

From Individual to Collective Labor Relations
Transformation of Collective Labor Relations and Evolution
of Labor Policy in China

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Abstract: The paper discusses the transformation that Chinese labor relations are currently undergoing from individual to collectivized relationships. It argues that the development of China's labor policy calls for further changes. The enactment of China's Labor Contract Law achieved the legal framework for adjustment to individual labor relations, and hastened the evolution of collective labor relations. But the new framework of individual labor relations is not sufficient by itself to resolve conflict between labor and capital, or to maintain industrial peace. During this process of change, two different aspects of labor market forces and of labor movements have been emerging and interacting. The transformation towards collectivized labor in China depends on the reconciliation of these two aspects. Collective labor consciousness and collective action at the grass-roots are unavoidable factors in this transformation. The strike wave of the summer of 2010 provided an important lesson. What might be called 'rational handling through the rule of law' has the potential to offer a solution to conflict between labor and capital, and to facilitate the adjustment and improvement of China's labor policy. The adjustment of China's labor policy requires the rethinking of labor relations theories, and of the choice of adjustment models. The improvement of collective labor law will call for the strengthening of the collective rights of workers and the development of institutions to mobilize the collective consciousness and organization of workers.

The market-oriented reconstruction of employment in China is taking place during a crucial historical period of transition from individual labor relations to collective labor relations. The transition towards collective labor relations is an important consequence of the formation of market-oriented labor relations, which has been having a fundamental impact on China's socio-economic and political development. It is important to ascertain the reasons, the processes, and the features of this transition. This is necessary for an understanding of the direction of change, and of what is needed to facilitate China's labor policy. In the context of this transformation, it is necessary for a better theoretical understanding of labor relations

under the conditions of a market economy. But it is also of direct practical significance in achieving smooth adjustment and the construction of harmonious labor relations.

I Market-oriented Transformation: From Individual Labor Relations to Collective Labor Relations

Labor relations refer to the social and economic relations generated by the transactional labor process, between the workers, the labor users and their associated organizations. It is the most fundamental social and economic relationship in a market economy. Labor relations embody the relationship between capital and labor, the two essential factors of production in market economy. The critical question is how to handle and regulate the unavoidable contradictions and conflicts that are implied in labor relations in order to make them stable and harmonious. This has become the fundamental challenge for economic and social policy in countries with market economies.

In contrast with traditional market economies, the formation of China's market-oriented labor relations has not arisen from a natural process of economic development, but as a result of the transition from a planned economy through government direct action. Seen as an important component of the restructuring of the economic system, labor relations' market-oriented transition has been implemented by means of the reform of property rights and management rights. This has established the principles of explicit property rights and of independent agency for enterprises. As a result, labor has been shifted from conceptually being 'owned by the whole people' in the planned economy, to become free labor provided by individual workers in the labor market. The prime objective of the reforms is to establish a freely flowing labor market, and to structure market-oriented labor relations on this basis.

The reform of labor system and the initial establishment of market-oriented labor relations have gone through an extended process. The first stage, from the mid 1980s to the early 1990s, was one of experimentation with the state-owned enterprises (SOEs), when the government carried out some employment changes and called for the establishment of labor contract system between workers and management. In the second phase of reform, from the early 1990s to the beginning of the new century, 'coordinated reforms' to establish the modern enterprise system, were advanced to full implementation. The SOEs' workers saw their status transformed from being 'the masters of the country' in a planned economy to being the employees of a market economy. This was achieved under a succession of reforms, including those aiming at 'downsizing for efficiency', 'worker layoffs' and 'the replacement of workers' identity'. Meanwhile, hundreds of millions of farmers were leaving the land and joining the modern industry with the identity of 'migrant workers', who thereby became purely market-oriented wage earners. The industrial army made up of ex-SOE employees and rural migrants has become the new labor force, while ex-managers of the SOEs, and the owners and executives of non-public enterprises, have become the new employers in China's market economy. These emerging market-oriented workers and employers faced the challenge of developing a new labor relation. The third stage

of reform, from the beginning of the new century to the promulgation and implementation of *Labor Contract Law* in 2008, was mainly concerned with consolidating the achievements of the labor market reforms and with establishing this new labor relation with appropriate legal forms.

These initial steps were still far from what was needed for a full market-oriented transition of labor relations. The labor rights that have been confirmed and regulated by the *Labor Contract Law* are still very much based on individual labor relations, lacking the attention to collective labor relations necessary for market-based employment relationships. Just what sort of collective labour law will be appropriate to complete the transition depends on the nature of the market conditions that are emerging in China.

Individual labor relations refers to the relationship between individual workers and their employers. These actors confirm and regulate the respective rights and obligations of individual labor relations through written or oral labor contracts. Although these individual labor relations contracts may seem superficially to be fair, they are based on subordination.¹ This is unavoidable because workers must obey their employer's commands, instructions and requests to complete their specific tasks. This is the basis of workers' personal subordination, social subordination and even class subordination. Subordination of labor is the most important characteristic of the individual labor relations.²

Collective labor relations, also known as group labor relations, refers to the social relationships generated through a process of consultation between the workers' collective or their representatives, and the employers or employers' organization over working conditions, labor standards, and other employment issues. In practice, collective bargaining, collective disputes, employee participation in management all fall into this category. Collective labor relations encompasses relationships that might be established at different organizational levels from corporate, or industrial, down to the workplace. The development of collective labor relations can achieve a more manageable balance in relative power between the parties because the key actors involved, management and worker representatives, are given procedural rights. The main function of effective collective labor relations is that it enables workers to consult and negotiate with employers to influence labor conditions and labor standards as a vehicle for their solidarity and potential for collective action. In contrast with the essentially subordinate nature of individual labor relations, the characteristic of collective labor relations is one of peer to peer negotiation and consultation.³

¹ Marx pointed out that the relationship between labor and capital in market conditions is 'formal affiliation and actual subordination of labor to capital'. He also discussed the characteristics and significance of this 'affiliation' in detail. See Marx, K. 1985. *Economic Manuscript in Collected Works of K. Marx and F. Engels* vol.48, PP.3-35. Beijing: People's Press.

² Japanese Institute of Labor Law. *Modern Labor Law Lectures (1): The Basic Theory of Labor Law*, P.83, the Japanese version in January 1981. The General Labor Research Institute.

³ Chang, Kai. 2004. Laoquanlun--dangdai zhongguo laodong guanxi de falv tiaozheng yanjiu (*Theory of Workers' Rights Research on the Legal Regulation of Labor Relations in contemporary China*), pp. 80-83. Beijing: China Labor and Social Security Publishing House.

Collective labor relations provides a means for correcting for the subordination implied by individual labor relations. Without an effective process of collective labor relations, there is no means of establishing compromises between labor and capital. Without means of compromise, the interests of the workers cannot be protected, and the labor relationship cannot be expected to be harmonious and stable. The subordinate nature of the individual labor relationship means that the worker's role is unavoidably passive and inarticulate, while the collective labor relationships permit the expression of workers' collective views and preferences. The subordination of labor and the inequality of labor relations is what drives the formation of collective labor relations. In order to obtain more equal rights and status, workers need to be able to develop the organisation with which to challenge the economic power of capital on behalf of worker interests. Only then can they achieve a more acceptable, and thus more harmonious, balance and coordination of social and labor relations.

It is for this reason that countries under the market economic systems, regulate labor relations mainly through collective labor relations. The regulation of collective labor relations has become the focus of modern labor legislation. Generally speaking, employers in a market economy prefer to deal with individual rather than collective labor relations. This is because individual labor relations provide the advantage to employers in controlling the labor process.⁴ Similarly, by making use of particular tactics, such as legal constraints called 'unfair labor practices' available in some countries, employer will be predisposed to resist expressions of solidarity by workers, in order to prevent the formation of collective labor relations.⁵ Collective worker organisation offers the most credible competition to capital power. Similarly, uniting together to form the collective labor organisations is the rational choice for workers. Historically, the building of labor movements has been the main social force driving the formation of collective labor relations. The governments of different countries in different historical periods have held very varied views towards collective labor policy. Governments of the major capitalist countries have mostly experienced periods in which they have first prohibited, then restricted, and then recognized rights to association for workers. Not until World War II, had the workers' right to form collective labor relations by association been generally acknowledged worldwide.⁶ For example, in the United States, the by the National Labor Relations Act --' Wagner Act (1936 and in Japan by the Labor Relations Adjustment Act (1946), Labor Union Law (1949).

The development from individual to collective labor relations has been a feature of market economies. But this has not happened spontaneously. It has been the product of a process of compromise by different parties in labor relations. The main driving force behind collectivization has been the pressure of organized industrial conflict. The mechanisms of collective labor relations have emerged when

⁴ For the nature and characteristics of the capitalist labor process in Manufacturing Consent, please see Changes in the Labor Process under Monopoly Capitalism by Michael Burawoy, The Commercial Press, 2008.

⁵ Chang Kai. 2000. Lun budang laodong xingwei lifa (An Argument about Unfair Labor Practice Legislation). Zhongguo shehui kexue(Social Sciences in China).

⁶ Chang Kai, Zhang Derong. 1993. Gonghui fa tonglun (The General Theory of Trade Union Law). Zhongyang dangxiao chubanshe(Central Party School Press), pp41-50.

governments, faced with the disruption caused by recurrent strikes, have come to realize that institutions for collective labor relations are necessary to make economic and social development stable and sustainable. With varying degrees of reluctance, governments of market economies have thereby giving priority to the construction of collective labor relations. Likewise have many employers also come to realize that 'more stable and efficient operation will help the management get compensation brought by collective bargaining, to compensate for the rise in labor costs'.⁷

The priority of the reform of modern China's employment system has been 'employment'; that is, how to create the labor market as a market in order to allocate and use the labor efficiently. This reform has been achieved through a top-down mandatory administrative action. The priority has been very similar for China's newly emerging employers: the corporate leaders of previously state-owned enterprises and the native private enterprise owners. Their new employees were previously the workers of state-owned enterprises or were migrant workers, sharing the experience of becoming hired laborers. This new market-oriented labor relations is undeniably based on individual labor relations, offering an employment relationship that is both subordinate and unequal. Consequently, the background for the *Labor Contract Law* has been the implicit assumption that the power relationship between individual workers and employers should be fundamentally unbalanced, based upon subordination, and without means of correction.

During the process of employment reform, it is true, the designers did take the construction of collective labor relations into their consideration. This was reflected in the *Trade Union Law* amended in 1992 and the *Labor Law* passed in 1994. However, these provisions were not in a position to be implemented⁸. At the time the labor market has not yet formed and there was no experience of collective worker organization. Labor-management conflicts had not become an issue. The workers had no experience of collective consciousness and strength. The awareness of their position in the market economy was still in a process of germination. For some years the state-owned enterprise workers who had been thrown into the labor market were still sentimentally attached to the idea that they had some part in the ownership of their enterprises, and the migrant workers were not integrated into the industrial work force in terms of their social awareness. The period of 'collective unconsciousness' or 'collective inaction' of workers has been a distinctive and important phenomenon as a preliminary to the process of their forming different consciousness in the rapid social

⁷ Thomas A. Kochan, Harry C. Katz, Robert B. McKersie. 2008. *The Transformation of American Industrial Relations*. China Labor and Social Security Press, Chinese edition. pp19.

⁸ Trade Union Law is an important component of collective labor law. The 1992 Trade Union Law made specific provisions on the nature and structure of the trade union organization, rights and obligations of trade union and their members. However, due to specific political and economic environment in the formulation and promulgation of this law, it does not provide that 'safeguarding the legitimate rights and interests of workers is the basic duty of the trade unions' under the condition of the market economy.

(This content was added to the 2001 Trade Union Act Amendment.)

Also, this law doesn't have 'legal responsibility' provisions, therefore, lacks of maneuverability. In 1994, Labor Law set up a chapter of 'the labor contract and collective contract', of which Article 33, Article 34, Article 35, and Article 84 are collective contract provisions, however, the provisions are too principled and lack of conditions to be put into practice, which have brought many problems in its implementation.

transformation.⁹ As consequence of this situation of 'unconsciousness', the collectivization of labor relations has been retarded because of the lack of a basic driving force. Indeed, despite some widely publicized cases of collective action, and public concern about deficiencies in workers' collective contracts, these have been little more than rehearsals or harbingers for what might be to come. There has not yet been sufficient shift in worker attitudes to provide the impetus for the reform of collective labour law.

II *Labor Contract Law*-- A starting point for the transition towards collectivization of labor relations

The implementation of *Labor Contract Law* was an important event in the development of China's labor relations. The law has been a link between past and future in the history of China's labor legislation. It clearly signalled that, with the reform of individual labor relations a preliminary phase in the reform of employment law had been completed. But it also opened up a new starting point for the development of a legal foundation for regulating collective aspects of labor relations.

The best indication of whether a market-oriented form of labor relations is developing in China is whether there is evidence that effective protections are emerging for market-oriented labor relations. The labor contract system is an important component of the legal system of market-oriented labor relations. However, labor contract is only the legal specification of individual labor relations, and it is the only legal specification. The *Labor Contract Law* stipulates at the outset that 'this law is formulated in order to improve the labor contract system, clarify the rights and obligations of the concerning parties of the labor contract, protect the legitimate rights and interests of laborers, build up and develop harmonious and stable labor relations.'¹⁰ *Labor Contract Law* applies to the concerned parties of the labor contract, namely, employees and the the employers.

The labor contract, as the legal form for the formation of individual labor relations, is the prior and basic content of legal regulation of market-oriented labor relations. The labor contract system started with a pilot from the 1980s, and was formally launched as the main content of the reform of labor system after the promulgation of *Labor Law* in 1995. Although it has lasted more than ten years, the effect was far from perfect. In August 2005, Luli He, the Vice Chairman of the Standing Committee of the National People's Congress, pointed out (in a report to the NPC) that, 'the inspection showed , that the rate at which small and medium-sized private enterprises are achieving labor contracts was less than 20%, and individual economic organizations had lower percentage. In order to avoid their legal obligations, some employers are reluctant to sign long-term contracts with employees. The terms of labor contracts are mostly less than one year, and the tendency towards more

⁹ Academic research on workers' 'collective unconscious' and 'collective inaction' mainly focuses on workers' awareness and action status in the process of transformation of the state-owned enterprises during 1990s. The main representative works of this subject include Ching Kwan Lee (1998) 'The Labor Politics of Market Socialism: Collective Inaction and Class Experiences among State Workers in Guangzhou', *Modern China*, Vol. 24, No.1, pp 3-33; Liu Aiyu(2003) 'Workers' Options for Action in the Process of Institutional Transformation of State-owned Enterprises-- An Empirical Study on Collective Inaction', *Sociological Research*, 2003(6).

¹⁰ *People's Republic of China Labor Contract Law* (2007), Article 1.

short-term labor contracts is obvious. Some employers have abused the probationary period of labor contracts. After the probationary period was complete, the employers did not continue to employ those workers; as a result such workers got exploited, especially those who were migrant workers. Many labor contracts allowed for the terms of payment, but they did not specify the amount, and some only set out the obligations of workers and the rights of employers. Furthermore, some employers signed labor contracts without the consultation with the workers, and some even have the workers sign on the blank contracts.¹¹ Without an effective labor contract system, there cannot be regulated market-oriented labor relations. The issues raised in this report were the main driving forces that initiated the labor contract legislation.

The legislative process leading to labor contracts started from 2005, and it brought into play many different parties with different interests. The workers hoped to improve the protection of their labor rights. The employers opposed any restrictions on the autonomy of employment for enterprises and anything that might increase labor costs. The government hoped to find a balance between development needs of enterprises and protection for workers. As the *Labor Contract Law* involved almost all occupational groups, it roused considerable social concern, and provoked a fierce debate in the academic community.¹² The legislators balanced opinions from all parties, based on the realities of labor relations and essential requirements of labor legislation. They aimed to protect the worker, while at the same time taking into account the legitimate rights and interests of enterprises. The *Labor Contract Law* was, eventually, overwhelmingly passed by the government standing committees in July 2007.¹³

The promulgation of *Labor Contract Law*, and, in particular, the relevant provisions about specific legal liabilities and the fines for illegal activities, greatly promoted the development and implementation of the labor contract system. At first, the rate of adoption of labor contracts increased steadily. According to Xin Chunying, the Deputy Director of the Legislative Affairs Commission of the NPC Standing

¹¹ He Luli. Quanguo renda changweihui zhifazu guanyu jiancha zhonghua renmin gongheguo laodongfa shishiqingkuang de baogao (The report about the inspection of the implementation of *Labor Law* of the People's Republic of China by the law enforcement inspection group of the Standing Committee of the National People's Congress). 2005-12-28

¹² From March 20, 2006 to April 20, *Labor Contract Law (Draft)* was released to solicit comments from the public, and then received 191,849 comments. 'After the introduction of the draft of *Labor Contract Law*, academics concerned with *the Law* had serious differences. Chang Kai, as the representative of the 'Beijing School' held that the draft was to balance the status quo of weak position of laborers in China's labor relations; Dong Baohua, as the representative of the 'Shanghai School', argued that the Draft provided 'excessive' protection for the laborers, which did not meet with the actual situation, and the result may be counterproductive.' (Chen Xiaojin, Chen Lei. Zhongguo jiang wei laodong hetong fa fuchu daijia (China will pay price for *Labor Contract Law*). Nanfang renwu zhokan (Southern People Weekly), Nov. 200) This so-called 'North-South dispute' in academics continued until the promulgation of the Law. The main ideas of both sides can be found in two books, one is written by Chang Kai, titled Laoquan baozhang yu laozi shuangying—laodong hetong fa lun(*the protection of labor rights and the win-win situation between employer and employees*) - <*Labor Contract Law theory*>(China Labor Press,2009); the other is written by Dong Baohua, titled Laodong hetong fa de zhengming yu sikao (*Debate and thinking of the labor contract legislation.*) Shanghai renmin chubanshe (Shanghai People's Publishing House, 2011).

¹³ After 4 times of reviews, the 10th NPC Standing Committee finally adopted this Law by the voting results of 145 votes in favor to none against a person fails to vote in the twenty-eighth meeting of June 30, 2007. Xin Chunying, as a member of the NPC Standing Committee and Deputy director of the Legislative Affairs Commission of the NPC Standing Committee, said that this result indicated the legislature reached a high degree of consensus on the formulation, legislative principles and elements of architecture of *Labor Contract Law*.

Committee, the proportion of labor contracts signed by enterprises with over 1000 workers had reached 93% between January to September in 2008. Before the implementation of *Labor Contract Law*, the rate of labor contract had been less than 20%.¹⁴ In the national human resources and social protection work meeting held in December 30, 2010, Human Resources and Social Security Minister Yin Weimin estimated that the rate of labor contracts signed by above-scale enterprises would reach 97% and that the number was 65% for small enterprises in 2010.¹⁵ According to the large-scale survey by the Department of Sociology in Peking University, of seven cities (including Beijing, Shanghai, Shenzhen, Quanzhou, Ningbo, Shaoxing, Henan), the rate achieving labor contracts was generally better than this, at about 72%. At the same time, the labor contract renewal rate also increased. According to the statistics of Beijing, 11 months after the implementation of *Labor Contract Law*, the labor contract renewal rate reached 93.9%.

The tendency towards an increase in short-term labor contracts has been effectively curbed. The survey by the Ministry of Human Resources and Social Security showed that the term of labor contracts signed was mainly 3 years after the implementation of the new law. In addition, the terms of the rights for workers in labor contracts have been specified, on matters such as wages, working hours, social security payments, rest periods and vacations, occupational safety and other related content. Particularly notable was that the social insurance contribution was greatly improved.

However, there have been some new problems in the implementation of the *Labor Contract Law*. The main problems discovered were that some enterprises used various ways to avoid some provisions; there was extensive use of agency workers; and informal employment was being used to replace formal employment. , All of these counteracted the intended effects of the *Labor Contract Law*. In 2008, the year in which the *Labor Contract Law* was implemented, there was the international financial crisis which resulting in China's economic downturn, with many factories being shutdown and jobs being cut. All of this undermined hopes that the *Labor Contract Law* could provide a major protection for workers.

An intensive outbreak of labor disputes occurred after the enactment of *Labor Contract Law*. According to the data from labor and social security development statistic bulletin, after the promulgation and enactment of the *Labor Contract Law*, there was a sharp increase of nearly 50 percent labor disputes cases, and the number surged to more than 690,000 in 2008. According to the statistics from the Supreme Court, there were 280,000 labor dispute cases concluded in 2008, an increase of 94% year-on-year. This continued in 2009. The statistics show the courts accepted nearly 170,000 labor disputes cases nationally during the first half of the year 2009,

¹⁴ Laodong hetong fa shishi hou hetong qiandingle you buzhu 20% tishengzhi 93% (The labor contract signing rate increased from less than 20% to 93% after the implementation of *Labor Contract Law*), People, <http://politics.people.com.cn/GB/1026/8932537.html>.

¹⁵ Xu Bo, Zhao Chao. 2010. Renshebu:quanguo guimo yishang qiye laodong hetong qiandingle da 97% (Ministry of Human Resources and Social Security: The rate of labor contracts signed of above-scale enterprises reached 97%), Xinhua Net, http://www.cq.xinhuanet.com/news/2011-01/04/content_21781409.htm.

increased more than 30% year-on-year. Some regions experienced a particular surge: Guangdong, Jiangsu and Zhejiang had an increase year-on-year of 42%, 50% and 160% respectively in the first quarter of 2009.¹⁶

Discussing the problems of implementing the *Labor Contract Law* and the surge of labor disputes, some scholars suggest it was caused by government intervention of the labor market and excessive protection of the workers, and they proposed amending the law¹⁷. As one of those involved in the legislation, the author considers that the problems are not due to the implementation of *Labor Contract Law*, but to the extent of illegality, and that the ‘outbreak’ can be attributed to the unregulated labor relations of the past. The resolution of the problems that have occurred after the implementation of *Labor Contract Law*, does not lie in amending it and deregulation. It lies in the enhancement of collective labor relations legislation, to ensure the implementation of the requirements of individual labor relations law. It has been argued that ‘we need to stick to the *Labor Contract Law*, and on this basis improve the Labor Standards Act and Collective Contract Law etc. As a general rule, attention to labor relations regulation should be a necessary component of any policies aimed at tackling problems arising from corporate development and employment relations’¹⁸.

The main effect of the *Labor Contract Law* is to protect the rights of workers while restricting those of employers. Its purpose is to change the status of individual labor relations from one of ‘strong capital but weak labor’. But this is not enough. However long one waits, a reliance solely upon the effects of the legislation will not correct the power-balance in labor relations. It is only the collective power of workers that can influence the relative balance of power and autonomy of both sides.

The law influences labor relations in two complementary ways. The first is by directly establishing effective labor standards, by regulating the employer’s obligations, and by secure labor rights that can be implemented under government supervision. The second way arises from workers forming trade unions in order to engage in collective bargaining with employers. This enables them to both implement the rights and obligations provided by the law, and to enhance them in ways that provide labor and capital with autonomy under the guidance of the state¹⁹. The former is a form of ‘public relief’; while the latter is ‘self-help’. Public relief is mainly concerned with the regulation of individual labor relations, while self-help mostly regulates collective labor relations. Generally speaking, the former provides the basis of labour standards; the latter provides their guarantee. The former is the substantive minimum, while the latter is the means for its improvement. In other words, only the combination of adjustments of both individual labor relations and collective labor relations, can achieve a functionally balanced mechanism of labor relations regulation

¹⁶ Wang, Junxiu and Liu, Mengze. 2010. Laohefa Shishi Liangnian Laodongzhengyi jinpen (The Outbreak of Labor Disputes after two years of the Enactment of *Labor Contract Law*). Zhongguo Qingnianbao (China Youth Daily) 19 Jan.

¹⁷ Refer to Liang Huixing. 2009. Laodong Hetongfa Bixu Yao Dagai (A Big Amendment of *Labor Contract Law* is needed). Chengdu Shangbao (Chengdu Business Daily). 10th Mar.

¹⁸ Mali. 2009. Changkai: Laodong Guanxi Bixu Yifawei jian (Changkai: The Labor Relations should be on the basis of Law). Faren Magazine

¹⁹ Wang, Zejian. 1988. Minfa xueshuo yu panli yanjiu (Civil law theory and case study). Beijing: Zhongguo Zhengfa daxue chubanshe (Beijing: China University of Politic Science and Law Press)

which can resist the employers' use of arbitrary power, and also realize the goal of adjusting labor relations in line with changing economic and social circumstances.²⁰

The legislation is best seen as the start of a process. Firstly, the implementation of the *Labor Contract Law* provides a foundation on which to build the collective relations at the institutional level. As mentioned earlier, the implementation of *Labor Contract Law* has greatly improved the level of implementation of labor contracts, the duration of contracts, and the specific details of contracts. The normalization and stability of individual labor relations, which has come with the greater symbolic importance of the labor contract as an institution, increases the need to develop collective labor relations, and provides the foundation for this at the institutional level. The law already includes some provisions regarding collective contracts, in preparation for the next stage of adjustment of collective labor relations.²¹

Secondly, the *Labor Contract Law*, generally enhances the concept of the labor legality of society as a whole. The *Labor Contract Law* caused a huge debate across the whole of society. This turned out to be an unprecedented event in popular education with regard to the role of law. It popularized the idea that, whether you support this law or not, you must implement it. Otherwise, you will pay the cost of acting illegally. This has to some extent strengthened the popular awareness of *Labor Law* as 'soft law', and to this extent, is gradually strengthening awareness of the importance of employers abiding by corporate law. In the first year after the implementation of the *Labor Contract Law*, the number of labor dispute cases in Shanghai increased by 199% year-on-year; but of these, the 17% cases which have been closed have been decided in favor of the employer, increasing 5% year-on-year. This was the first time the employers' lawsuit winning rates have had a rising trend since the statistics have become available.²² This suggests that the employment behavior of enterprises is improving, and the labor relations may be starting to change from operating outside to inside the law.²³

Thirdly, the *Labor Contract Law* has enhanced workers' awareness of their rights and their collective consciousness. The impact that *Labor Contract Law* has had on workers' consciousness may be manifest in two ways. On the one hand, the popularization of the *Labor Contract Law*'s promulgation has made a large number of workers understand the legal provisions regarding their own rights, and that they can

²⁰ C • A • Morgan, labor economics(Chinese Version). 1984. Beijing: Gongren chubanshe (Workers Press)

²¹ At the beginning of the legislation of the '*Labor Contract Law*', the legislators have already considered the subsequent collective labor relations legislation, in particular the legislation of collective contract. As the collective contract separate legislation process cannot be simultaneous with the labor contract legislation, the chapter of 'special provisions' in the *Labor Contract Law* specifically set up a 'collective contract' section. To put the relevant provisions of collective contract in the labor contract legislation, could be a special case in the labor legislation, but this approach helps the adjustment of individual labor relations and the continuative adjustment of collective labor relations.

²² Shanghai Municipal Human Resources and Social Security Bureau: 2008 nian laodong zhengyi qingkuang fenxi (the analysis of the labor disputes status in 2008) http://www.12333sh.gov.cn/2007sxy/2007news/2007xwzt/200902/t20090223_1061830.shtml

²³ About the labor relations changing from operating 'outside the law' to 'inside the law, please refer to Chang kai, Qiu Jie. 2011. Zhongguo laodong guanxi zhuanxing yu laodong fazhi zhongdian—cong laodong hetong fa shishi san zhounian tanqi (The transformation of China's labor relations and the key points of the rule of the labor law—a talk at the three years anniversary after the implementation of *Labor Contract Law*). Tansuo yu zhengming (Exploration and free views).

be safeguarded through the legal means.²⁴ On the other hand, since the labor law system is far from perfect, the rights that are stipulated by the *Labor Contract Law* are still quite remote from what is found in reality. This encourages workers to consider how they are going to achieve the rights that are conferred by law, especially when the governments' supervision of labor is weak and the official trade unions appear to be ineffective. A natural consequence would be to encourage workers to unite together to build their collective power.²⁵ The advance of workers' awareness with growing collective consciousness is likely to be a significant driving force as labor relations become more collectivised.

III. The Transformation towards Collective Labor Relations—Approach and Characteristics

Because the market-oriented transition of individual labor relations has been promoted by government, and because, as a result, workers have been passively thrown into the emerging labor markets, then it would appear that the transition towards collective labor relations is being driven by both the government and workers. There are two kinds of power and two approaches in this process of the transformation towards the collectivization of labor. One is a top-down process of institution building which is led by the government, and the other is a bottom-up process which is promoted by workers themselves.

The process of constructing institutions of collective labor relations from top to bottom has been led by the party and government administration. It has been simultaneous with the revolution of labor market. The main institutional innovation has been one of promoting the transition of the trade union to one that adapts to the market economy, which has called for a revolution in trade union market behavior. According to the *Trade Union Law* of PRC, 'Defending the legal rights of workers is the basic function of the trade union. The trade union delegates and safeguards the legal rights of workers, as well as safeguards the overall benefit of the national people.'²⁶ Such regulation of trade union's functions and orientations is the basic principle for the Chinese Trade Union in dealing with labor relations. That is, the trade union must delegate and safeguard the legal rights of workers, at the same time safeguard the overall benefit of the national people; this principle is called the 'Two Safeguard' principle. Under it, in the process of labor relations transformation, the Chinese Trade Union promotes the adjustment of labor relations by building the staff

²⁴ According to the research data from May to August in 2008 by 'the implementation of the *Labor Contract Law*' research group of Shanghai Federation of Trade Union, 82.71% employees know that the *Labor Contract Law* comes into force since January 1st 2008, 87.30% employees aware that the employer' changing the labor contract conditions should through the mutual agreement from both sides, 74.06% employees believes that the full implementation of the *Labor Contract Law* is conducive to safeguarding the legitimate rights and interests of employees, and 94.29% employees would safeguard their legitimate rights through right channels when facing labor disputes. Please refer to 'Guanyu laodong hetong fa shishi qingkuang de diaocha baogao' (the research report about the implementation of the *Labor Contract Law*) by Shanghai Federation of Trade Union.

²⁵ The author used to do research about dozens of enterprises with collective disputes in Guangdong, Shanghai, Liaoning etc. from 2009 to 2010, and found that 'gongrenmen tuanjie qilai' (workers shall unite) becomes the main slogan during collective action. And one of the important topics in QQ group established by workers was how to achieve and maintain the workers solidarity.

²⁶ Section 6, Chapter 1, 'Trade Union Law of the PRC' (2001).

family, promoting democratic management, facilitating transparency in factory affairs, carrying out activities with the aim to help poor workers, taking part in the labor legislation, implementing legal aid, promoting Tripartite consultation mechanisms, organizing to safeguard legitimate rights, founding new trade union branches, carrying out collective negotiations etc.

Especially after the *Labor Contract Law*'s implementation, the All China Federation of Trade Unions (ACFTU) has placed an emphasis on the construction of trade unions in enterprises and the implementation of collective negotiations . In 2010 they publicised the 'Two Generalizations', i.e. 'promoting the generalization of founding trade unions in enterprises according to law' and 'promoting the generalization of collective negotiations in enterprises according to law'.²⁷ 'Up to September 2010, the number of ACFTU members reached 239 million, and this number had increased by 13.613 million, among which 8.398 million members are migrant workers. There are 1.408 million collective contracts, covering 2.439 million enterprises and 185 million workers.'²⁸ These accomplishments of the ACFTU have constructed the basic architecture of collective labor relations in China. They have enlarged the social influence of trade unions, and helped workers safeguard their legitimate rights.

However, the union building and collective negotiation promoted by party and government administration have also brought some problems. One problem is that as employers control the union building process, many new enterprise trade unions are no more than 'listed trade unions' or 'empty-shell trade unions'. More seriously, some new trade unions become 'bosses' unions' since they are controlled by employers; such trade unions tend always to stand by the employers' side when there are labor conflicts.²⁹ Since the party and government administration attach high importance to promoting collective negotiations and even include it their performance evaluation standards, the number of collective contracts and coverage can be 'improved' greatly, but in many places such collective contracts are useless or exist in name only. This is because by emphasising formality and neglecting contents, by emphasising quantity and neglecting quality, by emphasising political achievements and neglecting actual performance, the collective contract system deviates the original purpose of safeguarding workers' rights and improving labor relations, and becomes more a source of vanity projects.³⁰

²⁷ Zhaoguo Wang. Zai zhonghua quanguo zonggonghui shiwujie sici zhiwei huiyi shang de jianghua ('Speech on the 4th Session of the 15th Executive Committee Conference'), July 26th, 2010.

²⁸ Yue Pan. 2011. Quanguo gonghui huiyuan da 2.39yi ren Gonghui jiada tuijin 'Liangge pubian' (The Number of Trade union Members Reaches 239 Million; Trade Union Promotes 'Two Generalizations Greatly'), Renmin ribao(People Daily).

²⁹ For this phenomenon, Mr. Weilong Deng, the Chair of Trade Union of Guangdong Province, clearly stated, 'Many *trade unions* in enterprises are merely bosses' subsidiary institutions. They help workers who meet difficulties, organize activities and contests, and arouse the enthusiasm of workers, so that the workers can create value for bosses. However, when the labor conflicts become severe, *trade unions* then represent bosses' interests.' Xiaolei Zhang et al. 2010. Guangdongsheng zonggonghui zhuxi:qiye gonghui zhuxi duo bushi minzhu xuanju (Chair of trade Union of Guangdong Province: Many Chairs of Trade Unions are Not Elected Democratically), Yangcheng wanbao (Yangcheng Evening News)

³⁰ Jing Wang. 2011. Jiti xieshang tanpan zhidu xu yi laogong sanquan wei jichu (The Collective Negotiation System Should be Based on Laborers' Three Rights). Zhanlue yu guanli (Strategy and Management).

The important indicators of collective relations are trade union density and extent of collective contracts. But in order to assess whether collective labor relations have genuinely developed, we cannot only judge on the basis of the numbers of unions and collective contracts. The more important thing is whether the unions in question can really represent workers on a genuine basis of solidarity, and whether the collective contracts have been achieved through collective bargaining with generalised contents and can be implemented effectively. If trade unions and collective contracts exist in name only, collective labor relations cannot be considered to be truly established. Also, if there is no workers' solidarity and no worker participation with the trade unions as their representatives in their enterprises, there cannot be real collective labor relations. Thus, although China has the highest number of union members and collective contracts in the world, the situation of labor relations in Chinese enterprises, especially Privately Owned Enterprises (POEs) still show the characteristics of being fragmented and atomised. That is, one employer is, in effect, dealing with a group of workers as individualsthrough what are in effect individual labor relations.

The basic requirements of forming collective labor relations is a basis in workers' wishes and actions, which necessitates the direct intervention and participation of workers. The transformation from individual to collective labor relations cannot be complete without workers' participation. Because of the close connection between collective labor relations and their own direct interests, workers must also be able to utilize their own collective power and opportunity for action to promote the transition towards collective relations. This is a kind of spontaneous, bottom-up social movement. If the government's effort is best seen as a kind of external driving force, then the workers' actions should be seen as a kind of internal power. Workers' action is subject to the initiation and awakening of collective consciousness, because as long as workers still accept or tolerate the situation of individual labor relations, the transition towards collective labor relations cannot be completed. *[I could add something about the idea of 'bargaining awareness' in Western literature]* Only when workers are aware of the potential bargaining situation and of the need to stay united for collective action, can they really promote the formation of collective labor relations.

The collective consciousness of Chinese workers has tended to takeshape in the process of the market reform. In terms of the stages of market development, duringthe period of the 1980s to 2000, there were some cases of collective actions arising from the transformation of SOEs and their downsizing.³¹ But at that time, workers' understanding about both the nature of market economy and their own status and rights still remained one in which they believed themselves to be the 'owners' of the enterprises in a planned economy. , They had not yet formed the distinctive labor consciousness of a market economy. The so-called labor consciousness in a market economy is the consciousness of the working class of wage laborers that comes from

³¹ About the reviews of the workers' collective action in 1980s, please refer to Kai Chang. 1988. Gongchaowenti de diaocha yu fenxi (The Survey and Analysis of Strikes). Issue 1, Dangdai gonghui (Contemporary Trade Unions). Beijing: Worker Press.

their social status in the market-specific labor form and labor process. And the core of this labor consciousness is their consciousness of labor rights.³²The promulgation and implement of *Labor Contract Law* confirmed that urban workers had completed the transformation of their roles from the ‘owners’ to employees, and rural workers have finished the transformation from migrant workers to employees.³³ The basis of workers recognition of the issue of their labor rights was thereby authorized by law, as well as by a wider workers’ consciousness arising from the practical [position they found themselves in the market economy.

This spontaneously formed labor consciousness is quite different from Marxism ‘class consciousnesses’. It simply arises from the psychology of their group consciousness, remaining at the stage of fighting for ‘existing partial interests’³⁴ rather than arising from ‘consciousness of class historical status’. The goal of this labor consciousness is not what Marx called ‘the eventual elimination of the labor employment system’, but ‘a fair day’s work for a fair day’s pay’.³⁵ As Lenin said, history suggests that the working class can only form the consciousness of trade unionism through the experience of their own power. They need to form trade unions, bargain with factory owners and campaign with government for the laws required by workers’.³⁶Chinese workers have tended spontaneously to develop labor consciousness in a market economy, and this is trade unionism in its essence.³⁷

If we analyzed what workers are demanding in episodes of collective action in China in recent years, we find that they are just asking for more equitable treatment under the current system. This is indeed a common type of trade unionism demand. During the working class revolutionary period, reformist trade unionism was characterized as backward and reactionary. But in the emerging market-driven period of contemporary China, is widely perceived to be legal and reasonable for trade unions to campaign for their own economic interests by means of worker solidarity and negotiations within the current system. In the present system, workers are able ask to establish trade unions, and top bargain with the employers, and to strive for the enactment of essential laws, etc. All these actions are approved and supported by law. And it is these actions that are tending to promote the collectivization of labor relations in China.

³² Chang Kai. 1995. Lun laodongzhe wenhua (the Culture of Labor). Issue 2, Gongyun yanjiu (Research of Labor Movement)

³³ There is no different appellation for workers of SOEs and migrant workers in *Labor Contract Law*, and they are both called ‘employee’. This means there is no difference of legal identity between urban and rural workers, and they are all employees in the labor/employment relations.

³⁴ Lukács, George. History and Class Consciousness. Beijing : The Commercial Press, 1999. pp. 136.

³⁵ Marx, Karl. *Wage-Labor and Capital*. Marx Engels Selected Works. Beijing: People’s Publishing House, 1972. Vol.2, pp.203-204.

³⁶ Lenin and Stalin’s theory of trade unions. China Worker Press, 1981. pp.24.

³⁷Trade unionism a reformism trend in labor movement in the middle of 19th century. It worships the spontaneity of labor movement, categorizes labor movement into economic struggle, regards wage increase, labor time reduction and working condition improvement as the sole objective of labor movement, promotes class cooperation and social improvement, objects to political struggle and violent revolution where the proletariat overthrow capitalism, advocates the fight for universal suffrage and labor legislation through the union that can realize benefits of both labor and capital and achieve fundamental improvement of labor class situation, stands for legal negotiations to resolve the contradiction between labor and capital as well as sees negotiation as the fundamental method for labor class struggle. Marx had made fierce criticism to this trend.

A series of collective labor relations developments and episodes of collective action occurred after the implementation of the Labor Contract Law. Particularly notable were episodes of collective action at state-owned enterprises such as Tonghua Iron & Steel Company and Linzhou Iron & Steel Company in the summer of 2009, and the foreign-owned company ‘strike wave’ such as at Honda Nanhai in the summer of 2010. These have become symbolic for the collectivization of labor relations arising from Chinese workers’ own actions.³⁸

Those collective disputes and collective actions have some significant characteristics. First, all these collective disputes that have happened in the past two years are, by their nature, economic disputes, whose targets are the employers or the management of the enterprises. In each case the workers hoped that the government could solve their problems in a fair way. However, a new characteristic has emerged, which is that the disputes have changed from being disputes of right to disputes of interest.³⁹ Collective disputes in the past were mostly rights disputes, resulting from the infringement of some established labor right. Recent collective disputes are basically disputes of interest, usually characterized by a request for higher payment and for better and fair treatment. In general, disputes of interest do not take shape until workers are able to form some perception of their collective strength. This change in the nature of collective disputes, from disputes of right to disputes of interest, is an important feature of the current collectivization of labor relations.

The way in which these events have been mobilized is notable. Recent collective actions in China have spontaneously organized by workers, and they have been triggered by accidents rather than well-organized plans. The leaders and willingness to take action by workers emerge in the initiation and development of the action. But the workers’ spontaneous solidarity is only temporary and it tends to evaporate when their leaders have completed their mission after the problem gets resolved. It is significant, however, that the scale and scope of these spontaneous actions tends to expand. Episodes of collective action within an enterprise will often result in a chain action beyond it, and spread to industries or areas outside. This happens without any organized alliance or premeditation, which suggests that the workers’ awareness of solidarity has developed through a wider social basis rather than being just confined within the enterprise.

³⁸ As for a review of Tonghua Iron & Steel company event and Linzhou Iron & Steel company event, please refer to Chang, Kai. Guoqi gaizhi dang yifa jixing—bu guifan gaizhi shi yinfa gongren jiti xingdong de zhijie yuanyin (The Reform of State-owned Enterprise should be Carried Out in Accordance with the Law—Nonstandard Reform Is the Immediate Cause of Workers’ Collective Action). Journal of Banyue tan (Internal edition), 2009 (9). Yang, Lin. Tonggang shijian shi woguo laozi guanxi fazhan de biao zhixing shijian (Tonghua Iron & Steel Group’s *event is a milestone of the development of China labor relations*). Outlook Weekly, 2009(31). As for a review of Nanhai Honda strike, please refer to Yi, Fu and Xu, Duo. Qinli yici bagong tanpan (Experience a strike personally). Xinmin Weekly, 2010(31).

³⁹ Dispute of right refers to any disagreement on the existence of parties’ rights claimed, infringed or debt fulfilled in accordance with provisions of the law, collective contract or labor contract,. Interest dispute refers to disagreement parties have on working conditions that will form mutual duties, maintenance of existing conditions or supposed adjustment and modification. U.K. Implementation Rules of industrial relations act (1972) .ACFTU. *Selection of Foreign Laws and Regulations (Internal version)*, 1997. pp.73

Workers' collective actions and bargaining are, furthermore, mostly conducted in a relatively calm and rational way. Collective action typically takes the form of idle working at workplace rather than aggressive behavior such as demonstrations, road blocking or vandalism. Most collective disputes have been solved through collective negotiations between the labor and capital. As 'People's Daily' reported in its assessment of the 'Honda Nanhai Event': 'the whole process of negotiation between employers and employees is carried out in a rational and peaceful way. Despite thousands of workers having participated in the work stoppage and expressing their demands, the factory is in a good order and there has been no extreme and irrational behavior between labor and capital.'⁴⁰The sense of legality and the rationality of behavior of workers in these collective actions has been widely noted.

with the use of a strike as the main form of workers' collective action is often seen to be a 'normal' action in market economy for resolving conflicts between the labor and capital., But it should not be an 'everyday' behavior; more importantly, the possibility of such action should aim to be an effective 'deterrent'. Continuous 'strikes' or 'ongoing strikes' in a workplace or region indicate that there are defects in its labor relations conflict resolution mechanisms. The concentration of workers' collective actions in China in recent years indicates that there may be an intensification of conflict between labor and capital resulting from years of low wages. The position may have been reached when workers can no long stand this situation.

For an enterprise, a strike is a crisis of management, perhaps reflecting unfair pay distribution, incompetent management, and the failure in practice of the labor-capital consultation mechanism. Workers' spontaneous collective action is more of a crisis of the system or a trade union crisis within the system, which indicates the failure of local trade union organization, in representing the workers, and the failure of the collective contract to play its role of coordinating labor relation. ⁴¹Workers' frequent demand for 'trade union reorganization' as one of their collective demands further indicates the seriousness of this problem. That is, that top-down labor relation has not achieved collective transformation, and the 'Two Generalizations' are little more than a formality. This spurs workers to spontaneous actions in order to promote transformation.

For all these challenges and crisis, the government has taken the approach of 'reasonable treatment, resolution by means of labor legality'. This has generally ensured that these events during that period got proper treatment. Firstly, government views about the nature of workers' collective actions have become more accurate. They have increasingly been judged to be economic labor disputes, rather than as the 'political events violating stability'. This has proved to be an important premise lying

⁴⁰ *Li, Gang*. Bentian nanhai lingbujian chang yin laozi jiufen tinggong(Workers of Honda Nanhai automotive components plant stop work due to industrial conflict). People's Daily, May 28th, 2010

⁴¹ The author investigated more than 20 enterprises in which collective disputes had taken place in Guangdong, Jiangsu and Dalian, etc. These enterprises all have trade unions and have signed collective contracts.

behind action to resolve the disputes properly.⁴²

Secondly, the events can only be resolved according to the law, but the *Trade Union Law* of the People's Republic of China specifies that, if an enterprise or public institution is subject to work stoppage or slowdown measures, the trade union shall represent the employees in negotiations with the enterprise, public institution or other relevant authorities, and that it shall respond the employees' appeals and requirements, and thereby propose resolutions. The law requires that the enterprise or public institution shall meet the reasonable requirements raised by the employees. And the trade union shall assist the enterprise or public institution on its work so as to ensure the normal production process can be resumed as quickly as possible⁴³. For the government, after the collective labor dispute occurs, the government should not be anxious to force workers to return to work, nor compel the enterprise to increase their salary, but should play a role as a third party to create the conditions for collective bargaining. The solution of the event of the Nanhai Honda was a prominent example⁴⁴. The success of resolving the Nanhai Honda event became the model for handing collective disputes all over the country. Most of the shutdown events ended with agreements with a 20%~30% wage increase, and the enterprises facing the risk of stoppage also eliminated that risk through engaging in collective bargaining and granting a wage increase. This model of good practice contributed to the resolution of collective disputes through a rational and legal way.

The experience of collective action by the workers, and the rational attitudes adopted by all parties' towards the event, promoted the fruitful combination of the two paths encouraging the collectivization transition of labor relations, external to the enterprise and internal to the enterprise. This also promoted the transformation itself. The effects were evidenced by two basic indicators.

On the one hand, the Nanhai Honda event effectively promoted the collective bargaining. The collective actions by workers in market economy countries usually occur after the breakdown of collective bargaining. By contrast, in China the effective use of peer-to-peer collective bargaining became possible only after the outbreak of collective actions. Compared with more formal collective contracts, the sort of collective bargaining with workers being direct actors was direct collective

⁴² Source: adapted from the article on People's Daily, the article expressed the government's attitudes on identifying and solving the event. The article said, Nanhai Honda event occurred because of the low salary, both sides of the labor relations negotiated rationally, Trade Union and other relevant authorities contributed to the consultation on the basis of equality. According to the author's investigation in Guangdong, the main leaders of Guangdong province directly came to the enterprise during the shutdown of Nanhai Honda, and gave the specific instructions: the event belonged to the economic disputes and non to use the stabilization ways to deal with, the government should facilitate the labor and the management reaching the agreement. The resolution of Nanhai Honda shutdown event followed the principle.

⁴³ Trade Union Law of the People's Republic of China(2001).Article 27.Chapter 3).

⁴⁴ The writer as a legal advisor joined the whole process of the collective negotiation in the Nanhai Honda incident. Under the auspices of the labor departments of Nanhai District, the negotiation continued for more than 6 hours, and finally ended its 17 days' collective actions with a 34% increase of enterprise salary. During this period, the resolution of collective disputes in Guangdong were basically in accordance with the Nanhai Honda event model.

bargaining with some authentic market economic characteristics. This was especially true of the collective bargaining during the collective actions by workers in 2010. They not only achieved a direct increase in the salary levels of some enterprises and industries, but also directly affected the official labor market price index. In 2011, 24 provinces of the country adjusted the Minimum Wage Standard, with average growth of 22%⁴⁵. The increase of minimum wage in most regions reached the highest in history, an achievement for which the influence of the collective action and collective bargaining cannot be neglected. The workers' collective bargaining ability was demonstrated in the Minimum Wage Standard as the symbol of price of labor.

On the other hand, the events have promoted the democratizing reform of the trade union, and has strengthened the relationship between the unions and workers. It was announced by the ACFTU that the strike is a 'radical' means of action, and that it is not in favor of it: 'the strike is the last means to resolve the labor disputes'⁴⁶. As a result, none of the 2010 strikes were organised by the trade unions, but by the workers themselves. The function of the union in the process of the strike was mainly reflected in the fact that only once the strike takes place, should the trade union, especially the local union, get involved positively. Then it tended to represent and organize the workers in order to negotiate with the employers, thereby transforming the workers' action from disorder into order and solving the incident in a proper and legal way. The success of the workers' spontaneous collective bargaining was directly related to the involvement and organization of the trade unions. The workers' demand to 'reorganize the existing union' rather than to 'organize another union' also received a positive response from the union organization. For example, the Guangdong union accepted the Nanhai Honda workers' claim to reorganize their trade union. After the incident, there was a new election in the enterprise union of Nanhai Honda. The new union committee, with the supports of workers, negotiated with the employers for the second time in 2012, and won a wage increase of RMB 611, far exceeding the wage rise resulted from the shutdown negotiation of the previous year.⁴⁷The collective actions of the workers directly contributed to the combination of the unionization of workers and the popularization of the unions in the collective labor relations.

Acting as a sort of counterbalance, the spontaneous actions of the workers made up for the shortcomings of government and unions. They won the involvement and support of underlying social forces for this transition towards collectivization. Due to the momentum of the workers' collective action, the collective transition of labor relations in China has entered into a new period. Although this path has this positive

⁴⁵ 24 ge shengfen niannei tiaozheng zuidi gongzi (24 provinces will adjust the Minimum Wage Standard within this year). 2011. xin jing bao(Beijing News).

⁴⁶ Li Binsheng, Secretary of the Secretariat in ACFTU said: 'I don't approve the idea that 'strike is the last means to resolve labor disputes.' After all, using radical means to solve labor disputes neither corresponds with the national conditions in China, nor accords with the present stage of our labor relations and the fundamental interests of the workers.' See Guo, Jian. 2011. Li Binsheng: Caiyong guoji shouduan jiejie laodong guanxi maodun bufuhe zhongguo guoqing. (Li Binsheng: Using radical means to solve labor disputes doesn't correspond with the national conditions in China).www.people.com.cn.

⁴⁷ Huang, Yinglai. 2011. Nanhai bentian laozi tanpan Jinnian gongzi zaizhang 611 yuan (Nanhai Honda negotiation Increase the salary of 611 yuan this year). Nanfang dushi bao(Southern Metropolis Daily).

significance, taking account of the high social cost, it is not necessarily optimal, but it has been the way things have turned out. The big problem has become how to deal with the problems involved in the transformation of labor relations through the adjustment and improvement of the government's labor policies, and how to make the transition steadier and more orderly and to avoid provoking more social conflict and aggravating differences.

IV The adjustment and improvement of government labor policies: Goals and Requirements

If it is to facilitate the transition of labor relations towards collectivization, government labor policy will need to be adjusted. Labor policy in a market economy encompasses a range of social policies. These take the waged worker as their policy object and focus on solving the associated labor problems.⁴⁸ Labor policy equates the labor relations policy. The policy is concerned with the rights and obligations for each party to the labor relationship, and with the regulation of the operation of labor relations and of disputes resolution. Labor policy is a basic social policy issue in a market economy. Since the reforms, however, labor policy in China doesn't have an independent system and structure within in the government's policy system. It is positioned as a secondary, accompanying policy of the economic reform. This situation arises from the long-standing guiding principle of government of taking economic development as the only goal. Because of this, problems have tended to accumulate gradually and unintentionally evolved into one of the key challenges to sustainable development in China at present. As a result, the central government has made a strategic adjustment in the '12th Five-Year Plan', with the result that people's livelihood and industrial relations have become major tasks for the government's to deal with during the Plan. The improvement of labor policy has become an urgent task for the government.

The transition from the current focus on individual labor relations to collective labor relations has become a major responsibility of government. China needs to improve the labor relations system mainly adjusted by legal means and other auxiliary adjustments. This will include the establishment of a more appropriate labor law system, the implementation of collective contracts, providing rights to trade unions, and the improvement of employment relations at enterprise level. The objective of labor relations policy will be the gradual realization of labor autonomy under the government's coordination.⁴⁹

The drawing up of strong collective labor laws must be the foundation of the adjustment to more effective collective labor relations. Although China has formed a basic framework of labor policy under the market economy, it is neither perfect, nor

⁴⁸ See Dahenei, Yinan. 1048. Social Policy. Japan: Yuhikaku p1-46.

⁴⁹ Chang, Kai. 2009. Zhongguo laodong guanxi baogao(Report of China labor relations). Beijing:Zhongguo laodong shehui baozhang chubanshe(China labor and social security press).

complete. The most prominent problem is that there is no provision for the regulation of collective labor relations. Labor policies still focus narrowly on the regulation of individual labor relations. The collective labor law is still in a fragmented state.⁵⁰ Experience in other countries suggests that, after the establishment of a labor market system, legal regulation of collective labor relations become the key to labor law. In Europe and America, the meaning of 'labor law' is collective labor relations; by contrast with the regulation of individual labor relations, which is often called 'employment law'.⁵¹ In China, some of the major problems of collective labor relations lack specific treatment by the law. Examples are the boundary between workers' and employers' organizing rights; the limits placed on workers' collective action; the procedures governing the initiation and conduct of collective action; and responsibilities and obligations of trade unions in labor conflicts. The absence of any rules to follow is an important reason why some labor conflicts fail to be prevented in time, and sometimes are exacerbated. Legislation on collective labor relations must be put on the agenda. Relevant laws include '*Trade Union Law*', '*Collective Contract Law*', '*Collective Dispute Law*', '*Democratic Participation Law*' etc.⁵²

The establishment and protection of collective labor rights and interests is the core feature of labor policy. The central concept of legislation should be specifically safeguards for the 'three rights of labor', that is workers' rights to organise, collective bargaining rights, and collective dispute rights. These rights, referred to as 'basic labor rights', are the most important basic rights for laborers in the labor law.⁵³ The purpose of collective labor relations regulation is to permit the two sides of labor and management to deal with labor affairs through effective organization and processes. The core issue of collective labor relations regulation is to give workers these rights and to allow them to develop organizational strength with which to confront management. Just, by regulating individual labor relations, the main role of government is 'safeguarding rights', so its main function in collective labor relations should be 'empowerment'. In collective labor relations, the workers themselves are not just the object being 'represented' and 'protected', but they should also be the main agents of rights and actions. In circumstances when both labor and management

⁵⁰ Till now there are 9 laws passed by the National People's Congress: 'the trade union law of the People's Republic of China '(1992, 2001), 'the labor law of the People's Republic' (1994), 'the law of the People's Republic of mine safety '(1994), 'occupational disease prevention law of the People's Republic of China '(2001), 'the production safety law of the People's Republic of China '(2002), ' the *Labor Contract Law* of the People's Republic of China '(2007), 'the employment promotion law of the People's Republic of China '(2007), 'the law of the People's Republic of labor dispute mediation and arbitration' (2007), and 'the law of the People's Republic of social insurance ', etc. All these laws are adjustment of individual labor relations except *Trade Union Law* and other provisions in some laws.

⁵¹ [British]Marnah Suff, Alison Bone. 2004. *Laodong fa jichu*(Essential Employment Law).Wuhan: Wuhan daxue chubanshe. p1.

⁵² The problem has been concerned by the national legislature, who starts to make some preparations for legislation of collective labor relations . In February 2010, the National People's Congress's legal committees in the Spring Festival Experts Symposium, I suggested to speed up the collective labor relations legislation. The proposal got attention and recognition by relevant people in charge of the legislation. After the symposium, the Law Committee asked for suggestions of future academic labor legislation, and started to do research on collective labor relations legislation.

⁵³ [Japan]Zhaotian Daoci Lang. 1969. *Laodong Jiben Quan*(Labor basic rights). Japan: Jingcao Shufang.

are not in a mature relationship, the government should focus on creating an environment of legality, cultivating relationships between labor and management, and gradually expanding the degree of labor autonomy.

A central issue in the reform of labor policies is how to deal with the relationship between union organizations and the workers.. As mentioned above, the problem of the relationship between the present unions and workers in China, at a deeper level, is related to the issue of interrelationship between China's two sources of labor power and labor movements. One of these is the current authorized trade union power, which is represented by ACFTU within the established system; the other kind is the spontaneous power arising from actions of the workers outside the system. Of these two aspects of labor power, one consists of activities promoted by trade unions in an administrative hierarchy, with authority going from the top to the bottom, including union development, establishing collective contracts, conducting labor elections, [labor contest, the warmth project and so on. The other is the labor movement outside the authorized system, expressed by collective actions taken on the grass-roots workers' initiative from the bottom to the top, through actions such as shutdowns and protests.

The emergence of these two aspects of labor power and labor organisation is caused by what is in effect a split in organized labor. In a legal sense, organised labor is constituted by both the union and the workers. That is to say, the workers are the responsive aspect of labor, while the union is its authorised aspect. Trade unions and workers together form the so-called 'organised labor'.⁵⁴ But in reality, the problem of the unions losing touch with the workers is becoming increasingly serious because of their alienation from what they see as the 'administrative local union' or even the 'bosses' trade union. If trade unions inside the system fail to effectively represent and safeguard the rights and interests of the workers, those workers will naturally choose the route and actions of self-help, and thus form this uniquely Chinese phenomenon of 'two kinds of labor forces and labor movements'.⁵⁵

In the process of transition towards the collectivization of labor relations it is necessary to appreciate the dichotomy between the formal authority of the trade union hierarchy and the informal effectiveness of workplace spontaneous collective action. In recent years, the collective disputes have provided some experience. If collective

⁵⁴ Chang Kai, Derong Zhang.1993. Gonghui fa tonglun(General Theory of Trade Union Law).Beijing: Zhonggong Zhongyang dangxiao chubanshe.

⁵⁵ The academic has different point of views towards 'two kinds of labor forces and the labor movements'. One view says that the trade unions and their activities are just a kind of administrative power and behavior inside the system, and doesn't recognize them as 'trade unions'. The author thinks that the trade union movements in China have a legal basis and social foundation within the system and they represented China in the international trade union movements. This is specific trade unions and the trade union movements after the planned economy. Another view says the workers' spontaneous actions outside the system are just 'unexpected events' and 'group events', and can't be defined as 'the labor movements'. The author holds the view that if observing in the point of view of labor movement history, we will find that the spontaneous actions of the workers are the foundation of the development of labor movements. In recent years, the labor collective actions appeared in our country, which also is a kind of social action enrolling the tens of thousands of people continuing to join , have already become a specific structure and form of labor movements, though without the formal organizations and programs.

disputes and collective actions were to be properly handled, the two forces would cooperate. Otherwise, they will conflict with each other. The basis for the satisfactory resolution of the problem is to form an accurate assessment of the nature of it, and then to devise the appropriate strategy to deal with it. It should be noted that there is a rational basis for the existence of workers' spontaneous power and the consequent actions. The primary reason is that, because the trade union cannot effectively represent and safeguard the interests of workers, and workers must protect themselves. Legally speaking, Chinese law does not prohibit workers' association. According to the official interpretation of China's law, workers do have the right of association. However, workers are not permitted to establish alternative workers' associations to the official one in the name of trade union. If they attempt to, those associations cannot enjoy any of the protective rights stipulated by the *Trade Union Law*⁵⁶. We can conclude that collective actions, including strikes, are not against the law in China⁵⁷.

However, workers' spontaneous collective actions tend to be officially characterized as uncontrollable, so the authorities consider that it is necessary to guide and regulate them, with political vigilance, in order to maintain the society stability. But by simply categorizing this sort of spontaneous collective labor action as a form of political opposition has the effect of manufacturing a negative reaction. If political pressure is used to suppress this grass-roots collective action, it can only make problems more serious and complicated, thereby exacerbating the social conflict. But, in fact, even in the current political situation and legal framework, the two aspects of labor power can mutually support and complement each other⁵⁸. At present, the two aspects of organized labor have the same basic appeal, which is to maintain and improve the status and wellbeing of workers through legal means within the current system. If the two can cooperate, it will further the formation of the collective organisation of Chinese workers, as well as furthering development of harmonious collective labor relations. The key to achieving this goal is that China's trade unions should fulfill their obligations according to law and try to get rid of what workers often perceive to be an unsympathetic 'administrative local union' and 'bosses' trade union'. The trade unions should act sympathetically to incorporate into the official organisation the unofficial workplace organizations of workers. The solution of the problem lies not only in the improvement of the unions' own policies, but also the refinement and softening of the government's labor policies.

The reform of labor policy also involves appropriate choice of theoretical guidance for reform. Given China's current labor relations, it makes sense to stick to the basic

⁵⁶ In the fourth article of the *Trade Union Law* in 1950: for all associations and organizations that are not organized according to the provisions of article 3 of this act, shall not be called trade unions, and shall not enjoy the rights stipulated in this act. This is the only legal provision regarding the association other than the trade union.

⁵⁷ Chang Kai. 2010. Guanyu bagong hefaxing de falv fenxi—yi Nanhai bentian bagong wei anli de yanjiu (The legal analysis of the legality of strike--A case study of the Nanhai Honda Strike). Zhanlue yu Guanli (Strategy and Management).

⁵⁸ As for the successful cases of dealing with shutdowns in Guangzhou and Dalian in 2010, many leaders of the unions hold the view that it is the workers' collective actions improve the trade unions' status and influence and the workers have become the basic power to support the trade union. At the same time, workers support the idea that it is trade unions' positive involvement as workers' representatives that lead collective action to a good ending.

principles of the Marxist theory. But while the unitarist theory of human resources management has its practical uses, and should be used accordingly, it cannot exclude another theories.⁵⁹ Pluralist labor relations theory, which the main theoretical basis for the analysis of labor relations in a market economy, deserves to be understood and used, in order to promote the construction of harmonious labor relations.⁶⁰ Pluralist theory assumes that the interests of workers and enterprises are not necessarily the same, and that there should be institutions through which compromises can be negotiated. In choosing the appropriate model for labor relations reform, it is valuable to place the accommodation of conflicting labor relations interests as the basic goal. But it is only a goal. The appearance of conflict arising from divergent interests in labor relations is normal and inevitable under market conditions at certain stages and within particular economic settings. If they are properly handled, the resolution of these conflicts of interest will promote the healthy development of labor relations. At the same time, so far as is possible, it is reasonable to pursue the ideals of win-win cooperation between the labor and management. The general principle should one of setting a goal of harmonious labor relations, while still admitting and resolving conflicts, in order to win-win labor relations through legal processes.

⁵⁹ It is a common trend to use the theory of human resources management to guide labor relations' adjustment. The case can explain the trend is the Dep. of Labor and Social Security has renamed to the Dep. of Human Resources and Social Security. Obviously, it shows the government's pursuit of value. Another example is the government is trying to promote the experience of Zhejiang Transfar Group. The experience is using the theory of human resources management to improve enterprise labor relations, rather than to use labor laws to adjust the labor relations. See Transfar group Co., LTD: Chuanhua jituan goujian hexie laodong guanxi de shijian he zuofa (Practice of Transfar group establishing harmonious labor relations). May of 2011. The core idea of the experience is the enterprise boss has enlightened concept to respect employees, improve their working and living conditions to satisfy the workers. This is just an individual case. Its experience can't be widely promoted.

⁶⁰ Dunlop' labor relations system theory is the representative of pluralism labor relations theory. It advocates that both the labor and the management have their own rights and disputes to deal with and adjust, but it shall stay in the existing system, through the procedural rules and entitative rules, aim at realizing the common development for both sides.