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The Role of the 2008 Labour Contract Law in Diffusing Labour Conflict in China

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What is the role of the 2008 Labour Contract Law in diffusing labour conflict in China?

Recent years have seen ample protests for workers at FOXCONN plants throughout China. As worker protests grip the country, FOXCONN (the world's largest electronics manufacturer) has made headlines. In 2012 alone, major news outlets reported strikes, protests, suicides, and other displays of worker discontent at the plants on at least three occasions. In January, the *Telegraph* reported a "mass suicide" threat at the Wuhan plant, where nearly 150 workers threatened to plummet from the roof of the three-story building in protest of the abysmal working conditions. Several months later, in September, *The New York Times* reported that FOXCONN officials closed the Taiyuan plant after 1000 of its workers rioted in an effort to force the company to address worker concerns. FOXCONN's problems continued as less than two weeks later *Bloomberg* reported a 2,000 man walk-off at the plant in Zhengzhou due to the company's overbearing demands and subpar working conditions. Similar incidents occurred in other companies throughout the country. Companies like Honda, Toyota, Denso, NHK Spring, Flextronics, Omron, KOK Machinery, and more, all experienced protests and strikes over poor working conditions, back pay, and worker exhaustion.

Unfortunately, the sheer size of the Chinese workforce often threatens to render labour strife moot. In a country where replacement workers stand ready, many ignore labour conflicts' source issues. Examples of governments' ignorance of the importance of labour conflict riddle history, in particular, the link between protests and mass uprisings. For example, Poland's Solidarity Movement resulted largely from a rise in prices, a fall in wages, a lack of respect for workers' rights, and the formation of an independent labour union. In general, "[w]orker protests are widely acknowledged to have contributed to the weakening of

Communist regimes across Eastern Europe” (Chen and Sil 2006, 62), something of which the Chinese Communist Party is keenly aware.

The link between labour conflict and mass protests indicate a great deal about the nature of society. Labour, through the breadth of its impact, becomes a commodity to be used for good or ill in the vitality of a society, and the size of the Chinese workforce only reinforces this point. “The enormity of the Chinese workforce – the largest workforce in the world at more than 800 million – and the centrality of China in the global economy, gives particular poignancy to the condition of Chinese labour” (Friedman and Lee 2010, 508).

Given China’s status as the “sweatshop of the world,” the study of her labour conflict is increasingly important. Unfortunately, while China’s cash assets have increased, the working people’s lives have not gained much improvement and they remain constant victims of labour rights violations. In fact, China’s Ministry of Public Security reported a rise in the number of public protests– from 15,000 in 1990 to 74,000 in 2007 (Haiyan Wang *et al.* 2009, 488). Figures on the number of officially arbitrated labour disputes tell a similar story: there were 135,000 labour dispute cases in 2000 and 314,000 in 2005 (Labour Statistics Yearbook 2006). This, coupled with the aforementioned strikes, leads many scholars to proclaim China a dormant volcano, fused with deep social tension and awaiting imminent implosion.

However, aware of the simmering labour unrest, China’s Communist Party (herein referred to as the CCP or the Party) leaders initiated and enacted comprehensive legal reform, including the 2008 Labour Contract Law. New legal rights and venues, through which disgruntled workers can pursue restitution, force one to examine the sustainability of Chinese society through a new lens. As a result, observers should look to the nature and quality of China’s current labour unrest rather than its quantity. In order to do that, this essay will use the dormant volcano and rocky stability theories as the lens through which to view the

effectiveness of the Labour Contract law. Here the observer will see the Labour Contract Law's effectiveness through monitored support of workers' rights. As a result, China is more aptly described as experiencing a period of rocky stability, a time of social unrest but continued trust in the CCP and their form of government. Labour relations, and the recent passage of the Labour Contract Law (complete with its July 2013 amendment), offer a prism through which to view China as a society with rocky stability.

In order to outline this argument, this essay will begin with a brief description of the Labour Contract Law (herein referred to as the Law) and the 2013 amendment (the Amendment) before discussing both the rocky stability and dormant volcano theories. The essay will then use the dormant volcano and rocky stability theories to analyse the effectiveness of the Labour Contract Law in diffusing labour conflict. The author combines legal and political analysis to show that the Law aims to balance worker rights and protections, including expressing disputes, with government control to ensure a lack of dissent severe enough to threaten social stability and the harmonious society ideal. Specifically, the Law diffuses this type of volcanic protest in the following three ways: promotion of worker's awareness of their legal rights, increased benefits to workers, and maintenance of the dual-purpose of the All-China Federation of Trade Unions (ACFTU) to support both the CCP and workers.

What is the Labour Contract Law?

On 1 January 2008, the Labour Contract Law came into effect. While not the first set of labour laws to be enacted in China, the Law offers the most comprehensive protection for the Chinese workforce to date. In contrast to the 1995 Labour Law, which loosened state control over labour relations and gave broad discretion to employers, the new laws impose

greater constraints on employer's discretion and take a more protective stance toward workers (Harper Ho 2009, 39). The intensity of the debate surrounding the Law makes it a prime lens through which to study the stability of Chinese society as a whole, maybe most particularly because all strata of Chinese society participated in its formation. The Chinese Communist Party opened comments on the draft law to the country at large, receiving more responses on its content than ever before. In addition, Party leadership sought the counsel of business leaders and union officials during the drafting process. As a result, the Law's contents represent the fruits of the efforts and interests of the holistic Chinese society.

Furthermore, the Law represents a substantial shift in the Party's decision making. Rather than a focus solely on growth, the passage of the Law indicates a shift to a focus on sustainable growth (Haiyan Wang *et al.* 2009, 489). Arguably, this shift should not come as a surprise. As previously mentioned, recent years have seen a great deal of labour unrest. As foreign companies' presence in China increased, working conditions decreased, only further exacerbating the Party's concern over its own future. Furthermore, foreign companies protested most vigorously to the enactment of the Law, often construing new ways for its circumvention. As a result, the Party enacted an amendment on 1 July 2013, prohibiting the use of dispatch companies in hiring only temporary workers not required to sign a contract under the Law. While it remains too early to examine the effects of the Amendment, the need for its presence and its subsequent enactment offer insight into the rocky stability of Chinese society.

Dormant Volcano Theory

Before discussing the predominant theory of this essay, one must understand its counterargument. The general idea behind the dormant volcano theory is that China stands on the brink of a societal explosion due to rising income gaps and unjust inequalities. On 26

January 2009, *The Economist* reported an underestimated level of political unrest amongst workers at the grassroots level. In recent years, the CCP has ceased to report the number of mass incidents in the country. However, as a 26 January 2009 article in the *Economist* notes, there are probably hundreds of incidents on any given day. In fact, the official admission of social unrest probably means the exact number stands much higher than what the Party admits (Xu 2006, 12). Scholars generally cite a slowing economy, poor pay and working conditions, corruption, and lack of proper political or legal redress as the primary factors contributing to China's dormant volcano status. The following paragraphs present a brief description of each factor.

First, many argue that the legitimacy of the current CCP rests almost exclusively on their ability to maintain China's unprecedented level of economic growth. As a result, economic downturn presents a substantial problem to the continued sustainability of the Chinese model of government. "As economic growth slows people will become increasingly dissatisfied with government and demand political reforms" (*The Economist* 2009, 1). The overall failure of the CCP to balance wealth accumulation with legitimization, or the creation of consent among the working classes, along with some means of conflict resolution, will result in an inability to maintain the stability required to proceed on a peaceful and expanded basis (Friedman and Lee 2010, 516).

Second, poor working conditions and poor pay substantially contribute to worker unrest and growing social instability. Increased wages equates to an increased lifestyle expectation on the part of the average Chinese worker. As a result, much of the country expects designer items they cannot consistently afford. For example, the average worker at a FOXCONN plant earns \$75 USD for a sixty-hour work week (Piling 2010, 1), hardly a wage able to support the latest fashions. In addition, China's entrance to the World Trade

Organisation in 2001, increased exposure to popular electronics, automobiles, and other luxury items, all of which the vast majority of the Chinese population cannot afford. This has increased the expectations of the average worker and as a result “[r]ecent waves of migrants have grander ambitions than those who came before them” (Piling 2010, 1). This contributes to the notion that rising income gaps and current inequalities are unjust (Han and Whyte 2009, 194). China’s official Geni coefficient of 0.474 (*The Economist* 2013, 1), supports the theory, particularly when noting that the actual number is most likely higher.

Furthermore, this terrible pay exists in tandem with atrocious conditions in the countryside. Comparatively, the hardships of city life diminish to those in the country. At least 200 million migrants have left the countryside in search of a better life (Piling 2010, 2). The Chinese Academy of Social Sciences estimates that average income in urban China stands as seven times more than the rural areas, not to mention access to higher quality education and healthcare in the cities (Xu 2006, 12).

Third, the vast corruption within the CCP contributes to China’s growing domestic instability. China’s top-down power structure inhibits grassroots mechanisms capable of rendering power holders accountable to citizens (Feng 2013, 4). As a result, Chinese citizens are apt to take to the street to protest procedural injustices and unequal access to opportunities due to abuses of power by the powerful and rich, the same people who monopolise the resources and benefits (Feng 2013, 4-5, *citing* Whyte 2010). Furthermore, the harmonious society goal creates conditions and incentives for local officials to abuse citizens and force them to take defensive actions (Feng 2013, 5)

“Local governments at the township and county levels are required to collect extra-budgetary revenue or self-raised funds to cover part of the stability expenditure...the most common sources of ...revenue are generated by undermining the rights and interests of citizens, including doling out fines for violating

family laws, collecting rents and income from leasing and selling collective land, and extracting fees and ‘donations’ from local enterprises” (Feng 2013, 5).

These policy priorities create incentives for local governments to operate with the end justifying the means. This results in rampant corruption, manipulation of information, seizures of village land and urban housing for development projects, damage to the environment, abuse and violation of the law, harassment of rights activists, suppression of discontent, and the use of violence within certain limits (Feng 2013, 7). Ultimately, failure to comply with the central government’s goals and objectives can nullify cadre’s good deeds and work on behalf of the Chinese citizenry, with failure to prevent mass incidents as the ultimate miss step (Feng 2013, 5). Armed with this information, Chinese citizens often resort to collective protests when left feeling their voices remain unheard.

Finally, the lack of proper legal or political redress contributes to China’s growing unrest. Currently, only 0.2% of the total petitions sent to the Offices of Letters and Visits are ever addressed by authorities (Feng 2013, 5, *citing* Zhao 2004). Interestingly, the law guarantees things that citizens do not actually enjoy. For example, Article 35 of the Chinese constitution guarantees freedom of speech, press, association, and assembly. In reality, these are largely ignored with both harsh and arbitrary punishments for violations enforced (Feng 2013, 7). Furthermore, local justice bureaus routinely level administrative sanctions against lawyers acting outside the Party’s accepted parameters (Feng 2013, 8). Currently China ties with Iran in terms of jailing dissident journalists, with Reporters Without Borders ranking China 174th out of 179 countries in its 2011/2012 worldwide index of press freedom (Feng 2013, 8 *citing* Reporters without Borders 2012). The crackdown on human rights activists and other dissidents has been so extensive in recent years that legal scholars at home and abroad have pointed to a retrogression of Chinese official legal reform toward the rule of law

(Feng 2013, 8 *citing* Cohen 2009, Jiang 2009). Law enforcement institutions (police, prosecutor's office) are lumped together as the "dictatorship organs" of the party state due to Leninism's incompatibility with the rule of law. Proletarian dictatorship is the core of Leninism and Lenin defined it as, "nothing other than power totally unlimited by any laws and based directly on the use of violence." (Feng 2013, 8 *citing* Lenin 1972).

In addition, the lack of any viable method of political disagreement is coupled with selective legal enforcement. The government stands as the primary violator of its own laws. Here one can see the problem of principal-agent relations. The CCP lends its tacit approval to ignore laws and regulations when convenient in achieving its policy priorities of stability and economic growth. This emphasis on preserving political stability at all costs has the effect of undermining social stability and existing legal institutions. One example of this come with the "re-education through labour", a system of administrative detentions carried out arbitrarily by the police circumventing the judicial systems, with sentences of up to four years complete with subjugation to political education and various forms of torture (Feng 2013, 7).

Rocky Stability

While the dormant volcano theory presents many valid points, the rocky stability theory interprets the points differently. The idea of China in a period of stable unrest originated with David Shambaugh, but was further expounded upon by Martin Whyte to the extent that this essay incorporate Whyte's theory. Martin Whyte's rocky stability theory views Chinese development in its entire process, accounting for growth while acknowledging current weaknesses. The general idea behind the rocky stability theory is that, "China's robust economic growth, improved living standards, and ample new opportunities promote general optimism and acceptance of current inequality levels, and little nostalgia for the

bygone socialist era” (Han and Whyte 2009, 193). The traditional analysis contends that the “winners” of the reform movement (the highly educated, the wealthy, urban *hukou* holders, government officials, *etc.*) will perceive the current Chinese state as fair, whereas the “losers” (rural residents, rural migrants, those with low incomes, uneducated, *etc.*) maintain the opposite (Han and Whyte 2009, 195). In particular, rural farmers largely seen as left behind by China’s marketised reforms often harbour a great deal of latent anger at their situation (Whyte 2010, 133). However, the results of the survey detailed below indicate this conventional wisdom may not hold true.

While these presumptions seemingly make sense, a closer analysis of statistics and surveys show that a, “dominant mood of anger at current patterns of inequality or pervasive feelings of distributive injustice,” do not exist (Han and Whyte 2009, 208). However, many do express a desire for the government to take action to alleviate some of the growing inequality (Han and Whyte 2009, 201). A solid majority (roughly 61%) of Chinese believe in the need to help society’s poor and provide them with equal opportunity for success (Whyte 2010, 134). This does not necessarily mean a return to China’s socialist past, as more disagree with a strictly egalitarian approach from the government than agree (Whyte 2010, 134). So while the government should work to reduce poverty and income gaps, they should do so only through market-orientated welfare programs (job provisions, subsidized housing, income guarantees, *etc.*) rather than egalitarian means (income levelling, income caps, *etc.*) (Whyte 2010, 135). In fact, most Chinese accept the inegalitarian nature of society, but only when the responsibility of basic provisions is shared between the government and individuals (Whyte 2010, 139). To further this point, statistics show that Chinese are generally less likely to favour government sponsored egalitarian measures – not

only in relation to the post-Soviet countries, but also in relation to advanced capitalist nations (Whyte 2010, 140).

Most would presume that the social unrest due to feelings of inequality exist in impoverished areas (i.e. the countryside, urban migrants, poorer provinces, etc.). However, “[i]n examining the statistical associations between occupational/household registration status group membership and distributive injustice attitudes, it is immediately obvious that objective status within contemporary China is a poor guide to distributive injustice attitudes” (Han and Whyte 2009, 208). Surprisingly, urban workers seem to be unhappy with the current levels of injustice, followed by the urban unemployed, urban white-collar workers, and rural migrants (Han and Whyte 2009, 203). The rural residents are those that express the most contentment with the current system (Han and Whyte 2009, 203). Chinese people show a faith in their own ability to improve their station in life, often surpassing those in capitalist countries, including the United States (Piling 2010, 2). Interestingly, the urban elite stand as the population group with the strongest beliefs in the inequality of China’s current society and the desire for government intervention (Whyte 2010, 135). In general, the trends show that the advantaged people are more egalitarian than the disadvantaged farmers (Whyte 2010, 135).

The rocky stability theory is often viewed in tandem with the harmonious society ideal, an ideal heavily promoted by the previous Hu administration. Essentially, to build a harmonious society means to sustain a process during which all social contradictions are solved (Warner and Zhu 2010, 286). This policy creates a renewed emphasis on extra-economic challenges (i.e. income inequality and general worker’s rights), problems of which the central government is acutely aware. Chinese history suggests that inequality leads to uprisings. For example, the restructuring of the state-owned-enterprises led to thirty-five

million layoffs and a sharp increase in social unrest (*The Economist* 2009, 1). While at no point did it look that the CCP's power stronghold was truly at risk, it's a situation the CCP remains loathe to repeat. Consequently, China remains the only major country in the world to maintain stability preservation offices at every level of government (Feng 2013, 3).

Furthermore, safeguards exist to aid the Party in preventing mass uprisings. Peasants and rural migrant workers are not allowed to form organisations designed to protect their rights and interests, including representations in negotiations with other parties during collective bargaining. As will be discussed later in the essay, the ACFTU (an arm of the CCP) remains the only trade union in China. Absolutely no independent trade unions are allowed, particularly involving the potentially volatile issues of wages and working conditions (Feng 2013, 4).

One of the essential arguments in favour of the rocky stability theory is the emphasis on legal reforms on the part of the CCP. In 1989, the Administrative Litigation Law authorised judicial review of government decisions and lawsuits against government agencies (Feng 2013, 6), and in 1999, the rule of law was written into the country's constitution. This has been described as a massive transplant of Western laws (Feng 2013, 6, *citing* Zhou 2006). By the end of 2012, the impressive body of laws included 243 laws, 721 national administrative regulations and more than 9000 local administrative regulations (Feng 2013, 6, *citing* People's Daily Commentary department 2013a).

The Labour Contract Law as a Promoter of Rocky Stability

The Party's willingness to sacrifice some capital for the sake of the worker arguably stands as the most notable aspect of the passage of the Labour Contract Law. While worker unrest does continue to exist subsequent to the passage of the Law, sometimes in larger quantities than reported, the careful observer must look to the quality of this unrest. Here the

observer will see the Law's effectiveness through monitored support of worker's rights. The types of government overhaul protests previously found in history do not bear enough substantial resemblance to China's unrest that would allow one to place China in the dormant volcano category. Specifically, the LCL diffuses this type of volcanic protests in the following three ways: increased awareness of workers' rights, increased benefits for workers, and the dual purpose of the ACFTU.

Increased Awareness of Rights in Promotion of Social Harmony

The first way in which the 2008 Labour Contract Law diffuses labour conflict comes with an increased awareness of legal rights on the part of the workers. As the notion of a harmonious society grips China, the Labour Contract Law plays an important role on the path to social unity. Specifically, three pieces of evidence indicate the important role of the Labour Contract Law.

First, lack of legal protection greatly contributes to the burgeoning social unrest in China. "The yearly increases in mass incidents and signals of rising social instability are at least partly attributed to the lack of legal protection afforded to Chinese workers" (Gallagher and Dong 2008, 45). The statistics clearly back Gallagher and Dong's position. From 1995 through 2006 employment disputes in China increased thirteen fold (Harris and Luo 2008, 1). In fact, Chinese legislators regard legal protection as so important, they almost completely ignored both domestic and international pressure to halt passage of the Law, a rather unprecedented step in a country whose continued Party leadership rests largely on its sustained economic development. The international pressure against the Law reached its zenith when AmCham threatened to withdraw investment from China due to the Law's over protection for workers (Leung and So 2013, 132). This defiance of AmCham stands in sharp contrast to previous positions of the Party arising from fear of the removal of foreign capital

in China (Haiyan Wang *et al* 2009, 487), only serving to further the point that Chinese legislators purposefully intended the Law to increase awareness of workers' rights in order to fortify social harmony.

Interestingly, the Chinese capital class also protested the passage of the Law, some in fact going as far as to proclaim the Law a return to policies of Mao and the strict Communist days. Zhang Yin (widely viewed as the wealthiest woman in China and owner of the Hong Kong-listed Nine Dragons Holdings and a member of the Chinese People's Political Consultant Committee) likened the Law's provision requiring the labour contract without a fixed term to a return to the Iron Rice Bowl policy during the age of the planned economy in which China fell into dire straits (Leung and So 2013, 142, 143). The Party's promotion of workers right in the face of sharp criticism from those representing the ever-important development sector in China indicates a switch from the develop fast policy previously held by the Party to a develop good and fast policy (Haiyan Wang *et al.* 2009, 489). By 2020, the CCP wants to shift national economic policy away from sheer GDP growth to a broader effort to improve social welfare (Haiyan Wang *et al.* 2009, 489), an effort that includes increased awareness of workers' rights.

Second, legal absorption stands as the Party's end goal for latent labour unrest. The Law provides a private right of action for a worker to enforce his own rights, a concept relatively new in China. "In general the [L]aw minimizes the role of the state in the employee/employer relationship and increases the ability of the employee to handle grievances on their own" (Harris and Luo 2008, 1). The divergence of surging labour conflict to legal channels (Leung and So 2013, 136) gives the worker unprecedented awareness of and responsibility for their own legal rights. In delegating this responsibility, the state hopes to decrease mass labour unrest, like protests. Legal reform is a strategy of the

state to regulate and contain resistance, while workers pursue legal activism (Friedman and Lee 2010, 508). Workers have clearly become more aware of their rights and have shown a willingness to utilize the court system. In the first quarter of 2008 alone, labour courts in Dongguan, Shenzhen, and Guangzhou accepted more than 10,000 cases (Haiyan Wang *et al.* 2009, 492). From 2008-2009, the number of labour disputes filed through the legal system grew 164.6% (Zhao and Zhang 2010, 569 *citing* Qiao 2009). The increase remained consistent across the country. For example, by September 2009, legal filings regarding labour disputes rose 103.8% in Beijing and 157.7% in Guangdong (Zhao and Zhang 2010, 569).

In fact, the Labour Contract Law was specifically designed to fill the legal loophole of workers lacking written contracts (Leung and So 2013, 138). Many scholars read the Labour Contract Law as representing the Party's desire to create a body of legal protection necessary for stable economic growth (Haiyan Wang *et al.* 2009, 489). Furthermore, the Labour Contract Law seems to be accomplishing exactly what it was implemented to do: absorb into the legal system labour conflict resulting from the lack of an employment contract. The cases regarding protection a personal right to compensation due to a lack of a labour contract account for 50% of all cases filed (Zhao and Zhang 2010, 570).

Third, the Party was so serious about increasing worker awareness of their rights that they took the unprecedented step of opening the draft law to comments from the public. This was widely viewed as a rare move toward making the post-socialist-party-state more transparent and responsive to social forces in society. The draft law received 191,849 comments (Leung and So 2013, 150), the largest response ever to pending legislation in China (Haiyan Wang *et al.* 2009, 490). Importantly, nearly two-thirds of these responses were from ordinary workers, and the Law was revised three times based upon their comments

(Haiyan Wang *et al.* 2009, 490). Furthermore, NGOs played an active role in spreading the knowledge of the Law to arouse worker enthusiasm for its discussion. According to Masfred Elstrom from the International Labour Rights forum, labour NGOs in Mainland China saw a spike in attendance at their legal training classes (almost double the previous attendance) right aft the Law went into effect on 1 January 2008 (Wang *et al.* 2009, 496). As a result, the Law has increased the awareness of contracts in society and raised the rate of signing a contract to an astounding 93% (Zhao and Zhang 2010, 568 *citing* an NPC conference 2010 Standing Committee report).

However, simply because the Law raises awareness of workers' legal rights, does not mean that it has unilaterally been successful in securing them, and thereby diffusing labour conflict. On the contrary, lack of enforcement of legal rights has been a consistent and pervasive problem throughout China greatly contributing to the dormant volcano theory. The 1995 Labour Law had little impact on the lives of workers, and while the legal framework governing employment relations in China is extensive enough to resemble more of a European system than an American, China's reputation for lax enforcement persists (Harper Ho 2009, 39). Part of the problem stems from the enforcement power nascent in the local level, the same level of government responsible for creating and fostering a business environment (Haiyan Wang *et al.* 2009, 486). The dual purposes, enforcement of workers' rights and fostering business interests, lends itself nicely to an environment of corruption. As government officials continue to take payoffs and benefits from business leaders in exchange for legal oversight, workers feel protests may be their only resort. "When workers are encouraged to seek legal and bureaucratic redress, only to find that the local sate often colludes with employers, they are emboldened to resort to collective action to draw the attention of superior level of government to right local wrongs" (Friedman and Lee 2010,

518). Even when local governments are not tainting themselves through corruption, the hugely overburdened courts cannot keep up with the ever-increasing amount of cases leading workers to resort to more radical action (Friedman and Lee 2010, 518).

In fact, the problems of implementation and enforcement contributed to international objections to the Law. “Indeed raising the bar before focusing on the root cause of the problem – the lack of implementation of existing labour laws – may actually worsen the current situation as the gap between law and reality will increase and may further discourage enforcement.” (Gallagher and Dong 2008, 59 *citing* European Union Chamber of Commerce). “The serious flaws in the draft, if left uncured, would not help to resolve the problems in enforcement of the current Labour Law. On the contrary they will bring chaos to the current labour market, weaken the competitiveness of Chinese enterprises, and bring adverse consequences to the national economy” (Gallagher and Dong 2008, 47, 48 *citing* James Zimmerman, Letter submitted to the Standing Committee of the National People’s Congress 19 April 2006). There are currently 20,000 officers enforcing labour law in China (O’Rourke and Brown 2003, 380). The lack of an independent judiciary promulgates this problem. “The problem has always been one of enforcement. With the Chinese judiciary dependent on local government for financing and personnel appointment, and with local officials prioritizing accumulation, the courts are under enormous pressure to respond to political contingency in meting out decisions” (Friedman and Lee 2010, 515). In short, the Law only addresses problems after the fact and ignores the root issues (Friedman and Lee 2010, 514).

The circumvention and corruption of enforceable laws leads many workers to strikes. Strikes and protests in China have recently received worldwide attention with May 2010 labelled the “May Great Labour Strike.” The number of officially reported mass incidents

increased in the 2000s. In 2005, the last year in which the central government released this figure, 87,000 protests occurred (Friedman and Lee 2010, 518), and by the end of 2008 (after the passage of the Law) the number had reportedly risen to 120,000 (Friedman and Lee 2010, 518 *citing* International Herald Tribune, 9 February 2009). Regardless of the official number released by Beijing, more than likely the number of protests stands much higher, with some social scientists claiming as many as 180,000 popular protests taking place in China each year (Lagerkvist 2012, 346). The percentage of these mass incidents that are worker related remains unclear, but the importance of wages and employment suggests a significant percentage. As Haiyan Wang *et al.* explain, “Despite some public support of the protests from the Party, activists remain sceptical about the larger implications inherent in the Law because the Party itself is designed to contain dissent and promote a party/state definition of the harmonious society” (Haiyan Wang *et al.* 2009, 496). As a result, several physical assaults on labour rights activists have occurred, with one of the most notable examples being Huang Qingnan who lost his leg in an attempt to educate migrant workers about their legal rights on the eve of the enactment of the Law.

While the dormant volcano theory certainly makes valid points as enforcement has been a significant problem for laws in China, the 2008 Labour Contract Law makes significant strides in this area. As Leung and So explain, “Previously, the Chinese labour law was a vague and ambiguous set of statutes of which most workers knew little, thus giving employers significant latitude to interpret the law and explain regulation in a way that served their interest” (Leung and So 2013, 137). However, the Labour Contract Law gives employers significant incentive for compliance. For example, by signing a contract at the beginning of the employment relationship, employers avoid having to immediately award a permanent contract. In addition, the law requires steep fines for employers not in

communion, but also continues to protect the employers right to fire a worker unable or unwilling to do the job required. Furthermore, while local government remain simultaneously responsible for enforcement of the law and the creation of a business environment, at least part of the Party's motive in introducing the law had to be the workers' interests. After the passage of the Law, several labour intensive companies shut down or moved to lower labour cost countries such as Vietnam, Laos, and Cambodia (Harris and Luo 2008, 1). The Party's endorsement of its own harmonious society ideal the enactment of the Law shows a willingness to restore balance between workers' rights and business interests.

Finally, while protests do quite obviously continue to occur in China, particularly surrounding employment issues, the Law channels the protests into solvable problems for the Party thereby contributing the China's rocky stability. The Law encourages workers to fight for their legal rights, rather than simply rebel against an unjust society (Haiyan Wang *et al.* 2009, 498). To illustrate this point, one should compare protests before and after the passage of the Law. Worker protests in China were at their height in the late 1990s and early 2000s due to the acceleration of privatisation, restructuring, and redundancies in the state-owned sector (Friedman and Lee 2010, 518). As a result, the protests that occurred were general in nature, with few concrete demands of the Party on behalf of the people. On the contrary, the vast majority of recent protests (defined as subsequent to the passage of the Labour Contract Law) are highly cellularized (Friedman and Lee 2010, 518), often characterised by the Party as "rightful resistance" or protests generated within the bounds of existing regulations posed by the state aimed at retrieving workers' rightful shares promised by the state and factory management, and not aimed at challenging the authority of the Party or the existing system (Leung and So 2013, 136). The fact that the Party has allowed media coverage of many of these strikes indicates their support for this "rightful resistance" and a genuine desire to see

higher wages for workers on the way to increased domestic consumption (Leung and So 2013, 152). In fact, many of these cellularized protests have been successful and garnered public Party support. For example, after the protests of the summer of 2010, local government announced a 10-20% increase in the minimum wage (Leung and So 2013, 152), an increase made possible because the strikes were labelled “rightful resistance” due to the legal framework established for workers in the Labour Contract Law.

The Labour Contract Law Diffuses Conflict Through Increased Benefits to the Workers

Rocky stability is achieved through the reduction of inequality and the enhancement of social justice epitomized by the spirit of the Law (Gallagher and Dong 2008, 45), which necessitate an increase in benefits for workers. Specifically, the Law requires written contracts, but also contains several other provisions with positive effects on workers. The following paragraphs are a brief description of some of the most prominent and relevant aspects of the Labour Contract Law to the reduction of labour conflict.

The most obvious benefit for workers, and one way in which the Law promotes rocky stability, comes with the insistence of a written labour contract delineated in the Law (Article X). While written contracts had previously been required under the 1995 Labour Law, less than one-fifth of employers complied (Zhao and Zhang 2010, 268). When a contract was put in place most were informal and lacking a section on the employer’s obligations to the employee (Haiyan Wang *et al.* 2009, 489). These contracts now mandate basic rights: equal pay for equal work, protection from termination during sickness, and shortened probation periods (Zhao and Zhang 2010, 571). In addition, the enforcement sections of the Law are severe enough to prompt employees to file complaints against employers when faced with lack of a written contract (Friedman and Lee 2010, 526).

At the commencement of the employment relationship, the employer must issue the employee a written contract (Article X). Should the employer fail to issue a written contract he will be deemed to have entered into a non-fixed-duration contract (Article XIV) and be required to pay twice the amount of the agreed upon wage to the employee (Article XI). The rules regarding these fixed-term contracts vary with the employee's length of previous employment. For example, once the employee continuously works ten years for the same employer, he may request a permanent employment contract from said employer (Article XIV(1)). The employer is then required to grant the employee permanent employment (Article XIV). If the employee has previously completed two separate fixed-term contracts for the same employer, although not necessarily continuously, the third contract must be permanent (Article XIV(3)). This previous rule carries the caveat that the employment contracts must have been established prior to January 1, 2008 (Article XCVIII). At the expiration of the contract, given the fulfilment of certain qualifications, the contract automatically continues (Article XLV). These qualifications include pregnancy, maternity leave, and partial disability as a result of an occupational hazard (Article XLII). Thus, these provisions offer increased protection to workers temporarily unable to work, relieving the worry of potential job loss in a time of great vulnerability and need.

The permanent contract provisions included in the Law clearly indicates the Party's intent to diffuse some labour conflict though shifting burdens away from the employee. "The restriction on the use of fixed-term contracts combined with the statutory restriction on firing employees can be seen as at least a partial return to the Iron Rice Bowl system with its emphasis on guaranteed job security" (Lauffs 2007, 98). Ultimately, the goal of the Labour Contract Law should be viewed as a way to strengthen individual rights without improving collective rights (Leung and So 2013,136). As the Party sees it, so long as the workers are

not aiming to challenge the post-socialist-party-state or the existing system (Leung and So 2013, 153) these workers should be helped.

Once the employee holds a written contract, the Labour Contract Law makes termination of that contract more difficult, further increasing the Law's impact on China's rocky stability. Employees who have worked for the same employer continuously for fifteen (15) years and are less than five (5) years away from retirement age enjoy complete immunity from termination (Article XLII(5)). However, employees not within the aforementioned exceptions can be terminated for just cause, so long as the employee received thirty days written notice or one month's wages (Article XL). An employee may only be dismissed without notice for a material breach of the employment contract (Article XL(2)) or a serious dereliction of duty (Article XL(3)). The Law further delineates between appropriate grounds for dismissal of individuals and mass dismissals. Article forty establishes the grounds for individual dismissals given three acceptable circumstances: illness preventing the employee from performing job assignments, incompetence or ineptitude (coupled with prior efforts at further education), and an inability to perform the contents of the contract (Article XL(1-3)). On the other hand, article forty-one delineates the grounds for mass dismissal. The Labour Contract Law defines a mass dismissal as the letting go of twenty (20) employees or more, or more than ten (10) percent of the employees, and this holds true regardless of the size of the business (Article XLI). As a result, a small business owner with three (3) employees falls into the mass dismissal category every time he releases a worker. Again, article forty-one lists three (3) appropriate grounds for dismissal. The most obvious and necessary ground would a reorganization of the company after a bankruptcy (Article LXI(1)). Furthermore, mass termination may be appropriate after "substantial difficulties" in

production and operation (Article LXI(2)). However, the Labour Contract Law fails to define “substantial difficulties”.

Finally, a fundamental change in operation may call for a mass dismissal (Article LXI(3)). Yet again, the Labour Contract Law remains silent as to the definition of “fundamental change.” Regardless of the method or reason for dismissal, all employees are entitled to compensation (Article XLVI). The mandatory compensation for a dismissed employee stands at one monthly salary for every year of employment (Article XLVII). A period of six (6) months equates to a year, while less than six (6) months equals half a year, and compensation is capped at twelve (12) months (Article XLVII). However, in the case of an unlawfully dismissed employee, a choice of reinstatement or compensation is offered (Article XLVIII). If the employee chooses compensation the rate is marked at double the employee’s previous salary (Article LXXXII). In short, it is important to note that there is no employment-at-will China (Lauffs 2007, 96), and the Law reinforces and solidifies this point through its employer obligation provisions and stiff penalties.

Aside from the clear increase in benefits to workers, one of the most important aspects of the Law, in terms of addressing social unrest due to labour disputes, comes with the attention paid to past ills that resulted from the national discussion surrounding the Law. As stated earlier in the paper, Chinese government statistics suggest an increase in social unrest substantially due to wage arrears (Xu 2006, 1). The “rightful resistance” struggles the Party has supported (discussed in the previous section) specifically tackled wage arrears. To further the Party’s support of the worker, the Labour Contract Law delineates protection of the bottom line of the salary as one of its purposes (Zhao and Zhang 2010, 571).

However, the passage and implementation of the Labour Contract Law does not solve all labour ills, and the dormant volcano does loom in the background. In general, employers

have expressed frustration that the law favours workers over productivity. For example, employees can use the Law to delay signing employment contracts in order to secure double the pay, which in turn slows productivity and reduces profit margins. Furthermore, the Law does have some outright negative impact on workers. For example, a reduced volume of employment in general is bound to lead to a reduction in jobs for low skilled workers (Zhao and Zhang 2010, 572). Furthermore, employees have seen a more frenzied workload as employers increased the workload during normal working hours in order to pay employees less overtime (Zhao and Zhang 2010, 572). Even the small benefits at the workplace decreased. In order to avoid minimum wage provisions, employers increased the dormitory and canteen prices (Leung and So 2013, 149). Furthermore, the rate of unemployment will increase due to firing to avoid signing flexible deadline contracts (Zhao and Zhang 2010, 572). Not only has the workload increased, but the pressure surrounding the work increased as well because the employees can be fired for violating the employer's rules. Employers began to refine the rules and regulations in order to facilitate a favourable basis for firing employees in the future (Zhao and Zhang 2010, 573). In addition, there has been an increase in fines for any number of insubordinations (Leung and So 2013, 149).

One enormous issue for social stability in China comes with the migrant labour problem. At its base, China's migrant labourers are indicative of the country's vast labour surplus. China's immense labour surplus continues to attract a great deal of foreign enterprise to the country and thus facilitates its economic growth. However, since the labour surplus suppresses Chinese workers' wages, it serves as a central force for domestic unrest. (Diamond 2003, 48).

China's labour surplus largely consists of migrant workers, or those labouring outside their assigned *hukou*. In 2010, the migrant worker population was 120 million strong

accounting for 64.4% of all workers in industrial employment and 33% of employees in the service sector (Friedman and Lee 2010, 516). In the case of migrant workers, the conditions in their assigned *hukou* are so bad they illegally move to the cities in search of employment.

“Chinese peasants working in urban area are subjected to tight immigration controls under China’s household registration systems. They are not entitled to any of the benefits enjoyed by local residents such as social welfare, schooling, and employment for their children. Periodically the police carry out raids to round up those peasants who do not possess a temporary resident permit to stay in the city. Those workers are harassed, humiliated, thrown into detention centres, and then deported from the cities” (Leung and So 2013, 133).

When these migrant workers lose their jobs in the cities they often have neither land to return to nor skills to till the land, and thus remain in the cities presenting a serious challenge to social stability (Lagerkvist 2012, 351-352).

Furthermore, “Empirical research has found that the safety valve of rural land ownership also inhibits the development of collective capacity, and many return to the countryside in times of crisis, unable or unwilling to sustain the long process of legal battles or extra-legal protests” (Friedman and Lee 2010, 516). Due to their lack of independent representation and low-level work skills, their leverage is further stymied by their inability to sustain a collective mobilization effort (Friedman and Lee 2010, 516). Many scholars consider the household registration system an open door to bonded labour through a neo-apartheid system (Leung and So 2013, 13). “Not only do the factories dictate the terms of the employment, but they charge about a half-month’s wages for the temporary work permit, which workers must forfeit if they quit without management permission before the contract expires” (Leung and So 2013: p. 133). Most of China’s job growth has been in the service sector as the bulk of new employment comes in the food and beverage, hotels, entertainment, cleaning, and healthcare industries (Friedman and Lee 2010, 512). Workers in such

industries are highly susceptible to the vagaries of the market as well as personal recriminations from employers, and these workers have been largely ignored by the ACFTU so legal enforcement and state supervision is weak to non-existent (Friedman and Lee 2010, 512).

Another problem for social stability comes with the idea of the commoditisation of labour. Even state owned enterprises have become more casual, as “[f]lexible, tiered, employment systems have become increasingly popular with dispatch workers appearing even in key industries, such as petrochemical, railways, and telecommunications “(Friedman and Lee 2010, 512). This makes it difficult to deliver collective demands on employers because the necessary solidarity and cohesion among the workforce remains broken (Friedman and Lee 2010, 512). In general, viewing labour as a commodity increases labour rights violations. Labour is the vehicle by which the CCP transformed China from a planned to a market economy (Friedman and Lee 2010, 514). Consequently, there is too much incentive for local officials to ignore labour standards in order to better promote economic growth (Friedman and Lee 2010, 514). Economic decentralization allows regional officials to compete for capital investment; but in doing so they often ignore labour standards, and the central government turns a blind eye because they benefit from the increased tax revenue (Friedman and Lee 2010, 515).

In addition, the increased benefits to workers provided through the Law seem diluted due to China’s insatiable supply of labour. This is particularly true in rural areas (Haiyan Wang *et al.* 2009, 486), where tension is often perceived as the worst. Hundreds of millions of impoverished Chinese compete for jobs and shelter and keep wages low and workers living in fear (Haiyan Wang *et al.* 2009, 487). The huge supply of labour allows employers to come up with new and creative ways to circumvent the law. The LCL increases labour

costs on the part of the employer (Zhao and Zhang 2010, 572) so there is an incentive to circumvent the law. One way in which employers circumvented the Law was through voluntary termination and rehiring in order to avoid giving a worker a permanent contract. For example, Huawei secured voluntary resignations from all its long-term employees in order to enter into new employment contracts and ensure that it remained easier to fire people (Harris and Luo 2008, 1). Similarly, Carrefour, on the eve of the Law, required all employees to resign and resign two year contracts to circumvent the indefinite contract clause (Harris and Luo 2008, 1). In some extreme cases, employers dissolved the company and reformed a new company to avoid permanent contracts and increased benefits to long-term workers (Haiyan Wang *et al.* 2009, 492). Enforced overtime stands as another way in which employers circumvent the Law. “It is not uncommon for workers to work two or three hours of overtime each day with only one or two days off every month. The wage system is constructed on a rigid system of penalties, deductions and fines. Factories devise their own sets of arbitrary rules and regulations in open breach of China’s labour laws” (Leung and So 2013, 133). Other methods of circumvention include intentionally placing long-term employees in ill-fitting job so they quit and the use of labour dispatching agencies.

In 2008, dispatch workers accounted for 270 million of the total workforce population (Friedman and Lee 2010, 512 *citing* Qiao 2009: 322); and these individuals are employed by hiring companies, who then dispatch them to manufacturers in need of a highly flexible, and highly exploitable, workforce (Friedman and Lee 2010, 512). By obfuscating the relationship between manager, worker, and employer, the dispatch labour system leaves workers in an incredibly precarious position in which they enjoy almost no job security whatsoever (Friedman and Lee 2010, 512). However, this was recently made illegal under the 1 July

2013 amendment, but the level of enforcement and other possible circumventions are yet to be known.

However, the CCP, aware of the dispatch labour problem, took action and on 1 July 2013, a new amendment to the Law came into effect. As a result, direct employment contracts are the rule and labour dispatch arrangements are now the exception. Previously employers could hire directly through employment contracts or through a dispatch agency. In fact, many employers preferred dispatch agencies because: (1) the lack of direct employer-employee relationship made termination easier and (2) benefits were based on average salaries, which were significantly lower in dispatch companies, therefore there was less economic burden on the employer (Winston and Strawn 2013, 1). These relationships are now illegal with the following exceptions: (1) labour-dispatch relationships concluded before December 28, 2012 (these can continue until the dispatch contract expiration at which point the employer must hire the worker through a contract or let them go), (2) representative offices, and (3) temporary, auxiliary, or substitute positions (Winston and Strawn 2013, 1). Temporary positions are those which exist for no more than six months, while substitute positions are those which must be temporarily filled for a full-time employee on approved long-term leave (Winston and Strawn 2013, 1). Finally, auxiliary positions are those jobs not of core interest to the business of the company (Winston and Strawn 2013, 1). For example, a canteen worker, security guard, receptionist, or janitor all work in auxiliary positions. The crux of this amendment revolves around wages and reiterates that dispatch employees must receive the same remuneration as a contract employee in the same position (Winston and Strawn 2013, 2). Specifically, this is likely directed at migrant workers and factory workers, but this is yet to be confirmed (Winston and Strawn 2013, 2). Finally, the amendment includes a stiff increase in the fine for those in violation of this law (Winston and Strawn

2013, 2). The Party's action, and willingness to further tighten controls on capital generation in favour of the worker, serves to mitigate some societal tension and increase rocky stability.

Therefore, while some serious issues do remain for the plight of the worker in modern China, the benefits of the Labour Contract Law do outweigh its drawbacks, and consequently promotes rocky stability. Despite the fact that employers bear more pressure under this law, worker relations have improved because workers understand the nature of their job and worker expectations from the beginning thanks to the presence of a written labour contract (Zhao and Zhang 2010, 570). Furthermore, migrant labour is not as concerning as one may think. Before the passage of the Law only 12.5% of migrant labourers had signed a labour contract (Chan 2009, 45), only 48% were paid regularly, 68% had no day off, 54% had never been paid overtime wages they had earned, and 76% never received legal holiday overtime wages (Friedman and Lee 2010, 6). Now, more than 93% have signed labour contracts (Zhao and Zhang 2010, 568). In addition, the root support for migrant workers is far removed from the protests in the cities (Friedman and Lee 2010, 518). Furthermore, while they have shown themselves able and ready to protest, they typically seek legal redress first (Friedman and Lee 2010, 519). Consequently, the Law's provisions have certainly benefited migrant workers enough to quell discontent serious enough to threaten social stability.

The Labour Contract Law Diffuses Conflict Through the ACFTU's Dual Purpose of Party and Worker Support

As previously mentioned, Chinese workers cannot form an independent labour union, as all trade unions fall under the auspices of the All China Federation of Trade Unions, which follow direct orders from the Party. In fact, the Party erects significant obstacles in order to prevent such an independent force. However, this does not mean that the Chinese worker

does not have representation. The purpose of the ACFTU was to prevent an independent labour movement from forming in China, while simultaneously representing the interests of the worker. The Labour Contract Law very clearly increases the power and authority of collective bargaining and the ACFTU, thereby helping to diffuse labour conflict

The Labour Contract Law brings new power to the ACFTU. The Employment Contract Law requires that every major decision regarding working time, benefits, vacations, pay, and things of like manner must first be subject to negotiations with a union. The Law expands the areas in which collective bargaining may occur to include all locales from county-level industries to regional or national-level industries (Article LIII). “Thus, the [Law] has ‘added’ to the 1994 Labour Law by providing a forum for different interest groups” (Josephs 2008, 373, 379). This expanded collective bargaining power has important implications given the unique role of the trade unions in China. As noted above, given that the Chinese Communist Party only allows for one union this provision can more rightfully be construed as negotiation with the CCP itself.

Before one can begin a discussion of the changing role of trade unions involved in the Labour Contract Law, a foundation must be established as to the unique role of a trade union in Chinese government and society, as trade unions play an inimitable role in the overall vision of China’s socialist market economy. A quick glance of the English version of the ACFTU’s website illuminates the various roles of a Chinese trade union. These roles include, but are not necessarily limited to: utilization of possible channels to encourage the Government to establish a legal system which protects both the interests of the trade union and workers; active participation in politics and the ability to offer suggestions at peoples’ congresses of all levels; establishment of joint meetings between various governmental bodies, industrial unions, and relevant departments in order to release succinct data about

workers and policies; and coordination of labour relations through and equitable, beneficial, harmonious, and socialist management relationship which urges all enterprises to establish and improve the labour contract system (ACFTU mission statement). Since there can only be one mother-trade union, all sub-unions must be affiliated with the ACFTU (Brown 2010, 44). For example, unions like the All China Women's Federation must subordinate itself to the ACFTU. This hierarchical structure stems from the original purpose of the ACFTU - to promote economic development and enterprise while simultaneously protecting worker's rights (Brown 2010, 44).

Given the promulgated belief that all workers should be members of a trade union, the Labour Contract Law's process of establishing trade unions in China is a relatively straightforward and simple one. Twenty-five (25) employees may join together, and with approval of a higher-level union, may request from their employer formal recognition as a union (ACFTU 2006). The benefits of membership in a union are substantial. In order to advocate for workers, the ACFTU provides guidance and assistance to workers regarding the attainment of individual labour contracts (ACFTU 2006). The ACFTU also works to secure employer's compliance with various health and safety laws (ACFTU 2006). The Union may take an employment dispute to arbitration or court (1995 Labour Law, articles 77, 83, 84). The Union mandates employee education and discipline (ACFTU 2006). The ACFTU also promotes the social welfare particularly well: arranging visits for sick workers, dealing with personal problems, and distributing benefits, and organizing picnics and celebrations (Karindi 2008, 5).

As the ACFTU represents workers' interests to the Party, and in the legislative process, it is important to note that the ACFTU was heavily involved in the drafting process of the Law. "The trade union has far more influence and voice than any other non-

governmental organization, but especially far more influence than organizations that represent the interests of employers or business more generally” (Gallagher and Dong 2008, 46). Note the difference between the involvement of the ACFTU and other organisations. For example, the Chinese Enterprise Directors Association was not a formal participant in the consultation and negotiation process, unlike the ACFTU. In fact, the role and importance allocated to the ACFTU’s continued to expand in later drafts of the Law (Gallagher and Dong 2008, 47). In general, the law expands the role of the union allowing a broader scope for collective bargaining at the enterprise level (Leung and So 2013, 139). This is an important step for the minimization of labour conflict in China for the following several reasons.

First, open and direct access to the workers allows the CCP to really understand workers’ issues and complaints. Unions develop as a force of political stabilization alongside an increasingly resistive workforce (Friedman and Lee 2010, 508). The ACFTU currently has 170 million members (ACFTU). Their responsibilities include negotiation of salary, working hours, holidays, and benefits. The ACFTU viewed the passage of the Law as so important and central to their mission that they started 866 legal aid centres in preparing for a national-wide campaign for enforcement (Leung and So 2013, 150 *citing* Global Labour Strategies 2007, 38). Furthermore, the structure of the ACFTU avails itself of opportunities for workers to have direct access to the country’s leadership. In particular, the chairman of the ACFTU himself is a member of the CCP’s all-important politburo. While local branches of the Union are beholden to the priorities of local governments and the imperatives of enterprise management, the centralized body of the Chinese trade union is well connected through its structure and personnel (Gallagher and Dong 2008, 46). In fact, the trade union is seen as playing a key role in linking to top and bottom sections of Chinese society in order to

create a more balanced country (Warner and Zhu 2010, 287). This link is so vital to the prosperity of Chinese society that the mission statement of the ACFTU requires its penetration into private enterprises to act a middleman in the name of resolving any labour disputes that may occur (Leung and So 2013, 153).

Second, the ACFTU's role, as implied by the Labour Contract Law, is to improve individual rights without improving collective rights; or in other words improve worker conditions in order to prevent a rise of the proletariat (Leung and So 2013, 138). "In this respect the Labour Contract Law is well positioned because it effectively builds on the labour rights that provide the necessary legal basis for a genuine collective bargaining system" (Leung and So 2013,152). Here the ACFTU's role is best illuminated through an analysis of its varying roles in the preliminary drafts of the Labour Contract Law. An earlier draft of the law stipulated that it was the employer's responsibility to sign a collective contract with the employee's representative within the enterprise. This was stricken; however, it indicates that the CCP is willing to allow collective bargaining so long as it is not with an independent union (Leung and So 2013, 152). In addition, the Labour Contract Law indicates that CCP's awareness that giving the Union a little more freedom, without making it independent, could prevent future wildcat strikes (Leung and So 2013, 152). As a result, the ACFTU is currently promoting a nation-wide collective bargaining system with collective contracts signed in more than 80% of the enterprises in China by the end of 2013 (Leung and So 2013, 153). As of 2010, 23 provinces and cities had enacted rules on collective bargaining and 13 developed collective bargaining (Leung and So 2013, 153). This is a promising step for meeting the challenges of labour unrest in China.

However, the ACFTU's dual role is not without faults. The most apparent problem occurs with the balancing of the fine line between workers' interests and loyalty to the CCP

when the two parties are at odds. This occurs most prominently in the area of economic development. The ACFTU's mission statement has economic development as its central task (ACFTU mission statement), which can prevent true protection of workers' rights. "Local level trade union organizations must take their orders from the local Party and government, which are usually more focused on boosting economic growth than on protecting the rights of workers" (Gallagher and Dong 2008, 57). As a result, the legal responsibilities of the trade union in protecting and helping workers are often ignored, and thereby only serving to stoke the dormant volcano. Trade union organization is closely tied to the management within a firm and must balance concerns over worker issues with concerns of management (Gallagher and Dong 2008, 57, 59). The delicate balance is further complicated by the fact that trade union officials within firms are hired and paid directly by the firm (Gallagher and Dong 2008, 57).

Given the precarious balance that the ACFTU must strike, many scholars argue that ACFTU is properly understood as a CCP "transmission belt," put in place to ensure workers are following the party line (Chen and Sil 2006, 65). The ACFTU's duty to suppress worker protests is frequently cited as evidence that its interests are more aligned with the Party than the worker. Given the absence of a right to strike (Han 2011, 1), the lack of a true adversarial system leads to a lack of transparency and unbalanced economic decision making, this in turn suppresses wages and domestic consumption (Diamond 2003, 64). The complete domination of the CCP gives way to ineffective responses to worker demands by the ACFTU.

Many scholars even take the argument a step further and claim that the intrinsic closeness between the ACFTU and the CCP threaten to make the Union irrelevant. "Given the explosive character of Chinese labour-capital relationships, the ACFTU's close identification with autocratic local officials and industry management threatens to make the

institution irrelevant” (Haiyan Wang *et al.* 2009, 495). The greater the rate of changes in economic, social, and political environment, the greater the pressure on the employment relations system to move towards decentralization (Zhu, Warner, and Feng 2011, 128). “Without the ability to form effective trade unions, workers cannot be said to enjoy fundamental human rights such as the freedom of association or the freedom of speech or the right to have grievances heard and redressed. Without an effective labour movement there is no counterweight to the power of business interests or the volatile market forces in society or to the state itself” (Diamond 2003, 46). In the recent past, an effort to establish a Workers Autonomous Federation was met with harsh repression (Diamond 2003, 56)

However, this paper argues the importance of considering the following three things when discussing the role of the ACFTU (as understood in the Labour Contract Law) in diffusing labour conflict in China and promoting rocky stability. First, criticism of the ACFTU is often exclusively presented from a Western perspective. In other words, it disregards the history of labour relations in modern China. One must consider China’s historical lens, experiences, and model of government in considering this problem. “The interplay between state, market, and civil society is much more complex than that posited by a sharp dichotomy between state and civil society, often oversimplified and at times viewed through a Western ethnocentric lens” (Lagerkvist 2012, 348). For example, in the beginning it was assumed that in a socialist society, where labour was no longer pitted against capital and workers were presumably represented by the workers’ state, unions’ original purpose of representing and defending labour interests was essentially redundant and even unnecessary (Feng Chen 2003, 1009). From the Chinese perspective, the ACFTU should be viewed as the CCP’s way of enjoining workers and capital as they move together to create a harmonious

society. The ACFTU has evolved and the argument that it is the CCP's transmission belt is harder to make (Chen and Sil 2006, 73).

Second, the system has always been tri-partite: CCP-enterprise-ACFTU. Under Mao, the system was very bureaucratic and hierarchical. "The managers pretended to pay us, and we pretended to work" (Warner and Zhu 2010, 288). While some forms of worker protection existed, it aided little in mitigating the uneasy balance between the tri-partite entities. The system evolved when Deng Xiaoping came to power. Under Deng, the ACFTU tried to revive their organizational role. He encouraged the workers' councils to be parallel to the union (Warner and Zhu 2010, 288). However Deng was simultaneously afraid of a solidarity movement (like the one occurring in Poland at the time), which hampered his aspirations (Warner and Zhu 2010, 288). Despite his fears, progress persisted and with the passage of the Trade Union Law in 1992, the ACFTU's definition as "under the leadership of the Party" was dropped (Chen and Sil 2006, 73). The advent of the 1994 Labour Law finally gave workers meaningful protection and representation (through the ACFTU) in the tri-partite relationship. Interestingly, the increased level of worker protection directly related to the fact that the ACFTU was invited into the debate concerning the content of the Labour Law, a role that only intensified during the debate over the Labour Contract Law in 2008. It should be no surprise then that the 2008 Labour Contract Law further improves upon worker rights, offering workers the best and most comprehensive protection seen in modern China.

The important role of the ACFTU in the Labour Contract Law can clearly be seen in relation to its roles in other laws. For example, the Trade Union Law of 2001 grants the ACFTU the right to seek legal redress against enterprises in violation of labour regulations. As a result, the ACFTU has the power to approach labour arbitration bodies for assistance in dealing with the culpable enterprise, even going as far as to allow the ACFTU to take the

issue to the People's Court when the initial ruling is unsatisfactory (Chen and Sil 2006, 73). This power, when combined with the regulatory enforcement power given the Union in the Law, makes the ACFTU quite a force for worker protection.

Third, one must consider the direction in which the ACFTU is moving, not simply where it currently stands. "Over the decades, the ACFTU has been seen to act as a Leninist transmission belt mechanism linking the central Party/State with the ranks below, and it would be unrealistic to expect this top down modus operandi to be dispensed with overnight" (Zhu, Warner and Feng 2011, 129). However, in modern history one can see the ACFTU move from the link allowing the Party-led Chinese working class viewed as a coherent national union entity (Zhu, Warner, and Feng 2011, 128) to an organization that forces managers to take a more serious account of employees' interests (Zhu, Warner, and Feng 2011, 129). The ACFTU's recent worker victories stand as prime examples. Both wages and domestic demand have increased largely due to the ACFTU's participation in and support for the May 2010 labour strikes (Zhu, Warner, and Feng 2011, 137). Furthermore, the ACFTU's role is increasing and evolving because the state is no longer the largest employer (Zhu, Warner, and Feng 2011, 137). As a result, one can see a switch from a bureaucratic top-down approach to encouraging grassroots union activity, particularly in dealing with the potentially volatile problem of migrant workers (Zhu, Warner, and Feng 2011, 137). In fact, recent scholarship has even gone so far as to label various methods of ACFTU grassroots support. The Xinyang model recruits migrants before they move to the city. After they move, the local branch then becomes responsible for transferring union membership to the workers new branch (Zhu, Warner, and Feng 2011, 136). The Yiwu model even allows migrants to self-organise and then petition the ACFTU to grant them their own union branch (Zhu, Warner, and Feng 2011, 136). The progression of the ACFTU from a Leninist

mechanism of population control to a mediating organisation between workers and the Party can clearly be traced through recent legislation and ACFTU activities.

Conclusion

The author combines legal and political analysis to show that the Law aims to balance worker rights and protections, including expressing disputes, with government control to ensure a lack of dissent severe enough to threaten social stability and the harmonious society ideal. As a result, the Labour Contract Law aids China's rocky stability, rather than contributes to its potential volcanic nature. Specifically, the Law diffuses this type of volcanic protest in the following three ways: promotion of worker's awareness of their legal rights, increased benefits to workers, and maintenance of the dual-purpose of the All-China Federation of Trade Unions (ACFTU) to support both the CCP and workers.

Chinese workers' increased awareness of their legal right diffuses labour unrest because any potential unrest is absorbed into the legal system. The Party pushed the Labour Contract Law as a method to educate workers about their rights and offer them a potential avenue to express their frustration rather than taking to the streets. In addition, the Law specifically addresses workers' most pressing concern, the payment of overdue wages. After the passage of the Law, legal filings substantially increased, with over half of the filings stemming from wage issues. While the Law does not unilaterally protect workers' rights, it certainly makes strides with more severe penalties and even some Party support for workers' rightful resistance.

Not only are workers more aware of their rights, but also their rights have increased in general. The Labour Contract Law substantially increased benefits to Chinese workers by protecting pay, maternity leave, illness, and work-related injuries. By intensifying the

termination provisions, Chinese workers can now rely on the safety of their job so long as all rules and regulations are followed. While China's seemingly insatiable supply of labour contributes to issues like commoditisation of labour and corrupt local officials, the benefits of the Law outweigh any detriments. The Law increased the percentage of the workforce with written contracts to 93%, a substantial feat. While the Law has caused other issues for employees, the issues are not as severe as lacking the basic protection of a written labour contract.

Finally, the ACFTU's dual mission to serve both the Party and the worker serve to foster a more peaceful socialist state. The ACFTU's unique contact to both Party officials and workers gives them an insight instrumental in diffusing labour conflicts. As a result, the Law expands the scope of the ACFTU in order to allow it to work to improve individual rights, without enabling a collective resistance movement. While the West often criticises the ACFTU as unable to truly advocate for workers, this criticism loses sight of China's collective mission, to form a socialist-market state where labour and employer are not at odds. Certainly, a delicate balance of worker and Party interests is required, but the evolution of the ACFTU highlights the Party's desire for this balance. The ACFTU has moved from an organisation designed to help workers "tow the Party line," to one which forces companies to take a more serious account of employees' interests, even going as far as to encourage grassroots movements.

As a result, China is more aptly described as experiencing a period of rocky stability, a time of social unrest but continued trust in the CCP and their form of government. However, the balance remains delicate. A slowing economy, poor pay and working conditions, corruption, and lack of proper political or legal redress threaten the harmonious society. The passage of the Labour Contract Law is a step in moving the country away from dormant

volcano status. The better pay and conditions required in the Law, the national discussion surrounding the Law, the ACFTU's close relationship to both the Party and the worker, and the legal avenues now available to workers foster an environment in which people can seek their own private redress rather than resort to collectivization and social upheaval. The dangers remain close, however, "[w]hile labour does not necessarily present a political challenge to the state in the short to mid term, it does present constraints on the state's attempt to switch models of accumulation from one dependent on exports to one based on domestic consumption" (Friedman and Lee 2010, 508). The Law's ability to, and the Party's willingness to, sacrifice economic growth for worker protection may eventually come at a price. However, in the immediate, the need to improve workers' livelihoods far outweighed the economic ramifications. While China's rocky stability may, one day, turn into an impending volcano, the Labour Contract Law's short-term benefits should suffice to keep that transformation at bay in the near future.

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