

Labor Rights in East Asia: Progress or Regress?

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This article examines the impact of recent economic and political change on collective and individual labor rights in East Asia. Deploying a new index for measuring *de jure* and *de facto* labor rights, the article presents new comparative data on labor rights in the region. Democratization has produced stronger collective labor rights in much of the region, but labor laws in most countries still fall far short of international labor standards. East Asia's labor laws offer similar levels of protection for individual labor rights to the rest of the world when firing costs are taken into account, and low regional averages are primarily an effect of Singapore's extremely weak individual labor rights. Few countries have revised their labor laws in the direction of greater labor market flexibility. However, the distance between law and practice is wide, so improvements in laws are not necessarily reflected on the ground. Flexibility enters through the back door of ineffective labor law enforcement, which in turn has affected the organizing efforts of unions.

KEYWORDS: labor rights, trade unions, East Asia, Southeast Asia, labor market flexibility, labor law, freedom of association, collective bargaining, right to strike

For much of the postwar era, many of the fastest growing economies of the world were in East Asia. "Beneath the miracle" of East Asia's stunning growth hid the ugly fact of severe labor rights violations (Caraway 2006a; Deyo 1987, 1989; Hadiz 1997; Rasiah and von Hofmann 1998). Since the late 1980s, however, democratization has opened political space for unions in some countries, and labor law reforms in others have strengthened the collective rights of workers. Yet the Asian financial crisis also gave the international financial institutions and employers an exceptional opportunity to roll back labor laws that partially shielded workers from market turmoil.

Unfortunately, the impact of these disparate pressures on labor rights in the region has not been fully explored because of the absence of data. In this article, I present data on both collective and individual labor rights that will allow scholars to draw better conclusions about labor rights in the region.¹ Most cross-national datasets that include Asia focus on one or the other; consequently, we have only partial views of how contemporary economic and political forces are affecting labor rights.² Collective labor law concerns the regulation of union formation, collective bargaining, and the right to strike, whereas individual labor law regulates employment contracts between individuals and employers. The individual rights index used here, while relying on World Bank data, further develops their work by incorporating firing costs into a unified measure.

Second, this study offers indexes that distinguish between *de jure* and *de facto* labor rights. Most cross-national research either combines *de jure* and *de facto* indicators (Kucera 2004; Mosley and Uno 2007) or focuses exclusively on the law (Botero et al. 2004; World Bank 2007; for Latin America only, see Murillo 2005 and Murillo and Schrank 2005). Both matter. Labor laws set the boundaries of the legal rights that workers can claim, but they are meaningless if they are not enforced. Offering separate indexes for *de jure* and *de facto* labor rights also expands the set of questions that scholars can address in their work.

The main focus of this article is the presentation and analysis of the regional data on individual and collective labor rights, both *de jure* and *de facto*, including a consideration of trends and comparisons with both the advanced industrial states and other regions. But it also offers some preliminary observations about causal processes and highlights empirical patterns and puzzles that are worth exploring more systematically in future research.

First, *de jure* and *de facto* collective labor rights have improved in the region, largely as a consequence of democratization. Nevertheless, the laws in almost every country—democracies included—still violate some aspects of International Labour Organization (ILO) Convention No. 87 (Freedom of Association and Protection of the Right to Organize), and Convention No. 98 (Right to Organize and Collective Bargaining). In countries where democratization has heralded significant advances in *de jure* collective labor rights, consideration of *de facto* measures shows that the full impact of these improvements in formal rights is eroded by weak enforcement. Moreover, countries with stronger collective labor rights do not have higher unionization rates, collective bargaining remains rare in most countries, and the right to

strike is poorly protected—even in democracies. Unions in East Asia may be freer, but they remain feeble.

Second, I find that laws on individual labor rights have also improved, suggesting that countries in the region have resisted the competitive and international forces that impel labor market flexibility. As codified in labor law, individual labor rights in the region are close to the world average and are not worsening. Contrary to world trends, several countries even enacted legislation that diminished labor market flexibility, and only one country in East Asia—South Korea—has passed legislation that significantly increased labor market flexibility since the Asian financial crisis. Democracy appears to offer at least a partial explanation for this outcome; labor laws in democracies provide for stronger individual labor rights than in nondemocracies. But as with collective labor rights, weak enforcement means that the real level of labor protection is often much lower than indicated by indexes that estimate individual labor rights based exclusively on an analysis of labor laws.

Third, there is no unitary East Asian labor rights regime. Singapore emerges as an outlier because of its extremely flexible labor laws. Excluding Singapore, there is a positive relationship between respect for individual and collective labor rights, both *de jure* and *de facto*. China, Laos, and Malaysia cluster together on the low end of the spectrum for both *de facto* and *de jure* labor rights, while Indonesia, South Korea, and Taiwan are on the high end. Cambodia, Vietnam, and the Philippines rank high on *de jure* rights, but they are in the middle of the spectrum of countries on *de facto* labor rights. Thailand is the only country that lands squarely in the middle of the spectrum for both *de jure* and *de facto* labor rights.

I begin the article with an analysis of individual labor rights, which is followed by a discussion of collective labor rights. I then assess whether there is a trade-off between the two and end with some concluding thoughts.

Individual Labor Rights

Individual labor rights pertain to the regulation of labor contracts between individuals and employers. Labor laws with strong individual labor rights partially decommodify labor by cushioning workers from the impact of volatile market cycles. Such laws make it more difficult and expensive for employers to fire workers; they also restrict the use of nonpermanent labor contracts and outsourcing and limit the ability

of employers to unilaterally determine the length of the working day. The international financial institutions commonly describe labor laws that protect individual labor rights as “rigid” because they constrain employers; the consequence, they argue, is reduced formal sector employment. They therefore recommend legislative reforms that create more labor market flexibility. Highly flexible labor market institutions give employers more control over setting the terms of labor contracts and thus constitute the opposite end of the spectrum from labor laws that protect individual labor rights. In other words, laws that provide for high levels of labor market flexibility have weak individual labor rights; “rigid” or protective labor laws, by contrast, promote strong individual labor rights.

It is perhaps unsurprising that the World Bank’s labor market data show that Asia, renowned for its booming economies, has comparatively flexible labor markets.³ Yet this finding stands on two weak pillars. First, Singapore’s laws are far more flexible than others in the region, which lowers the regional average. Second, the World Bank’s measure of rigidity excludes firing costs, which are actually very high in East Asia. When firing costs are incorporated, East Asia offers higher protection for individual labor rights than the world average. Even more interesting, the regional average masks sharp variations between countries in the protection of individual labor rights. Individual labor rights are stronger in democracies, and income levels are not correlated with labor market flexibility. However, labor laws are poorly enforced in many countries in the region, so actual levels of flexibility are higher than indicated by law. Democracies fare no better than other regimes in enforcing individual labor laws—as measured by the gap between *de facto* and *de jure* indicators—but rich countries do better than poor countries.

The analysis of individual labor law draws on the World Bank’s “Doing Business” report’s rigidity of employment index (REI), which is an average of three indexes that measure the difficulty of hiring, rigidity of hours, and difficulty of firing.⁴ The three indexes have scores from 0 to 100; higher values indicate more rigid regulation (stronger individual labor rights), and lower values indicate greater labor market flexibility (weaker individual labor rights). The average REI in the region is 29, which is slightly below the world average—33 (see Table 1). East Asia’s scores are close to the world average on every subindex except rigidity of hours. Africa has the most protective individual labor laws, East Asia and the Pacific the least. The World Bank’s regional average is significantly lower than the subset of countries discussed here

Table 1 Hiring, Firing, and Hours: East Asia and the World (2007)

	Difficulty of Hiring (0–100)	Rigidity of Hours (0–100)	Difficulty of Firing (0–100)	Rigidity of Employment (0–100)
Cambodia	56	60	30	49
China	11	20	40	24
Indonesia	61	20	50	44
Laos	11	40	50	34
Malaysia	0	0	30	10
Philippines	56	20	30	35
Singapore	0	0	0	0
South Korea	11	60	30	34
Taiwan	78	40	40	53
Thailand	33	20	0	18
Vietnam	0	20	40	20
Average	29	27	31	29
World	32	37	31	33
Middle East and North Africa	22	40	32	31
Latin America and Caribbean	35	33	26	31
South Asia	28	18	38	28
Africa	41	43	42	42
East Asia and Pacific ^a	20	19	19	19
Low-income	39	42	36	39
Lower-middle-income	34	36	33	34
Upper-middle-income	29	35	31	31

Source: World Bank 2007.

Notes: a. This grouping includes all of the countries in the top part of the table as well as Hong Kong, East Timor, Mongolia, Brunei, Papua New Guinea, and several small Pacific island nations.

because the island countries in the Pacific, as well as Hong Kong, Brunei, and East Timor, have extremely flexible labor laws. Flexibility increases with income category worldwide, including in East Asia.

Although the low REI indicates that the region is relatively flexible compared to other parts of the world, the index does not include firing costs, which are relatively high in the region. The world average for the cost of firing is forty-eight weeks of salary, but the regional average is sixty-eight, which is the highest of any developing region in the world (tied with Africa), as seen in Table 2. The comparatively high levels of severance pay in the region run counter to its image of flexibility. A particularly striking finding is that democracies in the region have much higher firing costs than nondemocracies.⁵ Income category also has a different effect in East Asia. Although worldwide firing costs are highest in low-income countries and lower in richer countries, the lower-middle-income countries have the highest firing costs in East Asia.

Table 2 De Jure Employment Protection: East Asia and the World (2007)

	Rigidity of Employment (0–100)	Cost of Firing (in weeks)	De Jure Employment Protection (0–100)
Democracies	37	87	55
Indonesia	44	108	60
Philippines	35	91	55
South Korea	34	91	54
Taiwan	53	91	64
Thailand	18	54	42
Semidemocracies	20	39	36
Cambodia	49	39	55
Malaysia	10	75	40
Singapore	0	4	13
Authoritarian	26	66	46
China	24	91	49
Laos	34	19	42
Vietnam	20	87	47
Region	29	68	49 ^a
By income category in East Asia ^b			
Low-income	34	48	48
Lower-middle-income	30	86	51
Upper-middle-income and higher	24	65	43
World	33	48	48
Middle East and North Africa	31	54	48
Latin America and Caribbean	31	55	49
South Asia	28	65	48
Africa	42	68	56
East Asia and Pacific	19	38	40
Low-income	39	62	53
Lower-middle-income	34	50	49
Upper-middle-income	31	40	46

Source: World Bank 2007.

Notes: a. This figure is not an average of the column. Since the DJEP formula has a log transformation of firing costs, the regional average is calculated by putting the regional average firing costs and regional average REI into the DJEP formula. A simple average of the column would be 47.

b. Low-income countries are Cambodia, Laos, and Vietnam; lower-middle-income countries are China, Indonesia, the Philippines, and Thailand; and upper-middle-income and above are Malaysia, Singapore, South Korea, and Taiwan.

The REI and firing costs can also be combined into a de jure employment protection (DJEP) index (see Appendix for further explanation). This combined index provides a better picture of individual labor rights than either measure on its own. The average DJEP in the region, 49, is slightly above the world average of 48 (see Table 2). Since Singapore pulls the regional average down significantly, individual labor rights in the region are much stronger than conveyed by the regional

average. In the combined index, then, East Asia's labor laws are more protective than the world average and every developing region except Africa. Democracies once again score higher than nondemocracies, and the distinct income pattern in the region also repeats itself, with the lower-middle-income countries' having the most protective labor laws. Still, even within income and regime categories there are notable variations. Among democracies, individual labor rights are by far the weakest in Thailand, and Cambodia's laws are as protective as those in democracies. South Korea and Taiwan stand in marked contrast to Singapore and Malaysia in the upper-middle-income and higher category. And among lower-middle-income countries, Thailand once again stands out as having the least protective laws. All the authoritarian countries in the sample are also socialist, which helps explain the surprising pattern of higher firing costs in authoritarian countries than in semidemocratic countries.

Part of the reason for these patterns is the legacy of "protective repression." Hagen Koo (2000) has observed that under authoritarianism, South Korea combined brutal repression of collective labor rights with strong individual labor rights that encouraged firms to retain workers. I (Caraway 2004) coined the term *protective repression* to describe a similar labor rights regime in Indonesia. Taiwan and (to a lesser extent) the Philippines, also fall in this category. With the exception of Thailand, all of the countries that are democracies today were protective and repressive under authoritarianism. Historical legacy, rather than regime type, is probably the reason that democracies have far stronger individual labor rights than nondemocracies. Communist countries also clump closely together, and Singapore is exceptional in having much more flexible labor laws than its neighbors, although it should be noted that Malaysia's REI is also very low. Firing costs, however, are much higher in Malaysia than in Singapore.

An index based purely on legislation, however, overestimates the strength of individual labor rights in the region, since labor laws are only as strong as their enforcement. Existing research therefore greatly overestimates the protection of individual labor rights, since it relies only on the coding of labor laws. The *de facto* employment protection index (DFEP) offers a way to estimate the impact of enforcement on individual labor rights, allowing scholars to distinguish between laws on the books and practice on the ground. The index incorporates a rule of law measure that essentially discounts the *de jure* score—the discount is largest for countries with strong laws and weak rule of law, smallest for countries with weak laws and strong rule of law (see Appendix for

more information on how the index is constructed). Since labor laws are poorly enforced in most of the region, the scores of many countries fall dramatically (see Table 3). Regime type does not have an effect, but rich countries show a less precipitous drop in their scores than poor countries. The richest countries have weaker laws but enforce them better, whereas low and lower-middle-income countries have stronger laws but enforce them poorly. The DFEP score for the world is 41, the same as East Asia.

In neither de jure nor de facto terms, then, is East Asia more flexible than the rest of the world. But has East Asia been heading in the direction of greater flexibility? In fact, individual labor rights as codified in labor law have improved in some countries, and even those that have adopted changes that weaken individual labor rights have combined them with other reforms that protect them. The most common flexibilization measure adopted in the region was the expansion of flexible working hour arrangements. Malaysia, Singapore, Taiwan, and Vietnam expanded the range of flexible working hour options available to

Table 3 De Jure and De Facto Employment Protection: East Asia and the World (2007)

	De Jure Employment Protection (0–100)	De Facto Employment Protection (0–100)	Percent Change
Democracies	55	45	18
Indonesia	60	44	27
Philippines	55	43	22
South Korea	54	47	13
Taiwan	64	54	15
Thailand	42	36	14
Semidemocracies	36	30	17
Cambodia	55	40	26
Malaysia	40	36	10
Singapore	13	13	1
Authoritarian	46	37	19
China	49	40	19
Laos	42	34	19
Vietnam	47	38	18
Region	49	41	16
By income category in East Asia ^a			
Low-income	48	37	21
Lower-middle-income	51	41	20
Upper-middle-income and higher	43	38	10

Source: World Bank 2007.

Note: a. Low-income countries are Cambodia, Laos, and Vietnam; lower-middle-income countries are China, Indonesia, the Philippines, and Thailand; and upper-middle-income and above are Malaysia, Singapore, South Korea, and Taiwan.

employers; Vietnam also raised the upper limit on yearly overtime. South Korea gave employers more latitude in unilaterally setting working hours but constrained them with a shorter work week.

South Korea experienced the most dramatic change in the region in the wake of the Asian financial crisis. Strongly pressured by the International Monetary Fund (IMF), South Korea enacted reforms that dramatically weakened individual labor rights (Kim and Moon 2000; Koo 2000). With the support of employers, South Korea instituted reforms in the areas where pressure was most intense—liberalizing layoffs and outsourcing. Previously, employers could only dismiss workers for “justifiable” reasons, and the South Korean courts interpreted “justifiable” narrowly. In practice it was difficult to fire workers on personal, behavioral, or economic grounds (Lee 2002). Although the new law required employers to make efforts to avoid dismissals, to establish “rational and fair standards” for selecting the workers to be laid off, and to give sixty days’ notice to unionized workers, employers were allowed to dismiss workers for “managerial reasons,” which included retrenchments, mergers, and acquisitions. Labor law reforms in South Korea also facilitated outsourcing. Until 1998, the minister of labor tightly limited the use of labor supply services (Lee 2002).⁶ The Dispatched Workers Act of 1998 removed labor suppliers from the scope of the Employment Security Act and stipulated the terms on which dispatched (temporary or outsourced) workers could be employed. The types of work that could be permanently outsourced cover twenty-six job categories.⁷ But South Korea’s new laws did not give employers a free hand—jobs could be outsourced for no more than one year, then extended once for up to one year, after which workers became permanent employees. The law, moreover, mandated equal treatment of dispatched workers, which eliminated one of the main advantages of employing them in the first place. The law is vague about what constitutes equal treatment, however, so it has been unenforceable.

However, several countries have moved in the direction of more, not less, protection. In Indonesia, severance payments increased dramatically for most types of dismissal in 2000 and then again in 2003. The Manpower Act of 2003 also introduced restrictions on outsourcing, previously unregulated, permitting it only for noncore work. Thailand increased the maximum level of severance pay from six months’ to ten months’ wages and eliminated the distinction between permanent and temporary workers on matters such as weekend pay, annual holidays, traditional holidays, and sick leave. The reform of the Labor Protection Act in 1998 also resulted in tighter restrictions on the use of fixed-term

contracts, limiting them to jobs that are occasional, seasonal, have a definite beginning or end, or that are not part of the normal business of the employer. The revised labor law also capped the length of time for which fixed-term contracts could be used to two years. Not a single country in the region reduced severance pay for workers who are not at fault.

The experience of East Asia, then, does not support contentions that countries are making dramatic changes to their labor laws in response to international competition and pressure from the international financial institutions. Only Indonesia, South Korea, and Thailand have made significant changes to the regulation of individual labor contracts, and in two out of three—Indonesia and Thailand—these changes have made the formal regulations more protective. South Korea, which made the most dramatic reforms weakening individual labor rights, partially offset them by introducing measures that limited the scope of their impact. And in spite of these reforms, South Korea's labor market is still less flexible than the world average. The IMF continues to push South Korea to further flexibilize its labor markets. In 2005, labor unions fiercely opposed the government's efforts to pass the Non-Regular Workers' Protection Law, which would have partially mollified the international financial institutions and employers (Doucette 2005). Most recently, a new law introduced limitations on the duration of fixed-term contracts and mandated equal pay for equal work. The law went into effect in large workplaces in July 2007 and will be phased into smaller workplaces over the next two years. China is also moving in the direction of less flexibility. China's new law on labor contracts, which went into effect in 2008 and is not reflected in the 2007 data presented above, placed limits on the duration of fixed-term contracts and outsourcing.

East Asia's reputed flexibility is thus largely a myth. When firing costs are taken into account, East Asia is more protective than the world average and all developing regions except Africa. Democracies have more protective laws, but they are poorly enforced, especially in the lower-income countries. Higher-income countries have less protective laws but enforce them better. The legacy of protective repression is pronounced in all democracies except Thailand and helps explain why Indonesia, the Philippines, South Korea, and Taiwan have the most protective labor laws in the region. Cambodia compares favorably with them, but the roots of its protective laws probably lie in the special circumstances in which its labor laws were drafted in the 1990s (Bronstein 2005). East Asia also seems to be bucking world trends by moving in the direction of more, not less, protective laws. These responses

are probably due in part to the increased de facto flexibility on the ground. The analysis presented here suggests that tightening laws will lead to limited gains in individual labor rights in most countries in the region; investments in improved enforcement would probably yield more benefits to workers.

Collective Labor Rights

Respect for collective labor rights varies dramatically between countries in the region. Not a single country has labor laws that are in full compliance with Conventions Nos. 87 and 98. The average score in the region for de jure collective rights (DJCR) is 69 (out of 100), which reflects the weak protection for many collective labor rights in national labor codes (see Table 4; see also Appendix for further explanation of the DJCR). Cambodia and Indonesia have the strongest legal protections for collective labor rights. The legal protection of collective rights does not correlate perfectly with regime type. Although democracies and semidemocracies fare better than authoritarian countries, Vietnam has the third highest score in the region, and Malaysia's scores are comparable to authoritarian countries. Only one democracy in the region has strong legal protections for collective rights—Indonesia. The labor

Table 4 Collective Labor Rights in East Asia, 2006

	De Jure Collective Rights (0–100)
Democracies	73
Indonesia	89
Philippines	74
South Korea	71
Taiwan	69
Thailand	63
Semidemocracies	72
Cambodia	90
Malaysia	55
Singapore	70
Authoritarian	45
Burma	0
China	50
Laos	53
Vietnam	77
Region	69

laws in the other democracies—South Korea, Taiwan, and Thailand—all retain many provisions that violate international labor standards. Among democracies, Thailand once again scores lowest, and among semidemocracies, Cambodia remains exceptional. As with individual labor rights, Cambodia's exceptionalism stems from the deep involvement of the ILO in crafting its new labor code in the 1990s (Bronstein 2005).

Labor laws in the region violate all three categories of collective rights—union formation, collective bargaining, and the right to strike—but countries vary in the degree to which their labor laws violate international labor standards, and some countries have strong protections for some rights but not others. Of the three main collective rights, collective bargaining is the most widely respected in law (if not in practice), while the right to strike is the least respected.

The Right to Establish Unions

Although the right to form unions has strengthened in the last two decades, workers still face many challenges in organizing to defend their interests. Democracies do not fare better than other regime types with respect to union formation, largely because several democracies prohibit civil servants from organizing unions. Democracies, however, are less likely to erect administrative obstacles to union formation and to interfere in internal union affairs than semidemocracies and authoritarian regimes. Surprisingly, laws that conform more closely to international labor standards are not correlated with higher unionization rates.

Indonesian labor law conforms most closely to ILO standards on union formation. After the fall of Suharto in May 1998, successive Indonesian governments worked closely with the ILO to produce new labor laws that addressed many of the ILO's criticisms of Indonesian labor regulation (Caraway 2004). Most notably, Indonesia moved quickly to recognize freedom of association by eliminating the legal monopoly enjoyed by the state-backed union (Ford 2000). The main weakness of existing law is the status of the right of civil servants to unionize. Although acknowledged in the Trade Union Act, the law stipulates that the unionization of civil servants is to be regulated by another law, which Indonesia has yet to produce. Civil servants have yet to test the law, but state enterprise employees and some teachers have successfully registered. In spite of the relatively strong legal status of the right to form unions, the ILO has raised some concerns about In-

Indonesian labor laws, most notably questioning the state's authority to suspend unions for failing to report financial assistance from overseas and changes in union statutes to the authorities. In addition, the ILO deems protections against antiunion discrimination to be insufficient.⁸ While Indonesian law has strong language on antiunion discrimination, current law requires workers to go through cumbersome procedures to file such complaints, and state authorities have proven reluctant to press forward with criminal charges against employers. In practice, this means that employers can fire labor activists at will, as long as they pay them severance.

After Indonesia, the Philippines and Cambodia are fairly compliant with international labor standards for union formation, but both fall short in important respects. In Cambodia, the ILO has raised concerns about the exclusion of most civil servants from the right to organize, restrictions on eligibility for union office, and insufficient protections against antiunion discrimination. As in Indonesia, the Philippines made changes to its labor code after the transition to democracy in 1986 (Bacungan and Ofreneo 2002), but since 1989 there has been no progress in rectifying aspects of Filipino law that are not in full compliance with ILO standards.⁹ The ILO has identified the membership threshold for registration, set at 20 percent of workers in a workplace, as constituting an obstacle to unionization. In addition, the ILO considers the restrictions on alien involvement in trade union activities and the high number of unions required to form a federation (ten) to violate Convention No. 87.

The legislation in communist countries—Vietnam, Laos, and China—imposes union monopolies, and none of them has ratified Convention No. 87. Nevertheless, since their laws conform to ILO standards with respect to the categories of workers permitted to unionize, the kinds of unions or worker organizations that can be formed, and union participation in political activities—although it should be noted that the ILO considers requirements for unions to support the socialist state to be problematic—they score relatively high on union formation. Laos and China score lower than Vietnam as a result of administrative hurdles to union formation in Laos and the legality of state interference in internal union affairs in China.

South Korea, Singapore, Thailand, Taiwan, and Malaysia score lower than communist countries on union formation (the countries are listed from highest to lowest). The low scores for Taiwan, South Korea, and Thailand are surprising, since they are democracies. All three exclude many or all civil servants from unionization and restrict union

pluralism in some or all sectors of the economy.¹⁰ Both Taiwan and Thailand erect administrative hurdles to union formation, limit the kinds of unions or worker organizations, and permit state interference in internal union affairs. South Korea and Thailand also prohibit some workers from participation in political activities—teachers and public servants in South Korea, state-enterprise employees in Thailand. In Taiwan, however, some of these provisions in the law are no longer enforced, so the actual labor rights situation is stronger than indicated by the legislation (Wang and Cooney 2002).

In addition to these common issues, the ILO has also criticized South Korea for its restrictions on the payment of wages to trade union officers, the prohibition against dismissed employees continuing to be union members and officers, and the requirement for third parties to register with the Ministry of Labor in order to consult with unions during collective bargaining negotiations and labor disputes.¹¹ Thailand has also come under criticism for placing restrictions on state enterprise employees—25 percent of workers must join a union in order for it to be registered, workers can only form enterprise unions, and the freedom to combine into federations with unions in the private sector is constrained.

Singapore and Malaysia show a different pattern of violations on union formation than South Korea, Taiwan, and Thailand. Malaysia and Singapore place fewer restrictions on the freedom of civil servants to unionize, but they erect administrative and legal hurdles to union formation, limit the kinds of unions or worker organizations, permit state interference in internal union affairs, and prohibit union participation in political activities (Ayadurai 1993; Leggett 1993). In Singapore, one effect of the heavy state hand in labor relations is a *de facto* union monopoly (Leggett 1993). By contrast, the registrar in Malaysia has used its authority to fragment the labor movement and to impede unionization in the electronics industry (Ahmad 2002; Jomo and Todd 1994). Malaysia has come under sharper attack by the ILO than Singapore in part because unions, both domestic and foreign, have filed cases with the ILO's Committee on Freedom of Association.¹² The ILO also considers protections against antiunion discrimination to be insufficient in Malaysia.¹³

On balance, respect for the right to form unions has improved, largely as a result of the increasing number of democracies in the region, but even democracies perform pretty miserably. Moreover, as Mark Anner (2008) has observed in Latin America, unionization rates show little sign of improving and are probably in decline. Strikingly, the protection of the right to form unions has little correlation with lev-

els of unionization in the region (see Table 5). Countries that score relatively high on indicators for union formation have both high and low levels of unionization; those with low scores show a similar pattern. Assessing comparative levels of unionization in the region is difficult, since few countries publish reliable statistics, and country specialists use different measures of union density. The most comprehensive data come from the ILO (International Labour Organization 1997). Though dated and incomplete, the data show that with few exceptions, unionization rates are low in the region. The US Department of Labor's Bureau of International Labor Affairs also produces a useful report, *Foreign Labor Trends*, which calculates unionization rates as a percentage of the total workforce.¹⁴ This measure results in lower union density estimates than those calculated based on the nonagricultural workforce, especially if a significant proportion of the workforce is employed in agriculture. Since the data are not comparable, they cannot be used to assess trends but do once again show that unionization rates in the region are low.

China has the highest rate of unionization in the region, followed by Taiwan, but the figures are misleading as indicators of union strength in these countries. In China, the high figure reflects compulsory membership for state employees and masks the top-down nature of much unionization in the private sector (Taylor and Li 2007). In Taiwan, the relatively high union density is largely a product of increases

Table 5 Unionization Rates: East Asia

	1995 (as percentage of nonagricultural workforce)	2000 (as percentage of total workforce)	Legal Right to Form Unions
Democracies			
Indonesia	2.6		High
Philippines	22.8	12.3	High
South Korea	9.0	11.8	Medium
Taiwan	27.9		Low
Thailand	3.1		Low
Semidemocracies			
Cambodia		1.0	High
Malaysia	11.7	8.3	Low
Singapore	13.5	15.7	Low
Authoritarian			
China	54.7		Medium
Vietnam		10.0	High

Sources: The 1995 data are from the International Labour Organization (1997); the 2000 data are from the *Foreign Labor Trends* reports prepared by the US Department of Labor.

in membership in occupational unions, which are largely composed of self-employed workers that join in order to receive health insurance (Chu 1996). Malaysia and the Philippines have relatively high unionization rates for the region, but membership levels are stagnating or in decline (Ahmad 2002; Bacungan and Ofreneo 2002). In South Korea, union density was in decline until the late 1990s, when teachers and state employees were permitted to unionize (Kim and Kim 2003). Vietnam, in contrast, may be experiencing an increase in unionization. Union density is relatively low because such a large proportion of the workforce is still in agriculture. The state sector is almost entirely unionized, and in recent years unionization in the private sector has expanded considerably (Clarke, Lee, and Chi 2007; Manyin, Lum, McHugh et al. 2002). Indonesia and Thailand both have extremely low rates of unionization, but union density has probably increased modestly in Indonesia as a result of the expansion of organizing efforts after the fall of Suharto in 1998 (Caraway 2008). The disconnect between law and unionization rates leads to new avenues of research. If countries with laws that are more compliant with international labor standards do not have higher rates of unionization, then it suggests that other factors are at work. One possibility is my observation (Caraway 2006b) that liberal labor laws that make it easier to form unions are not necessarily the most likely to increase unionization rates. Instead, they may encourage union fragmentation and competition. Another is that union busting is rampant due to poor law enforcement, implying that if the laws were enforced, unionization rates would increase.

Collective Bargaining

Compared to the regulation of union formation and strikes, collective bargaining is the most widely respected of the collective labor rights in the region. Cambodian and Indonesian law are in closest compliance with international labor standards that pertain to collective bargaining, although the ILO has raised some concerns in both countries. In Cambodia, civil servants do not fall under the scope of the labor code, so they do not have a legal right to bargain collectively,¹⁵ and in Indonesia the bargaining rights of civil servants are in legal limbo. The ILO has also requested that Indonesia make two minor adjustments to its labor laws to bring them into full accord with ILO standards. The first is to eliminate the requirement that employers attend votes to determine bargaining agents, and the second is to explicitly guarantee the bargaining rights of federations and confederations.¹⁶

South Korea, Thailand, and Taiwan also have relatively strong legal provisions on collective bargaining. Again, the main weakness in the laws is that workers excluded from the right to form unions also do not enjoy the right to bargain collectively. Aside from these exclusions, South Korea's and Thailand's laws are largely in compliance with international labor standards for collective bargaining. Both place some restrictions on the scope of bargaining. In Thailand, wages cannot be set in collective bargaining agreements in state enterprises; unions are consulted but ultimately the state determines the salary scheme (Añonuevo 2001). In South Korea, teachers and state employees can negotiate wages freely, but the Ministry of Planning has rejected some provisions of the agreements concluded by teachers and state enterprise unions (Añonuevo 2001). Taiwan's laws violate international labor standards by excluding some issues from the scope of collective bargaining and by giving the state the authority to strike wage provisions in collective agreements.

Singapore, Vietnam, and the Philippines have an average level of legal protection for the right to bargain collectively. The Philippines permits only majority unions to bargain, and the Civil Service Code has yet to be amended to permit collective bargaining by civil servants.¹⁷ Singapore brought its laws more closely in accord with Convention No. 98 when it repealed a provision of the Industrial Relations Act (Article 25) that restricted the scope of collective bargaining in "pioneer industries." In spite of this improvement, other aspects of Singapore's law still fall short of international labor standards. Employers may refuse to recognize a union as a bargaining agent if it does not represent a majority of workers, and the law excludes promotions, transfers, hiring, and terminations from the scope of collective bargaining agreements. The law also sets limits on wage supplements, and the state has the authority to amend provisions of collective bargaining agreements.¹⁸ Since civil servants are not covered by the Labor Code in Vietnam, they do not have full rights to bargain collectively.

China, Malaysia, and Laos have the weakest labor legislation for collective bargaining. Malaysian law requires unions to be "recognized" by employers in order to gain bargaining rights (which means that the union must represent a majority of workers), severely restricts the scope of issues that can be negotiated in collective labor agreements (especially in "pioneer companies," which tend to be in export-oriented industries), and curtails civil servants' right to bargain collectively by restricting negotiations on the terms and conditions of service and remuneration.¹⁹ In spite of the ILO's pleas over more than two

decades, Malaysia has not changed these aspects of its laws. The state has the authority to strike provisions of collective labor agreements in China.²⁰ Civil servants also do not have the right to bargain collectively. In Laos, there is no right to collective bargaining spelled out in its labor legislation.

Although the right to bargain collectively fares relatively well compared to other collective rights, in practice collective bargaining is poorly institutionalized in the region. Most bargaining takes place at the enterprise level (Caraway 2006a; International Labour Organization 1997). Given the low rates of unionization and the dominance of enterprise-based negotiations, the coverage of collective bargaining is also limited. In Cambodia, collective bargaining is rare, and in 2005 there were only five genuine collective bargaining agreements in the garment industry, where most unionized workers are employed (International Confederation of Free Trade Unions 2006a; US Department of State 2006a). Collective bargaining also seldom occurs in Taiwan, where only 254 agreements were in place in the whole country, mostly in large companies. These bargains cover only 21 percent of workers in industrial unions (International Confederation of Free Trade Unions 2006b). Collective bargaining covers just a small percentage of unionized workers in the Philippines as well—about 16 percent (US Department of State 2006c). In Indonesia and Thailand, collective bargaining occurs, but workers in many industries depend on annual increases in the minimum wage rather than on collective bargaining for improvements in pay (International Confederation of Free Trade Unions 2006d; US Department of State 2006d). In Indonesia and Vietnam, collective agreements often merely repeat existing law (Clarke, Lee, and Chi 2007; International Confederation of Free Trade Unions 2006d; Manyin, Lum, McHugh et al. 2002). In China, tens of thousands of collective bargaining agreements have been concluded, but most are in state enterprises, and those in the private sector usually reflect only minimal legal requirements (International Confederation of Free Trade Unions 2006c; US Department of State 2006b). Moreover, collective contracts in China are rarely the product of true negotiations between management and unions. Chinese unions are deferential to management and usually only make proposals that they think management will accept (Clarke, Lee, and Li 2004). The ILO estimates that coverage rates for employed workers are just 3.3 percent in Malaysia, 12 percent in Singapore, and 7.3 percent in South Korea (Lawrence and Ishikawa 2005).

The Right to Strike

The right to strike is the most weakly protected right in the region. Not a single country is in full compliance with international labor standards. No legal right to strike exists in China, so it has the lowest score in the region.²¹ Cambodia, Taiwan, and Vietnam have the strongest formal protections of the right to strike; restrictions are more severe in Indonesia, Malaysia, the Philippines, South Korea, and Thailand.

Every country in the region erects administrative hurdles to the right to strike. The precise nature of the hurdle varies from country to country. Many require strike ballots that secure the consent of a majority (sometimes two-thirds) of members before declaring a strike (Malaysia, the Philippines, Singapore, Taiwan, Thailand, Vietnam); allow the state to refer labor disputes in nonessential sectors to binding arbitration (Laos, Malaysia, the Philippines, Singapore, South Korea, Thailand); require time-consuming conciliation procedures (Indonesia, Taiwan, Vietnam); impose long strike notification periods (the Philippines); permit one party to refer a dispute to binding arbitration (Indonesia); or require workers to provide minimum service during a strike, even in nonessential services (Cambodia). The laws in many countries also impinge on the right to strike for particular categories of workers—for example, workers in state enterprises (Thailand), educational institutions (Thailand), transportation services (Malaysia, South Korea, Thailand), oil refineries (Malaysia, South Korea, Thailand), banking (Malaysia), teaching (South Korea), and some or all civil services (Cambodia, Malaysia, the Philippines, South Korea). Vietnam's labor code allows the state to ban strikes in a list of industries that the government deems to be important to the national economy and national security.

Understandably, the ILO has chided countries for these flagrant violations of the right to strike but to no avail. Even democracies have resisted easing restrictions on strikes. Yet strikes commonly occur in the region, and given the strict limitations on exercising the right, they often violate the law. According to ILO and national data, strikes frequently occur in Cambodia, Indonesia, the Philippines, South Korea, and Vietnam (Manyin, Lum, McHugh et al. 2002).²² Vietnam experienced a massive strike wave in 2005; all of the strikes were illegal wild-cat strikes, but the government did not crack down on workers and agreed to raise the minimum wage (Clarke, Lee, and Chi 2007). In spite of the harsh repression, worker protests also commonly occur in China

(US Department of State 2005b). Strikes are rare in Malaysia, Taiwan, and Thailand, and a strike has not occurred in Singapore for twenty years (Frost and Chiu 2003; US Department of State 2005a).²³ Singapore's leaders greeted the mere possibility of a strike by a pilots' union with threats. Senior Minister Lee Kuan Yew told unions to be reasonable in negotiating their new collective agreement with Singapore Airlines, otherwise "there are going to be broken heads" (*Straits Times*, December 2, 2003). In some countries, workers who strike face arrest and/or dismissal. In short, the right to strike is not sufficiently protected by law in the region. Even so, workers in many countries do strike frequently, but given the weak legal protections for this right, they often risk dismissal or worse when they do.

De Jure Versus De Facto Collective Labor Rights

Labor law tells only part of the story of collective labor rights in the region. Labor rights are also affected by whether the laws are enforced and by the political climate in the country. To take these factors into account, a number of indicators that assess law enforcement and political climate were incorporated into the index (see Table 6). The final measure is the de facto collective rights (DFCR) index (see Appendix). Folding these factors into the mix lowers the score of every single country.

Most striking are the plummeting scores of Cambodia and the Philippines—the legal protections provided by their laws are undone by weak enforcement and extreme labor rights violations on the ground, most notably the murder and intimidation of trade unionists and widespread unfair labor practices (International Confederation of Free Trade Unions 2006a). In one horrific case in the Philippines, the police and the army forcibly put down a strike at Hacienda Luisita sugar mill and plantation in November 2004, killing seven protestors (International Confederation of Free Trade Unions 2006f); in 2005, at least eight trade unionists were murdered or disappeared (International Confederation of Free Trade Unions 2005). In Cambodia, despite the ILO's much-praised Better Factories monitoring program, labor activists routinely face detention and intimidation, and two prominent labor activists were murdered in 2004 (Hughes 2007). China's score, already low, fell dramatically as a consequence of the weakness of political rights and rule of law, unfair labor practices, and the harassment and imprisonment of labor activists (International Confederation of Free Trade Unions 2006c). The ILO has raised particularly grave concerns about the

Table 6 De Facto Labor Rights: East Asia (2000–2006)

Country	Murder	Harassment, Intimidation, Detention	Unfair Labor Practices	De Facto Union Monopoly	Violations in EPZs	Rule of Law	Political Rights ^a	De Jure Score	Change in Score
Democracies							Average:	73.0	27.3
Indonesia		X ^b	X			20	2	88.6	29.5
Philippines	X	X	X		X	39	3	74.3	38.5
South Korea	X	X	X			73	1	70.7	22.8
Taiwan		X	X			79	1	68.6	16.7
Thailand	X	X	X			57	3	62.9	29.1
Semidemocracies							Average:	71.7	34.0
Cambodia	X	X	X			11	6	90.0	48.4
Malaysia		X	X		X	66	4	55.0	29.7
Singapore		X		X		96	5	70.0	24.0
Authoritarian							Average:	60.0	36.2
China		X	X	X		41	7	50.0	37.7
Laos				X		12	7	52.9	27.6
Vietnam		X	X	X		42	7	77.1	43.3

Sources: Data from ICFTU annual country reports, US Department of State country reports on human rights, and ILO Committee on Freedom of Association reports.

Notes: High scores on rule of law indicate strong rule of law, low scores equal weak rule of law.

a. Freedom House's political rights scores range from 1 to 7. Low scores denote strong political rights, high scores weak political rights.

b. X denotes that a violation has occurred in that area. Countries with an "X" for violations in EPZs have greater obstacles to freedom of association, collective bargaining, and the right to strike than are prevalent outside the zones. If violations are just as bad there as in the rest of the country, it is not marked.

continued use of arrests, detention, and violence to suppress labor rights there.²⁴ Brutal crackdowns on strikes and mass arrests of trade unionists mar South Korea's labor rights record as well. The International Confederation of Free Trade Unions (ICFTU) estimates that over a thousand trade unionists were arrested between 1999 and 2005, most on charges of "obstruction of business" and for organizing unions in the public sector (International Confederation of Free Trade Unions 2006e).²⁵ The scores for Singapore, South Korea, and Taiwan dropped the least (about two points), which is a reflection of the relatively open political climate in South Korea and Taiwan and the relatively strong rule of law in all three countries, which is in part a function of their comparative wealth.

Regime type affects the size of the gap between *de jure* and *de facto* collective labor rights. Although all regime types experienced sizeable declines in their scores, the change in the score—in both absolute and relative terms—was lowest in democracies. Scores declined an average of 27.3 points in democracies, 34 points in semidemocracies, and 35.9 points in authoritarian regimes. Democracies therefore not only had better laws, but they also enforced them better. Nevertheless, the gap between law and practice is huge, even in the democracies, and they have not performed particularly well in enforcing labor laws and protecting labor rights.

Individual and Collective Labor Rights: Is There a Trade-off?

Do countries with better collective labor rights also have strong individual labor rights? In other words, is there a relationship between respect for individual labor rights and respect for collective labor rights? Figure 1 plots the DJEP and the DJCR scores for eleven countries in the region. The countries cluster in the two top quadrants; if the outlier, Singapore, is excluded, the data provide some support for the contention that there is a positive relationship between the protection of individual labor rights and respect for collective labor rights. Figure 2 plots the DFEP and DFRCR scores. The *de facto* scores are much lower, but the positive relationship between individual rights and collective rights holds. The most arresting finding is the dismal state of labor rights in the region. All but two countries fall into the low/low quadrant (scores below 50 on both the DFRCR and the DFEP); only one case, Taiwan, is in the high/high quadrant (scores above 50 on both the DFRCR and the DFEP). In spite of the improvements in collective labor rights

Figure 1 De Jure Employment Protection and De Jure Collective Rights

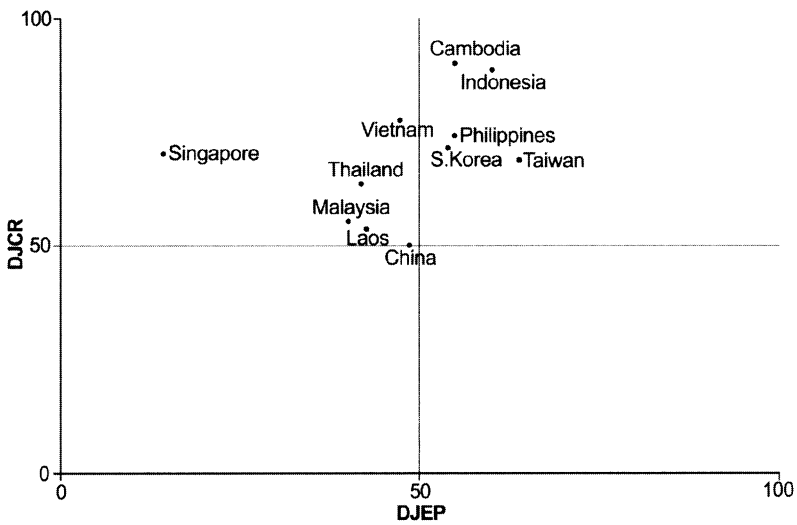
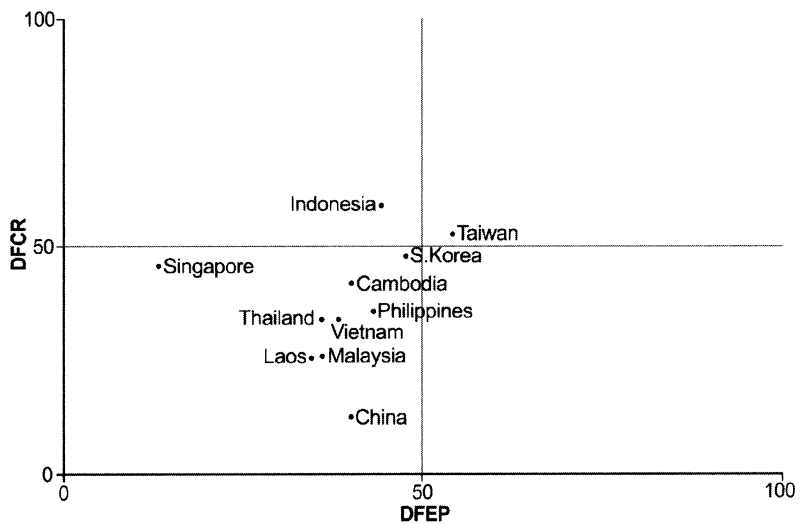


Figure 2 De Facto Employment Protection and De Facto Collective Rights



and the resistance to greater labor market flexibility, labor rights in the region still have much room for improvement.

Conclusion

Scholars have long observed that rapid economic growth after World War II in East Asia rested in part on authoritarianism and the repression of labor (Cumings 1984; Deyo 1989; Haggard 1990). As more countries in the region have democratized, the labor rights situation in many countries—most notably Indonesia, the Philippines, South Korea, and Taiwan—has undoubtedly improved. While democratization pushes collective rights on an upward trajectory, race to the bottom pressures should be propelling countries in the region along a downward path for individual labor rights. The data presented here offer some cause for hope but perhaps more ample cause for concern.

The positive relationship between collective and individual labor rights and the strong association of both with democracy suggest that race to the bottom fears are misplaced. Countries are not responding to increased economic competition by rewriting their labor laws in ways that lower individual and collective labor rights. In spite of improvements in democracies, collective labor laws in the region still fall far short of international labor standards, and in the last few years, countries in the region have shown little inclination to close the gap. The reluctance of democracies to embrace the collective mobilization of workers is a vivid demonstration of the incomplete nature of the democratic transitions in the region. Most worrisome is the wave of assassinations of leftists in the Philippines, which has claimed the lives of many trade unionists.

With respect to individual labor rights, East Asia's labor laws offer levels of protection slightly higher than the rest of the world when firing costs are taken into account, and democracies have stronger individual labor rights than nondemocracies. China, Indonesia, and Thailand have revised their laws to provide individuals greater protection from the vicissitudes of the market. Only one country, South Korea, has reformed its labor laws in ways that significantly increase labor market flexibility, but in recent years, it has enacted a new law that raises protections. Claims that flexible labor markets have contributed to East Asia's comparatively good economic performance in recent years must therefore be questioned.

Perhaps the most interesting pattern emerging within the region is that formerly authoritarian countries that have democratized are consistently clustered together for both individual and collective rights. Indonesia, South Korea, Taiwan, and (to a lesser extent) the Philippines inherited the protective yet repressive labor laws of the past. Collective labor laws have been rewritten in most cases, but the protective legacy of the past is still with them today. Cambodia and Vietnam cluster closely with these cases, too, but for different historical reasons. Cambodia drafted its new labor laws in the 1990s with significant input from the ILO (Bronstein 2005). Vietnam stands apart from the other authoritarian and communist cases in the region; its exceptionalism calls out for deeper analysis. China, Laos, Malaysia, Singapore, and Thailand also cluster together. All except for Thailand are among the most repressive countries in the region, and they combine fairly to highly flexible individual labor rights regulations with low scores on collective labor rights. Such a pattern is not so surprising in nondemocracies, but why does Thailand have more in common with these cases than with its democratic brethren?

Finally, perhaps the most important finding is that stronger laws do not necessarily translate into better rights on the ground. For collective labor rights, democracies enforce their laws more effectively than nondemocracies, but the gap between *de jure* and *de facto* collective labor rights is wide. This relationship does not hold for individual rights. For both individual and collective labor rights, enforcement is strongly correlated with income level, with richer countries enforcing their laws more effectively than poor countries. Poor enforcement may be having a more toxic effect on labor rights now than in the past. Before democratization, the weak enforcement of collective labor law in particular was not as serious an issue, since labor laws were repressive. In some countries, such as Indonesia, anecdotal evidence and research conducted by labor activists suggests that employers have responded to stronger collective and individual labor laws by flexibilizing labor contracts in flagrant violation of the law (Aliansi Serikat Buruh and Forum Pendamping Buruh Nasional 2004; Forum Pendamping Buruh Nasional 2004). Although Indonesian laws have actually increased individual protections, more workers are on short-term contracts than in the past. Flexibility thus enters through the back door of ineffective labor law enforcement, which in turn has affected the organizing efforts of unions (Anner 2008). Not only do unions face greater obstacles in signing up workers—employers may simply refuse to renew the contract of union members—ineffective en-

forcement also virtually ensures that if they dare to exercise their rights, they will be fired. As countries enact labor laws that provide better guarantees of collective labor rights and stronger protections for individual labor rights, the struggle for effective enforcement becomes paramount.

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Appendix

This appendix briefly outlines how the de jure employment protection (DJEP), the de facto employment protection (DFEP), the de jure collective rights (DJCR), and de facto collective rights (DFCR) indexes are calculated.

DJEP

The DJEP combines the World Bank's rigidity of employment index (REI) and firing costs into a single index that estimates employment protection. The DJEP for a country, a , is calculated as follows:

$$[(\text{Ln}(\text{firing costs}_a + 1) / \text{Ln}(446) * 100) + \text{REI}_a] / 2$$

Since firing costs in some countries are 0, we added 1 to the firing costs so that natural logs could be calculated. We divided the firing costs for the country by the natural log of the highest firing cost in the world, 446 (Zimbabwe), which yields an estimate of how generous firing costs are in relation to other countries. We then multiplied this figure by 100 so that firing costs are scaled 0–100, and then averaged it with the REI.

DFEP

The DFEP incorporates the rule of law (ROL) measure from the World Bank's governance indicators to estimate the impact of enforcement on individual labor rights. The formula is

$$\text{DFEP} = \alpha * \text{DJEP} + ([1 - \text{DJEP}] * \text{DJEP} + \text{DJEP}^2 * \text{ROL}) * (1 - \alpha)$$

with α being the weight given to legislation and $1 - \alpha$ being the weight given to the interaction of ROL and legislation; α was set at .33. Since the effect of

weak ROL is worse in countries with highly protective laws, countries with high DJEP are penalized more (proportionately) than those with low DJEP, holding ROL constant.

DJCR

De jure collective rights are estimated by evaluating the conformity of national labor legislation with Conventions Nos. 87 and 98 on seventeen indicators pertaining to freedom of association, the right to bargain collectively, and the right to strike. We could have added many more indicators in order to be more comprehensive, but our aim was to develop a relatively simple index that arrayed countries accurately. The author consulted labor law texts, supplemented by readings of the secondary literature, to determine scores.

If a country imposes a general prohibition for union formation, collective bargaining, or strikes, it receives the maximum score in that area (15, 10, and 10, respectively) and the subindicators are not coded. The subindicators do not add up to the score for general prohibitions, since the subindicators are not comprehensive. In other words, the three indicators that we use for the right to strike do not exhaust the list of things that are necessary for workers to enjoy full rights in this area, but we do think that they are the most important.

If a country's laws violate the indicator, it is scored 1. The maximum score is 35, with higher scores indicating worse labor rights. The raw score is then scaled to 100 and adjusted so that higher scores reflect stronger labor rights. Coding guidelines are available upon request.

Appendix Table 1 Weights Given to Criteria

Criteria	Weights
Freedom of association	
1. General prohibitions against union formation and activity	15.0
2. Administrative or legal hurdles to union formation	1.5
3. Limits on kinds of unions or worker organizations	1.5
4. Closed shop or other prohibitions against union pluralism	1.5
5. Exclusion of sectors or workers from union membership	2.0
6. State interference in internal union affairs	1.5
7. General prohibition of union or federation participation in political activities	1.5
8. Non-ratification of ILO Convention 87	0.5
Right to bargain collectively	
9. General prohibitions	10.0
10. Restriction on scope and/or level of collective bargaining	1.5
11. Other administrative or legal hurdles to collective bargaining	1.0
12. Exclusion of unionized sectors from right to bargain collectively	2.0
13. Nonratification of ILO Convention 98	0.5
Right to strike	
14. General prohibitions	10.0
15. Binding arbitration	1.5
16. Administrative or legal hurdles to right to strike	1.5
17. Exclusion of unionized sectors from right to strike	2.0

DFCR

To assess de facto collective rights, we incorporated indicators for law enforcement, political climate, and observed violations. Scores for these indicators are added to the DJCR score to produce a DFCR index. As with the DJCR index, the maximum raw score is 35, with lower scores reflecting stronger labor rights. Although no country in this study had a DJCR score of 35, in such an event, the country's DFCR score would also be 35, based on the assumption that if a country's labor laws prohibit all unionization, collective bargaining, and strikes, there are essentially no meaningful labor rights in the country. China, for example, had a raw DJCR score of 17.5, and de facto considerations raised the score to 30.7. In Indonesia, by contrast, the DJCR score is 4.0, indicating very strong labor law, but de facto considerations raise the score to 14.3. As with the DJCR, the raw scores are adjusted to a 0–100 scale with higher scores reflecting stronger labor rights.

Observed violations are scored 1 if they have occurred, 0 if they have not. Sources for scoring violations are the ICFTU Annual Reports, US State Department Annual Human Rights Reports, and ILO Committee on Freedom of Association reports. We include the following violations:

Murder of trade unionists: weight of 2.0

Harassment, intimidation, detention, arrest, or forced exile of trade unionists: weight of 2.0

Unfair labor practices: weight of 2.0

De facto union monopoly: weight of 1.5

Violations of rights to union formation and/or collective bargaining in export processing zones: weight of 2.0

We also incorporated a general enforcement measure by integrating the World Bank's governance indicator ROL into the following formula:

$$(1 - [35 - \text{DJCR}]/35) * (35 - \text{DJCR})/35 + (35 - \text{DJCR})/35 * (35 - \text{DJCR})/35 \\ * (1 - \text{ROL}) * 10$$

As with the DFEP index, the ROL formula penalizes countries with strong laws and weak enforcement more than it penalizes countries with weak laws and weak enforcement.

Finally, we integrated Freedom House's indicator for political rights (1–7), and subtracted 1, so that countries deemed the freest would not be penalized.

Notes

I would like to thank Katrina Burgess, Stephan Haggard, Barbara Stallings, and two anonymous reviewers for their comments on previous versions of this

article. Katrina Burgess deserves special thanks for agreeing to let me use the indexes that we developed together.

1. All of the indexes in this paper, with the exception of the World Bank's rigidity of employment index (REI), were produced by Katrina Burgess and the author for a cross-regional project on labor standards and labor market flexibility. This project is led by Barbara Stallings.

2. For example, the World Bank's "Doing Business" report focuses on individual rights but ignores collective rights. Kucera (2004) and Mosley and Uno (2007) have collected cross-national data on collective rights but not individual rights. Botero et al. (2004) are a partial exception. They have developed an index and collected data for both individual and collective labor laws, but the index for collective laws assesses the extent to which labor laws favor unions over employers. It is not an index of labor rights. For example, their index gives higher scores to countries with labor laws that do not require conciliation procedures prior to striking. Such provisions, however, do not necessarily constitute a violation of labor rights according to the ILO. They violate labor rights only if they prevent workers from striking or result in excessively time-consuming, onerous, or complicated procedures for calling a legal strike that in effect make the right to strike virtually meaningless.

3. The "Doing Business" summary data for East Asia and the Pacific includes cases that are not discussed in this chapter—Hong Kong, Brunei, East Timor, Papua New Guinea, Mongolia, and several small Pacific island nations.

4. I used online data for 2007 rather than the published report for 2007. There are some differences in the data, and I chose the online data since they have been updated more recently.

5. Thailand is categorized as a democracy in this article with some trepidation. Although the 2006 coup has undoubtedly weakened democracy, elections were held in 2007, and military efforts to thwart the election of Thaksin's supporters failed. Some changes to the constitution have weakened democracy while others have strengthened it (Ockey 2008).

6. Outsourcing was limited to security, janitorial, and engineering work, unless the union agreed to permit the outsourcing of additional job categories.

7. The list is a mish-mash of white collar and service sector jobs. Many of the categories are broad, such as computing professionals, business professionals, and administrative secretaries and related associate professionals.

8. See the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Direct Requests for Convention No. 87 (2002, 2003, 2004, and 2006), and Committee on Freedom of Association (CFA) Case Nos. 2116, 2236, 2336, and 2441, available at www.ilo.org/ilolex (accessed January 29, 2009).

9. CEACR Individual Observations on Convention No. 87 (1990–2006), available at www.ilo.org/ilolex (accessed January 29, 2009).

10. Although South Korea began to permit multiunionism at the industrial and national levels in the late 1990s, twenty years after its transition to democracy South Korea still prohibits multiunionism at the plant level.

11. International Labour Organization, CFA Case No. 1865, available at www.ilo.org/ilolex (accessed January 29, 2009).

12. International Labour Organization, CFA Case No. 2301, available at www.ilo.org/ilolex (accessed January 29, 2009).

13. International Labour Organization, CFA Case No. 1552, available at www.ilo.org/ilolex (accessed January 29, 2009).

14. In recent years the bureau has published the report sporadically.

15. International Labour Organization, CFA Case No. 2222, available at www.ilo.org/ilolex (accessed January 29, 2009).

16. See CEACR Individual Observation (2004, 2005, 2006) and Direct Request (2006) on Convention No. 98. Indonesian law does not prohibit bargaining at higher levels and permits unions to bargain jointly, but it does not lay out a procedure for determining bargaining agents and rights beyond the enterprise level.

17. CEACR Individual Observation concerning Convention No. 98 (2000–present).

18. CEACR Individual Observation concerning Convention No. 98 (1989–2005). The government has not used this authority in recent years but it retains the right to do so.

19. CEACR Individual Observation concerning Convention No. 98 (1998–present).

20. International Labour Organization, CFA Case No. 1930, available at www.ilo.org/ilolex (accessed January 29, 2009).

21. The ILO has analyzed this in some detail; see CFA Case 1652 and 1930. The ILO notes that the law does not explicitly state that strikes are illegal, but disputes that remain unresolved after conciliation procedures are automatically referred to binding arbitration. A strike is not listed as a recourse of action for resolving a labor dispute.

22. Data on strikes are available in the LABORSTA database: <http://laborsta.ilo.org>. For Indonesia, strike data were obtained from www.nakertrans.go.id/pusdatin.html,14,naker (accessed January 29, 2009).

23. Data on Malaysia and Thailand are taken from LABORSTA.

24. International Labour Organization, CFA Case Nos. 2031 and 2189, available at www.ilo.org/ilolex (accessed January 29, 2009).

25. Under section 314 of South Korea's Criminal Code, workers participating in strikes can be arrested and prosecuted on charges of "obstruction of business."

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