



## Vietnam's and China's Diverging Industrial Relations Systems: Cases of Path Dependency

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### ABSTRACT

This article explains why Vietnam and China, one-party states that allow only one official trade union, are traversing different paths in their trade unions' institutional structures, the state's and trade union's attitudes towards strikes, their willingness to allow independent trade unions and willingness to engage with the international labour union movement. These will be examined in terms of the path dependency of their recent histories, in which changes have been incremental on a path laid down by pre-existing entrenched institutions, until each national system no longer operated properly and new contingencies obliged the leadership to revamp the system. As a consequence of China's and Vietnam's divergent path dependencies, when external contingencies finally forced institutional change, countries have veered onto divergent trajectories – the Trans-Pacific Partnership energising Vietnam to debate the acceptance of autonomous trade unions, while Xi Jinping in China has intensified Party control over industrial relations.

### KEY WORDS

Vietnam; China; industrial relations; Trans-Pacific Partnership; path dependency

In March 2017, an International Labour Organization (ILO) consultant in Vietnam observed in an interview:

As I understand it, the new president of the VGCL [Vietnam General Confederation of Labour] is enthusiastic about continuing efforts to “renovate” grassroots organising even if the Trans-Pacific Partnership [TPP trade agreement] does not go forward ... In addition, I understand that the Ministry of Labour has moved forward with creating a new division of industrial relations that will administer the registration of independent unions.

At about the same time, in January 2017, a Chinese trade union employee remarked in an interview: “From the trade union's standpoint we don't welcome labour NGOs [non-governmental organisations]. We even feel antagonistic towards them. My own feeling is about the same. Our union has always taken them as a serious enemy.”

These two comments embody the current views held by the trade union federations in Vietnam and China. The first comment relates to heated debates within Vietnam on how to reform the industrial relations system to recognise workers' freedom of association in anticipation of Vietnam's participation in the TPP, a free trade pact that commenced at the end of 2018. This entails a revolutionary change in Vietnam's industrial relations system

and necessitates revising relevant laws and the creation of new institutions. At the time, there were also high expectations that Vietnam would also ratify ILO Convention 98 on the Right to Organise and Collective Bargaining (*Viet Nam News*, December 6, 2018).

In stark contrast, the second quote, from an informal interview with a young university graduate hired by a city-level Chinese trade union, reflects the animosity the union and the state harbour towards grassroots labour activism, especially after Xi Jinping became Party Secretary. At the end of 2015, the Guangdong government launched a mass arrest of labour NGO activists and then in January 2019 made another round of arrests (*South China Morning Post*, January 22, 2019). The two quotes exemplify the two countries' divergent governing strategies. The question that confronts us is why two formerly socialist one-party states that appear to have similar political systems are heading in diametrically opposite directions. Through a comparative analysis of China and Vietnam, this article seeks to explore the trends in both countries by way of the path dependency concept and will examine the contingencies that also helped to propel them in divergent directions.

### Sources for a Comparative Framework

Comparative analysis of countries can often lead to insights and, one hopes, avoids the pitfalls of myopic claims about each country's exceptionalism.<sup>1</sup> Vietnam and China are excellent comparators since both are Asian Communist Party states, steeped today in market economics. They share many characteristics born from a common Marxist-Leninist stock and scholars often make comparisons between the two countries to elucidate the transformations underway in both.<sup>2</sup> But while scholars who study Vietnam often include references to China in order to emphasise a point about Vietnam or to solicit backing for their arguments (see Nguyen 2016; Tran 2013), far less often do scholars in China studies engage with Vietnam comparisons. In this article, since Vietnam, not China, seems to be on the cusp of a transformative process in its industrial relations policy, the article will centre more on Vietnam, relegating China to the status of comparator. This will help highlight the policy choices that Vietnam has chosen in the last three decades that have led to its willingness to consider accepting freedom of union association.

The historical discussion in this comparison is drawn from secondary literature and repeated field observations in Vietnam and China over a period of more than two decades. For the more recent period since 2015, while recent documentation is used, the information is based largely on three rounds of field interviews in 2015, 2016 and 2018, both in Vietnam (Ho Chi Minh City, Dong Nai, Binh Duong, Hanoi and Haiduong) and in China (Shenzhen, Guangzhou, Shanghai and Beijing). Each research trip lasted about three to four weeks. Informants included VGCL officials at the national and city levels; ACFTU [All-China Federation of Trade Unions] officials and staff in Shenzhen and Guangzhou; workers in foreign-invested manufacturing factories in both countries; Taiwanese factory managers in the Ho Chi Minh City region and in Guangdong province; the Ho Chi Minh City and Hanoi branch offices of the Taipei Economic and Cultural Office; ILO offices and **Friedrich-Ebert-Stiftung** (FES) offices in both countries, and the Australian union federation's aid agency (APHEDA) office in Hanoi.

The interviewing was conducted as part of a collaborative project among six academics from Hong Kong, Taiwan and Australia. The six scholars each focus on one

socio-political topic. Almost all our interviews were shared among the team members. Thus, in addition to expanding my own knowledge on industrial relations during my trips of 2015–2018, I also gained a broader knowledge of the two countries' labour migration patterns, social security systems, workers' strikes and Taiwanese business's investment environments, which have helped me to place my own research findings into a broader context.

### **Path Dependency and Pressures for Change**

The path dependency concept is a useful starting point to explore transformative changes in state institutions and policies. Path dependency assumes relative stability in a political system as a state develops along a path laid down by pre-existing entrenched institutions (Djelic and Quack 2007). However, when a system no longer functions properly, internal social forces and/or external forces may emerge to force change, and path dependency is no longer adequate to explain the dramatic social and political changes and the creation of new institutions (Peters, Pierre, and King 2005; Kay 2005). To account for drastic change, critics invoke the pressures exerted by external or internal forces that can disrupt or even terminate what had been a path dependent scenario (Mahoney 2000). Djelic and Quack (2007, 113) note that in such unforeseen and unusual circumstances the path “will come to an end and a new set of contingent events will provoke a radical and partly unexpected reorientation.” This path transformation will allow new policy decisions and creation of new institutions (Kay 2005).

One epoch-marking political change in recent global history was the collapse of the bloc of Communist Party regimes in Europe during 1989–1991, giving way to the establishment of new multi-party political systems that recognised freedom of association and allowed multi-union systems. In contrast, by 1990 both Vietnam and China were well on the path to market economies without relinquishing Communist Party domination. Both states created new institutions and policies to adapt their economic system towards integration with the global capitalist economy, and as is well known, both have been largely successful. As is also well known, their success in the global economy has rested in part upon a large new class of migrant factory workers from the countryside, who worked very long hours at very low wages. But these workforces could not be expected to endure this permanently. Starting in the mid-2000s, migrant workers unleashed a series of strike waves that hit the foreign invested sector in both countries – especially in the industrial zones of Ho Chi Minh City and surrounding provinces and in China's Guangdong province. But whereas the Chinese government did not alter its labour policies, the Vietnamese government has increasingly moved to do so. Do Quynh Chi (2017, 3), a long-time researcher on Vietnam's industrial relations, observes, “The large number of strikes in the past decade has created significant pressure on the Vietnamese government to adjust the institutional framework.” She adds that the party-state's “decision to recognise independent unions is not due to external pressure [from TPP and the USA] but rather the result of internal demand for reforms” (Do 2017, 16).

Some other observers put more weight on external pressures and argue that “trade-labour linkages” are the main forces driving change in Vietnam's policies (Tran, Bair, and Werner 2017). One type of external pressure is corporate social responsibility codes

of conduct set by foreign brand-name firms (Evans 2018). More significantly, direct demands have been pushed by several countries when signing free trade agreements with Vietnam. These sometimes include labour clauses that stipulate freedom to join autonomous trade unions. The TPP includes such a labour clause, which the USA, Vietnam's largest export market, pushed hard for during the Obama administration. After President Trump pulled out from the TPP in early 2017, the remaining member nations formed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP or TPP-11), which also contains a clause on freedom of association. In addition, Vietnam was also under pressure from its other main export market for manufactured goods, the European Union. To access the European market, Vietnam has had to sign a free trade agreement called the European Union-Vietnam Free Trade Agreement. According to Evans (2018, 16), such free trade agreements have been "central to Vietnam's reform process." The external pressure can be interpreted as a driving force for change.

China similarly was worried that strikes might drive away foreign investments and threaten social instability. However, unlike Vietnam, it did not make concessions. It paid scant attention to corporate social responsibility codes and continued to clamp down on labour activism. Vietnam and China are heading in different directions. While an explanation for this partly lies in the trade agreements with labour clauses that Vietnam sought to benefit from, there were other factors embedded in the two countries' systems – historical, political, social and institutional – that provided pre-conditions for the two countries to choose different pathways for their industrial relations systems. It will be seen in the following sections that these pre-existing trajectories – these different path dependencies – were of vital importance in predisposing China to largely forego concessions in the face of worker unrest, whereas the Vietnamese government and even the Vietnamese union federation have been predisposed to open the doors to major changes. In fact, as the quote at the beginning of this article showed, the Vietnamese union leadership did not oppose the TPP proposal, but instead pro-actively recommended that the government accept the labour clauses that would open the way to new independent unions.

### **Historical, Political and Structural Similarities and Differences**

In the decades before Vietnam and China shifted towards a market economy, when both regimes had operated a collectivist command economy, in industrial relations they had held to the premise that since their regimes represented the interests of the workers, there was no need for an independent trade union. Neither did independent employer organisations exist since the state was the main employer. The only official trade union was set up as a two-way "transmission belt," with an assigned self-contradictory function. Supposedly, it represented the interests of both workers and the party-state. But in systems where all sectoral interests were subordinated to the interests of the party-state, in reality the "belt" could only transmit top-down information and directives and was prevented from having any bottom-up function. The state therefore was the sole commanding actor in the industrial relations system.

When they adopted "socialist market economies," China starting in the early 1980s and Vietnam beginning in 1986, the political structure was left intact, including the role of unions (Taylor, Chang, and Li 2003; Kerkvliet 2001; 2003). But this was like putting

square pegs into a round hole. The logic of the political structure of state socialism no longer fit a market model due to the emergence of new players – foreign and domestic capital. The party-states wanted the ACFTU and VGCL to continue to hold onto their monopolistic transmission-belt function, but the ideology that gave legitimacy to a state socialist structure was now being challenged by a new binary employment relationship between capital and labour, characterised by a commodification of labour, with a different balance in different sectors (Friedman 2014; Karadjis 2011). In the state sector of both countries, workers' wages and benefits are better, jobs are more secure and strikes fewer than in the private and foreign-funded sectors.

Notably, though, the two states' approaches to these shared circumstances have diverged. This is due in part to the fact that Vietnam has a more pluralistic governance structure, characterised by coalitions among its elite political institutions that result in "a diffusion of political authority" (Malesky, Abrami, and Zheng 2011, 402; also see Vasavakul 2019, 3). This is partly a consequence of the historical legacy in Vietnam, which had experienced its own form of personality cult but was spared the extreme degree of authoritarianism China experienced under Mao, and was spared, too, the same measure of subordination of the government to the Communist Party. More recently, as a result of having adopted a policy of fiscal, administrative and political decentralisation to lower levels of government, the prime minister has been able to rally provincial support, causing the Communist Party to decline in power *vis-à-vis* the government (Vu 2016). In contrast, in China ever since Deng Xiaoping left the scene, the Party Secretary has headed not only the Party, but also serves as president and heads the Central Military Commission. The centralised leadership, especially under Xi Jinping, allows little autonomous space for bureaucracies, including the ACFTU.

Under these two variants of power concentration, how did the trade union federations adjust (or rather were allowed by the party-state to adjust) when domestic private and foreign capital began to control workplaces? There are path dependencies at work here. Alongside the different degrees of concentration of power by the Communist Party, the VGCL's and ACFTU's pasts were quite different. Since the Chinese Communist Party came to power in 1949, the ACFTU has been entirely subordinate to party-state domination even when policies went against workers' interests. For more than a decade beginning in 1966 with the eruption of the Cultural Revolution, the union was even disbanded as an institution. After Deng came to power, he revived the ACFTU and granted it a small measure of autonomy in the early 1980s, aware that under a market economy, workers would need some protection (Chan and Zhu 2002; Taylor, Chang, and Li 2003). But by the 1990s, the experience of China's pre-1949 trade union movement was too distant in the past to leave any legacy of experience to trade union officials grappling to figure out how to adjust to the emergence of private companies. The union federation remained steeped in a culture of acquiescence to the Party. The first Labour Law, passed in 1994, was generally considered as pro-labour, but because the party-state prioritised foreign investment and economic development over workers' interests, the unions did not normally intervene on workers' behalf. This is particularly true of local-level union officials, who, as in the Mao era, come under local party-state governments. These local governments today compete to attract investments, as they depend on the revenue from private industry. Thus, when workers seek help from local unions, at best the unions do nothing, at worst they side with management and the police. When workers pursue legal channels, labour NGOs assist

them with the litigation, not the local union. The ACFTU today is no more than a very weak central government-style bureaucracy and the local unions are largely subordinate hand-maidens of local governments.

The VGCL in contrast has a long history of militancy during wartime, first against French colonialism and then in the south as autonomous unions up to 1975 (Tran 2013, 15–110; Wehrle 2011, 13–45; Schweishelm and Do 2018). After the war ended in 1975 union officials in the south retained memories of a mission to represent workers, and when *Doi moi* (renovation of the economy) began officially in 1986, institutionally, ideologically and culturally southern Vietnam had not been fully absorbed into the fold of Party verbiage. Hansson (2003, 167) has noted that “most officials interviewed at the VGCL in 1999 . . . held a more open attitude towards strikes and labour disputes.” This is confirmed by fieldwork experience. In an interview with a relatively high-level trade unionist in the mid-1990s, the feeling was of talking to a trade union official who still possessed some militant commitment, quite unlike the positions of Chinese union officials who were interviewed, who are accustomed to spouting the Party line. In another instance, at the height of the anti-Nike corporate social responsibility campaign in the second half of the 1990s, a Vietnamese American who worked for a US labour-rights NGO was smuggled into a footwear factory in southern Vietnam by the local trade union to collect evidence on poor work conditions; this could not have happened in China.

There were times when both the ACFTU and the VGCL tried to wrest some space from the party-state in the late 1980s. The ACFTU’s attempt to gain some autonomy during the 1989 Tiananmen protests ended up being suppressed (Walder and Gong 1993). The VGCL, in contrast, at the 1988 Trade Union Congress achieved some independence. The Secretary General of the Party, Nguyen Van Linh, declared that union cadres might voice their ideas independent of the Party and management (Hansson 2003, 159; Nørlund 1996, 96). Having specialised in Chinese labour relations, when I first conducted research on Vietnam in the mid-1990s, I was surprised that *Lao Dong* (Labour), the VGCL’s official newspaper, carried articles in which the union openly staked out a position different from that of the Party and the Ministry of Labour, Invalids and Social Affairs (MOLISA). Throughout the years, up to the present day, the VGCL has relentlessly argued that the minimum legal wage is set too low to cover workers’ needs (Siu and Chan 2015). Such an opinion has never appeared in China’s *Workers’ Daily*, the ACFTU’s mouthpiece, since all Chinese bureaucracies speak with one voice – that of the Party. When there were debates in China over industrial relations policy, they took place behind closed doors.

The VGCL enjoyed this public space partly due to the trade union’s structure. The Chinese and Vietnamese party-states both have control over the appointment of leading cadres at each level of the union and leading union cadres are therefore subject to two management systems in both countries, what the Chinese call “Branch Dictates” (*tiaotiao zhuanzheng*) and “Area Dictates” (*kuaikuai zhuanzheng*) (Unger 1987). Branch Dictates refers to an agency’s hierarchical chain of command while Area Dictates refers to a command system under the local Party at the same hierarchal level. Whereas China is dominated by Area Dictates, Vietnam is more inclined towards Branch Dictates. This structural difference means that the VGCL has more managerial supervision over its lower-level union administrations than the ACFTU has. The VGCL’s line of command from the top down to various lower-level unions can override

the interests of the party-state at the local level. This permits the VGCL to discharge its assigned mission to safeguard workers against employers' legal violations without being trumped by the local party-state's priority for economic development. Hansson (2003, 158) observed that unions at the local level "might in some cases behave in a more autonomous manner" and "according to the official organisational scheme, the unions at the different levels *cooperate* with the party and government institutions" (Hansson 2003, 157). The italics I have added to "co-operate" emphasise that this is not a word that would characterise the local-level Chinese unions' subordinate relationship with the local party-state. This is true even at the higher tiers of the Vietnamese union structure. When Do (2017, 2) commented on the relationship between the VGCL and the party-state she even referred to them as forming an "*alliance*" with "longstanding *links*" [emphasis added], rather than a superior-inferior relationship between the trade union and the party-state at the same level.

Vietnam has a tradition of sectoral trade unions that co-ordinate from top to bottom within a vertical line of command (Chan and Nørlund 1998, 187). In China, sectoral industrial unions that are organised from the centre down to the bottom do exist on paper, but they are so weak due to the Area Dictates structure that they are ignored in academic research even inside China. Friedman's (2014) field study in 2011 found that the Guangzhou City union federation and the Zhejiang provincial union federation attempted to organise small-scale cross-enterprise unions, while the party-state organised employers' associations in construction, sanitation, eyeglass making and woollen knitwear industries, to fulfil an upper-level demand to implement trade "collective consultations" over wages and conditions. But this experiment fell by the wayside because the sectoral unions and associations were weak and ineffective. These were sporadic piecemeal local initiatives that did not have an impact in other parts of China.

### **The State's and the Trade Unions' Attitudes towards Strikes**

The two countries' industrial relations systems are strongly influenced by the historical paths they had travelled, which became evident when many wildcat strikes erupted in the labour-intensive export sectors of both countries in the mid-2000s. These jostled the two countries' union federations into rethinking their strategies. How should they balance economic development against labour exploitation, which might open the floodgates to social instability? How should they handle strike situations and striking activists?

Foremost was how to devise a legal regulatory system to prevent and handle strikes. Should a labour law empower workers the right to strike? The Vietnam Communist Party is more tolerant of pluralistic viewpoints, and when drafting the Labour Code of 1994 one view expressed within the Law Commission of the Labour Code was "that the role of the trade union might have to be redefined to emphasise protection of labour rights including the right to strike" (Hansson 2003, 159). This argument won out and the right to strike was included in the Code. But this article in the Code was based on the expectation that if workers went through proper pre-strike procedures, which are cumbersome and which have to be led by the trade union, disputes could be peacefully resolved. One problem is that, similar to China, many smaller workplaces in Vietnam do not have trade union branches, and where they exist they are usually under management control. Too, grass-roots union members in Vietnam are not legally allowed actively to organise strikes and if

workers want to strike as stipulated by the law the workplace union has to apply. Even if the union applies, the application procedure is so laborious it is not pragmatic for workers to take that route. As a result, all strikes in Vietnam are “leaderless” wildcat strikes, and not one has been organised or led by a trade union.

In China, the right to strike was removed from the 1982 Constitution and when China passed its Labour Law in 1994 the legal status of strikes was not mentioned. There were reportedly internal debates on what to enact, but in the end the lawmakers did not want to confront the issue head on (Chang and Cooke 2015, 45). This resulted in Chapter 10, Article 84, which states that when a dispute arises and cannot be settled, “the administrative department of labour under the local people’s government may co-ordinate with the parties and organisations concerned in settling the dispute” (State Council 2014). There is no mention of the possibility of strikes, which in China are in a grey zone, but not criminalised.

Neither of the two countries’ regulatory regimes have been able to prevent strikes, regardless of strikes’ legal status. Both sets of authorities have the perception that social instability is under threat. The big difference between them lies in how the government and the trade union handle strikes in practice after they erupt.

Vietnam’s *de facto* policy is not to suppress strikes even when workers do not comply with the pre-strike procedures and stage an illegal strike. The party-state and the VGCL act as though it is up to the workers whether or not to strike. When Katie Quan, an ILO consultant from the USA, was officially invited to conduct collective bargaining training for the Ho Chi Minh City garment industry sector in 2010, this is what she observed in a mock collective bargaining session (Quan 2015, 179):

Its leader stood up and passionately argued, “The garment CBA [collective bargaining agreement] prohibits workers from striking, but if the workers strike, that is their right.” I was stunned to hear the chief negotiator say that striking was not a violation of the CBA. Later I heard the same sentiment expressed throughout Vietnam from grassroots unionists to high-level government ministers.

Researchers who have studied strikes in Vietnam independently have arrived at a consensus that when a strike breaks out, the local labour bureau, the provincial union, and the police all rush to the site to act as mediators, but normally on the side of workers.<sup>3</sup> They go around collecting workers’ grievances, lambast management for violating the law (which more often than not is the case), and then negotiate with management on behalf of the strikers. Since it is management that has breached the law, the trade union with the backing of the labour bureau tends to succeed in securing some gains for the workers. Strikes in Vietnam are usually short-lived and end without violence. The government also arranges that the strikers are not penalised for the lost work days. The irony is the authorities are violating the law in not punishing the workers for engaging in an illegal strike. The flip side of this peaceful pattern of resolving labour disputes is that going on strike has become an easy option for workers to improve their conditions, because they are confident the union and the government will react on their side. Däubler (2015, 106) observes, “The objective consequence is that the strikes can go on. They may be even less risky than before.”

A representative of a German association who worked closely with MOLISA, the VGCL and Hanoi Law University from 2007 to 2011 related his experience:



There is plenty of anecdotal evidence that trade union officials quite regularly do have advance knowledge of illegal strike actions planned. VGCL officials at local levels sometimes and in non-official settings make no secret of their conviction and determination that “to protect and struggle for workers” interests’ is their highest priority after all and cannot always be done by following the letter of the law or official doctrine of non-conflictual compromising. In addition, attempts are being made by VGCL officials to set up a fund for strike leaders paying a personal price for their engagement by losing their jobs. There even have been cases where successful strike-leaders who had found it impossible to find a new job have been taken on as VGCL staff (Bergstermann 2015, 84–85).<sup>4</sup>

Similarly, Anner and Liu (2016, 25) noted that the presence of the trade union during a strike is a signal to the workers that the union is on their side and the strike has informal approval. Do Quynh Chi (2017, 10) found there are cases of “covert collaboration between the informal leaders and the official trade union leaders.”

Chinese union officials, in contrast, have chosen a very different tactic in handling strikes. When a strike breaks out the local labour bureau, the local trade union and the police often rush to the scene. As in Vietnam, the Chinese labour bureau and trade union mediate, but more often than not they have come to help management to pacify the workers. Union officials do not behave as if they are workers’ representatives but rather management representatives; at best they attempt to play a persuasive role in coaxing workers to return to work (Chen 2010). If the number of workers involved is in the hundreds or thousands (the biggest strike at one factory involved 40,000 workers in 2014), the police (sometimes with dogs) will arrive *en masse*. The atmosphere often is impregnated with distrust and tension, as if violence is about to explode. If workers spill over onto the streets the police normally immediately move in to suppress them. Those arrested are sometimes charged with criminal offences such as disturbing the peace or inciting violence, but not for going on strike, as they cannot have violated a law that does not exist (Chan 2010; Chan and Hui 2014).

If a Chinese workplace has a trade union branch, workers are either dismissive of the union or often are unaware of its existence. In contrast, Vietnamese workers have much more favourable feelings towards the union. In 2007 I participated in survey research involving five Vietnamese and five Chinese owned companies in each country, an overwhelming majority of Vietnamese workers thought that the enterprise union branch represented their interests as opposed to only 10% of Chinese workers (Siu and Chan 2015, 8).

Workers in China have good reason for not trusting the levels of the union above the company, as these normally side with management. An illustration involves Walmart’s stores in China. In mid-2016 more than 10,000 workers from over 400 Walmart stores across China participated in an on-line interactive workers’ website that protested a new flexible work hour system that eliminated overtime pay. Through social media platforms, strikes broke out at four stores and slowdowns at many others. Despite workers’ repeated open appeals to various levels of the ACFTU for help, the union gave them no support and let Walmart retaliate by harassing and firing dozens of workers. When an activist went to the Shenzhen trade union office to seek help, the head of the Shenzhen union federation berated her:

The company has a normal management system. You should maintain a co-operative attitude with the company. . . . No one can help you when you hold onto this confrontational attitude of

yours. If you consider things from the vantage point of the workers, then you would not oppose Walmart's work hour system.<sup>5</sup>

He then ordered security guards to throw her out of the building (Chan 2018).

## **Integration with the International Labour Community**

The global template to achieve industrial peace is the ILO's hallmark tripartite framework composed of the state, employers and unions. The aim is that through dialogue the three parties, given an equal voice, can negotiate labour standards on an equal footing. The ILO's aim is to clone this structure at all levels in a country, from top to bottom. Labour, generally being the weakest of the three parties, often needs assistance to strengthen the trade unions so that labour's voice can have an equal status and equal competence.

The ILO Conventions were drawn up based on principles established in multi-party democratic political systems that recognise a peak-level tripartite system of state, employers and labour, freedom of association (that is, a right to participate in independent trade unions), and collective bargaining as core rights of workers. Even though China and Vietnam are one-party states that do not have freedom of association, the ILO has country offices in Hanoi and Beijing, working as partners to help strengthen a tripartite organisational structure. Since 2001, China, having sought membership in the ILO and thus having accepted tripartism as the foundation of stable industrial relations, began to establish national tripartite consultation committees (Clarke and Lee 2002). Replication of these committees from the top down took place at various levels. The Chinese party-state is unwilling to retreat from dominating the employer and labour organisations that it has created in the aftermath of joining the ILO. According to an ILO report, "The predominant views among seasoned observers – not only foreign but also local – have so far been sceptical about the impacts of the new industrial relations practices on labour market outcomes" (Lee 2009, 18). One consequence is that relations between the ILO office in Beijing and the authorities have been formal and distant (Interviews, ILO office, Beijing, 2015).

In contrast, in Vietnam, MOLISA and VGCL have been working closely with the ILO for many years. The ILO has been active in an advisory capacity, helping with organising collective bargaining training sessions, drafting and revising laws, facilitating contacts with international trade union communities, organising conferences and seminars, and so on. Working closely with the ILO office reflects Vietnam's willingness to be exposed to foreign systems, and this is where Vietnam and China differ. Based on repeated visits to the ILO offices in both countries for discussions during the past two decades, Vietnam is much more willing to consider ILO advice. An official in the ILO Beijing office who has worked in both countries remarked in 2015 in an interview, "Whenever there is a labour law reform in Vietnam the Vietnamese government consults with us at the very early stage whereas China only consults with us three months before passing the law." To a large extent, this is a reflection of the Vietnamese Communist Party's greater openness and its willingness to grant the VGCL some autonomy.

A sign that the tripartite system is taking shape in Vietnam was the creation of a National Labour Wage Council where the three parties each year negotiate on the country's minimum wages for different regions (ILO 2013; ILO Hanoi 2016). The negotiations pitted the

VGCL against the Vietnam Chamber of Commerce and Industry, the peak employers' association, with the state's representatives at the tripartite meetings largely assuming a neutral position. In 2017, after five weeks of negotiation, the VGCL's demand was for a 13.3% increase in the minimum wage while the Vietnam Chamber of Commerce offered 5%. In the end it was settled at 6.5% (the year before had a 7.3% increase), the lowest increase in 11 years. After the agreement was signed the vice chair of the VGCL in charge of union representation publicly lamented that the new minimum wage would not meet workers' needs (*VN Express International*, August 7, 2017). This points to a new situation in Vietnam in which the state does not assert its authority as it used to and takes a more neutral position, and since labour is weak, labour loses out in this round in this new tripartite institution.

However, this does not mean the VGCL and workers have lost backing from the party-state. Support depends on the circumstances. A good example is that when MOLISA sent two teams of investigators to factories operated by Samsung, Vietnam's largest foreign investor, which contributes more than 20% of Vietnam's exports, it found breaches of the Labour Code and demanded that Samsung rectify the problems in 60 days (*Vietnamnet*, November 27, 2017). The government is mindful that a high-level ministry has to be mobilised to handle such a powerful company. The VGCL would not be strong enough to take on such a powerful investor.

All through the years, the VGCL has consistently published reports on workers' living standards and has repeatedly argued that the minimum wages were set too low (Siu and Chan 2015). The VGCL seems determined to galvanise itself to gain better results in future years' negotiations. Efforts are being made to strengthen the VGCL from both ends: the peak-level union federation encourages collective bargaining training programmes throughout the entire hierarchical structure, and also has a focus on strengthening grassroots trade unionism, which is the weakest of all levels. The VGCL recognises that a much-needed change is for workplace union branches to dissociate themselves from management (Khanh 2014; Quoc 2017).

For many years, as it sought to learn how to operate better in the context of the new market economy, private capital and negotiations, the VGCL has been receptive to engaging with foreign trade unions. The VGCL has a particularly close partnership with two trade union support-and-solidarity organisations (TUSSOs).<sup>6</sup> One is FES, a German foundation sponsored by the Social Democratic Party that receives German government funding. The other is APHEDA, a foreign-aid organisation affiliated with the Australian Council of Trade Unions. Relations between the Vietnamese and Australian labour movements go back to the days of the Vietnam War (Cooper 2015). Both TUSSOs have been jointly running various programmes with VGCL since the 1990s when, through APHEDA, the Australian Public Service Sector Union helped VGCL to set up Vietnam's public sector union (Chan and Nørlund 1998, 193).

In 1996, FES and the VGCL organised training courses in labour law and legal services. To German trade unions, providing legal services to workers is considered a core task of the trade unions in representing workers. In 2006, through FES, MOLISA invited a German labour lawyer to give advice to personnel of MOLISA and VGCL and to a parliamentary commission on labour law reform. The terms of reference were "to develop a set of legal provisions which would give the workers a fair chance to realise their interests without breaking the rules" (Däubler 2015, 94). By 2016, 53 labour

service centres had been set up around Vietnam, mostly equipped by FES, and by 2014 the busiest of the centres had handled 3,000 cases within the previous one and a half years (FES 2015).

APHEDA has partnered with the VGCL to work with lower-level union branches to help with employment creation projects and to improve trade union capacity and provide collective bargaining training. These are not one-off training sessions but well-planned programmes. Aware that the VGCL was eager to learn from the experience of other national union movements, APHEDA also facilitated a delegation composed of the leaders of several Australian trade unions. The purpose was not so much to provide a litany of their successes but rather to provide a “warts and all” description of the Australian industrial relations system so that VGCL can understand the challenges it might face (APHEDA 2016).

By comparison, the ACFTU has an antagonistic attitude not only towards Chinese labour NGOs, but even more so with foreign NGOs. While the VGCL and the state are also wary of domestic labour NGOs, from my observations the VGCL’s negative attitude is not as strong. Official bureaucracies and NGOs in Vietnam sometimes run joint projects. According to Nguyen (2017b) who was a participant observer, the Dongnai provincial government and its union federation accepted several years of funding from Oxfam Solidarity Belgium and successfully established a very innovative grassroots legal aid project, training several hundreds of committed labour activists in the evenings and weekends to help raise workers’ legal awareness and to handle several hundred legal cases.

In contrast, the ACFTU’s relationship with foreigners tends to be distant, formal, cordial but guarded.<sup>7</sup> The distrust is mutual. The ACFTU has been the subject of an extended controversy within the former International Confederation of Free Trade Unions and its successor, the International Trade Union Confederation as to whether to accept the ACFTU as a member. The point of contention is whether the ACFTU should be recognised as a trade union federation because it is so dominated by the Chinese Communist Party. Those foreign unions that advocate engagement have tried hard to establish relationships with the ACFTU. Their union delegations to China receive friendly but formal receptions complete with visits to a few model factories or model trade unions, supplemented by banquets and sightseeing. Establishing relations beyond this formality is difficult. Partnership agreements sometimes are signed, but they tend to revolve around only a few enterprises whose investors are nationals of the foreign partner. Any kind of training in labour-related laws, industrial relations systems or collective bargaining is piecemeal and short-lived. A union of a Western European country, for instance, has been able only to have access to a few of its own country’s enterprises after almost a decade of contacts with the ACFTU. Well-planned, long-term training programmes and train-the-trainers programmes conducted by foreign trainers do not exist in China. The Chinese authorities keep foreigners at arm’s length from its institutions. With the passage of the new Foreign NGOs Management Law in January 2017 that imposes even greater restrictions, efforts to develop relations have become doubly difficult. Foreigners who have worked with labour-related institutions in both countries almost always report it is much easier and more rewarding to work in Vietnam than in China.

### **The Contingency Factor and Efforts to Reform Trade Unions**

The TPP served as a catalyst that induced Vietnam first to consider and then to decide to move towards a multi-union reform industrial relations system. It is notable that it was the

VGCL that proposed to the party-state that Vietnam should accept this negotiating demand of the US government.<sup>8</sup> While the TPP presented a contingency that triggered the VGCL's decision, it is also clear that the trajectory of shifts within the VGCL, in a path dependent fashion, provided the preconditions for the VGCL's affirmative decision.<sup>9</sup> Also notable is that the VGCL felt confident enough to compete for the loyalty of Vietnamese workers *vis-à-vis* any new trade unions that might emerge. In mid-2016, during field research, a VGCL official explained, in a matter-of-fact manner, that some workers had already applied to set up new unions in anticipation of the legalisation of independent unionism. The VGCL understood the necessity to be seen as actively representing the workers and is readying itself for a new challenging environment.

After Trump withdrew from the TPP negotiations, the ILO continued with a scheduled project to set up elected grassroots trade unions in six provinces (Interview, ILO Hanoi consultant, March 2017). The timeline drawn up to implement various stages in revising the labour law and trade union reform programme was also still in place, though slightly behind schedule. MOLISA drew up a draft of a revised Labour Code in November 2016. The VGCL president as of March 2017 was still enthusiastic about it and debate over revising the law and freedom of association was intense. In a top-level meeting of a number of government organs, with foreigners present, one of the vice presidents of the VGCL argued forcefully that the reform has to be from the bottom up, and even said, "if we [the VGCL] have to change, then the Communist Party too has to change" (Interview, 2017). The openness and the vigour of the debates in these meetings suggest an increasingly pluralistic Vietnamese politics.

China was not a partner member of the TPP. So there was no external pressure on the ACFTU to reform its industrial relations system. Diverging from the Vietnamese path of increasing liberalisation, China has continued to tread a path of little change in terms of protecting labour rights. In the past two decades, some officials within the ACFTU leadership periodically have sought to introduce reforms to pre-empt labour unrest; but, again and again, their reform proposals and programmes have petered out, and not much has changed. These programmes have included experiments in conducting workplace union committee elections, though these experiments were controlled and often manipulated (Chan 2015; Howell 2006; Chan and Hui 2014); campaigns to establish workplace collective bargaining (Lee, Brown, and Wen 2016); establishing amalgamated district or village union branches for scattered small workplaces (Friedman 2014); sectoral collective bargaining, such as for the woollen knitwear industry in a county (Wen and Lin 2015); and new laws such as the 2008 Contract Law to regulate individual employment contracts and reduce the exploitation of agency workers (Zheng 2009). None of these initiatives broached the sensitive issue of freedom of association. The initiatives are normally trialled first at pilot sites. Union officials often claimed "success," yet they have not been rolled out widely nor resulted in long-term changes (Howell 2008; Liu 2010; Friedman 2014).

Nonetheless, there are signs these programmes have helped raise some workers' knowledge of their legal rights. More often, though, labour NGOs and legal aid services for workers have emerged to fulfil functions abandoned by the ACFTU (Chan 2018). Strikes have been breaking out unabated since 2010 and there have not been any mass arrests of strikers; but the authorities have begun to clamp down in other ways.

The rise to power of Xi Jinping in 2013 has triggered a push for greater controls over all aspects of society. Xi has exhibited an authoritarian style of leadership, amassing unrivalled personal power in place of collective Politburo decision-making. This ended a more conciliatory path and has been replaced by hard-line governance, heading China in the opposite direction of Vietnam's gradual diffusion of political authority and liberalisation (Malesky, Abrami, and Zheng 2011). Xi has silenced well-meaning critics of government policy. He fears social instability, but unlike Vietnam, which, as we have seen, has accepted the ILO's tripartism governance model of industrial relations, Xi refuses to devolve any power or autonomy to the ACFTU, rejects any foreign influence and has created an environment in which labour NGOs and civil society organisations are subjected to rounds of suppression (Franceschini and Nesossi 2018).

Xi does recognise that the union federation is relatively ineffective and blames the ACFTU for not being able to manage social stability. In a speech, he lambasted the ACFTU and other state-sponsored mass organisations for having alienated themselves from the workers and the people due, according to him, to "four types of ossification" – that they have become "bureaucratized, hedonistic, behaving like royalty and acting like functionaries" (cited in Qiao 2017). Xi's solution is that they "should always place themselves under Party leadership" (*Xinhuanet*, July 8, 2015). A new round of top-down reform was ordered – union officials are to be one with the people; and more grassroots and amalgamated union branches are to be set up to provide workers with more services. Simultaneously the role of the Party should be strengthened by setting up more grassroots Party branches in factories. Essentially, it amounts to the Party being the overseer of the programmes to ensure the unions do not shirk their responsibility in surveillance at grassroots level to diffuse any sprouts of labour unrest. In practice, this amounts to Xi's personal sanction to roll out the practice that Howell (2015) has coined "welfarist incorporation." This includes setting up trade union outposts; having enterprise unions provide minor social services to workers, as had been the case under Mao; and subcontracting several other social services to private institutions or service-provider NGOs. The aim is that such welfare provisions can assuage workers' grievances without having to concede to their demands for better work conditions, labour rights protection or democratic elections of workplace trade union branches.

Each province, each city or each district may innovate and launch its own programmes. In 2015 and again in 2017 I had a chance to see how such a programme is carried out in Shenzhen. In 2015, the Shenzhen city union used its own resources to recruit several young university graduates to staff a few "community trade union" centres in industrial zones and run them like youth community centres, organising hobby clubs and outings and disseminating some innocuous labour law knowledge to workers in the zone. The centres' staff do not have the authority to intervene in strikes that involve more than 100 workers, in which case they have to wait for the local union and authorities. Nor are the centre staff empowered to organise any activities that might conceivably lead to collective workplace actions.

Reading between the lines of a provincial trade union report (Guangdong Province Federation of Trade Union Report 2016) on the "achievements" of three community union centres in three industrial zones, the centres are given hidden agendas – their more important tasks are to monitor workers' grievances and detect any signs of collective resistance in order to pre-empt collective protests and strikes. To fulfil

upper-level policy assignments to be “close to the masses,” the report lists their achievements quantitatively, expressed in the number of new social activities and hobby clubs set up, the number of workers participating in these activities, and the number of “illegal ‘labour protection’ organisations” (that is, labour NGOs) driven out of the zones. A 100% success rate means there has been zero number of labour protests.

The top-down piecemeal union “reform” agenda has not resolved industrial conflicts in Shenzhen. At the same time, suppression by the authorities has intensified, exemplified by the mass arrests of labour NGO staffers at the end of 2015 (Lai 2016). In July–August 2018 a strike in Shenzhen where workers applied to set up a workplace union escalated into violence. Several dozen workers and university students and labour activists who came to support the strikers were either charged for disturbing the peace, kidnapped in broad daylight or just disappeared (Wong and Shepherd 2018). January 2019 witnessed a third round of apprehensions and disappearances (*South China Morning Post*, January 22, 2019).

The VGCL in contrast is continuing to progress in the direction of tripartism under the guidance and technical support of the ILO and other Western institutions (Däubler 2018). The training in social dialogue does not encourage worker-management adversarial relations, but it does emphasise that trade unions represent workers’ interests that are different from those of employers. Admittedly, changing some of the enterprise-level union officials’ mentality takes time, but as described earlier, the VGCL at the national level has held a position relatively independent from the party-state and employers.

## Conclusion

What this article has shown is that despite China and Vietnam’s ostensible similarities as Communist Party regimes overseeing market economies, the two countries’ industrial relations paths have shifted in divergent directions since the introduction of economic reforms in the 1980s. It has been seen that this is due in part to Vietnam’s more pluralistic form of government, in which the official trade union federation, the VGCL, has had leeway to publicly promote its own policy positions. This compares to China, where the ACFTU must adhere publicly to Party policy and where local levels of the union serve as an extension to local governments that strive to attract new investors. A consequence is that local Chinese union officials have been more repressive than responsive when workers have raised collective grievances. In contrast, the Vietnamese union above the enterprise level has maintained a distance from employers; and it has also been less defensive when dealing with foreign unions and the ILO, and more open to ideas that originated abroad.

In step with the VGCL, the Vietnamese government similarly has been more responsive to workers’ collective actions over grievances. Vietnam recognises the right to strike, but not China; Vietnam has been lenient towards strikers, but not China; and Vietnam has been more willing to accept tripartite negotiations among employer associations, unions and the government, as promoted by the ILO. In all these respects, Vietnam, building on interactions among more pluralistic institutions, has been moving along a dependency path in industrial relations that diverges

further and further away from the trajectory followed by the Chinese government in the past three decades.

During the past decade Vietnam has been drawn in a dramatically new direction, as external contingencies arose – the TPP and its freedom of association clause and the free trade treaty with the European Union – with a real possibility that independent trade unions will emerge alongside, and compete with, the VGCL. Several commentators have naturally viewed this turn of events as having been forced upon the government and union as the price to be paid for needed trade pacts. But notably, Vietnam was already primed to consider and accept this dramatic change, due to the evolving dependency path the union federation and government have been following in labour relations during recent decades.

## Postscript

On 14 June 2019 all of the deputies present at a National Assembly session voted yes to the ratification of the ILO Convention 87 on the right to organise independent unions and collective bargaining. [https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS\\_710542/lang-en/index.htm](https://www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_710542/lang-en/index.htm)

## Notes

1. Using this analytical method, Estlund (2017) wrote an excellent book comparing the industrial relations systems of China and the USA, which surprisingly reveals many shared commonalities while disclaiming their uniqueness. Also see Homer (2009) for another comparative study.
2. There is a useful literature on these transformations. See, for example, Chan, Kerkvliet, and Unger (1999); Sidel (2008); Pringle and Clarke (2011); Nguyen (2016); and Malesky, Abrami, and Zheng (2011).
3. This has been described in several publications, including: Clarke, Lee, and Do (2007), Kerkvliet (2011, 160–210), Chan (2011), Do and Broek (2013), Siu and Chan (2015), Däubler (2015, 93–108), and Nguyen (2016, 2017a).
4. I am aware of only one similar case in China, in which a reformist trade union chair of Guangzhou city hired a store-level Walmart trade union chair after he was fired by Walmart for publicly and rebelliously refusing to sign a Walmart-dictated collective agreement that was endorsed by the ACFTU (Chan 2015, 213).
5. This excerpt is taken from a transcript recorded by the activist on her phone on September 18, 2016.
6. TUSSOs are different from labour NGOs in that they are either branches or affiliates of established political or trade union institutions.
7. This sentence is based on two and half decades of my conversations with relevant officers of Australian, Canadian, American, European and other countries' trade unions, labour-related organisations and international foundations and agencies. For a brief history of the American trade unions' relationship with the ACFTU, see Quan (2017).
8. This information was provided by an APHEDA staff member who works closely with the VGCL, in a 2017 email.
9. After President Trump withdrew the USA from the negotiated TPP, it seemed the contingency factor had disappeared. But within a few months it was replaced by another contingency – the European Union-Vietnam Free Trade Agreement. The EUVFTA has lesser enforcement mechanisms than the proposed TPP. Nonetheless it required recognition of freedom of association (Tran, Bair, and Werner 2017).



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