

THE STATE, THE UNIONS, AND COLLECTIVE BARGAINING IN CHINA: THE GOOD, THE BAD, AND THE UGLY

Mingwei Liu† and Sarosh Kuruvilla††

I. INTRODUCTION

Observers paint a variegated picture of Chinese trade unions. Most foreign observers are deeply skeptical that the All-China Federation of Trade Unions (ACFTU) can play a reasonable role in worker representation as long as they are subordinate to the Party and there is a lack of the genuine freedom of association that allows workers to choose who represent them.¹ Empirical support for these views can be found in numerous reports that the Chinese trade unions are usually more pro-management than pro-worker, based on their actions in numerous labor-management conflicts such as the widely reported strike at a Honda parts factory in Foshan in 2010 and the 40,000-worker strike at Yue Yeun (the largest footwear contract manufacturer in the world) in Dongguan in 2014.²

An alternative (and emerging) view is more positive. A few scholars see the potential of ACFTU transformation within a communist Party-state framework.³ Empirical support for these views can be found in illustrative

† Associate Professor, Rutgers University.

†† Professor of Industrial Relations, Asian Studies and Public Affairs, Cornell University.

1. *E.g.*, ELI FRIEDMAN, *INSURGENCY TRAP: LABOR POLITICS IN POSTSOCIALIST CHINA* (2014); MARY E. GALLAGHER, *CONTAGIOUS CAPITALISM: GLOBALIZATION AND THE POLITICS OF LABOR IN CHINA* (2005); CHING K. LEE, *AGAINST THE LAW: LABOR PROTESTS IN CHINA'S RUSTBELT AND SUNBELT* (2007).

2. *See, e.g.*, Keith Bradsher & David Barboza, *Strike in China Highlights Gap in Workers Pay*, N.Y. TIMES, May 28, 2010, http://www.nytimes.com/2010/05/29/business/global/29honda.html?_r=0. *See, e.g.*, Demetri Sevastopulo, *China Charges Labor Activist after Yue Yuen Shoe Factory Strike*, FIN. TIMES, Apr. 29, 2014, <http://www.ft.com/intl/cms/s/0/8242a8d2-cf92-11e3-9b2b-00144feabdc0.html#axzz4BIR5bmw3>.

3. *See, e.g.*, Simon Clarke & Tim Pringle, *Can Party-Led Trade Unions Represent Their Members?*, 21 POST-COMMUNIST ECON. 85 (2009); Mingwei Liu, *Union Organizing in China: Still a Monolithic Labor Movement?*, 64 INDUS. & LAB. REL. REV. 30 (2010); Mingwei Liu, Chunyun Li & Sunghoon Kim, *Chinese Trade Unions in Transition: A Three-Level Analysis*, in CHINA'S CHANGING WORKPLACE: DYNAMISM, DIVERSITY AND DISPARITY 277 (Peter Shelton et al. eds., 2011); TIM PRINGLE, *TRADE UNIONS IN CHINA: THE CHALLENGE OF LABOR UNREST* (2011); Chang-Hee Lee, William Brown & Xiaoyi Wen, *What Sort of Collective Bargaining Is Emerging in China?*, 54 BRIT. J. INDUS. REL. 214 (2016); Chunyun Li & Mingwei Liu, *A Pathway to a Vital Labor Movement in China? A Case Study of a*

examples such as the unionization of Wal-Mart stores in China, the seemingly successful model of sectoral collective bargaining in Wenling, the direct election of workplace union committees in Shenzhen especially in a number of Japanese electronics enterprises, and the ACFTU's strong pro-labor voice in national labor policy making.⁴ Some of these changes even made the China Labor Bulletin, a well-known critic of China's labor practices and conditions, conclude that we might reach "a turning point for China's trade unions."⁵

The rapid changes in Chinese employment relations make it difficult to pass judgement on which of the above viewpoints is more accurate. They both are. Our goal is to add nuance to the picture. We contend that the rising labor unrest since the late 1990s has deeply challenged the Chinese state, resulting in the latter's two strategic responses in rebalancing labor relations: reregulating the labor market and reviving the corporatist arrangement of employment relations at multiple levels. We argue that these two mutually reinforcing responses of the Chinese state have enhanced labor standards, contributed to quantitative growth and qualitative improvement of unions, imposed constraints on the development of genuine unionism, but also resulted in unintended consequences of growing worker demand for voice and justice at the workplace, sponsoring new collective action strategies.

In the sections that follow, we will first examine the key motivating variable, the growth of labor unrest. We will then examine the interests and responses of the state, and the effects of these responses on trade union growth, collective bargaining, and labor unrest. We conclude by discussing possible development of Chinese trade unions and worker representation in the future.

II. LABOR UNREST IN CHINA: FORMS, SCALE, AND NATURE

The forms, scale, and nature of labor unrest in China have been changing. In general, China's market-oriented reform has transformed the Chinese industrial relations system from the so-called "iron rice bowl," i.e., lifetime employment; standard, stable, and egalitarian wages; and "cradle-to-

Union-Led Protest against Walmart, in CHINA AT WORK: A LABOR PROCESS PERSPECTIVE ON THE TRANSFORMATION OF WORK AND EMPLOYMENT IN CHINA 281 (Mingwei Liu & Chris Smith eds., 2016).

4. Anita Chan, *Made in China: Wal-Mart Unions*, YALE GLOBAL ONLINE, Oct. 12, 2006, <http://yaleglobal.yale.edu/content/made-china-wal-mart-unions>; Liu, *supra* note 3; Xiaoyi Wen & Kevin Lin, *Reconstituting Industrial Relations: The Experience of Wenling*, 24 J. CONTEMP. CHINA 665 (2015); Ching Kwan Lee, *Precarization or Empowerment? Reflections on Recent Labor Unrest in China*, 75 J. ASIAN STUD. 217 (2016); L. Liu, X. Yong & B. Shu, *Regional Differences in Labor Rights: A Survey of Rural Migrant Workers in the Pearl River Delta and the Yangtze River Delta*, 2 SOCIAL SCIENCES IN CHINA 107 (2011).

5. CHINA LABOR BULLETIN, A TURNING POINT FOR CHINA'S TRADE UNIONS (2008), available at <http://www.china-labour.org.hk/en/node/100293>.

grave” welfare; to a system characterized by contractual regulation, wage and employment flexibility, and contributory social insurance schemes.⁶ During the 1990s and early 2000s, the relatively poor enforcement of labor laws, the absence of collective bargaining rights, and the practices of low cost foreign Asian employers engaged in low cost manufacturing produced a system of employment relations that was best characterized as exploitative and brutal. The workers’ response to this form of exploitative employment relations in low cost exported factories (the bulk of Chinese exports in the 1990s) has been steadily changing over time. During the 1990s and early 2000s workers largely responded through both public protests and through the dispute resolution system. Table 1 for example shows the dramatic increase in labor disputes in China since 1993 (when more systematic data became available).

Table 1
Labor Disputes in China, 1993–2014

	All Labor Dispute Cases	Cases Mediated before acceptance	Accepted Cases	Accepted Collective Labor Dispute Cases		Total Employees Involved in Accepted cases	Employees involved in Accepted Collective Labor Dispute Cases	
				Number	% of Accepted Cases		Number	% of Total Employees
1993	34149	21791	12358	684	5.53	34794	19468	55.95
1994	62949	43851	19098	1482	7.76	77794	52637	67.66
1995	107333	74303	33030	2588	7.84	122512	77340	63.13
1996	140122	92001	48121	3150	6.55	189120	92203	48.75
1997	110505	38981	71524	4109	5.74	221115	132647	59.99
1998	140307	46838	93469	6767	7.24	358531	251268	70.08
1999	168696	48505	120191	9043	7.52	473957	319241	67.36
2000	207605	72399	135206	8247	6.10	422617	259445	61.39
2001	218560	63939	154621	9847	6.37	467150	286680	61.37
2002	261458	77342	184116	11024	5.99	608396	374956	61.63
2003	284842	58451	226391	10823	4.78	801042	514573	64.24
2004	331311	70840	260471	19241	7.39	764981	477992	62.48
2005	407334	93561	313773	16217	5.17	744195	409819	55.07
2006	447483	130321	317162	13977	4.41	679312	348714	51.33
2007	502084	151902	350182	12784	3.65	653472	271777	41.59
2008	930748	237283	693465	21880	3.16	1214328	502713	41.40
2009	869977	185598	684379	13779	2.01	1016922	299601	29.46
2010	764862	163997	600865	9314	1.55	815121	211755	25.98
2011	783582	194338	589244	6592	1.12	779490	174785	22.42
2012	854139	212937	641202	7252	1.13	882487	231894	26.28
2013	881355	215595	665760	6783	1.02	888430	218521	24.60
2014	942610	227447	715163	8041	1.12	997807	267165	26.78
Ave. annual growth (%)	126.68	44.94	270.81	51.22	-3.79	131.80	60.59	-2.48

Sources: China Statistics Yearbook, various years.

6. Mary E. Gallagher, Ching Kwan Lee & Sarosh Kuruvilla, *Introduction and Argument*, in *FROM IRON RICE BOWL TO INFORMALIZATION: MARKETS, WORKERS, AND THE STATE IN A CHANGING CHINA* 1–16 (Sarosh Kuruvilla, Ching Kwan Lee & Mary E. Gallagher eds., 2011).

As Table 1 indicates, the number of labor dispute cases accepted by labor dispute arbitration committees (LDACs), along with the number of employees involved, increased from 12,358 and 34,794 in 1993 to 715,163 and 997,807 in 2014, an average annual growth rate of 270.81% and 131.80% respectively. After the spike in 2008 when several major labor laws came into effect, there had been slight decreases in recorded disputes in subsequent years until 2014. This decline does not necessarily mean that fewer actual labor disputes occurred as a large and increasing number of these were settled by various mediation institutions rather than being filed with LDACs. According to the Ministry of Human Resources and Social Security (MOHRSS), the number of labor dispute cases (including personnel dispute cases) handled by both LDACs and various mediation institutions in 2009 remained largely the same as that in 2008 (about 1.24 million), but increased thereafter, reaching 1.72 million in 2015.

In addition, as shown in Table 1, the number of collective labor disputes and employees involved in these disputes have dramatically increased between 1993 and 2014, with an average annual growth rate of 51.22% and 60.59% respectively. Yet, these two numbers, after reaching historically high levels in 2008, sharply dropped off in subsequent years for four major reasons. First, in 2009, the definition of a collective labor dispute was revised upward (now requires between three and ten workers to make it “collective.”) Second, LDACs started to disaggregate collective labor dispute cases into a number of individual cases to ease settlement. Third, collective labor disputes involving a large number of workers have been increasingly settled by government directly without going through mediation and arbitration procedures. Finally, losing trust in the formal labor dispute resolution system, many workers involved in collective labor disputes may have instead engaged in spontaneous strikes to resolve their disputes.

A second and common response is that workers have been “voting with their feet” and worker turnover in South China’s manufacturing has been high since early 2000s, in some cases higher than 100% annually.⁷ As a labor shortage developed in the late 2000s, worker turnover became a critical problem for many factories in coastal areas, prompting an effort by employers to improve practices, pay higher wages for retention, and/or shift factories to lower cost locations such as inland China, Cambodia, and Vietnam.

A third, and more significant response of workers has been strikes—wildcat strikes or spontaneous collective protests called by workers themselves. Strikes have shown a sharply increasing tendency in the last

7. Mingwei Liu, *China, in* COMPARATIVE EMPLOYMENT RELATIONS IN THE GLOBAL POLITICAL ECONOMY 324 (Carola Frege & John Kelly eds., 328, 2013).

decade, particularly after the new and more protective labor laws of 2008 (we will discuss these later). Given that the Chinese government does not publish strike statistics, getting access to data is not easy. One such source is the China Labor Bulletin, which tracks Chinese strikes through counting incidents in newspaper and internet reports throughout China. Their data suggest that there were 553 strikes between 2000 and 2010, less than five per month. Yet, the number of strikes has risen sharply since 2010, with 185 strikes and protests reported in 2011, 382 in 2012, 656 in 2013, 1,379 in 2014, and 2,773 in 2015. And as seen in Figure 1, 503 strikes and protests were reported in January 2016 alone! A second source of data on Chinese strikes, collected by Elfstrom and Kuruvilla using both newspaper reports and crowd sourced data, shows a similar trend.⁸ Although the widespread use of social media among Chinese workers may contribute to the higher numbers reported, it is no doubt that worker activism is rising. A third source is the data leaked from the Ministry of Public Security, which indicate that the number of mass incidents (i.e., strikes, protests, and riots involving more than three people) increased from 8,700 in 1993 to 87,000 in 2005 to 127,000 in 2008, about one third of the mass incidents being estimated as labor protests.⁹

However, there is dissent with regard to whether strikes have been increasing. Lee notes that strikes, protests, and petitions were high in Shenzhen even in the 1990s i.e., “totaled 556, 540 and 682 for 1998, 1999 and 2000.”¹⁰ Moreover, a recently available database—Global Data on Events, Language and Tone (GDELT) that uses the Chinese state’s press agency Xinhua as one of its primary news pools to code for different types of news events including strikes since 1979—paints a more complicated picture of labor unrest over time: strikes (as a percentage of reported events) have generally spiked since 2000 though unevenly; there are less strikes in some years post-2000 than in the 1990s; the peak of strikes in the past several decades, however, is in 1989.¹¹ Yet, the GDELT is based on news reports from the Chinese state media, which may have great limitations particularly given the lack of media freedom in China. In short, while reliable, historical data that can be used to compare recent labor unrest with that in the 1990s are still missing, there is a consensus from all of the credible sources that labor unrest in China has been rising since mid-2000s.

8. Manfred Elfstrom & Sarosh Kuruvilla, *The Changing Nature of Labor unrest in China*, 67 *INDUS. & LAB. REL. REV.* 453 (2014).

9. CHINA LABOR BULLETIN, *GOING IT ALONE: THE WORKERS’ MOVEMENT IN CHINA 2007–2008* (2009); Shenghong Jiang, *Mass Incidents Caused by Labor Conflicts: A Public Opinion Perspective*, 3 *THEORY HORIZON* 94 (2007).

10. CHING KWAN LEE, *AGAINST THE LAW: LABOR PROTESTS IN CHINA’S RUSTBELT AND SUNBELT* 163 (2007).

11. See *No Way Forward, No Way Back: China in the Era of Riots*, CHUNG (2016), available at <https://subversionpress.files.wordpress.com/2016/01/china.pdf>.

Figure 1
Number of Labor Protests and Strikes in China, 2011–May 2016



There has also been a change in the nature and distribution of strikes. Prior research has suggested that strikes were limited in number (although estimates vary), and there was variation in worker militancy based on the nature of workers (whether migrants or SOE), regional differences, ownership differences, and the degree of state suppression of strikes. Prior literature also suggests that most strikes were “defensive” in nature, trying to protect existing rights and benefits.¹² Recent research, however, has identified a new set of novel, more aggressive demands, such as wage increases or improvements in other working conditions above those stipulated by the law, reform of enterprise trade unions, and right to mandatory social insurances and housing funds payment that has been long ignored by migrant workers.¹³ In particular, Elfstrom and Kuruvilla argue that there is a qualitative change in the nature of strikes in China, showing that today’s strikes are more pro-active than reactive (or offensive rather than defensive), and their data indicate that workers are striking not just for

12. LEE, *supra* note 10; PHILIP PAN, *OUT OF MAO’S SHADOW: THE STRUGGLE FOR THE SOUL OF A NEW CHINA* (2009).

13. Elfstrom & Kuruvilla, *supra* note 8; Elaine Sio-ieng Hui & Chris King-chi Chan, *Beyond the Union-Centered Approach: A Critical Evaluation of Recent Trade Union Elections in China*, 53 *BRIT. J. INDUS. REL.* 601 (2015); Yunxue Deng, *Strikes and Workplace Collective Bargaining in the Auto Parts Industry in Guangzhou*, in *CHINA AT WORK: A LABOR PROCESS PERSPECTIVE ON THE TRANSFORMATION OF WORK AND EMPLOYMENT IN CHINA* 312 (Mingwei Liu & Chris Smith eds., 2016); Chunyun Li, *Unmaking the Authoritarian Labor Regime: Collective Bargaining and Labor Unrest in Contemporary China* (January 2016) (unpublished Ph.D. dissertation, Rutgers University) (on file with author).

increased wages and better working conditions, but also for increased “respect” from management.¹⁴ In addition, strikes seem to be happening all over the country and in a wide range of industries, in contrast to occurring in only some coastal regions and manufacturing or construction industries. Lee notes that these strikes by Chinese workers are about wages and lawful compensation (e.g., pension contributions in the case of the Yue Yuen shoe factory strikes in 2014), not political representation or institutional empowerment, lamenting that workers are not being “radicalized.”¹⁵ It is also possible that China’s economic slowdown may make workers return to more defensive demands as seen in many recent factory closures or relocations.¹⁶ Nevertheless, while it is true that workers largely do not have political demands and often frame their demands in legal terms, they are increasingly willing to strike or protest for their material conditions.¹⁷ Specific demands for rights or interests, however, may vary with workers’ relative bargaining power.

What is causing the change in the incidence and the nature of strikes? Recent research suggests a number of economic, political, and social factors at play. First, China has experienced a labor shortage since mid-2000s, starting from coastal areas but increasingly elsewhere. It is predicted that China’s labor force will decrease by twenty-nine million over the current decade.¹⁸ This shortage of workers has served to increase labor militancy and bargaining power, reflected particularly in workers’ increasing demands for wages.¹⁹ Second, the second generation of migrant workers, thanks to their subjective experience of anger, pain, exclusion, and social media and technology savvy, have more rights and class consciousness and are more willing to take collective action than their parents’ generation.²⁰ Lee, dissents however, arguing that, shorter job tenure and labor market information may undermine the empowerment effect of labor shortages; and there is little empirical support regarding whether second generation migrant workers’ are

14. Elfstrom & Kuruvilla, *supra* note 8.

15. Lee, *supra* note 4.

16. See, e.g., Li & Liu, *supra* note 3.

17. See Li, *supra* note 13.

18. *China’s Demographic Dividend Disappearing: Expert*, XINHUANET (Jan. 28, 2013), http://news.xinhuanet.com/english/china/2013-01/28/c_132134304.htm.

19. Elfstrom & Kuruvilla, *supra* note 8; Mary E. Gallagher, *China’s Workers Movement and the End of the Rapid-Growth Era*, 143 DAEDALUS 81 (2014); MARY E. GALLAGHER, *AUTHORITARIAN LEGALITY: LAW, WORKERS, AND THE STATE IN CONTEMPORARY CHINA* (forthcoming Cambridge University Press).

20. Pun Ngai & Lu Huilin, *Unfinished Proletarianization: Self, Anger, and Class Action among the Second Generation of Peasant-Workers in Present-Day China*, 36 MODERN CHINA 493 (2010); Chris King-Chi Chan, *Class or Citizenship? Debating Workplace Conflict in China*, 42 J. CONTEMP. ASIA 308 (2012); Leung Pak Nang & Pun Ngai, *The Radicalisation of the New Chinese Working Class: A Case Study of Collective Action in the Gemstone Industry*, 30 THIRD WORLD Q. 551 (2009); LU ZHANG, *INSIDE CHINA’S AUTOMOBILE FACTORIES: THE POLITICS OF LABOR AND WORKER RESISTANCE*. (2015).

more aware of their rights and more likely to strike.²¹ Third, the state's policy regarding worker protection and collective bargaining (for details see the section below) as well as the new media openness (at least until 2013) serve to further increase the bargaining power of workers.²² Finally, improved factory conditions, rising wages, and media coverage of new labor laws and greater reporting on strikes may provide "cues" to workers that the balance of power has shifted and that more activism is tolerated by authorities.²³

All in all, in terms of our "spaghetti western" metaphor, the fact that in general, Chinese workers are increasingly militant and ready to voice their concerns, proactively, can be considered a "good," not only intrinsically, but also because it has forced the state to respond in several distinct ways.

III. THE RESPONSE OF THE STATE

The response of the Chinese state has varied considerably over the two decades, and some degree of periodization is necessary to understand the evolution of state policy. The state's early response in 1994 was to engineer the transformation from the "iron rice-bowl" regime to that of a more market based regime. In what we term as *flexible re-regulation of labor market and industrial relations*, we argue that the state has "perhaps caused the problem." In 1994, the first labor law of the People's Republic of China was introduced, designed to "smash" the iron-rice bowl model. However, the enactment of this labor law had two very different objectives: to increase employment flexibility and efficiency of state- and collective-owned enterprises, and to protect basic rights of workers in the emerging private sector. A decade later, the first objective had been successfully achieved as evidenced by increased managerial autonomy and employment flexibility in all types of enterprises, both state owned and privately owned. However, the state had largely failed to achieve its second objective of labor protection, as indicated by massive increase in layoffs from state owned enterprises, and the rise of short term contracts and informal employment, combined with severe violations of labor rights. These effects have been well documented in various pieces of writing, and summarized in the book by Kuruvilla, Gallagher, and Lee titled "From Iron Rice-Bowl to Informalization."²⁴

The rise in labor conflict and deep dissatisfaction among migrant workers forced the state to act again. As part of a general need to promote industrial stability and reduce tensions in workplaces, encapsulated in the

21. Lee, *supra* note 4.

22. Elfstrom & Kuruvilla, *supra* note 8; GALLAGHER, *supra* note 19.

23. Elfstrom & Kuruvilla, *supra* note 8.

24. FROM IRON RICE BOWL TO INFORMALIZATION: MARKETS, WORKERS, AND THE STATE IN A CHANGING CHINA (Sarosh Kuruvilla, Ching Kwan Lee & Mary E. Gallagher eds., 2011).

slogan “development of a harmonious society,” the state pursued several avenues. First, since 2007 the state has embarked on a legislative onslaught to re-regulate the labor market, introducing new laws such as the Labor Contract Law (2007) and its Amendment (2012), Labor Dispute Mediation and Arbitration Law (2007), and Social Insurance Law (2010). These laws, coupled with an even larger number of administrative regulations such as the Special Regulation on Minimum Wage (2004), the Regulations on Enterprise Labor Dispute Negotiation and Mediation (2011), and the Interim Provisions on Labor Dispatch (2014), were to signal to workers that the state was responding to their concerns by introducing new and more protective legislation, but also to channel discontent away from the public sphere to the “rule of law” notably highlighted in an article titled “legislating harmony” by Gallagher and Dong.²⁵ The state has also promoted these laws among Chinese through various propaganda and education programs particularly via media—the so-called “legal dissemination” campaigns.²⁶ In addition, the state has developed a labor dispute resolution system to provide a formal channel for individuals to resolve their workplace grievances, and a legal aid system administered by the Ministry of Justice and its sub-branches that assists workers in the dispute resolution process.²⁷ There is widespread agreement that this legislative onslaught has raised labor standards and eased workers’ use of legal channels to resolve their disputes. Among these improvements, the restricted use of short-term employment contracts, stricter regulations on labor dispatch, and extended economic compensation for terminated workers are particularly noteworthy, as the enforcement of these rules would significantly reverse the trend of informalization.

However, the state’s re-regulation of labor market is flexible, selective, uneven, and unstable due to its concerns with political monopoly and market efficiency. First, the legal labor system is based on individual rights while collective labor rights, particularly freedom of association and collective bargaining, are still missing. Second, the legislation and many regulations themselves are vague or even contradictory, allowing room for different interpretations. In addition, state administrative policies may overrule legal regulations, as evidenced by the nation-wide suspension of enforcing social insurance regulations during the 2008–2009 global financial crisis. Third, the central and local states often have diverging interests: the former is highly concerned about industrial peace and regime legitimacy, while the latter is

25. Mary E. Gallagher & Baohua Dong, *Legislating Harmony: Labor Law Reform in Contemporary China*, in *FROM IRON RICE BOWL TO INFORMALIZATION: MARKETS, WORKERS, AND THE STATE IN A CHANGING CHINA* 36-61 (Sarosh Kuruvilla, Ching Kwan Lee & Mary E. Gallagher eds., 2011).

26. GALLAGHER, *supra* note 19.

27. Aaron Halegua, *Protecting the Legal Rights of Chinese Workers: A Mapping of Legal Issues and Avenues for Recourse in Several Chinese Cities* (Ford Foundation 2016).

obsessed with economic growth.²⁸ As such, local states often adapt the national laws and adopt lower labor standards. For example, after the labor contract law took into effect, many provinces such as Shanghai, Jiangsu, Zhejiang, and Guangdong issued Provincial High Court Explanations that significantly diluted the national law. The state's flexible re-regulation therefore may have mixed effects on workplace conditions which will be examined below.

We term the various paths toward a harmonious society pursued by the state as “a *state corporatist approach*.” While corporatism in the Western capitalist democracies entails a voluntary arrangement of state, labor, and capital, the Chinese approach to state corporatism differs from those of the West in that it is a form of institutional arrangement wherein employers and workers are organized into corporate entities that serve as organs of the state.²⁹ The state's corporatist approach takes two explicit paths, i.e., to increase both union organizing as well as collective bargaining coverage, with the expectation that both would reduce industrial conflict. It has done so via three separate initiatives: a change in the role of the MOHRSS, the inclusion of provisions for collective contract negotiations in the new or revised national and local labor laws and regulations, and most importantly, the instructions of the ACFTU to increase union organizing and collective bargaining coverage across the country. The primary change in the role of the MOHRSS has been to make it more responsible for the growth of collective bargaining. The Labor Contract Law contains six articles about collective contracts, stipulating the content of collective bargaining and the right to ratify a collective bargaining agreement of the workers' congress. In particular, two articles focus specifically on the establishment of relatively centralized—regional and industry level—bargaining. Moreover, many provinces have revised or enacted new regulations on collective bargaining—for example, the 2014 Guangdong Province Regulation on Enterprise Collective Consultation and Collective Contracts that sets out rights and obligations for both workers and employers as well as the principle of “good faith” bargaining (though it is still too weak to ease labor conflicts). Finally, the state and the ACFTU have launched several strategic policy campaigns setting specific quotas and coverage targets to expand collective bargaining in enterprises, including the 2008 “Rainbow Plan,” the 2010 “Notification on the Further Promotion of the Rainbow Plan for the Implementation of the Collective Contract System,” the “two universals”—“to promote the establishment of enterprise union organizations universally in a lawful

28. LEE, *supra* note 10; GALLAGHER, *supra* note 19.

29. Phillippe C. Schmitter, *Still a Century of Corporatism?*, in *TRENDS TOWARDS CORPORATISM INTERMEDIATION* 85 (Philippe Schmitter & Gerhard Lehmbruch eds., 1979).

manner; and to promote enterprise collective wage negotiation universally,”³⁰ the ACFTU’s 2011 Work Plan for Promoting Collective Wage Consultation in 2011–2013, the 2014 Notification on the “Uphill Plan for Promoting the Implementation of the Collective Contract System” by the National Tripartite Consultation Committee, and the ACFTU’s 2014 Work Plan to Further Deepen the Collective Consultation System, 2014–2018. Meanwhile, they continued to encourage (without specific targets) industry-wide or regional agreements to cover those nonunionized or small to medium-sized enterprises.³¹ More importantly, the state and the ACFTU have recently started to focus on the quality, not just the quantity, of union organizing and collective bargaining. In 2015, the Central Government Deepening the Reform Leadership Group requested that the ACFTU (and other mass organizations) carry out reform, and clearly stated that the key to reform was to “determinedly prevent and overcome ‘apparatusization, administrativization, aristocratization, and entertainmentization’.”³² The ACFTU enacted “Enterprise Union Chairperson Procedures” in 2008 to improve the quality of workplace union chairs, and issued the “Opinions Regarding the Enhancement of the Quality of Collective Consultation and the Effect of Collective Contract” in 2014, which mandates: “From 2014 onwards, within a five-year period, on the basis of maintaining an 80% collective consultation mechanism establishment rate, 90% of the workers covered by collective contracts should have developed an awareness of collective consultation, and there should be a steady increase in the workers’ overall satisfaction rate regarding the (union’s) work on collective consultation and collective contract signing.”³³

In addition, to better incorporate workers, particularly the contentious ones, into the ACFTU and collective bargaining system, the state issued a high level document—“Opinions from the Chinese Communist Party Central Committee and State Council on Building Harmonious Labor Relations” in 2015, which for the first time differentiates “work stoppages” or strikes from “labor relations mass events,” requesting the former be dealt with by applying the “tripartite mechanism of coordinating labor relations” rather than “Emergency Response Disposal Mechanism” that usually involved

30. Zhaoguo Wang, *Speech in the 4th meeting in the 15th ACFTU Executive Committee Session*, 8 CHINESE LAB. MOVEMENT 1 (2010).

31. Liu, *supra* note 3; Wen & Lin, *supra* note 4.

32. G. Fan, *Central Government Deepening Reform Office requesting Shanghai to Carry Out Mass Organizations Reform Trial Sites, and Come Up with Solutions Within Two Months*, PENGPAI NEWS, July 31, 2015, <http://news.qq.com/a/20150731/057184.htm>.

33. All-China Federation of Trade Unions, *The ACFTU Opinions on Improving the Quality of Collective Consultation and the Effect of Collective Contracts* (Jul. 17, 2014), <http://www.shxg.org/template/10001/file.jsp?aid=8055>.

suppression in the name of “stability maintenance.”³⁴ The local state in Guangdong Province has gone further, informally recognizing strikes as routine economic disputes.³⁵

IV. IMPACT OF STATE POLICIES

A. Positive Consequences

1. A General Improvement in the Industrial Relations Scene

The state's approach of flexible re-regulation of labor market and industrial relations have resulted in significant improvements of working conditions, which is supported by a number of empirical studies based on either qualitative interviews and case studies or quantitative analysis of firm or individual level surveys. To summarize, the Labor Contract Law has increased the percentage of workers with employment contracts and open-ended employment contracts, raised social insurance coverage, lowered the likelihood of wage arrears of migrant workers, improved firm's labor and human resource management practices, and increased the likelihood that migrant workers have a union at their workplace.³⁶ In terms of our Spaghetti Western Metaphor, these improved labor rights are a “Good.”

What has been the impact of the State's corporatist policies? One clear positive can be seen in the dramatic growth of union density and collective bargaining depicted in Figure 2 and Table 2.

34. *Opinions from the Chinese Communist Party Central Committee and State Council on Building Harmonious Labor Relations*, XINHUANET (2015) (Chinese), available at http://news.xinhuanet.com/politics/2015-04/08/c_1114906835.htm.

35. Elaine Sio Ieng Hui, *Putting the Chinese State in Its Place: A March from Passive Revolution to Hegemony*, 46 J. CONTEMP. ASIA (forthcoming 2016).

36. Virginia E. Harper Ho, *From Contracts to Compliance? An Early Look at Implementation under China's New Labor Legislation*, 23 COLUM. J. ASIAN L. 35 (2009); Jeffrey Becker & Manfred Elfstrom, *The Impact of China's Labor Contract Law on Workers*, INTERNATIONAL LABOR RIGHTS FORUM, May 12, 2010, http://www.laborrights.org/sites/default/files/publications-and-resources/ChinaLaborContractLaw2010_0.pdf; Chang-Hee Lee & Mingwei Liu, *Measuring the Effects of the Collective Voice Mechanism and the Labor Contract Law*, in THE ROLE OF COLLECTIVE BARGAINING IN THE GLOBAL ECONOMY: NEGOTIATING FOR SOCIAL JUSTICE 205 (Susan Hayter ed., 2011); Zhiming Cheng, Ryssel Smyth & Fei Guo, *The Impact of China's New Labor Contract Law on Socioeconomic Outcomes for Migrant and Urban Workers*, 68 HUMAN RELATIONS 329 (2015); Mary Gallagher et al., *China's 2008 Labor Contract Law: Implementation and Implications for China's Workers*, 68 HUMAN RELATIONS 197 (2015); Xiaoying Li & Richard B. Freeman, *How Does China's New Labor Contract Law Affect Floating Workers?*, 53 BRIT. J. INDUS. REL. 711 (2015); Fuxi Wang et al., *Converging Divergence: The Effect of China's Employment Contract Law on Signing Written Employment Contracts*, 27 INT'L J. HUM. RESOURCE MGMT. 2058 (2016).

Figure 2
Development of Trade Unions and Collective Bargaining in China, 1993–2014³⁷

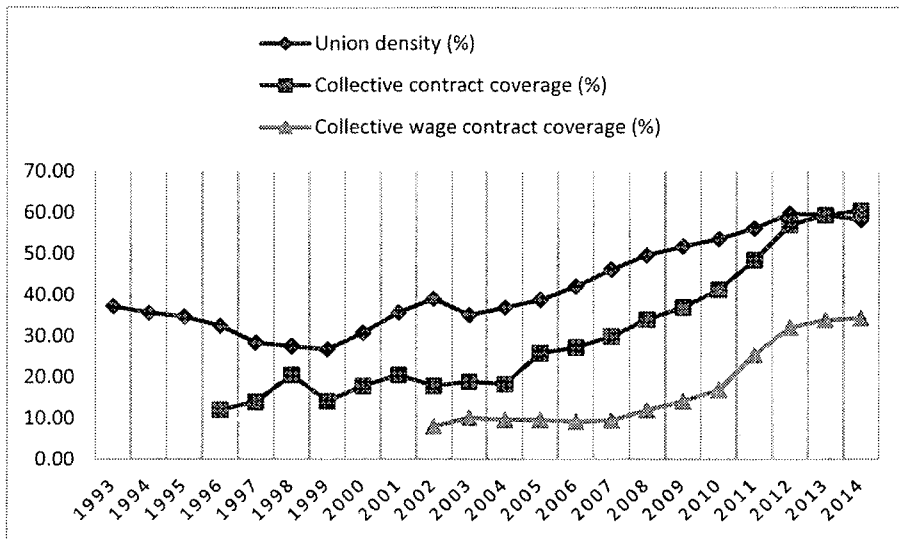


Table 2
Growth of Collective Bargaining in China, 2006–14 (in millions)

Year	All collective contracts			Collective wage contracts			Regional collective contracts			Industry collective contracts		
	Number	Enterprises covered	Workers covered	Number	Enterprises covered	Workers covered	Number	Enterprises covered	Workers covered	Number	Enterprises covered	Workers covered
2006	0.8	1.5	112	0.3	0.5	37	0.07	0.8	30	0.02	0.2	13
2007	1.0	1.7	128	0.3	0.6	40	0.10	0.7	32	0.05	0.2	13
2008	1.1	1.9	150	0.4	0.8	51	0.13	0.9	35	0.07	0.2	16
2009	1.2	2.1	162	0.5	0.9	62	0.15	1.0	42	0.10	0.3	19
2010	1.4	2.4	185	0.6	1.1	76	0.18	1.1	45	0.13	0.4	23
2011	1.8	3.6	223	0.9	1.9	117	0.24	1.8	59	0.17	0.6	28
2012	2.2	5.8	267	1.2	3.1	150	0.28	2.9	81	0.21	1.0	38
2013	2.4	6.3	288	1.3	3.6	164	0.33	3.7	93	0.24	1.4	44
2014	2.5	6.9	299	1.3	3.9	170	0.37	3.9	95	0.27	1.4	48
Ave. annual growth (%)	26.6	45.0	20.8	41.7	85.0	44.7	56.6	52.3	27.1	167.8	87.0	33.7

Source: Annual Report on Chinese Trade Unions Statistics Yearbook (various years).

There are also qualitative aspects that are worth mentioning. The encouragement of the ACFTU to aggressively organize and actively participate in labor policy making, such as the enactment of the Labor

37. Calculations from China Statistics Yearbook (various years) and Annual Report on Chinese Trade Unions Statistics Yearbook (various years). Union densities are calculated as ratios of union members to total non-agriculture employment (i.e., total employment-agriculture labor-self-employed individuals); collective contract coverages and collective wage contract coverages are calculated as ratios of workers covered by collective contracts and collective wage contracts to total non-agriculture employment respectively.

Contract Law and its subsequent Amendment, is a positive development. Moreover, various state-sponsored employer organizations particularly the China Enterprise Confederation and the All-China Federation of Industry and Commerce have emerged or developed playing an increasingly important role in industrial relations.³⁸ A tripartite consultation system between representatives of government, employers, and workers was established at the national level in 2001, aiming to promote stable employment relations through strengthening communication and coordination among the three parties. Since then this system has slowly evolved and is not just a formality. For instance, the nation-wide tripartite deal during the 2008–2009 global financial crisis, i.e., the state helps enterprises survive through various preferable policies and interventions; employers promise to keep workers' jobs; and workers accept lower labor standards; played a significant role in stabilizing the economy and employment relations.³⁹ In addition, the National Tripartite Consultation Committee has been actively involved in the campaigns to increase collective bargaining discussed above.

At the meso (regional or sectoral) level, the tripartite consultation system had been established in the vast majority of cities and counties/districts by 2009.⁴⁰ In addition to providing advice and recommendations regarding local labor policies (e.g., minimum wage levels), municipal tripartite consultation committees have actively participated in the settlement of large labor disputes. A most notable change at the meso level is the significant development of regional and industry level collective bargaining. In the early 2000s, a few innovative regional unions started to establish region or sector based union associations to organize workers in a large number of small- and medium-sized enterprises into the ACFTU. Under the support of local states, region or sector based employer associations were also established to facilitate meso-level collective bargaining. This new pattern of collective bargaining, with some degree worker participation, is termed as "centralized and authentic bargaining" by Kuruvilla and Zhang.⁴¹ Given that more centralized collective bargaining results in the coverage of more workers, the ACFTU is keen on diffusing this nationwide. It has resulted in a very few successful cases, however, such as the sectoral bargaining in the Xinhe wool sweaters industry, the Zeguo water pump industry, the Yixing ceramics industry, and the Pizhou plywood industry.⁴²

38. Liu, *supra* note 7; Judith Shuqin Zhu & Chris Nyland, *Chinese Employer Associations, Institutional Complementarity and Countervailing Power*, WORK, EMP. & SOC'Y (2016), <http://wes.sagepub.com/content/early/2016/05/26/0950017016643480.full.pdf+html>.

39. Liu, *supra* note 7.

40. Liu, Li & Kim, *supra* note 3.

41. Sarosh Kuruvilla & Hao Zhang, *Labor Unrest and Incipient Collective Bargaining in China*, 12 MGT. & ORG. REV. 159 (2016).

42. Liu, *supra* note 3; Wen & Lin, *supra* note 4; Lee, Brown & Wen, *supra* note 3.

At the micro/workplace level, the state has encouraged the ACFTU to organize workers and engage in collective bargaining, especially in the private sector. The ACFTU is experimenting with a variety of models, (i.e., the traditional ACFTU pattern, the union association pattern, and the regional, industry-based pattern) to strategically organize workers.⁴³ As a result, the institutional intensity of labor relations at the workplace level, measured as the range of industrial relations institutions present at the same workplace, has significantly increased.⁴⁴ Even Wal-Mart, though notorious for its anti-union approach, has had to set up union branches in all of its stores and concludes collective contracts with its unions. While these workplace labor relations institutions are still largely ineffective, some ongoing innovations and experiments of the ACFTU in responding to the rising labor unrest, may have a potential to change this.⁴⁵

Chen, Liu, and Halegua document the increasing ways in which unions are taking up their representative function with regard to individual, if not collective, disputes, including expanding and improving the workplace labor dispute mediation committee, providing free legal aid to workers, and developing trade union mediation organizations.⁴⁶

The ACFTU has also tried to reform its workplace branches with a focus on increasing their autonomy from management. Two ongoing experiments are worth noting. The first is the professional union chair program, i.e., regional ACFTUs directly recruit professional union chairs from society at large and sends them to represent or organize workers in the private sector particularly in small- and medium-sized enterprises. As these professional union chairs are supervised and paid by the regional ACFTU, they are relatively independent from employers and, therefore, have the potential to argue against employer dominance of enterprise unions.⁴⁷ The second experiment concerns direct elections of enterprise union chairs. Although earlier trials in some provinces had largely failed, the Guangdong ACFTU, under pressure of the local state that wanted a method to *incorporate* workers, revived this experiment after the strike wave in 2010. In 2014 direct union elections were introduced in five thousand enterprises in Guangdong, and it was reported that the Guangdong ACFTU planned to expand this experiment

43. Liu, *supra* note 3.

44. See Figure 2 and Table 2. See also Mingwei Liu, *Conflict Resolution in China*, in OXFORD HANDBOOK OF CONFLICT MANAGEMENT IN ORGANIZATIONS 494 (William K. Roche, Paul Teague, Alex Colvin eds., 2014); Lee, Brown & Wen, *supra* note 3.

45. Lee, *supra* note 4; Lee, Brown & Wen, *supra* note 3; Li & Liu, *supra* note 3.

46. Feng Chen, *Between the State and Labour: The Conflict of Chinese Trade Unions' Double Identity in Market Reform*, 176 THE CHINA Q. 1006 (2003); Liu, *supra* note 3; Halegua, *supra* note 27.

47. Liu, Li & Kim, *supra* note 3.

to all unionized enterprises by 2019.⁴⁸ While the majority of these direct union elections may still be *formalistic* as suggested by Chan and Hui,⁴⁹ a few elections that were conducted *after* workers went on strike have partially improved the representativeness of the enterprise unions, resulting in more meaningful collective bargaining that brought significant gains to workers, even though such elections were not *fully democratic*.⁵⁰

A related example can be found in the direct union elections in the auto parts companies in Guangzhou after 2010. Although the elected enterprise unions did not function well, they did provide a platform for union activists and workers to directly negotiate with the employer, backed by strike threats.⁵¹ These examples fall into the category of “decentralized and authentic collective bargaining” noted by Kuruvilla and Zhang.⁵² Directly elected workplace union leaders provide the potential to be more representative of workers, which could lead, in time, to a cadre of more genuine union representatives. There is some evidence of this change in the union-led protest against Walmart Changde store in 2014.⁵³

Building on the prior two experiments, a new model of union governance and collective bargaining has been experimented in Shenzhen since 2014, which features the recruitment of highly motivated young professional union officials at the neighborhood/town level to organize workers in local enterprises, guide enterprise level collective bargaining, and intervene in local collective labor conflicts. This effort is coupled with systematic training of union officials, workers, and managers on interest-based collective bargaining. It is still too early to evaluate this experiment.

Finally, as a large number of workers and employers are not covered or well represented by corporatist organizations, the state often has directly engaged with workers and employers. This is particularly evident in many spontaneous strikes during which the state actively intervened and facilitated their “voluntary” settlement via a process of quadripartite interaction between employers, workers, unions, and the state, often referred to as “party state-led wage bargaining.”⁵⁴

Thus, the efforts of the state in strengthening state corporatism at multiple levels, such as supporting the ACFTU in labor policy making and

48. X. Yi, *Enterprise Trade Unions Will Be Democratically Elected in 5 Years*, SOUTHERN METROPOLIS DAILY, July 3, 2015, at AA07.

49. Chris King-Chi Chan & Elaine Sio-leng Hui, *Development of Collective Bargaining in China: From Collective Bargaining by Riot to Party State-Led Wage Bargaining*, 217 THE CHINA Q. 221 (2014).

50. Lee, Brown & Wen, *supra* note 3.

51. Deng, *supra* note 13.

52. Kuruvilla & Zhang, *supra* note 41.

53. See Li & Liu, *supra* note 3.

54. Feng Chen, *Trade Unions and the Quadripartite Interactions in Strike Settlement in China*, 201 THE CHINA Q. 104 (2010); Chan & Hui, *supra* note 49.

developing collective bargaining at both the meso and micro levels, have to a small extent, served the interests of workers, and hence constitute evidence of the “GOOD” in this paper.

B. Negative Consequences

1. Legal Enforcement

The most notable negative consequence of the state’s response is in the area of legal enforcement. Due to the flexible approach of the state in reregulating the labor market, the gap between what is promised in law and what is actually delivered at the workplace remains large. While there has been a general improvement in enforcement, this is highly selective, uneven, and generally weak. As indicated in Table 3, although the percentage of migrant workers with employment contracts increased slightly between 2009 and 2012, it was still less than half of the migrant worker population. Even worse, the percentage steadily declined between 2012 and 2015. In 2015, only 36.2% of migrant workers had employment contracts, smaller than the percentage in 2009. In addition, nominal or low cost labor regulations are more likely to be enforced, while the enforcement of high standard or high cost labor regulations tends to be ignored, deferred, or discounted.⁵⁵ For example, as Table 3 shows, the coverage of mandatory employment contracts among migrant workers was relatively high (a low cost requirement), and far fewer migrant workers enjoyed the mandatory social insurance (a high cost requirement). Moreover, labor law enforcement varies significantly across regions, industries, types of enterprises, and types of employees. For instance, labor rights are better protected in the Yangtze River Delta; the manufacturing sector; large enterprises; and, for more educated, skilled, and urban workers than in the Pearl River Delta, service sector, small enterprises, and for less educated, skilled and migrant workers.⁵⁶ This flexibility in enforcement is mirrored in the activities of government labor inspection agencies, labor arbitration committees, and courts, which often settle labor dispute cases with awards substantially lower than legal standards.⁵⁷ Since 2008, the state’s encouragement of the use of mediation, in many cases “forced mediation,” to resolve labor disputes, has further worsened the

55. Ho, *supra* note 36; Sunwook Chung, *Explaining Compliance: A Multi-Actor Framework for Understanding Labor Law Compliance in China*, 68 HUM. REL. 237 (2015); GALLAGHER, *supra* note 19.

56. Liu, Yong & Shu, *supra* note 4; Cheng, Smyth & Guo, *supra* note 36; Gallagher et al., *supra* note 36; Wang et al., *supra* note 36.

57. Ho, *supra* note 36; Ching Kwan Lee & Yonghong Zhang, *The Power of Instability: The Microfoundations of Bargained Authoritarianism in China*, 118 AM. J. SOC. 1475 (2013); Wenjia Zhuang & Feng Chen, “Mediate First”: *The Revival of Mediation in Labor Dispute Resolution in China*, 222 THE CHINA Q. 380 (2015).

situation as labor rights are often mediated away.⁵⁸ Empirical evidence suggests that working conditions of some workers, instead of being improved by the state's reregulation efforts, have deteriorated. For example, the use of labor dispatch increased significantly after the Labor Contract Law and the workers who entered the labor dispatch system suffer from various violations of labor rights.⁵⁹

Table 3
Chinese Rural-to-Urban Migrant Workers: Coverage of
Mandatory Employment Contracts and Social Insurances (%)

	2008	2009	2010	2011	2012	2013	2014	2015
Employment contracts	-	42.8	42	43.8	43.9	41.3	38	36.2
Pension	9.8	7.6	9.5	13.9	14.3	15.7	16.7	-
Work injury insurance	24.1	21.8	24.1	23.6	24	28.5	26.2	-
Medical insurance	13.1	12.2	14.3	16.7	16.9	17.6	17.6	-
Unemployment insuran	3.7	3.9	4.9	8	8.4	9.1	10.5	-
Maternity insurance	2	2.4	2.9	5.6	6.1	6.6	7.8	-

Source: National Bureau of Statistics

2. Union Organizing

The process of union organizing has been described as largely formalistic.⁶⁰ The key question here is whether the ACFTU can effectively represent Chinese workers in collective negotiations. There are two primary lines of debate and argument with regard to the role of the ACFTU.⁶¹ The first concerns the ACFTU's *identity*—whether it is functioning in largely path-dependent ways and has not yet made the transition to a new role in a market based society. The second is that the ACFTU suffers from a *crisis of legitimacy*, in that most workers do not trust the union or see it as effective. We discuss each in turn below.

With regard to whether the role of the ACFTU has transformed, Chen argues that the ACFTU remains stuck to its “double institutional” identity as both an apparatus of the state (acting on behalf of the nation's collective good) and as a labor organization to protect workers' interests.⁶² When the

58. Liu, *supra* note 44; Zhuang & Chen, *supra* note 57; Halegua, *supra* note 27.

59. Lee & Liu, *supra* note 36; Virginia Harper Ho & Qiaoyan Huang, *The Recursivity of Reform: China's Amended Labor Contract Law*, 37 FORDHAM INT'L L.J. 973 (2014); Juliana So, *Exploring the Plight of Dispatch Workers in China and How to Improve Their Conditions: A Preliminary Study*, 17 WORKINGUSA 531 (2014).

60. Liu, *supra* note 3.

61. Kuruvilla & Zhang, *supra* note 41.

62. Chen, *supra* note 46.

two identities are in conflict, the former tends to prevail. Empirical studies in the past decade largely support Chen's view. For instance, the ACFTU publicly expressed that it did not approve of strikes.⁶³ The vast majority enterprise unions are found to be controlled or coopted by management.⁶⁴ Despite direct elections of their leaders in Walmart and Foxconn, the unions are discredited by their members.⁶⁵

Despite the positive evaluations of the ACFTU discussed earlier, the extent to which it has evolved in a more representative direction remains unclear. Friedman does not see a promising corporatist future for the ACFTU for three reasons.⁶⁶ First, state corporatism requires that workers' voices are successfully incorporated into the system, while the ACFTU does not incorporate workers' voices. Second, state corporatism requires that workers give up political demands in exchange for economic benefits and therefore implies a relatively decommodified model of social governance, whereas in China workers clearly do not enjoy, sufficiently, such benefits. Third, however coopted a union under corporatism is, it is a somewhat independent intermediary organization between the grassroots and the state, while the ACFTU, is clearly part of the state apparatus with no such independence. This is what Kuruvilla and Zhang call the crisis of legitimacy of the ACFTU.⁶⁷

3. Collective Bargaining

Despite the positive experiments promoted by the state with regard to collective bargaining that we described above, there are negatives too. Much of collective bargaining remains formalistic. Kuruvilla and Zhang's analysis of collective bargaining suggests that the vast majority of collective bargaining agreements can be classified as "decentralized and inauthentic."⁶⁸ These include what they call "template bargaining" and what other researchers have described as collective contracts without collective bargaining or collective consultation as a formality.⁶⁹ Typically, the local

63. Li Binsheng, *The Secretary of the Secretariat of the ACFTU, Talking About Promoting Harmonious Labor Relations*, STRONG CHINA FORUM OF PEOPLE'S DAILY ONLINE, Mar. 10, 2011, at <http://www.people.com.cn/GB/32306/143124/147550/14112975.html> (in Chinese).

64. Mingwei Liu & Chunyun Li, *Environment Pressures, Managerial Industrial Relations Ideologies, and Unionization in Chinese Enterprises*, 52 BRIT. J. INDUS. REL. 82 (2014).

65. Baogang He & Yuhua Xie, *Wal-Mart's Trade Union in China*, 33 ECON. & INDUS. DEMOCRACY, 421 (2012); Jenny Chan & Mark Seldon, *China's Rural Migrant Workers, the State and Labor Politics*, 46 CRITICAL ASIAN STUD. 599 (2014).

66. ELI FRIEDMAN, *INSURGENCY TRAP: LABOR POLITICS IN POSTSOCIALIST CHINA* (2014).

67. Kuruvilla & Zhang, *supra* note 41.

68. *Id.* at 175.

69. *Id.* at 175; Feng Chen, *Individual Rights and Collective Rights: Labor's Predicament in China*, 40 COMMUNIST AND POST-COMMUNIST STUDIES 59 (2007); Simon Clarke, Chang-Hee Lee, & Qi Li,

labor administration and official union develop a template for a collective contract that employers and the enterprise union branch should sign. In some cases, the template agreement contains blank spaces for wage increases, which enterprises can customize to suit their needs. Usually, a template agreement leaves little room for the parties to bargain over interest-based issues.⁷⁰ Kuruvilla and Zhang also highlight another category of “centralized and inauthentic collective bargaining,” referring to the ACFTU’s effort to carry out regional and industry-level bargaining, seen as necessary to bring employees of small and medium sized firms under collective bargaining coverage.⁷¹ Many of these regional and industry-level agreements are either formalistic or have shown themselves to be ineffective and not institutionalized. A classic example here is Friedman’s study of sectoral bargaining in the Rui’an eyeglass cluster, where workers interviewed indeed knew nothing about the industry level contract that covered them.⁷² The two categories of authentic collective bargaining, i.e., “decentralized and authentic collective bargaining” and “centralized and authentic collective bargaining,” have been discussed in the section above. Notably, they include only a small minority of overall collective bargaining agreements. Overall, collective bargaining is, as Kuruvilla and Zhang highlight, relatively incipient.⁷³

4. Summary

To summarize, on the one hand, the state’s re-regulations of labor market and the promotion of union organizing and collective bargaining have significantly improved the legal system, and sent a positive signal that the state is serious about protecting labor rights. On the other hand, enforcement of labor rights remains weak, selective, and uneven, and workers are increasingly acting offensively, demanding wages and working conditions above those stipulated by the law. Such interest-based disputes cannot be resolved by the individual labor rights based regulatory system that the state has espoused. Along with the above, the formalistic development of the majority of union organizing and collective bargaining efforts, result in (as an unintended consequence) a failure to reduce the number of either

Collective Consultation and Industrial Relations in China, 42 BRIT. J. INDUS. REL. 235 (2004); Chan & Hui, *supra* note 49.

70. Chen, *supra* note 69.

71. Qingjun Wu & Zhaoyang Sun, *Collective Consultation Under Quota Management: China’s Government-Led Model of Labor Relations Regulation*, 153 INT’L LAB. REV. 609 (2014).

72. Eli D. Friedman, *Economic Development and Sectoral Unions in China*, 67 INDUS. & LAB. REL. REV. 481 (2014).

73. Kuruvilla & Zhang, *supra* note 41.

individual or collective labor conflicts. These examples add to the “BAD” in Chinese collective bargaining.

V. FUTURE DEVELOPMENT OF TRADE UNIONS AND COLLECTIVE BARGAINING: UNPACKING THE STATE’S INTERESTS

As we have demonstrated, there are often contradictions in the states’ approach. While we do not have a coherent theory of the Chinese state’s interests in the labor relations sphere, we attempt to unpack it here in order to understand better the future evolution of union organizing and collective bargaining in China. Howell suggests that to understand the Chinese state today, we must recognize that the state lies between various categories, displaying “elements of efficiency and inefficiency, of control and chaos, of relative autonomy and clientelism, of neoliberalism and neocorporatism.”⁷⁴ This conception allows the Chinese state to be best understood as “polymorphous, assuming multiple complex forms and behaviors across time and space.”⁷⁵

One explanation for the state’s interests to increase collective bargaining draws primarily on the basic and long established institutional theory about industrial conflict and collective bargaining developed by the Webbs in their influential work “Industrial Democracy.”⁷⁶ The Chinese state’s response in encouraging collective bargaining is in many ways consistent with this explanation, in that it has enacted minimum standards legislation and is increasing collective bargaining coverage, but it is doing so in ways that do not result in the formation of free labor unions, i.e., the state here is corporatist and neoliberal at the same time. Collective Bargaining would also go a long way to reducing the widening inequality (China’s Gini coefficient is now 0.47) that is seen as a potential threat to political stability.

An alternative perspective is that the state’s labor policy is based on “decentralized legal authoritarianism” or “authoritarian legality,” which suggests a great emphasis on legal system building in order to steer the reform of the social governance system in general, and labor relations system in particular, toward an authoritarian “rule by law” system.⁷⁷ This explains the many legislations increasing labor protection during the 2007–2012 period. This also explains why the state has encouraged legal mobilization and seeks to channel labor conflict into the judicial and semi-judicial system, in part to

74. Jude Howell, *Reflections on the Chinese State*, 37 DEV. & CHANGE 273, 274 (2006).

75. *Id.* at 275.

76. SIDNEY WEBB & BEATRICE WEBB, *INDUSTRIAL DEMOCRACY* (1897).

77. LEE, *supra* note 10; GALLAGHER, *supra* note 19; Eli Friedman & Ching Kwan Lee, *Remaking the World of Chinese Labour: A 30-Year Retrospective*, 48 BRIT. J. INDUS. REL. 507 (2010); GALLAGHER, *supra* note 19.

maintain political control.⁷⁸ Given that labor peace (i.e., no strikes) can be achieved by strong protective legislation on minimum standards, as well as effective dispute resolution mechanisms, the state's encouragement of collective bargaining (an essentially democratic concept which implies some amount of independent agency on the part of workers), which might result in collective activity that might threaten the regime, remains puzzling. It is possible that collective bargaining is seen now as a necessary stabilizing force, because legal enforcement has not "produced the results."

Yet another explanation for the state's encouragement of collective bargaining can be found in the conception of "the developmental state." As Friedman and Kuruvilla note, at the firm level, high rates of labor turnover and severe labor shortages have come to be one of the key limits to future growth.⁷⁹ The inability to retain a stable workforce has pushed employers in the industrial centers in coastal areas to look elsewhere. Some economists have suggested that China may be at the "Lewis turning point," when labor scarcity begins to shift the economy away from labor-intensive, input-driven growth to enhanced productivity, declining inequality, and greater domestic consumption.⁸⁰ Promotion of collective bargaining is consistent with this approach as well, since genuine collective bargaining would result in higher wages, pushing the economy into a higher wage, higher price, higher productivity spiral that is ultimately necessary to get out of the "middle income trap" which China is likely to reach in 2030, as per the World Bank.⁸¹

The future of both unions and collective bargaining depend crucially on which analysis of the states' interest we accept. However, since October 2015, we are seeing a new side of the state's approach to labor, an alarming crackdown on labor activists and labor friendly NGOs. Seven labor activists have been arrested; four have been formally charged with crimes including the veteran activist Zeng, Feiyang; and some NGOs have been shut down. Worse even, the Chinese state passed the Overseas NGO Management Law in March 2016, which grants the police virtually unchecked power in targeting NGOs and restricting their activities. Some argue that this is a new phase of the Communist Party's attack on its critics to "reassert control over

78. LEE, *supra* note 10; GALLAGHER, *supra* note 19.

79. Eli Friedman & Sarosh Kuruvilla, *Experimentation and Decentralization in Chinese Industrial Relations*, 68 HUM. REL. 181 (2015).

80. E.g., Fang Cai & Yang Du, *Wage Increases, Wage Convergence, and the Lewis Turning Point in China*, 22 CHINA ECON. REV. 601 (2011); Hongbin Li et al., *The End of Cheap Chinese Labor*, 26 J. ECON. PERSP. 57 (2012).

81. WORLD BANK, CHINA 2030: BUILDING A MODERN, HARMONIOUS, AND CREATIVE SOCIETY (2012), available at <http://documents.worldbank.org/curated/en/781101468239669951/pdf/762990PUBLIC0china0Box374372B00PUBLIC0.pdf>.

all sectors of society and economy.”⁸² Friedman, in a February 2016 interview suggests “the crackdown appeared designed to warn workers that unrest would not be tolerated at a time when many factories were either closing as a result of China’s slowing economy or relocating to parts of south and south-east Asia where costs were lower . . . ‘which has not really been the case that much over the past 15 years.’”⁸³ This is a significant new and “UGLY” phase in the development of Chinese labor that will affect the future development of unions and collective bargaining.

VI. CONCLUSION

By the end of the first decade of the twenty-first century, the new labor regime in China exhibits a high standard of individual labor rights (the OECD rates China’s labor laws as being very protective),⁸⁴ weak, uneven, and selective labor law enforcement, a general encouragement of state corporatist industrial relations regime that provides some spaces for unions and collective bargaining, but in a context of “appropriated representation” (the state-sanctioned exclusive representation of an entire class by an organization without formalistic delegation from membership, as Friedman notes).⁸⁵ A variety of experiments toward more authentic collective bargaining continue to operate, although both this and the legislation have not successfully prevented the rise of labor conflict. And since October 2015, the communist party has embarked on a highly repressive strategy against labor activists that arguably creates a chilling effect on the more genuine collective bargaining that could potentially solve labor conflict (consistent with the state’s interest)!

In terms of our “Spaghetti Western” metaphor, there are good, bad, and ugly elements. The “GOOD” includes the rising willingness of Chinese workers to express their voice via strikes, their increasingly offensive rather than defensive demands, the state’s new protectionist labor legislation that sets a higher floor for wages and working conditions, its broad encouragement for increased unionization and collective bargaining, new experiments in worker democracy such as the direct election of union chairs in Guangdong and other places, the few but important examples of more authentic bargaining, and of course the quantitative improvements in union

82. Tom Phillips, *He Xiaobo: Latest Victim of China’s Crackdown on Labor Activists*, THE GUARDIAN, February 2, 2016, <https://www.theguardian.com/world/2016/feb/02/he-xiaobo-the-latest-victim-of-chinas-crackdown-on-labour-activists>.

83. *Id.*

84. See Danielle Venn, *Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators*, (2009) [cited Mar. 21, 2015], <http://www.oecd.org/employment/emp/43116624.pdf>.

85. FRIEDMAN, *supra* note 66.

density and collective bargaining coverage. The "BAD" (including unintended consequences) encapsulates several issues such as poor and variable enforcement of labor legislation, the formalistic approach of the ACFTU in union organizing and the formalistic and inauthentic collective bargaining agreements (the majority) which together, result in continuing and increasing labor unrest rather than containing or reducing it. The UGLY of course refers to the state's recent approach in shutting down labor friendly NGOs and arresting labor activists.