Unexpected Historical Parallels:

The Advent of the LAbor Problem and Governmental Responses

in China and the United States

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Key Words: Labor Problem, Collective Bargaining, Individual Employment Law

Since the 2010 Nanhai Honda strikes, workers across China have organized thousands of collective actions. The recent rise of Chinese collective labor protests invites historical comparison to the early days of labor unrest in America. Although the U.S. and China differ dramatically in their political, economic, and cultural structures, a comparison of the protests in the U.S. between 1850 and 1935 and in China since 1978 supports the argument that the “Labor Problem”[[1]](#footnote-1) is an inevitable consequence of the process of industrialization.

The governments of both countries initially responded this labor strife with strong opposition and suppression. However, ultimately, American workers succeeded in pressuring the government to pass the National Labor Relations Act of 1935 (NLRA), which aimed to solve the Labor Problem by allowing the workers to have independent unions and collective bargaining. Base on the strength of their continuous protests, Chinese workers seem to be on the verge of pushing a similar New Deal labor law reform through the legislature. Nonetheless, I would argue that collective bargaining is not likely to be as effective a solution for China as it was for the U.S.

China wrote collective bargaining into its 1994 Labor Law, long before it had a Labor Problem, in the hope of preventing labor strife. Paradoxically, China has never recognized the role of independent labor unions or to enforce the collective bargaining system. Besides, the labor law reforms that the Chinese government launched in response to recent labor protests focused more on raising labor standards through legislation and reforming the All-China Federation of Trade Unions. None of the reforms follows the American New Deal trajectory in which independent unions are the central players in the collective bargaining system. Looking ahead, the Chinese story is unlikely to follow the American path. It is politically impossible for China to recognize independent unions or grant workers the right to strike, as these would create a genuine threat to the Chinese Communist Party’s political power. This political risk prevents the Party-State from establishing a genuine collective bargaining system. Additionally, Chinese workers lack the critical tool that their American counterparts had – the vote, to compel the government to grant them such rights.

 If the Chinese government is not going to follow the path of the American New Deal, it has to come up with a different legal solution. The only available option seems to be a system of individual employment rights, which is the main focus in the U.S. today.

 After the United States passed the NLRA, union strength increased, but for less than two decades; it has been declining since the 1950s. In the meantime, judicial and administrative decisions have frequently frustrated goals of the NLRA. However, as the old system of collective labor rights has faded away, a new system of individual employment rights has developed. Since the 1980s, state legislatures and courts have created a series of individual employment protections, such as the right to privacy in the workplace and the right to protection against wrongful discharge. Currently, workers in the United States rely almost exclusively on the individual employment law system, rather than turning to unions for support.

 Perhaps China can skip the period of union dominance and transition directly to a regime of individual employment law. This path would protect the Chinese government from the threat to its stability that independent unions present. Simultaneously, it would give workers more legal protection, which could help to reduce labor strife. It is true that individual employment rights would not create workplace democracy or give workers a united voice, as collective labor rights do. Nor can individual employment rights help workers to negotiate higher wages or better working conditions. However, when workers protest in China, they are generally seeking the unpaid wages and unrealized rights to which they are entitled. These are demands that the individual employment law system can meet. Therefore, providing workers with sufficient individual employment rights and enforcing them vigorously would seem to be the most effective solution to China’s Labor Problem. But in order to succeed, this system needs far better enforcement than the Chinese legal system currently provides.

1. The Labor Problem generally refers to the disorder and violence resulting from labor conflicts. [↑](#footnote-ref-1)