The "Worthy" Unemployed: Societal Stratification and Unemployment Insurance Programs in China and the United States

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Both China and the United States have evolving unemployment insurance schemes. The debates in both countries over reform, which have surprising similarities, are illuminating because they reflect ideological concerns, shifts, and struggles in government and society. This article explores how in both countries, the creation of unemployment insurance legitimates the existence of unemployment in paid labor markets and embraces an economic growth model that assumes unemployment is a functional necessity to a growing economy. Likewise, the design and evolution of unemployment insurance schemes reflect policymakers' concern with upgrading labor productivity, albeit often with unintended consequences. The two unemployment insurance regimes also highlight the tension between state and individual responsibility in obtaining and retaining paid work. Finally, in both systems, delineating the boundaries of coverage and level of benefits in the context of labor attachment reinforces societal stratification.

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UNEMPLOYMENT INSURANCE IN CHINA AND THE U.S.

I. INTRODUCTION

In the Chinese Constitution, work is not simply production, but virtue; work is “a matter of honor for every citizen who is able to work.”\(^1\) While not expressed in the United States Constitution, this sentiment is equally embedded in the work ethic so valued in the United States.\(^2\) Yet what happens to the citizen who is “capable of working” but is without a “job”? What is the relationship between “labor productivity” and “social welfare”?\(^3\)

An examination of the evolution of the unemployment insurance laws in the two countries provides a window to the changing ideological, political and cultural considerations that influence each society’s conception of paid labor, unemployment and social welfare.\(^4\) In the traditional discourse, unemployment insurance policy is treated as part of “social welfare policy”—that is, as a benefit program designed to provide partial wage replacement to workers during temporary periods of unemployment. The assumption is that labor markets experience only temporary, cyclical or frictional unemployment.

The thesis of this article is that unemployment insurance statutes and regulations in fact reflect and contribute to the development of broader, contested visions of economic growth (which include social welfare implications), and that the choices made in the development of the program reinforce and create societal stratification. According to one vision of economic growth, worker equality and high levels of worker security increase productivity and help to maintain purchasing

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1. XIANFA [Constitution], art. 42 (1983). All translations in this article are transliterated in the Pinyin system. Unless otherwise indicated, all translations from Chinese sources are those of author Woo. Titles of Chinese books, newspapers and periodicals are transliterated and translated; titles of articles in newspapers are only translated.

2. JACK BARBASH ET AL., THE WORK ETHIC—A CRITICAL ANALYSIS 24 (Indus. Rel. Res. Ass’n Series No.1, 1983). “The tenacious hold of work upon the daily activities of most Americans shows few signs of weakening.” Id. at 24. Indeed, the great majority of Americans will continue to find reasons to work even when the absolute economic need to work may diminish over time. The social and psychological functions of work persist along with the desire for relative income gain. Id. at 24.

3. The authors have placed words in this paragraph in quotes to reflect the fact that, of course, each of them is fraught with its own ideological underpinnings.

4. In both countries, law is a way of “imagining the real.” CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY 175 (1983). The social and political struggles which develop and evolve in the law’s language and implementation both reflect the conditions of that culture and, in turn, construct new conditions. See Karl E. Klare, The Public/Private Distinction in Labor Law, 130 U. PA. L. REV. 1358, 1358 (1982).
power and, thus, demand. A competing vision holds that a certain amount of worker inequality, by providing material incentives, and worker insecurity increase labor discipline, and, hence, productivity. In both countries, the debate about choices regarding the establishment, design and implementation of an unemployment insurance system goes beyond technocratic concerns to incorporate economic, moral and political tensions between these competing visions.

In both China and the United States, the initial decision to enact an unemployment insurance system reflects the tension between these competing visions. It legitimates the existence of unemployment in paid labor markets and embraces an economic growth model that assumes unemployment is a functional necessity to a growing economy.

Likewise, the design, administration, and implementation of an unemployment insurance regime at every step reopens the ideological conflicts which are evident in the original enactment. In structuring their unemployment insurance schemes, policymakers in both countries have tried to create incentives they believe will increase labor productivity. These incentive structures, however, implicate the values of equality and social justice, and their effect on labor productivity is indeterminate.

The two unemployment insurance regimes also highlight the tension between state and individual responsibility in obtaining and retaining paid work. Choices regarding coverage for individuals who voluntarily leave their jobs or who are fired from their jobs delineate the boundaries of state responsibility to its citizens who are without paid work, and reflect attempts to again create economic incentives for both workers and employers.

Most important, incomplete coverage by the unemployment insurance systems in both China and the United States marginalizes certain “workers” and stratifies the work force. This process reflects political, economic, moral and cultural values about who is “worthy.” The shaping of a social insurance system for those outside paid labor market jobs evolves from the society’s struggle about how to define “labor markets” and how to classify the worth of those inside and outside paid labor markets. Not surprisingly, the resulting decisions incorporate class, race, and gender biases.

In Parts II and III, we begin by describing the historical development of and current tensions within the Chinese and United States unemployment insurance systems. In Part IV, we analyze how the shaping of these two sets of laws reflects the struggle between conflicting visions of social justice and economic growth, and creates
and legitimizes particular understandings of the role of paid labor markets. Obviously China and the United States are vastly different in tradition, polity, and economic situation. Yet, we argue, there is a remarkable similarity in the choices each is making with regard to its unemployment system. We argue further that each nation’s unemployment insurance system is, in practice, increasing the degree of inequality and stratification of its work force.

II. THE CHINESE LABOR SYSTEM

The labor system in the People’s Republic of China can best be understood as comprising two periods—pre-1978 reform and post-1978 reform China.5 In each period, labor policy mirrors evolving developmental goals. In the early 1950’s the national goal was to resurrect a war-torn economy, and various types of economic organizations and some private labor were allowed to exist. In the late 1950’s, in an effort to “catch up with the United States and surpass Britain,”6 the Maoist regime turned to a command economy: intensive production resulted in the mass mobilization of the labor force. Strict control of business and labor activities remained the policy throughout the 1960’s and 70’s, as part of the national goal of socialist construction to modernize industries, agriculture, national defense, and science and technology.7

For most of the Maoist or pre-reform period (late 1950’s to 1978), the concept of the “iron rice bowl” best captures the Chinese

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5. These two periods have also been characterized as the Maoist and Post-Mao periods. The year 1978 proved to be the watershed year. In December of that year, a series of discussions from the Third Plenum of the Eleventh Chinese Communist Party (CCP) Central Committee launched China on its present path of economic and institutional reforms and limited liberalization. Recovering from the Cultural Revolution, the post-Mao leadership led by Deng Xiaoping began to restore economic, social and political stability, first by reinstituting its legal institutions, then by a series of steps to restructure and revitalize its economy. See generally YANJIE BIAN, WORK AND INEQUALITY IN URBAN CHINA (1994).

6. For an excellent account of China’s pre-reform labor policies, see id. at 7. See also ANDREW G. WALDER, COMMUNIST NEO-TRADITIONALISM: WORK AND AUTHORITY IN CHINESE INDUSTRY 30-35 (1986).

7. See WALDER, supra note 6, at 32, 33 (detailing the transformation of private small workshops and individual craft workers to state-controlled, large-scale, heavy industrial enterprises from 1948-1957); MARTIN K. WHYTE AND WILLIAM L. PARISH, URBAN LIFE IN CONTEMPORARY CHINA 29-30 (1984) (noting that in the late 1970’s, a small number of self-employed businesses such as street vendors or barbers were allowed to operate, constituting 1% of the urban labor force or 3% if illegal activities of black marketeers or street hawkers are included).
state’s labor policy. Until recently, the Chinese state guaranteed work by providing all households in rural areas with land through collectivization, and workers in the urban areas with lifetime employment in state-owned or large collective enterprises. The urban worker was guaranteed a job at a fixed wage based on seniority and skills, but with no relation to the worker’s individual performance. The worker had little fear of termination, but also expected no bonuses for showing initiative. The primary incentives to motivate China’s workforce were ideological, not material.

Under this philosophical framework, the centrality of and the expectation of employment were evident in the way government-provided subsistence was tied to one’s job. For example, housing, medical care, schools and even access to cinemas were provided as job-related benefits and were lost when the job was lost. For the urban worker, therefore, a job was not only a matter of livelihood; it

8. Indeed, much of the labor and wage reform was designed to break the “three irons,” which include the iron chair (position), iron wage, and iron rice bowl. Peter Harrold & Rajiv Lall, China: Reform and Development in 1992-1993, WORLD BANK DISCUSSION PAPERS No. 215, at 49 (1994); BARRY FRIEDMAN & LEONARD HAUSMAN, SOCIAL PROTECTION POLICY AND ECONOMIC RESTRUCTURING IN CHINA (forthcoming 1995) (manuscript at 36-38, on file with authors).

9. Thus, for example, in 1977, 78.8% or 71,960 of the 91,270 total urban employed worked in state-owned enterprises, 21% or 19,160 worked in urban collective enterprises, with the remaining 0.2% or 150 as urban individual workers. BIAN, supra note 5, at 25. See also ZHONGGUO TONGJI NIANJIN 1993 [CHINA STATISTICAL YEARBOOK 1993] 97, 109.

10. During the Maoist era, wage and salary were comprised of three elements: a basic wage scaled for skill level, a social wage including insurance, welfare benefits and subsistence subsidies paid on the basis of need, and a bonus wage to reward collective efforts. J. PRYBLA, THE CHINESE ECONOMY: PROBLEMS AND POLICIES 158-160 (2d ed. 1981); W. Gary Vause & Georgia Bush Vrionis, China’s Labor Reform Challenge: Motivation of the Productive Forces, 24 STAN. J. OF INT’L L. 447, 458 (1987-88). See also CHARLES HOFFMAN, THE CHINESE WORKER 98-104 (1974) (detailing how the multiple wage-grade scale can differentiate among unskilled to highly skilled categories).

11. Vause & Vrionis, supra note 10, at 447, 449. See also HOFFMAN, supra note 10, at 93-94 (arguing that while material incentives were not totally abandoned, the Maoist strategy was to harness political education in the service of maximizing production. Socialist consciousness of workers was raised through class struggles and reinforcements of social or moral incentives).

12. A. B. Atkinson, Unemployment Insurance and Economic Reform in China, CP No.7 PROGRAMME OF RES. INTO THE REFORM OF PRICING AND MARKET STRUCTURE IN CHINA, STICERD, LONDON SCHOOL OF ECON., 21-22 (August 1990). See also Jesse Wong, In China, The Welfare State Hangs On, Burdening Already Stressed Companies, WALL ST. J., August 23, 1994, at A9 (documenting how, even today, the sense of state responsibility for social welfare lingers). It is important to note, however, that benefits accorded to workers can vary from enterprise to enterprise since each enterprise is subject to different local or ministerial regulations. In addition, responsible cadres and managers are given wide discretion in determining the appropriate levels of benefits.
also defined the quality of her life.

The state’s duty was to provide employment and its accompanying benefits, but the state could not be expected to provide a job for every person in any location that person chose. Thus, the corollary to the state’s acceptance of responsibility for full employment was a restriction of individual mobility. Jobs were assigned in a specific location, the employed person was registered in that location, and she was not usually able to relocate and obtain another job. The implementation of these urban labor force policies was largely dependent on a household registration system, with permanent jobs assigned only to local residents. As Barry Friedman and Leonard Hausman have said, “the permanent employment relationships in China were not entered voluntarily by either enterprise or worker, but were prescribed by government.” Thus, throughout the Maoist era, getting a job was not voluntary; everyone who could work was not only expected to do so, but was also ensured a place in the labor market.

In this historical context, unemployment insurance was unnecessary because theoretically unemployment did not exist. Rather, the

13. The state theoretically bore the responsibility for creating “the conditions for work,” as well as for providing “necessary vocational training for citizens.” Constitution arts. 42-43 (1983). The Chinese Constitution also lists a panoply of social benefits for which the state is responsible. See, e.g., Constitution art. 44 (the livelihood of retired personnel), art. 45 (social insurance, social relief and medical and health services for the elderly, ill or disabled), and art. 46 (education for children and youths).


15. FRIEDMAN & HAUSMAN, supra note 8, at 6.

16. In the history of the P.R.C., there were three periods during which unemployment was acknowledged. In 1949, in a war-torn economy, the Mao regime faced 4.7 million urban unemployed and an unemployment rate of 23.6%. From 1949 to 1957, 16.7 million jobs were created, of which nearly one-third were government introduced. In 1955, job introduction programs were replaced by a rigid policy of state assignment. As people were given jobs in the newly established state sector, the unemployment rate was reduced to 5.9%. In the early 1960’s, after the “Great Leap Forward,” over 20 million joined the urban work force, far exceeding the number of jobs available. The Chinese state responded by sending large numbers of urban youths to the countryside. By 1976, nearly 12 million urban youths were transferred. FRIEDMAN, supra note 5, at 51-53. In the late 1970’s after the Cultural Revolution, when youths sent to the countryside returned to the city, 5,676,000 workers were unemployed. The Chinese state dealt with this by job creation, institution of the “dingti” system (whereby parents retired early to allow their unemployed children to take over their
Chinese state only officially recognized a category of people without jobs as urban people “waiting for employment” [daiye renyuan]. With this labor policy, the state’s bureaucratic allocation of labor also served a welfare function in a society with surplus labor.

The formally employed worker—that is, the state worker or the worker in a state-owned or larger collective enterprise—enjoyed benefits from “labor insurance coverage” [laodong baoxian], which included benefits for disability, old-age, maternity and sickness as well as subsidized healthcare. Labor insurance benefits along with occupational or communal welfare provisions [shehui fuli], which include facilities such as day care centers, institutions for the mentally ill and the disabled, and hardship and bereavement allowances were administered by the work unit [danwei]. Two small programs supplemented labor insurance to constitute the social security regime of Maoist China: social relief [shehui jiufu], which provided assistance to the rural poor, particularly to the elderly without relatives to depend on; and disaster relief [ziran zaihai jiufu]. Unlike benefits received under the labor insurance and social welfare systems (which were viewed as entitlements), benefits under the social relief program were discretionary and miserly, and those who collected them were regarded with shame.


18. This group is composed primarily of youths waiting for job assignments from the state and is distinguished from those few jobless workers who previously held a job. Throughout the history of the People’s Republic, the Chinese state managed to keep the number of daiye renyuan artificially low. However, as discussed in the text accompanying notes 23-28, the problem of disguised unemployment and underemployment is not taken account of in this category.


20. Id. at 256-57. Another “social security” program is public health care, which, because of its complexity, is beyond the scope of this article.

21. Id. at 255; Margery Wolf, REVOLUTION POSTPONED: WOMEN IN CONTEMPORARY CHINA 196-199, 248 (1985). With decollectivization and the installation of the household responsibility system (described infra in text accompanying notes 29-30), rural households face greater incentives but also greater risks, as the financing of social security programs now depends on the willingness of individual households to contribute and the ability of administrations to collect welfare taxes. Ahmad & Hussain, supra note 19, at 267.
control and market coordination. These policies revamped the nation’s centrally-planned economy by encouraging decentralization, private enterprise, and foreign investment. This change in development goal prompted a shift in labor policy.

Specifically, the “iron rice bowl” was criticized for promoting inefficiency and products of poor quality. Policymakers focused on the fact that not all workers were needed at their present jobs, i.e., that many enterprises had “redundant” workers. In other words, there was a significant problem with underemployment or disguised unemployment. Furthermore, even those workers who were needed on their jobs were criticized as being inefficient. The reform debate centered on ways of increasing efficiency and reducing labor costs for enterprises by laying off workers, ending lifetime job guarantees and increasing labor market mobility.

The Chinese state began its labor reform in rural areas with the “household responsibility system,” under which a family household could contract with the state for the exclusive use of land in exchange for usage fees and could retain profits above a certain quota that goes to the state. The success of this system led to urban work force

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24. Schadler & Schucher, supra note 14, at 224-26; Jefferson & Rawski, supra note 14, at 48-51; FRIEDMAN & HAUSMAN, supra note 8, at 1-5.

25. Schadler & Schucher, supra note 14, at 222.

26. Atkinson, supra note 12, at 9 (quoting a factory manager in Hebei Province who “found that the company’s 800 workers on average did only 50% of the work expected of them during an eight-hour day.”). The central government identified “overcentralized control” to be a major defect in the economic system which has caused officials, enterprises and individuals to lack incentives and motivation needed for increased production. WANG, supra note 22, at 27.

27. Schadler & Schucher, supra note 14, at 219.


reforms such as wage bonuses,\(^\text{30}\) an "optimal labor composition program" that allowed managers more latitude in allocating labor within enterprises,\(^\text{31}\) and, in 1986, new hiring forms that allowed enterprises to recruit new workers under contractual arrangements typically lasting 1 to 10 years.\(^\text{32}\) The expectation was (and still is) that the labor contract system would slowly replace the permanent job system.\(^\text{33}\)

Other labor policy changes include the encouragement of the growth of non-state sector employment,\(^\text{34}\) greater responsibility on

\(^{30}\) Wages are now composed of a standard wage based on the job level and the employee's qualifications and other wages such as bonuses, allowances, overtime wages, and overfulfillment awards. The standard wage is fixed and does not change unless the employee's qualifications reach a higher level. The bonuses may vary month to month according to the employee's performance. From 1980 to 1992, the proportion of standard wage to other wages decreased from 72.4% to 45% of total monthly salary. Zhongguo Tongji Nianjian 1994 [China Statistical Yearbook 1994] 115. For a detailed explanation of the types of wages and the recent wage reforms, see Bian, supra note 5, at 145-158. Since wage reform, the Ministry of Labor sets a total wage bill for each state-owned and collective enterprise, leaving individual enterprises to determine how to divide the total among workers. The decision is normally made by the enterprise manager in consultation with the enterprise party chief and the All China Federation of Trade Union representative. U.S. Dept. of State, 1994 Human Rights: China 570 (1995) [hereinafter Human Rights Report].

\(^{31}\) The "optimal labor composition program" is a form of internal reorganization of surplus labor. It can involve retraining, relocation of workers, the opening of new branches or subsidiary companies, or transfer to other enterprises which are short of labor. Atkinson, supra note 12, at 6. Redeployment remains the favored and primary form of labor reform.

\(^{32}\) Schadler & Schucher, supra note 14, at 224, 227, 238-9, (discussing the 1991 CCP announcement of plans to extend the labor contract system to the whole staff, the resulting enforcement reorganization of work groups, and the shutting down of unprofitable enterprises, and how, to date, these measures have not been fully implemented). See also Friedman & Hausman, supra note 8, at 6-10 (discussing labor reforms).

\(^{33}\) Chinese official figures boast that in 1993, 23.3 million employees (21% of all urban employees) of state-owned units were under the contract employment system. Chinese Statistical Yearbook 1994, supra note 30, at 99. See also, Statistical Communique of the State Statistical Bureau of the People's Republic of China on the 1993 National Economic and Social Development, China Econ. News, March 14, 1994, at 7 [hereinafter Statistical Communique]. This percentage, which rose to about 40% in 1994, can vary widely from region to region, depending on the region's economic development. Contract workers are common in joint ventures and town and village enterprises, but less common in collective enterprises below the provincial level. Thus, for example, 97.5% of the state workers in Shanghai are under contract. Human Rights Report, supra note 30, at 571. The Chinese government is hoping that by the end of 1995, 80% of all workers will have signed employment contracts with their employers. Zhang Jinsheng, Zhou Jiahua Addresses Meeting on Labor Law, F.B.I.S. (China), December 27, 1994, at 56.

\(^{34}\) Non-state sector employment includes private (individual employment or family businesses [getihu] and private enterprises [siying qiye] which employ 8 or more persons), collective [yi yi qiye], and foreign-invested [sanzi qiye] ventures. Privatization of state-owned enterprises was initiated in Shenyang in 1986 and has since spread to other parts of the
work units to recruit, and the declining use of state assignment with the increasing use of direct individual application and indirect state assignments (work units taking charge of targeting and screening candidates). Thus, an overall theme of the post-1978 labor reforms is the decentralization of management decisions—the transfer of state control to enterprise managers, giving enterprise managers more autonomy in hiring, firing, and rewarding employees.35

Even more aggressive restructuring of China’s economy has been pursued in the 1990’s, with the official embrace of a “socialist

country. While privatization of state-owned enterprises remains limited to small industrial and commercially insolvent enterprises, the 14th Party Congress nevertheless gave further encouragement to the development of the private sector. Accordingly, some provincial and municipal governments have begun to enact special regulations to encourage the development of the private sector. For example, Hangzhou, Suzhou and Shenyang have opened private development zones, in which private enterprises are offered preferential treatment. Harrold & Lall, supra note 8, at 45. While the growth of private enterprises has unquestionably skyrocketed, the exact extent of this growth remains unclear. In 1992, officially registered private sector employment was 23.1 million, an increase of 26% over 1991. Harold & Lall, supra note 8, at 46. In an excellent article, Lora Sabin persuasively argues that official figures of non-state employment were inaccurately low because they failed to correct for distortions resulting from the false registration of privately owned enterprises and the undercounting of workers in the officially recognized urban private sector. Sabin estimates that the growth in non-state sector employment is between 21% and 33%. Lora Sabin, New Bosses in the Workers’ State: The Growth of Non-State Sector Employment in China, CHINA Q., 970 (1994).

35. WANG, supra note 22, at 11; WORLD BANK REPORT, NO. 12757-CHA, CHINA: ENTERPRISE HOUSING AND SOCIAL SECURITY REFORM PROJECT 6 (1994) [hereinafter ENTERPRISE REFORM PROJECT]. Another recent labor reform is the shortened work week from 48 hours to 44 hours, excluding overtime, with a mandatory 24 hour rest period. A system of alternating weeks of 6 and 5 day work weeks began in March 1994. HUMAN RIGHTS REPORT, supra note 30 at 571; Steve Mumson, Living for the Two-Day Weekend: For Most of China’s Laborers, the Six-Day Workweek is a Thing of the Past, WASH. POST NAT’L. WKLY. ED., May 15-21, 1995, at 16. By and large, foreign investment enterprises have the greatest freedom in the labor management area. The 1980 Regulations on Labor Management in Joint Ventures Using Chinese and Foreign Investments permitted joint ventures to dismiss employees for economic reasons, but only if the employees were compensated as stipulated in the labor contract and trained for another position. Enterprises were required to report disciplinary dismissals to the appropriate state authorities for approval. The 1984 Procedures for the Implementation of Regulations on Labor Management in Joint Ventures Using Chinese and Foreign Investment placed further limitations on the rights of enterprises to discharge employees, prohibiting dismissal of workers who were recuperating from illness or injury, whether or not work-related, and female workers who were six or more months pregnant or on maternity leave. Workers who were dismissed received compensation commensurate with the number of years of service with the joint venture. The 1986 Provisions for the Encouragement of Foreign Investments and the Regulations Governing Employment, Autonomy, Workers’ Wages and Insurance and Welfare Fees in Foreign Investments reiterated and expanded upon the employee dismissal policies and procedures. This most recent set of regulations authorized foreign investments to dismiss for cause, and to discharge unqualified or redundant personnel. Vause & Vronis, supra note 10, at 473-474.
market economy." Yet in the 1990's, competing forces have also emerged. First, worker dismissals have been met with worker resistance and hence, a reluctance on the part of factory managers and local officials to scale back employment. Indeed, worker strikes have occurred with such frequency that the Ministry of Labor has ceased to disavow the nonexistence of strikes and, in 1993, reported a 50% increase in labor disputes. Of the 12,358 labor disputes reported by the Ministry of Labor's arbitration bureau, 244 resulted in strikes.

Second, the potential scope of widespread worker dismissals has become clearer. Official Chinese government figures placed unemployment at 2.6% (4.2 million) in 1993 and 2.9% (4.9 million) in

36. Deng Xiaoping's spring 1992 tour of the southern provinces marked a commitment for accelerated reforms, now enshrined in the term "socialist market economy." The term cemented the role of the market as the articulated method of resource allocation in China and is a clear step away from the position of the 13th Congress in 1987 which characterized the Chinese economic system as one in which "the state regulates the market, and the market guides the enterprise." Harrold & Lall, supra note 8, at 30-31. Reforms of state-owned enterprises have included corporatization of the enterprise (allowing the public to buy shares of state-owned enterprises), leasing and sale of small unprofitable enterprises to larger, more financially secure enterprises, and limited bankruptcies. ENTERPRISE REFORM PROJECT, supra note 35, at 6. Other reforms include delinking social services from enterprises, completing price and market reforms, restructuring the government to meet the demands of the new economic system, fiscal and financial sector reforms to strengthen macroeconomic management. Harrold & Lall, supra note 8, at 29.

37. As so aptly put by Cyril Lin of Oxford University, the problem is that if enterprises were to dismiss workers, "workers will go on the streets and that will cause instability... . Until China establishes a social security safety net, and reforms its housing system so that workers do not depend on their companies for shelter... enterprises will be reluctant or unable to cut back significantly on redundant workers." Schadler & Schucher, supra note 14, at 240, quoting from SOUTH CHINA MORNING POST, April 12, 1994. See also text accompanying note 41. See also Jeanne L. Wilson, Labor Policy in China: Reform and Retraction, in PROBLEMS OF COMMUNISM 64 (noting that large scale strikes and demonstrations took place in Henan and Hunan in 1989 because of wage reductions and unemployment).

38. HUMAN RIGHTS REPORT, supra note 30, at 569. Most of the disputes occurred in foreign-invested and private firms, with 25% involving violations of labor contracts; the rest concerned wages, working time, working conditions and safety. Cai Min, Paper Views Disputes, New Laws, F.B.I.S. (CHINA), January 3, 1995, at 57.

39. HUMAN RIGHTS REPORT, supra note 30, at 569. Many of these strikes are conducted by migrant workers in special economic zones protesting low salaries and poor working conditions. Thus, in Zhuhai, strikes have hit many foreign, and especially Japanese, companies in recent years. In April 1993, a strike paralyzed a factory owned by the Japanese electronics giant Canon for three days. In January 1995, several hundred workers went on strike in the Zhuhai economic zone at a motor factory owned by Japanese conglomerate National Panasonic. Harold Bruning, Workers Strike at Japanese Factory at Zhuhai, F.B.I.S. (CHINA), January 18, 1995, at 23-24.

40. Statistical Communiqué, supra note 33, at 7.
1994.41 However, there are also many who fit into the category of disguised unemployment, aptly termed neibu daiye (internal job-waiting personnel), although the exact number of “disguised unemployed” is unclear.42 Official figures conservatively estimate that more than 10 million people, or 12% of the working population, are redundant workers and remain idle in state-owned firms nationwide.43 What is clear is that, including an estimated rural surplus of approximately 140 million persons (an increasing number of whom are migrating to the cities),44 China would face the prospect of some 160 million unemployed (more than half the entire population of the United States)45 if the pace of reforms were to accelerate.46 Such mass unemployment, in conjunction with the recently reported 21.9%


42. An exact figure is not possible since there is no clear definition of surplus labor nor has a systematic survey been done. Schadler & Schucher, supra note 14, at 225. There can only be estimations drawn from interviews of factory managers with figures based on actual number of hours worked each day or on labor norms.


44. Some authorities place surplus rural workers at 120 million. Rural Surplus Labor ‘Will Flow Blindly’ Unless Measures Are Taken, NEW CHINA NEWS AGENCY, January 27, 1995, translated in BBC SUMMARY OF WORLD BROADCASTS, February 27, 1995. Official figures admit to only 20 million new rural workers migrating to cities in 1993, 25 million in 1994, and possibly 30 million in 1995. Ma Chenguang, Goal for Jobless Rate: Under 3%, ZHONGGUO RIBAO [CHINA DAILY], March 8, 1995, at 1; Mark O’Neil, China Aims To Keep Unemployment at Three Percent, THE REUTER ASIA-PACIFIC BUSINESS REPORT, March 7, 1995. Fewer than 1% of these mobile laborers hold permits allowing them to travel to other places. Zhongguo Tongxun, Enterprises Have 17 Million Surplus Workers, F.B.I.S. (CHINA), October 4, 1994, at 70. This “floating population,” as they are generally termed, have been blamed for creating transportation chaos and general social instability. Ma, supra, at 1.


46. A report published by the Pacific Economic Corporation Commission in early 1994 named China as the country with the highest ratio of surplus labor to total labor in the world. Yun Hechun, State Enterprises Unsure Whether They Can Abate Workers’ Discontent About Prices, F.B.I.S. (CHINA), January 24, 1995, at 54-55. With the Chinese labor force expected to hit 780 million by the year 2000, some estimates conclude that the mainland government will have to find jobs for 220 million people in 10 years, including the 5 million existing unemployed, 15 million surplus in enterprises, surplus labor in rural areas, and those in urban areas who will join the labor force. Using the annual 8% economic growth rate, only 100 million positions will be available, and the other 120 million will remain jobless. Id.
inflation rate, could result in tremendous social unrest.47

Since losing a job in China means losing benefits as well as income,48 layoffs present a particularly difficult problem for workers and government authorities alike in the absence of a private housing market and government-supported social insurance programs.49 The point that social benefits need to accompany any layoffs is not lost on the Chinese government, which has declared the formulation of a unified social insurance system to be of utmost importance.50 Until that time, despite the official stated aim of eliminating lifetime guaranteed employment, redeployment remains the preferred method of handling surplus labor.51

The central government developed in 198652 and revised in 1993,53 a small and until recently largely unused54 system of unem-

47. Patrick E. Tyler, Chinese Leader Says “Mistakes” by Government Fueled Inflation, N.Y. TIMES, March 6, 1995, at A1. The last time China faced double digit inflation was in 1989, the year of the Pro-Democracy Movement. Over 75% of 800 workers interviewed by the Anhui Chuzhou City Federation of Trade Unions, and over 55% of citizens surveyed by Jiangxi Federation of Trade Unions have expressed concern over the present rate of growth in prices. Trade unions in some cities have even received anonymous calls asking them to organize strikes in protest against price increases. Yun Hechun, supra note 46, at 54-55.

48. See text accompanying note 12.

49. See generally ENTERPRISE REFORM PROJECT, supra note 35.

50. Thus, for example, two early social insurance regulations to accompany labor reforms were “The Temporary Procedure of Assistance to Old, Weak, Sick and Disabled Staff Workers” and “The Temporary Procedure of Workers’ Retirement and Resignation” enacted in 1978 to expand pensions to encourage older employees to retire from the labor force. TANG SHURONG & XI LONGSHENG, LAODONG FA SHIWU QUANSHU [COLLECTION OF LABOR LAW AND PRACTICE] 1251-1253 (1994). In the same way pension reforms sought to encourage early retirement, unemployment insurance seeks to encourage layoffs, and goes hand in hand with labor reform. China is also trying to encourage the development of a private market to provide some of the services which have been the responsibility of the state. See Wong, supra note 12 (discussing China’s receipt of a $350 million loan/credit approval from the World Bank to build housing for sale to state employees, and indicating that China will ease restrictions on foreign insurance companies so that workers can buy their own medical insurance).

51. Thus, the central authorities required “internal digestion as a rule, dismissal as an exception” [qiye xiaohua wei zhu shehui tiaojie wei bu], Shadler & Shucher, supra note 14, at 239, quoting from RENMIN RIBAO [PEOPLE’S DAILY], August 19, 1992.

52. GUOYING QIYE ZHIGONG DAIXIE BAOXIAN ZANXING GUIDING [PROVISIONAL REGULATIONS ON JOB-WAITING INSURANCE FOR WORKERS AND STAFF IN STATE-OWNED ENTERPRISES] (1986) (China) hereinafter 1986 REGULATIONS (issued by the State Council on the basis of recommendations from the Ministry of Labour. A translated copy can be found in HILARY K. JOSEPHS, LABOUR LAW IN CHINA, CHOICE AND RESPONSIBILITY 65-169 (1990)).

ployment insurance. The 1993 changes to the regulations, building on six years of implementation of the provisional regulations, were designed to clarify the qualifications for unemployment insurance benefits, to relieve the financial burden on enterprises, to provide a higher benefit level, and to give greater discretion to local governments.

From its inception, unemployment insurance coverage was limited to workers in state-owned enterprises, who, as of 1992 still constituted the majority of urban workers. This limitation, retained in the 1993 Regulations, maintains the distinction that existed under the Maoist regime between state and non-state workers. With the recent growth of new forms of enterprises, the 1993 Regulations...

54. See Atkinson, supra note 12, at 15-17 (stating that only 3,000 out of Shanghai’s 2.62 million workers receive unemployment insurance each month); Friedman & Hausman, supra note 8, at 15-16 (noting that only 100,000 had received benefits in the entire country by 1988). Yet, by 1993, the number of unemployed workers receiving assistance had increased to 128,000. Statistical Communiqué, supra note 33, at 7. This number skyrocketed to 1.8 million in 1994. China’s Efforts to Combat Joblessness Remarkable, Xinhua News Agency, March 1, 1995.

55. Significantly, the 1986 Provisional Regulations were issued at the same time as the regulations which established contractual time-limited hiring by state-owned enterprises (see text accompanying note 32), and regulations which allowed state-owned enterprises to dismiss workers for “violating operating rules” and poor work attitude as expressed in “extreme disrespect towards the enterprise’s clientele, frequent arguments with customers,” and “disturbances or fighting which cause a serious breach of the peace.” Guoying Qiye Citui Weiji Zhigong Zanxing Guiding (Provincial Regulations on the Dismissal of Workers and Staff for Work Violations in State Enterprises), translated in Joseph, supra note 52, at 163-175. See also Atkinson, supra note 12 at 3-11, 23 (discussing the way in which these regulations complement each other).

56. 1986 REGULATIONS, supra note 52, ch. 1, art. 1.

57. The breakdown of China’s labor force in 1993 was as follows: 73.70% rural labor, 18.32% state-owned enterprises, 6.09% urban collective enterprises, 1.42% urban individual-owned enterprises, and 0.47% other. China Statistical Yearbook 1993, supra note 9. By the end of October 1993, the State Statistics Bureau reported state industries employed 109,809 million people. Of the workers in state industries, 101.67 million held permanent jobs, and 8.139 million people held temporary jobs, about 748,000 more than at the end of September. Collective enterprises employed 33.487 million and private and foreign firms employed 5.678 million at the end of October 1993. Li Yan, State Industries Help Ease Unemployment Problem, F.B.I.S. (China), December 6, 1994, at 39. See also CHINA STATISTICAL YEARBOOK 1994, supra note 30, at 90 (stating that for 1993, total state workers numbered 109,201, urban collective workers numbered 33,930 million, and workers at other units numbered 5.35 million).

58. 1993 REGULATIONS, supra note 53, ch. 1, sec. 1.
thus exempt from protection large numbers of workers in collectives\(^59\) and private enterprises, township and village enterprises, and temporary and seasonal workers.\(^60\)

Under the presently effective 1993 Regulations, workers in state-owned enterprises who lose their jobs due to the bankruptcy, reorganization, dissolution or elimination of the state enterprise, production shutdowns, termination of labor contracts, or termination of employment by the enterprise, are eligible to receive unemployment benefits.\(^61\) The inclusion in coverage of labor contract workers is significant since it appears to be an effort to raise the social standing of labor contract work, rendering it more attractive and acceptable to state workers. While excluding workers who voluntarily quit and those who without good cause refuse two jobs to which they are referred,\(^62\) the 1993 Regulations extend coverage to workers who are dismissed for cause.\(^63\) They create a largely non-fault system, directed at discouraging voluntary departures but encouraging dismissals, for cause or otherwise.

Worker eligibility for benefits is tied to the worker's length of employment, and not to need; the unemployed worker can collect up to 12 months if she has worked between 1 and 5 years, and up to 24 months if she has worked over 5 years.\(^64\) There is therefore a

\(^59\) Classification of collectives is difficult because of their various complex management and ownership structures. Some collectives are little more than large enterprises established by state sector enterprises. Others are owned by workers or managers or by a village or locality. Some are collectives in name only. David S.G. Goodman, *Introduction: The Political Economy of Change, in China's Quiet Revolution: New Interactions Between State and Society* (David S.G. Goodman and Beverley Hooper eds., 1994) XIX. Thus, while there are large urban collectives which act like state-owned enterprises and provide unemployment insurance coverage to their workers, smaller collectives do not.


\(^61\) 1993 REGULATIONS, *supra* note 53, ch. 1, sec. 2.

\(^62\) 1993 REGULATIONS, *supra* note 53, ch. 1, sec. 2; *Id.* ch. 3, sec. 16.


minimum labor market attachment of at least one year before any benefits can be received.\textsuperscript{65} The two year benefits payment period is long by comparison to countries like the United States, and may be attributable to the recognition that the rising unemployment in China is not voluntary and that workers may remain unemployed for a long period of time.

Unemployment compensation is paid from an unemployment insurance reserve, funded primarily by contributions from employers based on a flat rate which does not vary with the enterprise’s number of layoffs.\textsuperscript{66} The 1993 Unemployment Insurance Regulations changed the minimum contribution by enterprises from 1% of the total standard wage, to a range of 0.6% to 1% of its work force’s total salary.\textsuperscript{67} The 1993 Regulations also changed the benefits level from 60% to 75% of the monthly standard wage for the first 12 months and 50% thereafter,\textsuperscript{68} to “the equivalent of 120% to 150% of the social relief assistance.”\textsuperscript{69} The higher percentage provided for unemployment insurance payments over social relief thus creates an hierarchical distinction between those who have been in the paid labor force and then collect unemployment insurance from those who have not.

The 1993 Regulations maintain the prior coordination of benefits with re-employment opportunities. The Regulations anticipate and authorize the use of insurance reserve funds for specialized job training and assistance to support unemployed workers’ self-employ-

\begin{itemize}
\item\textsuperscript{65} While this may be consistent with provisions of unemployment insurance in most countries which limit coverage to those with some record of employment, this requirement also denies coverage to new entrants to the labor force.
\item\textsuperscript{66} See 1993 REGULATIONS, supra note 53, ch. 2, sec. 5.
\item\textsuperscript{67} 1993 REGULATIONS, supra note 53, ch. 2, sec. 5; 1986 Regulations, supra note 52, ch. 2, art. 3. Because total salary could include bonuses, this change could, in some instances, mean that an enterprise must contribute a greater amount than under the 1986 Regulations, which required only a percentage of the standard wage.
\item\textsuperscript{68} 1993 REGULATIONS, supra note 53, ch. 2, sec. 3.
\item\textsuperscript{69} 1993 REGULATIONS, supra note 53, ch. 2, sec. 13. In tying the benefits level to standard wage, unemployment insurance under the 1986 regulations was insufficient to meet the subsistence needs of workers, since bonuses, wage supplements, and fringe benefits constitute an increasing portion of a worker’s total compensation package. For example, in 1988, the standard wage in state enterprises was 1,040 yuan per year, but the total wage including bonuses was 1,853 yuan. The standard wage was thus only 56% of the total wage. See WORLD BANK REPORT, NO. 8074-CHA CHINA: REFORMING SOCIAL SECURITY IN A SOCIALIST ECONOMY 71 (June 25, 1990). Furthermore, standard wage is the average of the prior two years, a lower amount than perhaps the current earnings. \textit{id.} at 71. While tying unemployment benefits to social relief might arguably be a more realistic rate to use, since social relief assistance is tied by regulation to the standard of living set by the provinces, in reality it represents a lowering of benefits.
\end{itemize}
ment, as well as for unemployment assistance, medical expenses and funeral expenses. In addition, while labor service companies were previously charged with administering the unemployment insurance system, the 1993 Regulations transferred that authority to unemployment insurance organizations established by labor administrative departments above the county level. This change may be due to the recognition that labor service companies have been reluctant and ineffective in taking on the added responsibilities of administering the fund and placing experienced employees. As Hilary Josephs concluded after interviewing administrators of labor service companies, the companies simply mimicked the hiring and retention patterns of state enterprises by placing entry level workers and discouraging turnovers, rather than increasing the labor mobility of experienced workers.

The 1993 Regulations explicitly give both greater responsibility and greater discretion to local authorities. Under the Regulations, local (primarily municipal, county and prefectoral) authorities may increase or reduce the employers' contribution level within a specific range, determine the exact benefit level, and establish the percentage of the fund to be devoted to specialized training and self-employment expenses. Pursuant to the 1993 Regulations, then, different provinces and cities are separately experimenting with their own unemployment insurance regime. Hence, there can be great variation in the amount paid to workers from the local municipality.

Of course, the current version of the law was not widely known, and even as early as 1993, evading payments was a common practice. The state is that which sustains enterprises' payments reforms, it is not the state that can afford to pay the unemployed. The cost of unemployment workers are borne on the backs of the enterprises.

There is an additional payment infrastructure.

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70. 1993 REGULATIONS, supra note 53, ch. 3, sec. 10.
71. 1993 REGULATIONS, supra note 53, ch. 4, sec. 17.
72. JOSEPHS, supra note 52, at 57-58.
73. 1993 REGULATIONS, supra note 53, ch. 2, sec. 5.
75. 1993 REGULATIONS, supra note 53, ch. 3, sec. 15.
76. National legislation in China often serves simply as a guide, with implementation occurring through local regulations, to the extent that they do not conflict with the Constitution, national laws and regulations. Constitution, ch. III, sec. 5, art. 100. Additionally, certain local governments are targeted by the central government to try out new policies and reforms, before national legislation is issued. Thus, for example, China has targeted the municipalities of Beijing, Chengdu, Ningbo and Yantai to develop a social safety net and a market-based housing system. ENTERPRISE REFORM PROJECT, supra note 35, at 6. In these cities, unemployment insurance coverage was extended to all forms of enterprises except for village enterprises. The jurisdictional wrangling between the Ministry of Labor and the Ministry of Civil Affairs has left unclear whether labor ministry regulations such as unemployment insurance apply to village enterprises. This was found to be true in the pension area, as one researcher has discovered in her interviews with labor officials in China. Various ministerials ranging from the Ministry of Labor to the Ministry of Civil Affairs battled for authority causing confusion in the implementation of laws and regulations. Nonggi Zhang, Old Age Insurance and Retirement Pension Policy in China’s Market Reform (1995) (Ph.D Dissertation, Northeastern University) (on file with authors and at
variation in unemployment insurance coverage from municipality to municipality and enterprise to enterprise.77

Of course, the unemployment insurance law as applied differs from the law on the books. Until recently, unemployment insurance was not widely used.78 Inconsistent central government directives as well as enterprise resistance to layoffs79 have led to enterprises evading payment into the fund. In part, the anomaly for the Chinese state is that while major labor reforms are needed to reinvigorate loss-sustaining enterprises and benefits are needed to support major labor reforms,80 it is those very loss-sustaining enterprises that cannot afford to pay for the benefits. Indeed, it is estimated that one third of state-owned enterprises are operating at a loss,81 and many workers are already suffering from wage arrears.82

There is evidence that compliance with establishment and payment into the fund may have improved since 1994. It is reported

Northeastern University Snell Library).

77. See regulations cited in note 60. Additionally, for example, Taiyuan was one of the first cities to develop a form of compulsory unemployment insurance, in which the enterprise and the employee pay into the fund 1% and 0.5% of the employee’s salary, respectively. The fund thus covered 98% of the firms in Taiyuan, provided unemployment benefits for 3,241 people, and found 2,861 new jobs. The benefit level was calculated at 75% of the lowest local wage. Shanxi Popularizes Various Forms of Social Security, supra note 43.

78. See supra note 54.

79. See supra text accompanying notes 37 & 51. Indeed, even the overall policy focus on economic development can be a disincentive to enterprises to pay into the social insurance fund, as enterprise managers feel encouraged to reinvest profits. Zhang, supra note 76. See also Atkinson, supra note 12, at 22, 24 (noting that the provision of unemployment insurance had little effect on enterprises’ hesitancy to lay off redundant workers and discussing enterprises’ unwillingness to lay off workers who are part of the community); Schadler and Schuehr, supra note 14, at 242-43.

80. China has accelerated its adoption of a socialist market economy since 1990. In 1993, 90% of retail prices were subject to market adjustment. THE STATE STATISTICAL BUREAU, RENMIN RIBAO [PEOPLE’S DAILY], OVERSEAS EDITION (November 20, 1993). Economic growth also accelerated, but was spurred primarily by the private and joint-venture sectors. In 1992, the economic growth rate was 13.2% and 13.4% in 1993. Hartold & Lall, supra note 8, at xi; THE STATE STATISTICAL BUREAU, RENMIN RIBAO [PEOPLE’S DAILY], OVERSEAS EDITION, October 14, 1993, at 1; and RENMIN RIBAO [PEOPLE’S DAILY], OVERSEAS EDITION 2 (March 2, 1994).

81. Ma, supra note 44, at 1.

82. For example, the four biggest coal mines in Heilongjiang have defaulted on payments to 300,000 workers for a long time. It is estimated that 5% (seven to eight million) of mainland workers are living a difficult life because their enterprises operate at a loss or have suspended operations. Yun, supra note 46, at 54-55. The Ministry of Labor revealed that by the end of September 1994, about 3.14 million workers had not received wages from their employers because of their enterprise’s poor performance; another 490,000 retired workers had not received their pensions. Cao Min, Plan Aims to Confinie Jobless Rate Within 2.8 Percent, F.B.I.S. (CHINA), December 13, 1994, at 34.
that established unemployment funds now cover a majority of state-sector urban workers,\textsuperscript{83} but ensuring compliance by smaller enterprises in rural areas and townships, as well as joint enterprises (in those provinces which require compliance), is difficult. Meanwhile, the Chinese government has advertised that, by the end of 1994, the unemployment insurance system covered 26 provinces, and that 1.8 million unemployed people received benefits.\textsuperscript{84}

Economic and labor reforms are continuing in China. Most recently, a national Labor Law embodied the first effort to extend labor protections to foreign-invested enterprises and, in an important step, unified the timing and conditions under which workers may be fired or laid off.\textsuperscript{85} Under the new law, all enterprises are empowered to lay off employees in times of severe business difficulties without the approval of higher authorities, but only after consultation with the workers’ union and the local labor department. The enterprise can also dismiss incompetent staff, but only after job training or job reallocation has failed. At least on paper, the new labor law anticipates broader labor protection than before. Of course, its effectiveness will depend on the panoply of accompanying explanatory laws and regulations as well as its implementation in practice.\textsuperscript{86}

More legislation is under discussion by the Chinese government, including a national social insurance law which will authorize

\textsuperscript{83} Human Rights Report, supra note 30, at 571. Official statistics maintain that 95 million out of 150 million urban employees are now covered by unemployment insurance. About 40 million of the 150 million urban employees are working in non-state owned enterprises. Cao Min, Most Labourers Have Jobless Insurance, Zhongguo Ribao [China Daily], February 9, 1995, at 2.

\textsuperscript{84} China’s Efforts to Combat Joblessness Remarkable, Xinhua News Agency, March 1, 1995.


\textsuperscript{86} About 17 regulations have been promulgated to accompany the new Labor Code, including “The Administrative Penalizing Method Against Violating the Labor Law of the People’s Republic of China.” Cao Min, Paper on Labor Law’s Protection of Employee Rights, F.B.I.S. (China), January 5, 1995, at 51.
pension, unemployment, health, work injury, and maternity insurance. A third version of the unemployment insurance regulations, which focuses on revisions in coverage, funding, local government discretion, and use of the fund, is being drafted. Reformers are urging expanded coverage to include non-state sector employees in smaller collectives, foreign-invested ventures, and private and township enterprises, where workers reportedly suffer the worst labor conditions and the most job insecurity. Funding discussions include the issue of linking enterprise payments to local unemployment rates, with enterprises paying a percentage of overall employee payrolls corresponding to the local unemployment rate. There are also plans to transfer management of the unemployment insurance reserve fund from local prefectoral, municipal, and county levels to the provincial governments. Finally, there is discussion of better using the fund to set up job training programs to improve labor skills and expand job opportunities, as reemployment and the job-waiting pool grows. Additional concerns include improvement of the administration of the fund, and better investment and distribution.

Unemployment insurance and the accompanying social insurance structure will be a critical piece of the continued restructuring of the Chinese economy. The evolving social and work policies will contribute to a redefinition of the concept of labor market work for China, and will present a challenge to China's stated commitment to the social and economic equality that was the rallying cry of the communist regime.

87. This information is based on the authors' discussions with representatives of the Chinese Department of Labor. See also Chen Yanbang, The Basic Framework of China's Social Security System, F.B.I.S. (CHINA), January 13, 1995, at 58-61.

88. For a good account of the poor conditions found in some of these enterprises, see the investigative report by Zhang Ke, To Be Employed Is Not To Be In Bondage, ZHONGGUO RIBAO [PEOPLE'S DAILY], September 6, 1994, at 3. Zhang describes conditions at one joint venture at Kunshan, Jiangsu. At that factory, the 500 workers, 350 women and 150 men, are for the most part migrants from the surrounding provinces. The workers range from 14 to 20 years of age. They eat and sleep at the factory. At night, several hundred double beds are rolled out for use. There is no segregation of facilities for men and women. These workers need permission to leave the factory for any reason or else face a fine of 50 yuan. Each worker works approximately 12 to 13 hours each day for 200 yuan a month, but 20 yuan is deducted for a security deposit. According to Zhang, these conditions are typical of the 42 enterprises in Kunshan. None of the workers has any labor protection. Indeed, of the 10,388 workers in Kunshan, 6842 are without labor contracts, and 7017 are without pensions. See also Non-State Firms Mistreat Workers, Withhold Wages, F.B.I.S. (CHINA), December 19, 1994, at 39-40.

89. Chen Yangang, supra note 87, at 59-60.

III. THE UNITED STATES SYSTEM

The United States national unemployment insurance statute was enacted as part of the broader Social Security Act in 1935, in response to the high level of unemployment following the stock market crash of 1929. President Roosevelt had established the Committee on Economic Security [hereinafter the Committee] in 1934 with the mandate to "study problems relating to the economic security of individuals" and to recommend government policies that would "promote greater economic security." The Committee found that "the first objective in a program [to support that goal] must be maximum employment." As such, they recommended the "stimulation of private employment and the provision of public employment for those able-bodied workers whom industry cannot employ at a given time."

While viewing work as preferable to cash relief, the Committee also recommended the immediate establishment of an unemployment insurance system. Initially three purposes of the unemployment insurance program were identified: to provide some measure of

91. This section does not attempt to restate the massive historical scholarship on the United States unemployment insurance program. For a historical perspective, see, e.g., WILLIAM HABER & MERRILL G. MURRAY, UNEMPLOYMENT INSURANCE IN THE AMERICAN ECONOMY (1966); SAUL J. BLAUSTEIN, UNEMPLOYMENT INSURANCE IN THE UNITED STATES: THE FIRST HALF CENTURY (1993); MARGARET WEIR, THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES (1988). The purpose of this section is to summarize various aspects of the program and its history, which highlight some of the political, economic and cultural struggles reflected in the unemployment insurance system.


94. COMMITTEE ON ECONOMIC SECURITY, supra note 92, at 23.

95. COMMITTEE ON ECONOMIC SECURITY, supra note 92, at 23.

96. COMMITTEE ON ECONOMIC SECURITY, supra note 92, at 24.

97. The United States Department of Labor re-articulated these goals in 1955: Unemployment insurance is a program—established under Federal and State law—for income maintenance during period[s] of involuntary unemployment due to lack of work, which provides partial compensation for wage loss as a matter of right, with dignity and dispatch, to eligible individuals. It helps to maintain purchasing power and to stabilize the economy. It helps to prevent the dispersal of the employers' trained work
economic stability for the unemployed worker, to stabilize the employment of individual employers by providing a lower tax rate for employers who laid off fewer workers, and to minimize recessions by maintaining purchasing power.98

The unemployment insurance program in the United States is designed as a joint federal-state system.99 States are authorized to

force, the sacrifice of skills, and the breakdown of labor standards during temporary unemployment.


These mixed purposes led to two schools of thought. The Wisconsin school, represented by the Wisconsin unemployment insurance statute, financed benefits solely through individual employer contributions at varying rates, and was designed to emphasize each employer’s responsibility for unemployment and encourage employers to stabilize their work force. Arthur Larson & Merrill G. Murray, The Development of Unemployment Insurance in the United States, 8 VAND. L. REV. 181, 185 (1955). The Ohio school, represented by the 1932 report of the Ohio Commission on Unemployment Insurance, and introduced but not passed in New York and Michigan, financed benefits by pooling contributions which were paid both by employers and employees, and had no variation in contribution rates. This allowed a longer duration of benefits, thus emphasizing the social welfare aspect of unemployment and the belief that structural nationwide conditions created unemployment. Id. at 185.

The Wisconsin/Ohio debate on whether employers should have a tax rate based on experience was one of the most hotly contested areas of the original enactment. While neither system of financing was mandated by the federal statute, the Social Security Board prepared two draft bills which provided different options for use by the states in enacting their own laws. The vast majority of states in their original bills opted for an experience rating system. Id. at 196, 199-200; HABER & MURRAY, supra note 91, at 31. All states soon incorporated some type of experience rating, and this system of rate differentiation became one of the distinctive characteristics of the United States unemployment system. Edwin R. Teple & Charles G. Nowacek, Experience Rating: Its Objectives, Problems and Economic Implications, 8 VAND. L. REV. 376 (1955).

98. HABER & MURRAY, supra note 91, at 31 citing SOCIAL SECURITY BOARD DECLARATION OF STATE PUBLIC POLICY (1936).

Although there has been disagreement about the prioritization of these not-always reconcilable goals, BLAUSTEIN, supra note 91, at 43 citing H.R. REP. TO THE COMM. ON WAYS AND MEANS, ISSUES IN SOCIAL SECURITY, 79th Cong., 1st Sess. 368 (1946), the greatest emphasis appears to have been on the alleviation of hardship to the unemployed worker. HABER & MURRAY, supra note 91, at 26-27; BLAUSTEIN, supra note 91, at 48-49; ADVISORY COUNCIL ON UNEMPLOYMENT COMPENSATION, REPORT AND RECOMMENDATIONS 30-32 (1995) [hereinafter ACUC 1995 Report]; SOCIAL SECURITY BOARD, DRAFT BILLS FOR STATE UNEMPLOYMENT COMPENSATION OF POOLED FUNDS OR EMPLOYER RESERVE ACCOUNT TYPES 1 (1936) cited in BLAUSTEIN, supra note 91, at 46; Letter, supra note 97 (1955).

99. Employers had previously opposed the imposition of solely state legislation on the basis that a particular state would be disadvantaged in interstate competition for business if employers in only one state had to pay unemployment taxes. Larson & Murray, supra note 97, at 185. See Joseph E. Hight, Unemployment Insurance: Changes in the Federal-State Balance, 59 U.DEF.J.URB.L. 615 (1982) (discussing the historical debates and shifts in the
implement the program pursuant to the federal requirements set forth in Title III of the Social Security Act. State noncompliance may result in higher tax rates for businesses and the loss of federal administrative funds. Each state is left to determine most eligibility standards, the amount of taxes to be collected, and the level of benefits to be paid. As a result, there is great variation from state to state.

Despite this local flexibility, however, there are several overarching themes. The unemployment insurance program was and continues to be uniformly designed as a fault-based (only for those who are involuntarily unemployed), non-needs based (all covered employees are eligible for benefits regardless of destitution), and short-term (generally 26 weeks) program.

First, in order to be eligible, claimants must be unemployed through "no fault of their own," i.e., they must not have voluntarily quit their jobs without good cause; they must not have been fired for work-related misconduct; they must not be involved in a labor dispute; they must be available for and actively seeking work;
and they must not have turned down a suitable job. The federal statute leaves to state discretion which employees are to be eligible for unemployment insurance, definitions of disqualifications, and definitions of penalties for losing a job for fault. Originally, the Social Security Board’s draft bills and the subsequently enacted state bills uniformly denied benefits to those who voluntarily quit their jobs, those who refused to accept a suitable job, or those who were fired for misconduct. Yet, perhaps in recognition of the dearth of available jobs at that time, most states disqualified “at fault” workers only for a designated number of weeks. After that period, the state laws incorporated the assumption that unemployed workers who were actively looking for employment might not be able to find jobs on their own, ended their fault disqualification, and found the claimant eligible for benefits.

In the last 15 years, however, states have expanded both the scope of these non-monetary disqualifications and the duration of the period of ineligibility, thus increasing the significance of the worker’s “fault.” For example, all but five states now disqualify a worker who voluntarily leaves her job for the entire duration of unemployment, all but 12 do so for workers who are discharged

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109. Note organized labor’s historic opposition to these requirements, in that the provision of unemployment insurance would then be “dependent on government supervision of the conditions of leaving employment, often in partnership with a coercive employer’s leverage over employment terms.” Kenneth M. Casebeer, Unemployment Insurance: American Social Wage, Labor Organization and Legal Ideology, 35 B.C. L. REV. 259, 270 (1994).

110. The draft bill recommended disqualifications from one to five weeks for voluntary quitting and for refusal of suitable work without good cause, and from one to nine weeks for discharge due to misconduct. Larson & Murray, supra note 97, at 198.

111. Id. at 198-99.

112. All but one state imposed a limited period or no disqualification for voluntary quitting, all but two states did so for misconduct discharge, and all but six states for refusal of suitable work. Id. at 198-99.

113. BLAUSTEIN, supra note 91, at 166.

114. ACUC 1995 Report, supra note 98, at 102; BLAUSTEIN, supra note 91, at 282-289. For documentation of an earlier but much less pervasive expansion of disqualification periods, see Larson & Murray, supra note 97, at 203-4 (documenting that by 1955, 16 states had an indefinite disqualification for voluntary quit, nine states for misconduct, and fifteen for refusal of suitable work).

115. BLAUSTEIN, supra note 91, at 284 (documenting that only 11 states did so in 1948 and 28 did so in 1971). See also ACUC 1995 Report, supra note 98, at 110 (finding that states have become more restrictive in defining “voluntarily leaving without good cause,” focusing more on reasons attributable to the employing unit and less on the worker’s personal circumstances).
for misconduct, and all but 13 do so for workers who refuse a suitable job. The definitions of these disqualifications are not clearly articulated; frequently decisions are made on a case-by-case basis.

Second, the unemployment program was designed in sharp contrast to the welfare, or "relief," programs for the needy. Eligibility for unemployment benefits is based on attachment to the labor market, not need. Unemployed workers are not required to exhaust their assets to be eligible for unemployment benefits. In fact, the very premise of unemployment insurance is the maintenance of economic stability in the unemployed worker’s life until she is able to find another job. In establishing unemployment insurance as a non-needs based program, Congress and the states developed a twotiered system of social welfare, differentiating those who are "worthy" from those who are "unworthy." Much of the debate centered on the need to maintain the individual’s self-respect, because the program was based on the worthy worker’s attachment to the labor force.

Thus each state required workers to meet a standard of labor force attachment in order to be eligible for unemployment insurance, setting a “base period” during which the worker must have earned wages in a specified dollar amount and/or worked a specific number of hours. As with the non-monetary eligibility standards, over time states have increased the required degree of labor attachment.

116. ACUC 1995 Report, supra note 98, at 107-9; BLAUSTEN, supra note 91, at 284 (documenting that only 6 did so in 1948 and 20 did so in 1971).

117. ACUC 1995 Report, supra note 98, at 107-9; BLAUSTEN, supra note 91, at 284 (documenting that only 12 did so in 1948, 23 did so in 1971, and 41 in 1990).

118. ACUC 1995 Report, supra note 98, at 110-16.

119. HABER & MURRAY, supra note 91, at 28-29, 42. In contrast, the Aid to Families With Dependent Children program has an asset limit of $1000 (42 U.S.C.A. §602 (a)(7)(B) (West 1995)). Food Stamps has an asset limit for families that do not contain a member over age 60 of $2000 (7 U.S.C.A. § 2014(g)(1) (West 1995)). Applicants for these and other programs, such as Medicaid, are ineligible if they retain assets in excess of the specified amount, and often if they seek to expend or transfer assets in order to be eligible for the program. See 7 U.S.C.A. § 2015(b) (West 1995); 42 U.S.C.A. § 1396p(c) (West 1995).

120. See infra part IV. D.

121. HABER & MURRAY, supra note 91, at 34, 42-43.


123. While many states originally applied an annual earnings test, states have moved to more restrictive weeks-of-work or multiple of high-quarter wages tests. BLAUSTEN, supra note 91, at 278-80. Seventeen states used the flat annual earnings test in 1948, as opposed to 7 in 1990; one required more than 20 weeks of employment in the base period in 1948.
Third, the short term benefit is premised on the assumption that workers can find work if they simply try. The implicit economic model is one in which labor markets have little friction and great fluidity, and it thus fails to appreciate, let alone account for, the increased structural unemployment in recent years. Unemployed workers are far less likely to return to their previous jobs after spells of unemployment. The percentage of unemployment insurance claimants who exhaust their 26 weeks of benefits without finding another job has been steadily increasing during recessions since 1970. Similarly, the average duration of unemployment and the percentage of individuals experiencing long-term unemployment has increased. Periodically, the federal government has legislated an extension of the 26-week limit in times and geographical areas of high long-term unemployment.

The historical standard for defining benefit levels has been a 50% wage replacement, although the replacement rate varies among

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as opposed to 6 in 1990; 2 used the multiple of high-quarter wages test in 1948, as opposed to 24 in 1990. Id. at 279.

124. This of course oversimplifies the historical debate emerging from the 1929 Depression which preceded the enactment of the Social Security Act and the post World War II debate regarding the federal government’s responsibility to ensure full employment. For further discussion on this topic see note 201, infra.

125. “Structural unemployment” refers to unemployment which is caused by structural changes, such as the closing of obsolete factories or reduction of jobs due to technological innovations, which permanently eliminate jobs. Blaustein, supra note 91, at 25-31.

126. ACUC 1994 Report, supra note 107, at 7. The 1935 assumption was that most employees would return to the employer who laid them off when the economy improved. See note 97, supra (citing to the purpose of preventing “the dispersal of the employer’s trained work force.”)


128. ACUC 1994 Report, supra note 107, at 20, 22.

states and depends on the worker’s previous earnings.\textsuperscript{130} This standard appears to have been based on a “common-sense estimate,”\textsuperscript{131} and whether that level is sufficient to cover “necessary expenses” has been questioned.\textsuperscript{132}

Although facilitating the reemployment of unemployed workers has been articulated as a fourth goal of the unemployment insurance system,\textsuperscript{133} the actual record of providing reemployment and retraining services has not reflected a significant commitment to that goal. Unemployment insurance trust funds may not be used for the costs of retraining.\textsuperscript{134} Job training programs\textsuperscript{135} are separately authorized, each with a targeted population,\textsuperscript{136} are generally poorly funded,\textsuperscript{137}

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\textsuperscript{130} ACUC 1995 Report, \textit{supra} note 98, at 126-27. “The average replacement rate is approximately 55 percent for minimum-wage workers, 50 percent for workers earning about $10 per hour, and 40 percent for workers earning about $15 per hour.” \textit{Id.} at 150.

\textsuperscript{131} JOSEPH M. BECKER, \textit{UNEMPLOYMENT BENEFITS: SHOULD THERE BE A COMPULSORY FEDERAL STANDARD?} 7 (1980).

\textsuperscript{132} ACUC 1995 Report, \textit{supra} note 98, at 131-133. The level appears to be sufficient to meet a low estimate of necessary expenses in most states only for workers who previously earned between $20,000 and $40,000. \textit{Id.} at 133.

\textsuperscript{133} ACUC 1995 Report, \textit{supra} note 98, at 29-30; BLAUSTEIN, \textit{supra} note 91, at 45.

\textsuperscript{134} 26 U.S.C. \textsection 3304 (West 1991).

\textsuperscript{135} It is beyond the scope of this article to provide an extensive history of each job training program, its evaluations, and assessment of cost effectiveness. For a discussion of the development of various job training programs, particularly those enacted as a part, albeit tangential, of the 1960’s War on Poverty, see WEIR ET AL., \textit{supra} note 91, at 301, 395-96; MARGARET WEIR, \textit{POLITICS AND JOBS} 66-9, 78-80, 85, 119 (1992) [hereinafter \textit{Politics]}.

\textsuperscript{136} Current programs coordinated by the U.S. Department of Labor include the Employment Service (codified at 29 U.S.C. \textsection 49 et seq.), Trade Adjustment Assistance (codified at 19 U.S.C. \textsection 2271 et seq.), Economic Dislocation and Worker Adjustment Assistance (codified at 29 U.S.C. \textsection 1651 et seq.), North American Free Trade Agreement Adjustment Assistance (codified at 19 U.S.C. \textsection 3301 et seq.), and Title II-A of the Job Training Partnership Act (codified at 29 U.S.C. \textsection 1501 et seq.). ACUC 1995 Report, \textit{supra} note 98, at 197. For example, Trade Adjustment Assistance, the largest of the programs for dislocated workers, targets a narrow population, requiring that workers petition the Department of Labor for a certification that a company is laying off a significant share of its work force due to import competition. ACUC 1994 Report, \textit{supra} note 107, at 50-52; 19 U.S.C. \textsection 2271. If certified, TAA provides cash benefits equal to the worker’s unemployment benefits for up to 52 weeks after the 26 weeks of UI have been exhausted. TAA also provides retraining for employment and reemployment assistance. ACUC 1994 Report, \textit{supra} note 107, at 51; 19 U.S.C. \textsection 2293.

\textsuperscript{137} For example, the Economic Dislocation and Worker Adjustment Assistance Act, while containing a broad definition of eligible dislocated workers, is funded at a level which allows only 10% of those eligible to receive the classroom training, on-the-job training, and job search assistance provided under the program. ACUC 1994 Report, \textit{supra} note 107, at 51-52. \textit{See} DEMETRA SMITH NIGHTINGALE, \textit{FEDERAL EMPLOYMENT AND TRAINING POLICY CHANGES DURING THE REAGAN ADMINISTRATION: STATE AND LOCAL RESPONSES} 16 (Urban Institute, ed. 1985).
and serve only a small percentage of the eligible population. In addition, most state unemployment insurance laws initially provided that an unemployed worker who was being retrained was not available for work and therefore was ineligible for unemployment benefits. In 1970, the federal unemployment insurance statute was amended to prohibit states from denying unemployment insurance benefits to unemployed workers in training for being unavailable for work, refusing to take suitable work, or failing to look for work, if the training was approved by the state agency. Although this change might be interpreted as an increased emphasis on training for dislocated workers, states have utilized the training approval mechanism infrequently, and the funding for retraining programs has remained inadequate.

Likewise, the major United States labor exchange program, the Employment Service, has been strongly criticized for low ser-

138. For example, in 1991, only 25,000 displaced workers, largely from the manufacturing sector, received assistance under the TAA. ACUC 1994 Report, supra note 107, at 51, citing Walter Corson et al., International Trade and Worker Dislocation: Evaluation of the Trade Adjustment Assistance Program (1993) (unpublished report submitted to the U.S. Department of Labor, on file with authors).

139. BLAUSTEIN, supra note 91, at 214-15.

140. 26 U.S.C. § 3304(a)(8); BLAUSTEIN, supra note 91, at 242.

141. The federal mandate did not provide standards for state approval of training. The Federal-State Unemployment Compensation Act of 1970, Title II, 84 Stat. 708 (1970). As a result, states have usually approved only vocational and basic educational training. BLAUSTEIN, supra note 91, at 288. In 1990, 22 states automatically denied benefits to students, even if they were available for work and had prior qualifying employment. Blaustein, supra note 91, at 287. Some states provide that individual workers can be approved for training while workers are receiving unemployment insurance, and a few states give a small extension of weeks of benefits while receiving approved training. See, e.g., MASS. GEN. L. ch. 151A, § 30 (1994), MICH. COMP. LAWS § 421.64 (1994), HABER & MURRAY, supra note 91, at 270, 476.

142. See supra note 137. Historically, the United States economic structure has largely relied on employers providing on-the-job training as the mechanism for developing and matching worker skills to job needs. Eileen Appelbaum, Introduction, Structural Change and the Growth of Part-Time and Temporary Employment, in NEW POLICIES FOR THE PART-TIME AND CONTINGENT WORKFORCE 5 (Virginia L. duRivage, ed. 1992). However, the level of employer commitment to such training has substantially decreased in recent years, not coincidentally at a time when the contingent labor force is on the rise. Id. at 5; Richard S. Belous, The Rise of the Contingent Workforce: The Key Challenges and Opportunities, 52 WASHINGTON AND LEE LAW REVIEW xx, at xx (1995).

service, placement, and wage rates. Although the United States Department of Labor oversees both the Employment Service and the unemployment insurance system, the systems are funded and sometimes operated on a state level as separate entities. The basic services offered by the Employment Service are identifying job openings and matching job seekers with employers; however, employers do not have to list openings, and all workers are not required to seek jobs through this vehicle. As a result, only one fourth of all job seekers register with the Employment Service, and less than 2% of all job openings are filled through the Employment Service. Thus the Employment Service is not a comprehensive system of job assessment, development and worker retraining for all or even most of the unemployed.


145. Only 17% of those who register find jobs through the Employment Service, and the placement rate has declined substantially over the past 20 years. KULIK, supra note 144, at 1-11, 2-1.

146. Most of the jobs filled are low-wage, low-skill jobs. KULIK, supra note 144, at 2-2.


149. U.S. GENERAL ACCOUNTING OFFICE, supra note 148, at 2. Other mandated services are “administration of ‘work test’ requirements for UI; certification of individuals for the Targeted Jobs Tax Credit . . . ; administration of special programs for targeted groups . . . ; certification of alien labor and verification of employer compliance with regulations; and collection of labor market information.” ACUC 1995 Report, supra note 98, at 199.

150. The major exception is that unemployed workers are required to register with the Employment Service as a condition of eligibility for certain governmental benefit programs, including unemployment insurance. 1995 ACUC Report, supra note 98, at 200.

151. Jacobson, supra note 143, at 8.

152. KULIK, supra note 144, at 2-1.

153. The role of the Employment Service in developing federal labor market policy and its relationship to unemployment insurance has been historically fraught with tension. See Politics, supra note 135, at 80-82, 103-4, 108-113 (concluding that Employment Services offices evolved into “passive labor exchanges” rather than “aggressive screening and placement agencies.” Id. at 81); HABER & MURRAY, supra note 91, at 418-437 (discussing
In 1991 Congress established an Advisory Council on Unemployment Compensation (ACUC)\textsuperscript{154} "to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of state administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement."\textsuperscript{155} Recommendations in each of their two reports issued thus far crystallize the tension between a minimalist approach to reducing labor market friction and a more social welfare approach.\textsuperscript{156}

In its February 1994 Report and Recommendations, the Council recognized the discontinuity between an unemployment insurance system designed to respond to short-term unemployment and the increasing presence of long-term unemployment, and it recommended an expansion and reformation of the Extended Benefits program to more accurately target geographical areas of high unemployment.\textsuperscript{157} In addition, the ACUC recommended that the federal requirement that recipients of Extended Benefits take any minimum wage job be abolished and left to state discretion.\textsuperscript{158}

In its February 1995 Report and Recommendations, the Council made its first set of recommendations concerning the policies restricting eligibility for unemployment insurance. The Council proposed a change in the time period used to calculate monetary eligibility,\textsuperscript{159} a reduction in the amount of earnings required to

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qualify, and no disqualification for part-time workers who meet the monetary eligibility requirements. These recommendations would particularly affect low-wage workers, many of whom work in part-time or temporary jobs.

IV. THE IDEOLOGY OF PAID LABOR AND UNEMPLOYMENT

The evolution of the Chinese and United States unemployment insurance laws and regulations reveals practical as well as ideological concerns. Nonetheless, several themes emerge which reflect the political and social tension within each country and which serve as the backdrop for each country's approach to the development of unemployment insurance: the enactment and implementation of unemployment insurance as a legitimation of an economic policy which views unemployment as necessary for economic growth, highlighting the relationship between theories of economic development and social stability; the centrality of labor productivity to political debates regarding the content of the unemployment insurance program, and the indeterminacy of the choices made vis-à-vis that goal; the conflict between state responsibility and individual responsibility in providing and retaining jobs; and the multiple stratifications created by a benefits regime which incorporates class, race, and gender biases. An understanding of these themes will help to clarify and guide future decisions now facing both the Chinese and United States governments.


160. If the earnings were set at the level recommended by the ACUC, the number of individuals eligible for UI would increase by 5.3%. ACUC 1995 Report, supra note 98, at 17.

161. ACUC 1995 Report, supra note 98, at 18, 103-04. Workers in 39 states are currently ineligible if they are only seeking part-time work. Id. at 104. This disproportionately affects women in the labor market who bear a higher burden of child care responsibilities. Deborah Maranville, Changing Economy, Changing Lives: Unemployment Insurance and the Contingent Workforce, 4 B.U. PUB. INT. L.J. 291, 293 (1995); Diana Pearce, Toil and Trouble: Women Workers and Unemployment Compensation, 10 SIGNS: J. OF WOMEN IN CULTURE AND SOCIETY 439, 444-45, 447 (1985).


A. Unemployment Insurance Systems Provide Social Support and Moral Legitimacy for Economic Policies that Regard Unemployment as Functional to Other Goals

Since the 1950’s, China has pursued a “full employment” strategy. Similarly, since 1946 the United States has had on the books a statute which declares that it is the federal government’s policy and responsibility “to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining . . . conditions under which there will be afforded useful employment opportunities . . . for those able, willing, and seeking to work . . .” Yet both countries have enacted statutes or regulations to provide support for unemployed workers, thus legitimizing the inevitability of unemployment. By providing a safety net, unemployment insurance programs in fact help to regulate, maintain, and contribute to the ongoing creation of unemployment in both countries.

Gunner Myrdal has articulated the assumptions underlying a “full employment” model as follows: given rational attitudes of workers, standardized working conditions, and fluid labor markets, most workers will want jobs. Thus any unemployment must necessarily be “involuntary,” to be redressed through the creation of more job opportunities. In China this interpretation seems particularly apt given the large labor surplus both at the time of the Communist takeover and today.

Before 1949, employment policies in China were largely focused on a worker discipline model of labor productivity, labor conditions were harsh, and protective labor regulations were nonexistent. After the Communist takeover, the Maoist regime tackled the 23% unemployment rate as a national problem, through a policy of job creation, which later became a rigid system of assignment.

164. See text accompanying notes 8-16.
166. GUNNAR MYRDAL, ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS 962 (1968).
167. See supra text accompanying notes 7-11.
168. Around the turn of the century, women and children began migrating into the cities and formed the bulk of the workforce in the low-paying textile and other light industries. The conditions in these factories were described in ONO KAZUKO, CHINESE WOMEN IN A CENTURY OF REVOLUTION, 1850-1950 (1989); BOBBY SIU, WOMEN OF CHINA: IMPERIALISM AND WOMEN’S RESISTANCE 1900-1949 (1982).
169. See supra note 17.
Under the “full employment” strategy as adopted by China, urban unemployment was (and still is) kept artificially low—unemployment theoretically did not exist. Workers were guaranteed permanent jobs in state or collective enterprises whether or not workers were needed for the jobs they held. The work unit became not only a workplace, but also a cell of political control and a source of social benefits for the individual. Labor bureaus were as concerned with job creation as they were with job matching. The issue of unemployment, then, was submerged under the provision of “full employment.” Everyone either held a job or was classified as “waiting for a job” [daiye], not as unemployed. Yet the enormous task of implementing “full employment” and the inefficiencies it created in China led to inconsistent attempts to withdraw from this policy, with costs in terms of social instability. In the context of this withdrawal, unemployment insurance is designed to balance social stability and reform.

One of the stated goals of unemployment insurance in China is to “maintain social stability.” This goal stems from a widely shared fear of chaos, a fear which has its origins in dynastic upheavals and the Cultural Revolution. Since the Cultural Revolution, during which lawlessness and chaos reigned, the Chinese leadership has attempted to restore order and stability through the reestablishment of a judicial system and a system of law. The economic reforms of recent years, however, have introduced greater discontent and instability as well as greater freedom. The 1989 prodemocracy movement was but one manifestation of this discontent. Widely recognized as a movement with broad-based popular support from

170. In 1994, the official “unemployment” rate was 2.9%. *Renmin Ribao* [People's Daily], March 2, 1995, at 2 (overseas edition). As discussed earlier, this low percentage of state-recognized urban unemployment is primarily composed of new entrants or “daiye” youths who have chosen to extend their waiting period in order to obtain a better assignment, and secondarily, of former workers who have become unemployed. See Jefferson & Rawski, *supra* note 14, at 45-47.

171. See *supra* text accompanying notes 23-35.

172. See *supra* text accompanying notes 38-39.

173. 1993 REGULATIONS, *supra* note 53, ch. 1, sec. 1 (indicating that “[t]hese regulations are adopted in order to perfect the labor system for state-owned enterprises, insure the basic needs of unemployed workers, and maintain social stability”). Thus, the first chapter of at least one social insurance textbook is entitled “Social Stability Necessitates the Development of Social Security” [Shehui Wending Youqi Fazhan Shehui Baozheng]. *Zhongguo Shehui Baozheng Xue Gailun [Introduction to China’s Social Insurance]* 1-24 (Tian He, Gan Benyou, Zhang Weichao eds., 1992). The textbook explains that social security in China is necessary for economic development and the realization of socialist production. It is distinct from social security in capitalist countries which serves to alleviate “societal contradictions” in order to maintain the class structure. *Id.* at 10.
workers, the movement forewarns of future unrest, a scenario cutting to the core of the Chinese government's fears.\textsuperscript{174}

Since market reforms were introduced in the Chinese economy, workers have faced increasing social\textsuperscript{175} and status inequality\textsuperscript{176} as well as employment insecurity. Many Chinese workers are beginning to question their relative position in society, as the reforms shift the state away from communist claims of egalitarianism.\textsuperscript{177} Workers have increasingly resorted to strikes and protests to challenge perceived growing economic disparity as well as unfair labor conditions.\textsuperscript{178} In response, the CCP Central Committee (and hence the Chinese state) has viewed its main task for the 1990's as maintaining social stability while implementing market reforms.\textsuperscript{179} The unemployment insurance system is one critical way to ensure social stability by providing a safety net of minimum benefits to alleviate the concerns of displaced workers, thereby supporting the labor reforms.

Many of the elements of China's unemployment insurance program seek to encourage layoffs. The Chinese unemployment insurance program specifically covers workers who have been dismissed for cause and, in so doing, empowers state-owned enterprises to dismiss workers.\textsuperscript{180} Unlike unemployment insurance in the United States, China has no experience rating which ties the level of

\begin{thebibliography}{99}
\bibitem{174} See Jeanne L. Wilson, \textit{Labor Policy in China: Reform and Retrogression, in PROBLEMS OF COMMUNISM} 44 (1990); Anita Chan, \textit{Revolution or Corporatism? Workers and Trade Unions in Post-Mao China}, in Goodman & Hooper, \textsl{supra} note 59, at 162-163.
\bibitem{175} BIAN, \textsl{supra} note 5, at 213-215.
\bibitem{176} \textit{Survey Indicates Wealthier Groups}, \textsl{BEIJING XINHUA, F.B.I.S} (CHINA), October 12, 1994, at 22. According to a survey by the State Planning Commission, people in 14 occupations are found wealthier than others in China. Heading the list are shareholders who benefit from profitable share transactions, self-employed people, owners of private enterprises, film stars, singers and dancers, heads of newly created companies as well as managers and contractors in certain companies, Chinese management personnel in foreign-funded enterprises, lawyers, chefs, and people with other special expertise in a market economy. While these groups earned anywhere from ten thousand to several hundred thousand yuan, the average annual wage of state workers was 3371 yuan in 1993. \textsl{CHINA STATISTICAL YEARBOOK} 1994, \textsl{supra} note 30, at 112.
\bibitem{177} Many workers feel their status has declined, from workers "leading everything" to "everything leading" workers. Liu Jixing, \textit{Dangqian Woguo Gongren Jiben Zhuangkuang De Fenzi Yu Sikao, [An Analysis and Reflection on the Basic Situation of Today's Chinese Worker],} \textsl{1 SHEHUIXUE [SOCIOLOGICAL RESEARCH]} 91 (1991).
\bibitem{178} See \textit{supra} text accompanying notes 38-39.
\bibitem{179} See Wending Yu Fazhan: \textit{Zhongguo Jiushi Niandai Mianlin de Liang Da Zhuti, [Stability and Development: The Two Major Topics that China is Facing in the 1990's]}, \textsl{5 SHEHUIXUE YANJU [SOCIOLOGICAL RESEARCH]} 1-5 (1991).
\bibitem{180} See \textit{supra} text accompanying notes 62-63.
\end{thebibliography}
employer contribution to the level of layoffs and dismissals to financially discourage employers from laying off workers. However, the regulations dictate that those who have lost their jobs because of labor reforms are to be provided with some minimum basic livelihood, rendering unemployment benefits and unemployment more palatable.

Since the implementation of the 1993 Regulations, the number of unemployed collecting from the fund has increased, although there are as of yet no massive layoffs. For one thing, enterprises continue to redeploy surplus workers where possible. Second, enterprise managers have resisted layoffs because of a sense of personal responsibility for workers and also because of the cost of establishing the fund. The fact that the unemployment insurance payment does not replicate the worker's entire package of social welfare protections, and the insecurity which accompanies the lack of a job, have caused workers to resist unemployment. Indeed, it is unclear whether unemployed workers are able to find new jobs within the two-year benefit period. Additionally, the emotional impact of losing a job and applying for unemployment insurance may be much harsher than the debilitating effect of knowing that one is a redundant worker. This is particularly true since, as will be discussed later, unemployment insurance reinforces and creates social stratification. The irony for China is that for the full implemen-

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181. See supra notes 97-98.
182. See supra text accompanying notes 68-69.
183. See supra notes 54, 79. Furthermore, labor ministry officials anticipate that the number of unemployed due to bankruptcies, layoffs, dismissals or cancellation of contracts could reach 18 million by the end of this century. Zhongguo Jingji Shibao [China Economic News], April 25, 1995, at 2.
184. Thus, from early 1993 to July 1994, it was reported that workers in groups of 30 to 100 would protest to Beijing city officials. Specifically, when enterprises were shut down, workers would spontaneously organize to negotiate with city officials and enterprise officials, albeit with limited success. In Heilongjiang, for example, where 85% of miners were asked to "rest at home," a miner's strike increased from 60 to 20,000 people in a matter of two days. The miners protested layoffs, wage arrearages and a recently imposed ordinance requiring contributions of 100 yuan per family to a local festival fund. Within days, city and ministry officials quickly responded by canceling the mandatory contribution requirement and agreed to issue pay and reinstitute miners within ten days. Shen Yinhan, Guanyu Guoying Qiye He Zhigong Zhuangkuang De Diaocha, (An Investigative Report of China's Enterprise and Staff Worker's Conditions), Beijing Zhichun (Beijing Spring), December 1994, at 10-11.
185. Friedman & Hausman, supra note 8, at 24-25.
186. Id. at 27-28.
187. See infra, part IV.D.
tation of an unemployment insurance program, unemployment insurance must not stray too far from "full employment" in replicating the panoply of benefits already guaranteed to employed workers.

Thus unemployment insurance is not simply a major tool which the Chinese government is using to ensure social stability in a time of economic and social change; it is a tool which the Chinese government is using to encourage and incorporate a particular theory of economic development, namely, that economic restructuring requires employee layoffs. Unemployment insurance regulates the existence of a less than fully employed labor force; it creates the social stability which allows layoffs and unemployment to exist. If successfully reformed and fully implemented, unemployment insurance contributes to a redefinition of the concept of paid labor markets in China, one which represents an ideological shift from a full employment policy to an acknowledgment and, indeed, validation of unemployment. It may not be insignificant that the term shiye (literally, to lose a job) has now replaced the term daiye (job-waiting) to describe the unemployed.

Similarly, the enactment of unemployment insurance in the United States legitimated an economic model premised on less than full employment. An initial glance at the structure of the United States program, however, appears to support the opposite conclusion. Enacted in a period of high unemployment, the program was designed in part to discourage businesses from reducing their work forces and

188. See discussion of labor reforms, and emphasis on layoffs, in text accompanying notes 23-50.

189. Jefferson & Rawski, supra note 14, at 61; Schadler & Schucher, supra note 14, at 240. According to Chinese labor law textbooks, unemployment is necessary for economic restructuring because unemployment can 1) encourage structural changes in industry; 2) increase labor mobility and contribute to a fluid labor market; 3) improve labor quality. Tang & Xi, supra note 90, at 1141.

190. Tang & Xi, supra note 90, at 1139; Atkinson, supra note 12, at 23. See also note 55. Thus the first set of unemployment insurance regulations in 1986 was promulgated at the same time as regulations for the implementation of the labor contract system and for the dismissal of workers by state-owned enterprises. Atkinson, supra, at 2.

191. Indeed, contemporary Chinese labor law textbooks state that the distinction between "job-waiting" and "unemployment" no longer exists; under the present market socialist economy, "job-waiting" is "unemployment." Tang & Xi, supra note 90, at 1139. However, according to one textbook, the causes of unemployment in China are different from that of capitalist countries. In China, unemployment is attributable to 1) a backward economy combined with rapid population growth; 2) an "irrational" industrial structure which focused on heavy industries that were non-labor intensive (by comparison to service industries), along with an educational structure which failed to provide the appropriate training for the needs of the economy; 3) errors in economic policies and plans; and 4) personal preference. Id. at 213.
thereby stabilize the labor market, rather than to dissipate possible social revolt. Through the mechanism of “experience rating” (an increased tax on employers based on the number of workers laid off) the United States program sought to build in a disincentive to layoffs.

However, as Kenneth Casebeer has documented, the development of unemployment insurance was also partly a response to more radical proposals for universal jobs and a social wage, which were being debated at the same time. This “recharacterizes unemployment compensation as a conservative or privatized form of social wage.” The passage of unemployment insurance treated income insecurity as individual misfortune. In contrast, the contemporaneous Lundeen, or Worker’s, Bill, “forced recognition of the social nature of the costs of the production system and of the

192. Note, however, that there was some concern about social stability at the time of the original enactment. Casebeer, supra note 109, at 315-16 citing an interview with Wilbur Cohen, contained in RALPH ALTMAN, U.S. DEP’T OF LAB., BEGINNING THE UNEMPLOYMENT INSURANCE PROGRAM - AN ORAL HISTORY 7 (Helen Manheimer & Evangeline Cooper eds., 1985) citing to an interview with Wilber Cohen (“You have to go back and realize that with the Great Depression of 1929-33, and with 25 percent of the labor market unemployed, there were people who were concerned that America was on the verge of some kind of an internal revolution.”).


194. Id. at 378-9; Almon R. Arnold, Experience Rating, 55 YALE L.J. 218, 219 (1945) (noting also a second objective of allocating costs of unemployment to the business responsible for the cost).

195. Casebeer, supra note 109, at 262, 270 (discussing 1931 American Federation of Labor (AFL) Executive Council report which demanded “wage maintenance, shorter hours, the addition of workers by each employer, public building, employment agencies, preference for workers with dependents, and financial relief from public funds,” rather than unemployment insurance. This was consistent with AFL President Samuel Gompers’ 1921 statement that unemployment insurance was “not insurance against unemployment” but “compensation for lack of employment.”). See also text accompanying notes 94-95 (documenting Committee on Economic Security primary recommendation of jobs for all).

196. Casebeer, supra note 109, at 263; Mary E. O’Connell, On the Fringe: Rethinking The Link Between Wages and Benefits, 67 TUL.L.R. 1421, 1433-34 (1993) (concluding that “the ideology of voluntarism and the power of welfare capitalism merged to produce... a highly conservative and uniquely American product”).

197. Casebeer, supra note 109, at 300. See also Theda Skocpol, State Formation and Social Policy in the United States, 35 AM. BEHAV. SCI. 559, 564 (1992) (noting the strength of laissez-faire liberal values and the “commitment to individual achievement and self-help” in resisting social welfare legislation).

198. The Workers’ Unemployment and Social Insurance Act (H.R. 7598), introduced by Congressman Ernest Lundeen on February 2, 1934, provided a minimum benefit level of indefinite duration in times of full or partial involuntary unemployment, paid by the federal government to all workers regardless of previous job attachment and for all occupations, including the domestic and agricultural jobs traditionally held by African-Americans. Casebeer, supra note 109, at 266, 268-69, 295.
reproduction of the labor force. This in turn demanded national action in order to maintain the economic system’s health by guaranteeing the purchasing power of all the producers of the system’s wealth and hence, the social wage . . . " As Mary Van Kleek, the principal drafter of the Lundeen Bill, stated:

By the very definition of the term, therefore, individual case treatment is excluded as a remedy, and it is recognized that the needs created by involuntary mass unemployment are also “mass needs” reflected in lowered standards of living both for the individual and the community. This suggests the necessity for social insurance as opposed to individual insurance, and it makes necessary the integration of insurance against “unemployment” . . . whether the cause of unemployment be located . . . in a general industrial depression; or whether it be due to the recognized general hazards to security, namely, industrial accidents, sickness, maternity, and old age . . . social insurance should not be split into categories."

Thus the establishment and development of unemployment insurance was an alternative to policies which might have realized full employment and a guaranteed income. This choice lives on today,

199. Casebeer, supra note 109, at 300.
201. In 1942, the Committee on Long-Range Work and Relief Policies submitted a report to the National Resources Planning Board which focused on measures to ensure full employment, recommended that a national employment service be established, and called for the assurance of “economic security as a right of every citizen.” Edwin Amenta & Theda Skocpol, Redefining the New Deal: World War II and the Development of Social Provision in the United States, in WEIR ET AL., supra note 91, at 88-89 (emphasis in original). However, public employment programs were phased out beginning in 1942, and the NRPB was itself dismantled in 1943. Id. at 89. The Full Employment Bill of 1945, which would have guaranteed full employment through government spending if necessary, was defeated by a coalition of business and agricultural interests. WEIR ET AL., supra note 91, at 156, 160; BLAUSTEIN, supra note 91, at 183-84; Theda Skocpol, The Limits of the New Deal System and the Roots of Contemporary Welfare Dilemmas, in WEIR ET AL., supra note 91, at 298-301. The enacted Employment Act of 1946, Ch. 33, 60 Stat. 23 (1946) (codified as amended at 15 U.S.C. 1021-25), while emphasizing unemployment as a major problem, only required the government to perform an annual review of the nation’s economy, and endorsed “maximum” rather than “full” employment. For a discussion of the political struggle which resulted in the defeat of the Full Employment Act of 1945 and the passage of the watered down Employment Act of 1946, see the classic account in STEPHEN KEMP BAILEY, CONGRESS MAKES A LAW (1950). See also Politics, supra note 135, at 44-47; BLAUSTEIN, supra note 91, at 183 ("Congress backed away from that firm a commitment because of concerns raised over difficulties in defining the full employment goal in
enshrined in Federal Reserve Board monetary policy and United States government’s fiscal policy that declares some baseline unemployment rate (currently 6%) to be “full employment,” and holds that attempting to lower unemployment beyond this point will trigger uncontrolled inflation.202

Thus, for both China and the United States, the enactment and implementation of unemployment insurance was motivated by a theory of economic growth that treats unemployment as functional, i.e., that assumes the need for a percentage of unemployment to allow and promote economic growth. Although coming from different ideological perspectives regarding the state’s role in labor market control, both countries are creating systems which are based on and legitimate the presence of unemployment.

B. Policymakers Use Unemployment Insurance Systems to Create Incentives They Believe Will Increase the Productivity of Labor

Critics have faulted the “full employment” model for focusing unilaterally on increased employment through the provision of job opportunities and ignoring labor productivity.203 Theories of labor measurable terms, controversy about the efficacy of fiscal policy manipulations, worry about potential inflation, and general resistance by many to deliberate government interference in the economy”). For an excellent summary of the attempt to again guarantee full employment in the Humphrey-Hawkins Act in the 1970’s, see Politics, supra note 135, at 132-40. See also Skocpol, supra note 197, at 563 (noting that United States welfare policy “remains, as always, both institutionally and symbolically separate from national economic management ... ”).


203. MYRDAL, supra note 166, at 1015-16. The criticism is part and parcel of a broader challenge to the post-war welfare state and Keynesian thinking. The critics maintain that excessive reliance on government spending and social programs reduces labor efficiency. In the United States, this has taken the form of cutbacks in numerous social welfare programs. See generally PAUL PIERSON, DISMANTLING THE WELFARE STATE: REAGAN, THATCHER, AND THE POLITICS OF RETRENCHMENT (1994). In the vastly different context of Chinese socialism, which of course is not based on Keynesian economics, there has been a debate in a similar vein. The post-1978 reform process in China, while motivated by
productivity recognize that even if there are jobs, output may be
deficient because workers may not perform the job adequately, and
in some cases may not be in a position to take the job. Labor
productivity depends in part on labor efficiency, which can be
affected by discipline, motivation, skills upgrading, and appropriate
job placement.

Policymakers use unemployment insurance systems to create
incentives they believe will increase the productivity of labor. For
example, in moving away from its “full employment” strategy, the
Chinese government is apparently embracing the assumption that
accelerated unemployment is necessary to increase labor efficiency.
However, the choices policymakers make in attempting to serve this
goal are both value-laden and indeterminate in outcome.

We have previously noted competing theories of labor productivity
based on worker security or insecurity. The establishment of
an unemployment insurance system itself reflects choices and assump-
tions regarding these theories in an attempt to affect worker moti-
vation. On the one hand, the very creation of an unemployment
insurance system provides a safety net, and thus, by making the
worker feel secure, might provide the basis for increased worker
morale. This could lead to more motivation to share human capital
and embrace technological advancement. On the other hand, the
legitimization of unemployment as an inherent part of the labor
structure—another effect of the existence of unemployment insurance
—might make workers feel insecure, leading them to hoard specific
skills and resist retraining and technological advancement. Yet this

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different political considerations from the West, nonetheless has stressed greater fluidity in
labor markets as a mechanism to increase labor productivity. Obviously, in this article we
do not attempt to sort out the debate between the post-Keynesian critics and their challengers.
Our point is that, as a reflection of this debate, policymakers are seeking to increase labor
discipline by increasing unemployment.

204. Other variables that can influence the level of productivity are the social relations
and organization of labor, occupational distribution of the labor force, natural resources, the
volume of capital resources and their allocation, and technology. MYRDAL, supra note 166,
at 1015-16; BLOCK, supra note 156, at 24-25, 43-45.

205. For example, in China, economic liberalization also meant the introduction of more
"Tayloristic" management practices which "attempt to rationalize and to intensify the labor
process so as to raise labor productivity." These measures include tightening labor
discipline, imposing heavy penalties, raising production norms and restructuring award
systems. These measures have had the contrary effect of deteriorating management-labor
relations and worker resistance, leading to increasing strikes. See Chan, supra note 174, at
169.

206. See supra text accompanying notes 7-11. See generally BLOCK, supra note 156,
at 75-119.
insecurity might also enhance worker motivation because the worker fears losing her job.

This tension is replicated by choices regarding the level and duration of benefits, and the extent to which the benefits package replaces or fails to replace the total wage package. 207 A low level of benefits with a short duration might generate worker insecurity and might increase labor efficiency because the worker would want to stay on the job and not be the one laid off or fired. Or such a system might escalate the intensity and flexibility of job search by the unemployed, thereby reducing frictional unemployment and increasing productivity by quickly moving a worker back into the labor market. But inadequate benefits might instead demoralize the worker and thereby reduce efficiency. 208 In the United States, the short 26-week benefit period may be intended to exacerbate worker insecurity, while the relatively long two-year benefit period of the Chinese program seems to be an attempt to induce enough worker insecurity to increase productivity but not enough to create social instability.

Similarly, the emphasis, or lack thereof, on training and upgrading skills in the unemployment insurance design in the United States and China is an effort to affect the worker skills element of labor productivity: while the Chinese unemployment insurance regulations specifically address training, skills development, and relocation of redundant workers laid off from state-owned enterprises, 209 the United States unemployment insurance scheme has historically been largely silent. 210 The Chinese regulations state that “[u]nemployment insurance should be closely coordinated with work

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207. See text accompanying notes 68-69, 130-132.

208. Another example may be the United States system’s decision to deny benefits to workers who are fired for misconduct. This allows employers to challenge eligibility for benefits based on misconduct of the employee and might increase discipline and reduce worker misconduct or complaints. At the same time, such a choice might reduce democracy in the workplace, decrease worker investment in the efficiency of the enterprise, and result in decreased motivation of the worker and a net negative effect.

209. See discussion of small efforts already implemented in Atkinson, supra note 12, at 6.

210. See requirement of registration with the Employment Service, ACUC 1995 Report, supra note 98, and listing of non-unemployment insurance programs, which are piecemeal and inadequately funded, ACUC 1994 Report, supra note 107, at 50. Only recently, the 1993 Emergency Unemployment Compensation legislation enacted “worker profiling,” under which each state’s State Employment Security Agency must establish a system to identify unemployed workers who are most likely to be structurally unemployed, and require participation in reemployment services, including comprehensive job search assistance and referral for retraining, as a condition of eligibility for unemployment insurance. 42 U.S.C. § 503(j), discussed in ACUC 1995 Report, supra note 98, at 208-09.
to increase employment opportunities, employment training, and self-
employment.”211 They permit the use of unemployment insurance funds for retraining or for the construction of training facilities,212 and a substantial percentage of unemployment insurance fund expenditures has been for retraining unemployed workers.213 Thus the regulations view retraining and the provision of cash benefits as integrally connected, and they articulate retraining as a government responsibility.214

The incorporation of skills and retraining in the Chinese unemployment insurance system may be attributable to the continuing

211. 1993 REGULATIONS, supra note 53, ch. 1, sec. 3. Thus, for example, Gu Shengzu, member of the Eighth National Committee of the Chinese People’s Political Consultative Conference (CPPCC), stated that “the redevelopment of human resources is the basic way for transferring surplus labour in State-owned enterprises.” Sun Shangwu, Job Loss Can Be Route to New Career, ZHONGGUO RIBAO [CHINA DAILY], March 8, 1995, at 1.

212. 1986 REGULATIONS, supra note 52, sec. 3, arts. 6(v) and 11. The 1993 Regulations continue this emphasis, allowing funds to be used for specialized training, assistance to support self-employment, and other open-ended expenses to assist in reemployment. 1993 REGULATIONS, supra note 53, ch. 3, sec. 10.

213. In Shanghai, for example, 3.37 million yuan were spent on training unemployed workers, while in Wuhan, 20% of the surplus was allocated to training and employment creating loans. China Reforming Social Securities in a Socialist Economy, WORLD BANK REPORT No. 8074-China, June 25, 1990, at 67. See also Atkinson, supra note 12, at 15; Friedman & Hausman, supra note 8, at 31 (discussing pre-employment training by labor service companies); Schadler & Schucher, supra note 14, at 244-45 (reviewing labor department efforts at retraining and supporting self-employment).

214. 1986 REGULATIONS, supra note 52, art. 4, sec. 12. While previously enterprises were primarily responsible for providing training, municipal governments are increasingly active in this role. FRIEDMAN & HAUSMAN, supra note 8, at 9 (noting that enterprises are less willing to provide training under short-term labor contracts). Thus, according to Labor Minister Li Boyong, the Ministry is experimenting with a “Reemployment Project” for laid off workers in Liaoning Province, Shanghai and another 25 cities. The project provides financial relief as well as vocational training. By the end of November, 1994, according to Dai Mingxun, director of Liaoning Province’s Labour Department, the program had helped 32,299 unemployed find jobs, provided 100,000 laid off workers with new employment opportunities, and trained 20,000 jobless. Plans Aims to Confine Unemployment Rate, F.B.I.S. (China), December 13, 1994, at 37. In Xian, for example, thirty-eight "self-assistance" centers were created to train workers and provide new employment opportunities for jobless people. Insurance Need, ZHONGGUO RIBAO [CHINA DAILY], February 7, 1995, at 3.

Beijing, meanwhile, plans to implement a reemployment program which will develop service industries, particularly labor intensive ones, with the goal of absorbing surplus workers. The Chinese government also plans to establish an employment system with job search agencies, unemployment insurance, and retraining. The city is also offering over 23 million yuan in loans to re-settle a total of 30,000 surplus workers in three consecutive years. Beijing to Aid, Train the Jobless, ZHONGGUO RIBAO [CHINA DAILY], March 11, 1995, at 3.

The strategy is to develop tertiary or service industries, which are expected to need more laborers in the latter part of the 1990’s. See infra part IV C, for discussion of state and individual responsibility.
ideological formulation of labor as a national resource. Although the Chinese state is encouraging a more fluid labor market, there is a residual belief that labor is collectively "owned," and that the state has a duty to its citizens to harness this resource.

For example, in this period of economic reform, working hand in hand with the unemployment insurance regulations are "labor service companies," established by labor bureaus, state-owned enterprises, and government organizations, which create jobs for the unemployed, albeit at lower pay and with little or no labor insurance coverage. The assumption is that workers will want a job once they are provided with skills and an opportunity for paid employment. Operating from the economic model that providing a worker with skills training will increase labor efficiency, the Chinese state steps in to provide retraining for the unemployed.

In contrast, as we have already noted, unemployment insurance in the United States does not presume to encompass retraining or job development, addresses only small pieces of the skills component, and has increasingly evolved to view work as an individual,.

215. This belief underlies both the “iron rice bowl” policy and today’s reforms. In the Maoist era, the Chinese state attempted to galvanize its labor force to pull China out of poverty and into the company of developed nations through such political and economic campaigns as rural collectivization and the “Great Leap Forward.” In the modern market reform era, the “unemployed” and “underemployed” are again treated as a reserve labor supply that, with greater training and skills, and expanded job opportunities, can be harnessed toward the development of the Chinese economy. BIAN, supra note 5, at 10.

216. BIAN, supra note 5, at 10. During the Maoist era, the government allocated and controlled labor resources according to the “ideological interests of the party, national interest of state planners, and the control interests of government jurisdictions.” Id.

217. Ahmad & Hussain, supra note 19, at 283. Labor service companies were first established in the late 1970’s to help find work by setting up small scale collectives. Preferential tax treatment has encouraged state-owned enterprises to set up their own labor service companies. By the end of 1992, these companies totaled 200,000. See Sabin, supra note 34, at 951.

218. See supra text accompanying note 19.

219. There is a strong emphasis in the Chinese system on government’s responsibility for referring unemployed workers to new jobs, rather than placing the onus on the worker. This is consistent with both the emphasis on redeployment of redundant workers, FRIEDMAN & HAUSMAN, supra note 8, at 33, and the optimal labor combination program. Id. at 10. The regulations specify that refusing two jobs without a legitimate reason will disqualify the worker only if the job assignments were provided by the “related departments.” 1986 REGULATIONS, supra note 52, sec. 3(9)(iii); 1993 REGULATIONS, supra note 53, ch. 3, sec. 16(4) (“job offers through the employment office”).

220. See supra text accompanying notes 133-138, 143-153. See also WEIR, supra note 91, at 150, 301, 395.

221. See supra text accompanying notes 139-142.
voluntary decision. Yet, the government’s role (albeit limited) in providing retraining, job development and job search programs is particularly important given the reality of a rapidly changing labor force, i.e., more involuntary part-time workers and increased structural unemployment. Although economists have accepted a 6% unemployment rate as necessary to avoid inflation, the overstated assumption of labor market fluidity has continued a mythology of individual responsibility, which attributes fault to workers who are not successful in obtaining a job.

Thus, while unemployment insurance largely is shaped by the objective of increasing labor productivity, there are competing visions of how to accomplish that goal. As a result the enactment and implementation of unemployment insurance regimes affects discipline, motivation, skills upgrading and job placement, but often with unintended results.

C. The Development of Unemployment Insurance Highlights the Tensions Between State and Individual Responsibility in Obtaining and Retaining Work

Intricately tied to the focus on and conflicting views of labor productivity is the concept of voluntariness or choice in both

222. See supra text accompanying notes 109-118.
223. Chris Tilly, Reasons for the Continuing Growth of Part-Time Employment, 114 MONTHLY LAB. REV. 10 (1991). Involuntary part-time employment accounted for 40% of new part-time jobs between 1979 and 1989, and was responsible for the entire increase in part-time employment between July 1990-January 1992, so that by January 1992, 21 million, or almost one-fifth of all U.S. workers, were working part-time. Appelbaum, supra note 142, at 1. Of these, the number desiring full-time employment rose by 1.5 million. Id. See supra note 142, discussing decrease in employer on-the-job training as a result of the changing structure of the labor force.
225. See supra notes 201, 202.
227. The use of the word “voluntary” in this context connotes individual choice and responsibility, as distinct from 1930’s voluntarism which connotes action by voluntary institutions rather than governmental compulsion. O’Connell, supra note 196, at 1433; RAY LUBOVE, THE STRUGGLE FOR SOCIAL SECURITY, 1900-1935 3-4 (1968).
obtaining and retaining work. In the Maoist era, the worker in China had no choice about whether to accept a job. She was assigned a state enterprise or large collective position and was confined to the geographic location of the assignment. Her choices in quitting or changing jobs were limited, not only because of geographical registration limitations, but also because her total package of subsistence benefits was directly tied to maintaining the job. However, she did have the choice of whether to do the work required on the job, and her failure to perform adequately or even to be present on the job did not necessarily result in a loss of employment, because the enterprise did not have the discretion to terminate the worker. Thus the state largely bore the responsibility for both obtaining jobs and retaining workers. In the reform era, however, new areas of limited choice are developing—at both the individual and enterprise levels—to be balanced against the state’s responsibility.

Enhanced individual choice in the market economy is reflected in China’s unemployment insurance design. The regulations assume that some workers may “voluntarily resign” or refuse state-referred jobs. However, perhaps in an attempt to increase efficiency through the threat of non-employment, the regulations exclude such persons from coverage. The regulations’ focus on training and job development recognizes the unemployed worker’s need for assistance in finding work, and suggests that the failure to find work may not be “voluntary.” In addition, the Chinese regulations do not require that workers produce evidence of individual efforts to find

228. See supra text accompanying notes 8-16.


230. See supra part III B (discussing indeterminant outcomes of unemployment insurance choices designed to affect labor productivity).

231. See supra text accompanying note 62.

232. See supra text accompanying notes 209-226. Indeed, one Chinese labor law textbook explained “voluntary” unemployment as only the last of six causes of unemployment in China today, the other reasons being structural in nature (backward economy, rapid population growth, industrial structure which focused on nonlabor intensive industries, poor training and education of workers, and errors in economic policies). TANG & XI, supra note 50, at 213.
jobs as a condition of collecting unemployment, implicitly acknowledging that finding a job will be difficult in a labor surplus environment, and affirming a strong state responsibility for job creation and assignment. Finally, the benefit duration period of up to 24 months reflects an assumption that replacement jobs are not readily available and a value judgment about state responsibility to the worker in that event.

The Chinese unemployment insurance regulations also reflect the goal of increasing the incentives and therefore the power of enterprises to exercise choice in employment decisions. Unlike the United States regulations, benefits are available under the Chinese regulations if the enterprise fires the worker for cause, as well as if the enterprise lays off the worker for economic reasons, and all covered workers are included regardless of on-the-job fault. Thus, the Chinese unemployment insurance regulations continue to limit the choice of workers to leave a job voluntarily, but seek to increase the choice of employers to fire workers, thereby encouraging and creating unemployment.

Likewise, the United States unemployment insurance system has historically reflected the tension between the existence of structurally induced unemployment and the concept of individual volition in obtaining and retaining employment. The Social Security Act, enacted in a period of high involuntary unemployment, recognized that many unemployed workers could not find jobs. Even then, Congress did not enact a national job training or job placement program. Moreover, the unemployment insurance program was

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233. However, greater worker mobility permitted by the economic reforms may indicate either reinforcement of state responsibility with the practical reality of labor needs, or increased emphasis on individual choice and responsibility to move to areas of higher labor need.

234. Of course, with much built-in local discretion, different localities may require more or less individual effort.

235. See supra note 35 and accompanying text.

236. The Chinese regulations cover only registered workers of state-owned enterprises (see supra text accompanying notes 58-60), as opposed to virtually full coverage in the United States.

237. See supra text accompanying notes 201, 202.

238. HABER & MURRAY, supra note 91, at 128-29, 131-32.

239. See supra text accompanying notes 137-138, 147, 153, 220-226. Of course, Congress did enact several temporary and limited public works programs during the New Deal era. WEIR ET AL., supra note 91, at 83-84, 86, 89. Likewise, at various other times, Congress has made limited forays into public service employment schemes. Politics, supra note 135, at 99-129 (discussing history of enactment and demise of the Comprehensive Employment and Training Act (CETA)).
drafted and designed to provide benefits only to those who lost their jobs involuntarily, thus incorporating the premise that retaining a job is a matter of individual choice; a worker who is herself responsible for being unemployed is faulted for her unemployment, and is therefore not “worthy” of unemployment insurance. 240

As the United States unemployment insurance system has evolved, it has increasingly emphasized this theme of the individual’s responsibility for both obtaining and retaining a job. 241 As initially drafted, the United States scheme required only that the worker be able to work and be available for work. 242 By 1955, however, twenty-six states had added a requirement that unemployed workers affirmatively demonstrate that they were “actively seeking work,” and had registered for job referral at the local employment office. 243 Currently all states have stringent requirements that, as a condition of eligibility for benefits, the unemployed worker prove by documentary evidence that she is actively seeking work each week. 244 The underlying assumption is that although a worker is involuntarily unemployed on the day that she is laid off due solely to the action of her employer, she may immediately thereafter become voluntarily unemployed by not searching assiduously for new work. 245 In addition, except for emergency situations, the United States system provides for 26 weeks of regular unemployment insurance benefits. 246

We have noted the attempts by policymakers to build incentives into the unemployment insurance system encouraging workers to

240. See supra note 208 (discussing indeterminate effects on worker motivation and productivity of choice to deny benefits to certain fired workers).

241. One of the reasons suggested for this eligibility tightening and the resulting lowering of expenditures is federal policy encouraging the states to increase the solvency of their unemployment insurance trust funds, e.g., by charging interest on loans to states which do not repay the loan during the same fiscal year. ACUC 1994 Report, supra note 107, at 108-11, 114-15.

242. Larson & Murray, supra note 97, at 198 (discussing draft Social Security bills and resulting state legislation).

243. Id. at 203.

244. BLAUSTEIN, supra note 91, at 286-87. See also HABER & MURRAY, supra note 91, at 268-69; ACUC 1995 Report, supra note 98, at 103.

245. HABER & MURRAY, supra note 91, at 136. The value choices embodied in benefit duration and individual active work search requirements may rest on an acceptance of the United States as a full employment society which has only residual or transitional unemployment. See supra text accompanying notes 201, 202, 225-226.

246. See supra notes 98, 124-129, and accompanying text. See also text accompanying notes 157-158 (discussing ACUC recommendations regarding expansion of the Extended Benefits program).
maintain jobs and not enter the unemployment insurance system at all: workers are often disqualified from benefits when dismissed "for cause"; the fault disqualification periods have lengthened, so that now most states disqualify a worker for the entire period of unemployment; and the definitions of disqualifications have expanded.247

The imposition of a system based on individual fault in these contexts returns us in many ways to the tensions in the initial purposes of both the Chinese and United States enactments. One way to view an unemployment insurance program is as a social welfare program, designed to increase worker security, provide wage replacement for the unemployed and provide purchasing power to maintain the economy.248 This view would lead to programs which cover all workers regardless of whether the unemployment was voluntary, and disqualifications, if any, would be of limited duration.249 However, this is not the case in either country.

Competing economic considerations make the analysis more complex. If an original goal in the United States were to encourage businesses to stabilize their work forces by limiting layoffs, then increasing their experience rating250 (or charging them) for unemployed workers who were responsible for their own unemployment would be self-defeating. A business would be penalized for something it could not control.251 If a goal in China is to encourage enterprises to reduce redundant workers while maintaining social stability, providing benefits to both those fired and laid off is consistent. Thus, economic growth considerations drive both, albeit different, approaches to the question of individual fault and its relation to unemployment.

D. The Enactment and Design of Unemployment Insurance Creates and Reinforces Societal Stratification

In both China and the United States, labor market attachment is an important indicator of worth. Those who are sufficiently attached

247. See supra text accompanying notes 109-118.
248. See supra text accompanying notes 68-69, 88, 97-98.
249. Thus, regardless of initial worker fault, at some point the unemployment becomes involuntary and attributable to economic circumstances. Larson & Murray, supra note 97, at 216-17.
250. See note 97 and accompanying text.
251. Larson & Murray, supra note 97, at 216. The experience rating model itself has been criticized as being based on individual employer fault, rather than on collective responsibility for societal unemployment. Teple & Nowacek, supra note 97, at 381.
to paid labor are "worthy" and receive "social insurance" programs, which are more generous and more immune to attacks. Those who are not sufficiently attached to paid labor are "unworthy" and are eligible only for needs-based or relief programs. Unemployment insurance programs, which provide benefits only to those with labor market attachment and which fund those benefits through employer contributions rather than general revenues, are in the social insurance category.

The very enactment of unemployment insurance, and the many choices regarding coverage, thus define a group of "worthy" unemployed and, at the same time, devalue a group of "unworthy" unemployed. In addition, choices in benefit levels create a stratification between even the "worthy" unemployed and the "worthy" employed. Existing societal biases including race, gender, class, and, in China, status distinctions are incorporated in the selection of these groups.

252. See O'Connell, supra note 196, for general discussion of benefits program. See also Gosta Esping-Andersen, The Three Worlds of Welfare Capitalism 23-26, 55-78 (1990) (discussing social stratification created by social welfare policies).


254. For a discussion of the shame attached to Chinese relief programs, see supra text accompanying notes 20-21, and for a distinction between Social Security/Unemployment Insurance and Aid to Families with Dependent Children in the U.S., see O'Connell, supra note 196, at 1430-31. See also Casebeer, supra note 109, at 317 (noting dichotomy between the shame attached to needs-based programs and the dignity which attaches to social insurance, based on the perception that while a worker who loses a job through no fault of her own is entitled to benefits, welfare is not a "right" and is given only after an investigation finds that one is "in need").

255. Cf. Edwin E. Witte, Development of the Social Security Act 118-9 (1962) (discussing President Roosevelt's concern that unemployment insurance not become a charity—"It must be financed by contributions, not taxes"). For an interesting discussion of the theory of unemployment insurance and an explanation of its funding by the state, by quasi-state organizations, or by a combination of state and private organizations and not solely on a private market basis, see Gunther Schmid et al., Unemployment Insurance and Active Labor Market Policy: An International Comparison of Financing Systems 63-69 (1992).

256. Walder, supra note 6, at 39-56 (classifying Chinese workers into status groups each with its own rights to income, job tenure, social benefits; i.e., permanent workers in state enterprises, workers in urban collective industry, temporary workers in urban enterprises, rural workers in collective town and village industry).

257. See Weir et al., supra note 91, at 15 (criticizing the analysis of United States social policy based on the political class struggle between workers and capitalists as ignoring the intersection of regional, ethnic, and racial factors).
1. The “Worthy” Unemployed and “Unworthy” Unemployed

Unemployment insurance differentiates between those who are sufficiently attached to the labor market and, hence, “worthy” of coverage, and those who are not. For example, programs in both China and the United States require of workers a minimum period of employment or level of earnings during a specific period to be eligible for benefits. In China, the worker must have worked in a qualifying job for a state enterprise for at least one year in order to receive the minimum benefit. In the United States, each individual state sets a base period earnings or hours requirement. While there is wide variation in the amounts, every state’s system is based on a model of required substantial attachment to the labor force. Thus, simply having worked will not qualify a worker for unemployment insurance coverage; rather, unemployment insurance in both countries requires that the worker must have worked enough.

While the requirement of attachment to the labor market might be explained by financial concerns, the critical point is that even choices made within financial or administrative constraints are political choices laden with value judgments. In this instance, choices about coverage create distinctions about worth. The stratification imbedded in unemployment insurance systems excludes from coverage a very large number of workers, people who actually do paid work. This exclusion is even more problematic in its failure to acknowledge the rapidly changing composition of paid labor markets in both countries.

As an initial matter, there is an important distinction created by the level of benefits provided under the unemployment insurance scheme in China. In particular, the system provides for benefits at the rate of “120% to 150% of the benefits accorded those receiving social relief.” This percentage in itself captures the distinction drawn by the Chinese system between the “worthy” and the “unworthy” unemployed.

In its coverage, the Chinese unemployment insurance regime is eliminating some inequality between enterprises but continues to

258. 1993 Regulations, supra note 53, ch. 3, sec. 12; see supra text accompanying notes 64-65.
259. See supra text accompanying notes 122-123.
261. See supra text accompanying notes 29-33, 125-126, 224 and infra text accompanying notes 272-280, 287-289.
reaffirm the inequality between economically disparate provinces and
the status distinction between state and non-state workers. In
addition, it contributes to the creation of a new stratification between
temporary and permanent workers. In today’s changing work force,
these distinctions have both gender and class implications.

As carefully documented by Yanjie Bian, workplace segmenta-
tion in socialist planned economies exists where the allocation of
labor and incentives varies from enterprise to enterprise depending on
whether the enterprise falls within government priorities or whether
the enterprise has a higher bureaucratic rank.263 Thus, workers
whose workplaces are in the state sector have a higher bureaucratic
rank, and workers who work in favored industries have higher salaries
and bonuses.

However, the 1993 Regulations place the responsibility for
setting benefit levels on municipal and county governments, and do
not tie the levels to previous wages or rank, but rather to 120% to
150% of the locally determined “social relief assistance.”264 By
pooling resources between enterprises within a municipality or
county, unemployment insurance may eliminate some inequality that
currently exists between enterprises. Additionally, Chinese govern-
ment officials are discussing increased responsibility for provincial
governments,265 which could have the potential to lessen stratifica-
tion among localities within a province.

On the other hand, unemployment insurance in China currently
reaffirms stratification between provinces. The unemployment funds
are established through contributions by enterprises, based on a
percentage of employees’ salaries, with local governments retaining
discretion to increase or reduce the percentage. Thus, the money
available for unemployment benefits depends on the prosperity of the
enterprises contributing to each unemployment fund. As such,
unemployment insurance enhances the disparity between economi-

cally-developed regions and the poorer interior regions, creating
the potential for unemployment without coverage[youxian, wubao] and
coverage without danger of unemployment [youbao, wuxian].266

Also, as presently configured, national unemployment insurance

263. BIAN, supra note 5, at 159-74. Bian concludes that “workplace segmentation in
socialist planned economies is an institutional expression of government interests,” and “the
socialist workplace represents important social status.” Id. at 209.
264. See supra text accompanying note 69.
265. See supra text accompanying note 89.
266. TANG & XI, supra note 50, at 1142.
in China extends only to state workers.\textsuperscript{267} Importantly, the 1993 Regulations expressly exclude from coverage “contract farm workers hired by enterprises”\textsuperscript{268} and further require an employee to have “worked continuously for an enterprise for over one year”\textsuperscript{269} in order to receive protection, thus reaffirming the longstanding stratification in communist China between urban and rural workers, between permanent and temporary workers, and between state workers and non-state workers. In the pre-reform period, these various categories tended to overlap, with permanent urban state workers receiving extensive labor protection, and rural workers and temporary non-state enterprise workers from the countryside receiving little or no labor protection. This stratification is exacerbated by the recent expansion of non-state sector employment and the rising numbers of migrant workers who take on temporary employment.

Recognizing that the number of village, township, and private enterprises is growing,\textsuperscript{270} many provinces, municipalities, and autonomous regions that have issued local unemployment insurance codes and regulations have extended protection to workers in collective or private enterprises.\textsuperscript{271} Furthermore, national policymakers are currently discussing the extension of unemployment insurance coverage to non-state owned enterprises.\textsuperscript{272} If this exten-

\textsuperscript{267} See supra text accompanying notes 56-60 (explaining the implications of this distinction).

\textsuperscript{268} 1993 Regulations, supra note 53, ch. 6, sec. 23.

\textsuperscript{269} Id. at ch. 3, sec. 12.

\textsuperscript{270} Official statistics placed workers employed by urban private enterprises at 13.22 million in 1994, up from 8.38 million in 1992. Workers for township enterprises, meanwhile, numbered 0.12 billion. \textit{Rennmin riBao [People's Daily], Overseas Edition}, March 2, 1995, at 2. From 1992 to 1993, township enterprises increased 18%. \textit{China Statistical Yearbook 1994}, supra note 30, at 17; see also Sabin, supra note 34 at 968 (containing table wherein author estimates that non-state sector employment could be as high as over 21% to 33% of the urban workforce). This reality is not lost on the All China Federation of Trade Unions, which has urged the expansion of the definition of worker to include those who work in township and village enterprises. \textit{Human Rights Rep.}, supra note 30, sec. 6(b).

\textsuperscript{271} See supra note 60. Thus, for example, in 1988, Qingdao extended unemployment insurance coverage to temporary and self-employed workers and to Chinese workers in joint ventures and foreign enterprises. \textit{World Bank Rep.}, No. 8074-CHA, \textit{China Reforming Social Security in a Socialist Economy} 66 (June 25, 1990).

sion occurs, unemployment insurance could function to obscure the traditional lines of stratification between state and non-state workers, which today it serves to reinforce.

Migrant rural workers are a growing part of the Chinese labor market, with unofficial figures of migrant workers nationwide standing between 70-80 million.273 They often take non-contractual, less desirable, temporary jobs without urban residence registration [hokou] rights.274 Arguably, exclusion from unemployment insurance coverage might discourage this “floating population,” which the government blames for social disorder.275 Yet, most workers move in search of jobs, not unemployment benefits. Accordingly, any lack of unemployment benefits has had little effect in checking this movement. Instead, noncoverage merely penalizes these workers and creates an underclass of workers without protection.

This stratification is particularly problematic for women workers who, by and large, are least likely to join the ranks of state workers and are most likely to be temporary workers. In 1992, 55.86 million women were permanent state workers as compared to 92.06 million men.276 Women workers constitute the majority of migrant workers, in the factories that have been the focus of economic reform.277 In special economic zones (which focus on the expansion of non-state sector enterprises), women workers constitute 90% of the labor force

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274. Atkinson, supra note 12, at 7; see also Schadler & Schucher, supra note 14, at 222, 226-7, 230-4 (discussing “floating” workers). Temporary workers may by definition also include workers with urban registration and rural immigrants with temporary urban registration. Those temporary workers with urban registration face a better chance of graduating to permanent positions, and temporary workers in the state sector even benefit from some labor insurance provisions. Ahmad & Hussain, supra note 19, at 282. The distinction between permanent and temporary workers dates back to 1955, when temporary workers from rural areas were recruited to work on a short-term contract basis in the cities. BIAN, supra note 5, at 52. The temporary work force was criticized as a form of class exploitation during the Cultural Revolution, id. at 53-54, but has returned with full force since the economic reforms.


276. RENMIN RIBAO [PEOPLE'S DAILY], October 12, 1994, at 3.

277. See supra note 88.
in some factories. They are often hired on a temporary basis, with little labor protection. Unemployment coverage limited to registered state workers thus denies coverage to many women.

Likewise, the denial of unemployment coverage itself has a disparate impact on women workers, who are overwhelmingly the last to be hired and first to be fired by enterprises. In 1992, women constituted 60.2% of the urban job-seeking youths, and, in some cities, this number has risen as high as 80%. In the limited restructuring of state enterprises which has occurred thus far, women, the old, and the disabled have been the first to be laid off in urban work units. This gender-oriented disparity was particularly evident in the mid-1980’s when, in an effort to reduce the bloated work force, some managers adopted a “return home policy,” encouraging women to return home to take care of children and household. Even without such pressure from their enterprises, women workers are

278. The term nuer guo or “world of young women” aptly describes Zhujiang where women workers constitute 80% of the migrant worker population. Liang Yebo, Fashi [Legal System], 3 Nuer Guo Shiliu [JOURNAL OF NER GUO] 131 (1993). In private or joint enterprises, women workers (ages 18-22) can constitute as high as 80-90% of the workforce. Nan Bo, Bi Xu Jian Jue Wei Wu Nu Gong De Quan Yu Hu Zun Yan [Maintain and Protect Women Workers’ Rights and Dignity], 2 Zhongguo Funu [Chinese Women] 4 (1994); see also Liu Bingyi, Dangdai Dajiliu—Zhongguo Liudong Ren Kou Touzhi [Modern Flood—An Examination of China’s Floating Population], 6 Falu Yu Shenghuo [LAW AND LIVING] 12 (1989) (detailing the “third class” citizen status suffered by these migrant workers).

279. For an excellent account of the status of women workers in China since the reforms, see Emily Honig & Gail Hershatter, Personal Voices: Chinese Women in the 1980’s 243-63 (1988); see also Margaret Woo, Chinese Women Workers: The Delicate Balance Between Protection and Equality, in ENGENDERING CHINA: WOMEN, CULTURE AND THE STATE 279-299 (Christina K. Gilmartin et. al. eds., 1994). Women workers not hired or fired before the one-year requirement would not be protected under the unemployment insurance scheme, as presently configured.

280. Renmin Ribao [People’s Daily], October 12, 1994, at 3.

281. Thus, the retirement age for Chinese workers is 60 for men, but 55 for women white-collar employees and 50 for women blue-collar workers. Pensions, along with unemployment insurance, are one of five programs presently undergoing revision to make up China’s social security regime. The number of retired and resigned staff workers increased from 3.14 million in 1978 to 27.8 million in 1993. China Statistical Yearbook 1994, supra note 30, at 664.

282. For one woman’s account of the difficulties faced as a result of reduced income and status due to the return home policy, see Li Jing, Wo De Chulu Zai Nali? [Where Is My Way Out?], 1 Zhongguo Funu [Chinese Women] 6-7 (1988). This policy was met with mixed support and resulted in a year-long debate by the Women’s Federation on its impact. In total there were at least 38 articles and letters published in the year 1988 on the efficacy of the “return home” policy and its effect on women’s equality in China. One of the first articles that year on this subject was Zhang Jun & Ma Wenrong, Daqiu Zhang ‘Funu Huijia’ De Sisu [Some Thoughts About Da Qiu Village’s ‘Return Home’ Policy], 1 Zhongguo Funu [Chinese Women] 8-9 (1988).
more likely than men to withdraw from the labor market because of family and child care responsibilities. Their return may be temporary work.\footnote{283} To the extent that temporary unemployment and voluntary withdrawal from employment are not covered, then, we may be seeing the beginning of a feminization of poverty in China.

In the United States, a myth persists that the unemployment insurance system provides benefits to virtually all workers who lose their jobs,\footnote{284} while actually less than 40% of those technically covered by the unemployment insurance categories actually receive benefits when unemployed.\footnote{285} This discrepancy is largely the result of expanded state disqualifications based on (1) insufficient wages and (2) findings of individual worker fault in job terminations.\footnote{286} The composition of the United States labor force has changed dramatically since the enactment of the Social Security Act. The massive entry of women into the paid labor force\footnote{287} and the rapid expansion of part-time, temporary, or contract work (filled largely by women, workers of color, and low-wage workers) have been well documented and much discussed.\footnote{288} This latter group, the so-called

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283. See Friedman & Hausman, supra note 8, at 9, 27 (noting that women and older workers would have a difficult time finding new jobs after dismissal and that the state system is not accustomed to hiring experienced workers).

284. See O'Connell, supra note 196, at 1471 (noting that participation in the paid labor force does not necessarily equate with access to benefits, which are more available to whites and males and less available to African-Americans and females).


287. Blau & Ferber, supra note 202, at 30, 75-77 (noting that the percentage of women in labor force has risen from 27.9% in 1940 to 57.5% in 1990).

\end{footnotesize}
"contingent" labor force, is disproportionately affected and therefore marginalized by unemployment insurance qualifications.

Furthermore, the classification of "covered employment" in the unemployment insurance system has historically been racially biased. In addition to the 1935 exclusion of agricultural and domestic workers, the current exclusion in many states of seasonal workers and certain farmworkers has a disproportionate impact on workers of color. Moreover, the United States Employment Service has been criticized for racial exclusions and discriminatory job placement.

Even for those in covered employment, the labor market attachment requirement embraced by unemployment insurance disadvantages those who work but who are low-wage, contingent workers. For example, to meet monetary eligibility minimums, low-wage workers must work more hours than higher paid workers. Thus, in nine states, a half-time, full-year (1040 hours of work) worker who earns minimum wage is completely ineligible for benefits, while the worker who earns $8.00 an hour for the same hours of work is eligible.

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289. Contingent work slots are those which fall outside of the traditional full-year, full-time job for a single employer, such as temporary or contract work. See supra note 223, for discussion of part-time increase. Employment in the temporary help supply industry grew from 340,000 in 1978 to 695,000 in 1985. Françoise J. Carre, *Temporary Employment in the Eighties, in New Policies for the Part-Time and Contingent Workforce* 47 (Virginia L. duKivage ed., 1992). These workers are disproportionately female, young, and African-American. *Id.* at 50.


291. See supra note 102.


293. QUADAGNO, supra note 102, at 22; see also Politics, supra note 135, at 81. Note also the racial tensions which undermined cohesive working class support for job training programs in the 1960's. QUADAGNO, supra note 102, at 192.


295. ACUC 1995 Report, supra note 98, at 17-18. Likewise, a two day a week full-year worker earning minimum wage would be ineligible in 29 states, but the same worker earning $8.00 an hour would be eligible in all but two states. *Id.*
In addition, requirements that wages be earned during certain quarters\textsuperscript{296} negatively impact part-time low-wage workers. For example, nine states would disqualify a half-time full-year minimum wage worker (who worked 1040 hours), but only one state would disqualify the same worker if she worked the same number of hours full-time for 26 weeks and did not work at all the rest of the base period.\textsuperscript{297} Finally, the very existence of the fault-based misconduct disqualifications, by emphasizing the innocence of some unemployed workers, creates an “other” category of those who are not innocent\textsuperscript{298} and for whom little governmental assistance is available.

In both China and the United States, those who “voluntarily” withdraw from paid labor markets are disqualified, regardless of the length of their previous labor attachment.\textsuperscript{299} Thus, both countries stigmatize some workers who allegedly created their own unemployment or destitution. Each choice with respect to coverage implicates and legitimates social values.

2. The “Worthy” Employed and the “Worthy” Unemployed

The stratification maintained by unemployment insurance is not limited to that between the “worthy” unemployed and the “unworthy” unemployed. Even within the worthy category, both countries have adopted systems which do not replace wages and benefits accrued while working, thus legitimating and perpetuating a hierarchy between the “worthy” employed and the “worthy” unemployed.

Prior to the recent reforms,\textsuperscript{300} the Chinese state integrated social welfare benefits with labor market work. In particular, Chinese enterprises continued to pay wages to workers who, for whatever reason, were not working. Indeed, these non-workers received not only wages but all other benefits (medical care, pensions, etc.) accorded to all of the enterprise’s workers. By providing only cash benefits, the recent unemployment insurance reform is taking a different approach.

\textsuperscript{296} Thirty-three states require that a minimum amount of earnings be received in an individual’s high-wage quarter. Thus, workers who concentrate their work hours in a shorter period are more likely to meet the eligibility requirements. ACUC 1995 Report, supra note 98, at 94, 98.

\textsuperscript{297} ACUC 1995 Report, supra note 98, at 98.

\textsuperscript{298} See Casebeer, supra note 109, at 317.

\textsuperscript{299} Of course, the interpretation of “voluntarily” quitting a job has class and gender ramifications as well. Pearce, supra note 161, at 452-54.

\textsuperscript{300} See text accompanying notes 23-35.
The unemployment insurance regulations establish a small isolated cash program, providing only for medical and funeral benefits as ancillary to the receipt of cash unemployment insurance. While unemployed workers continue to enjoy price subsidies, and some unemployed workers manage to keep their non-wage benefits for a limited time, nowhere is there a conceptual framework for replicating within unemployment insurance benefits the totality of benefits that one is entitled to as a state worker. What has resulted then is a stratification between those who are employed and the "worthy" unemployed, which echoes the United States model.

Unlike China, the United States has not provided a total package of care as a basic right or necessity in paid labor markets. Instead, wages derived from work and benefits awarded by statute or contract are to provide the social welfare base. In theory, each individual should be able to provide for all needs through her wage work. The unemployment insurance program, modeled on that same assumption, is designed to provide only a partial wage replacement, independent of all other needs.

The enactment of cash benefit programs in isolation from other systems of social support has a long and much criticized history in the United States. The Social Security Act provided cash benefits for only three discrete categories: the elderly, certain children deprived of parental support, and designated unemployed workers. It failed to address systemically either health care or

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302. See discussion in FRIEDMAN & HAUSMAN, supra note 8, at 22-23, of how some workers maintain benefits while establishing self-employment. Additional information is needed, however, on the actual living standard of the unemployed. It is unclear how long or even if an unemployed person can continue to occupy housing provided by the enterprise, or enjoy other benefits such as child nurseries, heating and furnishings, and education of children. See WORLD BANK REPORT, NO. 8074-CHA, CHINA: REFORMING SOCIAL SECURITY IN A SOCIALIST ECONOMY 71 (June 25, 1990).


304. See text accompanying notes 130-132.

305. See Skocpol, supra note 197, at 563-64. See generally LUBOVE, supra note 227.

306. The original Social Security Program covered only elderly individuals (not dependents) and did not cover disabled workers. Social Security Act, ch. 531, § 210(c), 49 Stat. 620, 625 (1935).


308. See supra note 102.
nutritional needs and did not guarantee either subsistence benefits for all or full employment. As different groups of individuals moved in and out of political favor, or as different kinds of needs were recognized (e.g., food, medical, heating, housing), a confusing array of programs, each with complex regulations and widely divergent coverage and eligibility standards, was enacted. The result is wide gaps in coverage of certain types of benefits for certain categories of people.

In the United States, by tying the level of benefits to previous earnings, the unemployment insurance program has made the choice not to have a substantial redistributive effect, but rather to continue "vertical inequity." In other words, those who have higher earnings in the paid labor market enjoy advantages, such as increased eligibility and higher benefits, in the unemployment insurance scheme as well. Yet even in China, where the 1993 Regulations do not tie benefits to previous wage level, the failure to provide full benefits received by those in paid labor markets has a similar result. Central to the Maoist policy is the formal guarantee that the government shall provide for basic needs and reduce economic inequality. The central government professes to be concerned about these goals, even in light of shifts in leadership and organization.


310. Weir has questioned whether, in not guaranteeing a job for all, the Social Security Act was consistent with longstanding U.S. values and emphasis on work. Weir ET AL., supra note 91, at 13.

311. See Haber & Murray, supra note 91, at 461-486.

312. Marmor, supra note 303, at 34. See also supra note 130 (documenting slightly higher replacement rate for lower wage workers).

313. See text accompanying notes 294-295.


315. Constitution, art. 46 (providing that citizens of China have the right to material assistance from the state and society when they are old, ill, or disabled. The state develops social insurance, social relief, and medical and health services that are required for citizens to enjoy this right.). For a detailed history of social security programs in the People's Republic of China, see Tian He ET AL. EDs., Zhongguo Shehui Baozheng Xue Gai Lun [Introduction to China's Social Insurance System] (1994), at 39-44.

316. China has been comparatively successful in preventing deprivation, but that success is neither unblemished nor unqualified. There continues to be poverty in rural and some urban areas. According to Ahmad & Hussain, this comparative success is attributable to the joint effect of three sets of factors: 1) the state's capacity to mobilize the population for collective ends; 2) providing rural households with access to land and maintaining a high rate
of the economy. Yet, in the short time since the reforms, the commitment to both eliminating deprivation and to economic equality appears to be waning as the Chinese state begins to tolerate widening income gaps and the emergence of a new underclass in parts of the country. Unemployment insurance reflects and reinforces this stratification.

Thus in both countries, current unemployment insurance is an isolated and frequently inadequate wage replacement program, filling only a portion of the worker’s needed and previously provided wage and benefit package and perpetuating economic inequities. The development of an unemployment insurance system thereby creates multiple stratifications of those in paid labor markets and those who are not currently in paid labor markets, replicating the gender, race, and class biases of the larger society.

V. CONCLUSION

Both China and the United States have evolving unemployment insurance schemes. The debates in both countries over reform, which have surprising similarities, are illuminating because they reflect ideological concerns, shifts, and struggles in government and society.

Unemployment insurance legitimates the social construction of the inevitability and necessity of unemployment. For both countries, unemployment insurance was established in response to a particular economic model and was structured to provide for a built-in percentage of unemployment which served the interests of social stability and an economic growth strategy. Thus the creation of unemployment insurance recognizes a new conception of paid labor market work, namely one that has room for unemployment.

In addition, the design and evolution of unemployment insurance schemes reflect policymakers’ concern with upgrading labor

of employment in urban areas; and 3) social security programs. Ahmad & Hussain, supra note 19, at 298.

317. During the reforms, a residue of egalitarian principles can be seen in the equitable methods of allocating land and other productive assets during the implementation of the “household responsibility system.” Jonathan Unger, “Rich Man, Poor Man”: The Making of New Classes in the Countryside, in GOODMAN & HOOPER, supra note 59, at 46 (land was divided among the peasants on a per capita basis and farm tools and draught animals were distributed free of charge).

318. See Survey Indicates “Wealthier” Group, BEIJING XINHUA, F.B.I.S.(CHINA), Oct. 12, 1994, at 22; Unger, supra note 317, at 48-49 (noting the emergence of a new underclass in those districts too remote from urban centers to sustain off-the-farm opportunities).

319. See text accompanying notes 68-70, 130-132, 304.
productivity and therefore incorporate incentives to further that goal. However, the differing choices in the unemployment insurance regimes are value-laden, reflect different theories of how to affect workers’ motivation, skills and discipline, and often have unintended consequences.

Similarly, unemployment insurance regimes incorporate assumptions about voluntariness and choice in finding, accepting, and maintaining work. As reflected in the United States system, work is largely a statement of individuality: a worker is supposed to find and retain her own job and not have that job terminated through any fault of her own. In China, unemployment insurance reflects the recognition that the state is inducing unemployment by encouraging lay-offs through increased enterprise choice and unemployment insurance coverage. Thus, China has taken more initiative and assumed greater responsibility in providing retraining, retooling, and placement of its workers, including use of the unemployment insurance fund for such purposes.

In both systems, delineating the boundaries of coverage and level of benefits in the context of labor attachment reinforces value judgments which socially construct status and create societal stratification. Both countries hold up the image of the worker as one to be emulated, and the concept of full employment as a national value. In the United States, the problem is that the concept is a fiction. The mythology of the “work ethic,” based on the false assumption that jobs are available for all except those who refuse to seek and accept them, and the very rhetoric of full employment which

320. Indeed, the "model worker" is often a vehicle used by the Chinese state to promote ideological messages and to render such messages acceptable to the populace. For example, in the months after the brutal suppression of the 1989 Pro-Democracy Movement, the Chinese state quickly promulgated a campaign upholding Lei Feng, a public security worker, as a model worker whom all citizens should emulate. This was part and parcel of the state's effort to win back public trust of armed officers. See, e.g., Lei Feng Is By Our Side, FAZHI RIBAO [LEGAL DAILY], Jan. 31, 1990, at 1; "Public Security Officers Consciously Emulate Lei Feng's Style of People's Police," FAZHI RIBAO [LEGAL DAILY], Feb. 5, 1990. The value of work is also codified in the Chinese Constitution, which provides that the Chinese state "promotes socialist labour emulation, and commends and rewards model and advanced workers." Constitution, ch. 11, art. 42. For a discussion of the moral value of work in the United States, see JOEL F. HANDEL & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA 17-22 (1991). See generally LUCY A. WILLIAMS, Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate, 22 FORDHAM URB. L.J. 301 (1995) (discussing pejorative images of poor women outside paid labor markets).
reifies the work ethic, marginalizes others who are unable to obtain jobs or who are contributing to society outside of paid labor markets. In China, while the idealized worker image at one time had a universal validity because of guaranteed employment, the current labor reforms—with built-in unemployment—make that image questionable.

For both countries, the unemployment insurance system, by providing a structure to uphold the ideological construction of unemployment, thus stands in contradistinction to the valued image of the industrious, paid labor market worker and ensures that a certain percentage of each country’s citizens will always be “unworthy.” In China, the unemployment insurance regime, in making room for unemployment, in emphasizing a view of labor productivity which moves away from labor egalitarianism, and in tolerating inequality rather than economic redistribution, is a litmus test for “socialism with Chinese characteristics.”