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By working population, Guangdong and Jiangsu have labor disputes rates 3-4 times the national average.
Law in Chinese Policy Making

- Laws are subordinate to CCP “policy”
- Central Laws are vague; must be supplemented with local regulations
- Legislative process is chaotic and unbalanced
- Fetish for “the best laws”
- Populist media increases expectations
Case Study of Labor Legislation

- Rapid increase in labor disputes since 1990s
- New institutional and legislative measures to channel labor conflict and limit instability
- Societal input increased: labor activism at the grassroots; lobbying and participation in legislative drafting
2007 “Year of Social Legislation”
The Labor Contract Law
The Labor Dispute Mediation and Arbitration Law
The Employment Promotion Law
The Social Context: Increased Social Tensions and Widespread Violations

2003年10月24日，国务院总理温家宝在三峡库区腹地——云阳县人和镇龙泉村10组，并与村民攀谈聊天。
October 24, 2003, Premier Minister Wen Jiabao talked to a migrant worker whose wages had not been paid…

熊：包工头拖欠农民的工钱一直不还。爱人李建明有2000多元工钱已拖欠了一年，影响娃儿们交学费……”
温：“一会儿我到县里去，这事我一定要给县长说，欠农民的钱一定要还！”
当天夜里，熊德明拿到了被拖欠的2240元工钱。
Xiong: The labor contractor withheld my salary for more than one year.

Wen: I will talk to the head of the county government.

The night Mr. Xiong received his wages.
Trends in Legislation

- Imbalanced representation of capital and labor in the drafting process
- More transparent
- Increased participation from society
- MUCH MORE CONTENTIOUS

“Running dog of the foreign capitalists!”

“Hostile foreign forces!”

“Bureaucrat with a trade union background!”

“Why are foreign investors threatening China’s legislation?”
Legislative Contention
# The Legislative Process of the Labor Contract Law

<table>
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<td>Am-Cham, US-China Business Council, Euro-Cham, Grassroots unions, NGOs, INGOs, Academics</td>
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- **Phase**: The stages in the legislative process.
- **Drafting**: The phase where the initial draft is created.
- **Discussion/Revision**: The phase where the draft is discussed and revised.
- **Public Comment**: The phase where public comments are considered.
- **Final Stage**: The phase where the final version is approved.

**Key Participants**:
- Ministry of Labor (MOL)
- ACFTU
- State Council
- Academics
- Am-Cham
- US-China Business Council
- Euro-Cham
- Grassroots unions
- NGOs
- INGOs
- Academics
- National People’s Congress (NPC)
- MOL
关于公布《中华人民共和国劳动合同法（草案）》
征求意见的通知

《中华人民共和国劳动合同法（草案）》是一部规范用人单位与劳动者订立和履行劳动合同的行为，保护劳动者合法权益，促进劳动关系和谐稳定，关系人民群众切身利益的重要法律草案。

经第十届全国人大常委会第十九次会议审议后，委员长会议决定，全文公布《中华人民共和国劳动合同法（草案）》，广泛征求意见，作进一步修改，再提请全国人大常委会会议审议。将《中华人民共和国劳动合同法（草案）》向社会公布广泛征求意见，是全国人大常委会推进科学立法、民主立法的又一重大举措，各有关方面务必高度重视，统筹安排，精心组织，确保工作顺利进行。

现将有关事项通知如下：

一、请各省、自治区、直辖市人大常委会负责征求、收集本地区全国人大代表和有关部门、法学教学研究等有关单位的意见，于2006年4月30日前将意见汇总报送全国人大常委会法制工作委。
National People’s Congress’ Period of Public Commentary

191,849 opinions submitted in 30 days, far more than any other draft law thus far

China’s National People’s Congress (NPC): “the participation was very broad, the opinions were constructive, demonstrating everyone’s concern for harmonious labor relations”

national: very broad, the opinions were constructive, demonstrating everyone’s concern for harmonious labor relations
1995 Labor Law vs. 2008 Labor Contract Law
Main Issues of the Draft Labor Contract Law

CONCERNS
- From Iron Rice Bowl to No Rice Bowl
- From Planned Employment to Informal Employment
- From Collective Organization to Individual

PROPOSED REMEDY
- Less employment flexibility
- Restrictions on short-term employment
- New requirements for collective consultation with ACFTU (Trade Union)
Aspiration vs. Regulation

- 1995 Labor Law
  - 40-hour work week
  - 5 kinds of social insurance
  - Consultation with the trade union
  - 36-hr max overtime/per month

- 2008 Labor Contract Law
  - Strict limits on short-term contracts
  - Punitive fines for non-signing of contracts
  - Severance pay for contract expiration
“Why are foreign investors threatening China’s legislation?”
-headline on Sohu.com

- Drafting changes since period of “public comment” reflect power of foreign capital AND state actors (esp. large firms and other ministries)
- Public debate focuses on formal input; foreign investors and foreign business associations are the focus
- Debate is constructed in the public sphere as “foreign capital” vs. Chinese workers
- Media coverage dramatically increases societal attention to the new laws
Media exposure positively associated with higher levels of confidence in labor law.

Radio and TV content most effective (most vivid?)

Personal experience with the legal system reduces the media’s ability to persuade, but not as much as expected.
The More Laws, the Better?

- High standards without capacity to enforce
- Collective bargaining without unions capable of representation
- Dispute resolution process already unable to handle annual caseload
But bottom-up enforcement??

- Large, double or triple digit, increases in disputes since January 2008 (97% increase in litigation nationally)
- Media’s role in advertising the new law means many more workers know their rights
- More detailed, punitive clauses leading to more claims by workers for enforcement by courts
Building Rule of Law in China

- Both a top-down and bottom-up process
- Shows adaptability and ambition of the CCP to have law without liberalism
- But also leading to rising expectations and increased social contention