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An Exploratory Study of the Emergent Model of Labor Regulation in Contemporary China

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This paper aims to articulate the emergent labor regulation model in contemporary China. To accomplish this, I first review six popular accounts of enforcement and compliance in previous research, and then examine the relevance of these accounts to labor regulation in China. Although useful, existing approaches do not fit the Chinese context well, and thus cannot fully explain current labor law enforcement and compliance in China. Against this backdrop, in this paper, I propose a Chinese model of labor regulation, namely, the state-designed, bottom-up deterrence model, and describe its working mechanisms and unique features. I identify the following main features: first, the Chinese emerging model was thoroughly designed by the state, which established a floor for bottom-up pressure against complacent labor officials and unlawful employers; second, this emergent model is characterized by bottom-up pressure—the government strongly welcomes bottom-up “input” activities from individual workers and various societal actors as long as this input from bottom remains within state guidelines; and, third, this bottom-up model shares an element of deterrence theory in that the heightened risk and uncertainty that employers perceive are the main predictors of employers’ compliance, but it diverges from deterrence theory in that the source of enforcement is indirect intervention from the bottom, rather than direct state intervention. By articulating the emergent model in China, this paper can enrich current discussions of the varieties of labor regulations across the globe. In addition, it can help Korean firms in China better understand how labor regulation works and thereby enable them to take steps toward becoming more responsible in China.

Keywords : China, labor regulation, bottom-up pressures, the state-designed model, deterrence theory

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I. Introduction

There is clear agreement that Chinese labor regulations have been strengthened since the mid-2000s. Unlike earlier periods when local interests that prioritized economic development seriously compromised labor regulations, government agencies are currently far more committed to addressing labor standard issues. Both academic studies and media reports confirm this (e.g., Li and Freeman, 2015; Sweeney, 2016); nowadays, workers are willing to express their grievances and take part in grievance procedures, and the relevant agencies attempt to resolve workers' complaints in a timely manner using state-designed procedures.

However, scholarly attempts to explain the recent strengthening of labor law enforcement and compliance remain scarce. Little is known about how labor regulations have become stricter in China. Against this backdrop, the present paper seeks to describe the emergent labor regulation model in China. This attempt deserves close attention both academically and practically. Extant literature, which is based in western contexts, is limited in its applicability to institutionally different contexts such as developing countries in Asia. Hence, the present paper can enrich current discussions of the varieties of labor regulations across the globe. Practically, this study can help Korean firms in China better understand how labor regulations work and become more responsible employers in China. In addition, this study may serve as a useful guide for Korean firms, helping them to better understand labor regulations in Vietnam, which, as a developing post-socialist country, shares institutional commonalities with China.

The remainder of this chapter is arranged as follows. First, to derive insights for this study, I review six popular accounts of enforcement and compliance

in previous studies of regulations, labor inspection, industrial relations, and organizations. I then examine the relevance of these accounts to labor regulation in contemporary China. After critically assessing each account, I propose a bottom-up regulation framework in China and articulate its working mechanisms and describe its unique features. Finally, I summarize this research and discuss its theoretical and practical implications.

II. A Variety of Approaches to Labor Regulations

Scholars in different disciplines and fields have developed various approaches to the study of labor regulations. These include the deterrence and cooperation approaches in regulation and labor enforcement research, the corporate social responsibility (CSR) approach, the NGO-based approach, the worker empowerment approach, and the constructivist approach in organization studies.¹⁾

These studies can be divided into two categories based on the role of the state : state-centered approaches and non-state-centered approaches.²⁾ Scholars who adopt approaches in the former category argue that the state should be a main actor in improving labor standards and they therefore contend that priority should be placed on strengthening labor regulations and enhancing

1) The list of studies here is by no means exhaustive. They were selected because they satisfied two criteria: 1) prominence and 2) direct relevance to the present study.

2) It should be noted that some approaches (such as the empowerment approach and the constructivist approach) are not easy to categorize based on the “state-centered versus non-state-centered” criteria because they have various dimensions. Although I place them in the non-state-centered approach category, I do not mean to say that these approaches do not emphasize the role of the state, but to say that the focus is more on non-state entities (in the case of the empowerment approach, independent and strong unions; in the case of the constructivist approach, the normative and/or imitative isomorphism pressures among managers and HR professionals).

state capacities (Weil, 1996; Piore, 2002, 2007; Schrank 2008a, 2008b). They suggest that, although it requires serious commitment in terms of time, effort, and resources, only state-centered approaches are sustainable and empowering for workers. On the other hand, the non-state-centered approach suggests that approaches other than state-centered approaches including 1) corporate-based voluntary monitoring, 2) NGOs' naming and shaming, 3) workers' strong, independent grassroots unions, and 4) normative and/or imitative isomorphism pressures in extremely uncertain environments can enhance working conditions significantly.

Furthermore, depending on "where the focus is," these four non-state-centered approaches can be placed into two categories: approaches focused on regulators (the NGO-based approach and the worker empowerment approach) and approaches focused on regulated entities (the corporate-based approach and the constructivist approach). Specifically, the NGO-based approach focuses on indirect social intervention against bad working conditions, while the worker empowerment approach focuses on the indirect internal intervention of collective workers against employer violations of labor law. On the other hand, the corporate-based and constructivist approaches examine how employers (or the regulated) are motivated or forced to move towards higher levels of compliance. In sum, these six accounts of labor regulations can be categorized based on the role of the state (state-centered versus non-state-centered) and focus (regulator-focused versus regulated-focus).³⁾ I detail each of these approaches below.

1. The State-centered Policing Approach

The first approach focuses on state intervention and the impacts of state

3) These studies can also be categorized according to the style of enforcement (policing versus counseling), a categorization that resonates with the deterrence and compliance model in the regulation literature (Reiss, 1984; Ayres and Braithwaite, 1992).

sanctions on violators. It draws mainly on deterrence theory from the regulatory compliance literature (Becker, 1968; Stigler, 1971; Polinsky and Shavell, 2000). Scholars such as Becker(1968) and Stigler(1971) suggest that regulated entities will comply with regulations when the expected punishment arising from non-compliance—namely, objective violation costs—exceeds the costs of compliance. Since detection probability and punishment severity determine objective violation costs, the solution for higher compliance would be either heightened inspections or strengthened legal provisions.

Similarly, in labor law enforcement literature, scholars argue for strong state-oriented capacities and severe sanctions (Arthurs, 2004; Murray, 2003; Esbenschade, 2004). They strongly believe that the serious threat of enhanced state inspections and sanctions motivates companies to accept responsibility for improving working conditions. Proponents of this approach argue that the solution can be accomplished only by pushing states to enforce their already existing laws and helping to strengthen states' formal workplace intervention capacities (Murray, 2003; Esbenschade, 2004). This approach also relates to a legal model of compliance that has received support primarily from well-known domestic legal scholars in China (e.g., Dong, 2008; Chang, 2007). Focusing on the impact of labor law on employer behavior, these scholars argue either for or against the strengthened labor law. Specifically, Dong (2008) argues against the new labor law, highlighting the possibility that the strengthened law will have adverse effects on employers and workers, while Chang(2007) argues for stronger labor legislation to protect workers.

2. The State-centered Counseling Approach

A second state-centered approach emphasizes the importance of active state engagement in the workplace, but in more cooperative ways. The counseling approach, also known as the cooperation or persuasion approach, emerged in

the 1980s as a challenge to the deterrence model. Scholars argue that stringent deterrence-based sanctions can cause bureaucratic inefficiencies and create disincentives for compliance(Bardach and Kagan, 1982; Ayres and Braithwaite, 1992; Gunningham, Kagan and Thornton, 2003). This approach focuses on how to induce actors' compliance with the law, not on how to sanction violating actors. In the cooperative approach, state agents' discretion and mutual understanding between state agents and employers are critical to identifying workable solutions for compliance and better labor standards.

Similarly, a growing number of labor law enforcement and industrial relations studies emphasize the importance of active consultative and constructive state engagement in the workplace(Piore, 2002, 2007; Piore and Schrank, 2008; Schrank, 2008a, 2008b; Teague, 2009). These scholars idealize the Latin model of labor inspection, suggesting that, ideally, labor inspectors can act as best practice consultants. The Latin model, which originated primarily in France in the 19th century, was introduced to other southern European countries, particularly Spain and Portugal, and then migrated to Latin America.⁴⁾ The distinct features of the Latin model are integration and coordination. One agency enforces the law in an integrated manner, and inspectors with substantial discretion take coordinated approaches. The Latin model is similar to the state-policing approach in that it emphasizes the role of the state, but it diverges due to its focus on persuasion and education. Proponents of the Latin model believe that most labor violations stem from ignorance on the part of employers or from limitations in their abilities to address the violations. Accordingly, capable and experienced inspectors work largely as advisors and consultants by participating in production facility and HR practice upgrades(Piore, 2007).

4) Given its origin, the Latin model shares many features with the Franco-Iberian model(Reid, 1986; Von Richthofen, 2002). In this paper, I call this approach the Latin model because it is considered more relevant to the context of developing countries.

3. The Non-state-centered Corporate-based Approach

The third approach highlights private firms' efforts to improve labor regulations. Given the weakness of state enforcement, corporate-based voluntary enforcement has emerged as a major approach. Proponents of this approach argue that, given the realities of the current weak enforcement situation, particularly in developing countries, the corporate-based approach is more viable(Ruggie, 2003; Santoro, 2009; Scherer and Palazzo, 2007; Matten and Crane, 2005; Scherer et al., 2006; Jenkins, 2001). For the past decades, many multinational corporations have created self-regulatory systems to deal with not only their own practices, but also bad working conditions in their supplier factories (Amengual, 2010). In this paper, I focus on supplier monitoring. In the face of increasing external pressures, multinational corporations have established codes of conduct and forced their supplier factories to follow the rules. These major brands enforce these rules independently, employ third-party monitors, or conduct joint auditing (O'Rourke, 2003, 2006). If a supplier factory does not follow the buyer company's guidelines, this factory will receive diverse sanctions ranging from simple warnings to revocations of contracts. The core argument in support of this approach is that well-designed and implemented private regulations can effectively push supplier factories towards compliance.

On the other hand, an increasing number of recent studies propose a commitment-based CSR approach distinct from the typical punitive CSR approach (Locke et al., 2007; Locke et al., 2009; also see Frenkel and Scott, 2002). These scholars suggest that it is time to expand beyond simple state inspection and third-party auditing toward a system of improvement that addresses the question of "why not improve" in developing countries. They argue that typical, punitive means of detection and sanction are problematic because they may simply perpetuate a "cat-and-mouse game" (Locke et al.,

2009; Businessweek, 2006). Alternatively, in a series of studies on major brand supply chains, Locke and his colleagues find that only a commitment-based approach founded on trust and mutual interests can make a real difference in working conditions. These studies commonly highlight the role of auditors as agents of innovation, as well as the importance of win-win relationships with suppliers in their pursuit of better labor standards. These auditors facilitate communication and reduce barriers between functions in firms and thereby help many companies with limited resources upgrade their systems (Locke et al., 2009).⁵⁾ In sum, Richard Locke and his colleagues convincingly suggest that rather than being limited to simple monitoring activities, private monitoring needs to be integrated into overall factory production systems.

4. The NGO-based Approach

The NGO-based “naming and shaming” approach generally distrusts the capabilities and willingness of either states or private companies to create better labor regulations. In situations where labor laws and codes of conduct are seldom enforced and employer violations are rarely sanctioned, proponents of this approach argue that NGO-based naming and shaming can offer an effective alternative means of sanctioning irresponsible major brands and abusive employers (Keck and Sikkink, 1998; Armbruster-Sandoval, 2003;

5) Locke et al.(2007) identify two kinds of relationships between brands and their suppliers: “hands-on, cooperative” relationships and “arms-length, more distrustful” compliance relationships. Locke et al.(2007) indicate that more frequent visits and more open communication between Nike’s regional staff and Plant A management led to “trust and a better working relationship between these two actors.” In turn, this positive relationship contributed to upgrading the production system and working conditions in Plant A. Conversely, less frequent, more formal communication patterns between these actors appear to have reinforced typical buyer-supplier relationship-namely, the “arm’s-length nature” of their relationship, in which Plant B pursues economic motivations and Nike seeks to sanction violations, as seen in typical, punitive monitoring relationships.

Esbenshade, 2004; Soule, 2009).

A well-known example of the NGO-based approach is that of Kukdong in Mexico (Rodriguez-Garavito, 2005). Acute pressure from transnational activists in the early stages of abuses there played a critical role in bringing diverse stakeholders to the table and determining the success of mobilization efforts to improve working conditions.

In most cases of naming and shaming, local actors pass on reports of labor abuses to transnational activists and then these activists use that information to mobilize average consumers to put pressure on violators (Keck and Sikkink, 1998). By publicizing the issue across the globe, these activists challenge the well-established brand images of major companies and convince consumers to boycott their products (Bullert, 2000; Featherstone and USAS, 2002). In particular, NGOs' clever use of information technology has made active sharing of sweatshop abuse reports possible in developing countries across the globe. Accordingly, major brands have been forced to pay close attention to enhancing labor standards in their supplier companies (Felder and Meisenbach, 2007). While some critics downplay the effect of boycott activism, pointing out that it lacks sustainability and impact, the fact that direct consumer activism has been a critical factor in forcing major brands to take the labor standards issue more seriously and start implementing fundamental changes cannot be denied.

5. The Worker Empowerment Approach

A fifth approach highlights collective action and workers' rights, mainly through independent labor unions (Freeman and Medoff, 1984; Marshall, 1992; Chen, 2007; Friedman and Lee, 2010). In this approach, labor unions are key actors who have bargaining power vis-à-vis employers. If workers do not have strong unions, they cannot protect themselves from employers. Only when they

have strong independent unions can workers respond to employer violations by expressing their own voices, negotiating with management, and asking for corrections in workplaces. In addition, if labor unions function effectively, they can actively represent their members; they can report employer wrongdoings to labor bureaus or file cases with arbitration committees or courts on behalf of aggrieved workers. Likewise, Gay Seidman (2007) suggests that an ideal type in the state-centered approach also assumes that a labor union serves as a vehicle for a strong independent collective voice.⁶⁾ Historically, workers' collective actions via strong trade unions have influenced not only working conditions in individual workplaces, but also welfare policies on a broader level (Esping-Anderson, 1990).⁷⁾ Based on this rationale, scholars who support this approach tend to be skeptical regarding the effectiveness of individual legal rights in the absence of collective rights, since "individualized legal rights cannot address the fundamental imbalance" of power between workers and employers (Friedman and Eli, 2010: 530). In sum, this approach argues that strong, independent grassroots unions contribute to better labor regulation.

6. The Constructivist Approach

Adopting a slightly different perspective, the constructivist approach in organization studies focuses on firms' behavior in uncertain environments (Edelman et al., 1992; Dobbin and Sutton, 1998; Hirsch, 2009; Kelly, 2010). The core premise of this approach is that firms inherently seek solutions when they face high levels of uncertainty in external environments (Dobbin and Sutton, 1998). Because employers often lack a clear sense of their next steps

6) However, it should be noted that union effects are weak and inconsistent in the US context (Edelman, 1990; Edelman, 1992; Sutton et al., 1994; Sutton and Dobbin, 1996).

7) Schmitter(1979) emphasizes that labor market institutions such as trade unions can play significant roles in enhancing economic outcomes.

in rapidly changing legal environments, they seek the opinions of experts both internally and externally. In such situations, professionals function as creators of normative pressure (DiMaggio and Powell, 1983; Jacoby, 1985; Baron et al., 1986). Studies examining the roles of professionals in workplace practices highlight the critical role played by labor/HR professionals in constructing models of compliance with legal requirements (Edelman et al., 1992). Baron et al.(1986) emphasize the role of the personnel profession as a “key actor” in diffusing workplace practices. Meanwhile, Edelman et al.(1992) show that professionals play important roles in transferring best practices, suggesting that how professionals interpret external environments mainly determines employer responses to external environmental pressures. Hence, this approach offers a more nuanced understanding of compliance by suggesting that the regulatory process is determined by dynamic interaction between regulators, regulated entities, and professionals. In sum, these scholars argue that managers and professionals help shape the meaning of compliance when external environments are quite uncertain and hostile, thereby fostering better compliance.

III. Relevance of Existing Approaches

Although all of the six approaches discussed above appear convincing, they do not sufficiently explain current labor law enforcement and compliance in China. In this section, I offer critiques of these approaches by highlighting their irrelevance to the Chinese context.

1. The State-centered Policing Approach

This approach is questionable in the Chinese context because the Chinese

context defies the underlying assumption of the deterrence approach. Basically, this approach assumes two elements: 1) a strategic calculation of violation costs, and 2) a predictable regulatory environment. However, China essentially has a complaint-driven employment rights protection system. Top-down preventive inspection, which the deterrence approach assumes, is very rare, and local labor bureaus rely exclusively on workers to identify violators and report them to relevant agencies (Cooney, 2007a; Casale and Zhu, 2013). Practically, covering such a large country and dealing with the increasing number of problems occurring in ever more complicated workplaces with this heavy-handed approach involves substantial financial costs. Thus, in reality, labor inspectors only go to sites and inspect them when they receive complaints (Cooney, 2007b). Therefore, although it has some general explanatory power, the top-down deterrence-based approach does not fit the Chinese context.

2. The State-centered Counseling Approach

At its most basic, the state-centered counseling approach is far ahead of the current situation across the board in China. This counseling model, which includes the Latin model, appears to be based on two essential assumptions: 1) reasonable discretion on the part of inspectors, and 2) a certain level of state inspection capacity. Under such ideal conditions, inspectors are supposed to make reasonable decisions after consideration of overall workplace situations and discussions with employers. In addition, states' inspection mechanisms must be strong enough to deter purposeful defectors and to protect cooperators against demoralizing and injurious competition from defectors. However, the reality is that in China, labor officials devote most of their time to labor administration tasks (Zhu, 2009; Casale and Zhu, 2013). Therefore, fulfilling the roles of counselors is almost impossible for local labor officials, and their jobs remain focused on addressing workers' complaints. Hence, this approach

is likely to remain simply an ideal for the time being.

3. The Corporate-based Voluntary Approach

Scholars, practitioners, and activists in China and elsewhere have extensively debated this private governance system (e.g., Esbenshade, 2004; Manic, 2004; Bandy and Bickam Mendez, 2003; Bickham Mendez, 2005; Frundt, 2005; Businessweek, 2006). Although it sounds convincing, CSR-based supplier monitoring only covers a very small number of supplier factories, usually only their 1st tier contract factories. Furthermore, monitoring activities under this approach center on visible issues such as child labor or wage arrears. Thus, most CSR monitoring cannot address root causes (e.g., Verite, 2004; CLW, 2009, 2010). A recent article about Apple and its supplier Foxconn in Bloomberg effectively illustrates the fundamental limitations of such private governance compliance efforts (Gurman, 2019). The fact that Richard Locke's (2009) commitment-based monitoring approach remains in an exploratory stage, conducted by a couple of attentive MNCs, also warrants emphasis. Overall, existing studies show that the corporate-based voluntary approach has a limited impact on employer compliance (He and Perloff, 2013), and this approach cannot explain the emergent labor regulation model in China.

4. The Worker Empowerment Approach

In principle, workers' collective action through strong workplace unions can prevent and/or correct employer violations. However, the workplace union in China, the only official union, is far from an ideal labor union that defends workers' rights on the shop-floor; most importantly, the union is unwilling to strike in China. Moreover, notwithstanding several intriguing experiments, the union is for the most part not democratically elected. Specifically, management

dominates most firm-level unions (Metcalf and Li, 2005; Friedman and Lee, 2010). Likewise, local governments control local union federations (Chen, 2004; Gallagher, 2005). In addition, from a demographic standpoint, most of the worst workplaces—usually small labor-intensive factories—do not have unions, and thus labor unions cannot help address the harsh working conditions.⁸⁾ Furthermore, the legal authority and powers given to grassroots unions to push employers to comply with the law are weak. When a union identifies a violation of the law, it has no direct authority against the employer (Howell, 2008). In sum, although unions are gaining power in China, their overall impact remains too weak to explain the recent high level of labor law enforcement and compliance in China.

5. NGO-based Naming and Shaming Approach

In China, NGOs are very weak and their activities are selective (Lee and Shen, 2011; Franceschini, 2014; Xu, 2013). While these actors challenge employer wrongdoings openly and loudly as the state strongly encourages them to do so, they dare not involve themselves in any collective action and/or independent union issues.⁹⁾ This situation contrasts with the NGO-based approach depicted in the literature where NGOs have often helped workers build independent unions in developing countries such as Guatemala and Bangladesh (Armbruster-Sandoval, 2003; Rodriguez-Garavito, 2005). In addition, the institutional configurations in which NGOs engage in workplace issues also differ. In countries like Bangladesh, NGOs' active involvement in

8) A huge gap exists between the official unionization rate and the reality. I found that a large proportion of grassroots unions are either nominal or very weak.

9) This is a result of the sensitivity of labor issues under the country's repressive authoritarian regime. The Chinese government has the power to control international and domestic NGO activities, and thus their activities in China are far more circumscribed and remain within state guidelines (e.g., CLNT, 2007; Lee and Shen, 2011).

child labor issues has contributed to new regulations regarding child labor. However, China already has pro-labor regulations; the issue is a lack of enforcement, not a lack of relevant regulations (Lee and Shen, 2011; Franceschini, 2014). Accordingly, NGOs' activities focus on cautiously exposing the gap between the law and reality rather than on working to address more fundamental issues (Friedman and Lee, 2010). In sum, the existing NGO-based approach is insufficient to address various aspects of the emerging bottom-up regulation model in China.

6. The Constructivist Approach

Although sharing several characteristics of the constructivist approach, China's emerging bottom-up model differs in three ways. Above all, the implicit focus of the constructivist approach on normative pressures is too narrow to explain the multi-dimensional nature (coercive, normative, and imitative) of the antecedents of employers' compliance in the "bottom-up" regulation model. The constructivist approach tends to mainly address the unexpectedly strong influence of non-coercive pressures rather than coercive pressures on organizations. Accordingly, a large proportion of constructivist studies start with phrases such as "In the absence of strong regulatory pressures." In contrast, China's bottom-up model addresses topics related to legal provisions (e.g., written labor contract requirements, social insurance purchases, and OT hour regulations). These regulations were first implemented during the socialist period, but they remained largely ignored in the name of economic development until recent years when increasingly serious social inequalities and labor unrest led to their revival. These days, local governments, which must seek to protect both workers and employers, have adopted a "bottom-up" enforcement approach in which, despite the fact that local agencies do not proactively enforce the law, agents investigate

problematic employers when complaints are filed. In other words, the subject of China's bottom-up model is more like coercive pressure originating from labor regulations, which naturally exacerbates employers' concerns

IV. An Emergent Labor Regulation Model in China

With these distinct differences in mind, I contend that attention should be paid to some indigenous elements that either directly make labor law work or help enhance law enforcement. In this paper, I focus on an emerging on-the-ground mechanism in China's workplace that can explain the heightened labor enforcement and compliance.

Based on extant China studies and my own field research in the country, in particular in Guangdong and Jiangsu, I identify the framework of the new state-designed, bottom-up deterrence model.¹⁰⁾ The working mechanism of this model is based on the following three key features and their close interactions: state-designed, bottom-up, and deterrence-based. First of all, this model was thoroughly *designed by the state*, which established a floor for bottom-up pressure against complacent government officials and unethical employers. Workplace stability—in conjunction with related issues such as labor abuses, wild-cat strikes, and a spate of worker suicides—has become a priority for the leaders of contemporary China (Kuruvilla, 2018; Howell and Pringle, 2019). Based on this rationale, the Chinese government has enhanced grievance procedures: a series of new labor laws has greatly increased potential fines levied against violating employers and direct financial returns for workers who file complaints, while making it far easier for aggrieved workers to express

10) An earlier version of this paper arose from the author's unpublished dissertation, and has been supplemented by his follow-up interviews and literature review of China studies.

themselves via official mechanisms (e.g. labor bureaus, arbitration committees, and courts). It is also worth noting that the mandatory investigation of accepted and filed complaints has been significantly regularized. As long as workers satisfy the minimum reporting requirements, such as providing employer information and filing within the correct inspection boundaries, labor officials are obliged to complete investigations of complaints, generally within 60 days and within 90 days for more complicated cases. Under this stricter policy, labor officials cannot ignore worker complaints, as doing so would cause them to be sanctioned for inaction if workers then reported them to upper-level state agencies.

Second, this emergent model is characterized by *bottom-up* pressure. The Chinese government has strongly welcomed bottom-up “input” activities (Nathan, 2003; Shambaugh, 2008). Examples of “acceptable” bottom-up topics include environmental protection, food safety, and the protection of workers’ rights. As long as efforts to exert pressure concern these issues, the government strongly encourages societal actors to openly raise them. Governance-wise, these bottom-up voices are quite useful for the Chinese government (Howell and Pringle, 2019). Societal actors are seen as useful ears and eyes gathering information from below and monitoring the activities of powerful local officials and capitalists (Nathan, 2003; Shambaugh, 2008). This “input” from the lower ranks provides the government valuable information regarding street-level bureaucratic corruption, which supplements restricted administrative resources. Lorentzen (2008) emphasizes that the monitoring activities of local actors have become particularly useful to the regime because market reforms have increased the prevalence of corruption and labor abuse. Therefore, at present, societal actors, armed with state slogans such as harmonious society, can actively and safely expose employer wrongdoings to the public and state agencies. The fact that the series of labor regulations implemented since the mid-2000s fully support this bottom-up mechanism warrants emphasis.¹¹⁾

Third, the bottom-up model builds on *deterrence* theory in the regulatory compliance literature (e.g., Becker, 1968; Stigler, 1971; Braithwaite and Makkai, 1991) in that it forces employers to comply with labor law because they perceive heightened risk and uncertainty. However, this bottom-up model diverges from deterrence theory in that the source of enforcement is indirect intervention from the bottom including from individual workers and various societal actors, rather than direct state intervention (Elfstrom, 2019; Howell and Pringle, 2019). Ideally, the state-centered deterrence approach engages in the workplace directly, by proactively detecting and sanctioning violations in a punitive way (e.g., Becker, 1968; Stigler, 1971). However, direct, proactive state intervention is rarely seen in China, and the state governs the workplace in an indirect way at arm's length, by establishing a floor for the indirect intervention of workers and other societal actors and encouraging their activities. In sum, although pure deterrence theory does not apply to the Chinese context, the bottom-up model shares an element of deterrence theory in that the heightened risk and uncertainty that employers perceive are the main predictors of employers' compliance decisions. Below, I detail the three distinct characteristics of the state-designed, bottom-up deterrence model in China.

1. Within State Guidelines

First and foremost, bottom-up actors faithfully rely on the state-designed legal framework. Workers, NGO activists, lawyers, and journalists have a clear

11) According to the Labor Contract Law(2008), if an employer fails to sign a written contract with an employee within a month, it shall face a penalty of paying the worker double wages for any time served without a written contract (Articles 10 and 82). In addition, a worker can voluntarily terminate their labor contract and still receive severance pay equal to one month's wage if she resigns by reason of employer violation, such as non-purchase of social insurance or overtime hour/wage violations (Articles 46 and 47). In similar rationale, the grievance procedures have also been improved in favor of workers (Labor Arbitration and Mediation Law (2008)).

understanding of what is possible and impossible under China's strong authoritarian regime (Xu, 2013). They always follow prevailing rules and employ the regime's propaganda and rhetoric to justify their actions (Lee, 2007). In a rightful and clever way, bottom-up actors expose the gap between labor law and employer practices, and ensure that their grievances are addressed. Bottom-up actors are more conscious about not violating state policies, emphasizing that they supplement the functions of the state. They make sure that their assistance contributes to workplace stability by caring for marginalized and aggrieved workers and rechanneling their anger into more acceptable actions. This strategy resonates with the concept of rightful resistance identified by O'Brien and Li(2006). Regarding several specific subjects including food safety, environmental protection, employers' labor abuses, and rural officials' corruption, the state tends to strongly encourage rightful resistance on the condition that the actors follow state guidelines.

2. Challenging Enterprises

Bottom-up actors openly and loudly challenge employers, invoking pro-worker policies and legal provisions, and arousing public attention (Li and Liu, 2018). They are keenly aware that unlawful employer behavior is one of the few issues that they can tackle without being hurt. Armed with state slogans such as "harmonious society," workers and societal actors actively expose employer wrongdoings to the public and to official procedures (Lee, 2007; Chan and Pun, 2009; Li and Liu, 2018). Bottom-up actors are very good at publicizing violations committed by large employers and then publicizing names and numbers. When employer violations concern the central government's core reform issues, such as having written labor contracts, societal actors are more than willing to name and shame. This exposure is especially effective when it comes to well-known or foreign employers, because it attracts attention

and satisfies the central government's expectation that local social organizations are doing their part to expose local corruption and injustice (Lorentzen, 2008). Furthermore, bottom-up legal activism receives extensive support from the public and the central government. Given the shared minimum moral values originating from the still latent communist legacy and deepening inequalities within the new society, workers' rightful resistance receives broad support. This sentiment prevails partly because most Chinese citizens remember the pre-1979 economic reform period in which most workers were treated fairly equally and guaranteed basic economic security.

3. Consequential to Employers

Last but not least, workers' actions to ensure their labor rights have had a consequential impact on employers. Employers express serious concerns about the potential risks of workers' bottom-up activism.¹²⁾ Accordingly, to keep legal risks in check, employers have adopted new response patterns by either quickly aligning their labor practices with standards or employing expedient "risk-aversion" strategies. Large companies tend to care more about their societal reputations. Meanwhile, small and mid-size companies are more concerned about workers' copycat legal reporting and filing complaints; this inevitably happens when word spreads about a co-worker's financial return from a grievance action. Clearly, the enactment of the new labor laws and labor inspection regulations has given these workers a strong understanding of several sensitive provisions. As workers' basic understanding of what is right and wrong becomes clear, local inspection officials tend to respond more appropriately when complaints are filed. Finally, this bottom-up pressure is more salient in the Chinese context because the country has the following

12) The multiple rounds of interviews I conducted in China show that employer concerns about workers' bottom-up activism have continuously increased since the mid-2000s.

unique characteristics: a socialist legacy, including a history of bottom-up revolution, and the continued power of previous socialist institutions (e.g. state-controlled media and trade unions); a recently implemented series of pro-labor policies and laws well known for streamlining the legal processes for complaints and providing filing workers substantial financial rewards; and a repressive authoritarian regime that sends a clear signal that it pays off for workers to individually use the law as their weapon against employer wrongdoing, while harshly punishing collective action.

In sum, the emerging Chinese model is characterized by 1) unexpectedly heightened pressure on employers regarding labor standards, 2) strong non-state bottom-up forces, and 3) a very uncertain legal environment in which social legacies still prevail and an authoritarian regime relies on legal populism, given increasing labor unrest.

V. Discussion and Conclusion

In this paper, I sought to describe the emergent labor regulation model in contemporary China. To accomplish this, I first reviewed six popular accounts of enforcement and compliance in past studies, and examined the relevance of these accounts to labor regulation in China. I emphasized that although useful, existing approaches do not fit the Chinese context well, and thus cannot fully explain current labor law enforcement and compliance in China. Based on my own field research and a comprehensive review of labor regulation and China studies, I proposed a new framework for the state-designed, bottom-up deterrence model, and articulated its working mechanisms and described its unique features.

This model has three key characteristics: it is *state-designed*, *bottom-up*, and *deterrence-based*. First of all, this model was thoroughly designed by the state

to target complacent government officials and unlawful employers. To accomplish this, the Chinese government created a legal framework that enables multiple sources in society to exert bottom-up pressure. Being well aware of the policy direction of the Chinese government, various societal actors (not only individual workers, but also labor NGOs, labor lawyers, and the media) have smartly exposed employer wrongdoings to the public and state agencies in recent years. The fact that the series of labor regulations implemented since the mid-2000s fully support this bottom-up mechanism warrants emphasis. The Chinese model builds on deterrence theory in that it uses the heightened risk and uncertainty perceived by employers as the main driver of compliance with the labor law, but it diverges from deterrence theory in that the source of enforcement is indirect intervention from the bottom, instead of direct state intervention. The distinctive features of this state-designed, bottom-up deterrence model include that it works thoroughly within state guidelines and is widely supported by the public. In addition, regulation-wise, it is very contentious and has a consequential impact on employers. Indeed, overall, the emergent Chinese model has had a significant impact on employers in recent years. Employers express serious concerns about the possible risks of workers' bottom-up activism, and, as a result, they are motivated to change some risky workplace practices to reduce uncertainty.

This study contributes to existing research in several ways. Above all, recognizing that extant studies are mainly based in western contexts, which means their applicability to institutionally different contexts such as developing countries in Asia is limited, the present paper can enrich current discussions of the varieties of labor regulation models across the globe. By offering a detailed analysis of the emergent Chinese labor regulation model, this study adds nuance to extant labor law enforcement and compliance literature. On a practical level, this study offers useful guidance for Korean firms doing business in China. It can help Korean firms in China better understand how

labor regulation works and become a responsible employers in China. Furthermore, this study may provide useful insights for the ever-increasing number of Korean firms in Vietnam; it can help Korean firms understand labor regulation in Vietnam, which, as a post-socialist developing country, shares institutional commonalities with China (Chan and Norlund, 1998; Chan, 2019). Future studies would benefit from comparing the labor regulation models of China and Vietnam.

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최근 중국의 노동규제 모델과 작동방식에 대한 탐색적 연구

정 선 욱

본 연구는 최근 학술적·실무적 관점에서 주목을 받고 있는 ‘중국의 노동규제’에 대한 모델과 작동방식을 탐색하고 그 모형을 정교화하는 것을 목적으로 한다. 2000년대 중반 이후 중국에서는 노동법과 그 집행이 강화되었고 노동자들은 예전과 달리 좀 더 적극적으로 불만을 표출하고 노동법과 관계기관의 도움을 통해 권리를 구제받고 있다. 하지만 이러한 최근의 현상들을 학술적으로 조명하고 설명하는 시도는 부족하였다. 이러한 배경하에, 본 연구는 강화된 중국의 노동규제가 어떠한 방식으로 작동하는지를 탐색하고 그 특징을 설명하고자 한다. 저자는 우선 기존 노동규제에 대한 주요 이론들을 고찰하면서 기존 연구가 중국 맥락에 그대로 적용될 수 없다는 것을 강조한다. 저자는 현지조사와 중국 제도변화에 대한 최근 중국 논문 고찰을 바탕으로 현 시점에서 중국에서 작동하고 있는 노동규제에 대해 모형을 제시하고 중국 노동규제의 주요 특징들을 소개한다. 중국의 노동규제 모델은 다음의 특징을 가진다. 첫째, 새로운 모델은 철저히 정부가 고안한 것으로서, 제 역할을 못하는 관리들과 법을 위반하는 비윤리적인 고용주를 타깃으로 하여 밑으로부터의 압력(bottom-up pressure)을 유도한다. 둘째, 예전과 달리, 중국정부는 노동규제에 있어서 개별노동자와 여러 사회 행위자들의 참여를 적극 권장한다. 셋째, 정부의 권장과 행위자들의 적극적 참여하에 사용자는 큰 압박을 받게 되는데, 이는 기존의 억제모델과 유사하지만 그 압박의 근원이 정부주도가 아니라, 여러 행위자들의 밑으로부터의 추동이라는 점에서 기존 억제이론과 다르다. 본 연구는 최근 강화된 중국의 노동규제에 대해 좀 더 정교한 설명 모형을 제시한다는데 의의가 있다. 또한 중국에 진출한 한국기업들이 강화된 노동규제에 대해 좀 더 폭넓은 이해를 바탕으로 현지에서 좀 더 책임감 있고 모범적인 기업이 될 수 있도록 도움을 제공할 수 있을 것이다.

핵심용어: 중국, 노동규제, 밑으로부터의 압력, 국가 주도 모델, 억제이론