State Regulation, Economic Reform and Worker Rights: The Contingent Effects of China’s Labour Contract Law

TU LAN, JOHN PICKLES & SHENGJUN ZHU
Department of Geography, University of North Carolina, Chapel Hill, USA

ABSTRACT In 2007/2008 the Labour Contract Law was introduced and enacted in China. Responses to the law have varied enormously. For many, it represented a major change in the conditions under which workers and employers can enter into contracts and, as a result, it has been seen as an important step in empowering workers to shape their conditions of work. For others, the law lacked teeth and was not implemented. In practice, the law has had different effects within and among different types of firms depending on their ownership structure, product mix, market orientation, size and geographical location. The differences are particularly clear among private sector firms and between and among private and public sector enterprises. This article outlines the conditions and terms of the 1995 Labour Law and how the 2008 Labour Contract Law changes these, particularly for global buyers sourcing from China and for workers and enterprises in China. In particular, it assesses the differential impacts of the new law on permanent and temporary workers in state-owned and private enterprises, and between private- and public-sector employees, with an emphasis in the latter case on the liberalisation, not enhanced protection, of workers’ rights.

KEY WORDS: Apparel, China, global sourcing, Labour Contract Law, private- and public-sector workers

Building or re-building international and state institutions that protect workers in global value chains has become an increasingly urgent matter as international sourcing has driven down contract prices and squeezed margins and wages among export producers in the global South to levels that are increasingly being recognised as unsustainable (Appelbaum et al. 2005; Gereffi and Mayer 2006; Mayer and Pickles 2011; Barrientos et al. 2011). In recent years, the resulting conditions for workers and the difficulty in ensuring compliance with standards in complex global production networks have generated an increasing number of workplace demands, disputes and strikes as workers and their organisations strive to provide basic legal and social protections, to improve working conditions, increase wages and workers’ benefits and push labour provisions into bilateral and regional trade agreements and even into the heart of policy agendas of Bretton Woods institutions such as the World Bank and the International Monetary Fund. However, as Mayer and Pickles (2011, 10) have pointed out, “significant obstacles remain in the
development of effective inter-governmental regulatory or distributive governance capacity at the global or regional level.” In part this results from the dismantling of existing institutional capacities and governance mechanisms after 20 or 30 years of neo-liberal deregulation and attacks on prior gains to labour and wages, and in part it results from the mobility of global value chain sourcing as it moves among low-cost producing locations in countries with less-well-developed facilitative, regulatory and compensatory capacities.

These pressures from below and the failures of global buyers and international regulatory agencies to address the expansion of worker demands in low-wage industries such as apparel have led some emerging economies, particularly the BRICS of Brazil, Russia, India, China and South Africa, to reconsider their earlier commitments to neo-liberal policies (deregulation, privatisation and the withdrawal of the state from the economy). In their place, or alongside them, these states are adapting existing state institutions and creating new governance capacities to regulate production, protect workers, expand their rights and provide social safety nets and other forms of compensatory mechanisms for those who have been affected by the unregulated and, at times, predatory practices of manufacturers and global buyers. Thus, for example, Piore and Shrank (2006, 7) report that:

Brazil, Chile, Costa Rica, and the Dominican Republic have rededicated themselves to labour law enforcement in recent years. And potentially more fundamental reforms are underway from Argentina, where they are motivated by domestic party politics, to Central America, where they are a product of transnational pressure emanating from the campaign for a US-Central America FTA.

Moreover, Shrank (2007) found that among Central American firms there was a positive relationship between labour law enforcement and the propensity to upgrade human resources, with potentially important impacts on competitiveness.

In these endeavours, despite a history of seeking out less regulated labour markets from which to source their product, global brands have increasingly pressed for, or at least acquiesced to, stronger state regulation in some areas of national and international labour codes and practices. For such brands, earlier attempts to regulate global value chains through corporate social responsibility, standards and code monitoring and compliance failed in the face of complex supply chains and the competing pressures on cost and brand reputational risk. For buyers and their suppliers private monitoring and auditing led to increasing costs and “audit fatigue.” In recent months, Bangladesh has emerged as the bell-weather test of the limits and risks of such private accountability models. In 2010 the decline of wage levels and working conditions in Bangladesh created such intolerable conditions that they led to deep social unrest and intense mobilisation among labour advocates who pressured the government for an increase in the minimum wage for apparel workers. A coalition of major apparel buyers – including Wal-Mart, Tesco, H&M, Zara, Carrefour, Gap, Metro, JCPenney, Marks & Spencer, Kohl’s, Levi Strauss and Tommy Hilfiger – joined this push for national regulation, perhaps in part recognising their own inability to deal with the social unrest their own buying practices had generated. In response, the Bangladeshi government increased its minimum wage in the apparel sector by 80%, a compromise among state officials, apparel buyers, other sector employers and workers, but far below what had been demanded by workers (The Financial Express, 17 January 2011). With the subsequent continued expansion of sourcing for export, regulatory failures have generated ever more tragic fires and building collapses, with the most
recent (May 2013) Rana Plaza sweater factory collapse in Dhaka resulting in over 1,000 deaths and amounting to one of the largest ever industrial “accidents.” The combined reaction by the Bangladeshi government, other countries, international public and private actors, and major brands sourcing from those factories has been rapid and far-reaching, involving commitments to buyer-compensation for victims, the closing of a significant number of non-compliant factories, zero-tolerance policies for factory code compliance among the remaining suppliers, and investments for higher standards and improved infrastructure in producing factories.

Institutional reforms and struggles over their implementation have also emerged in several post-socialist states, most particularly in Central and Eastern Europe. When their planned economies were almost instantaneously deregulated after 1989, state institutions were weakened and state-owned manufacturing industries suffered massive retrenchment with the loss of long established Comecon (Council for Mutual Economic Assistance) markets. Export-oriented industries declined, employment was shed, and plant and capital were redirected into private hands, sold, or abandoned. But most post-socialist states retained the working (albeit weakened) institutions of state socialism (labour inspectorates, health inspectorates, working hours law, overtime regulations, insurance and pensions requirements, etc.) and by the late 1990s and early 2000s some governments (such as Bulgaria and Slovakia) were providing additional support and funding to them to ensure basic working conditions were better regulated. While many cases of workplace abuse and hyper-exploitation undoubtedly occurred (most notably in Bulgaria (Musiolek 2004)), in general the legacies of labour inspectorates, health and safety inspectorates, respect for working hours, child labour laws, wage payments and contract conditions remained important partial regulators of predatory business practices that were, in some cases, renewed with real effects in the late 2000s (Pickles et al. 2006; Smith et al. 2008).

The case of China is distinct in the ways in which these processes are occurring. While the renewal of labour laws and worker rights in the 2008 Labour Contract Law (LCL) has been lauded or condemned as a renewal of the developmental state, its effects remain unclear, although detailed empirical analyses of its effects are now beginning to appear (see, for example, Josephs 2008; Ho 2009; Cooney et al. 2013; and Qian et al. 2013). The LCL has as its main goal the regularisation of hiring practices through written contracts, which in turn have enhanced backing of, and recourse to, national arbitration committees and the courts. The LCL also redresses some elements of the Labour Law (LL). Particularly in public sector enterprises, the expansion of worker rights and workplace protections must be understood in conjunction with the fact that the LCL has also had the effect (directly or indirectly) of deregulating and liberalising public sector jobs and increasing the number and role of temporary contract workers. In this article we show how the 2008 LCL functions simultaneously in these two registers. As a result, we argue for the need to keep open the question of whether the Chinese state can be seen to be committed to regulatory renewal or neo-liberal deregulation. We aim to show that it is, at the same time, both, but that each operates differently in specific parts of the economy, particularly in specific sectors where ownership patterns matter.

Of course, some have argued that the Chinese state never ceased being a regulatory state, although the nature and sectoral focus of its regulatory practices may have changed in important ways (Hsueh 2011). Others such as Ong (2006) and Harvey (2005) see the post-1978 reform initiated by Deng Xiaoping in China, alongside Thatcher in the United Kingdom (UK) and Reagan in the United States (US), as an integral part of the historic
emergence of global neo-liberalism. Pushing beyond these either/or binaries, Lim (2014, 222) argues for a different reading of political and economic reforms in which there has been “a scalar differentiation within the Chinese state apparatus’s politico-economic ideology.” That is, while the Chinese state advocates neo-liberal free-trade doctrines at the international level, it retains a strong commitment to its regulatory role and maintains its socialist ideal of income redistribution within the national border. Thus, for Lin (2014, 223), “China’s economic transformations must be conceptualised as a cross-scaler socio-spatial dialectic” in which institutional reforms such as the 2008 LCL must be understood in terms of the ways in which state apparatuses seek to manage the ambiguous and dialectical nature of these two imperatives.4 The law was neither a decisive movement of China towards a new regulatory regime of labour nor simply a gesture to appease rising income inequality. Instead, the law itself should be viewed as one tool among many by which the government uses labour regulation to respond to growing worker aspirations and complaints accompanying rapid economic growth, while also complementing other regulatory shifts whose goal is to manage the ongoing transition from state to private sector development models and to rebalance export and domestic production systems. In this sense, the LCL was part of a much broader set of responses to the challenge of rapid economic growth and the need to reconfigure economic and labour relations in line with both international norms and internal needs for cohesion and protection. We argue that in the economic domain the Chinese state does not require – or operate with – a unified ideology of either neo-liberal market reform or a strong regulatory state. As Cooney and colleagues (2013, 3) have pointed out: “It is important to stress that Chinese labour regulation is in many ways dispersed and fragmentary.” Instead, the differential patterns of implementation of the law and their often ambiguous and uneven impacts in different sectors, different places and at different times precisely reflect the pragmatism of the Chinese state towards both. In this view, we argue, China’s new LCL operates as a set of contextually specific resources that are being mobilised in a diverse set of conditions with very different effects.

Our central argument is that the impacts of the LCL, including whether there are any impacts at all, have always been sector- and time-specific. For some the new law was regarded as a major step forward in legislating and regulating labour issues, contributing to expanding protections for many private sector workers. For example, in 2007 Cooney and colleagues (2007, 788) welcomed it as “the most significant reform to the law of employment relations in more than a decade” and they continue to see it as “the most significant legal reform to Chinese work law since the enactment of the Labour Law” (Cooney et al. 2013, 88). But it is also an integral part of the national programme to liberalise public sector employment and, in conjunction with broader reform trends and policies, has contributed in some measure to shifts in the nature and conditions of contracts and working conditions in these sectors. We argue that, at this time, it may be impossible and sometimes misleading to disassociate the direct and indirect effects of the law from the nexus of reforms and policies within which it operates. However, it is possible to analyse how – as Chinese state-owned firms and government units choose to undertake institutional reforms that change the status of workers, in some cases to their detriment – the law operates as a barrier or resource for companies and workers in sectorally and spatially specific ways. The article is divided into three parts. First, it introduces the background of the new law and shows the changes of the social-economic conditions between the old and new laws. Second, it compares the two laws and analyses the social issues beneath legal demands. Third, it compares the immediate and the long-
term consequences since the announcement of the law and its differential impacts in private and public sectors.

China’s Labour Laws

China’s first labour law following the reforms of 1978 came into being only in 1995 (NPC 1994). In general, the law was a legal response to the reforms of “the socialist market economy” and the bourgeoning labour market they created (Cooney et al. 2007). Before the reforms there were no labour contracts because all workers were seen to be the “masters of the nation” with permanent positions in state-owned enterprises (SOEs, the “iron rice bowl”) (Warner 1996, 782). A series of reforms in the early 1990s significantly changed this condition and made labour law necessary. First, the central government initiated reform in SOEs to deal with the huge deficits they had accumulated. One step was the installation of the employment contract system, a measure that was not unambiguous in its effects, removing as it did the security of the iron rice bowl for many workers. Second, the proliferation of export factories in nascent Special Economic Zones created an army of workers in the private sector, a phenomenon never seen before in the People’s Republic of China (PRC). Surveys by the Ministry of Labour showed that there were 12,500 “large scale” disputes in 1993 alone (cited in Warner 1996, 781). Essentially, these workers were not under any legal protection and conflicts around workplace conditions were creating problems for local governments. The result was the 1995 LL, whose primary aim was to create guidelines for local governments and to ensure that economic reform occurred in a regulated manner.

Cooney and colleagues (2007) suggest three ways in which the 1995 law eventually failed to meet the needs of labour “harmony.” First, the law focused solely on the termination of the labour contract without paying enough attention to when and how a contract came into being. In many cases, employers simply refused to sign a contract, which effectively invalidated the obligations required in the law. Second, the law was widely regarded as vague and overly simplified, and many potential abuses were not covered by it. Third, the old law had nothing to say about informal employment and precarious work, which simply did not exist in the early 1990s. Between the 1995 LL and the 2008 LCL, thousands of administrative regulations had to be promulgated by local governments to deal with these omissions. Although some of these regulations were progressive and effective, many of them were ad hoc responses to demands, often contradicted each other and eventually exacerbated the intent in promulgating the laws in managing increasingly complex labour controls (Wang et al. 2009).

From the 1990s, gross domestic product and the number of labour disputes increased in parallel. In 1996, 57.2% urban workers were still employed by the SOEs (Lin et al. 1998, 422) and labour relations in those enterprises were still relatively harmonious (Cooney et al. 2007). But from the 1990s the number of public protests, of which labour disputes made up a substantial portion, increased dramatically, from about 10,000 in 1990 to more than 80,000 in 2007 (Ye 2009). In 2007, China’s labour dispute arbitration committees accepted 350,000 cases, an increase of 10.3% from 2006 (CLB 2009, 14). The average number of workers in disputes had risen to 28.6% in publicly-owned enterprises and 51.3% in privately-owned enterprises (CLB 2009, 14). “Making peace” and “building a harmonious society” (chuangjian hexie shehui) thus became an urgent task for the
government internally, and increasing pressure from global buyers to meet compliance standards became increasingly important externally.

Long before its introduction in 2008, the intention to implement a new law and widespread publicity about it generated an unprecedented amount of public comment. It was arguably the most publically debated law in the history of the PRC, comparable to the fourth amendment to the constitution in 2004, and was used by the government to demonstrate that it was responsive to the concerns of labour and local governments (Wang et al. 2009; Cooney et al. 2007). Moreover, the law was not published by itself but as part of a new legislative structure. During the same year (2008) the Employment Promotion Law (on August 30) and Law on Mediation and Arbitration of Labour Disputes (on December 29) were also passed, as well as a number of local regulations.

In practice the relationship between the 2008 LCL and the 1995 LL is more complicated than one law replacing the other (Zuo 2007) or of a government intent on expanding protections and rights available to workers (Cooney et al. 2013). The 1995 law was neither amended nor abolished. It is still regarded as the foundational law regulating labour relations in general. The 2008 LCL and the other laws concerning labour that were passed in the same year are new elaborations of the 1995 LL. However, the 2008 LCL did contradict and effectively overturn many clauses of the 1995 LL. In these cases where there are conflicting laws and regulations published by the same institution, the Law of Legislation specifies that the new one always takes precedence over the old (NPC 2000, Ch. 5). Thus, while the 1995 LL remains law, it has – in many instances – been superseded by the 2008 LCL. The former Ministry of Labour was actually authorised to draft a labour contract law in 1995 along with a number of other laws relating to labour issues (Biddulph et al. 2012, 389). With increasing pressure on the government to deal with these issues, instead of creating a new labour law, the National People’s Congress (NPC) decided to extend the 2008 LCL beyond the narrower issue of labour contracts (Qian et al. 2013, 3). Under the same name (LCL), the 2008 law was intended to cover many of the new problems that had emerged in the 13 years since the enactment of the 1995 LL. These were more generally outlined in the eleventh Five-Year Plan (2006–10), where the government set out its goals of increasing the number and quality of jobs, social security, more effective workplace inspection and enforcement, regularising labour relations and investing in legal education for employers and workers (Brown 2010).

The main explicit intention of the new law has been to expand legal protections for employees and ensure that these protections were more fully applied to foreign-invested and domestic enterprises, as well as SOEs and public organisations. While the effectiveness of these reforms remains in question, the LCL has made changes to prevailing contracting and employment practices, perhaps most notably by introducing new requirements for employers to enter into written contracts with all of their workers (Table 1).

Although the law was generally welcomed by workers, it generated outright resistance from domestic employers and foreign investors. Reactions from both workers and employers were widely reported before and after the law came into effect. The Shanghai-based American Chamber of Commerce, for example, lobbied hard against parts of the law and eventually was given some concessions in the framing of the new law (Costello et al. 2007). The European Union (EU) Chamber of Commerce was also active in opposing the law (CLB 2009, 18). The objections by both US and European chambers essentially represented the negative responses of the multinationals. As Zhang (2011) has shown for the textile and apparel industry, even though global buyers
ostensibly welcomed improved labour protections in their supplier factories, most of them did not want to pay for the resulting added costs.

**What Was New in 2008?**

The 2008 LCL differed in five main ways from the 1995 LL: (i) coverage; (ii) length of the probationary period; (iii) the role of the written contract; (iv) collective bargaining; and (v) the rights to unionise (see Table 2). As Cooney and colleagues (2007, 777–778) have shown, one of the major efforts of the 2008 LCL was to clarify issues that had only been vaguely defined in the 1995 LL, particularly who was covered, the rights of the written contract and the length of the probationary period. But, the 2008 LCL also differed in fundamental ways from the earlier LL. For several rights and responsibilities that were not included in the 1995 LL, the LCL set up a framework to address them. These new aspects of the law are particularly important. Regulating the length of the probationary period and defining and limiting the use of labour dispatching have been particularly important; each has been used by companies to (neo-)liberalise their labour force and enhance their flexibility to the detriment of workers. By including them in the LCL the government, in effect, officially endorsed more general concerns that Chinese workers were facing increasingly precarious working conditions.

**Coverage**

An initial difference in the two laws involves the coverage each gives to workers and enterprises. The 2008 LCL provides a much wider coverage than the 1995 LL. The 1995 LL applied to all production enterprises, private economic organisations and employed

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<th>Key provisions</th>
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<td>1 In drafting or revising work rules and regulations, an employer must consult with the applicable labour union, employee representatives or the employees. If the work rules are deemed to be inappropriate, the labour union, employee representatives or the employees may raise issues during the consultation process.</td>
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<td>2 Employers are required to execute a written labour contract with an employee within one month of hiring or face statutory penalties.</td>
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<td>3 The probationary period of an employee is determined according to the length of term of the labour contract.</td>
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<td>4 An employer may require an employee to sign a service agreement requiring a period of service for, and imposing an early termination penalty on, an employee who receives training at the employer’s expense. Only senior management personnel, senior technical employees or other employees who have access to an employer’s trade secrets may be required to sign confidentiality and non-competition agreements, which may extend for a period of up to two years.</td>
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<td>5 Three types of labour contracts are authorised: fixed-term contracts, non-fixed-term contracts and project-based contracts.</td>
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<td>6 After completion of two fixed-term contracts workers must be given permanent contracts.</td>
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<td>7 Severance payments are required in many circumstances under which an employee is terminated.</td>
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*Source: Author’s summary from the original text of LCL (NPC 2007).*
workers within the border of PRC (Clause 2), while the 2008 LCL applies to all enterprises, private economic organisations, non-enterprise organisations, including those in government, public institutions, and other social organisations, and all those employed on a labour contract (Clause 2). This is a crucial change in the law, particularly in its expansion of rights for workers in the private sector and its extension of labour contract rights to workers in the public sector and government, a twofold expansion that created a deeply ambiguous role for the new LCL.\(^5\)

**Probationary Period**

In the 1995 LL, labour contracts could include a probationary period of no more than six months (Clause 21). This clause was intended to favour employees, but there were no clear mechanisms for employees to appeal to employers or government authorities.\(^6\) As a consequence it had become common before 2007 for employers to require a probationary period in labour contracts, which in turn increased workplace conflicts. In particular, as the reforms in higher education in the late 1990s produced ever-larger numbers of college graduates, the probationary period increasingly was being used to exploit upwardly
mobile and aspiring young workers for short periods of time. As a result, low-wage work was increasingly sold to workers as a stepping stone to an upwardly mobile career. The new LCL recognised these tensions between new graduates and their employers and sought to redress them.\(^7\)

**Written Contracts and Permanent Contracts**

In the 1995 LL the labour contract was the basis for most formal employment relations and indicated the rights and responsibilities for both employees and employers (Clause 16). Clause 20 defined the type of labour contract (whether fixed-term or permanent) and the nature and amount of work required (Clause 20). For those workers who had been working continuously for one employer for more than ten years, both parties could agree to extend the contract as a permanent contract. Under this law, if the employer refused to extend the contract, a permanent contract would not be issued. Thus, by allowing the contract term to expire, employers were able to legally dismiss workers without paying compensation.

Although the old law required a labour contract, less than one-fifth of employers actually had any formal contracts with their workers (Wang et al. 2009, 489). Instead, employers maintained flexible hiring arrangements to reduce labour costs and to circumvent compensation demands from those who were terminated. As late as 2008, 60% of labour contracts were short-term flexible arrangements with contracts of less than one year (Guo 2008).

The new LCL sought to deal with these problems by regulating work and stabilising contracts for workers entitled to permanent contracts. Written contracts are now mandatory for all employees. For those working without a written fixed-term or permanent (non-fixed-term) contract, one has to be created within one month of the start of work (Clause 10) and it has to specify the quantity of work demanded (Clause 12). After working for the same employer for ten years, workers must be given a permanent contract. Failure to do so means that the employer must pay double the wages from the time the permanent contract should have been issued (Clause 82).

**Labour Dispatching**

Prior to the introduction of the new LCL, labour contracting through dispatching agencies was widespread. Such dispatch workers were particularly vulnerable; the contracts were usually short-term and the legal obligations of both the dispatching agency and the employer who actually uses them were unclear and under-specified. In fact, the 1995 LL said nothing about such labour dispatching practices and agencies.

As dispatching contracts continued to grow after 1995 the scope and scale of flexible work and precarious employment expanded, particularly in the east (Zheng 2008). By the end of 2004, Beijing alone had 680 dispatching agencies and by August 2005 Fujian Province had 85 agencies hiring 139,800 workers (Wu and Chen 2007). The agencies are similar to temporary manpower agencies in the US and Europe and they operate by putting workers under contract with the dispatching agency, which in turn dispatches workers to enterprises that contract with the agency (Wang et al. 2009, 493). Most labour dispatching agencies supply workers for service, manufacturing and construction sectors, and more recently they have also become important in information technology, banking
and other hi-tech, high-value industries (R. Wu and Chen 2007). In the telecommunication
industry, in 2007, the three state-owned telecoms (China Telecom, China Mobile and
China Unicom) had 480,000 dispatched workers, accounting for about 40.5% of the total
1.18 million workers. In the railway system (also stated-owned), there were 320,000
dispatched workers in 2007, about 13.3% out of the total 2.4 million. The numbers of
dispatched workers in the construction sector are more difficult to determine, but in 2007
this number exceeded 10 million, while in coal mining about 80% of workers were
dispatched workers (R. Wu and Chen 2007). Labour dispatching is also popular in the
private sector and in foreign invested enterprises, but the numbers employed in this way
are more difficult to ascertain.

Dispatching is not only about allocating surplus labour for flexible, manual jobs. New
graduates are the most popular and dominant group for dispatch in the technical indus-
tries, while peasant workers are also popular in manufacturing, although about 30.6%
males and 46.7% females “peasant workers” were also high school or college graduates (G.
Zheng and Huang 2007, 32). A significant proportion of dispatched workers are workers
who have been “fired” from the same firms for which they are now working as firms
reacted to the fixing of labour contracts by rapidly flexibilising their workforce (H. Wang
et al. 2009, 494). Despite provisions in the law to prevent such practices, many of these
“fired” workers are hired by labour dispatching agencies established by their former
employers for this very purpose.

The 2008 LCL aims to regularise labour dispatching agencies, restrict them to specific
sectors and delimit the responsibilities of the dispatching agencies and the
employers that use dispatch workers. Under the law, the dispatching company is the legal
“employer” and must comply with all employer responsibilities under the law. Section 2
of the LCL explicitly requires dispatching companies to comply with PRC Company Law,
including registering capital assets of at least 500,000 yuan or US$80,237 on 18 June
2014 (Clause 57). The contract between the labour dispatching company and the
employee must indicate the name of the enterprise that actually contracts for the labour,
the period of the dispatch and the position description and expected conditions of work
(Clause 58). The LCL also requires the dispatching agency to specify the positions,
number of workers, periods of dispatch, wages, amounts and methods of payment for
social insurance, who has responsibility for any violation of the agreement (Clause 59),
and to refrain from abuses such as dividing the assigned work period into a number of
short periods (Clause 60) or subcontracting dispatched workers more than once (Clause
62). It also grants dispatched workers a number of rights, such as the right to equal pay
with those in the same position full-time (Clause 63) and the right to create a trade union
(Clause 64). In practice, many dispatched workers are effectively long-term employees
working on short-term and precarious labour contracts, receiving lower wages for the
same work carried out by permanent employees alongside whom they work.

Collective Bargaining and the Role of Trade Union

Officially, there is only one trade union in China: the All-China Federation of Trade
Union (AFTCU), a semi-government organisation that functions as the bridge between the
Chinese Communist Party and workers. Although the history of ACFTU dates back to
before 1949, its power has been increasingly limited in the years of the PRC, especially
since economic reforms were implemented. It has been particularly ineffective in export
factories in coastal provinces (Chen, 2003), where global buyers and firms have resisted trade unions in their factories. Most international companies sourcing from China have freedom of association principles in their own codes and these generally refer to plural trade unionism (for example Wal-Mart before 2006 (He and Xie, 2011)). But, since the state allows only the ACFTU, and since its trade union officials have often also been the heads of the enterprise or officials in local government, business support for broader unionisation has been limited at best (Chen 2003; Pringle 2011).

As a result, many of the provisions of the 1995 LL relating to worker rights and trade unions were rights on paper only. Workers had the right to join and organise a trade union and the trade union had the legal right to represent and protect the workers’ rights and to do it independently (Clause 7). The trade union had the right to represent any worker that had been unfairly or unlawfully dismissed and to correct any employer violations of the law or the contract. It also had the responsibility to represent worker appeals in arbitration or legal proceedings (Clause 30). Some enterprises did follow these provisions of the 1995 LL in whole or in part, but many did not. Thus, one primary goal of the 2008 LCL was to enshrine many of these earlier protections, but to do so in ways that gave to workers and trade unions more power to act and more access to local administrations (Wang et al. 2009). In particular, the new law had the explicit intention of changing the role of the ACFTU and granting it a larger role in enforcement and compliance by giving it a greater level of independence and more powers to act (CLB 2009).

In the new LCL, any change in enterprise regulations relating to wages, working time, holidays, welfare insurance, training, and rules and processes relating to management and production that directly affect workers must be discussed in the employees’ representative meeting or at a general meeting of all workers. Specific details must be developed in discussion with the trade union or employees’ representatives. During the decision-making process, the trade union or any employee has the right to challenge inappropriate behaviour and practices, and seek revision through negotiation. In particular, the 2008 LCL allowed workers the right of collective bargaining and recognised the ACFTU as the sole legal representative for workers in mediation processes.

**Consequences of the New LCL for Workers in Global Factories**

Since its publication in 2008, the impacts of the LCL have been time- and place-specific. But, even in this short period of time, socio-economic conditions and the context in which the law has been applied (or not) have also changed dramatically. Most significantly, the enactment of the law coincided with the global financial crisis and the decline in export orders for Chinese factories. In this context, the new LCL has had a complex series of effects, both positive and negative, for workers and employers, with great variation for each within and across sectors. Within a sector, as our case study in the apparel industry shows, the impacts of the LCL vary among different types of companies, whether their markets are global or national, how their input and product mixes are managed, ownership patterns, and the extent to which and in what ways they have been affected by the financial crisis. Depending on the specific nature of the cases investigated, scholars have reported quite different stories about the LCL. For example, while some have been critical of its implementation (Wang et al. 2009; He and Xie 2011; Chan 2011), others have found that the law resulted in increased labour costs (Tsai and Tien 2010; Han et al. 2011). In some cases a specific company may have changed its attitude towards the LCL over time. It is beyond the scope of this article to tease out the entangled effects of the
LCL and other state policies across sectors and enterprise types. Instead, we focus on the contradictory impacts of the LCL as they reflect the ways in which firms and public enterprises strive to manage the ambiguity of developmental and neo-liberal state policies. In particular, using selected case studies in the apparel industry in Zhejiang Province we compare the immediate with the “long-term” (five-year) impacts of the LCL and differentiate companies that are more or less affected by the law.

Immediate Responses

The introduction of the new law immediately generated a great deal of opposition from employers across the country. As early as March 2006 when the NPC published the draft of the new law, there were strong objections from both domestic and foreign employers. The American Chamber of Commerce and the EU Chamber of Commerce voiced their opposition immediately upon publication of the draft and both lobbied heavily in the NPC (Cooney et al. 2007; Wang et al. 2009). In fact, as many non-governmental organisations (NGOs) have pointed out, it was not the new law itself that was feared; many of the regulations existed in the old law or in other local regulations. Employers and employers’ organisations were more concerned by the fact that enactment of the new law might signal that the government would begin to enforce the regulations more vigorously (IHLO 2008a; CLB 2009).

While the new law does not say anything about the right to strike, and striking is still officially forbidden by the Law of Assemblies, Processions and Demonstrations, enactment of the LCL clearly signalled the intention of the government to loosen restrictions on striking and to expand the rights of workers to assert their legal rights. In many ways, these changes responded directly to increasing worker pressure for change over the preceding years, both at the level of the national mediation and arbitration committees, but also in regional and local courts. As Table 3 shows, workplace tensions in the early 2000s resulted in an increased role for national arbitration, although it was the regional and local courts to which workers took the bulk of their disputes.

Although worker disputes and strikes had been common before 2007, Qian et al. (2013, 10) have shown that the LCL led to a significant increase in the number of labour arbitrations, increasing from 447,000 in 2006 to 1,512,000 in 2012 (also CLB 2009, 14) (Table 4). During the first quarter of 2008 alone, the labour courts in the three industrial cities in the Pearl River Delta (Dongguan, Shenzhen and Guangzhou) accepted more than 10,000 cases, double the number for the same period the previous year (Wang et al. 2009, 492). Comparable increases in the number of complaints were also observed.

<table>
<thead>
<tr>
<th>Stage of dispute resolution</th>
<th>National arbitration committees (national)</th>
<th>Arbitration committees (national)</th>
<th>Arbitration committees (Guangdong)</th>
<th>District and intermediate court (Dongguan)</th>
<th>Intermediate court (Dongguan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent increase</td>
<td>+40</td>
<td>+60</td>
<td>+70</td>
<td>+1,080</td>
<td>+466</td>
</tr>
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Sources: Compiled data from China Labour Bulletin (2011).
in Shanghai and Nanjing in the Yangtze River Delta, and in inner provinces such as Shanxi (Wang et al. 2009; CLB 2009). The waves of taxi drivers’ strikes in 2008 and of auto workers’ strikes in 2009 and 2010 were also directly inspired by the new law (CLB 2009; The Economist, June 3, 2010).

At the firm level, private companies were particularly “creative” in responding to the potential effects of the law (IHLO 2008a; CLB 2009; Wang et al. 2009). Here we focus on four main types of response; (i) layoffs; (ii) reversed dispatching; (iii) tricking the contract; and (iv) relocating factories to other provinces or countries with lower costs.

### Layoffs

Layoffs are one of the most common ways private enterprises used to circumvent the new law, with the largest number of layoffs occurring immediately after its publication in 2007–08 and before workers and trade unions mobilised to make use of its provisions. During the few months before the law came into effect, mass layoffs were reported in Guangdong, Zhejiang, Henan and many other provinces (IHLO 2008a). For instance, Huawei Technologies Co Ltd, one of the largest private high-tech companies in China, laid off about 7,000 employees including the founder himself on October 17, 2007, three months after the publication of notice of the new law. Most of these workers had worked for the company for eight years or more. Many then received a new three-year contract, while about 500 were laid off at the cost to the company of about 1 billion yuan in redundancy compensation payments (Wang et al. 2009, 493). Wal-Mart laid off more than 100 employees who worked in the procurement offices during autumn 2007, about 40 in Shanghai and 60 in Shenzhen. Although the company claimed this was a “natural” adjustment in its global outsourcing strategy during the financial crisis, others questioned if this was the primary reason since the layoffs were primarily aimed at long-service employees who would soon have been covered by permanent contracts (Wang et al. 2009, 488; see also Chan 2011). Often, although not in Wal-Mart’s case, workers were offered a new fixed-term contract as a way for employers to counter the effect of the Clause 14 of the new law.

### Contracting Workers

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### Contracting Workers

Ironically, although regulating labour dispatching was one of the main goals of the 2008 LCL, the most common strategy used by firms to avoid the new law was an expansion in
the number of dispatched or contract workers, in turn stimulating a rapid expansion of temporary employment agencies (Xu 2009). The number of dispatched workers has continued to grow, reaching 60 million or 20% of the working population by the end of 2010 (Global Times, May 4, 2012).

Labour dispatching had been a common and persistent practice before and after the publication of the new law, when it was used for at least three main reasons. First, employing temporary workers circumvented restrictions on firing permanent contract workers. Indeed, on the eve of enactment of the LCL many firms fired their contracted workers and then hired them back through the labour agencies (People’s Network 2008). These dispatched workers usually received lower wages while doing the same jobs, while enterprises also reduced their social insurance costs (which in turn reduced future pensions for the individual workers).

Second, although the LCL formally gives many of the same rights to both directly hired and dispatched workers, dispatched workers who are hired by a separate firm do not have – in practice – the same rights and benefits (Wu and Chen 2007). In most cases, these dispatched workers are deprived of any bonus, medical insurance or days off, and they receive a much lower salary even though they may do the same jobs as the formal workers. They are also usually dispatched on short-term contracts that can be renewed if workers are needed (Wu and Chen 2007; Zheng 2008). For instance, a recent Beijing ACFTU survey shows that on average, dispatched workers receive 20–50% lower wages than formal employees (Global Times, May 4, 2012). The same survey indicates that 65% of the dispatch contracts have to be renewed every year.

Third, Zheng (2008) has shown, since only 500,000 yuan is required for firm registration, many firms do not have the ability to fulfil their responsibilities for training and are reluctant to bargain for workers. Even when workers win their cases in labour disputes many firms simply declare bankruptcy at little financial loss to themselves. The 500,000 yuan registration fee is not a sufficiently large barrier to this practice and is usually insufficient to cover the compensation costs owed to dispatch workers. In cases where a company may have as many as 1,000 workers or more, the LCL effectively limits the firm’s legal liability for individual worker compensation after bankruptcy to 500 yuan or less. Ironically, it is SOEs that have most often used dispatched workers, as we discuss later.

The problems associated with labour dispatching have been so extensive since 2008 that the ACFTU began advocating for changes to the LCL after only four years (Reuters China, February, 10 2012). On July 31, 2013, the LCL was amended to close some of these loopholes and strengthen protections for dispatched workers. The resulting amendments require pay levels to be equal to those of full-time employees, dispatched workers must only be assigned on a temporary, auxiliary or substitute basis, and both the dispatch agency and the employer are now subject to fines for any violations of the law (Huang 2013).

Tricking on the Written Contract

The International Trade Union Confederation and Global Union Federation (ITUC/GUF) Liaison Office in Hong Kong (IHLO 2008a) has identified a number of other “creative” tricks that were applied to labour contracts, especially in the first years of the LCL’s
implementation. One of the most important intentions of the new law is to require written contracts. In 2007, in preparation for the enactment of the new LCL and to facilitate the use of written contacts, many local governments prepared and published a sample contract online to encourage employers to download and adopt. The quality of these sample contracts was very uneven; many implied that employers had more power than the new law actually allowed and many employers simply revised the sample contract to their own advantage (IHLO 2007; IHLO 2008a). Implementation of contracts has also been a problem. In some cases, workers were not allowed to read the full contract and in other cases they were asked to sign a contract in English which few, if any, workers could read (IHLO 2008a). In other cases, employers prolonged actual work hours without paying overtime, increased penalties for violating workplace rules, and/or increased the prices for food and accommodation in workers’ dormitories (CLB 2009, 19). Some strategies were even harsher; some firms placed their senior workers in entry-level positions with heavy workloads until they eventually requested voluntarily resignation (Wang et al. 2009, 494).

Relocation

Relocation is another important strategy employers (especially foreign employers) have used to “manage” the perceived or real effects of the new LCL. When the new law was first published, it was widely reported that many foreign investors might leave China and move their factories to countries such as Vietnam, Cambodia, Thailand or Bangladesh to avoid expected increases in labour costs (IHLO 2008a). Indeed, the prospect of foreign capital fleeing to other locations was one of the major objections to the law (Cooney et al. 2007). Others argued that companies would not relocate production outside China because they had already made recent and substantial capital investments, re-capitalisation cycles were relatively far in the future, many had established long-term relationships with local partners and the investment environment in China was arguably still the best in the world (IHLO 2008a). More recent research shows that the potential increases in labour costs acted as very different kinds of stimuli to different sectors and companies. Some firms relocated all or part of their production processes to inland or northern provinces where labour costs are lower. For example, in 2007 and 2008 Foxconn opened its new factories in Shanxi, Henan and Hunan, where minimum wages were 60% lower than in Guangdong (IHLO 2008a). As a result, although the company publicly claimed to be increasing wages by 30% in its Shenzhen factories, by relocating to inland provinces average wages had only increased 10% by the end of 2010 (Sun 2011). Others adopted the so-called “China plus one” strategy, outsourcing labour-intense activities to other Asian countries, especially Vietnam, while maintaining the bulk of their production in China (HSBC 2008). Among foreign owned firms, some were more sensitive to increased labour costs; Taiwanese investments, for example, were more oriented to low labour costs and hence were more likely to relocate to less developed regions in and out of China (Tsai and Tien 2010).

In short, reactions to the LCL have varied among firms and many of the adjustments made have been compounded by the 2008 economic crisis. The post-2008 period was indeed a hard time for many of the private small and medium-sized companies in coastal areas. Recent research in Guangdong Province has shown that many firms may have suffered more from declining exports due to weakening consumer demand in major
markets than from other factors such as the effects of the LCL (Cao and Huang 2012). However, evidence based on factories in Guangdong Province (Han et al. 2011) and Taiwanese companies in mainland China (Tsai and Tien 2010) suggests that the LCL increased labour costs per capita between 2.45% and 4.9% and 8% respectively, particularly in labour intensive industries with very low profit margins.10

Local governments responded to this situation in different ways. In major manufacturing hubs like Guangdong, local governments argued that the LCL was “bad timing” and that, in order to avoid more severe impacts on manufacturing, they deferred implementation of some provisions. As a result of appeals to the central government for relief “on 3 February 2009, the State Council advised local governments to take temporary measures to reduce labour costs, such as suspending social insurance premiums, reducing social insurance rates, and extending tax preferences for certain enterprises in economic distress in order to avoid mass layoffs” (ILO 2009). Provincial governments subsequently adopted different strategies as they attempted to manage the crisis and alleviate negative impacts of the LCL. For instance, Guangdong suspended collective bargaining in enterprises that had experienced labour strife in November 2008 and provided compensation to migrant workers impacted by the recession (ILO 2009). State involvement in China’s economic development has always been based on such fluctuating and, at times, pragmatic and ambiguous relations between the central and provincial governments. In this case, central government flexibility resulted in partial autonomy for local governments to adapt policies to local conditions. National laws and policies would, as a result, have different effects in different provinces. This pragmatic approach to the political management of the economy has been dubbed “federalism, Chinese style” (Montinola et al. 1995) or “local state corporatism” (Oi 1995).

Post-2008 Consequences

Our own interviews conducted in 2012 with apparel companies in Ningbo and Wenzhou in Zhejiang Province have shown that the long-term reaction of private companies depended on sector, size and position in its production network. In these firms many of the initial responses to the LCL now seem to have been overreactions. As a result, in many of these firms hostility towards the LCL has diminished in recent years. Our research suggests that the actual effects and responses to the LCL have been highly dependent on the socio-economic circumstances faced by specific companies. Since these have changed rapidly over the past five years, firm responses to the LCL have also been highly variable over time. In the following sections we illustrate these findings by focusing on three private sector apparel firms that are illustrative of a wider range of enterprises (see Table 5). We then turn to the crucial and largely unexamined effect of the law’s impact on public sector workers.

Case A: Do Not Kill the Goose that Lays the Golden Egg

Company A started as a family workshop producing casual shirts in the 1980s and expanded dramatically in 1990s as domestic demand for garments increased rapidly. After its transformation from a small family workshop to a formally registered enterprise in 1995, it was able to leverage its competitive advantage over state-
owned and other private apparel enterprises that still relied on mass production based on a low-cost labour strategy. In 1999, Company A was the first entrant into own-brand ladies’ wear in a men’s wear-dominated apparel cluster. Production was initially carried out in-house and targeted to medium- and high-quality niche markets and the firm invested heavily in innovation and upgrading, gradually becoming a lead firm focusing on original branding manufacturing (OBM) production. It now concentrates on its core competences such as research and development (R&D), branding and marketing and sales, while production (cutting, sewing, ironing and trimming) are increasingly outsourced to other factories. In 2006, 80% of its production was still carried out in its own factories, whereas today 80% of its product is outsourced. The share of outsourcing continues to increase as the company focuses increasingly on R&D, branding and marketing.

The new LCL had an immediate impact on Company A’s contracting and employment practices. As the general manager of Company A commented:

The new Labour law came out in the same year as the global financial crisis. We only supply the domestic market, so the fluctuation in global markets has not caused a great deal of damage to us. But the labour issue is real. It raised labour costs substantially. Some of my friends moved to Bangladesh to avert its negative effects (Interview August 2012: General Manager of Company A).

In fact, Company A did not relocate. Instead, it responded to the new LCL by shedding non-core operations (cutting, sewing, ironing and trimming), outsourcing production to other firms and focusing on R&D, branding, marketing and sales. The former labour-intensive elements of the production process were more sensitive to labour costs, whereas the latter are usually tied closely to human capital resources and knowledge networks. As an enterprise dependent on skilled or medium- and high-educated workers, and having minimised labour costs through outsourcing, Company A now focuses its attention on the accumulation of human capital through training and learning-by-doing. Consequently, as many firms increased short-term and temporary workers or dismissed workers before the probationary period ended, Company A chose a different way, as its general manager argued:
Firms which rely on short-term and temporary workers and fire them before the probationary period ends are stupid. They treat running their business as a game. They are blinded by the smallest piece of cake. In fact, workers hardly contribute to their firms in the probationary period. Firing them before they can really create profits is like killing the goose before it can lay the golden egg (Interview August 2012: General Manager of Company A).

As an own-brand firm, poor hiring practices would damage this firm’s brand reputation on which its core competence and competitiveness rely. For the manager, the direct and indirect effects of Company A’s efforts to offer an “employee-friendly” environment are the real “golden egg”; workforce upgrading and productivity improvement.

Case B: Race to the Bottom

Company A represents a group of lead firms whose concentration on OBM production for domestic markets has allowed them to minimise the effects of the LCL, in part by outsourcing lower-cost labour to other firms. Company B illustrates the other extreme where the “China Price” and the “race to the bottom” have led to a dependence on low-wage work (Appelbaum 2004; Appelbaum et al. 2005; Henderson and Nadvi 2011).

Company B was one of the largest apparel producers in China. Emerging out of a state-owned enterprise (Zhejiang Dongfang), the company underwent a process of partial privatisation and became a joint venture in the late 1990s. Starting with assembly production, Company B still focuses on assembly and original equipment manufacturing (OEM) production, though it began to develop its own brand – C.O. – in 2012. The company does not concentrate on branding, but sees its strength in production; over 90% of its production is carried out in-house. It has over 150 clients, but fast fashion retailers like H&M and Zara account for 70% of its output. The remaining 30% of output is sold to sportswear firms such as Adidas and Reebok. The concentration on OEM production has made Company B more vulnerable to the effects of the new LCL and to its associated increase in labour costs. As its general manager argued:

The increase of costs is eroding the profit margin drastically. First, the price of cotton increased 100% in 2009. Second, Chinese currency appreciated 20%. Third, labour costs increased from 1,000 Yuan a month [in 2000] to more than 3,000 [Yuan] [in 2012 in the coastal regions]. Since cotton prices and exchange rates were relatively stable this year, the biggest concern is the rising cost of labour generated by the new labour law. Labour costs have already increased 15% in 2012 [in this city] (Interview August 2012: General Manager of Company B).

The manager also stressed that large global buyers like H&M and Adidas are very powerful in their ability to manage costs and determine sourcing decisions in their value chains. As Gereffi (1995) has shown more generally, lead-firms in buyer-driven value chains use their bargaining power to lower contract prices and hence the costs of production worldwide. In this case, buyer concern for rising costs associated with the LCL led Company B’s customers to encourage the company to relocate part of their production to Southeast Asia. As a result, and since their global buyers were unwilling to accept cost increases resulting from the new LCL, Company B did relocate some
production lines to Southeast Asia where – their manager indicated – labour laws do not exist or are less demanding. Heeding its customers’ call, Company B’s new manufacturing base located in Cambodia employed 500 local workers in 2012 and planned to recruit a further 1,500 within five years.

**Case C: A Necessary Step Towards a Modern Enterprise**

Established in 1990, Company C developed from a family workshop into a full-fledged corporation which integrates design, marketing and manufacturing. It produces men’s clothes, particularly dress suits. In 2012 it produced 300,000 pieces and employed 800 workers, most of whom it claimed were college educated. In 2012 about 40% of its product was exported, mainly to European countries including Italy, France and Greece. The company played the role of OEM in around half of these export orders and the role of original design manufacturing (ODM) in the other half.

The company’s experience with the economic crisis was not unique among apparel producers in Wenzhou. On the one hand, between 2010 and 2011, labour, materials and energy costs rose by 30%. On the other hand, exports to EU countries also increased substantially. In fact, according to the president of the local association of apparel producers, in 2011 the EU became the biggest importer of Wenzhouese apparel, and the total value of exports increased by 22.4% in one year. When asked whether or not the LCL has affected the company, the owner said:

> At the beginning we were certainly uncomfortable. But we know this was a necessary step toward a modern enterprise. Many foreign buyers also came over to check environmental and labour conditions. All these were not bad things. Although they would definitely increase our costs, overall speaking, they helped us upgrade. The most difficult thing for us was to limit the working time. But we have been trying hard to comply with the law and requirements of the buyers (Interview June 2011: Owner of Company C).

However, although sales increased in 2011, profits declined as costs increased. To counteract the falling profit, Company C decided to place more emphasis on design and marketing. One of its innovations was to develop a remote measuring system equipped with laser sensors which allowed the producer in China to tailor products for individual customers overseas. The other approach to maintaining profit was to increase prices. Although some buyers initially refused to accept higher prices, the owner believed they would eventually have to do so because all producers were increasing their prices and, like his main competitors, the company had to improve its position in the value chain by adding more value-added functions.

Depending on their different positions in global production networks, companies have quite different experiences with the 2008 LCL. Although many of the private companies overreacted in 2008 and 2009, many of them (like Company A and C) adopted a more sustainable development strategy, willingly adapting to the requirements of the LCL. By contrast, Company B with its large workforce and disadvantaged position in the value chain had to accept lower profits and was forced to relocate parts of its production to lower-cost regions.

Similar differential impacts and responses have also been found in foreign-owned companies. In a study of four Swedish companies in China, Fang and colleagues (2010) found that companies who are concerned about product quality, corporate social
responsibility and Chinese domestic markets are more likely to remain in place and adapted to the new law’s requirements, while those heavily dependent on minimising lead times and maintaining cheap prices tend to be the ones that relocate.

Statistical reports also confirm that the implementation of LCL, and in particular the adoption of written contracts, has been spatially uneven across China’s major industrial regions. According to a 2010 survey by the Beijing-based Transition Institute, the percentage of workers in the Pearl River Delta with written contracts increased from 62% in 2007 to 94.3% in 2008, with similar increases found by Peking University in other regions including Beijing and Shanghai (China Youth Online, January 19, 2010). However, the same reports also show that the percentage of workers with paid insurance remained low, with about 71% of workers still not having pension insurance, 55% not having medical insurance, 83% not having unemployment insurance and 64% not having insurance for work injuries. Moreover, based on a field survey by Nanjing University in 2010 in Zhejiang and Jiangsu where small and medium-sized private enterprises dominate, the rate of written contracts was much lower, with only 55.2% of workers having signed a written contract (Zhou 2011). Low rates of written contracts among small and medium-sized private firms were also detected by the authors’ own field research in Zhejiang and Fujian Provinces in 2011 and 2012.

The LCL and Public Sector Workers

Most studies of the impacts of Chinese labour law focus on private sector firms and workers. Relatively little attention has been given to effects of the new law on public sector workers which in 2009 still accounted for 64.2 million workers and 20.6% of urban employment (NBSC 2010). If the story of the new law in the private sector is one largely of re-regulation of overly liberalised private firms, the story in the public sector is quite different. Here the LCL must be seen as one element in a broader reform and marketisation of public sector labour markets. While it is certainly the case that state sector workers saw their position deteriorate much more sharply as retrenchment occurred in the public sector in the 1990s and 2000s when millions were laid off, a retrenchment that now sees the preferential treatment of some public sector workers coming under attack, the 2008 LCL has compounded these effects in some important ways.

The public sector includes SOEs and public institutions (shiyue danwei, including public schools, hospitals and various civil services), and here the story is different and more complicated than in private sector enterprises. Compared with the private sector, the impacts of the 2008 LCL in the public sector have been largely indirect. By focusing too one-sidedly on private sector impacts, we argue that the effects of the 2008 LCL on public sector workers have been underestimated. In this view, the LCL is usefully seen as part of a wider ranging reform programme through which the state is liberalising its bulky SOEs and public institutions. As such, it is deeply imbricated in other state and local policies.

State-Owned Enterprises

The flexibilisation of the SOEs was initiated as early as the 1980s. Hong Yung Lee (2000) has argued that the legitimacy of the party state after 1979 rested on the one hand on economic prosperity generated by efficiency in SOEs and on the other hand on the state’s social responsibility in maintaining socialist welfare among SOE workers. Thus the
continuation of SOE reforms was always a careful balancing act between two potentially contradictory goals. In reforms since 1994 a large number of SOEs were privatised or claimed bankruptcy, particularly in the northeastern provinces. These reforms generated large-scale lay-offs for thousands of unemployed workers (xiagang gongren) and led to widespread social unrest. In 1998, at the peak of SOE reforms, 17.24 million workers were laid off (Cai 2002, 327). During the central planning period, these workers had received many state benefits including fixed wages, housing, education and health care. With marketisation, these benefits were largely removed.

After 2000, large-scale lay-offs meant that those who retained their jobs became privileged workers. Compared with those who worked in the private sector, these public sector workers received more benefits and were usually paid much higher wages. The effects of the new LCL on the conditions of work for these workers have been ambiguous. On the one hand, for those workers whose conditions of work and employment historically have been good, the new legislation has reduced their accumulated privileges. On the other hand, the old law did not legally or effectively guarantee job security, and therefore when labour disputes did happen such workers did not have specific protections for their privileges and benefits (Guo 2008). Formalisation of rights came with flexibilisation of contracts. This had important impacts on job security with the passage of the new LCL.

Reactions from employers have varied. As with private firms facing cut-throat competition, managers in SOEs also often have to struggle to cut their labour costs. In order to deal with the entrenched labour power among SOE workers, many enterprises have resorted to using labour dispatching agencies (either internally or externally) or to outsourcing parts of their production to private firms (Zheng 2008). Such dispatched workers, known as “out-of-system” (bianzhi wai, as opposed to bianzhi nei, “in-system”) workers are usually paid much less than their “in-system” colleagues (Wu 2010; Global Times 2012). This hierarchical system has effectively ameliorated the resistance from in-system workers but created inequality within the enterprise. Two major risks in such a system have become apparent in recent years. First, with unconditional protection, in-system workers are likely to become less productive or more resistant to organisational and workplace changes, with direct consequences for productivity and profitability. Since many of the SOEs which survived the reforms are monopolies, they have been able to reap monopoly rents and share them with the in-system workers (Cao et al. 1999). Moreover, some have even suggested that in addition to their monopoly nature, precisely because of the massive use of dispatched workers with much lower wages, the unusually high benefits for in-system workers in certain SOEs are able to be maintained (Global Times, May 4, 2012). Second, in some cases such inequalities among workers in the same enterprises have created hostilities between in-system and out-of-system workers, creating problems for workforce organisation and efficiency (Cui 2002). To date very little research has been carried out on the kinds of conflicts or conflict resolution that are emerging in these kinds of firms as a result of the LCL.

Public Institutions

Working conditions in public institutions are different from both governmental organisations and SOEs. Public institutions include a wide range of organisations such as public schools, hospitals, research institutions, sport associations and civil services of all sorts. As of 2006, there were 1.3 million such institutions with about 30 million employees (Zhang 2007). Historically, all of these institutions were funded by the government, with
their workers having the same benefits as government officials. After 1979 the state encouraged the creation of public institutions as a way to extend the civil service and reduce the *danwei*s role in providing services for its workers from birth to death. But the state also reformed the structure of many public institutions and encouraged them to operate on more market-based principles (Wang 2011). As a result, many now operate like private enterprises with little support from the central budget. Despite the importance of these public sector organisations, little attention has been paid to reforms in the sector and even less to the kinds of labour issues workers face in them.

As with private sector reforms, even though they were initiated in 1992 during the 14th Congress of Party Members, the actual implementation of reforms in public institutions varied greatly among provinces and sectors. The resulting confusion has generated criticisms from both the government and the public (see Xinhua Online 2011). In 2011, the central government finalised guidelines for reform in three broad areas (Central Committee of the CCP and State Council of China 2011, 6–10): (i) those with government functions (such as public legal aid) that were to be integrated into the government; (ii) those that were market-oriented (such as tobacco and alcohol bureaus) and were to be turned into enterprises; and (iii) those in between (such as public schools and hospitals) that were to be retained as public institutions. Such workers in public institutions are regarded either as government officials with privileged benefits or they fall under the jurisdiction of the LCL.

To date, the liberalisation of public institutions has focused primarily on those organisations that were already market-oriented, while the public institutions of education, health care, etc., have not been seen to be areas for privatisation and competition (J. Zhang 2007). However, public sector reform is viewed as part of a process of progressive rationalisation and the LCL is one of the steps towards further liberalisation. As a result, the scale of labour contracting in public institutions has increased rapidly from 36% in 2004 to 80% in 2009 (Xinhua Online 2011). While some have welcomed their reclassification as government officials, those who have been moved to contracts have not always gone willingly. Especially in universities, reforms imply the potential loss of teachers’ pensions and significant reductions in job security. For example, in Guangdong, which is an experimental province for these reforms, vigorous protests against the reforms have emerged among professors (News Express, February 12, 2009). Notwithstanding the protests, the central government continues to push through the reforms, recently extending them to the social security system which, in the 12th Five-Year Plan (2011–15), is to be extended to all employees in public institutions, effectively turning pension and medical insurance benefits into self-paying systems (Phoenix Network, May 2, 2012).

The focus on private sector labour law and policies has all too often overlooked the more ambiguous and potentially more far-reaching reforms the 2008 LCL is creating in the public sector. While the LCL enhances some protections for private sector and public sector employees, and was aimed at arresting the trend towards using more dispatch workers in each, in practice it has also resulted in the liberalisation of public sector work and the weakening of public sector entitlements. Both have important potential consequences for China’s long-term labour policy.

**Conclusion**

The new LCL has contributed in at least five ways to the ongoing transformation of China’s labour regime. First, its announcement along with related reforms of labour
legislation and regulation signalled a shift in the Chinese government’s attitude away from a low-wage, largely export-oriented development model. It sent a clear message that low-cost sourcing and low-value export production was not to be the basis for the next round of China’s economic growth. Predatory China-price sourcing was, it suggested, reaching its limit. Second, implementation of the LCL provided some tools and mechanisms to stabilise worker contracts, normalise labour dispute resolution mechanisms, and empower workers to push for more realistic “market” wages, employment contract stability and fairness, and some part of the social dividend from successful firms. After the enactment of the LCL there was a surge of labour complaints and court actions, although in practice legal responses and the kinds of redress offered were limited, pushing workers to expand their efforts from court actions to other forms of struggle in their workplaces. It remains to be determined whether this growth of spontaneous labour strife indicates a failure of the LCL or has been enabled by it. Third, provincial government interventions in the wake of the global crisis after 2007 resulted in regionally differentiated forms of labour law reform. The central government allowed provincial and local authorities to adapt the implementation of the LCL to the specific circumstances each faced, further enhancing the sense that the reforms are currently motivated by strong political and pragmatic imperatives. Fourth, the new LCL has contributed to the broader process of the downgrading of employment conditions for public sector workers by decreasing benefits and encouraging a shift to generally less-secure labour contracts. Here the effects of the new law are also mixed, but they underwrite the ongoing process of public sector reform, rationalisation and possible privatisation, particularly if the use of dispatched worker contracting continues to increase. In private firms, the LCL also weakened the position of some contract and temporary workers who were hoping to regularise their employment contracts and who, instead, found their employment terminated prior to mandated deadlines for giving permanent contracts. Fifth, the continued informal operations of many dispatching agencies after 2008 undermined the initial intent of the LCL and on 28 December 2012, China’s NPC revised the LCL by adopting the “Decision on Revising the Labor Contract Law of the People’s Republic of China (Order No.73 of the PRC President).” Its aim was to address some of the limitations of the 2008 law and to tighten loopholes on the hiring of dispatched workers. Under the revised LCL labour dispatch agencies must demonstrate that they have sufficient capital resources, they must have permanent business premises with documented business practices compliant with state laws, and they must register their company and obtain the requisite administrative licence.

The LCL has had consequences not only for workers in China, but also for workers elsewhere in the world either as a symbolic model of the re-regulation of labour contracts and working conditions after decades of de-regulation or as a determinant of actual wage levels and working norms (Global Labor Strategies 2008). To the extent that the LCL and the broader policy reforms of which it is a part contributed to increases in the average cost of labour in China, it has also had indirect effects on workers in other countries. In this sense, the LCL also changes the ways in which multinational companies must deal with worker organisations, and this has already led to sourcing shifts as buyers manage risk by complementing orders from China with orders from other low-cost regional producers such as Indonesia, Vietnam and Cambodia. For some, this has resulted in expanded contracting, employment and pressure on workers as buyers have shifted from “China price” to low-cost contracting in countries such as Bangladesh. For others, the LCL and related reforms have had consequences for stabilising wages and working conditions for
millions of low-wage and temporary contract workers in factories in countries that had been experiencing downward pressure because of the “China price.”

The LCL is certainly fraught with difficulties. As we have shown, rates of implementation vary across and within regions and sectors, among workers in the same industries and sometimes in the same workplaces, and different articles of the law are implemented to differing degrees in different sectors. The law happened to coincide with the global economic crisis which seems to have encouraged some companies to continue to flaunt its provisions, while sub-contracting relations in extended production networks make oversight of compliance difficult for global buyers, NGOs, trade unions and government labour departments. However, growth in the number, size and scope of labour disputes since 2008 is indicative that the new labour law has signalled to workers and businesses alike that the state is intent on fostering a new development strategy and path. The publication of the Implementing Regulations at the 25th Ordinary Meeting of the State Council on September 3, 2008 confirmed the central government’s view of the LCL in regard to such low-wage, low-value added industries, with one commentary stating that: “It’s one of the points of the law to drive those firms out of business anyway” (IHLO 2008b).

Five years is certainly not long enough to evaluate the long-term impacts of the LCL, particularly given the important changes in the Chinese and global economy over this period. Certainly, many questions remain. One might be particularly difficult to answer – that is, is the new LCL a signal that a new labour regime is emerging in China? The Chinese government is certainly working towards a new model of economic development by promulgating its “Go Up, Go West and Go Out” programmes, officially advocating economic/social upgrading, Western development and outward foreign direct investment (Zhu and Pickles 2014). The increasing frequency of social unrest and the associated political challenges of low-wage and low-value added export industrialisation continue to motivate reforms in labour legislation and regulation. The LCL and its revision may yet install a new labour regime and contribute to social upgrading for many contract workers producing for both global and domestic markets, but – as we have tried to show – interpreting the actual effects of the law requires a sensitivity to the distinct roles played by national and provincial administration, the relational effects of this with other regulations, and the differential impacts of the law in public and private sector enterprises and organisations.

Acknowledgements

The research on which this article is based was supported by the Capturing the Gains Research Network, funded through the University of Manchester by the UK Department for International Development (DFID) and by a Doctoral Dissertation Research Improvement Award from the US National Science Foundation Award Number BCS: GSS 1130214. The authors are grateful to Frederick Mayer, Doug Miller, Adrian Smith and several anonymous reviewers for their comments and suggestions.

Notes

1 By the mid-1990s, the delocalisation of European and US clothing manufacture had revitalised the industry throughout the region around stitch-up, Cut-and-Make (CM), and Cut-Make-and-Trim (CMT) contract manufacturing, structured largely by international buyers and manufacturers. As a result, the industry re-emerged quickly, but largely under the radar of the state authorities. These remained weak and the institutions of the state continued to be under-funded and under-incentivised (see Pickles et al. 2006).
For documentation of abuses in Bulgarian supply chains see Bettina Musiolek and others’ (2004) account of the “Conditions in the Savina Factory.” For discussion of the consequences of state socialist institutions on post-socialist working conditions, see Pickles and Smith (2010).

In dating China’s Labour Law and Labour Contract Law legal scholars writing on the laws often use 1994 and 2007 respectively, the dates the laws were promulgated (see Biddulph et al. 2012; Cooney et al. 2007, 2013; Qian et al. 2013). Labour organisers and activists often prefer to use the years the laws were actually enacted, in both cases on January 1, the year following promulgation –1995 and 2008. Because our focus is on the direct and indirect effects of the laws’ implementation, we elect to use the years of enactment, 1995 and 2008.

The new LCL (NPC 2007) passed on June 29, 2007, at the 28th session of the Standing Committee of the 10th NPC and was enacted on January 1, 2008, complementing the 1994 LL. The LL was passed on July 5, 1994 during the 8th session of the Standing Committee of the 8th NPC, taking effect on January 1, 1995. Hereafter, the first LL will be referred as the 1995 LL, the second one as the 2008 LCL, indicating the years in which they were enacted.

Specifically, Chapter 8 – “Appendix of the Labour Contract Law” requires that public units and units which follow the public employment system must follow the requirements of the LCL unless there is any other explicit law or administrative regulation already in place (Clause 96). Although the 1995 LL Clause 2 states: “governments, public institutions, social organisations shall follow the law with labourers who have established the relationship of labour contract,” it does not include those who do not sign the contract with these employers, while in the 2008 LCL, so long as there is “the labour relationship,” the law applies. Moreover, government employees are still outside the provision of LCL even in the 2008 LCL, and this is why controversies emerged during the reform of public institutions which we will discuss later (Guo 2008).

Even if they did appeal, there were no clear mechanisms for authorities to arbitrate. Under Clause 32, if the employer used force, violence or intimidation, or if the employer failed to pay wages or provide working conditions based on the contract, the employee did have the right to terminate his or her labour contract at any time during the probationary period. But the labour market has long been a buyer’s market and because many workers feared losing their jobs during the reforms few exercised this right.

The LCL has many provisions, among them it seeks to protect workers from other abuses, it sets up minimum wage requirements and it specifies the conditions under which early termination penalties are to be levied on employers. For example, wages during the probationary period cannot be paid at levels below the minimum enterprise wage, at less than 80% of the formal wage in the labour contract, or below the minimum wage of the local standard (Clause 20). Also, if the probationary period is unlawfully terminated, the employer has to pay the worker compensation of an amount based on the full amount of the contracted wage and the time of the illegal probationary period completed (Clause 83).

The annual number of labour arbitrations accepted by the Ministry of Human Resource and Social Security can be found on: http://www.labournet.com.cn/lazy/cckzl/cckzl2a.asp

For more details about different relocation strategies, see Zhu and Pickles (2014).

Tsai and Tien (2010) found that while labour intensive sectors, such as textile and clothing, are particularly sensitive to such labour cost increases, more technology-oriented industries did not experience the same large effects.

Danwei is the dominant and very distinct form of social and spatial governmentality in pre-reform China, and in many ways there are still vestiges of it in contemporary Chinese society. For a detailed genealogy of danwei, see Bray (2005).

The history of such a binary labour system in SOEs and public institutions dates back to the Maoist era (Wu 2004).

By disbanding the danweis, the state tried to improve the profitability and efficiency of its SOEs and public institutions.

Based on various author interviews conducted in 2008, 2009 and 2012.

References


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