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# The Political Economy of Collective Labour Legislation in Taiwan

James W. Y. Wang

**Abstract:** This article provides a seminal analysis of collective labour legislation in Taiwan. A chronological review of Taiwan's legislative process suggests that the context of incorporation, institutional framework, mechanisms for delivering reforms, and sequence of reforms together shape the legislative outcomes of labour reforms at the collective level. While most labour legislation was revised and passed after the preceding sequence of economic transition, the reform of collective labour rights was greatly constrained by the flexible labour-market structure. In order for politicians to form new alliances with labour organizations, legislation of collective labour rights was a strategy to cultivate support during electoral periods. Consequently, the industrial relations changed following the enactment of substantial reform-oriented labour legislation. Theoretically, the historical analysis of legislative procedure unveils evolutionary reform paths for collective labour rights in new democracies. At the same time, empirically, Taiwan demonstrates an alternative reform path in combination with incremental steps and progressive agendas. For new democracies of small economy, a window of opportunity for the progress in collective labour legislation remains open today, albeit with limitations.

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**Keywords:** Taiwan, collective labour rights, labour legislation, labour movements, industrial relations

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## Introduction

Taiwan's story of becoming an economic power is archetypal in its juxtaposition of aggressive economic growth against a backdrop of weak protection of labour rights. During the authoritarian period, committed and diligent workers "manufactured" the economic miracle. However, the iron-fisted control of the authoritarian state served to enfeeble workers' bargaining power against their employers. Forced overtime work and infringement of labour rights were common occurrences throughout this period of Taiwan's history. Although workers were the major electorate in Taiwan, only few legislators genuinely represented workers' rights or interests. During the authoritarian period, labour-rights suppression in Taiwan was justified by the promise of economic growth.

Factional struggles within the ruling Kuomintang (KMT) (Guomindang), the rise of opposition movements, and the death of strongman Chiang Ching-kuo (Jiang Jinguo) opened the window of political opportunity in the mid-1980s. Opposition movements seized the opportunity to change the status quo by forming a new party, the Democratic Progressive Party (DPP). Labour activists started to collaborate with the DPP in the legislature. Huntington's (1993) reputed research on "third wave democracies", asserted that economic development brings affluence and raises national interest in political participation, thereby increasing demand for channels capable of voicing the needs and grievance of constituencies with common interests.

Taiwan developed its modern system of labour rights in the context of democratic transition. As the authoritarian era came to an end amid calls for reform, the KMT proposed starting economic reforms first to quiet an increasingly dissatisfied electorate. Until the late 1980s, the KMT lifted the martial law and launched democratic reform. During the period of democratic transition, political parties had to expand their support base to gain the popular appeal required to prevail in elections. Since that time, legislation started to be the strategy for the opposition party to collaborate with trade unions on labour reforms.

Beyond political structure, Taiwan's labour-rights system came from a continental legal system established by the KMT during its ruling years on the Chinese Mainland. After its defeat in the civil war, the KMT resettled to Taiwan. As an organization with close military ties, the authoritarian KMT state carried out a mission of military mobilization. Main labour rights, including collective bargaining, dispute settlements, and solidarity, were hamstrung by a military imperative that remained solidly

in place until the rise of opposition movements in the late 1970s. The iron-fisted control of the KMT state over labour affairs thereby obstructed the political potential of the labour force (Chu 1989; Pempel 1999; Woo-Cummings 1999). Politically, only a few seats from functional constituencies represented labour interests. Structurally, trade unions in Taiwan were permitted to organize only in local administrative districts. The main positions of the sole national federation of trade unions were filled by KMT cadres. Expression of labour interests was sometimes distorted. Occupational injury and industrial disasters were frequent. But widespread dissatisfaction with working conditions did not translate into any noticeable political upheaval during the KMT's period of authoritarian rule (Haggard 2000: 185).

In the 1980s, market-oriented economic transition incrementally changed and constrained the landscape of Taiwan's political economy. First, globalization accelerated the velocity and latitude of capital flow. By holding abundant capital accumulated from long-term growth, Taiwanese business groups became capable of funding foreign investments in other countries, with the most popular initial destinations for Taiwanese capital being Southeast Asia and Mainland China. Over the long-term, these capital outflows starved the local economy, with adverse effects on domestic employment and economic growth. The psychological experience of this hollowing-out gave justification to disadvantaged sectors to demand more protection and support from the state.

Second, deregulation of financial sectors, started in 1991, gave big business groups access to cheap capital. Previously, under state tutelage, allocation of credit was closely supervised and monitored (Haggard 1990: 93-94; Kuo 2000). After new banks and private financial institutions became licensed, speculation and insider trading drastically increased. In this atmosphere of inadequate oversight and accountability, non-performing loans became rampant (Kang 2002: 123). In 1997, Asia fell into a financial crisis and Taiwan quickly faced a credit crunch (Chang 2000; Cheng, Haggard, and Kang 1996; Dore 1998; Haggard 2000; Wade 2000). In order to make unemployment manageable, the state swiftly took economic rescue measures (Haggard and Kaufman 2008). Observing that administrative actions alone would not be enough, the government began enacting amendments of existing labour laws to provide additional labour protection.

Third, periodic elections and constitutional reforms changed the nature of politics in Taiwan. Closer alignment between political parties and

constituencies was crucial to win political competition. As winning margins continued to diminish during democratic transitions, expanding the support base became imperative. Even the business-leaning KMT began to court labour support (Woo 2007).

Table 1: Labour Legislation in Taiwan

Promulgated	Titles of Rules and Regulation	Revised
9 June 1928	The Settlement of Labour Disputes Law	27 Sep. 1932, 31 May 1943 27 June 1988 1 July 2009 (66 articles, the entire statute, were amended)
21 Oct. 1929	Labour Union Law	7 Jan. 1949 21 May 1975 19 July 2000 1 June 2010
28 Oct. 1930	Collective Bargaining Agreement Act	9 Jan. 2008
26 Jan. 1953	Statute for the Transfer of Public Enterprises to Private Ownership	19 June 1991 29 Nov. 2000 15 Jan. 2003
30 July 1984	Labour Standards Act	27 Dec. 1996 13 May 1998 28 June 2000 19 July 2000 12 June 2002 25 Dec. 2002 14 May 2008 22 April 2009
7 Feb. 2003	Protective Act for Mass Redundancy of Employees	23 May 2008

Source: Council of Labour Affairs 2010.

Against that backdrop, Taiwan had managed to move up the ladder of labour reforms. However, in comparison to other countries with similar iron-fist state control, Taiwan was a rare case where control mechanisms were undermined through a series of incremental, instead of disruptive, labour reforms. The incremental pace of Taiwan’s labour reform was exceptional, compared with other transitional states where state control over labour forces was expelled through disruptive change. The core reason for the slow progress of labour reform has to include the sequen-

tial effects of the preceding economic transition in the 1980s. The result was usually making labour reform through legislation (Lee 2007: 94-95). Table 1 illustrates the chronology of labour legislation in Taiwan. Some labour laws were promulgated before or during World War II. There was a wave of mass legislation right before the historical power changeover from the KMT to the DPP in 2000 and this wave continued until 2009. In addition, the timing of legislation was tied to presidential elections in 2004 and 2008. The evolution of legal and institutional frameworks reflected opportunities and constraints (Lin 2004). Tracing the historical process of collective labour legislation helps in understanding how labour movements became incorporated into the political arena, why specific mechanisms were selected to implement reforms, and how one sequence of reforms influenced the next.

By chronological comparison and institutional analysis, this article provides a historical understanding of political dynamics of labour reforms in Taiwan. This article is organized in six sections: Section 2 details the research framework of labour legislation; Section 3 outlines the state of labour legislation during the authoritarian rule and the early stages of democratization; the progress of collective labour legislation during the period of democratic consolidation is reviewed in Section 4; the compromise resulting from the completion of labour legislation is analyzed in Section 5; a short conclusion is provided in the final section.

## Political Dynamics of Labour Reform and Labour Legislation during Democratization

In the last decades of the twentieth century, the relationship between the state and the labour movements in Taiwan underwent some fundamental changes. These changes must be understood from the historical process of strategic interactions between state, labour, and business interests and the resulting legislative reforms of labour rights. To explore the historical process of legislative outcomes, it is helpful to observe how the labour movement became incorporated into the political arena, how the main actors interacted, the nature of the implementation mechanisms, and the sequence transitional steps that culminated in Taiwan's modern labour-rights system.

As for the incorporation of the labour movement, previously, the state intervened in the markets on the side of business interests and uniformly repressed workers' rights. During a conspicuous period of de-

mocratic transition, state control over workers was accomplished incrementally through collective labour-rights legislation and the institutionalization of labour organizations. (For example, trade unions became legitimate actors within the national political system.) “Collective labour rights” involve a set of values dedicated to labour rights at the collective level. Due to differences in legal and institutional frameworks of each country, definition, regulation and implementation of collective labour rights have to be understood in context. Taiwan’s labour rights are covered through a set of codes written into the legal system of labour laws. There is a wide scope of legal codes that have to be cited when deliberating on a specific issue of labour rights. For the sake of this discussion, my analysis centres on the three pillars of collective labour laws (集體勞動法, *jiti laodongfa*): the Labor Union Law, the Labor Dispute Law, and the Labor Standards Law. The legislative procedures of the Labor Union Law and the Labor Dispute Law had been delayed many times. Before the legislative procedures were finalized in 2009, various supplementary laws were revised or enacted. These laws were also included in the discussion.

This transition toward new modes of industrial relations took place in the context of greater transformation of the political economy. Specifically, state dominance over industrial sectors declined, the national economy opened up to globalization, capital was allowed to flow freely, and labour movements surged. To keep the economy afloat, the incorporation of the labour movement into the political arena became a common phenomenon. Generally speaking, there were two types of incorporation: state incorporation and party incorporation (Collier and Collier 1991: 8). In the case of state incorporation, the principal agencies initiating the incorporation were the legal and bureaucratic apparatuses of the state. The main purpose of state incorporation was to control and to depoliticize labour movements. As for party incorporation, the central agency of incorporation was a political party or a political party originating from political movements. In addition to gaining control over social movements, a fundamental goal of party incorporation was to mobilize working-class support through a party. This mobilization of labour was obviously different from the depoliticization characteristic of state incorporation.

Specific types of labour incorporation had a great impact on the subsequent evolution of labour politics in Taiwan. Generally, state incorporation was principally implemented under an authoritarian regime.

A corresponding process of democratization would follow in the wake of the initial regime breakdown. In contrast, party incorporation usually occurred in a relatively democratic regime and was intended to promote progressive social values. This incorporation period in some cases triggered strong conservative reactions. By tracing labour movements through different sequences of change, one can observe how legacies of incorporation influenced the evolution of labour movements and established these movements' respective roles in Taiwanese society.

Beyond the political structure of labour incorporation, the formation of strategic relationships between the state, labour, and business interests engendered the protocols and parameters of labour reform. The state was insulated from social pressures and allowed to make decisions in a calculated and utilitarian fashion. The strength of employers was manifested by the unity of business interests, their political alliances, and the pro-business orientation of the government. Trade unions formed and recruited members based on collective labour laws to unify workers and to defend workers' interests. It is important to distinguish those reforms aimed at individual worker rights from those benefiting collective interests. Trade unions tended to support collective rights, but not individual employment rights and legislation. This was a middle ground for trade unions, for which the industrial sector was a core advocate.

Governments generally pursued labour-reform policy implementation through three mechanisms: executive decrees, legislation, and consultation (Cook 2007: 10). Government's choice of mechanism was hinged on its commitment to reform and the particular context. Executive decrees were the most direct mechanism to deliver reform policies. But they were relatively limited in terms of effectualness and subject to change after a change of administration. Legislative bills demonstrated the commitment of the executive regarding labour reforms but required time to pass through the full series of legislative procedures. Consultation mechanisms tried to solicit the opinions of affected groups and convince interested stakeholders to support the government's priorities and plan for reform. Because it sought consensus, consultation was sometimes an ineffective approach.

The government would select a mechanism depending on its feasibility given the particular social contexts applicable at the time. Decrees were widely used in a divided government where the executive had to circumvent an antagonistic legislature. During the DPP years, the executive greatly counted on decrees to bypass the KMT-controlled legislature

to implement labour reforms. When labour reforms involved the overhaul of collective labour laws, the executive still had to send amendment bills to the legislature. Legislative initiatives of the executive branch typically involved revisions to key clauses or comprehensive pieces of labour legislation. The legislative procedures took a long time and were vulnerable to opposition by adversely affected stakeholders. Thus, when it came to labour legislation, sometimes the legislative bills were distorted from previous versions. Governments could hold a national conference of consultation to collect reform ideas or introduce new proposals. Since the 1990s, Taiwan had held several national conferences in which affected groups were invited to debate contested issues pending legislative decision.

Besides mechanisms to deliver reforms, contexts shape the environment, parameters, and relative positions of interest groups. Democratic transitions in the wake of authoritarian rule, and economic transitions under the pressures of globalization, cast the course of reform in very different directions, shaping the long-term evolution of the national political economy. Generally speaking, labour reforms coinciding with democratization tend to enhance collective labour rights and extend protections to individual workers. In contrast, reforms occurring during market-oriented economic transition tended to increase the flexibility of labour markets.

In new democracies, if economic transition precedes democratic transition, the “first-round” democratic government faces a problematic situation in which the structural economic reforms often serve to impede the democratic transition process. Democratic governments committed to preserving economic reforms implemented them prior to democratic transition and handled the expansion of collective labour rights cautiously, allowing public debate on matters of labour rights and labour flexibility. The democratic government’s core responsibility is to establish and consolidate democracy. During this period of democratic reform, the economy is particularly vulnerable to stagnation or downturn (Haggard and Kaufman 1995). Poor economic performance will often put the government in disfavour, leading to a power turnover to the opposition, possibly even to the same conservatives of the prior administration. But by “the second round”, democratic governments are generally more capable of addressing labour reforms and economic recovery, as they are not burdened with democratic consolidation. As a result,

there is a common “unintentional sequencing of tasks” between the first two ruling parties following authoritarian rule (Bermeo 1994: 602).

Taiwan experienced economic reform in the 1980s during an authoritarian period. As Taiwan accumulated enormous amounts of foreign reserves, the economy opened in 1983 to domestic companies seeking to export and invest abroad. This allowed employers great leeway in operating across the border. Later, the KMT government opened access to foreign currency and deregulated the banking industry. This financial leverage gave rise to cross-strait branches of Taiwanese businesses and provided momentum to export sectors (Amsden 1998; Chang 1994; Chu 1989; Hong 1997; Johnson 1982; Simon 1992).

In 1987, the lifting of martial law formally commenced the process of democratic transition. Built on opposition movements, autonomous labour movements also stepped up to challenge repressive state control (Lee, Chung, and Jang 2008). Autonomous labour movements collaborated with the radical wing of the DPP. Following significant democratization progress, the DPP achieved electoral success when their candidates won posts as the magistrates of several counties that represented important bases for autonomous labour movements.

**Table 2: Timing of Democratic Transition and Economic Reform in Taiwan**

	<b>Timing of Democratic Transition</b>	<b>Initiation of Economic Reform</b>
Lifted the regulations on export and investment abroad		1983
Opened access to foreign currency/ Lifted martial law	1987	1987
Deregulated the banking industry		1989
Wild Lily Student Movement	1990	
Direct presidential election	1996	
DPP Rule	2000	

Source: Author’s own compilation.

The 1997 Asian Financial Crisis was an important call to shift the government’s attention toward labour legislation. Escalating unemployment and labour disputes exposed the meagre legal protections for labour in place at the time. Additionally, workers came to recognize the value of autonomous trade unions (Wade 2000: 88). The DPP’s surprising presi-

dential election win heralded a new era of industrial relations. The national confederation of autonomous labour movements became a formally recognized entity and more collective labour rights were written into legislative proposals.

As “the first-round democratic government”, the DPP was structurally constrained as it attempted to simultaneously preserve economic growth and consolidate democracy (Jessop 2010). The antagonistic legislature, controlled by the opposition party, became the stumbling block that forced the DPP government to count on executive decrees, rather than more collaborative means, to implement its labour reform agenda.

## The Party-State, Leninist Control, and State Corporatism in Taiwan

The KMT state resettled to Taiwan after fleeing the Chinese Mainland in 1949. In the style of the Japanese colonizers who preceded them (Ching 2001), the KMT established a ruling machine with complicated monitoring and policing structures to secure its rule in the new territory. As warfare against communist China lingered on under the dictatorship of Chiang Kai-shek (Jiang Jieshi), civil rights were abandoned in the name of national security. All policies were mandated to serve the imperative of military mobilization. The martial law, titled the Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion, was promulgated in 1948 as the legal basis of *modus vivendi*.

Under martial law, the president enjoyed the supreme power to mobilize all available resources to maintain national security in a state of emergency. In the name of national security, the social movements that occasionally collided with the interests of the state were susceptible to being branded as unlawful institutions. Furthermore, the KMT suspended the periodic re-election of the National Assembly and Legislative Yuan with the justification that its legitimate power (法統, *fatong*) would be extended to rule China. The legislature became a representative body only for the interests of the ruling class, as local populations had no presence in the legislature. The KMT held a re-election of supplementary seats of legislators in 1973 in order to fill the seats left by members of National Assembly and Legislative Yuan who were either dead or incapable of attending regular sessions.

Beyond the functional dimension, there existed a structural reason for the KMT to seek the appearance of public representation in Taiwan via legislative elections. Since resettling to Taiwan, ideologically, the KMT placed its legitimacy in the argument that the Republic of China was the only surrogate that could represent China in international society. This “Great China” ideology was the core of the national Spiritual Mobilization Plan, which was charged by the high-ranking KMT cadres with the mission of establishing and intensifying Chinese identity through governmental announcements, mass communication, and school education.

As the Republic of China was deprived of UN membership by the People’s Republic of China in 1971 (Cheng and Haggard 1992), the “Great China” nationalist discourse suddenly collapsed. It followed that the justifications that the KMT regularly employed to explain its postponement of civil rights became untenable. The KMT state had to reposition the ideology better in a context believable to local society. Granting open re-elections was the first step toward reinvention of an *émigré* state with more indigenous elements. In its early steps toward democratic transition from authoritarian rule, Taiwan’s periodic re-elections of legislators effectively integrated opposition movements into the constitutional framework.

A localization strategy, by the name of “Taiwanization” (本土化, *bentubua*), was another cornerstone of the KMT’s approach to establishing direct links with the local elite, following the directive of strongman Chiang Ching-kuo. Administratively, a small band of Taiwanese elite were selected and recruited to fill secondary posts within the central government or act as mayors of directly controlled municipalities. The infamous Formosa incident was staged to purge the KMT’s main opposition leaders. *Formosa Magazine* was founded by veteran opposition leaders as the core channel to voice dissent. On 10 December 1979, opposition politicians held a demonstration commemorating Human Rights Day in the name of *Formosa Magazine* to promote and demand democracy in Taiwan. Perceived by the opposition as a threat to the authoritarian government, the government decided to use this protest as an excuse to arrest the main leaders of the political opposition and bring them to military court. This incident was later considered the pivotal issue that garnered widespread sympathy for the opposition movements. The strategy employed by Chiang Ching-kuo both helped and hurt the KMT. On one hand, the KMT consolidated its rule and thereby helped to keep the

economy afloat. On the other hand, opposition movements made significant gains at the ballot box. It was obvious that, to meet the increasing demands of genuine democracy, the KMT had to accelerate political reform as the economy pushed on.

The establishment of the Democratic Progressive Party in 1986 marked a watershed for social movements, especially labour movements. Previously, the voices of labour activists were kept out of the legislature. Susceptible to police harassment and job insecurity, members of labour movements had to keep low profiles in accordance with the framework of legal regulation. The presence of the opposition party in the legislature, however, suggested a relaxation of state control over the expression of labour interests. The subtle change of the state-society relationship opened a new window for labour movements. Within the DPP, the radical New Tide faction (新潮流系, *Xinchaoliu xi*) was the main force that drafted the guidelines for collaboration among progressive social movements. The New Tide argued that perennial rule of the authoritarian KMT state resulted in a tight monitoring mechanism and annihilated the political potential of civil society. To subvert the KMT establishment, the DPP became the opposition party responsible for organizing all anti-KMT forces as a pro-democratic coalition. Following these guidelines, in the economic arena, the DPP was obligated to form a united front with labour movements to break the iron control of the KMT state (Ho 2005: 406). The Taiwan Labor Front (台灣勞動陣線, *Taiwan laogong zhenxian*), founded in 1992, was the first joint step between the DPP and the labour movement. The Labor Charter was written by the Taiwan Labor Front to appeal to workers by advocating an “industrial democracy”, in which labour organizations enjoyed rights to information, consultation, and consent in the working place. All issues concerning workers had to be consented to through a tripartite consultation between the government, business management, and labour groups. In collaboration with the Taiwan Labor Front and labour activists, various legislative bills were submitted to the legislature by DPP lawmakers (Han and Chiu 2000: 150). In local counties governed by DPP magistrates, labour activists were appointed as heads of labour affairs, which facilitated administrative decrees passed to federations of autonomous trade unions years before the national Labor Union Law was amended to include the same rights.

Beyond its party-labour relationship, the state was effective in coordinating labour into productive activities through a pyramid system that integrated business groups and trade unions hierarchically (Ho 2006;

Kuo 1995). Structurally, the Chinese Federation of Labour (中華民國全國總工會, *Zhonghua minguo quanguo zonggonghui*), abbreviated CFL, was the highest national federation of trade unions, representing all other unions. According to Article 8 of the Labor Union Law, promulgated in 1929 and revised in 1949, the Council of Labor Affairs (CLA) would authorize only one federation of trade unions in one administrative area. For this reason, the CFL was the only organization to sit on the advisory councils on behalf of labour interests and participate in official CLA meetings within the Executive Yuan. At the local level, each county was permitted to establish only one federation of trade unions. Horizontal linkages between federations of trade unions at the county level were forbidden, however, to constrain labour solidarity in the local level.

Functions of trade unions were greatly curbed. According to the Labor Union Law (工會法, *Gonghuiifa*), promulgated in 1929, and revised in 1931, 1932, 1937, 1943, and 1975, national organization of single-sector unions was forbidden. The right to strike was forbidden. Collective bargaining of labour affairs was hamstrung as well. Article 4 of the Collective Bargaining Agreement Act (團體協約法, *Tuanti xieyuefa*), promulgated in 1930, stipulated that state approval for collective bargaining was needed before collective agreements were deemed legally valid (Chen 1997: 166). The Settlement of Labor Disputes Law, promulgated in 1928, was ineffective. Workers had to become members of trade unions in order to be eligible for labour insurance partially sponsored by the government. By and large, trade unions were mainly service-oriented and not active associations capable of speaking for the interests of labour (Ho 2006: 110). Kickbacks and bribes were commonly accepted by board members seeking re-election to trade unions. In most cases, KMT membership gave a candidate an unfair political advantage (Ho 2007: 165).

To nurture labour obedience, the KMT state also propagated “harmony culture” as an important guideline to settle labour disputes. The campaign of “Make the factory your home, make the factory your school” (以廠為家, 以廠為校運動, *Yi chang wei jia, yi chang wei xiao yun-dong*) was the representative movement put into practice. The workers had to assimilate the paternal ideology into the factory life. In the meantime, the government asked factory owners to tighten control over trade unions (Peng 2006). Taiwan’s economy performed brilliantly during the 1980s. Most workers expected a salary rise and welfare improvement.

The campaign to promote “harmony culture” aimed to mitigate growing tension between employers and workers.

Following the rise of opposition movements in the late 1980s, new wave autonomous labour movements sprung up. In September 1987, the Brotherhood Union (兄弟工會, *Xiongdì gonghui*) was established in northern Taiwan. In May 1988, the National Federation of Independent Trade Unions (自主工聯, *Zìzhǔ gonglián*), which became a member of the World Confederation of Labor, was established by labour activists. During this period, attempts to establish non-official trade unions in the workplace, and efforts to build linkages across the borders of administrative districts, saw substantial growth. These autonomous labour movements later contributed to the establishment of the Taiwan Confederation of Trade Unions (全國產業總工會, *Quanguo chanye zonggonghui*, TCTU), which acquired legal recognition in 2000. Sensing that autonomous labour movements threatened its control over labour forces, in 1989, the KMT government collaborated with business interests to clamp down on burgeoning labour movements. Prominent cases included the Far Eastern Chemical Fiber Company and Keelung Bus Company. Labour activists involved in these incidents were arrested and brought to the court under the charge of disturbing the public order. Most defendants were convicted and received sentences of either three months in prison or two years of probation.

In anticipation of rising militancy among labour movements, the KMT also worked to amend relevant regulations to restrain collective labour rights. Most important amendments took place on the “three collective labour laws” (勞動三法, *laodong sanfa*), including the Labor Union Law, the Labor Dispute Law, and the Labor Standards Law. Compulsory union participation was loosened, parallel unions in the same workplace were banned, and unionization rights of public utility sectors were suspended (Ho 2006: 115). It was noteworthy that autonomous labour movements were not significantly affected as the KMT government tightened relevant labour legislation. Instead, with administrative support from various local counties, mainly governed by the DPP, several confederations of trade unions were launched at the local level. In 1994, the first autonomous confederation of trade unions (產業總工會, *Changye zonggonghui*) was established in Taibei County, where a labour lawyer – who was also a labour activist – headed the Bureau of Labor Affairs. Similar patterns to establish county confederations of trade unions also appeared in other DPP-governed districts. As the

DPP's political strategy to "encircle the central from the local" (地方包圍中央, *difan baowei zhongyang*) paid off in local elections, autonomous confederations of trade unions mushroomed around the country.

Autonomous labour movements proliferated at the national level and expanded their impact on labour legislation during the democratic transition of the 1990s, a critical period in which the Taiwanese political economy underwent a sea of change. In the economic arena, structural reform and market liberation abruptly transformed industrial relations. Formerly, privatization of state-owned enterprises (SOEs) was considered a key policy to increase national competitiveness. Reform initiatives of SOEs received vehement criticisms from provoked employees, who conventionally considered them para-statal actors. Faced with impending privatization plans that they expected to threaten their job security, SOE employees drastically changed course and quickly organized into trade unions (Chao 1996). Through collaboration between the Taiwan Labor Front and labour activists, various autonomous trade unions of SOEs were founded and became strong voices against privatization (Ho 2007: 178). The Land Bank, the China Oil Company, and the Chung-Hwa (Zhonghua) Telecommunications Company became prominent sources of anti-privatization fervour in the heyday of autonomous labour movements. It was common to see unionization in the SOEs coinciding with privatization. Former trade unions, usually run by KMT cadres, enjoyed legal recognition and were generally service-oriented. But after autonomous trade unions were established, conventional support of SOE employees by the KMT was quickly withdrawn. The moderate strategy of autonomous labour movements not to take over the factories not only made autonomous trade unions more acceptable to the KMT government, but also bought time to court public support. As it failed consecutively in the 1994 Taipei mayor election and the 1997 county magistrate election, the KMT was under great pressure to woo labour support.

Employment, which had rarely been a political issue prior to economic liberalization, appeared to be an important agenda item in the wake of the Asian Financial Crisis. When unemployment escalated to an historic three per cent, and further climbed in successive years, the KMT government was pressed to confront an unprecedented problem of joblessness. In the beginning, the state preferred to follow the conventional method of introducing retraining programs, making available low-interest financing, and loosening the money supply to create job opportunities. Nevertheless, administrative measures soon proved insufficient

to combat the crisis. Widespread labour disputes, mass factory shut-downs, and non-performing loans all led to issues concerning legal rights. One May Day protest organized by the CFL even went so far as to request that the government provide unemployment insurance, enact legislation of the Protection for Workers Incurring Occupational Accidents Act (職業災害勞工保護法, *Zhiye zaihai laogong baohufa*), and suspend SOE privatization procedures. At the same time, autonomous trade unions also asked for legal recognition.

In response to the deterioration of the labour market, the KMT government introduced a more comprehensive policy package in September 1999: the Protective Measure for Mass Redundancy of Employees (事業單位大量解僱勞工保護措施, *Shiye danwei daliang jiegu laogong baohu cuoshi*) (Jingji Ribao 1998): Firstly, a market-surveillance mechanism was established which delivered responsive policy measures and mass unemployment alerts based on “employment indicators”, which collected relevant information, negotiations, layoff plans, and similar information reported by employers. In addition, the CLA announced the Recognition Standards and Procedures for Termination of Enterprise to ensure delivery of back pay, severance pay, and retirement pay to workers, in order to strengthen the protection and management of labour rights. Finally, legal aid was provided. The CLA sponsored free legal counsel for workers involved in litigation concerning a violation of their labour rights. Assistance for labour-insurance-fee arrangements, job-hunting tools, and re-employment advice were also made available (Li 1999).

Conventionally, the KMT government preferred to increase the flexibility of labour markets to grant the management more leeway to keep the business afloat. The Protective Measure for Mass Redundancy of Employees offered a new direction for the KMT government to move to assure greater protection of labour rights. However, the state lagged behind in the process of transforming industrial relations. The Council of Economic Planning and Development suggested that the Labor Standards Law had to be revised, and that National Pension Insurance deserved to be considered (Huang 1998). However, the KMT government was slow to produce relevant legislation. In the 2000 presidential election, the KMT suffered an historic failure as it was defeated by the DPP. A new political landscape substantially changed labour legislation.

## The DPP Rule and the Decline of State Corporatism

The DPP's victory in the 2000 presidential election represented a critical juncture for autonomous labour movements. However, despite the fact that long-term KMT authoritarianism was over, institutional arrangements between the state, business, and labour did not see the drastic change they expected. A few factors still lingered that impeded the reform initiatives of the new government. Firstly, benefited by the plurality voting system, Chen won the election by virtue of a split within the KMT camp that forced the People First Party (PFP) and the KMT to compete for the same conservative support at the ballot box. The old guard of the KMT refused to concede and continued to obstruct DPP rule. As a result, the Pan-Blue camp, including the KMT and the PFP, refused to cooperate with the DPP government on key reform proposals. As the Pan-Blue camp had a legislative majority, constitutionally, the legislative opposition was capable of crippling the DPP government's reform agenda. Without political compromise, constitutional stalemate caused by the divided government greatly hamstrung the responsiveness of the government to key agendas, most of all to comprehensive labour reform. As a result, labour legislation during the DPP years was highly connected to elections, as stakes for political exchange. In the 2004-2005 and 2008 sessions of the Legislative Yuan, the KMT caucus used its legislative advantage on labour-reform bills in exchange for political support.

Political turnover did not only influence reforms. It also changed the political alignment between parties and trade unions. The legitimate party-state relationship was once defined by the KMT. Power turnover, however, withdrew the state's role as the sole authorized controller of labour organizations, thereby opening the window to legitimate autonomous labour movements. The reason the DPP declared the TCTU legal was more than a social one. To dismantle the KMT establishment, the DPP considered introduction of democratic forces as the cornerstone of a new political economy, the "New Middle Way" (新中間路線, *xin zhong-jian luxian*), manifested in President Chen Shui-bian's (Chen Shuibian) campaign, made special reference to the Third Way of New Labour. Within the blueprint of the New Middle Way, a "new partnership" was formed between the state and labour to establish a constructive culture intended to replace a traditionally confrontational relationship. Labour

activists, environmentalists, feminists, and community workers were solicited by the new government to serve in relevant units. Social forces started to work with the state. The rampant protests during democratic transitions that had been common in prior periods were not seen during the DPP years.

The landscape of trade unions was greatly changed by the process of democratization. Following the power shifts of the new political economy, the state-labour relationship underwent realignment. For autonomous labour movements, according to the Labor Union Law, promulgated in Mainland China in 1949 and amended in 1975, the TCTU was authorized to serve as a national confederation of trade unions. Based on the constitution which permitted citizens to associate, the CLA, headed by labour activists of the new government, reinterpreted the Labor Union Law and decreed authorization of the TCTU. By contrast, internal schisms formed in the CFL, the monopolistic confederation of trade unions that relied on its allegiances with the KMT to manifest political clout and the unrivalled privilege to speak on behalf on labour interests. The KMT did not only lose the reigns of the CFL, but also suffered from an internal split within the party. This became apparent immediately preceding the presidential election, when a powerful former KMT leader led some capable party cadres to defect from the KMT and founded the People First Party. Without strong political backing, cadres of the CFL called for a structural overhaul of the federation and sought new political alliance. The 2000 re-election of one of its own board members was flashpoint. A KMT labour leader was defeated in the re-election and the position of director-general went to a People First Party candidate. This showdown forced the KMT leader to leave the CFL along with 21 other labour leaders from county federations of trade unions. They went on to found another federation of trade unions, the R.O.C. National Labor Alliance (中華民國全國勞工總會, *Zhonghua min-guo quanguo laogong zonghui*). The establishment of the TCTU and the schisms within the CFL attested both to the transformative influence of economic liberation reforms and to the decisive impacts of democratization on formation of labour forces and the framing of the reform agenda. Previous state dominance over both business and labour hinged on the condition that the state was virtually the only legitimate source for credit allocation. Liberation of economic resources enabled the businesses to move production and investment abroad through newly acquired access to financial leveraging instruments. With its capacity to

coordinate economic activities as the primary state actor drastically undermined, the prior KMT approach to aggregating and centralizing labour interests became unsustainable.

The schism within the CFL was a turning point signalling the end of service-oriented federations. But it did not mean that trade unions would keep themselves separate from political parties. The CFL and the TCTU generally kept ties with political parties and sometimes gave input on labour policies. The reason the CFL and the TCTU kept conventional ties with political parties could be understood as strategic and calculated. But the move left workers and employees sceptical of the organizations' higher loyalties. On various topics, national labour leaders of the CFL and the TCTU blamed each other (instead of presenting a more inclusive solution) for selling out workers. In the case of working hours, the CFL criticized the TCTU for collaborating with the CLA at the expense of workers. In response, the TCTU accused the CFL of ignorance of the latest solution to secure labour welfare and abused the idea of labour solidarity (Xu 2001). In turn, workers failed to transcend the political cleavages leftover from the previous institutional legacy and therefore had difficulty creating a unified voice for aggregate labour interests.

Contentions between state and labour came to a head as soon as the economy deteriorated following an investment slump in 2000. Negative factors, including political antagonism, the diversion of investment funds away from Taiwan, and global economic doldrums, all resulted in bad economic performance and an historically unprecedented -2.17 per cent growth rate with a drastic drop of GDP per capita from 14,519 USD to 13,093 USD. President Chen Shui-bian's New Middle Way was seriously contested. To protect the fate of the DPP government, the New Middle Way had to be redefined in order to survive a changed political environment. Under the slogan "Boost the Economy" (拼經濟, *pin jinji*), in August a national development debate was held at the Economic Development Advisory Conference (經濟發展諮詢委員會議, *jinji fazhan zixun weiyuan huiyi*) to hear suggestions and opinions from national business leaders. At this conference, business leaders asked for more flexibility in the labour markets and for a lowering of the burden of labour insurance on businesses. The conference concluded with an endorsement for greater labour-market flexibility, including flexible working hours, adjustable work schedules, and a three-track retirement system (Ho 2005: 412). In the meantime, the DPP government also returned to the old approach of the KMT government to stimulate the economy by introducing new

policies to loosen the money supply, deepen export policy, and increase labour-market flexibility. The DPP efforts to boost the economy were hailed as successful when the growth rate bounced back; however, the agenda of improving the labour market fell short. As a large proportion of export-sector businesses moved manufacturing across the strait to Mainland China, the DPP's stimulus policy focused on helping export sectors to recover. Local workers benefited little from this policy. Unemployment hovered around 5 per cent as the total number of jobless reached an all-time high of 750,000.

This attention to the domestic economy undermined the potential of pro-labour reforms while, at the same time, new participation in international trade systems posed external administrative constraints. In Jan 2002, Taiwan officially entered the World Trade Organization (WTO). As most trade unions perceived in the lead-up to WTO accession, mass unemployment was likely in traditional sectors. This problem seemed bothered Premier Yu Shyi-kun (Yu Xikun) relatively little. He referred to his cabinet as "the combat cabinet" (戰鬥內閣, *zhāndòu nèigé*) with a commitment to boost the economy. Fearing that their concerns were being overlooked in favour of globalization and economic expansion, leaders of trade unions voiced concern about the DPP government (Xu 2002). Other labour activists also observed the limits of the DPP government's commitment to labour reforms and called for more strategic cooperation with political parties. For example, some autonomous trade unions started to meet with KMT legislators to deliberate on labour affairs. The new strategy contributed to the success of labour legislation. The result of new cooperation could be seen in the Protective Measure for Mass Redundancy of Employees, though it failed to protect workers during a subsequent series of mass layoffs. As the government requested employers to fill a report when total lay-off of workforce reach 30 per cent and to negotiate with workers concerning lay-off conditions, in practice, the employers sometimes prefer to shut down the factories to avoid negotiation. Trade unions criticized the Protective Measure labourineffective to prevent hostile shut-down. This led to the enactment of the Protective Act for Mass Redundancy of Employees in February 2003 to provide additional legal protection.

Without proportional representation, labour legislation in Taiwan was deeply influenced by dynamics between main political forces. Unfortunately, as the government was highly divided, without a political culture of compromise, ideological warfare simply obstructed opportunity

for constructive cooperation. The 2004 amendment of the Labor Union Law was a prominently case to show how partisan warfare in the Legislative Yuan seriously stalled the passage of labour bills. On that time, most labour activists reached consensus of the amendment bill and expected a smooth legislative procedure. When the amendment was submitted to the floor, the KMT caucus considered that the amendment may increase credit to the DPP on labour affairs right before the 2004 Legislative Yuan election. As a result, the KMT caucus overruled this amendment bill. Executive-legislative antagonism greatly delayed the legislative process to amend collective labour laws. Cases resembling that of the Labor Union Law were frequent. In this context, labour laws passed during the DPP years were few in number. Three cases deserve special attention: working hours, teacher's union rights, and extending union membership to public sector employees.

First, the revision of working hours applied to the total number of working hours, as well as working schedule flexibility. As for the total number of working hours, the legislature passed an amendment of the Labor Standards Act in June to cut the maximum workweek from 48 hours to 42 hours starting in 2001. This made the government's proposal of a 44-hour workweek obsolete. The primary reason for cutting working hours was the KMT strategy to woo labour support in the legislature, albeit at expense of its stronger supporters, which included businesses in traditional sectors. The legislative procedure deserved some attention. In late 2000, the DPP government rolled back preparations for an amendment bill of a 44-hour work week to the floor of the Legislative Yuan for a second and third reading. The DPP government argued that WTO entry in 2002 might strangle the traditional sectors. If the 42-hour workweek was sustained, traditional sectors may disburse about 177 billion TWD per year in overtime payments and hired additional workers. In the meantime, the DPP government also managed to re-negotiate with trade unions to express their commitment to a shortened 40-hour workweek reform in 2003. Finally, the Pan-Blue coalition agreed on revision with a condition that employers had to consult and reach consensus with trade unions. The reason Pan-Blue insisted on these concessions was to force employers to permit the establishment of trade unions to negotiate the extension of working hours. To make collective bargaining through trade unions possible, the Labor Union Law and Collective Bargaining Agreement Act had to be overhauled to increase union density beforehand.

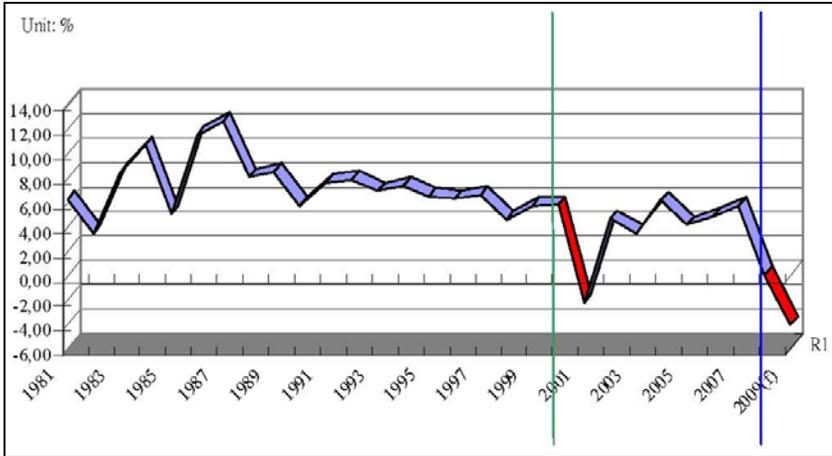
For confederations of trade unions, including the CFL and the TCTU, the collective concessions of the two main parties in the legislature were more than disappointing. Yet they proposed alternatives to finally compromise on the amendment of a work schedule of 84-hours per each two workweeks, and to demand management agreement on trade unions' right to organize in the workplace prior to negotiations of working-hour extensions. Eventually, the confederations' proposals gained support from the main parties to replace the official version of revision. The 84-hour proposition was received as the final amendment bill.

Labour's political advantage did not last long. After the Economic Development Advisory Conference, businesses urged the government to again extend working hours. Saying it intended to "Boost the economy", the DPP government drafted the 2002 amendment of Article 30 of the Labor Standards Act with new rules mandating a flexible working schedule. Within the new system, the management had leeway to arrange working schedules and overtime work based on existing shift systems and shop-floor practice. Despite a 2002 amendment requiring businesses to get the consent of trade unions before changing working conditions, in practice, most labour-management committees were manipulated. As union density in Taiwan fell below three percent before supplementary legislation was overhauled, labour-management bargaining always favoured the employer (Lee 2007: 111).

Two important legislative changes in 2003 affected the flexibility of the labour market. The Statute for the Transfer of Public Enterprises to Private Ownership was amended, privatizing the 43 state-owned enterprises previously under the jurisdiction of the Ministries of Economic Affairs, Finance, and Communication. At the same time, the Protective Measure for Mass Redundancy of Employees was promulgated. Created at the request of trade unions, the Protective Measure was an importance step toward formalizing the procedures and responsibilities of employers during the process of shop closing, including layoff reporting, notice obligations, processes and means of negotiation between employees and employers, provisions of employment service and preferential rights of re-employment, consulting systems, and disciplinary restrictions on requiring exit provisions for employees (Lee 2007). It would have been premature to think that these two pro-labour rules meant that Taiwan had finally reached a balance between labour flexibility and job security

(Wilthagen 2002). Instead, union rights were not fully realized, and the right to organize unions was not universally enfranchised.

Figure 1: Economic Growth of Taiwan



Source: Taiwan Statistical Bureau (various years).

Public sector employees and teachers were two groups of workers not enfranchised to organize into unions. Their job security was generally high and their welfare was typically above that of the average citizen. But there were reasons for them to identify themselves as “labour”. As with public sector employees, employees of state-own enterprises maintained collective anxiety regarding the government’s steady move toward privatization of SOEs. They worried that their current welfare, job security, and pension could deteriorate as the consequence of new rules. For teachers, lower birthrates substantially shrunk gross demand for educational instruction. In elementary and secondary schools, over-employment of instructors was criticized as squandering resources and led to recruitment freezes. Further, some schools located in remote areas were shut down due to meagre student registration. In the end, schoolteachers were convinced that unionization was crucial to ensuring their jobs. For different reasons, both public sector employees and teachers sought inclusion as union members.

Previously, the state excluded public sector employees and teachers from unionization followed the concept of the “special power relation-

ship”, a legal principle originated from Germany and was introduced to East Asia by Japan. Later, China assimilated the Japanese model and introduced the special power relationship into the modern bureaucratic system. Within the special power relationship, the position of the party concerned did not have equal status. The obligation was obscure. There were special rules, but no legal preservation regulation. There was disciplinary punishment, but no controversy relief. Even though the special power relationship was unequal, public sector employees enjoy good welfare and high job security ensured by special laws. Public sector employees considering their interests highly protected were not necessary supportive of unionization. But activists within public sectors still managed to collaborate with the TCTU to inquire with the CLA concerning the ban on public sectors unionization. Without consensus, the CLA took a relatively liberal position toward the matter (Ho 2005: 410). Finding the state’s reception of the idea to be positive, public sector employees and teachers were encouraged to request union rights. When it came to legislative procedure, there was dissent within the DPP government, which argued that a special association law was necessary for employees and personnel holding strategic positions of public service. In March 2002, the Examination Yuan passed the draft of Civil Servants’ Association Law, which stipulated the voluntary principle of membership. Military personnel and teachers were not eligible under the Civil Servants’ Association Law.

Teachers were generally unsatisfied with the conservative bill prepared by the Examination Yuan. Despite strong support from the CLA, the Executive Yuan and Ministry of Education (MOE) stood with the Examination Yuan to reject union rights for teachers, as well as the right to strike. In April, the MOE conceded to grant teachers the right of association through a law titled the “Teachers’ Association Act”. In September 2002, the National Teachers’ Association R.O.C. (abbreviated NTA) reached agreement with the MOE to ensure teachers’ rights of association, collective bargaining, and dispute settlement. The MOE was reluctant to consent to teachers’ right to strike. But the MOE’s agreement to teachers’ right of association already encouraged the NTA to prepare to negotiate annual contracts with schools on behalf of its member teachers. Bureaucracy aside, teachers publicly voiced political opposition to the legislature. The Taiwan Solidarity Union (TSU) held a staunch position against teachers’ union rights. Of the 2004 amendments of three collective labour laws, which were expected to legalize teachers’ union

rights, the TSU successfully influenced legislators of the main parties to obstruct the legislative procedure in the regular session of the Legislative Yuan. The TSU's intervention in legislative procedure greatly delayed the pace of labour reform. The three collective labour laws had to wait another three years to be read in the committee of the Legislative Yuan. Eventually, in March 2007, the three collective labour laws were passed to provide a legal source of teachers' union rights. The MOE soon drafted the Teachers' Association Act in May 2007, with an exemption of teachers' right to strike.

## Towards the New Labour Regime: the Return of the KMT and Collective Labour Laws

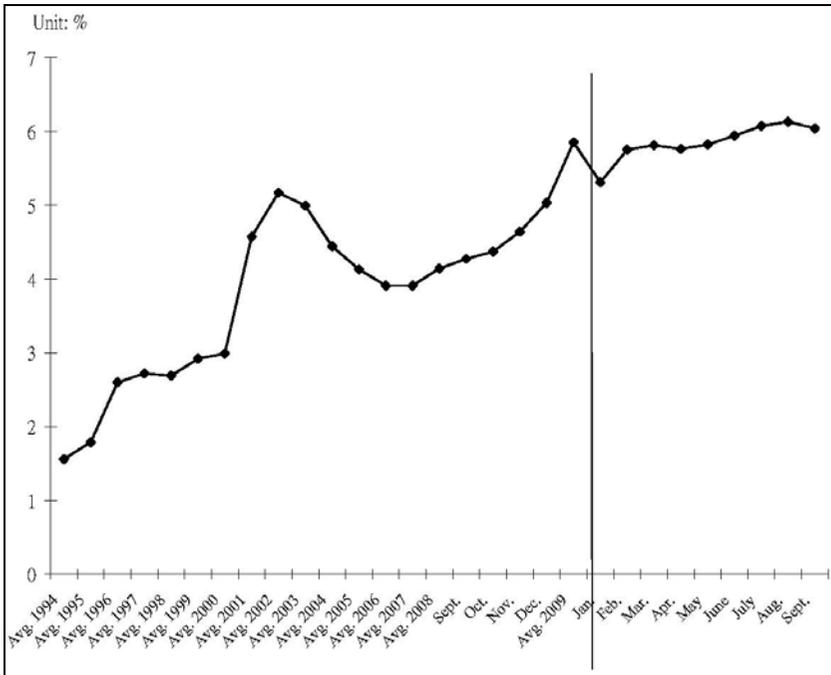
Following eight years of constitutional stalemate, the KMT regained control of Taiwan's government. It was the second turnover in power in Taiwan and viewed as an indicator of democratic consolidation by Huntington (1993). As a transitional regime struggled to find its path from authoritarianism, Taiwan was successful in making democracy "the only game in town". But it was undeniable that the economy was still one of the most important issues of the 2008 presidential campaign. In this competitive race, the KMT candidate Ma Ying-jeou (Ma Yingjiu) proposed a rapprochement with China, in contrast to the DPP's traditionally cautious China policy. After Ma's inauguration, the "Three Links" (三通, *santong*) policy, meaning direct links of trade, postal service, and transportation, was soon enacted. The KMT government maintained that "Three Links" policy was the cornerstone of Taiwan's future prosperity. Taiwanese businessmen in China generally endorsed the KMT's stance on China policy. They also expected new business opportunities to arise from improvements to cross-strait relations.

Beyond the political concerns of deepening integration with China, Taiwanese workers and employers harboured great expectations for an improved economy following the power turnover. Cooperation between the KMT and labour activists manifested in a new political alliance committed to economic growth and job security (Ho 2005: 417). This was a major challenge to the KMT. Traditionally, the KMT advocated the use of industrial policy and flexible labour markets to keep the economy running. The logic was that, when businesses profited, more workers would be hired. This formula fell short of expectations in prior decades as companies reinvested their earnings abroad (typically on the

Chinese Mainland) and downsized labour capacity in Taiwan. The same companies complained that high labour costs in Taiwan forced them to relocate resources and therefore insisted on greater labour market flexibility at home. With businesses' attention focused across the strait for labour and local workers feeling the pinch of outsourcing, the KMT faced the overwhelming challenge of making both workers and businessmen happy. It is undeniable that the KMT supported union membership expansion. However, the KMT at the same time appeared likely to fall back into its old tradition of increasing labour market flexibility. Several months after the presidential inauguration, the Taiwanese economy felt the impacts of the "financial tsunami", the U.S. sub-prime crisis that sabotaged the New York Stock Exchange (Blackburn 2008; Mann 2009). It was critical juncture that showed the true face of the reinvented KMT government.

Right after the financial tsunami, Taiwan's export sectors sustained severe losses. Mass layoffs and shop closings followed. Atypical employment prevailed. The electronics chain giant, Tsann Kuen (Zhangzhou), also laid off 92 workers. The major LCD manufacturer Chi-Mei Corporation dismissed 3,000 dispatch workers following the procedure of Protective Act for Mass Redundancy of Employees. Another LCD manufacturer, Wintek Corporation, followed suit to lay off 600 workers. Other than this bad news, irregular management practices arose. The Taiwan Fluorescent Lamp Company violated the Protective Act for Mass Redundancy of Employees when it failed to disburse severance pay to dismissed employees. The managers responsible were ordered banned from leaving the country by the court. Later, following legal procedures, the trade union took over the factory and acquired ownership of factory equipments and property collateral, worth 300 million TWD. Further, the government also went on to prevent wage raises. On the Basic Wage Deliberation Committee, chaired by CLA and attended by economic, financial, economic planning, local government, and other government groups, most participants expressed strong opinions toward freezing increases to the minimum wage. Uncharacteristically, the CLA did not speak out for workers and chose to take a neutral position. In conclusion, the KMT government followed mainstream interests by freezing the minimum wage for the following year. The decision hamstrung trade unions' capacity to negotiate wages.

Figure 2: Unemployment Rate in Taiwan



Source: Taiwan Statistical Bureau (various years).

In response to the deteriorating labour market, the KMT government introduced various programs to contain escalating unemployment. First, employment promotion, job retraining, recruitment by municipal governments, and similar functions were formalized in government-sponsored programs. These short-term employment promotion programs were implemented in two phases: from Nov 2008 to Jun 2009, and from 2009 to 2012. In the first phase, the KMT government was estimated to create 102,000 job opportunities. Second, the Ministry of Education proposed a job training program that dedicated to providing job opportunities and internships at schools and companies. The MOE expected this program would create 690,000 job opportunities. Third, public works were expanded in coordination with trade unions to relocate redundant workers into proper sectors.

During this period, labour legislation experienced significant progress. The Collective Bargaining Agreement Act, generally considered

the foundation of collective labour rights, was amended in Jan 2008. The Protective Act for Mass Redundancy of Employees was amended in May 2008 to prevent employers from fleeing the country if they failed to disburse back pay, severance pay, or wages. The Labor Standards Act and the Labor Insurance Act were both amended to ensure job security. It seemed that labour legislation during the economic downturn tended to emphasize job security. But it was undeniable that there was a gap between the law and its effectuation. The Protective Act for Mass Redundancy of Employees was denounced by the trade unions as a legal procedure to allow employers to lay off employees at a reduced cost. The Protective Act requested employers to submit layoff projects to CLA 60 days ahead. But in practice, employers could circumvent this regulation by asking employees to “leave without pay” or conducting “unpaid leave on a mass scale” (Yang 2003). The Labor Standards Act was another ineffectual example of employees failing to get their interests met in their bargaining with employers concerning working hour reductions and unpaid leave. Even as union density decreased, employees found it hard to bargain on equal ground with the employers. Legal provisions of job security in Taiwan failed to be as effectual as expected. For these reasons, it was no wonder that workers accused the collective bargaining rules of the Labor Standards Act as privileging employers (Wu 2008).

According to the official statistics, the KMT government successfully kept unemployment at 5.85 per cent, which demonstrated that unemployment rescue efforts had been relatively effective (Executive Yuan no year). But quite a few newly hired employees were not happy with the low wages they subsequently received. For this reason, the approval ratings for President Ma Yingjiu always hovered between 40 and 20 per cent. The consequence was a second wave of labour reforms. Right after the 2009 May Day protest, CLA had held the Government-Employer-Labor Consultative Conference (政資勞協商會議, *zhengzilaolao xieshang huiyi*), with the participation of eight national confederations of trade unions, and representatives from the government, the employer, and academicians. Within this tripartite consultation, CLA expected these stakeholders in labour affairs to gather together and deliberate on a new direction for important issues, ranging from the occupational safety of dispatched workers to industrial democracy, social security, and employment promotion. Although the TCTU questioned necessity of the Government-Employer-Labor Consultative Conference, various conclusions contributed to a latter revision of the labour laws. Restrictions on

labour market flexibility, the Labor Union Law, the Collective Bargaining Agreement Act, and the Settlement of Labor Disputes Law were all deemed to be in urgent need of revision.

The Collective Bargaining Agreement Act was amended on 9 Jan 2008 to authorize trade unions to negotiate with employers on behalf of workers in the workplace. The supplementary law, the Settlement of Labor Disputes Law, and the Labor Union Law, were under revision and were read for the first time in the committees of Legislative Yuan in 2007. The CLA made slight revisions to the supplementary amendment bills and resubmitted them to the Legislative Yuan in 2009.

Various proposals needed to be further deliberated. First, the most contentious part was the right to strike, and that had been heavily regulated in the past. Workers from strategic sectors, including banking, transportation, oil and gas, and communication, were all banned from striking. Workers also had to notify employers 30-days ahead to create a “cool off period” to avoid disruptions in operation. Surprisingly, the ban on strategic sector workers, and the cool off period, were all cancelled on amendment. The CLA overhaul infuriated business groups. Six of the largest business and industrial associations denounced the labour reform, stating that it would simply worsen the business environment in Taiwan. As a result, amendments to the Settlement of Labor Disputes Law and the Labor Union Act were passed in June 2009 and June 2010 respectively (Qiu 2009). Teachers were granted union rights, as no TSU legislators sat on the floor to obstruct legislation. The voluntary membership principle for participation in trade unions was upheld. Trade unions were not entirely happy with the legislation and denounced it for a lack of compulsory membership principle, claiming that this would impede the strength and force of the unions. In this regard, the compromises seemed necessary steps toward labour reform.

## Conclusion

This article provided a historical analysis of collective labour legislation in Taiwan. The evolution of collective labour rights was gradual and non-uniform. Incorporation of labour movements, mechanisms to implement reforms, and the sequence of transition were all factors that influenced legislative outcomes. By comparing periods of administrative change, one can observe how the state, employers, and labour interests interacted; how the labour reforms were implemented; and why the la-

bour legislation was constrained by prior precedents. During the period of state incorporation, the principal agency leading reforms was the legal and bureaucratic apparatus of the state, and the primary concerns were to depoliticize the working class and strengthen control over trade unions. Benefits to labour were paternalistically extended through a state-controlled union structure. It was not until the rise of opposition movements that autonomous labour movements had opportunity to take root in local workplaces. By contrast, party incorporation of the DPP and the KMT during democratization significantly benefited the progress of collective labour rights. Party incorporation entailed the electoral mobilization of workers in the framework of a two-party competition between the DPP and the KMT. The legacy of market-oriented economic reform ahead of democratic transition structurally constrained the potential for progressive union-party relations. Party commitments to labour reforms were thus more opportunistic than sincere.

It is interesting to see how legal and institutional frameworks and political legacies shaped different levels of labour strength and encountered varying degrees of resistance. Under the state corporatist legacy, although most trade unions were service-oriented, the state-controlled union structure helped trade unions in strategic sectors to mobilize SOE workers effectively against reform proposals aimed at increasing labour flexibility and privatization. State corporatism during democratization in turn constrained government labour flexibility reforms, when market-oriented reforms weakened ability of trade unions. State corporatism was eventually vanquished under the DPP government. The democratic government preferred to establish legitimate reform proposals through consultation at national conferences with bureaucrats, employers, labour leaders, and academics. During its first 4-year term, the DPP government held a national conference to justify its turn from “New Middle Way” to “Boost the Economy”.

Mechanisms to implement labour reforms were dependent on their feasibility in the applicable context. Executive decrees could circumvent the legislature and fully deliver reform proposals without long and uncertain legislative procedures. However, labour legislation was considered an expression of party’s commitment to labour reform. Even faced with an antagonistic legislature, the DPP government still introduced reform proposals after taking office. The KMT, however, immediately approved collective labour laws after winning the 2008 Presidential election. There

was positive correlation between democratization and the progress of labour legislation.

**Table 3: Historical Process of Labour Legislation in Taiwan**

Ruling Party	KMT	DPP	KMT
Ruling Period	Prior to 2000	2000-2008	Since 2009
Incorporation	State incorporation	Party incorporation	Party incorporation
Legal/ Institutional Framework	State-corporatism	Consultative cooperation	Consultative cooperation
Implementation Mechanism	Executive decrees	Executive decrees and legislation	Legislation and executive decrees
Sequence of Reform	Economic transition ( <i>circa</i> 1983) and democratic transition ( <i>circa</i> 1987)	Democratic transition and economic reform	Economic reform and democratic consolidation
Legislative Outcome	Increasing labour flexibility	Increasing labour flexibility and limited progress of collective labour rights	Progress of collective labour rights

Source: Author's own compilation.

Finally, the sequence of reform mattered set the context for the actors in question to calculate their interests. Economic transition that preceded democratic transition substantially drove up unemployment and weakened the bargaining positions of trade unions in the long-run. Autonomous labour movements filled the widening gap by providing collective labour protection. When the DPP government came to power, the situation was complicated, as market-oriented reforms constrained the space for progressive reforms. Core interests of trade unions during this period were to extend union membership and to give employees the right to organize, to strike, and to settle disputes. Teachers and public sector employees in particular struggled for association rights. Dissent within the DPP government and the legislature stalled legislative procedure. It was not until the KMT returned that teachers and public sector employees were enfranchised to organize into associations. Labour reforms during democratization tended to bolster collective rights. The process has been described as an “unintentional sequencing of tasks” between the DPP and the KMT.

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