The essays in this book are written by recognised experts and provide a comparative overview of the development of labour law in different countries. The book aims to give a concise account of the history of labour law and goes on to provide a critical historiography for each country with supplementary essays on international dimensions. This collection will be of interest to historians, labour lawyers, industrial sociologists and labour economists.

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The Rise and Development of Collective Labour Law · I. van der Linden / R. Price (eds.)





# The Rise and Development of Collective Labour Law

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# Contents

# Cultivation, Control and Dissolution: The Historical Transformation of the Labour Union Act of Taiwan, 1911-1990

G.S. Shieh*

## *Introduction*

Many know of the economic "miracle" of Taiwan. Some may have heard about labour relations in the country. Fewer are familiar with its labour law, and scarcely anything is known about the country's collective labour law. This paper delineates the historical formation and transformation of Taiwan's labour union law. The analysis of the articles of the various versions of labour union laws will be placed in a political context, highlighting the unique experience in the case of Taiwan.

I will begin by analysing the historical formation and transformation of Taiwan's labour union law since its inception in China in 1924.[1] The article concludes with the 1990 draft to revise the labour union law. We will demonstrate the repeated changes in the images of labour unions. The historical evolution of the constituents of the Labour Union Act of post-World War II Taiwan (singularity, compulsory organization and participation and plant-based unions) will then become clear as well. This process reflected the political developments. A three-stage scenario is presented: cultivation, control and dissolution. In the second section, two case studies depict the labour union law in force between 1949 and 1987. In the third section, I will investigate the labour union law in collective action (i.e. its treatment during the 1987-89 labour movement). I will reveal that the outcome was of a cumulative-causal nature rather than an "abnormal" or a "business-as-usual" consequence. Focusing on the substance and effects of labour union law, I will review the implications of the case of Taiwan and will explore whether the historical evolution of labour union law in Taiwan resembles that of the Western countries.

*. Thanks are due to Jane Winn, who gave thoughtful comments on the draft of this paper.

1. The Imperial Ching dynasty (1644-1912) was overthrown by the Kuomintang (KMT, the Nationalist Party) led by Sun Yat-sen, who established the Republic of China in 1911. As a result of the civil war between the KMT and the Chinese Communist Party, the KMT government retreated to Taiwan in 1949. On the mainland, the Chinese Communist Party established the People's Republic of China.

## *Historical Transformation of the Taiwanese Labour Union Act*

### *Precedents to the Labour Union Act*

After the Kuomintang (KMT), led by Dr. Sun Yat-sen, overthrew the Ching Dynasty and established the Republic of China in 1911, workers' collective action remained prohibited. The Temporary New Penal Codes, for instance, outlawed strikes: strike leaders were subject to four years imprisonment and their followers to fines (article 224). Similarly, the Regulations on Social Order and Police of 1914 prohibited workers' combinations and strikes, although the sanctions were somewhat milder (articles 22, 38). Acknowledging the need for workers to organize, the Guangzho government in South China repealed these two regulations in 1921. This measure preceded the progressive equivalent of the Labour Union Law of 1924, the first in the history of modern China.

### *A Progressive Initiation: The Regulation on Labour Unions of 1924*

Promulgated by the Guangzhou government, the Regulation on Labour Unions was a progressive piece of legislation. It confirmed that "labour unions and employers' associations [were] equal". "Pursuing and protecting members' interests" was identified as the primary mission of labour unions. Although this position may seem self-evident, the affirmation of this quintessence of labour unions was valuable compared with later versions of labour union laws (1929, 1943, 1947). In the subsequent versions, the stated chief objective was to "increase knowledge and skill (of members)", whereas "pursuing and protecting members' interests" was relegated to the third priority.

The Regulation on Labour Unions of 1924 had a very liberal structural framework. Workers were able to organize throughout the industry; no regional restrictions applied (article 1). Theoretically, the labour union might be a national labour union under the 1924 Regulation. Moreover, the 1924 Regulation contained no restrictions regarding the industries where workers were allowed to organize: even workers in the state-owned enterprises and state employees were entitled to organize.

The 1924 Regulation also permitted labour unions to confederate with each other (article 6). Although no explicit regulation applied, the labour union confederations had the right to engage in collective bargaining and to strike. Considering that such rights seemed natural in the West, their emphasis in the Regulation may appear surprising. In fact, the right of labour union confederations to engage in collective bargaining and to strike was so unusual,

particularly in the subsequent versions of the labour union law, that the 1924 Regulation was heralded as progressive legislation.

The 1924 Regulation applied a double standard regarding the number of labour unions allowed to organize. With labour unions, its policy was *pluralism*, but with the labour union confederations, the system was *unitary*: "Labour unions with the same nature that are two or more in number should confederate with each other in order to form an alliance or to reorganize" (Article 6).

The 1924 Regulations also upheld the principle of voluntarism: workers who were qualified to organize labour unions were permitted (but not required) to organize labour unions. The freedom of workers to join and to cancel their membership, once the labour unions were established, was not explicitly regulated. A reasonable reading, based on the voluntarist principle of organizing, was that workers were free to come and go.

The 1924 Regulation exempted labour unions from the two penal codes of 1911 and 1914, which outlawed the workers' combinations and collective action: "All restrictions of penal codes on the associations and assembly are not applicable to this Regulation" (article 20). In the West the transition from the repression to tolerance (i.e. the repeal of the penalties on workers' associations) took almost fifty years. In China these changes were accomplished within thirteen years. When the labour unions were still in their incipient stage, China had progressed from "repression" to "tolerance" and even to "recognition". This historical legacy left a permanent impression on the labour union movement in China and in Taiwan. Did this stimulate or impede the development of labour unions?

The power of the state under the 1924 Regulations was limited compared with subsequent versions of labour union laws. Labour unions were required to register with the government to qualify for the rights conferred by the Regulations (article 7). Labour unions could therefore exist without registering with the government, provided they felt strong enough to withstand the loss of protection by the Regulations. Labour unions were obliged to report their general operations to the government (article 9). Otherwise, the government gave labour unions *carte blanche* in selecting union personnel, in convening meetings and in allocating their budgets. Again, even though these rights are self-evident in the West, they are remarkable for China and in Taiwan.

Most importantly, strikes could be announced following their approval by the majority of the labour unions (article 14); the government had no say in the procedure. Nor did the government control the collective bargaining process. (Yet another example of a situation taken for granted in the West but remarkable in China and Taiwan.)

When the Regulations were promulgated in 1924, three rationales were announced. First, most of the workers in the handicraft industry in China were unaware of the importance of organizing labour unions, due to the recent emergence of mechanized industries. The status of labour organization in society therefore needed to be acknowledged. Second, the Regulations aimed to grant workers' organizations more freedom. Third, the Regulations attempted to remove obstacles that prevented workers' organizations from realizing their full potential and thus offered them more opportunities for free growth.[2] In a nutshell, the Regulation of Labour Unions of 1924 was promulgated before the establishment of any labour unions), cultivation (the development of labour unions) and combination (tolerance and recognition).

*The Beginnings of State Intervention: The Labour Union Act of 1929*

From 1924 to 1927, the ruling KMT, now allied with the Soviet Union, incorporated the Chinese Communist Party (CCP) into the KMT party apparatus, especially the branches in charge of civil organizations. Consequently, the labour movements were controlled by the leftists of the KMT and by the CCP during this period. At the same time, the North Expedition, which aimed at levelling the political and military enclaves scattered around Central and Northern China, were supported by the Chinese workers. This assistance underlay the KMT's ambivalence towards the labour movement: though appreciative of the movement's help in consolidating its regime, the KMT was also concerned about the disruptive potential should the labour movement come under the opponent's control. The practice of "purging the party" marked the end of the cooperation between the KMT and the CCP, as well as a turning point in the labour policy of the KMT and formed the background to the Labour Union Act of 1929.

The underlying logic of the Labour Union Act of 1929 was therefore that the KMT welcomed the growth of the labour movement but – this was the key issue -- hoped to control the its strength. Though only an architect and a referee of the Regulations on Labour Unions of 1924, the government became a referee and a player in the operation of labour unions in the Labour Union Act of 1929. This change marked the beginning of the state's intervention in labour unions. Asserting that the state began to intervene in labour unions at that point would be overly simplistic. An examination of the nature

2. Zhong-guo lau-gong yun-dong-sh xu-bian bian-zuan wei-yuan-hui, *Zhong-guo lau-gong yun-dong-sh* [Committee on the History of Chinese Labour Movement, *History of the Chinese Labour Movement*], Vol. 3 (Taipei, 1984), p. 342.

and dimensions of such intervention is necessary to depict the state's ambivalence towards the labour movement.

The labour union's primary mission was "to increase knowledge and skill" (article 1), with the essential task of "maintaining and improving working conditions" relegated to third place. Presumably, a labour union's reason for existence is to maintain and improve working conditions ("at least"). By reordering the missions, the state had thus transformed the essence of labour unions. In the Labour Union Act of 1929, the state's first intervention consisted of changing the reason for existence of labour unions.

The state also stipulated the organizational structure of labour unions. The first change apparent upon studying the development of labour unions in Taiwan is the principle of singularity: "Within the same region, workers in the same industry and workers in the same occupations are allowed to set up only one labour union." (Article 6) Second, only workers in certain industries were granted the right to organize: civil servants and workers in transportation, the military, arms industries, state-owned enterprises, education and utilities were not allowed to organize unions, whereas workers in these restricted industries were entitled to organize but not to engage in collective bargaining. Compared with the Regulation on Labour Unions of 1924, which did not limit eligibility for setting up a labour union, the Labour Union Act of 1929 provided for state intervention in labour unions through restriction of the industries where workers were entitled to organize.

Confederations of labour unions were strictly regulated. Their functions were limited to "increasing knowledge and skills of members, promoting production and establishing mutual societies" (article 45); rights to collective bargaining and to strike were not granted. While no explicit regulations affected the levels of confederations, according to one prominent labour law scholar at that time, vertical confederations were allowed only up to the provincial level, while horizontal structures were prohibited.[3] The state had imposed restrictions on the functions and the levels of labour union confederations.

As in the 1924 regulations, labour unions were still expected to register with the government. Labour unions could recruit their personnel from non-members contingent upon government approval (article 11). Under the Nanking Government (1927-1937), when the KMT was in charge, this stipulation amounted to the KMT's control of the selection of labour union personnel and, moreover, the deployment of KMT cadres in labour unions.

3. Shang-kuan Shi, *Lau-dong-fa yuan-lun* (Taipei, 1978 [1934]), p. 188.

The state had also set a ceiling for union dues (article 22) and required government approval for fund-raising by labour unions (article 17). Amendment of the union charters was also subject to government approval (article 9). Furthermore, the government had the right to order labour unions to revise their charters, if the government deemed that these charters violated laws and regulations (article 29). This right extended to the decisions and elections of labour unions (article 28). The regulations concerning the operations of labour unions were remarkably detailed.

The government also had the right to dissolve labour unions (article 37). Labour unions were not allowed to strike to demand more than standard wages (article 23). In fact, the Labour Union Act of 1929 stipulated that "collective agreements may not be concluded, revised or repealed without the government's approval" (article 15). If collective bargaining was viewed as the primary mission of labour unions, this article nullified the autonomy of labour unions and subjected them to state control.

One of the characteristics of the contemporary labour unions law in Taiwan concerns "plant unions" (i.e. unions organized by individual plants, which are small in Taiwan). Our historical research on labour union law should therefore trace the emergence of the "plant union". The Labour Union Act of 1929 lacked any mention of the plant union. Instead, it depicted industrial or occupational unions within the xian (county) area. The executive guidelines, based on the Labour Union Act, were ambiguous. The guidelines stipulated that "the title of a labour union should be 'The Y industrial union of X xian'". At the same time, article 2 of the guidelines stipulated that "[u]nions organized by workers of different occupations in the same enterprise are an industrial union". This article confused a plant union with an industrial union. The mistake revealed that the state had conceived of the "plant union" idea from the outset of labour union law.

Before the Labour Union Act of 1929 became effective, a 16-article draft provided a basis for discussion.[4] Two messages from the draft merit attention. First, labour unions were to be directed by the KMT and supervised by the local government. The rationale was that, according to the Project for Organizing Citizens (the KMT's programme), the KMT should cultivate and direct civil organizations, but the local government would retain the right to supervise. A reading of the Labour Union Act of 1929 alone was not enough. The draft that preceded the act shed more light on the intention of the ruling KMT. The KMT's Project for Organizing Citizens guided the

4. Committee on the History of Chinese Labor Movement, *History of the Chinese Labour Movement*, vol. 4, p. 128.

labour union legislation, and its principle regarding the organization and operation of labour unions was based on "cultivation" and "direction".

Another message concerned the principle of singularity. The 16-article draft explained that "[...] the policy of our party (the KMT) towards the labour movement was not pressured by the *de facto* existence of strong unions, whereby legal recognition was granted as a coping mechanism. Rather, the labour policy of our party was to lead citizens to participate in populist movements. In addition to recognizing civil organizations, we encourage them. The purpose is to concentrate their strength in our party."[5] This explanation did not refer directly to the principle of singularity. Nevertheless, the principle of singularity was obviously closely related to the concentration of union power in the KMT. The KMT pre-empted intentions and turned the labour unions into its puppets by deploying its cadres into their ranks. Although the KMT's roles in labour unions were deleted in the Labour Union Act of 1929, its influence remained ubiquitous.

Under the principle of singularity, workers could not set up a genuine union to compete with the official (mostly KMT-controlled) union. The state wielded extensive control over the establishment and operation of labour unions. Once a labour union was set up (passing the first gate), it therefore immediately came under the control of the state party (the second layer of monitoring). This legal framework suited the purpose of "purging the party (KMT) and controlling the labour unions".

We should place the Labour Union Act of 1929 in its proper context. The KMT government in Nanking promulgated a series of labour laws during this time: the Labour Dispute Act, the Collective Bargaining Act, the Factory Act and the Factory Inspection Act. The framework of the labour law system in contemporary Taiwan was also devised during this period. On the whole, the Labour Union Act of 1929, full of controlling and monitoring provisions, should be juxtaposed against the protective individual labour law. This design included both restrictions (the Labour Union Act) and incentives (the individual labour law that granted some individual labour rights). The substituting relationship between collective and individual labour laws remains observable some sixty years later.

### *Absorb and Control: The Labour Union Act of 1943*

The Sino-Japanese War broke out in 1937. In April 1938, the KMT announced "Outlines on the War of Resistance and National Build-up" to mobilize the whole country "by organizing the peasants, workers, merchants

5. *Ibid.*, pp. 128-129.

and students". The underlying vision of the outlines was contained in the "Outlines of Training Citizens" of 1936, in which the KMT was entrusted with the mission of leading and cultivating civil organizations. The revision of the Trading Union Act in 1943 was an application of the Outlines to labour unions.

The unique aspects of the Labour Union Act of 1943 included the principle of compulsory organization, the admission system and the expansion of the state's power. Qualified workers (i.e. those employed in the same industries in a given region and over age 20) now had an obligation to organize labour unions (article 7). Once a labour union was established, skilled workers had to join (article 12). Compulsory organization and participation constituted a strong manifestation of the compulsory principle, which has persisted to the present and was a characteristic of contemporary Taiwanese labour union law.

Why maintain a compulsory principle in 1943 but a liberal one in 1929? An eminent scholar on labour law at that time and an architect of the Labour Union Act explained:

> During that period (1929), labour unions were manipulated by the CCP. Since the authorities did not want the labour unions to become so powerful that they would curb the freedom of the common workers, [they had adopted the principle of voluntary organization]. The government's decision to organize citizens actively makes its principle of compulsory organizing understandable.[6]

The same is true of the general unions.[7] In 1929 the general unions had no legal status, as most were controlled by the CCP at the time. Likewise, the 1943 version legalized general unions not merely to satisfy the expectations among workers throughout the country[8] but also because the government had begun to organize citizens actively.

The changes in the Labour Union Act from 1929 to 1943 resulted from the struggle between the KMT and the CCP as well as the Sino-Japanese War. The principle of free organizing in 1929 was not promulgated in defence of the "passive right to organize", as argued by the 1990 revised version of Labour Union Act. Nor was the principle of compulsory organizing in 1943 invoked to increase the legitimacy of labour unions.

The same logic applied for the recruitment of personnel for unions. The 1929 version allowed non-members to serve as union staff (so that the link

6. Shi, *Lau-dong-fa yuan-lun*, p. 20.
7. *Ibid.*, p. 38.
8. Committee on the History of Chinese Labor Movement, *History of the Chinese Labour Movement*, vol.6, p. 162.

between the KMT and labour unions could be consolidated). The 1943 version, however, included the revision that only members could serve as staff, because "(as a result of the 1929 open policy) most unions were controlled by individuals outside the labour movement (namely, the CCP cadres)".[9] The unintended consequence of the decision in the earlier stage forced the revision at the later stage.

The compulsory principle might be conducive to "absorption": incorporating all workers in labour unions. What if labour unions thus established were not under the control of the KMT? This was where the admission system entered the picture. Henceforth, applications for setting up a labour union needed to be approved by the government (article 9). Confederations of labour unions needed to be admitted by the government as well. Given the unity of the party and the government, KMT effectively acquired control over the establishment of new labour unions. Whereas the Labour Union Act of 1943 allowed the horizontal xian-level general labour unions, this progressive move was soon restricted by the admission system, thereby revealing the intention of "incorporation and control".

The state further expanded its power by stripping labour unions of their key weapon: strikes. The Labour Union Act of 1943 stipulated that "during the emergency period, no strikes are allowed". Together with the incursions in the right to collective bargaining, passed on from the 1929 version (collective agreements required government approval), labour unions were losing their reasons for existence. The state not only controlled the establishment and disbandment of labour unions but detailed their operations as well. The 1943 version overshadowed the control dimension of the Labour Union Act of 1929. Perhaps the 1943 version could be characterized as "absorption and control".

The only perceptible rationale in the development of the Labour Union Act from 1929 to 1943 was political logic: "Wherever the KMT attempted to consolidate its power, the Labour Union Act would be strict; otherwise, it would be more permissive."

Now the regulations were based on singularity (1929 version), compulsory organization and participation, and the admission system (the 1943 version). The effect would be "a seamless net overhead and no fish outside the net underneath". The final feature of the contemporary Taiwanese labour union law to be described concerns the plant union.

9. *Ibid.*, p. 22.

*Permitting Confederation and Penetrating Underneath: The Labour Union Act of 1947*

Three major revisions appeared in the Labour Union Act of 1947: liberalization of confederations of labour unions, admission of the "locals" of labour unions and the opening of the legal space of the plant union.

General unions at the provincial and national levels, as well as the national confederation of industrial unions, were legalized under the Labour Union Act of 1947 (articles 50-54). Moreover, the missions of confederations were not confined to "increasing knowledge and skill, promoting production, setting up mutual societies, and connections between trades". Rather, confederations were granted the rights to engage in collective bargaining (pending the government approval) and to strike (i.e. their status was equalized with that of labour unions) (article 54).

The second major revision was the introduction of the "locals" of labour unions. Within industrial or occupational unions, "locals" (zhi bu and xiao zu) could be established, with five to twenty members constituting a xiao zu and three xiao zu constituting a zhi bu (article 55).

The third major revision was the establishment of the plant union's legal framework. Since this change is crucial in contemporary Taiwanese labour union law, it merits closer examination. The rule that "workers of the same industry with the number of more than fifty in the same region *or the same plant* [...] must organize unions" (article 7) indicated an important change with respect to the 1943 version. Once the section in bold type was added to the 1947 version, plant unions officially became part of the labour union law.

Which types of labour unions did the Labour Union Act of 1947 depict? We witnessed: industrial unions, occupational unions, confederations of industrial unions (at the provincial and national levels), general unions (at the county, provincial and national levels), plant unions and "locals". The executive regulations based on the Labour Union Act of 1947 stipulated that "the titles of labour union must be the X industrial or occupational union of Y county or the industrial union of the Z plant [...]" (article 2). Thus "industrial unions" identified two types of unions: one was the cross-plant union within the county, the other was the industrial union at the plant level (single-plant industrial unions). This distinction was confirmed by the executive regulations based on the Labour Union Act of 1975 (in which the regulations regarding the plant union remained unchanged): "Workers who have joined the plant-based industrial union may not join the industrial union of that labour in that region" (article 7).

Prior to 1947 under labour union law industrial unions were cross-plant labour unions within the same region. The sphere for organizing was the region (e.g. the county), not the plant. This arrangement was clearly stipu-

lated under the Labour Union Act of 1929 and 1943 but was somewhat ambiguous in the executive regulations based on the Labour Union Act. According to the executive guidelines of 1930 (based on the Labour Union Act of 1929), for instance, "an industrial union assembles workers of different occupations within the same enterprise, whereas an occupational union assembles workers of the same occupation" (article 2). While this article served to distinguish between an industrial and an occupational union, it introduced the plant union idea ("[...] within the same enterprise"). The guidelines also specified the industrial union idea: "the title of a union must be X labour union of Y county" (article 1). The plant union idea was absent from this article, as well as from the executive regulations of 1944 (based on the Labour Union Act of 1943).

Thus, the plant union did not exist in the labour union laws prior to 1947. The executive might have an obscure conception of the plant union and produce a self-contradictory definition, but the Labour Union Act of 1947 provided the legal framework for the plant union. Since then, the scope of an industrial union was broadened (although its substance was scaled down): it included not only the cross-plant, region-based unions, but also the single-plant unions. These two types of industrial unions coexisted until 1990, when new legislation was passed to make the plant union idea more orthodox.

### *A Little Unbounded: The Labour Union Act of 1949*

The present Constitution of the Republic of China became effective on 25 December 1948. The Labour Union Act was revised accordingly in an effort to relax the state's grip over labour unions. First, the admission system was restored to the registration system (article 9). Second, convening union meetings and amending charters no longer required government approval (articles 19 and 28). Third, the article empowering the government to disband labour unions in the event of "serious conspiracies" was repealed (article 40). Fourth, collective bargaining agreements were no longer subject to official approval (article 5). Finally, "protecting workers' interests" once again became the primary mission of labour union (article 1), marking a return to the spirit of the Regulations on Labour Unions of 1924. "Promoting workers' solidarity", however, has not been listed among the missions of labour unions since 1924. Perhaps it never will be.

*Limited Adaptation: The Labour Union Act of 1975*

Defeated by the CCP, he Nationalist Government retreated from mainland China to Taiwan in 1949. The labour union system that covered the whole of China was also transferred to the small island of Taiwan. During the colonial period (1895-1945), workers' associations in Taiwan had been suppressed by Japanese colonial forces. The 1947 massacre by the Nationalist Government eliminated virtually all potential leaders of progressive movements. In 1949 the Chinese labour union system was transplanted to Taiwan, which was union-free at the time.

The union personnel that were affiliated with the KMT retreated with the KMT to Taiwan. Over time, these people gradually died. Replacement became more urgent. One of the reasons for revising the Labour Union Act in 1975 was the need to replace these union personnel from China. The revised Labour Union Act of 1975 stipulated that "When the national labour unions were unable to convene meetings due to a national emergency, their personnel could be elected from lower echelons within the unions, pending government approval [...]" (article 59).

The implication of this revision is clear. First, the labour union structure designed for and in mainland China was imposed on Taiwan. The union personnel elected in China still controlled the unions. Second, while the replacement article was a limited adaptation to the reality of the Taiwanese society, it did not materialize upon the retreat to Taiwan but 26 years later, when the Chinese union personnel were too old to occupy their positions anymore. Third and finally, the adaptation was very limited in that it was contingent upon official approval. The state's intention to control labour unions was obvious.

The second revision was the reduction in the number of workers required for organizing a labour union from 50 to 30 (aged above 20). The rationale was that most workers in Taiwan were young (especially the women); the old requirement was deemed too restrictive. The numerous constraints on organizing a labour union (as we have learned from the history of the Labour Union Act from 1927 to 1949) raises question as to why the threshold regarding the number and ages of the members was the criterion singled out for revision.

Between 1949 and 1975, the Labour Union Act was not revised. Nevertheless, Martial Law was decreed on 20 May 1949; the Regulations on the Punishment for Rebellion on 21 June; and the Regulations on the Hunting of CCP Spies also in the same month. All these measures constituted the martial regime, under which the rights to organize and to strike were suspended. Although the Labour Union Act remained the same during this

period, the policy of the KMT changed. Besides the basic tone of repression, an active policy of organizing labour unions was adopted between 1950 and 1959. This policy, however, applied only to the basic and strategic industries (most were state-owned). Workers in these industries were encouraged to organize labour unions, especially under the auspices of the KMT. This policy catered to both political mobilization and leadership (establishing the social base of the KMT regime in Taiwan and eliminating any potential threat apparent under the martial regime) and economic reconstruction and stabilization. The third policy was to connect with international labour organizations, thereby forcing the KMT to consolidate the labour union system in Taiwan (Li, 1992).

All these policies were adopted under the Labour Union Act of 1949. Together with the intention of "pre-emption, cultivation and control", we see other intentions: economic development and international relations. Clearly, the same Labour Union Act could be compatible with various policy intentions, which might have nothing to do with its original mission. Below, we will see how the restrictive Labour Union Act helped Taiwanese workers cultivate an awareness of "the legalization of labour unions", which facilitated the autonomous labour union movement between 1987-89. The plasticity of labour union law, derived from the above two cases, highlights the role of the Labour Union laws as a vehicle that might serve political objectives and the unintended consequences of labour union laws.

*Selective Liberalization and "Short and Slim": The 1990 Labour Union Act*

In response to the autonomous labour movement between 1987 and 1989, the executive branch of the government drafted a revision of the Labour Union Act. This outcome was a fundamental change in the Regulation on Labour Unions of 1924. First, the compulsory principle was modified and a principle of voluntarism proposed. Second, freedom to join a labour union replaced compulsory participation. Third, the principle of singularity was replaced by one of pluralism. Yet, singularity still held for labour union confederations. This design denotes the "plural bottom and singular top".

Officially, these revisions were a response to the liberalization and pluralization of Taiwanese society. Underlying the official story, however, was a hidden agenda to dissolve the burgeoning autonomous labour movement. First of all, as has just been mentioned, the effort to revise the Labour Union Act immediately followed the 1987-89 labour movement. Second, the countries allowing plural unionism have a corresponding institutional design to resolve the question of representatives (such as the vote monitored by the National Labour Relations Board in the United States.). No similar arrange-

ment existed in the draft for revision. Third, why were labour unions pluralized but not confederations, if adaptation to the liberalization and pluralization of Taiwanese society was necessary? Did the KMT not still control the confederations and seek to face any challenge of pluralism? Of all the possible combinations of singularity and pluralism within labour unions and of confederations, why was the particular configuration of "pluralist bottom, singular top" selected?

The intention of reducing the strength of labour unions figures more prominently in another major revision in the draft of 1990. This change concerns the effort to make the plant union more orthodox. The legal framework for the plant union was established in 1947 but was merely a facilitating environment. In the 1990 draft, however, the plant union became the definition of labour unions: "An industrial union is organized by those workers in production units of the same enterprise" (article 6). Here, the plant, rather than the enterprise or the industry, was the organizing field for labour unions. The conceptual scope of labour unions had been narrowed.

The spirit of miniaturization peaked with the proposal of an innovative design in the draft: "enterprise-level labour union confederations. More than three labour unions in the production units of the same enterprise are [...] allowed to organize confederations of labour unions of that enterprise" (article 49). This revision revealed the intention to miniaturize labour unions on the one hand and to reverse the conceptualization of the labour union on the other. An industrial union was supposed to assemble workers from the same industry distributed throughout the different enterprises and plants. The 1990 draft reversed this principle by calling for the assembly of the so-called "industrial unions" into an "enterprise-level confederation of labour unions". Did this kind of miniaturized union have sufficient strength to engage in collective bargaining?

A revision more obviously aimed at curtailing union actions was the procedure for convening a union meeting. Before calling meeting, labour unions had to inform the government and to invite officials to attend the meeting. If the meeting was to be held during working hours, the labour union had to negotiate with the employer first. In the absence of an agreement, the final decision rested with the government. The number of meetings held during working hours was also limited (article 19). All these designs served to curb a common strategy adopted by labour unions during the 1987-89 labour movement: calling a *de facto* strike by convening a union meeting.

As part of the effort to neutralize the power of labour unions, the 1990 draft set up a very restrictive and strange regulation for strikes. After deciding to call a strike, the labour union had to inform the employer and the government of

the person in charge, the time and the place and method of the strike (article 26). Faithful compliance with this procedure would prevent the strike from being effective. In which capacity and with what concern was a state able to make such arrangements? To be fair to the labour union, did the state have a duty to request that the employer fulfil a similar "obligation to inform?"

Selective liberalization, miniaturization and the obligation to inform all suggested the intention of dissolving the power of labour unions under the guise of the liberalization and pluralization in the 1990 draft. Like the situation around 1929, other labour laws (together with the revision of the Labour Union Act) were undergoing modification as well: the Labour Dispute Act, the Collective Bargaining Act and the Labour Standards Law. The labour- capital conference was granted the right to engage in collective bargaining, which effectively neutralized the power of labour unions.[10] The article allowing labour unions to enforce compulsory membership as a means of increasing membership was to be repealed. Many moral elements were added to the individual labour law, which was comprehensive and detailed. The possible consequences included:

> The regression of our labour law back to one hundred years ago, when there was no collective labour law, when there was only individual labour law under the most *laissez-faire* liberalism. This is the most terrible aspect of the situation![11]

This statement reveals the "substitution relationship" between collective and individual labour laws and, ultimately, the extreme, the de-collectivization of collective labour law. The legal suits in the wake of the 1987-89 labour movement exhibited the same tendency, which will be analysed below.

Concluding this review of the historical transformation of the Labour Union Act of Taiwan raises a crucial question: what is the relationship between the state and law? A state may promulgate laws and put them in the shelf. A state may also interfere with the promulgated laws to impede their proper functioning: through the emergency ordinance, through administration, through KGB or FBI-like apparatus or through the party machine. A state may even revise laws. Over time the Labour Union Act of Taiwan underwent all these modifications.

10. Stipulated by the Labour Standards Law, Labor-capital conferences are attended by the representatives of both workers and management to discuss ordinary business. In practice, such conferences are rarely held.
11. Cheng-guan Huang, "iang-zh ru-hui?" *Tai-wan she-hui yan-jiu ji-kan*, 13 (1992), pp. 31-62, 58-60.

## *Labour Union Act in Practice*

### *1929-1949*

To what extent and in what manner was the Labour Union Act implemented? The following discussion distinguishes the situations before and after 1949, when the Nationalist Government retreated to Taiwan. Before 1949, the labour legislation in China was far from perfect, as one reviewer of the Chinese labour movement observed in the 1930s:

> Unfortunately, with the exception of the rather repressive Labour Union Act of 1929 (which placed union organization and activities under tight control of the KMT and the police and prohibited unionization nationally), the KMT regime never effectively enforced these labour and factory laws. The regime's lack of legal authority in the foreign concessions and settlements, as well as the protection of foreign enterprises by the extra-territoriality clauses in the unequal treaties, prevented effective enforcement. The problem was grave, since most of China's modern industries were located in these concessions and settlements, and a sizeable number of the large-scale enterprises in China was controlled by foreign interests. Domestic factors were also important. The lack of political will and the determination to implement effective enforcement, the underdeveloped machinery of labour administration and the absence under the KMT's one-party "political tutelage" system of strong public opinion supporting industrial regulations contributed to the inability to enforce industrial legislation, even in the areas most directly under the regime's control.[12]

While the protective (individual) labour laws were put in the shelf, the repressive Labour Union Act (collective labour law) was implemented. This was the situation in the 1930s. Now, the lack of political will and determination to achieve effective enforcement, the underdeveloped machinery of labour administration and the absence of strong public opinion supporting industrial regulations due to the tutelage system rendered this legislation ineffective. Given that labour laws existed within the same general institutional environment as the Labour Union Act, why were protective labour laws were not enforced effectively, while the Labour Union Act was?

Two explanations were possible: differentiated attitudes of the state toward the individual workers and collective workers' organizations and different enforcement mechanisms. With the CCP stronghold on the workers and peasant organizations, the KMT was certainly not about to relinquish its control over the labour unions. While individual labour laws needed to be

12. Ming K. Chan, *Historiography of the Chinese Labor Movement, 1895-1949. A Critical Survey and Bibliography* (Stanford, 1981), p. 10.

promulgated as incentives, their actual enforcement was of less symbolic importance than their promulgation. The collective labour law, however, served to channel the strength of labour unions to the KMT.

Generally, enforcement of individual labour law is the task of the labour administration in countries without strong unions and comprehensive collective bargaining systems. Labour's underdeveloped administrative apparatus and the lack of political will were therefore detrimental to the enforcement of individual labour law. Collective labour law, on the other hand, was enforced "informally" and effectively through the KMT.

One might even wonder about the potential basis for enforcement, supposing that the Labour Union Act had been enforced effectively. Was it enforced according to the Labour Union Act itself? Or was the logic merely "loyalty to the party-state", with the Labour Union Act being set aside? The infrequent consultation of the Labour Union Act might have doomed it to the same fate as the individual labour laws.[13]

*1949-1987*

The case study of a large private enterprise (Far-Eastern) in the chemical fibre industry reveals information about the operation of the Labour Union Act between 1949 and 1987. At this enterprise, which had about 2,400 employees in 1989, the labour union was established only in 1977.[14] The effort to organize a labour union, however, began in 1975. Between 1975 and 1977 three patterns of interaction between the employees, the management, and the state were detected. The first one concerned "two lists of initiators". Once the workers attempted to organize and filed the application with the local government, the management would soon collect another list of initiators. The result was two competing lists of initiators. The situation was facilitated by leaks of information from the local government to the management. Second, the management would then urge the first group of initiators to withdraw from the list "of their own accord". Lacking a sufficient number of initiators, the effort to organize the union would be abandoned. Third and finally, if the second step failed, and two competing lists of initiators reached the local government, the local government would issue an impartial invitation to both sides to organize the union as a joint effort.[15]

13. This description pertains to the 1930s. Presumably, the situation of the 1940s was quite similar.
14. This delay indicates that the regulation of compulsory organizing was not comprehensively enforced. The situation at public enterprises was probably far better than at private enterprises in this respect.
15. Sheng-lin Chang, "ong-jian fen-gong yu lau-gong yun-dong" (M.A. Thesis, Graduate

Two key messages were clear. First, the existing Labour Union Act was not comprehensive enough in two respects. On the one hand, it was insufficient to prevent employers from exploiting the procedure of organizing a union; on the other, the protection from the union personnel was not extended to include the initiators. Second, the bias of the local government enabled the three patterns of interaction. The registration system afforded the local government access to the organizing effort. Moreover, the principle of singularity enticed the employer to organize a pro-management union.[16]

Chang observed: "These three patterns of interaction were almost generalized throughout the weak labour organization under the structure of immobilization. Even after Martial Law was lifted in 1987, workers' efforts continued to be seriously challenged."[17] This observation was supported by Hsu.[18]

Even in private enterprise, interference by the "political security personnel" (*ren-er*) was noticeable. Ironically, these political security personnel were also members of the labour union. Once they informed the local government that the newsletter published by the labour union was illegal, with the result that newsletter was suspended for one year. They were also always finding fault with the labour union.[19] Although the *ren-er*'s incorporation into state-owned enterprises was not surprising, its traces even in large private enterprise were more remarkable. The covert control over labour unions by the party-state was thus pervasive.

The Far-Eastern chemical fibre enterprise's labour union was controlled by the management for six years. In 1986, when elections for union personnel were held again, workers mounted their own front and, with an attack on the lay-off project announced by the management, won the election. This watershed ushered in an autonomous labour union that became a key leader of the Taiwanese labour movement between 1987 and 1989.

"Autonomization through election" became the strategy for the exiting but disabled labour unions to reinvigorate themselves between 1987 and 1989. The Labour Union Act of 1975 stipulated the number of seats and procedures for electing union personnel (articles 14-18,19-21; executive regulations, 14-20, 21-24). While this election system did not change between 1949 and 1987, it was used to the advantage of the management before 1986; after 1986, it furthered the victory of the workers. The Labour Union Act's role as a

Institute of Architecture and Urban Planning, National Taiwan University, 1989), p. 66.

16. In Taiwan, no institution of "unfair Labour practices" exists.
17. Chang, "ong-jian fen-gong yu lau-gong yun-dong", p. 66.
18. Cheng-kuang Hsu, *ong-he zheng-ce xia de Tai-wan lau-gong. Di-yi-jie lau-z guan-xi yan-tau-hui lun-wen-ji* (Taipei, 1987), pp.189-204.
19. Chang, "ong-jian fen-gong yu lau-gong yun-dong", pp. 67-68.

vehicle appears to be supported in this case. Nevertheless, the election machinery was only one very technical part of the Labour Union Act (others included the architecture of singularity, compulsory organizing, and the plant union), and elections within the union should be placed in the context of the repeal of Martial Law.

Similar developments are apparent in the state-owned enterprise, with the sole difference that the interference of the KMT and the state was far more pervasive. The Public Transportation Corporation (PTC), previously a branch of the Public Transportation Bureau of the Taiwan Provincial Government, had a union sponsored and controlled by the KMT before 1988. Established in 1954, the Public Transportation Union (PTU) was a product of the principle of compulsory organizing and KMT manipulation. The PTU was organized by the public-transportation branch of the KMT, which promoted unionization in the 1950s. Most officials in the KMT's branch in the state-owned enterprise represented the management, thereby achieving a party-cum-management control over the labour union.[20]

At the same time, the KMT's branch in the state-owned enterprise also influenced the election of the union's staff.

> Candidates for the representatives of members of the union were hand-picked by the KMT branch. Candidates who were not party members required permission from the KMT or the management (to run for the election). Before election, management would advise the employees which candidate to elect by allocating the ballots through the KMT branch. Some pro-management employees even collected the ballots for their fellow employees.[21]

The *ren-er* also monitored the employees and collected the so-called "security" information. The party-plus-*ren-er* apparatus penetrated the operation of the PTU until 1988. For over thirty years, the union neither protected workers' interests nor promoted workers' solidarity. For workers with grievances, the only channel for redress was through informal connections with the KMT's branch and the *ren-er*.

Considering the Labour Union Act as an isolated case might suggest that the establishment and operation of the PTU proceeded "in accordance with law". The party-state's interference would then escape our attention. This situation contrasted sharply with the course of events when the workers attempted to organize a new union in 1988: "Want to sue us? Go ahead and

20. Xiao-ding Fang, "ong-hui yun-dong yu gong-chang zheng-qyuan zh zhuan-xing" (M.A. Thesis, Graduate Institute of Tung-hai University, 1991), p.38.

21. *Ibid.*, p. 40.

try. The Labour Union Act stipulates that workers are entitled to organize their union, so why can't I?"[22]

Why did this awareness of legal rights emerge only in 1988 (when the party-state established rigid control over the union)? One possibility was that such awareness already existed when the Labour Union Act was first promulgated but was repressed under the Martial Law regime. Once the Martial Law regime was challenged and dissolved, the awareness of legal rights (or specifically, the awareness that the labour union was a legalized entity) burgeoned and facilitated the organizing efforts of workers.

Thus, as long as a labour union law existed, regardless of its substance, it might provide a basis for the "awareness of legal rights". This was the Labour Union Act's first-tier effect. Second, a labour union law might offer legal protection for unions to a certain extent, although the realization of such protection was uncertain. This was its second-tier effect. Finally, the Labour Union Act's detailed regulations defined the union's format. Shaping the union image was the third-tier effect of the Labour Union Act. These effects are apparent from the analysis in the previous section.

The effects of the first two layers and their limits become manifest upon examining the 1987-89 labour movement. While the party-state's manipulation was covert, legal obstacles were another tactic for restraining labour unions. When workers from one station of the Public Transportation Corporation requested permission to organize a union in 1988, the local government rejected their application. The reason provided was that since most workers at the PTC were members of the PTU, they were not allowed to establish another union. This effect resulted from the legal principle of singularity and compulsory organizing. The Labour Unions Act served as a pre-emptive measure.

Applications to organize a new union instigated the three patterns of interactions that we have seen the case of the Far-Eastern chemical fibre union: "two lists of initiators, management pressure and official offers of joint union. At the PTU, workers cultivated and enlisted the strength from the grassroots. After rehearsing tactics and manoeuvring strategies, the workers won the election of union personnel. Modelled after political elections, this accomplishment embodied the workers' solidarity under the Labour Unions Act.

Once the PTU became autonomous, the union was able to negotiate with the management. Focusing on individual labour rights (provided under the Labour Standards Law), the union reclaimed what the management owed to the workers. This success, however, was the union's undoing. It forfeited

22. *Ibid.*, p. 64.

the conditions for its existence. Failing to shift attention to the consolidation of collective organization and bargaining, the union was constrained by its victory. "The gains resulting from the law [the Labour Standards Law] led to losses according to law as well." What was the reason for this overwhelming focus on the issues of individual labour rights? Why was no effort devoted to collective build-up and industrial democracy? These questions will have to be investigated in the future. This study revealed paradoxical incompatibility between individual and collective rights, as will be discussed below.

What were the implications of the PTU for our understanding of the Labour Unions Act in practice in Taiwan, particularly between 1949 and 1987? First, the Labour Unions Act applied only to unions that already existed. The legal protection did not extend to pre-union associations. Pre-union workers' associations, however, were the most important organizational basis for labour unions (e.g. the friendly societies in Great Britain). The party's control and monitoring by political security personnel in Taiwan penetrated these pre-union associations long before labour unions were officially established. And these associations exceeded the jurisdiction of the Labour Unions Act. Originally a "xiao-jiu-din" (drinking group), the PTU workers encountered the watchful eye of the party and the security personnel when they attempted to formalize their "workers club".

Second, coercion and control might come from sources other than the Labour Unions Act, such as the Martial Law ("organizing a labour union may be prosecuted as a criminal act of rebellion") and *ren-er.*

Third, the individual labour rights played a key role in mobilizing support for unionization. In their efforts to enlist grass-roots support, initiators of new unions studied the Labour Standards Law, not just the Labour Unions Act. Within the "rights awareness", individual labour rights loomed larger than collective rights.

Fourth, the detailed design of the Labour Union Act (e.g. the principle of singularity and compulsory organizing) boiled down to compulsory integration and pre-emptive control. This effect should be considered in the context of two other effects of the Labour Unions Act, as mentioned above.

Finally, in the election of union personnel, workers and employers mobilized their support and rehearsed their respective tactics. Here, the workers were keenly aware of the solidarity option. While the regulations governing the election of union personnel were neutral, the practice of elections may have cultivated the "rights awareness" and the possibility of solidarity as far as the labour union was concerned.

## *The Labour Unions Act in (Collective) Action: 1987-1989*

During the 1987-89 labour movement, four types of union actions were identifiable: "conquering the old unions; organizing new unions; setting up workers' clubs and offering assistance to the old unions via the autonomous unions".[23] Conquering the old unions was achieved through the election of union personnel, as described in the previous section. Organizing a new union during this period exposed the three patterns of interaction described above. This section will focus on the actions of the local government in charge of union registration of unions. The local government might leak information about applications to establish a union to the employers, "especially when those who want to organize the union are not supporters of the KMT".[24] Using this information, the employer might quickly summon "his" workers and submit a second list of initiators. In some cases, the local government might antedate the application of the pro-employer initiators to give the impression that it preceded the pro-worker's case. The effects of pre-emption and repression of the Labour Union Act were easily noticeable and were attributable to the bias of the local government.

The two case studies review the process of setting up a labour union before 1987 and during the 1987-9 labour movement. These patterns were largely similar, except for the series of collective actions by workers occurring during the 1987-89 period.

The Far-Eastern chemical fibre labour union mentioned above, for instance, assisted the workers of the factories nearby and bound them together as a "brotherhood union". The application of the brotherhood union to become an official organization was filed in 1987 but was rejected. Six years later a similar effort by the industrial unions of Northern Taiwan was successful, albeit in a county ruled by the opposition Democratic Progress Party. The effort to confederate indicated that the existing confederations were not able to represent the interests of industrial unions (because of the majority of occupational unions, which were easily established, and the control of the KMT over the confederations). It also revealed the difficulty of setting up confederations due to the detailed stipulations of the Labour Union Act (such as the minimum number of unions that might initiate confederation and, of course, the principle of singularity).

What was the historical context of the course of events during the collective actions between 1987-89? Were they a rupture and hence an "abnormal"

23. Ya-zho zhuan-xiun zhong xin and Ho Ying-shuet, *Tai-wan z-zhu gong-hui yun-dong-sh* (Xiang-gang, 1992), pp. 49-59.
24. *Ibid.*, pp. 54-55.

situation? Or were they simply business as usual (a "normalist" point of view)? According to the "abnormalist view" the repression during 1987-89 was exceptional with respect to the interactions between labour, capital, and state since 1949. By contrast, the "normalist view" held that the incidents during 1987-89 were similar to those before 1987. Why, then, was autonomous unionization so rare during the pre-1987 period?

Another viewpoint might be more realistic. The 1987-89 occurrences were the cumulative consequence of the interactions among labour, capital and the state since 1949. On the one hand, they opened a Pandora's Box revealing to the world the true nature of labour relations in Taiwan before 1987. From this perspective, the actions of the state and the employers towards unionization would be similar before and after 1987. On the other hand, they also exposed the specific situation during 1987-89, namely, the lifting of Martial Law and the cultivation of the political opposition and the consequent launching of collective action.

Numerous disputes arose as a result of collective action during this period. "Struggles according to law" set the tone. The workers were motivated to launch collective actions by the employers' violation of labour rights as stipulated in the Labour Standards Law. Their actions included taking off on "holidays" *en masse* and legally or convening union meetings to achieve a *de facto* strike.[25] Employers, however, cited the regulations of the Labour Standards Law to dismiss the activist workers. Justifications for employers to dismiss workers without any compensation included business retrenching, insults to the employer or his agents and serious violation of work rules. Between 1987 and 1989 a total of 44 cases, affecting personnel from 112 unions, were transferred (10 persons) or dismissed (the remainder) by the employers.[26]

Some cases reached the courts, where the terms of debate shifted. The court's concern was whether the dismissal by the employers was legal. The origin or root of disputes, namely collective actions to establish unions or to make the old unions autonomous, was put aside. "De-collectivization" of disputes originating in collective action was an obvious response. "Struggles according to law" meant that the legal right that existed only on paper before 1987 was being claimed as a legitimate right. In this respect, both individual and collective labour laws began to have the effect of empowering

25. Jenn-hwan Wang and Xiao-ding Fang, "uo-jia Ji-qi, lau-gong zheng-ce yu lau-gong yun-dong", *Tai-wan she-hui yan-jiu ji-kan* 13 (1992), pp. 1-29, 15.

26. Nai-te Wu and Jing-guei Liao, "i-guo da-fan-ji: jie-gu gong-yun gan-bu, lau-z guan-xi han jie-ji chong-tu" (Paper presented at Lau-dong sh-chang yu lau-z guan-xi yan-tau-hui, zhong-yang yan-jiu-yuan zhong-shan ren-wen she-hui-ke-xue yan-jiu-suo, 1991).

the workers. With respect to the Labour Union Act, they introduced workers to the official channels of mobilization, the awareness that "labour unions were official organizations", and the ways to confederate.[27]

Closer examination reveals a confrontation between the individual and collective labour laws. A very intriguing question arose here: why could the Labour Standards Law cited by the employer to repress activist workers come into effect immediately, while the collective labour law that was supposed to protect these very workers could not and became a mere facade? Why was individualist *laissez faire* taken for granted more than collective *laissez faire*? Identifying the effects of the Labour Union Act requires a detailed analysis of its different layers.

## *Significance and Implications*

The emergence of collective labour law in the West is known to comprise three stages: repression, tolerance and recognition.[28] Some scholars include the stage of integration as well.[29] Taiwan's history reflects substantial deviation from this pattern. There, a pattern of "cultivation, control and dissolution" prevailed. Garon notes that a given historical stage may contain repression, tolerance and recognition simultaneously, with retreat as a constant possibility.[30] The case of Taiwan supports this combination-and-reverse hypothesis. Here, encouragement indicated that the labour union law was the antecedent to a strong labour movement. In the case of Taiwan, the 1924- 1929 period was marked by the state's effort both to encourage and to control unionization. In 1990 the attempt to revise the Labour Union Act revealed an effort to "repress" labour unions through conceptual miniaturization and "liberalization" (the repeal of the principle of compulsory organization and participation).

Does an inner logic underlie the emergence of labour union law in Taiwan? Does the progression of such legislation demonstrate a tendency towards "rationality"? Any such logic in Taiwan is rooted in politics: the struggle between the KMT and the CCP, the Sino-Japanese War, the consolidation

27. Sh-si Wang, "uo-jia tong-he zhu-yi xia de gong-hui zu-zh", (M.A. Thesis, Graduate Institute of Sociology, National Tsing-Hwa University, 1995); Cheng-kuang Hsu, "ong yi-hua dau z-zhu: Tai-wan lau-gong yun-dong de ji-ben xing-ge yu qu-sh", in: Cheng-kuang Hsu (ed.) *han Song Wen-li bian Tai-wan xin-xing she-hui yun-dong* (Taipei, 1989), pp. 103-125.
28. Antoine Jacobs, "Collective Self-Regulation", in: Bob Hepple (ed.), *The Making of Labour Law in Europe* (London, 1986), pp. 193-241.
29. *Ibid.*, 195.
30. Sheldon Garon in this volume.

of a migrant regime in Taiwan and the intention to control and otherwise to dissolve autonomous workers' organizations.

The emergence of the legal concept of "labour unions" is noteworthy. While the same legal concept remains in use, its content and connotations have changed. The property concept is a case in point. With the rise of capitalism, the concept of property evolved from the house and the surrounding animals and plants to production means, interests and profits.[31] In the case of Taiwan, the labour union concept changed from a workers' association comprising the whole industry to a regional one and finally became a plant-based workers' organization. Similarly, the right to collective bargaining, an essential feature of a labour union, has been curtailed and circumscribed by the state. Other stipulations about the principle of organizing and participating and confederating also shape the concept of the labour union and its modification.

The historical experience of the case of Taiwan also reveals a complicated relationship between individual and collective labour laws. The Labour Union Act of 1929 was more repressive than the 1924 version. Yet, a series of individual labour laws was promulgated in the same period. The process reflected a substitution relationship from the perspective of the state: the restriction of the Labour Union Act was compensated by the promulgation of the individualist labour laws. The same was true of the 1990 draft, which entailed the combined revision of an entire package of labour laws.

Ironically, the rights based on individualist labour law were one of the crucial motivating forces of the 1987-89 labour movement. That very individual labour law, however, was also deployed by employers as a defence mechanism against the union activists. Dialectically and paradoxically, whether workers won or not, the labour unions would suffer. If workers won their struggle for individual labour rights, the labour union would lose the very base that motivated workers to join. If workers lost (in the case of transfer and dismissal), the disputes would be "individualized" (portrayed as disputes derived from the Labour Standards Law), thereby obliterating the collective origins. The draft of 1990 contained an obvious attempt to "de-collectivize". Legislation refers to a "replacement" or "trade-off" relationship between individual and collective labour laws. In practice, confrontation and dialectics prevail. In a nutshell, individual labour law remains the focus for all those concerned. Collective labour law has not yet become the "structure of feeling". Does Taiwan's collective labour law contain collective elements? The answer is not that self-evident.

31. K. Renner, *The Institutions of Private Law and their Social Functions* (London, 1949).

The fundamental and difficult question is thus: What determines the nature of labour law? The articles of a particular labour law (such as the Labour Union Act)? Current legal practice? Or labour law as a whole? Three layers of the effect of Taiwan's labour union law are identified here: the cultivation of the "rights awareness", legal protection (literally and in practice) and the detailed regulations of unionization and union action, which might be perceived by the workers as restrictive and repressive. In conclusion, we have to broaden our vision.

First, the antecedence of labour union law both in China (before 1949) and in Taiwan (after 1949) to the actual development of labour unions affects the agenda. Labour unions became a subject of discussion, analysis and review and provided the basis for activating the "rights awareness". Second, the potential scope of this awareness is not limitless. Specific images of unions, detailed by the various versions of labour union laws, might shape the imaginative capacity of constructing a labour union. Third, the relationship between the individual and the collective labour laws may elucidate the nature of labour union law. In the case of Taiwan, "de-collectivization" seems to set the tone. Fourth, reading the Labour Union Act alone is not enough to detect its nature. Its effects are also shaped by the special laws (such as the Martial Law), administrative practice, the party manipulation, the apparatus of the political security personnel and the collective actions of workers. Finally, labour union law has come a long way from setting its agenda to shaping a cognitive structure that takes for granted the existence and operation of labour unions. Nevertheless, any debate on labour union law (either to promulgate a new one or to revise an old one) would at least raise general awareness, a process that would definitely lead to unpredictable effects.[32]

32. The analysis in this paper should be placed in a context that clearly delineates the legal awareness among the Taiwanese. Unfortunately, few academic studies address this issue. Some case studies (not directly related to labour law) show that, in response to instrumentalism and selective enforcement, the Taiwanese adopted similar attitudes towards law; see Jane Winn, "uan-xi yun-zuo yu fa-lu bian-yuan-hua", *Tai-wan she-hui yan-jiu ji-kan*, 17 (1994), pp. 1-40. The purpose of dealing with law is not to observe law (and observing law itself is not a virtue). "Using law in order to escape law and using this law to counteract that law" set the tone. Thus, the Taiwanese interact with the law in almost a "playful" sense. That the Taiwanese worker dared challenge the trade union law only after the Martial Law was lifted indicated the importance of the historical context. An analysis must integrate the political-economic situation and the legal awareness to be a comprehensive investigation of legal phenomena. Additional research is necessary about the legal awareness of the Taiwanese workers. See G.S. Shieh, "h-chang zhuan-zh yu guo-jia que-xi!?" Paper presented in Pu-luo-hua, lau-dong-fa yu lau-dong-ti-zh xio-xing zhuan-ti yan-tau-hui. Institute of Ethnology, Academia Sinica, April 7, 1995; and Chien-Jen Tsai, "The Social Contours of Labor Law: With Special Reference to Taiwan" (Unpublished manuscript, 1991).