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**Chinese Workers:**
Under Threat or a Threat to American Workers?

by

**Jialu Liu**  
Assistant Professor  
Economics Department, Allegheny College

**Virginia Harper Ho**  
Associate Professor  
University of Kansas School of Law

and

**Lu Zhang**  
Postdoctoral Fellow, Research Center for Chinese Politics & Business  
Indiana University

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**Editor’s Note**

In March 2010, the RCCPB hosted the symposium, “Chinese Workers: Under Threat or a Threat to American Workers?” The motivation for the symposium and the question from which its title comes out of are the regular stream of newspaper headlines which paint Chinese workers as either suffering from low pay and horrible working conditions or as fundamental threats to American workers (and those of other advanced economies). Although an oversimplification or even wrong in some respects, the purpose was to provoke and gain greater insights into the condition of labor in China. Liu Jialu, Virginia Harper Ho, and Lu Zhang provided different, yet complementary perspectives based on their backgrounds as an economist, legal scholar, and sociologist, respectively. (At the time of the symposium, Liu was a doctoral candidate in IU’s Economics Department and Ho a visiting professor in IU’s Maurer School of Law.) Each of them has spent a number of years culling through data, examining cases, and observing workers in China.

The symposium was so successful, the three agreed to put down their thoughts in a collective working paper, which we provide for readers here. The take-off point is the passage of new labor laws in 2007 and 2008. Liu, Ho, and Zhang arrive at a mixed conclusion. From an economic perspective, wages have risen substantially during the reform era, yet there is still substantial inequality, in part a result of the maintenance of the household registration system. The adoption of labor laws has empowered Chinese workers, leading to better conditions in some enterprises and greater activism on the part of workers. At the same time, some employers have found ways to avoid following the spirit, if not the letter of the laws. The consequences for American workers are unclear, since their challenges are less about a direct threat from Chinese workers and more about the overall declining environment for workers globally as a result of neoliberal economic policies and related business practices. All three authors offer specific policy suggestions directed at the Chinese government, the US government, and civil society groups.

The authors and the RCCPB welcome your feedback.

Scott Kennedy
Director
Research Center for Chinese Politics & Business
Indiana University
Since 1978, China has seen phenomenal economic growth. The success is built on economic reforms adopted in almost all major sectors—state-owned enterprises, private enterprises, agricultural production, banking and finance, and trade. The rural sector was among the earliest to undergo radical policy experiments and has experienced tremendous changes and improvements over the past three decades. The productivity in rural production soared after the more efficient household responsibility system replaced the collective people’s communes. Both income level and expenditure of rural households have had decent growth. More people migrate from rural areas to cities, which speed up China’s urbanization process.

However, compared with urban areas, the growth in the rural sector is still sluggish and lacks momentum. Figure 1 shows that the per-capita income of rural households increased from $109 in 1980 to $561 in 2007, while that of urban households increased from $274 to $1,870 during the same period. Figure 2 shows the inequality in terms of real purchasing power after adjusting for inflation. From 1980 to 2007, the real per-capita income of urban households increased by about 6.2 times, while that of rural households increased by about 4.6 times. Moreover, inequality between coastal cities and the less developed rural areas in in-land China are even more severe. Therefore, the rural-urban income inequality poses a severe and chronic challenge for China’s sustainable growth. Escalating rural-urban unbalances not only create social uneasiness and class resentment, but also slow down the overall pace of economic development.
This essay takes a historical point of view to explain underlying reasons for the unbalanced development between rural and urban areas in China. Moreover, we will provide some policy suggestion given the status quo.

Historical Reasons for the Unusually Large Rural-Urban Divide

The share of total Chinese labor force employed in rural areas was 80% in 1958; twenty years later, in 1978, the number was 76% (China Statistical Yearbook). For an economy with such a large rural population, one would imagine that urbanization should have taken place very quickly assuming low transportation costs. However, labor movements from rural to urban areas during this period were under strict control in China. Beginning in January 1958, the Regulations on Household Registration System in People’s Republic of China formally categorized all citizens into those holding “non-agricultural household registrations” and those holding “agricultural household registrations.” In addition, the state imposed food supply rationing and food stamps (liangpiao), which were popular in China until 1993. Food and other commodity stamps were distributed to urban residents according to the location of their household registration, family size and other factors. Therefore, it created an effective barrier for labor mobility, especially rural to urban relocation.

Since 1978, the State has loosened restrictions on rural-urban labor movements gradually. Since 1984, rural individuals who were doing business in urban areas were able to transfer their household registration to corresponding towns and cities, under the constraint that those individuals need to bring their own food rather than receiving food stamps from towns and cities. In 1985, the Ministry of Public Security approved an annual 0.02% quota of agricultural household registrations switching to non-agricultural ones. In 1993, the food stamps were
formally abandoned. The state adopted locations of residence and occupations instead of food stamp rations as the standards to define agricultural and non-agricultural household registration, and began a management system with permanent, temporary and visiting residents. In 1997, the State Counsel passed the new rules allowing rural citizens who were employed in towns, purchased housing in towns, or had immediate relatives in towns to transfer their registration to local townships. More radical changes in the household registration system were discussed in the annual sessions of the National People's Congress and the Chinese People's Political Consultative Conference held in March 2010.

Due to strict controls on rural-urban labor migration from 1958 to 1978, as soon as the economic reform started in 1978 and the restrictions were loosened, millions of rural Chinese began pouring into towns and cities. In 2009, a conservative estimate for the total number of rural migrants was 180 million, more than 10% of China’s population. Most of the rural migrant workers still keep connections with hometowns and go back to visit frequently. Rural migrant workers were given the name “the floating population” because of the high mobility of their jobs.

Characteristics of Rural Migrant Workers

Rural migrant workers are highly concentrated in several provinces in eastern China. In 2004, 28.4% of rural migrant workers worked in Guangdong, 8.1% in Zhejiang, 6.8% in Jiangsu, 4.7% in Shandong, 4.4% in Shanghai, 4.2% in Fujian, 3.8% in Beijing, and 3.6% in Hebei. More than one-fourth of rural migrant workers are employed in Guangdong province. Rural migrant workers travel a long distance to find jobs. More than 50% of rural migrants work in places
outside their home provinces. Moreover, more than 60% of rural migrant workers are employed in mid-size and large cities and metropolitan areas.

According to the Survey of Rural Migrant Workers in China (2006), a large proportion of migrant workers are concentrated in labor-intensive sectors. Figure 3 shows that more than 30% of the migrant workers are employed in manufacturing sector, about 23% in construction sector and more than 10% in services. Such sectors have high labor turn-over rates, high risk of job-related injuries, and low wages.

There are several reasons for migrant workers’ unsatisfactory working conditions. First, there is a large supply of migrant workers which put downward pressure on their wages. At the dawn of the economic reform, about 76% of China’s population lived in rural areas. Metropolitan areas, mid-size cities and towns have developed quickly and attracted a large volume of rural migrant workers over the past three decades. A conservative estimate is that there are 180 million rural migrant workers in China, counting for about 14% of its total population. Nevertheless, 45% of Chinese were living and working in rural areas in 2008, indicating China is still undergoing urbanization process and that there is great potential for the urban labor supply to continue to expand.

Second, migrant workers face low job security when local reinforcement of the Labor Law is weak, in which case, the employers may take advantage of the fact that rural migrant workers do not have local household registration. The Survey of Rural Migrant Workers in China (2006) shows that it is very common for urban employers to exploit wages of rural migrant workers. In 2004, 6.1% of rural migrant workers did not receive their deserved wages. 34% of rural migrant workers did not sign any contract. Many employers withhold 20~30% of
wages for three years, which are non-refundable if there are any errors or mistakes in their work or if migrant workers leave the company. Moreover, employers do not purchase health insurance for rural migrant workers, which leave 88.5% of migrant workers uninsured.

Last but not least, the education quality and human capital accumulation in rural China are disturbing. Among rural migrant workers in 2004, 2% are illiterate, 16.4% had primary school education, 65.5% had middle school education, 11.5% had gone to high school, and 4.6% had vocational school education. Most rural migrants have not received any kind of skill training. Even though the average education level of migrant workers are higher than those who choose to stay in rural areas, the overall skills and human capital level of rural migrant workers are not very satisfactory. In 2008, rural individuals on average received 7.8 years of education, urban individuals received 11 years, and Shanghai residents receive 14 years.

The above mentioned three factors—a large labor supply, inadequate protection for rural migrant workers’ rights and disadvantages in education result in the deemed low wage level, and insufficient wage bargaining power of migrant workers. It is commonly observed that rural migrant workers receive the minimum wage of the city where they are employed at. Figure 4 shows the levels and growths of minimum wage over the past 15 years in Shenzhen—one of the biggest China’s manufacturing and exporting hubs. In nominal terms, the minimum wage in Shenzhen in 2008 was about three times that in 1994. However, after adjustment for inflation, the minimum wage in Shenzhen grew at only four percent per year.

Alternative Occupational Choices for Rural Chinese

Rural migrant workers face low and slowly growing wages, discriminations from urban residents, job insecurity, and high risks in job-related injuries. Far away from families and
friends, rural migrant workers have few choices but labor-intensive jobs. One might wonder why millions of rural people still choose to leave their hometown given the seemingly unbearable working conditions?

To answer this question, we need to explore the alternative routes available for rural Chinese other than migration. Generally speaking, there are two broad categories of work that rural individuals can choose from. First, they can engage in agricultural production, such as farming, husbandry, fishing, forestry, etc. Second, they can stay in rural areas and begin non-farm businesses. However, rural individuals encounter sizeable difficulties and barriers in both types of work. As of November 2005, China had approximately 122 million hectares of arable land, covering only 13 percent of its territory. This amounted to 0.27 hectares per capita, one-eighth the U.S. level, and one-half the Indian level. The low quantity of arable land operated by each household makes agricultural production less efficient and makes it difficult to utilize economies of scale. Therefore, agricultural production cannot provide a fast growing income for most rural households.

On the other hand, for those who want to start business in rural non-farm sectors, they frequently suffer from funding shortage problems. Figure 5 shows that the development of TVEs came to a halt after 1990s. Even though the non-farm sector experienced fast growth in rural China after the reform, the rural financial market failed to show the same pace of development. Since 1980s, there have been several government attempts to liberalize the financial system in rural China; however, the results have not met the expectations. The financial markets in the rural area largely differ from those in the urban area. While the latter have had modernization and even participated in global competition, the former are stagnant. Cheng (2003) and Guo (2009) both show the rural credit markets are fragmented so that formal credit programs are
highly centralized, "cheap" credits are earmarked to certain agricultural investment, and private lending is strictly regulated and usually illegal. Deposits in rural China have been increasing over the past two decades; however, loans in those areas have not shown the similar growth. Figure 6 illustrates the decline in the ratio of total rural loans to deposits from 1985 to 2004, which indicates that the rural loanable funds are either channeled outside of rural China or are left unused. Successful entrepreneurship calls for mature financial markets. Facing borrowing constraints, many potential entrepreneurial projects in rural areas rely heavily on self owned funds or borrowing from relatives and friends. Huang (2008) considers the “great reverse” in China’s financial policies during 1990s has led to the sluggish development of rural enterprises. Liu (2010) discusses the negative effect of credit constraints on the sizes of rural firms and employment levels, and shows that some migrants choose migration as an intermediate method to accumulate funding for their business projects. The non-profitability in agricultural production due to limited per-capita arable land and the funding shortages facing rural non-farm enterprises have driven many rural people to become migrant workers.

Policy Suggestions

The current large volume of rural migrant workers is not a pure labor phenomenon; but rather, it reflects compounding effects of multiple policies from as early as the 1950s. The agriculture and non-agriculture dual household registration system delayed rural to urban labor movements; however, it also amplified its impact when the restrictions were loosened. The bias of financial policies toward urban sectors jeopardized rural township and village enterprises and brought their development to a halt after 1995. Insufficient education support fails to equip the rural young knowledge and skills that will empower them more leeway in occupational choices.
Under the current economic and political situation, several policies are important for China’s further urbanization process.

First, government should strengthen funding for rural education, cutting or eliminating education fees. Even though education is currently free for many rural schools, rural teenagers drop out of middle schools and start working as the opportunity cost of receiving longer education is too high. In order to provide more incentives for the rural young to stay in schools, the government needs to create more jobs requiring skills and higher education level so that students will recognize the long-run value of education. In addition, students from low-income families should have more access to loans to help them finish academic work.

Second, rural enterprises should be granted more access to loans in order to get over the credit constraints. Even though the applications for loans have been becoming much easier than in the 1990s, it is still very difficult for many rural households to obtain loans to start own business. The government should lead more balanced financial and credit policies to guarantee sufficient credit flows in rural areas.

Third, the household registration system should be completely eliminated. As long as there are different types of household registration, class discrimination and resentment will never come to an end, and rural migrant workers will always be in a passive position to accept the minimum wage.

Fourth, the government should speed up the development of suburban areas. Currently, too much monetary and physical resource is invested in the few metropolitan areas, where the large labor supply and fierce competition have suppressed both wages and career development
for rural migrant workers. A more balanced development of suburban areas can ease some population density pressure for central cities, and also alleviate regional inequality problem.

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Figure 1. Nominal Annual Per-capita Income (US $)
Figure 2: Real Annual Per-capita Income, Base year: 1978, RMB

- Urban residents
- Rural residents

Figure 3: Migrant Workers' Profession (2004)

- Manufacturing 30%
- Construction 23%
- Services 10%
- Others 20%
- Mining 2%
- Restaurants and Lodging 7%
- Whole sales and Retails 5%
- Transportation, Storage, Postal Services 3%
Figure 4: Shenzhen Minimum Wage

Nominal wage (yuan)  Real wage (in 1978 yuan)

Figure 5: Numbers of TVEs and TVE Employment  (Unit: million)

# TVEs  # TVE Employees
Figure 6: Loan to Deposit Ratio in China

Data: Almanac of China’s Finance and Banking (1986-2005); Guo (2009)
Labor and employment practices in China have captured the attention of policymakers and trade specialists in nearly every administration since China began its drive toward market-based reforms. These issues continue to raise complex policy choices for the Obama Administration as it contemplates a still-looming trade deficit with China and high unemployment domestically.

In this context, the title of our symposium, "Chinese Workers Under Threat or Threat to U.S. Workers?" presents (perhaps intentionally) a "false dichotomy." In fact, the fundamental "problem" of China's labor policy is most commonly encapsulated by the famous "race to the bottom," where artificially low wages and weak enforcement of labor and employment laws depress labor costs in China and other global low-wage manufacturing hubs. The result is an "uneven playing field" for American companies and American workers. Evaluating the merits of this claim is beyond the scope of this essay. However, if we assume this is so, then stronger rights and protections for Chinese

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1 The following is adapted from a symposium presentation organized by the Indiana University Research Center for Chinese Politics and Business (RCCPB) in March, 2010, Bloomington, Indiana. A more complete discussion of the changes introduced by China's recent labor law reforms and the research findings and sources summarized here are contained in Virginia Harper Ho, From Contracts to Compliance? An Early Look at Implementation Under China's New Labor Legislation, 23 COLUM. J. ASIAN L. 35 (2009).

2 Indeed, concerns about the trade impacts of inadequate enforcement motivated negotiations surrounding China's accession to the WTO. China's Accession Protocol required China to ensure that all "laws, regulations and other measures pertaining to and affecting trade [including labor laws] shall be enforced." (WTO, 2001, §§ (B), (C), 3). Organized labor in the United States has also repeatedly sought to define China's poor record on workers' human rights as an "unreasonable trade practice" justifying unilateral trade sanctions under Section 301 of the Trade Act of 1974, as amended, 19 U.S.C. § 2411 (AFL-CIO, 2006). Earlier administrations have declined to adopt such harsh measures, but these efforts highlight concerns shared by many in the business community as well.
workers may in fact alleviate some of the perceived threats to U.S. workers as well.

The 2007-2008 PRC Labor Law Reforms

In 2008, China enacted three new national-level labor laws that together represent its most comprehensive labor law reforms in over a decade: the Labor Contract Law (LCL), the Labor Dispute Mediation and Arbitration Law, and the Employment Promotion Law.\(^3\) In contrast to earlier legislation, these laws limit employer's flexibility in structuring the terms of the labor relationship and adopt a more strongly pro-worker stance. Indeed, a number of the elements of the new legislation (as well as the prior law) bear a strong resemblance to employment laws in France and Germany, which are much more protective of workers than is U.S. employment law (Ho, 2009; Blanpain, 2007).

While many in the international business community were disappointed by the restrictive nature of some of the new rules, others expressed hope that they would be enforced in practice in a way that would hold Chinese employers to the same standards as U.S. and other multinational employers. Labor advocates, for their part, voiced hopes that the changes would in fact empower China's workers and lead to improved employment practices and expanded space for worker representation (Gallagher & Dong, 2010).

\(^3\) In China, "labor law" encompasses matters generally viewed to be within the scope of "employment law" in the United States and in fact covers to a much more limited extent rules governing collective bargaining and labor-management relations and others, such as freedom of association, are largely excluded. For complete references to the legislation, see Ho (2009), p. 38.
The Implementation Question

The fundamental question, however, is, is labor reform working? In a study recently published in the *Columbia Journal of Asian Law*, I present a preliminary answer based on interview and survey data collected from workers, employers, and labor enforcement officials in Guangdong province during the first half of 2008, in the window of time immediately after China's new labor laws took effect but before the full impact of the global financial crisis began to be felt in China (Ho, 2009). I focused primarily on the implementation of the basic requirement that all employers enter into written employment contracts with their employees. This obligation was included in China's first national Labor Law, enacted in 1994, but is reinforced in the LCL. Such contracts are typically individual employment contracts, although by official counts, over 60% of China's workers are employed under collective contracts entered into between the local or industry union association and representatives of the employer or an employer association (Clarke et al. 2004; CLB, 2007).

Executive Summary of Research Findings

In general, the results of this investigation call into question the perception that labor law in China is ineffective and that China's workers are ignorant of or incapable of using legal tools to assert their rights. Instead, this study finds that the law has incentivized shifts in hiring patterns and formal changes in employers' labor contracting practices, although it has had only a limited effect in foreclosing avenues for evasion and
noncompliance. The results also paint a more nuanced picture of the obstacles to stronger enforcement at the local level, many of which have parallels in the experience of administrative enforcement agencies in the United States and in other developed economies.

As noted below and in Zhang Lu's contribution elsewhere in this report, the laws were widely disseminated and had an almost immediate impact on the level of labor disputes channeled through labor arbitration and the courts. The explosion of such cases demonstrates that labor conflict in China has actually intensified since the reforms took effect. Yet it in some measure also reflects the success of the reforms, particularly the procedural reforms under the Labor Dispute Mediation and Arbitration Law, which reduced barriers to "private enforcement" of the labor laws directly by Chinese workers.

Discussion

Under the LCL, employers now have strong incentives to execute written employment contracts because a violation can result in increased administrative penalties and entitles workers to sue the employer for double severance. If the violation continues beyond one year, workers may claim preferential status as an employee under an open-ended contract.

Enforcement campaigns focused on written contract implementation from the end of 2007 throughout 2008. As of year-end 2008, provincial authorities in Guangdong reported that 97% of all employers had signed written contracts, with over 53,000
collective contracts covering almost 7 million workers also concluded (Ho 2009).

Independent interview and survey sources in large part support these results (Ho, 2009).

However, a deeper look reveals that many employers were in fact engaging in illegal coercive and deceptive practices to compel workers to sign contracts, which ultimately could make resolving any dispute over the agreement more contentious (Ho, 2009). In those cases, worker representatives or unions were either nonexistent or uninvolved in the contract negotiations. Such practices point to the limits of law as a tool to prevent evasion and minimize workplace conflict. However, they also provide a strong, if somewhat ironic, indication that the incentives created by the Labor Contract Law were in fact effective in motivating employers to comply with the written contract requirement, in contrast to the pre-enactment period.

The study's findings also show that labor relations in China are likely to continue to follow global trends toward more flexible, less secure modes of employment (Kurivilla et al., 2010; Stone, 2006), and that the goal of encouraging more stable, long-term employment relations has not been achieved. As of April 2008, less than 30% of employers in the surveys I relied on planned to use open-ended (ie. indefinite term) contracts and over 60% of workers in a separate survey were under short-term contracts of less than 1 year (Ho 2009, p. 92). In addition, the surveys found that many employers

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4 The findings were based on two surveys, one of 417 employers in Guangdong and elsewhere in the Pearl River Delta conducted by an HR consulting firm in December 2007 and January 2008, and one of 320 workers in Shenzhen conducted by a labor NGO in April 2008. The latter survey found that only 7% of the surveyed employees had open-ended contracts. In both samples, the range and number of small, mid-sized, and large employers, based on the number of employees, was comparable.
have begun to rely more extensively on probationary, or seconded workers (sourced through labor dispatch (laowu paiqian)) that give employers greater flexibility at lower cost but are afforded fewer protections under the labor laws.

Finally, the study showed that enforcement practices surrounding labor rights in China are more complex than is commonly recognized. It is significant that national leaders as well as provincial authorities in Guangdong province and elsewhere continued to voice strong commitment to implement the new laws throughout 2008 and 2009 in the face of widespread business failure and worker unrest in the wake of the financial crisis, despite calls for the repeal of the Labor Contract Law from strong business interests and some local government leaders. In Guangdong, this was due in part to the province's policy drive to attract value-added manufacturing and move away from labor-intensive sweatshop production, which aligned its leaders behind the reforms.5

Local officials interviewed in this study, for their part, acknowledged the need to uphold the law but were hesitant to enforce the law aggressively, citing the need for companies to adapt to the new rules. While some may simply turn a blind eye, the reality is that most local enforcement officials in fact lack the resources to enforce the law aggressively. Many were effectively limited to damage control and unable to do so when more businesses began to fail toward the end of 2008 and into 2009, leaving local governments holding the bag for unpaid wages (Canaves, 2009; Roberts, 2009; IHLO,

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5 For example, authorities in Guangdong had stepped up inspections to enforce the LCL in 2008 and Shenzhen municipal authorities had issued tough new rules threatening to strip investment incentives from employers who committed serious violations of the labor laws (Shenzhen Measures, 2008).
However, as local economic growth regains speed in Guangdong and elsewhere, there may be greater willingness among local officials to refocus on enforcement to attract workers to sectors experiencing labor shortages or employers in high value-added sectors.

The most dramatic impact of the new legislation, however, can be seen in the level of enforcement undertaken directly by workers almost immediately in 2008. The number of labor cases filed with labor arbitration and the courts surged exponentially, in addition to rising levels of labor protests. In some cases, arbitrators and judges faced caseloads double or even triple the 2007 level, with continued increases observed throughout 2009 (CLB, 2010; 2009 SPC Work Report). While the level of labor conflict can be expected to return to more moderate levels in 2010, further empirical research is needed to explore the impact of these trends on employer practices.

Conclusions and Policy Recommendations

For China's workers, then, this study shows that the new laws have in fact empowered workers, but that many remain "under threat," including those without full employee status under Chinese labor law. Until a "culture of legality" becomes part of China's business environment, this is likely to remain the case even as demand for skilled labor, inter-regional competition, and local development priorities lead to higher minimum wage levels and better workplace practices for some.

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6 Workers have historically prevailed in 85-90% of arbitrated labor disputes. China Statistical Yearbook, various years.
Many U.S. employers in China also now confront a more challenging compliance mandate since the passage of the labor law reforms. In general, the LCL has introduced heightened severance obligations and less flexibility in hiring and firing. In addition, employers must address the uncertainty re-introduced by a wide range of new local implementing regulations and the heightened risk of labor-related legal claims that may in some cases be frivolous.\(^7\) There is also little evidence that the reforms have in fact "leveled the playing field" – that is, that official oversight of companies' compliance is directed at domestically-owned companies with the same rigor applied to Western investors.\(^8\)

At the end of last year, the Obama Administration reiterated its interest in engaging Chinese officials on fundamental labor rights, enforcement of China's labor laws and other key labor-related issues (USTR, 2009). As the scope of that engagement takes shape, U.S. policymakers may consider the following recommendations that flow from the findings reported here:

1. **Support Greater Public Enforcement Capacity:** There is no easy fix to the enforcement problem, as local capacity constraints and economic conditions continue to influence enforcement priorities. However, pressure from U.S. policymakers can serve as one of the multiple, mutually reinforcing mechanisms needed to foster an "environment

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\(^7\) Under prior law, local arbitration commissions and courts were permitted to charge fees for filing and processing labor claims. Such fees were eliminated by the enactment of the Labor Dispute Mediation and Arbitration Law in an effort to expand access to legal process.

\(^8\) For example, in 2008, the "top 500" Western multinationals in China were the major targets of a unionization drive (Guan 2008).
of legality”:

- Continue to actively enforce the Foreign Corrupt Practices Act (FPCA) and collaborate with China and with other global leaders on anti-corruption initiatives.
- Continue to fund and support technical exchanges by OSHA, the DOL, and state-level authorities to train Chinese enforcement officials and related experts at all levels.
- Provide regular forums for dialogue between U.S. and Chinese enforcement officials on common enforcement challenges, such as capacity constraints and strategies for approaching compliance by small and mid-size employers.
- Encourage efforts by Chinese authorities, such as those in Guangzhou (Ho, 2009, pp. 53-54), to reward companies with strong compliance records, and incentivize employer self-regulation. The U.S. government can work within the WTO and through bilateral efforts to ensure that such programs comply with China’s international commitments on transparency and national treatment.
- Consider proposals to create consistent approaches to incorporate labor rights provisions within trade and investment agreements, including the proposed Sino-U.S. Bilateral Investment Treaty (BIT).9

2. **Support the Accessibility and Transparency of China's Courts and Labor Arbitration Institutions:**

- Urge China to improve the transparency of labor arbitration and court proceedings, and to expand public access to labor law cases and legal aid.
- Urge China to permit the unfettered operation of local NGOs engaged in labor advocacy and to repeal recent measures limiting the freedom of lawyers and other rights advocates to represent clients in "sensitive" cases.

3. **Support U.S. Employers and Civil Society Initiatives**

- Encourage U.S. employers to abide by China's labor laws.
- Sponsor business-to-business exchanges focused on human resource

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9 See, for example, the recommendations put forth in Aaronson & Rioux (2008).
management, business ethics, compliance, and risk mitigation.

- Support efforts by U.S. nonprofits, academic institutions, and the private sector to encourage grassroots labor advocacy organizations and the expansion of legal aid services in China.

4. Worker Representation  Among the root causes of labor conflict and inadequate protection of labor rights in China are the continued restrictions on freedom of association and collective bargaining and the lack of viable mechanisms for worker representation at the factory level. However, U.S. policymakers and labor rights groups have been hesitant to show support for Chinese policies promoting, for example, unionization and "collective consultation" because of China's suppression of independent unions and insistence on unitary worker representation by the All-China Federation of Trade Unions, which is affiliated with the Chinese Communist Party. Nonetheless, it is possible to support labor rights and worker representation without compromising our nation's commitment to urge China toward full recognition of international labor rights.

- Encourage China's recognition of all fundamental international labor rights.
- Affirm China's efforts to promote collective bargaining even under the auspices of the state union (the All-China Federation of Trade Unions).
- Support and fund efforts by U.S. nonprofits, academic institutions, and the private sector to train ACFTU personnel and Chinese managers in human resource management "best practices," collective bargaining, and workplace conflict management tools.
• Encourage U.S. employers to create mechanisms for worker representation, as permitted under Chinese law, to provide ongoing input to management.

The 2008 labor law reforms were enacted into a business climate where compliance has been the exception rather than the rule, and their potential to take root was threatened almost immediately by the onset of the financial crisis. As markets begin to recover, it is imperative that U.S. policymakers actively urge China's leaders at all levels to demonstrate their commitment to consistently enforce the labor laws and assist them in confronting the practical barriers to its implementation.
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Coming Together: The Impacts of Labor Law Reform and Its Implications for Chinese and American Workers

Zhang Lu, Post-Doctoral Fellow, Research Center for Chinese Politics & Business

A popular discourse in the United States has been that the fast growth of manufacturing and cheap labor in China has stolen American workers’ jobs and sounded the death knell for organized labor to engage in collective resistance. With the mobilization of China’s vast reserves of cheap and disciplined labor, it is argued that a “race to the bottom” has been unleashed, producing an endless downward spiral in workers’ power and welfare. While this adverse linkage between U.S. and Chinese workers is suspect on theoretical and empirical grounds (as I shall discuss below), it is no doubt that the “labor problem” in China is a paramount and perplexing one for workers, labor and union activists, and policymakers in both countries. It is in this context that the 2007-2008 labor law reform in China—which is said to mark the most significant change in China’s labor policy and legislation since the implementation of the 1994 Labor Law, and signal a new stage of labor relations in China (Ngok 2008, Xiao and Qiang 2007)—has received extensive attention and scrutiny from both within and outside China.

This paper focuses on the impact of China’s labor law reform (in particular, the Labor Contract Law) on Chinese workers and American workers its implications under the current global economic crisis.

To put the current labor law reform in China in a perspective, let’s start from a brief overview of the evolving change of state-labor relations and labor policy and legislation in reform China.
Between Security and Flexibility: Evolving State-Labor Relations in Reform China

Over the past three decades, China’s transition from state socialism to a market economy, along with its integration to the global economy, has changed its state-labor relations profoundly. In the pre-reform era, labor system were known as the “iron rice bowl” system, workers were allocated to a job tenure system in urban work units called “danwei.” Their livelihood were guaranteed and enforced by the state provided employment, wages, and welfare distributed through their danwei. In exchange, workers gave their political support and loyalty to the party-state. This is known as the socialist social contract. China’s market economic reform in the urban area since early 1980s has changed the state-labor relationship dramatically. Three turning points can be identified.

The first turning point was in 1986, when the State Council issued four sets of provisional regulations on labor and employment reforms and introduced the labor contract system to all new hires at state-owned enterprises (Ngok 2008). Yet it was still rare for state-owned enterprises to fire workers until the early 1990s, largely due to workers’ resistance to “the smashing of ‘iron rice bowl’” permanent employment, and the sensitivity of commodification of labor when the socialist ideology was still relatively strong (Gallagher 2005, Lee 2007).

The second turning point came with the passage of China’s first national Labor Law in 1994, which universalized the labor contract system and allowed employers to formally terminate labor contracts with employees. As the state withdrew from direct management of labor, law has become the key institution to regulate labor relations and provide workers with
basic rights and protections. This time period was also the era when China deepened the market economic reform and began restructuring and privatizing the state-owned enterprises. Thousands of small and median state and collective enterprises were restructured and privatized. Over fifty million workers and about 40 percent of the public-enterprise workforce lost their jobs. Meanwhile, with the massive movement of global capital into China, more than 200 million rural migrant workers left countryside for factory jobs in industrial cities.

As marketization and commodification of labor deepened in the 1990s, both the state and employers attempted to shed their previous responsibilities for workers. There was a general move toward more labor flexibility by replacing permanent and long-term employees with temporary and short-term contract workers. A good illustration was the fast expansion of informal employment, in particular, labor dispatch (agency employment) in almost every sector in China.\(^1\) It reflected the deepening of commodification of labor when the state was guided by a single-minded emphasis on economic growth in the 1990s and further withdrew from protecting workers.

Such attacks on workers’ job security and livelihood have provoked waves of labor unrest in China since the mid-1990s. According to official Chinese government figures, mass protests increased from 10,000 incidents involving 730,000 protestors in 1993 to 60,000 incidents involving over 3 million protestors in 2003. Chinese workers—both the laid-off state workers and the new migrant working-class-in-formation —have been participating in strikes and demonstrations in increasing numbers and with increasing frequency in recent years (Cai 2002, Pan 2002, CLB 2005, Solinger 2005, Lee 2007, Hurst 2009, Silver and Zhang 2009).

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\(^1\) Labor dispatch (laowu paiqian), or agency employment, labor leasing, co-employment, is a typical triangular employment that separates legal contract employment relations from workplace labor-management relations. Agency employees sign labor contracts with labor dispatch agencies but working at client firms on a contingent basis.
the turn of the century, widespread, spontaneous, “apolitical,” and localized labor protests have already induced the Chinese Communist Party to modify its labor policy to pacify workers in fear of regime stability and legitimacy. This fear was one of the key forces propelling the Chinese central government to pass three new labor laws in 2007 to stabilize labor relations and pacify workers—most notably, the Labor Contract Law (LCL). Summing up the judgment of employers, the *Wall Street Journal* concluded that the Labor Contract Law “has shifted bargaining power in favor of employees and raised awareness of rights among workers” (Fong and Canaves 2008) It is not far-fetched to conclude that a new paradigmatic turn of the state-labor relations towards more job security and protection of workers is currently taking place in China through the state-led pro-labor legislation in response to the bottom-up pressure of rising labor unrest.

But what about the implementation of the new labor laws and the actual impacts of the laws on Chinese workers and labor relations in China, especially under the current global economic crisis?

**The Impact of the New Labor Laws and the Global Economic Crisis on Chinese Workers**

While it is still too early to tell the long-term impact of the new labor laws and the global economic crisis on Chinese workers, there have been several notable effects since the implementation of the new labor laws.

*The Central Government and Large Employers:* There has been evidence that the new law is being taken seriously by the central government, and as a consequence, by large employers. Even faced with tougher economic environment under the global economic
downturn, there has been no outright repeal of the new labor laws. In fact, around late 2008 and early 2009 many large employers received local governments’ mandates to avoid layoffs in favor of wage and hour reductions to preserve jobs and keep unemployment rate low. At the same time, while the law did increase obligations of employers for their formal contract employees, the state efforts to protect formal contract workers through legislation have tended to drive more employment into informal arena, such as labor dispatch and subcontracting. There has been evidence showing that the number of dispatched workers (agency workers) increased sharply after the enactment of the LCL as employers look for ways to evade the new restrictions and heavier obligations of formal employment (Weng 2009). Thus, one of the “unintended” impacts of the LCL is the entrenchment of a dualist labor system with the continually-shrinking segment of well-protected formal contract employees and the fast-growing segment of informal employees who have far less protection and social benefits than the former.

Local Governments: Not surprisingly, the implementation of the new labor laws is bound to be uneven and varied largely by local governments. In particular, coinciding with the global economic downturn meant less local government support for legislation that may hinder economic growth and employment in their areas. Some local governments in coastal manufacturing centers have already taken their own regulatory measures that aim to dilute the law’s impact on their local economies. But that does not mean that local officials can completely ignore workers’ grievances and discontents, nor does that mean the Chinese central government has lost control over localities. Studies have found that the CCP is still capable in monitoring local officials through the cadre evaluation and promotion system (See, e.g.,
Landry 2008, Zeng 2007). Under the Hu-Wen administration, local officials are given environmental and other social targets (e.g., the numbers of mass incidents) besides GDP in the cadre evaluation system in the effort to create a “harmonious society” (Wang 2008). As a result, it has been noticed that local officials have taken a more conciliatory attitude towards labor and other social protestors so long as they do not “cross the line” (i.e., aiming to challenge the current political system). For instance, in a recent report on workers’ movement in China, China Labor Bulletin observes that concerned with political order and social stability, local government officials often gave protesters a prompt hearing and settled some of their grievances quickly. In cases of unrest triggered by wage arrears following the disappearance of employers, local governments usually stepped in and paid at least some of the wages owed by the absconding employers to pacify workers (CLB 2009b). Even when some local governments have eased enforcement of the new labor laws by the excuse of global economic downturn, given the center’s emphasis on social harmony and stability, when caught between the conflicting interests of employers and workers they will choose social harmony, i.e. the protection of workers (Heerden 2009).

**ACFTU**: Notably, ACFTU played an important role in pushing through the labor law reform as a conveyor-belt to channel the bottom-up pressure of labor unrest to the CCP’s top leaders. It has also stayed assertive throughout the law-making process and the implementation of the new labor laws, even under employers’ and local officials’ backlash attacks and lobbying against the new laws under the global economic crisis. More recent studies have also shown that the fast growing numbers of labor disputes and workers’ spontaneous strikes and protests have played a key role in pushing the party-run ACFTU to become more aggressive in
organizing rank and files and protecting workers’ interests (Chan 2006, Liu 2008). In particular, faced with mounting labor unrest, CCP’s top leadership has explicitly required unions to play an important role in “harmonizing labor relations” and “building a harmonious society” in recent years.\(^2\) We can expect ACFTU to become more aggressive in organizing workers and reforming itself, under the pressure that it might become totally irrelevant to both workers and state bureaucrats if it cannot deliver any meaningful gains for workers, and (thus) cannot play any role in containing rising labor unrest. Indeed, some have noted that the current crisis presented a more intense version of the long-standing debate within China about the right and power of Chinese workers as both laborers and consumers. While there are voices from employers and local officials calling for repeal of the 2008 labor laws, there are also increasingly labor advocates inside China—from top government and ACFTU officials to journalists, lawyers, and public media-- arguing that workers need rights, voice and enhanced purchasing power if China is to transform its export-led growth model to a more socially sustainable development model (Brown 2009, GLS 2008). This has important implications for international and US labor and nongovernment organizations to develop strategies to engage with ACFTU and labor and legal aid NGOs in China to bring about more positive change, such as collective bargaining and workers’ representation.

*Chinese Workers:* Correspondingly, one of the most notable impacts of the new labor laws is their empowerment effects on ordinary Chinese workers, who have become more proactive in taking their grievances to court. According to the Chinese official statistics, in

\(^2\) See, for example, Hu Jintao’s speech in the conference of honoring national laborer models and advanced workers in 2005 (Xinhua, May 2, 2005); as well as his speech to representatives from trade unions, the Communist Youth League, the Youth Union, and the Women’s Federation who attended the 2007 Annual Sessions of the National Committee of the Chinese People’s Political Consultative Conference (Xinhua, March 7, 2007).
2008, 1.2 million workers filed over 693,000 labor dispute cases with Chinese authorities.³ This represents a 98% increase over 2007. There were 22,000 collective labor dispute cases accepted by the committees, which was a 71% increase over 2007.⁴ The doubling of both arbitration cases and labor related lawsuits had partly to do with the sharp increase in factory closures and wage defaults in the 2008 global economic downturn. But it also reflected workers’ growing awareness of their rights and confidence in China’s legal systems of public redress (CLB 2009a). China’s new labor laws, as recent events have already indicated, are very likely to serve as the catalyst for a new wave of labor activism and militancy in China—especially if employers attempt to evade the law and if the arbitration system becomes too burdened with cases to be able to resolve workers’ grievances quickly, encouraging them to turn instead to direct action. Notably, the new generation of Chinese workers, most in their 20s, have demonstrated growing consciousness of their rights as both individuals and wage laborers and have become increasingly assertive of those rights (Zhang Forthcoming, Pun Forthcoming). Workplace disputes and protests at all levels—on the streets, in courts and in interactions with managers and supervisors—have been continually rising, as did labor rights awareness campaigns by lawyers, legal aid groups, and NGOs from both within and outside China. (Brown 2009)

Coming Together: Labor Strategies and Policy Implications

What, then, are some impacts and policy implications of the labor law reform along

³ Another 237,000 cases were settled through mediation out of the court.
with the rising labor cost and workers’ right awareness in China, on the U.S. labor and labor movement? A common assumption would be if wages and labor standards were to improve in China, then the attractiveness of China as a low-cost site for foreign direct investment would decline. Global flows of capital would reverse direction and the problems of labor in the U.S. and other countries outside of China would largely be solved. Reasonable as it sounds, a further analysis suggests several problems with this assumption.

First, obviously, China is not the only country to which American workers are losing jobs. India, Vietnam, Bangladesh, and many other low-cost countries are involved as well. Chinese workers are not the enemy of American workers; rather, it is transnational corporations who lay off American workers only to depend on the sweatshop labor in China, Vietnam, and other low-cost countries the main cause of the problem to blame. Second, as many have noted, it is not only about cheap Chinese labor; rather, economies of agglomeration provided by planned industrial districts and networks, a healthy, educated, and disciplined workforce, and the size of the internal market are all strong motivations for investment in China that would remain even if labor costs rise substantially. If anything, rising real wages will make China even more attractive as a site of investment as the relative global weight of the Chinese market increases further. Third, as many studies have suggested, the decline of organized labor and the loss of manufacturing jobs in the U.S. preceded the rise of competition from China. Other forces, such as the post-industrial economic structural shifts, technology innovation, post-Fordist lean production, change composition of workforce, as well as the “neoliberal turn” of pro-business and pro-free-trade policies are all at work leading to the “crisis of labor movement” in the U.S. and around the globe (Silver 2003, Moody 2007). Ruth
Milkman (2006) also found that the sweatshop conditions emerged in service sectors such as trucking and janitorial services that are not subject to international competitive pressures. In the other words, the problems faced with American workers—the loss of manufacturing jobs, declines of labor standards and job insecurity, and lack of workers’ voice and purchasing power in the United States—were not mainly caused by the competition from Chinese workers. Rather, it is the neoliberal policies of deregulation and unbalanced growth of big corporate power vs. small business and ordinary working family in the U.S. the root of the problems. This crisis has indeed exposed the unsustainability and vulnerability of relying on the economic development models that depend upon evasion of labor standards and norms, and that leave working citizens without channels to effectively redress basic workplace injustices or sufficient purchasing power to afford a decent life for themselves and their families—both in China and in the United States.

Rising labor costs in China will have direct impact on workers as consumers outside of China as the foundations of the low-road neoliberal “social compact” pioneered by the United States (and exported elsewhere) has begun to crumble in this crisis. For to the extent that the suppression of real wages in the United States has been socially sustainable, it has been founded on the massive importation of low-cost consumer items from China as well as on a mushrooming current account deficit. While the crumbling of this race-to-the-bottom neoliberal “social compact” is no doubt a good thing for workers around the world, labor academics and activists have not yet begun to think through the political dynamics, much less strategies and overall vision adequate to confronting the emergent new era. (Silver and Zhang 2009)
An important place to start is to change the current discourse of “China threat” and protectionism, and “assist Chinese worker rights advocates in unions, law faculties, NGOs and legal aid societies to take up the invitation presented by 2008 labor law reforms to implement the mandate for collective bargaining” (Brown 2009). At the same time, it is also important to keep in mind that national context and historical legacy of state institutions matter. We should not assume that the organizing strategies, patterns, rhetoric, and dynamics at work for labor movement and the general improvement of workers’ welfare in China are the same as the conventional wisdoms generated from the experiences of the industrialized and democratic countries. As Earl Brown (2009), Director of the Solidarity Center at AFL-CIO wisely pointed out, “Our assistance should be delivered with deference to the agency of our Chinese colleagues, and with complete awareness that only the Chinese will determine the contours of their labor relations system.”

This global economic crisis has exposed Chinese and American workers, and workers everywhere, to the “dire effects of the unregulated race to the bottom.” It is time to make the serious efforts to build a strong labor movement in the U.S. that sees Chinese workers as compatriots, rather than as enemies. Engagement and collaboration is a more effective and smarter strategy than alienation and protectionism to both Chinese and American workers.

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