

# THE EMERGENCE OF TEMPORARY STAFFING AGENCIES IN CHINA

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## I. INTRODUCTION

“Labor dispatch,” “talent dispatch,” “human resources outsourcing”: these are some of the names used in China to describe the temporary staffing industry, an increasingly controversial practice in China.<sup>1</sup> The industry rests on a triangular employment relationship amongst a private employment agency, employees, and the corporate customer. Like temporary staffing agencies in the West, the private employment agency in China dispatches its employees to work for the corporate customer, and the corporate customer pays the agency a fee in exchange for the labor of the employees and the staffing service it receives. In China, supporters of the industry see it as a cost-cutting, human resource-management tool as well as a policy tool for solving unemployment. Its critics consider the industry as a means for companies to make workers more “flexible” with fewer protections.<sup>2</sup>

“Temporary staffing agencies are a form of labor market intermediary, meeting the needs of client companies for contract workers of many kinds. With a core business of *labor supply*, temporary staffing is a very particular kind of people-based service activity, and one that by its very nature is always *delivered* locally.”<sup>3</sup> Because of these characteristics, coupled typically with a trans-local and even global recruiting strategy, Coe, Johns, and Ward argue that the staffing industry must operate within national legal framework

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1. Banzhu.com., Zhonghuarenmingongheguo laodonghetongfa caoan xueshuyantaohui [Academics Debate on the Labor Contract Law] (draft 2008), *available at* <http://free.banzhu.com/l/laodong/prog/showDetail.asp?id=154> (in Chinese).

2. YOU JUN, BLUE BOOK OF THE CHINESE EMPLOYMENT (2007).

3. Neil Coe, Jennifer Johns & Kevin Ward, *Mapping the Globalization of the Temporary Staffing Industry*, 59 THE PROFESSIONAL GEOGRAPHER 503, 504 (2007) (*italics in original*).

rather than either local or transnational ones. At the same time, many temporary staffing firms in China are transnational operations, serving the outsourcing needs of their transnational clients. This globalization of the staffing industry must therefore be situated in China's specific national context.

Furthermore, Jamie Peck and Nik Theodore argue that the transnational staffing industry does not merely respond to national labor-market conditions, but rather is an *active collective agent* in re-regulating local labor markets.<sup>4</sup> Temp agencies "actively shape the growth in contingent labor through their role in labor-market intermediation, by selling employers the cost-cutting and labor-controlling virtues of workforce flexibility while mobilizing contingent workers and brokering connections to employers."<sup>5</sup>

I approach the operation of this industry in China in the following way. Although China is in broad terms an illiberal polity, the Chinese state is increasingly adopting a neo-liberal way of governing or neo-liberal governmentality. Ironically, it does so in order to strengthen Party-state rule. Following Michel Foucault, "governmentality" refers to forms of governance that utilize a network of state and non-state actors, with the specific aim of steering individuals (both individual persons and individual institutions) to govern themselves in the market economy.<sup>6</sup>

Data for this paper are drawn from my personal interviews with managers in three labor dispatch companies, government officials in the Bureau of Labor and Social Security, and the Bureau of Personnel (the two bureaus were recently merged as the Bureau of Human Resources and Social Security) in Shanghai and its surrounding areas, and Wenzhou, Hangzhou, and Ningbo, Zhejiang Province. Data are also drawn from document analyses. The theoretical orientation of the paper rests on a growing literature on the temporary staffing industry.<sup>7</sup> Although an important edited book on China's labor

4. Jamie Peck & Nik Theodore, *Contingent Chicago: Restructuring the Spaces of Temporary Labor*, 25 INT'L J. URB. & REGIONAL RES. 471 (2001) [hereinafter Peck & Theodore, *Contingent Chicago*]; Jamie A. Peck & Nikolas Theodore, *Temped Out?: Industry Rhetoric, Labor Regulation and Economic Restructuring in the Temporary Staffing Business*, 23 ECON. & INDUS. DEMOCRACY 143 (2002) [hereinafter Peck & Theodore, *Temped Out?*].

5. Peck & Theodore, *Contingent Chicago*, *supra* note 4, at 477.

6. Michel Foucault, *Governmentality*, in THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY, WITH TWO LECTURES AND AN INTERVIEW WITH MICHEL FOUCAULT 87 (Graham Burchell, Colin Gordon & Peter Miller eds., 1991).

7. LEAH VOSKO, *TEMPORARY WORK: THE GENDERED RISE OF A PRECARIOUS EMPLOYMENT RELATIONSHIP* (2000). Peck & Theodore, *Contingent Chicago*, *supra* note 4; Peck & Theodore, *Temped Out?*, *supra* note 4; Neil Coe, Jennifer Johns & Kevin Ward, *Flexibility in action: the Temporary Staffing Industry in the Czech Republic and Poland*, 40 ENV'T & PLAN. A 1391 (2008).

dispatch industry was recently published in China,<sup>8</sup> thus far, I have encountered little scholarly work in English on the staffing industry in China, nor are there reliable data on the scope of this industry. To my knowledge, this paper is thus a first attempt to understand the domestic context within which the staffing industry operates. Thus, it seeks to make some contribution to understanding the globalization of the temporary staffing industry, an *active agent* in creating the global flexible labor regime.<sup>9</sup>

The emergence of governmentality as a leading theme in labor and employment regulation can be traced as a historical development. The Chinese central government initiated the emergence of a labor market by introducing the labor contract into its lifelong employment system in 1986.<sup>10</sup> The aim was to make Chinese labor less “rigid,” and thereby meet a key demand of the foreign capital that led China’s post-reform economic development. This move toward a more “flexible” labor force became much more abrupt as China prepared to enter the World Trade Organization in 2001.

The real causal processes informing this change do not turn exclusively on the role of nation-state adhesion to international treaties. By participating as the manufacturing site in an expanding set of global commodity chains, the Chinese government and domestic firms have also been compelled to adopt global rules of governance that operate directly along the chains rather than indirectly through the nation-state. Local governments, the international organizations such as the International Labour Organization (ILO) and the World Bank, both international non-governmental organizations (NGOs) and domestic NGOs on workers’ rights; and firms have been involved in labor governance, exercising influence at different nodes along the chains.<sup>11</sup>

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8. LAODONGPAIQIAN DE FAZHAN YU FALÜ GUIZHI [THE DEVELOPMENT AND LEGAL REGULATION OF LABOR DISPATCH] (Zhou Changzheng eds., 2007).

9. Jamie Peck & Kevin Ward, *Constructing Markets for Temporary Labour: Employment Liberalization and the Internationalization of the Staffing Industry*, 5 GLOBAL NETWORKS 3 (2005).

10. DOUG GUTHRIE, *DRAGON IN A THREE-PIECE SUIT: THE EMERGENCE OF CAPITALISM IN CHINA* (1999); JOHN KNIGHT & SONG LINA, *TOWARDS A LABOUR MARKET IN CHINA* (2005).

11. Human Rights in China (hereinafter HRIC) *Institutionalized Exclusion: The tenuous legal status of internal migrants in China's major cities* (2002), available at [http://www.hrichina.org/fs/downloadables/video/HRIC\\_Full\\_Report\\_Nov\\_2002.pdf?revision\\_id=10322](http://www.hrichina.org/fs/downloadables/video/HRIC_Full_Report_Nov_2002.pdf?revision_id=10322); Liu Kaimin, *The Impact of Multinational Corporations' Code of Conducts on China*, in *STUDIES ON INTERNATIONAL LABOR STANDARDS AND LABOR LAW UNDER GLOBALIZATION* 142 (Shi Meixia & Lisa Stearns eds., 2005); Global Labor Strategies, (hereinafter GLS), *Why China Matters: Labor Rights in the Era of Globalization* (2008), available at [http://laborstrategies.blogs.com/global\\_labor\\_strategies/2008/03/new-gls-report.html](http://laborstrategies.blogs.com/global_labor_strategies/2008/03/new-gls-report.html).

Central to the staffing industry's growth has been the way in which the staffing industry has established its members as trusted mediators in the existing Chinese context of predominantly state- and network-mediated employment. As I will discuss in the following section, the staffing industry promotes ISO 9000 and codes of conduct to establish this trust in job applicants and client firms alike. The self-regulatory basis for instilling such trust is itself a move away from longer established bases for trust in China, which have been based on personal and social connections. This transition is broadly in line with the Chinese government's approach to "active employment" policy: "workers must rely on themselves to seek jobs; the market mediates employment; and government promotes employment."<sup>12</sup> In this sense, then, the staffing industry contributes to turning the Chinese jobseekers into a contingent labor supply (especially migrants and those laid off during the economic restructuring of the state sector): its operations mesh with capital's insatiable but fickle need for numerical flexibility in the labor force.

Both domestic and foreign firms increasingly consider using labor dispatch companies. It appears in particular that what they offer (labor dispatch services and human-resources outsourcing) is increasingly seen as the best way to get around Labor Law (1994) and Labor Contract Law (2007) regulations. This is particularly true of the new rules in the Labor Contract Law regarding the length of labor contract, the conditions under which workers may be fired, and so on. When labor dispatch companies in China sell their business to firms, a central selling point is that by using labor-dispatch services and by outsourcing human resources operations, firms not only save transaction costs on the labor market, but also focus more on their strategic goals.<sup>13</sup> Beyond these more immediate growth pressures, the staffing industry has grown in China since its introduction to China in the 1990s for another important reason: rising unemployment. Because large numbers of secure jobs have abruptly been made redundant, especially in the state sector, the government's active employment policy encourages the unemployed to seek part-time, temporary, and seasonal work. Labor dispatch services are considered the most efficient to help the unemployed find this kind of

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12. Ministry of Labour and Social Security (hereinafter MoLSS), *Zhongguo Jiji de Jiuye Zhengce: Quanguo Zaijiuye Gongzuo Huiyi Wenjian Huibian*, [China's Active Employment Policies: Documents from National Re-employment Work Conference] (2002) 15 (2003).

13. See, e.g., <http://www.rjjob.com>.

work.<sup>14</sup> Labor dispatch companies, in turn, also represent themselves as making a contribution to solving China's unemployment problem—the number one social problem deemed by the government. In the following sections, I sketch the history of labor market structure and regulation since the late 1970s; and I explore the characteristics and problems of the contemporary temporary staffing industry in the light of the orientation that I have just outlined.

## II. CHINA OPENS UP

China started its economic reform program in 1978 to open up its economy and foreign policy to the outside world, and to reform its domestic socialist economy. It did so amidst a wave of economic restructuring in both developing and developed countries. China's subsequent participation in a mounting number of “global commodity chains” (IT, fashion, toys, and so on)<sup>15</sup> was facilitated by this uncanny coincidence. China provided the perfect destination for outsourcing manufacturing activity from the developed world.

China's economic reform has been unusual because of the direct leadership role of foreign direct investment (FDI), mostly from Hong Kong and Taiwan.<sup>16</sup> Foreign capital was attracted to China primarily because of its relatively cheap labor, preferential taxation, and lax labor standards. Special economic zones, the most famous pioneer of which was Shenzhen in the Pearl River Delta, were created so that the emerging experiment with markets and capitalism could be conducted in controlled areas.<sup>17</sup> Since Deng Xiaoping's famous 1992 tour of southern China, China's economic reform picked up speed: transition to a market economy, albeit a “socialist market economy,” appeared as the official economic development policy.

Local governments were granted tremendous power in economic decision making.<sup>18</sup> They compete with each other to attract FDI by offering better investment deals. These deals include tax holidays, built infrastructures, and guaranteed supplies of “cheap and docile” labor. In this competitive context in the very earliest days of a modern Chinese labor market, it is not surprising that local bureaus of

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14. People's Daily, *Growing Number of Laid-off Workers Turn to Employment Agencies* (2002), available at [http://english.peopledaily.com.cn/200209/13/eng20020913\\_103161.shtml](http://english.peopledaily.com.cn/200209/13/eng20020913_103161.shtml).

15. IMMANUEL WALLERSTEIN, *THE ESSENTIAL WALLERSTEIN* 221–23 (2000); GARY GEREFFI & MIGUEL KORZENIEWCKI, *COMMODITY CHAINS AND GLOBAL CAPITALISM* (1994).

16. BARRY NAUGHTON, *THE CHINESE ECONOMY: TRANSITIONS AND GROWTH* (2007).

17. GEORGE LIN, *RED CAPITALISM IN SOUTH CHINA: GROWTH AND DEVELOPMENT OF THE PEARL RIVER DELTA* (1997).

18. NAUGHTON, *supra* note 16, at 406–10.

labor and social security, local trade unions, and local bureaus of personnel set up "labor introduction agencies" of their own to help supply foreign investors with much-needed labor. In these special economic and/or development "zones," foreign firms also brought with them capitalist labor practices, that in turn, created competitive pressure for domestic firms involved in joint ventures or supply agreements to follow the capitalist labor practice of foreign firms. Consequently, domestic firms have also opted for flexible labor practices, following the practices of foreign firms.<sup>19</sup>

China's position in contemporary global commodity chains has begun as a supplier of low- and medium-end manufactured goods produced by cheap and flexible labor. As Kelly Hu points out, "China is becoming the global OEM [original equipment manufacturing] production center, especially since its inclusion in the World Trade Organization."<sup>20</sup> As Hu further points out, "brand-sticking production" is a Chinese term that vividly expresses the nature of OEM production—"Chinese manufacturers take charge of the manufacturing process for famous brand names."<sup>21</sup> The Pearl River Delta is famous for "brand-sticking production" in toys, sportswear, and clothes, with Hong Kong, Taiwanese, and Korean as contractors.<sup>22</sup> Since the early 2000s, the Pudong Economic Development Zone in Shanghai and its surrounding areas have become the main destination of outsourced IT industries from Taiwan, the world's leading IT contract manufacturers.<sup>23</sup> Taiwan-invested IT firms in China also brought its mantra of "cheaper, better, faster" in order to meet the demands of their brand-name buyers for cost reduction, quality assurance, and just-in-time production and delivery.<sup>24</sup> The logic of China's success in capturing "brand-sticking production" in global commodity chains, compounded with the local government officials' developmentalist orientation, has meant that workers are made as flexible and cheap as possible. The ready supply of internal migrant labor has meant that companies and local governments can continue to rely on a supply of cheap and flexible

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19. MARY E. GALLAGHER, *CONTAGIOUS CAPITALISM: GLOBALIZATION AND THE POLITICS OF LABOR IN CHINA* (2005).

20. Kelly Hu, *Made in China: the cultural logic of OEMs and the manufacture of low-cost technology*, 9 *INTER-ASIA CULTURAL STUD.* 27, 28 (2008).

21. *Id.*

22. Liu, *supra* note 10.

23. ANDREW ROSS, *FAST BOAT TO CHINA: CORPORATE FLIGHT AND THE CONSEQUENCES OF FREE TRADE LESSONS FROM SHANGHAI* (2006).

24. Murray Cooke, *The politics of greater China's integration into the Global Info Tech (IT) supply chain*, 13 *J. CONTEMP. CHINA* 491, 499 (2004).

labor for this purpose. Additional labor supplies have become available because of widespread redundancies in China's state-owned and collectively-owned enterprises. This government-initiated move dismantled many workers' lifelong employment and the associated social welfare provided through work units in the state sector. In its place, a labor market has emerged that is overwhelmingly characterized by flexible labor practices, a process facilitated in law and policy by the Labor Law of 1994 and the government's active employment policy (2002).

### III. AN EMERGING LABOR MARKET

China's economic reform entailed the building of a labor market. Under the socialist economy, jobs in state sectors were all allocated according to plan rather than by market mechanisms. No work unit/danwei could hire or fire its staff independently. Instead, the local bureau of labor assigned job quotas to each danwei every year. Once people were allocated jobs, they had them (and the associated benefits) for life until retirement: this was the iron cladding of the so-called "iron rice bowl." In return, employees declared political loyalty to the Party.<sup>25</sup>

However, not all urban household registration/hukou holders worked in state or collectively-run danwei. There were those who worked in neighborhood-run danwei, and the majority of them were women. These jobs did not offer job security or social welfare benefits, at least not on the same scale as state or collective danwei. Moreover, the rural majority were excluded from the danwei and their benefits: these constituted over 70% of the Chinese population. The hukou system was central to creating an entrenched rural-urban divide, with important implications that have carried over into the present. Notwithstanding important if ambiguous gains that Chinese peasants gained from successive waves of land reform, this divide maintained peasant migrants as "second class citizens" in their own country.<sup>26</sup>

The "iron rice bowl" was therefore only ever enjoyed by some residents with urban hukou. Further, these guarantees in China's former centrally planned economy were not the so-called "standard employment relation" (SER) that Vosko and others have discussed in

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25. ANDREW WALDER, *COMMUNIST NEO-TRADITIONALISM: WORK AND AUTHORITY IN CHINESE INDUSTRY* (1986).

26. DOROTHY SOLINGER, *CONTESTING CITIZENSHIP IN URBAN CHINA: PEASANT MIGRANTS, THE STATE AND THE LOGIC OF MARKET* (1999).

the west, even granting that the Western SER was only ever normative and was never truly universal in application.<sup>27</sup> The Mao-era Chinese labor system needs to be understood on its own account. In contrast to the West where standard employment represented the compromise between the capital and labor after the Second World War, the “iron rice bowl” under the socialist planned economy did not operate in a labor market. Rather, it was a privileged status that some urban residents enjoyed in exchange for their political loyalty to the Party.

#### *A. Toward Flexible Employment*

During the early period of economic reform, the job allocation system in urban areas came to be seen as too “rigid.” Building a labor market in China entailed above all the functional separation of state agencies from economic enterprises, and the separation of these enterprises from “social” responsibilities. A key goal of reform was therefore to turn state-owned enterprises (SOEs) into modern profit-making enterprises. Reforming SOEs in this way was considered the key to urban economic reform. Reducing so-called surplus labor in these enterprises on the grounds of economic rationality was deemed essential to improving the efficiency of China’s state-owned enterprises.<sup>28</sup> But an abrupt turn to an open labor market under these conditions was seen to be inconsistent with public order. This concern was all the greater, given that the basis of Party-state legitimacy lay in its self-proclaimed role of protecting peasants and workers.

In this context, labor contracts were officially introduced in 1986. Anybody hired after 1986 was officially to be on contract. Three types of contract were defined: the fixed term contract, the non-fixed term (or open-ended) contract, and the project-based contract. The introduction of these labor contracts officially started the death-watch for lifelong employment in the state-owned and collectively-owned enterprises, and thus for the end of the iron rice bowl.<sup>29</sup> By the end of 1997, 97.5% of urban workers were on contract.<sup>30</sup>

As the Ministry of Labor and Social Security’s Blue Book of Chinese Employment points out, the Labor Law of 1994 essentially treats the fixed-term labor contract as the new norm or standard. But

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27. PRECARIOUS EMPLOYMENT: UNDERSTANDING LABOUR MARKET INSECURITY IN CANADA (Leah Vosko ed., 2006).

28. MoLSS, *supra* note 12, at 14.

29. GUTHRIE, *supra* note 10, at 87.

30. YANG YANSUI & ZHAO JIANGUO, VARIOUS JOB & FLEXIBLE EMPLOYMENT MECHANISM 63 (2006).



Article 20 of the Law states that those who have been with an employer for over ten years can request a *non*-fixed term contract, and by agreement between worker and employer, such a contract is to be signed at that point. In 1994, those who fell in this category were workers employed before the introduction of labor contracts in 1986, a population soon to be the targets of massive layoffs. This stipulation was therefore the government's effort to protect its SOE workers at a sensitive moment. Since then, the Blue Book states that fixed-term labor contracts have in practice been shortened, meeting most firms' preferences for flexible labor.<sup>31</sup> Ironically, we can speak of "standard" employment in the sense used in the West (non-fixed term employment with social benefits in a labor market) as a relatively recent development, and then only as a category that was being eroded from its very inception. When "non-standard" employment is used in the Western context, the standard employment relation—a full time, open contract with social benefits—is the proper frame for comparison. However, when "non-standard" employment is contrasted with "standard" employment in China, the *latter* is understood to be the fixed-term contract or even the project-based contract, and the context is an emerging labor market with many transitional pressures that relate to a one-time wave of massive dismissals from some of the most privileged workers. "Standard" employment in the Chinese context today thus refers clearly to what would be described in the West as a form of "precarious" employment: that is, "forms of work characterized by limited social benefits and statutory entitlements, job insecurity, low wages, and high risks of ill-health."<sup>32</sup>

Such precarious employment is often referred to as "flexible employment" by the Chinese government, but as "informal employment" by the ILO.<sup>33</sup> The government's choice of words is not entirely a matter of optics. As some Chinese scholars point out, flexible (informal) employment conditions in China do differ from those that prevail in many other developing countries. First, flexible employment is encouraged by the Chinese government as a specific response to the problem of re-employing the masses of former workers laid off from the state sectors. Second, and for related reasons, flexible employment in China is much more organized and

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31. YOU, *supra* note 2, at 503.

32. PRECARIOUS EMPLOYMENT, *supra* note 27, at 11.

33. Peng Xizhe & Yao Yu, *Liqing Feizhengguijiyue gainian, tuidong feizhengguijiyue fazhan*, [Clarify the Concept of Informal Employment to Promote the Development of Informal Employment], 10 SOCIOLOGY 80 (2004)

less “informal,” with more government intervention than equivalent employment in many other developing countries.<sup>34</sup> The abundant labor pool of internal migrants, a key precondition of China’s rising share in the world’s manufacturing capacity, further swells the ranks of workers in “flexible” employment. The Western categories of standard and non-standard employment, like the category of truly informal employment that is abundant in most of the developing world, do not help us understand the categories of work that have emerged from the profound changes specific to the Chinese labor market.

The fortunate older workers lost their “iron rice bowl” in the mid-1990s when the state-owned enterprises were forced to shift to profit-making companies. These reforms included large-scale mergers and acquisitions; outsourcing non-core state businesses to small- or medium-private firms, while retaining core industries; and diverting the surplus labor created out of the state sector.<sup>35</sup> Workers who were laid off from the SOEs and collectively owned enterprises were not called the “unemployed,” rather they were called “off-post.” They were still officially attached to their workplaces. The central government proposed a stop-gap measure in 1998 to smooth the transition for job-seekers from relying on the state to relying on the market.<sup>36</sup> Employers were required to set up re-employment service centers to help their “off-post” workers find jobs. To qualify as “off-post” workers, and hence to use the services these centers provided, workers had to be “permanent” workers under the system that prevailed before the introduction of the labor contract in 1986 and be laid off because of company restructuring. Off-post workers as a category were thus a direct legacy of the “iron rice bowl”—the state still tried to look after its permanent workers, the former “masters of the state.”

However, off-post workers were required to sign a contract with the re-employment service center. In this contract, the off-post workers agreed either to look actively for work or to accept jobs referred to them by the center. In return, these workers received a “basic living guarantee” of no more than 120% of local unemployment insurance, and the center continued to pay both for the workers’ training and the employer’s portion of the workers’ previous social benefits. According to the contract, all benefits would

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34. *Id.*

35. MoLSS, *supra* note 12, at 26.

36. CHEN SHAOHUI, FROM EMPLOYMENT UNDER PLANNING TO EMPLOYMENT UNDER MARKET [CONG JIHUA JIUYE DAO SHICHNAG JIUYE] 253–73 (2003).

be withdrawn if the off-post workers twice refused work referred to them or if they did not find employment within three years. In any case, off-post workers under these contracts who were still unemployed after three years would also end their relationship with their employers (1998–2001).<sup>37</sup>

Overwhelmingly, the jobs that off-post workers found could be described as the less desirable “flexible” labor.<sup>38</sup> According to a study conducted by the All China Women’s Federation for the occasion of tenth anniversary of the 1995 UN Conference on Women (held in Beijing), off-post female workers found it extremely difficult to get into formal employment.<sup>39</sup> While the public sector shrank, the private sector expanded, and share-holding companies, joint ventures, individual households (*getihu*), and private enterprises have all overwhelmingly preferred more flexible employment categories.<sup>40</sup>

The clear empirical trend in China’s labor market is toward flexible (informal) employment without protection. A social security system (unemployment insurance, pension, medical care) was introduced in the mid-1990s to facilitate the move toward a labor market. However, because social security is financed locally, and the costs are shared among individuals, local government and employers, and because these provisions only cover people with local, urban hukou, social security coverage as a fraction of the total workforce has been low.<sup>41</sup>

On the other hand, these uncomfortable realities are poorly reflected in raw employment statistics, even within the category of “off-post” employees. The point is to focus on how many employees accepted more flexible employment. According to statistics from the fifth national census and the 66-city survey of employment and social security conducted by the Ministry of Labor and Social Security in 2002, fully two-thirds of those who found employment in the two years before the survey was conducted, had found part-time jobs.<sup>42</sup> According to the study done by All China Women’s Federation I mentioned earlier, the percentage of women with urban hukou having flexible employment is 62.9%, a figure 8.4% higher than their male counterpart. But as the study also points out, this number would be

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37. *Id.* at 275–308.

38. YOU JUN, BLUE BOOK OF THE CHINESE EMPLOYMENT 26 (2005).

39. Jiang Yongping, *Women’s Employment in China*, in REPORT ON GENDER EQUALITY AND WOMEN DEVELOPMENT IN CHINA (1995–2005), 35, 46–47 (Tan Lin ed., 2006).

40. YANG & ZHAO, *supra* note 30; YOU, *supra* note 37, at ch. 5.

41. *Shehuibaozhang tizhi gaige gongjian [The Battle of Social Security System Reform]* 1–19 (Zheng Bingwen ed., 2005).

42. YOU, *supra* note 38, at ch. 5.

much higher if flexible employment in formal sectors (e.g., laborers dispatched to work in the state sector; non-full-time workers in the formal sectors), and migrant workers were included.<sup>43</sup>

As I will discuss in the next section, laid-off workers have also become the main targeted group of labor dispatch companies, most of which are run by companies that laid off these workers in the first place. These labor dispatch companies dispatch laid-off workers to work in service sectors characterized with precarious employment: cleaning, domestic service, security guard, and so on. However, government considers labor dispatch companies an institutional support in the labor market, an intermediary between workers and the labor market for laid-off workers. Thus they are viewed as contributing positively to solving unemployment.<sup>44</sup>

SOE reform is not the only impetus behind the important role now being accorded to labor dispatch firms. Besides the SOEs and core government administration, it also includes non-profit and non-production work units (*shiye danwei*). "This designation includes scientific research institutes, educational institutions, as well as government-sanctioned social and professional organizations (e.g., the Consumer Rights Association), health services, cultural organizations, and athletic organizations."<sup>45</sup> Key accountability mechanisms within the state sector itself have generated an important separate rationale for the growth in labor dispatch companies.

In the Chinese system that governs both the core civil service and not-for-profit *danwei*, an agency in the state sector is assigned a certain authorized staff size. The state then allocates money for these salaries and all the associated benefits. Reforming the state sector as a whole was thus aimed at reducing the total size of the state sector, and make all agencies more efficient wherever possible. This meant reducing authorized staff size at all levels, and hence the total members on the official government payroll.<sup>46</sup>

The reduction of government-authorized staff size provided good opportunities for labor dispatch companies to provide not-for-profit,

43. Jiang, *supra* note 39, at 45–46.

44. Beijing Municipal Bureau of Labor and Social Security (BMBLSS), *Beijing shi Laowupaigian zuzhi guanli zaixin banfa* [Provisional Regulations of Beijing Municipal Labor Dispatch Organizations] (1999) [hereinafter BMBLSS, *Provisional Regulations*], available at <http://www.law999.net/law/doc/c004/1999/06/28/00034946.html>; BMBLSS, *Fazhan Laowu Paigian, Chujing Linghuo Jiuye* [Develop Labor Dispatch to Promote Flexible Employment] (2005) [hereinafter BMBLSS, *Develop Labor*], available at <http://www.hbpai.com/news.asp?newsid=230>.

45. DANWEI: THE CHANGING CHINESE WORKPLACE IN HISTORICAL AND COMPARATIVE PERSPECTIVE 7 (Lü, Xiaobo & E. Perry eds., 1997).

46. *Id.* at 25–64.

non-production employees who would not be counted against the official limits on the government's payroll. The goal of reforming this sector, as Zhao Libo points out, is "to delink this sector from state finance, differentiate the sector, decentralize, and make the sector flexible."<sup>47</sup> The key measure seems to be the introduction of a new hiring system: shiye danwei are granted independence in hiring and firing; and employees sign contracts directly with employers.

A brief summary can now be offered as a prelude to a discussion of the current labor dispatch system. Reforming the SOEs is considered essential for China's transition to the market economy. Reducing the size of non-production and the non-profit sector as well as the administrative sector is hailed as making the state agencies more responsive to business needs, thus facilitating China's transition toward a market economy. Much of the "iron rice bowl" has been smashed, and people are encouraged to embrace market, either by seeking more flexible employment or by creating their own businesses. Further, in a document called "Document 12," issued jointly by the Central Committee of the Party and the State Council, the Chinese government officially encourages laid-off workers to seek employment through flexible employment: part-time jobs, temporary jobs, seasonal jobs, and flexible jobs. These jobs are typically insecure, with low pay, and little social protection.<sup>48</sup> Having outlined the Chinese government's effort to smash the "iron rice bowl," I will now turn to discuss the government's top-down model of regulating the emerging labor market in order to shed light on the emergence of China's temporary staffing industry. But first, a brief discussion of the industry's names and origins is needed to grasp the development trajectory of the industry.

#### IV. THE LABOR DISPATCH INDUSTRY

As I mentioned at the beginning of the paper, many names are used to describe the industry. These different names reflect the diverse origins of the industry in China. Labor dispatch as a triangular form of employment relationship was first used in representative offices of foreign companies in the late 1970s. Others started as labor intermediaries, charging jobseekers service fees, but then gradually

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47. ZHAO LIBO, SHIYE DANWEI GAIGE: GONGGONG SHIYE FAZHAN XINJIZHI TANXI [THE REFORM OF NON-PRODUCTION AND NON-PROFIT WORK UNIT: EXPLORING THE NEW INSTITUTIONAL DEVELOPMENT OF PUBLIC SECTOR] 236 (2003).

48. ZUIXIN JIUYE CUJIN FALÜ ZHENGCE ZHIDAO [THE LATEST POLICY GUIDANCE ON PROMOTING EMPLOYMENT] 103 (2007).

got into the business of labor dispatch. One manager told me her company has shifted from a job brokerage firm to a labor dispatch firm because it makes more money in the business of labor dispatch.<sup>49</sup>

### A. *Names and Origins*

Foreign services companies were set up to service representative offices of foreign companies in China, mostly in Beijing, Shanghai, and other coastal cities, and primarily in the early days of reform from the late 1970s to mid-1980s. According to the State Council 272 document (1980), "Temporary Stipulations on Offices of Foreign Companies in China," the offices of foreign companies in China had to ask the local foreign affairs office or a local government-appointed work unit to help rent office space and hire employees, because these firms' offices were not legal persons in China. Foreign service companies arose under government direction, in part for labor dispatch—hiring Chinese employees on behalf of the foreign firms. But the employees remained employees of the foreign service companies. Companies of this kind have since expanded into human-resource work, and their clients are no longer limited to the Chinese offices of foreign companies. For example, one of the largest labor-dispatch companies today, the Beijing Foreign Service Human Resource Company, started out as Beijing Foreign Service Company (FESCO) in 1979. Its official Web site states, "the company was the first to dispatch the first Chinese employee to foreign company in China. Twenty six years later, FESCO has become a company that provides diverse and all comprehensive human resources services to foreign companies, Hong Kong and Taiwanese companies, and foreign financial institutions in China."<sup>50</sup>

By contrast, "labor introduction institutes" were originally set up under local bureaus of Labor and Social Security in the 1980s, initially to be intermediaries finding employment for the "sent-down youths" of the Cultural Revolution. Many in this population category, now in middle age, were returning to the cities from lengthy political relocation in the countryside. The institutes were really a continuation in a long-standing policy problem: how to employ the burgeoning urban youth population of that generation.<sup>51</sup>

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49. Personal interview, in Wenzhou, Zhejiang Province (Feb. 20, 2008).

50. [http://www.fescogroup.com/jt\\_jj.htm](http://www.fescogroup.com/jt_jj.htm).

51. THOMAS BERNSTEIN, UP TO THE MOUNTAINS AND DOWN TO THE VILLAGES: THE TRANSFER OF YOUTH FROM URBAN TO RURAL CHINA (1977).

In the early 2000s, state-owned enterprises also set up labor dispatch companies of their own, to dispatch workers laid off from their own operations amidst the large-scale privatizations of that period. Labor dispatch represented a second step in handling this surplus workforce, after the shrinking SOEs closed similarly-purposed re-employment centers. Labor dispatch was considered an efficient way to find re-employment for laid-off workers who still needed institutional support to find work. Their emergence meant that institutional support for workers had been shifted from state agencies to market institutions. These workers were destined mostly for the company's former subsidiaries or franchises, its subcontractors and share-holding companies.

"Labor exchange centers" were also set up as intermediaries, but between migrant labor and labor-intensive manufacturers, and with local government sponsorship. Migrant-sending governments (Henan, Sichuan for example) and migrant-receiving governments (Beijing, Shanghai, Shenzhen, for example) both set up labor exchange centers to coordinate supply and demand of migrants. The goal was to achieve "orderly migration," or migration only for those who had jobs in hand.<sup>52</sup> Labor dispatch companies run within the labor bureau are also seen to be finding jobs for laid-off urban workers, as well as helping in the orderly transfer of rural labor to the cities.

Some privately-owned "labor brokers" also operate as intermediaries, catering to the needs of migrants looking for work in the cities. These labor brokers have been the target of periodic government crackdowns: some have acted illegally, and have been said to be in the business only to "exploit" migrant workers. This typically means high fees to migrants for jobs that were promised but often failed to materialize. The response to such rogue market actors by the government is a telling indicator of the general orientation of policymakers. In government-published brochures on the rights of migrants, migrants are now being educated about the difference between a legal and an illegal labor broker. Some labor brokerage (intermediary) operations have become labor dispatch companies: among these are both labor introduction agencies and labor exchange centers. The pointed claim of some labor dispatch companies that they only charge fees to employers might be a way by which firms seek to distinguish themselves from illegal and (in the view of workers) illegitimate labor brokers.

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52. YOU, *supra* note 2, at 512–15

Since 1993, university graduates were no longer allocated jobs. With this development, the Bureau of Personnel also entered the business of high-end labor brokerage, under the name “talent exchange center.” This marked the current division of labor between the Bureau of Personnel and the Bureau of Labor and Social Security in the staffing industry: the former is in charge of “talent” (university graduates); and the latter “labor.”<sup>53</sup> However, with both bureaus directly or indirectly in the labor-dispatch business, they often find themselves competing with each other to capture market share at the margins between these two population categories. It is perhaps for this reason that the Ministry of Labor and Social Security and the Ministry of Personnel were recently merged as the Ministry of Human Resources and Social Security.

This divide also points to the frequently puzzling public-private divide that currently prevails in China. Some organizations involved in the business of labor dispatch and human resources outsourcing are officially considered “non-profit” organizations, in the limited sense that non-profit organizations need to be approved by government, are not officially “firms” (qiye), and hence do not have to pay taxes. But the services they provide are in fact for profit.

This complexity points to conflicting incentives for many organizations in the staffing industry. These issues deserve a brief detour in the inventory of staffing-industry organizations. The complexity reflects the fact that cozy relationships between the public and private are often necessary in China to get things done; it is also a means by which government can keep an eye on non-government organizations, which is a more general concern of maintaining Party-state leadership in Chinese society. At the same time, non-profit organizations do not necessarily want to move away from such cozy relationships, and do benefit from them. Labor dispatch organizations under the Bureaus of Personnel, and of Labor and Social Security, are commonly of this view. On the one hand, government agencies have the role of ensuring that laws are followed; on the other hand, local governments see accumulation as their number one concern: these indicators are also linked directly to their political career and personal benefits. This can lead to practical conflicts between the promotion of accumulation and the guarantor of such laws as those concerning workers’ rights. Some local governments are themselves said to be

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53. See, e.g., Dayoo.com, *Daxuesheng youxin paiqian [University Graduates turn to Labor Dispatch to Seek Jobs]* (2004), available at [http://gzdaily.dayoo.com/gb/content/2004-11/08/content\\_1802568.htm](http://gzdaily.dayoo.com/gb/content/2004-11/08/content_1802568.htm) (in Chinese).



active in either violating laws or trying to bypass them. As Lee points out, this fits into a larger pattern of “decentralized legal authoritarianism”: “the twin strategy of decentralized accumulation and legalistic legitimation of authoritarian rule.”<sup>54</sup>

Returning now to the inventory of staffing industry names and origins, human resources outsourcing and labor-dispatch companies were set up as pure profit-making commercial ventures in the late 1990s. The timing was no coincidence. The ILO passed Convention 181 on Private Employment Agencies in 1997, legitimizing this form of employment relation, even though China has not ratified the convention as a whole. The Ministry of Labor and Social Security sent a delegation to the ILO at this time to find out more about private employment agencies.<sup>55</sup> Further, the ILO issued a guide on private employment agencies for its members.<sup>56</sup>

The ILO-inspired trends in the contemporary staffing industry envision a model triangular employment relationship, in which agencies act as employers, workers as employees of the agencies, and client firms as receiving services in the form of labor from agencies.<sup>57</sup> Organizations that act only as labor brokers are seen to represent the past, while labor-dispatch and human-resource firms are considered part of the modern service sector, in line with the global practice of the staffing industry.<sup>58</sup> Some of the above mentioned agencies and companies, originally set up to deal with specific task and target specific groups, are now transitioning to become profit-making companies. This is encouraged, as a move away from acting as labor brokers to taking up the business of labor-dispatch and human-resource outsourcing.

Modern labor dispatch companies continue to exist under bewilderingly different ownerships in China: state-run and privately-run firms coexist with joint ventures with major global firms such as Manpower, Randstad, Kelly, and Adecco. The staffing industry is now touted as belonging to a much larger modern service sector in China (a “sunrise industry”). China’s modern service sector still occupies a relatively small percentage of its overall economic growth.

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54. CHING-KWAN LEE, AGAINST THE LAW: LABOR PROTESTS IN CHINA’S RUSTBELT AND SUNBELT 10 (2007).

55. International Labor Organization (hereinafter ILO), *Chinese Delegation Visits ILO to Learn About Private Employment Agencies* (June 28, 2007), available at <http://www.ilo.org/public/english/employment/skills/download/esnews.pdf>.

56. ILO, *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement* (2007), available at <http://www.ilo.org/public/english/employment/skills/download/peaguide.pdf>.

57. Vosko, *supra* note 7, at 95.

58. *Id.* at 137–56.

But to become truly “modern and industrialized,” many Chinese are now looking to build the modern service sector into the largest segment of the national economy.<sup>59</sup> The staffing industry is therefore under a subtle pressure to conform with a format that represents a widely-desired future for China’s overall economic development.<sup>60</sup> Because this transition is not fully achieved, either in the staffing industry or in China as a whole, these pressures are reflected in an often puzzling approach to the naming of firms. Because labor dispatch companies and their distinctive triangular employment relationship are still new to China, old names for the organizations in this industry are still used in Chinese, while new names (reflecting modernizing aspirations) are commonly used in English. One and the same organization can have more than one name for different purposes and different audiences. So for example, the White Paper of Shanghai Talent Service Association uses the older name “Talent Service” in Chinese, but also uses the name “Shanghai Human Resources Consulting Association” in English. To emphasize this change in the nature of their business, some companies will intentionally point out that they are not “intermediaries” (zhongjie).

*B. The Staffing Industry and the Laws*

As Peck and Ward argue, the temporary staffing industry most likely finds its new market in a country where deregulation of the otherwise highly regulated labor market is occurring. Japan and Germany are the latest examples in this regard.<sup>61</sup> In China, the Chinese government has been eager to develop a labor market in order to attract foreign direct investment and boost economic growth. It took massive labor protests to prompt the government to finally pass the National Labor Law in 1994. However, the Labor Law has provisions that are too vague and general to implement. The labor market is increasingly moving toward flexible employment. During this period, the staffing industry mostly appealed to state monopolies such as Tobacco, Banks, and Telecommunication and some well-known foreign firms. Other sectors, especially small- and medium-sized companies did not turn to staffing industry because their employment relations are already flexible. It again took massive labor

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59. See, e.g., THE REPORT ON DEVELOPMENT OF SHANGHAI’S ECONOMY (2006-2007) (Zuo Xuejin & Chen Xiong eds., 2007).

60. *The White Paper*, (Shanghai Rencai Zhongjie Xiehui [Shanghai Talents Intermediary Association] ed., 2007); Manpower, *Manpower Inc. to be the Pilot Global Foreign Multinational Corporation to Obtain a Temporary Staffing License* (2007).

61. Peck & Ward, *supra* note 9.

protests to get the government in action to draft a Labor Contract Law in 2005. Consequently, a Labor Contract Law was passed in 2007 so that employers face much stricter rules to sign labor contracts with their employees, and the labor dispatch industry finally has its national regulation. Not surprisingly, the staffing industry experienced tremendous growth in the past few years when firms try to sever themselves with their employees in anticipation of the Labor Contract Law.

The drive to attract foreign investment informed the Chinese government's effort to build a "rule-of-law" society on the wreckage of Mao's "rule of man." Most of the laws passed in the earliest stages of economic and legal reform are thus in the areas of contracts, taxation, and foreign business. The purpose was to provide a rational-legal framework for a market economy to develop and to protect foreign investors in China.<sup>62</sup> However, as Chinese labor relations expert Chang Kai argues, regulating labor relations was not considered important at the initial stage of Chinese law making, at least in comparison with the cardinal importance attached to attracting foreign investment.<sup>63</sup>

However, the rapid expansion of non-state ownership under these initial conditions rapidly expanded labor conditions that were widely seen as both precarious and objectively horrible. Spontaneous labor protests proliferated, and with this as a backdrop, the government finally passed a national Labor Law in 1994. The Labor Law is significant on several points. First, it provides a legal framework regulating labor relations between employers and employees. Workers, especially those in non-state-owned enterprises, can resort to the Law to fight for their rights. Second, the Law signals the government's turn from regulating labor relations administratively, which was the typical method of governance in state owned enterprises, to legal means, which is congruent with the active parties in the emerging labor market. Finally, the existence and terms of the Law suggest that the Chinese government admits that workers and employers might have conflicting interests, and that workers are in a disadvantaged position relative to owners and management. This is certainly implied in the very idea that workers might need a Labor Law to protect their rights. Given the real scale of much more informal labor arrangements, this legal contractual arrangement was

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62. Donald C. Clarke, *Legislating for a Market Economy in China*, 191 CHINA Q. 567 (2007).

63. CHANG KAI, THEORY OF WORKERS' RIGHTS: RESEARCH ON THE LEGAL REGULATION OF LABOR RELATIONS IN CONTEMPORARY CHINA 24-30 (2004).

not a trivial gain. There is therefore much truth in H       Piquet's balanced assessment, "China's Labor Law is very much in tune with broader trends identified in other parts of the world: it is partially based on the flexibility and efficiency paradigms, but this trend is counterbalanced by important developments with respect to the protection of workers' rights."<sup>64</sup>

That said, the more significant overall point is that workers have been reconceived and reorganized as individual subjects, selling their labor on a labor market. Before, workers had leverage over SOE management, because they were officially celebrated as "the masters of the socialist state." Now, when dealing with the inherently unequal relations in the modern workplace, the principal resort that workers have in the state structure are laws that work from the premises of the lonely status of a legal individual who is party to a contract.<sup>65</sup>

Other aspects of the Labor Law are significant in assessing its potential and its limitations. For instance, the Law focuses heavily on the termination of labor contracts (articles 23–32). As Cooney and his associates point out, its provisions "do not address contracts formation in any detail . . . the Labour Law has very little to say about when a labour contract comes into existence, what the default terms are, how the contract may be amended, when a contract or contractual agreement is invalid or the consequences of invalidity."<sup>66</sup> The Law assumes that employer and employees are equal in the contractual relationship. Article 17 states, "[C]onclusion and alteration of labour contracts shall follow the principle of equality, voluntariness, and agreement through consultation."

Most employers simply read this article's emphasis on voluntarism and mutual agreement, not as a guarantee for workers' freedoms, but as a license for themselves not to sign labor contract with their employees at all. Their ability to do this in real terms is great. In the first place, the employers' bargaining power is enhanced by the tight labor market in China. Second, the Law provides only administrative enforcement powers to local labor bureaus to issue warnings and fines for violations of the Law (articles 89–105). The developmentalist orientation of local governments, mentioned earlier,

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64. H       Piquet, *Chinese Labor Law in Retrospect: Efficiency and Flexibility Legitimized*, in *THE CHINESE PARTY-STATE IN THE 21<sup>ST</sup> CENTURY: ADAPTATION AND THE REINVENTION OF LEGITIMACY* 39, 51 (Andre Lalibert   & Marc Lantaigne eds., 2008).

65. Huang Qiaoyan, *Laodongfa de zhongzhi yu laodongfa de xiugai [The Principle of the Labor Law and its Amendment]*, in *STUDIES ON INTERNATIONAL LABOR STANDARDS AND LABOR LAW UNDER GLOBALIZATION* 195, 201 (Shi Meixia & Lisa Stearns eds., 2005).

66. Sean Conney et al., *China's New Labour Contract Law: Responding to the Growing Complexity of Labour Relations in the PRC*, 30 UNSW L.J. 789 (2007).

makes it difficult for agencies at this level to enforce such a law. Further, both foreign and domestic companies have found ways to get around the contract signing requirements. For example, the use of apprenticeships and labor dispatch services has expanded significantly, and these workers are not covered by the contract requirements.<sup>67</sup>

Increasingly, employers do not sign any labor contracts with workers, but instead employ them informally. According to a report reviewing the ten-year implementation of the Labor Law, fewer than 20% of small- and medium-sized state sectors in China have labor contracts with employers even though the Labor Law stipulates that labor contracts must be signed.<sup>68</sup> About 12% of migrant workers signed labor contract with their employers.<sup>69</sup>

The staffing industry's attractiveness to client firms in recent years have mostly been in the domains of cost reduction, numeric flexibility, and risk aversion in relation to employing labor. One manager of a labor dispatch company told me in an excited tone that labor dispatch company has amazing employment formula: "employers who manage workers don't use workers, while employers who use workers don't manage workers."<sup>70</sup> In the company's publicity handout, it hails labor dispatch as a new method of employing labor—employers use labor but do not provide for them. Such a new method of employing labor, as the publicity handout to its client firms claims, helps reduce operating costs; helps reduce those on the payroll, yet at the same time expands its numbers of employees; helps reduce labor disputes; and helps customers to develop and rationally use their human resources.<sup>71</sup>

In both China and elsewhere in the world, customers turn to labor dispatch companies as an act of "distancing." The staffing industry in China has also been actively selling its attractiveness to its corporate customers. Lucille Wu, Managing Director of Manpower Greater China said, "Manpower can help our clients increase their business efficiency by offering flexible workforce solutions and managing associates to achieve the highest productivity. And we operate under strictest bylaw discipline to fully protect our associates'

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67. GALLAGHER, *supra* note 19, at 76–81.

68. YOU, *supra* note 2, at 451.

69. Research Office of the Ministry of Labor and Social Security, *Nongmingong gongzi he laodongbaohu wenti yanjiu baogao* [The Report on Wages and Labor Protection of Migrants], in ZHONGGUO NONGMINGONG DIAOYAN BAOGAO [THE REPORT ON CHINA'S MIGRANTS] 201 (Research Office of the State Council ed., 2006).

70. Personal interview, Wujiang, Jiangsu Province (June 28, 2007).

71. A copy of the publicity literature was given to the author at the time of the interview.

benefits and welfare.”<sup>72</sup> Specifically, corporate customers of labor-dispatch companies can satisfy their needs for numeric flexibility, reduce key costs, including payroll taxes; move their contributions to workers’ social security benefits from their wage bill to a tax-deductible cost; pay labor-dispatch workers lower wages than contract workers for the same job; and reduce the transaction costs and risks involved in employing workers such as hiring and firing. Further, because labor dispatch workers are forced to work harder to keep their jobs, their presence on the job puts pressure on contract workers to work harder as well. The main clients of labor dispatch companies in recent years have been foreign-invested enterprises (FIEs), state-monopoly industries such as power, tobacco, telecommunication, and banks, as well as government and non-production, non-profit government agencies.<sup>73</sup> FIEs use labor dispatch companies because they want to present themselves as not violating China’s Labor Law by not signing labor contract with their employees. Therefore, turning to labor-dispatch companies to recruit workers gets around contract signing without violating the Labor Law. Many small- and medium-sized companies do not use labor dispatch companies because they simply don’t bother signing labor contracts.

As part of the dwindling state sector, workers in state monopolies are paid well with good benefits. In order to reduce labor costs, these companies turn to labor-dispatch companies. These supply them not only with non-core workers, but with core workers as well. According to a special report in *Nanfang Daily*, one-third to two-thirds of employees of some large state-owned enterprises are labor-dispatch workers.<sup>74</sup> Government agencies use labor-dispatch companies because of severe official staff quota constraints. Consequently, labor dispatch has become an important way for government agencies to reduce their official size.<sup>75</sup> For example, China Central Television had at least 5000 labor-dispatch workers, twice the size of the full-time permanent workforce. This made CCTV the largest employer of labor-dispatch employees in non-profit and non-production

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72. Manpower, *supra* note 60.

73. YOU, *supra* note 2, at 502–22.

74. Cao Haidong, *Tebiebaodao: Zhongshihua de laowupaiqian fengbo* [The Controversy over Labor Dispatch in China Petrochemical Corporation: a Special Report] (2007) [hereinafter, Cao, *The Controversy*], available at <http://www.nanfangdaily.com.cn/zm/20071213/jj/200712130063.asp>; Cao Haidong, *Tebiebaodao: Laowupaiqian de feizhengchang fanrong* [The Abnormal Prosperity of Labor Dispatch: A Special Report] (2007) [hereinafter Cao, *The Abnormal*], available at <http://www.nanfangdaily.com.cn/zm/20071213/jj/200712130064.asp>.

75. YOU, *supra* note 2, at 517–20.

government agencies.<sup>76</sup> Local governments encourage labor-dispatch company development because the industry is considered useful in solving unemployment much more efficiently than public employment agencies.<sup>77</sup>

There is much evidence of abuse in the triangular employment relationship. Both labor-dispatch companies and their customers took advantage of the lack of national regulation to maximize profits at the expense of workers' working conditions. For-profit companies who turn to labor dispatch companies operate under wide-spread international assumptions that China is a paradise for cheap labor, and they demand numeric flexibility. Labor-dispatch companies are also profit-making organizations. Indeed, I was told by managers of two labor dispatch companies that the business was highly profitable.<sup>78</sup> The White Paper of the Shanghai Talents Intermediary Association, the official association of labor dispatch companies in Shanghai, reported that industry revenues were increasing drastically. For local governments facing the tasks of promoting economic growth and solving unemployment, labor-dispatch companies can "kill two birds with one stone."

But the one obvious consequence is that Chinese jobseekers are increasingly pushed into precarious work. When labor disputes arise, both the labor-dispatch company and its customer deny accountability because each claims that it does not have employment relations with the employees. And this creates new considerations associated with the industry that are of special concern to the government. These concerns turn on the fact that labor disputes have been on the rise over the years, and they are compounded by the fear of "migrant labor shortage."

Many workers, especially internal migrant workers, have also been the victims of widespread illegal labor brokers and illegal labor-dispatch companies. This has occurred in part because the burgeoning labor dispatch sector has been operating without national regulations, and the local regulations of the sector were aimed primarily at promoting employment for workers laid off from SOEs and collectively-owned enterprises, rather than to maintain high levels of

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76. Cao, *The Controversy*, *supra* note 74; Cao, *The Abnormal*, *supra* note 74; Cheng Qijin, CCTV 'Guifanyonggong' Zhenxiang [The Truth behind 'Standard Labor' of the CCTV [China Central Television]] (2007), available at <http://www.nanfangdaily.com.cn/zm/20070816/wh/whxw/200708160034.asp>.

77. BMBLSS, *Provisional Regulations*, *supra* note 44; BMBLSS, *Develop Labor*, *supra* note 44.

78. Personal interview, Wujiang, Jiangsu Province (May 10, 2007); Personal interview, Wenzhou, Zhejiang Province (Feb. 20, 2008).

worker protection. Consequently, many critics argue that the labor dispatch system in particular undermines the protection of workers' rights.<sup>79</sup>

In more recent years, numerous "public-order disturbances" are everyday occurrences in both rural and urban China.<sup>80</sup> Accelerated social polarization is being pushed into the national and international spotlight with increasing openness.<sup>81</sup> The leadership of Hu Jintao and Wen Jiabao has marked a widely noted shift from the previous leadership's single-minded pursuit of GDP growth. Instead, a top stated priority is to build a "harmonious society" and to foster "people-centered" development. The rationale behind this shift can be explained in pragmatic terms: without social harmony, economic development will be derailed; without being seen to respond to widespread social insecurity and suffering amongst urban workers, the Party-state would open itself up to doubts about its self-proclaimed role as the champion of workers. But the new position on a harmonious society and people-centered development is emphatically not a radical move: it merely aims to regulate capitalist development and to prevent it from running out of control.<sup>82</sup>

It is in this context that the recent Labor Contract Law was drafted, starting in 2005. According to the Chinese government, the Labor Contract Law is aimed at improving workers' rights at the workplace, especially migrant workers' rights; and at providing more security to an otherwise increasingly "flexible" (i.e., relatively precarious) labor force.

The public was invited to comment on the first draft of the Labor Contract Law. This consultative procedure in itself is a significant indicator of the country's move toward a "rule-of-law" state, and the loudest voices in the process certainly conform with the view that the "rule-of-law" tendencies in China today serve developmental goals.

The lobbying efforts of foreign business associations in China were quite telling, both of the extent to which the government was under new pressures that were opening a gap between government drafters and members of these key circles. In particular, the American Chamber of Commerce in China and the European Chamber of Commerce lobbied strenuously against regulating the

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79. Cao, *The Controversy*, *supra* note 74; Cao, *The Abnormal*, *supra* note 74.

80. *Mass Incidents Involving Labor Dispute on the Rise*, XINHUA NEWS (2007), available at [http://news.xinhuanet.com/english/2007-07/24/content\\_6425086.htm](http://news.xinhuanet.com/english/2007-07/24/content_6425086.htm).

81. Joseph Fewsmith, *Social Issues Move to Center Stage* (2002), available at [http://media.hoover.org/documents/clm3\\_JF.pdf](http://media.hoover.org/documents/clm3_JF.pdf).

82. Cf. KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (1957).



labor market. Their main expressed fear was that the Labor Contract Law would increase labor costs, thus making them less competitive. Some even threatened to take their businesses to cheaper places such as Vietnam. But domestic capital also lobbied against the Law.<sup>83</sup> Some legal experts also argued that the Law's labor standards were set too high for a country with cheap labor as its main resource.<sup>84</sup> The staffing industry associations lobbied especially strenuously against two articles in the draft. First, each labor dispatch company was to deposit no less than 5,000 yuan for each of its employees in a government-designated bank account. Second, when a dispatched worker had worked for one year in a corporate client of a dispatch firm, and if the corporate client intends to continue to use the worker, then the labor contract signed between the labor dispatch company and the employee was to be terminated, and the corporate client was to sign the labor contract with the employee instead, becoming the employee's new employer.<sup>85</sup> The final version of the Law took out both articles. Now the labor dispatch company is obliged only to sign labor contracts of at least two years' duration with its employees. The lobbying efforts of the staffing industry have thus retained the overall pattern of high labor flexibility in China, albeit on a modestly higher standard.

However, the drafting of the Labor Contract Law also mobilized domestic and international labor activists directed at both the lawmakers and at the companies. Some high-profile firms also broke with the collective position of the major business associations. Under international pressure, "Nike has virtually repudiated the efforts of the United States Chamber of Commerce in Shanghai (AmCham) to lobby against the law. And the E.U. Chamber of Commerce has reversed its opposition to the law and renounced its threat that its member companies may leave China if the law passed."<sup>86</sup>

Of critical importance to workers' rights (and simultaneously to corporate fears of rising labor costs) is the Law's insistence on a

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83. US-China Business Council (hereinafter USCBC), *Comments on the Draft Labor Contract Law of the People's Republic of China* (2006), available at <http://www.uschina.org/public/documents/2006/04/uscbc-comments-labor-law.pdf>; GLS, *Undue Influence: Corporations Gain Ground in Battle over China's New Labor Law* (Mar. 2007), available at [http://laborstrategies.blogs.com/global\\_labor\\_strategies/files/undue\\_influence\\_global\\_labor\\_strategies.pdf](http://laborstrategies.blogs.com/global_labor_strategies/files/undue_influence_global_labor_strategies.pdf).

84. Banzhu.com, *supra* note 1; DONG BAOHUA & YANG JIE, LAODONG HETONGFA DE RUANZHOU LUO: RENLIZIYUAN GUANLI DE YIGXIANSU YU YINGDUI [THE SOFT LANDING OF CONTRACT LABOR LAW: THE IMPACT ON HUMAN RESOURCES MANAGEMENT AND ITS RESPONSES] (2008).

85. Shanghai Talents Intermediary Association, *supra* note 60, at 19.

86. GLS, *supra* note 83.

written contract and more detailed provisions to enforce contract signing. Under the first draft, “if an employer failed to enter into a written contract with workers, the law implied a non-fixed term contract between the employer and employee.”<sup>87</sup> Transnational firms demanded and received a revision of this provision. In the end, the Law gave an employer in this instance a one-month grace period to sign. Article 10 of the Law now stipulates, “[W]here a labor relationship has already been established without concluding a labor contract in written form at the same time, parties shall conclude a labor contract in written form within one month as of the date of using the worker.” In a distinction that the present article has already described, the Labor Contract Law distinguishes between three categories of contract: contracts with a fixed period, labor contracts without a fixed period, and labor contracts with a period to complete the prescribed work (article 12). The business community was most fearful of the provisions on contracts without a fixed term (article 14). Some sounded alarms that labor contracts without a fixed term are just like the old days of the “iron rice bowl.”<sup>88</sup> Besides stipulating that those who have worked with the employer for “an uninterrupted term of 10 years” shall be able to ask for a contract without a fixed period, “unless the worker proposes to conclude a labor contract with a fixed period,” (article 14) the Law also stipulates that “in case any employer fails to sign a labor contract in written form with a worker after one year as of the date of using him, it shall be regarded that the employer and the worker has concluded a labor contract without a fixed period” (article 14). The Law also provides barriers to dismissal in terms of circumstances and the financial consequences of dismissal (articles 36–44).

The Labor Contract Law also provides regulations governing the labor dispatch sector for the first time (articles 57–67). It recognizes the fundamental trait of modern labor dispatch arrangements: a triangular employment relationship (article 58). It provides that “the labor contract between the labor dispatch service provider and the dispatched workers shall be a labor contract with a fixed term of more than two years, and the remunerations thereof shall be paid by the labor dispatch service provider on a monthly basis. During periods when there is no work for the workers, relevant remunerations shall be paid to such workers by the labor dispatch service provider on a

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87. *Id.* at 13–14.

88. Lan Yugui, *Laodonghetongfa bei yaomohua le* [The Demonization of the Labor Contract Law], available at <http://www.chinanews.com/cn/cj/plgd/news/2008/03-10/1186917.shtml>.

monthly basis at the minimum salary as prescribed by the people's government of the region where the labor dispatch service provider is situated" (article 58).

In order to prevent shoddy business by labor-dispatch companies, the Law introduces a system of licensing and registration, requiring firms to "be established as prescribed by the Company Law and have registered capital of no less than 500,000 yuan" (article 57). It also stipulates that the labor dispatch company and its customer sign a service contract "regarding the posts for dispatched workers, the number of dispatch workers, the term of dispatch, the amount and payment of remunerations and social security premiums, and the liability for breach of agreement" (article 59). The Law also limits labor dispatch to "temporary, assistant or substitute posts in general" (article 66).<sup>89</sup> However, what constitute "temporary, assistant or substitute posts in general" are vague, and thus leave room for business to exploit.

The Labor Contract Law created much anxiety in business circles about the prospects of rising labor costs as a result of the Law's strict rules on the formation and termination of labor contracts.<sup>90</sup> Consequently, on the eve of the Law coming into effect, there were numerous reports of companies trying to sever their employment relations with their employees through "reverse labor dispatch": employees already hired directly by firms are "asked" to sign labor contracts with a company-designated labor-dispatch company, and the workers are then dispatched by the latter to the original employer.<sup>91</sup> Some companies even ask labor dispatch companies to bid openly for business, in order to drive down costs further.<sup>92</sup> However, it can be argued labor dispatch companies grow much faster due to the anticipated implementation of the Labor Contract Law. According to the above-mentioned White Paper issued by Shanghai Talents Intermediary Association, the industry's revenues in 2004 were 6.5

89. Labor Contract Law of the People's Republic of China, (adopted at the 28th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on June 29, 2007 and shall enter into force as of Jan. 1, 2008), available at [http://www.bjreview.com.cn/document/txt/2007\\_10/16/content\\_80896.htm](http://www.bjreview.com.cn/document/txt/2007_10/16/content_80896.htm).

90. Mark Lee, *China Labor Law Comes into Force; May Raise Manufacturing Costs*, available at <http://www.chinapost.com.tw/business/asia/%20china/2008/01/02/137331/China-labor.htm>.

91. *Bufeng Qiye wei guibi labodongfa zishi paiqiangongsi taobi yonggong zeren* [Some Companies Set up their own Labor Dispatch Companies to Circumvent the Labor Contract Law] (Xue Song ed., 2008), available at [http://www.cnss.cn/xwzx/zl2/ldhtf/rdjj/200802/t20080221\\_178295.html](http://www.cnss.cn/xwzx/zl2/ldhtf/rdjj/200802/t20080221_178295.html); Xue Song, *Sishier min nongmingong zhuanggao zhongshihua jialaowupaigian* [Forty two Migrant Workers Accuse China Petrochemical Corporation of Fake Labor Dispatch], available at [http://www.cnss.cn/xwzx/zl2/ldhtf/rdjj/200804/t200804/t20080403\\_184262.html](http://www.cnss.cn/xwzx/zl2/ldhtf/rdjj/200804/t200804/t20080403_184262.html).

92. Cao, *The Controversy*, *supra* note 74; Cao, *The Abnormal*, *supra* note 74.

billion yuan; in 2005, its revenues went up to 10.4 billion yuan, with estimates for at least 13 billion yuan in 2006. Media reports also showed many companies turned to labor dispatch companies to recruit workers, some even turning their own workers directly into labor dispatch workers and forcing them to sign their labor contract with labor dispatch companies.<sup>93</sup>

It is still too early to gauge the impact of the Labor Contract Law on the development of the staffing industry. It is important to emphasize that the Law is not meant to ban the industry, but rather legalize and regulate it. The result is meant to be that the industry can have some degree of accountability to the national government, as well as to the dispatched workers through their contracts. The intent of the government is to see the staffing industry develop into a modern service sector. Consistent with this goal, the Law favors larger labor-dispatch companies, primarily through a system of licensing and registration and raising the threshold of entering into business.

The industry itself tries to improve its image among negative publicity brought on by notorious cases of abuse involving prominent companies, such as KFC and China Petrochemical Corporations.<sup>94</sup> The industry has responded with regional and cross-regional associations, codes of conduct, and ISO 9000 quality management ratings for its members.<sup>95</sup>

These efforts on the part of the industry are entirely compatible with the ILO's guide on private employment agencies.<sup>96</sup> Since China entered the WTO in 2001, the Chinese government has allowed foreign labor-dispatch companies to form joint ventures with Chinese companies. So, for example, Randstad bought 47% of shares of Shanghai Talent Company Ltd. in 2006. Major multinational companies such as Manpower, Adecco, and Kelly Services also have operations in China. Large labor dispatch companies have international, and/or regional reach within China. As Coe, Johns and Ward argue, the internationalization of business services is due most importantly to "the significance of client-following behaviour in which

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93. Cao, *The Controversy*, *supra* note 74; Cao, *The Abnormal*, *supra* note 74; Xue, *supra* note 91.

94. China Labor Organization, *Beijing KFC accused of unfair employment system*, 2006, available at <http://iso.china-labour.org.hk/en/node/38856>.

95. Shanghai Talents Intermediary Association, *supra* note 60; Zhang Jizheng, *Kuadiqu waibaoliansheng fa ziluxueyan [Cross-regional Association of Human Resources Outsourcing Issued Declaration of Self-Regulation]* (2008), available at [http://www.sh.xinhuanet.com/2006-04/25/content\\_6839036.htm](http://www.sh.xinhuanet.com/2006-04/25/content_6839036.htm).

96. ILO, *supra* note 55.

business service transnationals are initially drawn abroad by the desires of their leading clients to access their services in different markets.”<sup>97</sup>

Large companies in the industry also try to differentiate themselves from smaller ones in terms of the quality of their businesses and of their clients. Such firms offer not only low-end but also high-end services such as executive headhunting, vocational training, and human-resources outsourcing. They always list major multinational corporations as their clients on their Web site. As multinational companies increasingly outsource higher-end businesses to China,<sup>98</sup> large labor dispatch companies who provide high-end services ensure that outsourcing of high-end businesses can proceed as smoothly as possible. Commenting on Kelly Services’ expanded operations in China and Singapore with acquisition of P-Serv, Carl Camden, president and chief executive officer of Kelly Services said, “the acquisition of P-Serv strengthens our global network and enhances our ability to provide wide-ranging talent management solutions to our customers as they expand globally.”<sup>99</sup> Consequently, not only manufacturing labor is made flexible, but also skilled workers and professionals are increasingly made flexible in China.<sup>100</sup> The industry considers the Beijing Olympics and the Shanghai World Expo in 2010 as two golden opportunities for their business. In the words of Zhang Jingrong, general manager of Shanghai Talent Dispatch Company, Ltd., the establishment of cross-regional association of human resources outsourcing and the establishment of codes of conduct are aimed at presenting the image of the industry as providing legitimate and responsible services.<sup>101</sup> The industry also promotes the linkage between high quality labor dispatch companies and high quality talents dispatched for high quality customer companies. This kind of linkage then is presented as the main contribution professional and high standard human resources companies make to China’s move toward a knowledge-based economy.<sup>102</sup>

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97. Coe, Johns & Ward, *supra* note 3, at 1395.

98. ROSS, *supra* note 23.

99. Press Release, Kelly Services Expands Operations in China and Singapore with Acquisition of P-Serv, *available at* <http://www.marketwire.com/press-release/Kelly-Services-NASDAQ-KELYA-737777.html>.

100. Cf. STEPHEN R. BARLEY & GIDEON KUNDA, GURUS, HIRED GUNS, AND WARM BODIES: ITINERANT EXPERTS IN A KNOWLEDGE ECONOMY (2004).

101. Zhang, *supra* note 95.

102. Shanghai Talents Intermediary Association, *supra* note 60; C. DAHLMAN & JEAN-ERIC AUBERT, CHINA AND THE KNOWLEDGE ECONOMY: SEIZING THE 21<sup>ST</sup> CENTURY (2001).

## V. CONCLUSIONS

The Chinese government initiated a series of moves to make its labor more flexible to facilitate its participation in the global commodity chains. The global and Chinese domestic capital's demands for flexible labor without protection and the Chinese government's effort to abolish its lifelong employment can be explained by a series of "distancing acts." As Thomas Princen argues, "as distance increases, feedback diminishes and the need for accountability and governance increases, possibly exponentially. . . . Without self-regulation and without institutions that recreate ecological feedback, efficiencies may be achieved (in the short term, anyway) but costs will also tend to be externalized over space and time."<sup>103</sup> The Chinese government attempted to distance itself from labor by handing the labor over to the market, thus shirking off its accountability to workers. Global capital increases distance between producers and consumers by extending global commodity chains. More particularly, companies have recently tried to avoid establishing employment relationships with their employees in order to shirk accountability under the provisions of the Labor Law. The staffing industry thus plays an active role in making and keeping a "flexible" labor force without the protections of either the old state-owned wage-and-benefit system, or of the more recent labor-protection legislation that the current central government has felt compelled to implement. With the passing of the Labor Contract Law, the Chinese state is reasserting accountability through a series of government-mandated contracts. But such a move is the state's attempt to provide an optimum condition for a market economy to flourish because workers' rights are merely protected through contractual requirements; and the staffing industry is given the legal recognition in China.

In sum, developments in the staffing industry shed light on this overarching thesis: 1) the temporary staffing industry has been greatly invigorated by the recent introduction of the Labor Contract Law in 2007. The Law's approach to the temporary staffing industry presents a paradox, and in some ways moves away from the straightforward deregulation of labor markets in 1986. For the first time, this Law provides for the regulation of the staffing industry, thereby legitimizing it. Yet at the same time, the Law has moved to increase

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103. Thomas Princen, *Distancing: Consumption and the Severing of Feedback*, in *CONFRONTING CONSUMPTION* 103, 127 (Thomas Princen, Michael Maniates & Ken Conca eds., 2002).

protection of workers' rights; 2) The Labor Contract Law provides much more detailed and enforceable regulations on workers' rights and entitlements. As a direct consequence, the triangular employment relationship characteristic of the staffing industry provided an attractive option for firms to distance themselves from the new legal requirement to establish labor and employment relations with their workers. Instead, labor and employment relations are turned into commercial/economic relations that do not see firms and workers officially confronting one another as contracting parties;<sup>104</sup> and, 3) The staffing industry is replacing both government agencies and personal and social networks as the intermediary between jobseekers and firms. Thus, employment becomes increasingly an agency-mediated market relation, rather than state- or network-mediated. Government agencies welcome this move: the staffing industry is seen to be helping Chinese jobseekers to "embrace" the market, but in an institutionally-mediated way.

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104. Cf. Judy Fudge, *Self-employment, Women, and Precarious Work: the Scope of Labour Protection*, in *PRECARIOUS WORK, WOMEN, AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS* 201 (Judy Fudge & Rosemary Owens eds., 2006).

