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**Richard Croucher**, *Middlesex University*

**Lilian Miles**, *Middlesex University*

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# Chinese Migrant Worker Representation and Institutional Change: Social or Centralist Corporatism?

Richard Croucher and Lilian Miles

## Abstract

This article argues that the Chinese state has more highly articulated policies to deal with social disturbance than previously recognized by specialists. It does so by highlighting and critically analyzing the policies followed to improve the opportunities for migrant worker representation. The state has adopted a three-pronged policy. It has improved migrant worker rights, encouraged the official unions to help enforce these rights and allowed NGOs to offer certain services. The official unions are encouraged to adopt a legal watchdog role by a combination of legislation and limited external organizational competition. We argue that the dynamic of organizational competition is a previously unrecognized factor in moving China in a 'socialist corporatist' direction.

**KEYWORDS:** migrant worker representation, unions, civil society, institutional change

**Author Notes:** Richard Croucher, Professor of Comparative Employment Relations, Middlesex University. Lilian Miles, Senior Lecturer in Law, Middlesex University.

## INTRODUCTION

This paper presents a new perspective on Chinese state policy towards the representation of migrant workers, a large, economically significant and distinct group within the Chinese working class. The central questions addressed are how far the state is attempting to encourage more representative institutions to emerge and what this implies for characterisations of Chinese ‘corporatism’. We draw on existing industrial relations and NGO literature, and examine the terms of legislation to approach the issue. The answers help broaden our understanding of, and help us characterise, the ruling élite’s strategy for dealing with social discontent.

The early stages of industrialisation, viewed in international historical perspective, have frequently caused massive social dislocation and internal migration, bringing enormous social unrest frequently encompassing revolutionary political elements (Thompson, 1991). In the Chinese case, social disruption has been huge and migrant workers today number in excess of 200 million (Chinese National Statistics Bureau 2009). Migration from villages to large cities such as Beijing, Shanghai, Guangdong and Shenzhen has fuelled the rapid pace of economic growth (Liu, 2007: 78-81). Contemporary collective disturbance by migrants stands in a centuries-long tradition of popular revolt and occurs in the context of a subservient and largely ineffective trade union movement (Arrighi, 2009). The current financial crisis threatens further unrest as laid-off workers are often unable to return to their villages.

It has been posited (Petras, 2006) that the élite’s central response to these disturbances has been to increase social spending. Others have focused on the state’s repressive activity (China Labour Bulletin, 2008c). A third strand of analysis addresses potential changes in representative bodies. This has concentrated on the extent of trade unions’ ‘corporatist transformation’ (Chan, 2006) while a closely associated stream of research has drawn attention to the re-shaping of civil society through the expansion of popular associations (Unger and Chan, 2008).

The latter schools of thought suggest that the much-disputed ‘corporatist’ term (Wiarda, 1996) is most appropriate to characterise developments. ‘Corporatism’, as used in this context, stresses the organic nature of society and, in the common Chinese term, the need to ‘harmonise’ different social interests. It therefore emphasises the way that all organisations are subject to strict political control. Corporatism may vary in the extent to which it is ‘state’ or ‘societal’, that is, in the degree to which it is driven and supported by institutions from above or below. These researchers address the extent to which the state’s political domination is being eased by a shift towards ‘societal’ corporatism whereby associations in civil society play an increasing role (Chan, 2006, Unger and Chan,

2008). Might there be a gradual move from a ‘state-dominated form of corporatism’ to a ‘societal’ variant in which an increasing representational function is performed by associations? If so, this shift in emphasis might go some way to refuting Dickson’s (2003) contrary arguments emphasising the ‘Leninist’ nature of the Chinese state. Stressing the essentially centralist nature of this political tradition, Dickson took the view that political dominance and repression severely limit the possibilities for any such shift. We address this theoretical debate.

We analyse the ways that the state is seeking to re-shape its interactions with civil society in one important area, primarily by focusing on the legal and other measures taken by the government to diffuse and channel discontent. We adopt an historical-institutionalist approach that focuses on the dynamic interactions between the state, markets, workers and the key institutions of employee representation (Gospel, 2005). Our main lines of argument are that the Chinese state has tried to allay migrant worker unrest by improving their rights and, in particular, has provided safe channels for them to voice their problems. We show that, in part, these channels take the form of individual legal mechanisms, but unions are also encouraged to undertake collective bargaining. In addition, the state has permitted a degree of external (albeit very limited) competition from NGOs across several of the unions’ functions. Overall, therefore, it has strengthened the position of those within the ossified official unions who argue for change. They have done so in three ways: by legislating for the rights of migrant workers, by increasing the scope of the official unions’ remit, and last but not least, by permitting an element of organisational competition.

The article is structured as follows. First, the position of migrant workers as a distinctive segment of the working class is sketched. Next, the ways in which the Chinese state has legislated to improve their treatment and encouraged the official unions to take a more representative role in relation to them is analysed. We then examine the role played by NGOs in providing a range of services to migrant workers. Finally, we conclude by discussing the significance of current state policy.

## **MIGRANT WORKERS: A SPECIFIC SEGMENT OF THE WORKING CLASS**

Migrant workers in China have suffered from profound and particular problems, making them a super-exploited segment of the working class. They were long not considered part of the proletariat by the Chinese Communist Party, but were rather defined by their peasant origins. This ideological definition was institutionalised in a distinctive labour régime: the ‘*hukou*’ registration system, initially implemented to restrict agricultural labour mobility, while ensuring an

adequate supply of labour to state enterprises and providing enhanced surveillance possibilities. Registration records officially identify a person as a resident of a particular area and contain information such as his or her name, date of birth, the names of family members, and if married, those of spouses. Neither individuals nor families can move outside their localities without first obtaining permission from the authorities. The number of people allowed to do so has been tightly regulated; those who moved without permission lost their entitlement to food rations, housing or medical care and could be forcibly removed. Workers migrating from rural areas thus cannot transfer their residence status when they move, preventing them from settling and integrating into urban life. Their citizenship status is thereby undermined – despite living in cities, they are not entitled to urban citizenship, the right to settle, nor regular jobs or social benefits such as subsidised housing, pension or healthcare.<sup>1</sup> Unregistered workers could be forcibly removed to their villages of origin.

The registration system remains largely intact though migrant workers can now, subject to certain criteria, apply for permanent or temporary residency status in the cities (China Labour Bulletin, 2008a). Currently, the legitimacy of their presence in cities remains contested, cutting them off from the rights enjoyed by urban workers and weakening them greatly in the employment relationship (Florence, 2006). Many are illiterate in terms of their ability to understand written documents. Even if aware of their rights, they are reluctant to claim them because they are liable to be dismissed by their employers and replaced from the abundant supply of other workers seeking jobs.

Suffering from low status and often with only limited skills, many are employed in poorly paid, labour intensive jobs such as construction and low-skilled manufacturing (Wang, 2006). They frequently work without employment contracts and do not enjoy even the formal protection offered by these (rest periods, sickness benefits, maternity rights and rights against unfair dismissal). They experience exceptionally high rates of occupational diseases and workplace injuries, particularly in its notoriously dangerous coal mining industry (China Labour Bulletin 2008b). Migrant workers also suffer disproportionately from poor physical health, stress and depression (Wong & Song, 2008). Their access to state aid such as medical and healthcare facilities and social security is extremely limited. Employers frequently delay the payment of wages to them, giving rise to wage arrears. Many local state authorities require them to pay a range of

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<sup>1</sup> The *hukou* system has been the subject of considerable debate, concerning its continuing viability under current circumstances. See e.g. Liu, ZQ (2005) "Institution and Inequality: The *Hukou* System in China" *Journal of Comparative Economics*, 33, 1, pp. 133 – 157, Wang, FL (2004) "Reformed Migration Control and New Targeted People: China's *Hukou* System in the 2000s," *The China Quarterly*, 177, pp.115 – 132 and Wang, FL (2005) *Organising Through Division and Exclusion: China's Hukou System*, (Stanford California: Stanford University Press).

supplementary taxes – city improvement fees, labour adjustment fees, fees for issuing temporary residence cards, employment cards, work permits and fees to enable their children to attend schools in urban areas. They also often turn a blind eye to the way such workers are treated, more intent on securing the cooperation of employers from whom they derive revenue (Gallagher, 2004; Zhang, 2008). In short, they are a group exhibiting serious and very specific problems.

The separateness of migrant workers has extended to their representation as employees since they have traditionally been denied union membership, previously limited to urban workers. Employers discourage them from developing a collective identity (Human Rights Watch, 2008: 47, 55). Consequently, no legitimate institutional vehicles have existed for the expression of their discontent. They have had no ways of raising their problems other than individual resistance on the one hand and strikes and public protest action on the other. They have also not been able to enforce their rights through a formal employment contract – a 2006 survey into forty cities conducted by the Ministry of Labor showed that only 12.5% of migrant workers had signed a labor contract (Chan, 2009). Further, Gu, Zheng & Yi (2007) discuss China's "urban diseases" caused by migration; large numbers of migrants and a high degree of concentration, low levels of collective action, marginality in social status, unfair treatment and difficulty experienced by migrant workers in integrating into cities. Those frustrated with their plight employ a range of methods ranging from sit-ins, to wildcat strikes, pickets and rioting (Shen, 2008: 163 – 165). 'Mass incidents' involving migrants occur daily, although many are unreported in the media.

Many violent actions have occurred, threatening social and political stability (Li, 2005; Beijing Review, 2009).<sup>2</sup> The official number of strikes rose to almost 100, 000 in 2005, of which an unknown but probably large number involved migrant workers. The media continues to report incidents of strikes and protests by migrant workers and indeed, they have been closely identified with social unrest (Kahn, 2006; Parameswaran, 2008; McCartney, 2009).

In recent years, the state, alarmed by high levels of civil disturbance, has increasingly specified certain rights and attempted to extend individual worker representation by the official unions. It has also introduced various formal measures to enable migrant workers to claim equal entitlements to employment rights and social protection, thereby attempting to reduce the gap between their experience and that of other workers. In this way, it is hoped to reduce their specific sense of grievance and collective identity as excluded workers. Moreover,

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<sup>2</sup> Labour arbitration departments in Beijing handled 32,954 labor disputes in the first nine months of 2008, up 104% from the same period in 2007. Courts in Beijing handled 12,140 first-instance labor dispute cases, up 90% from the same period in 2007. It was estimated that the average annual increase in legal labour disputes was 17% in recent years, but had rocketed to 170% in 2008 (Beijing Review, 2009).

by providing individual legal ways of addressing problems, the collective actions may become less frequent and virulent. We now turn to a consideration of these.

## **REGULATING THE EMPLOYMENT RELATIONSHIP**

Chinese workers are in an increasingly market position. Previously, the official ideology was that workers were ‘masters of the enterprise’, contributing to a radiant future for all. There was no difference between the interests of enterprise managers and workers, because under communist ideology, all helped fulfil the mission of the party state. Since the initiation of market based reform in the late 1970s, however, the situation has shifted. Labour has been more fully commodified, with the ‘iron rice bowl’ being replaced by labour contracts (Ngok, 2008: 45). The privatisation of state owned enterprises from the 1990s also saw more and more power being given to management to determine labour practices within the firm (Gallagher, 2004).

Legal regulation of the employment relationship is a relatively recent phenomenon in China, introduced only after changes in the labour market. The late 1980s and early 1990s saw increasing fragmentation of labour relations in the country, due to rapid economic growth based on the ‘market economy’ model and the impact of ongoing attempts to privatise state owned enterprises. More workers fell outside the old labour regime, becoming subject instead, to the forces of supply and demand. Indeed, in 1992, the government under the premiership of Deng Xiaoping accepted the ‘market economy’ system as the ultimate goal of economic reform. For the first time, the concept of developing a labour market was put forward, as was the need to develop a framework to regulate the relationship among the key players in the market (CCPCC, 1992;<sup>3</sup> Ngok, 2008; Josephs, 2007).

The Labour Law 1994 was the first comprehensive statute to stipulate minimum workplace standards, regulating aspects of employment ranging from recruitment, termination of employment, payment of wages, work hours, overtime, rest periods and dispute resolution. However, it was drafted in a broad brush way, without detailed clarification of its various provisions, and therefore offered employers great discretion in the way it was implemented (Wang, Appelbaum, Degiuli & Lichtenstein, 2009: 486). Benefitting from an abundant labour supply, many employers simply refused employees contracts specifying their legal rights since they had few difficulties in recruiting workers. Moreover, since both enforcement mechanisms and employee representation were almost non-existent, the terms of the 1994 law were often unobserved. Most significantly, the Act did not recognise migrant workers as workers and conferred no rights upon them,

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<sup>3</sup> The Decision on Some Issues on the Establishment of a Socialist Market Economic Structure, 1992.

causing them to be exploited. Unsurprisingly, the number of strikes and protests grew rapidly, attracting criticism from the media and international human rights groups (Ngok, 2008: 53-57).

In 2003, the new leadership, Hu Jintao & Wen Jiabao, announced that ‘social stability’, ‘social justice’ and ‘plight of the underprivileged’ were primary concerns in their attempt to create a more ‘harmonious society’. Migrant workers were recognised as a special category of employees deserving additional protection and several regulations were enacted to alleviate their position. ‘The Circular on Good Management and Provision of Services for Rural Migrant Workers 2003’ required local authorities to abolish discriminatory treatment of migrant workers and provide them with equal access to education, employment and public services. The ‘Circular to the Ministry of Construction and Other Departments on Further Resolving the Problem of Unpaid Wages in the Construction Industry 2004’ ordered local governments to pay all outstanding wages to migrant workers at their construction sites within three years, and urged courts to speed up the processing of unpaid wages. The ‘Circular on Further Improving the Working Conditions of Rural Migrant Workers 2004’ required local governments to simplify the application process for migrant workers in search of work. Last but not least, the ‘Opinion on Resolving the Problems faced by Migrant Workers 2006’ urged local governments to improve migrant workers’ access to social services. The latest Five Year Plan (2006 – 2010) to ‘construct a harmonious society with social balance’<sup>4</sup> emphasised the state’s intention to ensure the use of labour contracts, protect workers’ legal rights, build proper dispute resolution mechanisms and make sure laws are implemented properly (Wu, 2005).

Labour laws were also enacted. The most recent, the Labour Contract Law 2007, stipulated rules for the regulation of the employment relationship, creating stringent requirements for employers to follow. It prescribed when workers could be dismissed (e.g. Articles 21, 44, 48, 87) and introduced requirements regarding work hours, rest and leave, wages and social insurance (e.g. Articles 4, 17, 51). Despite drawing opposition from the American Chamber of Commerce in Shanghai, the US-China Business Council and the European Union Chamber of Commerce in China on the basis that it would increase costs, over-regulate business relationships and would be very difficult to enforce, the government persisted in enacting it.<sup>5</sup> It moved to finalise the Act following the

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<sup>4</sup> See ‘Communique of the Sixth Plenum of the 16th CPC Central Committee, at < [http://news.xinhuanet.com/english/2006-10/11/content\\_5191071.htm](http://news.xinhuanet.com/english/2006-10/11/content_5191071.htm) >

<sup>5</sup> This did not prevent companies from continuing to protest against the Act after it came into effect, however. Chan (2009) recounts the actions of Zhang Yin (CEO of the biggest papermaker in mainland China ‘Nine Dragons’ as well as a politician) who warned against the Act allowing a return to the old Maoist, socialist system of “iron rice bowl” (permanent employment)—only two months after the law came into effect. She was also forthright in her view that from the perspective



public outcry in June 2007 over slave labour conditions in the brick industry in the Shanxi province. Rural migrant workers were kidnapped, sold to brick factories and forced to work long hours with no pay. Subsequent investigations revealed that more than 2,000 brick kilns were operating without licenses and had “illegally” employed 53,000 workers. The case was regarded as symbolic of a lack of workers’ rights in China. Within weeks, January 1, 2008 was set as the date for the Act’s implementation.<sup>6</sup>

Simultaneously, anti-discrimination legislation was elaborated. The Employment Promotion Law 2007, which also came into force in January 2008, prohibited various discriminatory practices. Many of the prohibitions in the new Act already appeared in the Labour Law 1994, but were never effectively enforced. The 2007 Law provides that employees cannot be discriminated against on the basis of their ethnicity, race, gender, religious belief, age, physical disability or disease (Article 3; Articles 25 – 30). For the first time, the Act prohibits discrimination against migrant workers by providing that those who seek employment in cities must be given the same rights as those of urban workers (Article 31). A new central government department, the Department of Migrant Workers’ Affairs, was set up in 2008.

Yet the chronically weak enforcement of laws in China continues to allow migrant worker super-exploitation. Two reasons for the weak enforcement of law may be given. First, the distinction between ‘policy’ and ‘law’ is conceptually problematic in China – it was not until recently that the ‘rule of law’ was recognised as a crucial tool with which to regulate the key players in the market – previously, under an interventionist state, few laws existed. Instead, it was more usual to rely on administrative orders, decrees, rules and notices enacted by the NPC, State Council and other governmental agencies. Although latterly many labour regulations have been enacted, they are still very much considered as ‘policy’ rather than ‘law’ – they take the form of directives from the state and are of an administrative, rather than legal, nature. Often drafted in a broad brush basis, they lack the detail and clarity needed to assist their enforcement. Rather than creating rights which can be used against employers, these regulations are often drafted in a propagandistic sense. They are also enforced by local governments rather than the courts and only when conditions for law making matured, were labour regulations converted into ‘law’ (Ngok, 2008: 49). Thus China’s ‘...written law is slowly coming abreast of that in developed countries...’ (Josephs, 2008: 374).

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of development, China would not become strong and affluent if the disparity between the rich and the poor did not exist, and if the law overprotected labour, enterprises could not operate efficiently.” The union, perhaps not surprisingly, sided with the company.

<sup>6</sup> C Divjak, “China enacts new labour law amid rising discontent” at <http://www.wsws.org/articles/2008/feb2008/clab-f06.shtml> .

Secondly, fundamental flaws exist in the legal channels for enforcing the law. Cooney (2007) discusses this in detail, pointing out that laws are often ignored by the very persons responsible for implementing them – ie. local state authorities, which are more interested in generating income from employers and which are reluctant to antagonise them by forcing them to comply with the law. Evidence suggests that despite central government blandishments, regulations are being implemented by local government in a way which maintains rather than reduces the discrimination and inequality suffered by migrant workers, in order to restrict their migration into large cities (Davies & Ramia, 20087). Collusion between state officials and employers further weakens the law's potential to protect workers (Gallagher, 2004: 23, 36). Official inspections by authorities remain sporadic and superficial because of a shortage of inspectors. The range of penalties is also very limited – local labour authorities can only issue warnings, correction notices, fines and compensation orders. They cannot, for example, order a business to close, seize its earnings or detain its owners. In order to do this, they must seek the assistance of other state bodies, such as the police. However, the latter are very reluctant to intervene (Cooney, 2007: 678). Many employers have attempted to circumvent their legal obligations. Huawei Technologies, China's largest telecommunication equipment manufacturer, asked 7,000 workers with more than eight years of service to resign and accept re-employment as 'new' staff in order to convert 'long-term contracted' staff to 'short-term contracted' staff – taking itself out of the reach of the new laws. Businesses have abandoned factories in order to avoid paying wages, companies have relocated to other south east Asian countries where labour contracts are regulated even less strictly and smaller companies, unable to bear the costs of compliance, have made workers redundant (Lan, 2009: 512 – 513). Extensive evidence exists of employer violation of the Labour Contract Law (see for example ITUC/GUF Hong Kong Liaison Office 2008).

Consequently, we do not suggest that the enactment of law may be seen as a real change in practice in society but rather argue that changes in the rhetoric of government are occurring. It is clear that worker rights continue to be inadequately observed, largely because no effective system of enforcement exists, underlining the continuing lack of effective worker representation.

The continued specificity of migrant workers' problems entails organisational proximity to their constituency and specific expertise on the part of any body wishing to assist them. Significantly, the first organisations to react on a

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<sup>7</sup> The authors conducted research into how central government regulations (which required local government to lift residential restrictions, provide social security and employment related services and enable access to education by migrant children) were being implemented by local government. The authors argue that without adequate funding for governance reform, local governments will continue to manipulate central regulations to maintain the status quo.

large scale to the unrest of the early Twenty First Century were NGOs which sprang up in the regions and whose work we detail below, rather than the official trade unions. Some NGOs had already been formed by the end of the Twentieth Century, and moved into the space left by the official unions' inactivity (He & Huang, 2008).

## THE ACFTU

The official Chinese union, the All China Federation of Trade Unions (ACFTU), is an integral part of the state regulatory apparatus (Taylor & Li, 2007). It is regarded as a state instrument to curb dissent and dissipate conflicts. Its representative monopoly was for many years emphatically enforced. The formation of independent unions is strictly prohibited under the law<sup>8</sup> and attempts by workers to organise or form independent unions have been suppressed (Han, 2005; Munro, 2006;<sup>9</sup> ITUC, 2008). Though there have been sporadic attempts by union activists to assert the ACFTU's independence from the state, these have either lost momentum or failed (Chan, 2006: 277, 288). Indeed, Howell (2006) questioned the prospect of the ACFTU recreating itself to become a genuine representative for Chinese workers and concluded that this would only occur if it was able to extricate itself from the state party. At present, this prospect is unlikely.

The ACFTU represents the largest bloc of union members in the world, but it is not recognised as independent by the international trade union movement (Croucher & Cotton, 2009). Protection of workers' rights is regarded by the state as subordinate to the overall goals of social and political stability; the unions are 'transmission belts' for the Communist Party's ideas. The ACFTU's subservience to the state in political terms and lack of track record in representing workers are both evident; key union positions are allocated by the Communist Party. Under classic communist rule, trade unions had several functions. These were to mobilise workers for labour production, to administer welfare (giving rise to the possibility of exercising discipline over workers by withholding it), to organise recreation, to act as political advocates within the official apparatus and finally to protect workers' rights and interests essentially through their role as legal watchdogs. Since it views itself as an extension of the state, the ACFTU avoids adversarial stances in dealing with employers, preferring instead to build 'harmony'. In many instances, union officials in enterprises are appointed by the employer, rather than democratically elected by workers. Zhu (2004) and Chan

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<sup>8</sup> Article 10 of the Trade Union Law 2001

<sup>9</sup> Munro (2006) discusses how the state has retaliated against dissidents by forcing them into psychiatric hospitals against their will.

(2006, 2008) are among many scholars who argue that Chinese trade unions, limited by current constraints, cannot meet workers' representational needs.

Making significant changes in structures, functions and ways of working has been notoriously difficult for unions in most countries, focused as they are on reacting to initiatives by employers and the state rather than on more pro-active approaches. International experience shows that structural and formal changes, though themselves not easy to bring about, are easier to achieve than more profound cultural shifts, especially those that include adopting new representational functions (Hannigan, 1998; Croucher, 2000). In China, two additional factors militate against the possibility of unions fulfilling even the legal functions specified in legislation, that is, political control by party officials and the continued close relationship between local authorities and enterprises. Local government has also been criticised as bureaucratic, ineffectual and elitist, preferring to take employers' rather than migrant workers' part (Zhu, 2004: 1026; Taylor & Li, 2008: 703 – 704). Change is further hampered by the lack of power and autonomy of union officials themselves in representing workers, management domination of unions and the low levels of awareness among workers of the possible functions of workplace unions (Gallagher, 2004).

In the last decade, however, practices have shifted somewhat in some localities. Workers have been allowed to, on occasion, directly elect their union leaders at enterprise level, though they are provided with 'advice' from the ACFTU when doing so. In the 1990s, many local unions in economically developed provinces such as Guangdong and Fujian, experimented with democratic elections (Howell, 2006). The preparatory work for direct elections in itself raises awareness about union functions and their potential to improve their rights (Chan 2007<sup>10</sup>). Such elections had potential for creating a more accountable, worker-responsive and dynamic leadership, but did not in fact feed into more effective representative practices by the ACFTU on any widespread basis.

With NGOs already beginning to emerge to fill this representation gap, the state enacted legislation to try to induce the ACFTU to fulfil and extend its activities. The Trade Union Law 2001 envisaged a more proactive role for the ACFTU in protecting workers' rights. Its formal terms essentially reminded the ACFTU of its tasks: to be involved in drafting and enforcing collective contracts (Article 20), investigate abuses of labour rights (Article 25), direct employers to improve health and safety at work, require rectification when employers violated the law (Article 22), exercise their right to be consulted in the revision of labour laws and provide legal services to workers (Article 33). Rights to collective bargaining are however, notably absent in this statute.

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<sup>10</sup> The author discusses the encouragement experienced by workers during the Wal Mart unionisation process by the ACFTU, which galvanised them into both spreading the word and joining unions at Wal Mart branches.

The Labour Contract Law 2007 envisaged a more ‘progressive’ role for the ACFTU, such as requiring it to conclude and police contracts with the employer (Article 6), giving it consultation rights on redundancy and rights to make legal challenges to changes to contracts made by the employer (Articles 41&43) and conclude collective contracts on behalf of workers relating to remuneration, hours of work, holidays, health and safety, social insurance and welfare (Article 51). A degree of collective involvement by workers themselves is also envisaged here since the draft of the collective contract is to be presented to a meeting of workers. Article 51 further envisages representation in hitherto non-unionised workplaces through representatives elected by workers albeit on the ‘advice’ of the next highest level of the ACFTU. Article 56 encourages increased collective bargaining on distributive issues, providing that unions must oversee the collective rights of workers through legal channels. Article 78 obliges the union to ‘assist’ workers when they apply for arbitration or commence legal action against employers. Overall, the Act clearly pushes the ACFTU towards a more active defence of workers’ interests and allows for a degree of worker involvement. It unambiguously tries to move the ACFTU more fully to fulfil its legal watchdog role and, additionally, to exercise a representative role by supporting workers bringing individual arbitration and legal cases.

Migrant workers were historically excluded from union membership, since they were not urban workers. The State Council’s ‘Circular on the Improvement of the Services and Management of Migrant Workers 2003’ represented an historic step because for the first time, migrant workers became eligible to join the ACFTU, whether at their employing units, employment services agencies or home towns. In 2003, the ACFTU started to bring them into the union’s purview for the first time, in response to the legislation. While the process of bringing them into membership is not a classical Western ‘organising’ one, but normally involves obtaining management agreement, it remains a symbolic step forward since it publicly demonstrates that they are now, for the first time, recognised as members of China’s working class.<sup>11</sup> By early 2008, according to official figures, some 66 million migrant workers had been brought into the union.<sup>12</sup> In addition, again in response to policy, the ACFTU has recognised ‘neighbourhood or community unions’ within its structures— allowing migrant workers in small enterprises in the same neighbourhood to be recruited to the union. In the past, they could only be brought into unions in the enterprise

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<sup>11</sup> China Daily (2003) “Union accepts migrant workers” (3 September 2003) <[http://www.chinadaily.com.cn/en/doc/2003-09/03/content\\_260707.htm](http://www.chinadaily.com.cn/en/doc/2003-09/03/content_260707.htm)> (accessed 1 October 2008)

<sup>12</sup> *Trade Unions to Target Migrant Workers*, CHINA DAILY, July 2, 2007, <http://www.china.org.cn/english/China/198600.htm> ; *More than 66 Million Migrant Workers Join Trade Unions*, XINHUA NEWS AGENCY, Oct. 14, 2008, at <[http://en.chinagate.cn/news/2008-10/14/content\\_16611431.htm](http://en.chinagate.cn/news/2008-10/14/content_16611431.htm)>.

which employed them (Pan, 2007). This measure has created a more inclusive basis for membership since it allows workers even in small workplaces to be represented. From 2003 the ACFTU claimed to have become more proactive in defending migrant workers (ACFTU, 2007). However, the historic exclusion of migrant workers from ACFTU membership is likely to mean that they would have had no experience or tradition of extracting benefits from it.

The ACFTU has unionised foreign-owned and private enterprises even in the face of employer opposition. It recently succeeded in requiring Wal-Mart, Dell and Kodak – all heavily opposed to Chinese trade unionism—to allow the establishment of trade unions in their units in China (Chan, 2007). The unionisation of Wal-Mart in the summer of 2006 was an important symbolic victory for the ACFTU since it occurred in the face of the world’s largest employer, although the level of democratic involvement from workers has been the subject of some controversy. The reality at workplace level has been much discussed; it appears that despite initial euphoria among workers over their success in setting up ‘grass roots’ unions at the Wal-Mart branch in Quanzhou, the establishment of unions at its other superstores subsequently have been dominated by management and influenced by the business-friendly approach of the state, thus hampering their ability to act independently (Chan, 2007).

The ACFTU recently also announced that it would pursue ten measures to ensure migrant workers’ legal rights (2006<sup>13</sup>). These included helping local state authorities promote the use of labour contracts, working to establish a prompt payment system in the construction industry so that workers receive their wages in a timely fashion, strengthening occupational health and safety education among migrant workers and providing them with free legal assistance and other benefits. Thus, at the rhetorical level at least, the ACFTU reaffirmed its legal watchdog role. Yet this role remains seriously under-developed, especially in migrant workers’ view. Drawing on over 500 interviews conducted in state owned enterprises in 2007 in the auto industry in Hubei Province, Nichols & Zhao (2010) found extensive disaffection among workers with the ACFTU because they did not feel it represented their interests.

The wider reality for Chinese workers’ representation remains one of ACFTU ineffectiveness. It is argued by the Hong Kong based China Labour Bulletin that the ACFTU remains ‘...essentially a charitable organisation, providing assistance only after workers’ rights have been violated’, and that it is ‘...reactive rather than proactive; it only reacts within the bounds prescribed by the government, and only when the government instructs it to do so. The ACFTU is stuck in a rut, overly dependent on the Party and government, and cut off from the workers it is supposed to represent...’ (China Labour Bulletin, 2009: 33).

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<sup>13</sup> ACFTU, “Protection Measures for Migrants” 30 March 2006, at < <http://www.acftu.org.cn/template/10002/file.jsp?cid=28&aid=267> > .

Whether the ACFTU is likely to change is a question which is becoming more pertinent. With China's accession to the World Trade Organisation and its signature of various ILO conventions, this question will be raised. Labour issues will constitute part of China's international trade and political relations and no longer simply be regarded as domestic issues (Zhu & Warner, 2005: 359).

Overall, therefore, while the state's policy of trying to build the ACFTU as a means of mediating and moderating violent and volatile manifestations of social unrest has brought some results, their scope has been limited. While the state has taken action to promote action on the part of the ACFTU, the latter has made only small moves. Consequently, the ACFTU, it has been suggested, may only '*play a minor role in helping to soften the blow for workers, exactly the role the State wants it to play in a period of radical economic reform*' (Chan, 2006: 285). Unsurprisingly, workers seldom express confidence in the ability of unions to represent their interests. For the state, this raises both the possibility and the spectre of an alternative in the form of strengthened collective self-organisation. We now turn to examine the role of NGOs since this offers the state some possibilities of minimising this possibility whilst simultaneously running the risk of helping it develop. Therefore their activities, though not generally suppressed, are subject to strong state control.

## **NGOS AND MIGRANT WORKERS**

Over the last fifteen years, large numbers of migrant worker NGOs have emerged, many founded by migrant workers themselves. Zhang (2008) suggests that an attitude developed among migrant workers that they must become self-reliant, because neither trade unions nor the state would help them. They have developed a collective self-consciousness and awareness of the need to act on their own behalf that reflects their specific situation. A tendency towards increased migrant worker self-activity has become evident. In the Pearl River Delta, for example, it has been estimated that there are over 500 'citizens' advocates' or 'barefoot lawyers', themselves migrant workers, who represent their fellows in disputes with employers (China Labour Bulletin 2008d). This tendency has been important background to the development of NGOs, part of a wider civil rights movement to protect the rights of the exploited in China (Greenwood-Bentley, 2004; Edele, 2005; Liu, 2006; Beja, 2006). Links with global NGOs and international labour and human rights organisations have generated valuable resources and opportunities, providing a further impetus for their growth (Huang & Guo, 2006). At one level, NGOs provide safe representative possibilities in line with government policy, but at another, they potentially offer a more threatening prospect. Given wider Asian experience, including in Hong Kong, in which migrants' issues have linked to wider democratic battles and NGOs have been

able to draw on external links to further expand the democratic space, these developments give the élite cause for concern (Nomura, 2007; Lai, 2008).

It is impossible to tell how many Chinese NGOs exist, although the World Bank (2009) estimates that they exceed 1 million. The term covers a wide range of organisations – from government-operated non governmental organisations (GONGOs) to non governmental organisations (NGOs) which do not enjoy state financial support (Wang & Liu, 2009: 6 – 7, 26 – 27). GONGOs are established by the state to deal with social problems and are by definition generally closely linked to the government. The state tolerates NGOs as long as they do not focus on politically motivated issues, particularly where they provide services to their constituents (poverty alleviation, elderly care, services for the disabled, youth development, rural development). The government continues to view NGOs as ‘bridges’ between the state and society and expect them to function as ‘helpful assistants’ in delivering services to society. Outside of these functions however, political control over them remains tight.

## **NGO FUNCTIONS**

NGOs in China are not allowed to engage in overtly political activities, for fear that labour rights movements will threaten social harmony and stir up unrest among workers. Where migrant workers set up informal institutions of self-representation, they have been unable to assert themselves with employers because of their unofficial nature (Gallagher, 2004: 34). NGOs must thus find acceptable methods when trying to influence policy and their actions must take place in a space determined by the state. They have no right to make demands on the state, improve its structure and functioning or hold state officials accountable. This differs from their counterparts in advanced and developed countries who can demand governmental resources, participate in policy making and monitor state officials (Tang & Zhan, 2008<sup>14</sup>). Unlike those in the west, Chinese NGOs are not a legally protected form of organisation (Salmenkari, 2009). In the main, like the ACFTU, they also only help minimise social conflict and orientate reforms in a way which helps the state maintain legitimacy (Froissart: 2006: 213).

Nevertheless, there are NGOs which have attempted to go further to champion the rights of migrant workers, for example, by putting pressure on state authorities to set up programmes to benefit migrants, highlighting their plight by liaising with the media and mobilising public participation to influence the formation of pro-migrant public policies. They have also acted as legal representatives of migrant workers, advising them of their rights, assisting them in preparing legal documents and taking their cases through the legal system

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<sup>14</sup> The authors contrast the capacity of Chinese NGOs with those in the developed western world and highlight the hurdles faced by the former.



(Greenwood-Bentley, 2004; Froissart, 2006; Halegua, 2008, He & Huang, 2008). The very activity of bringing legal cases to enforce rights may pave the way for further development towards open and collective action.

It is therefore notable that the NGOs have in fact exercised a certain political role, albeit one that has avoided invoking possibilities of collective action. So for example, The Peking University Legal Aid Centre for Women recently addressed the concerns surrounding rural women's land rights. Many rural women, if they owned land, had to forego their ownership of the land once they married and left their villages. The Centre raised public awareness of the issue and has campaigned for new laws to be introduced to protect women's land rights.<sup>15</sup> Halegua (2008) recounts the services provided by 'Little Bird' NGO in Beijing in representing large numbers of migrant workers in settling labour disputes (the majority of these concern the non payment of wages) with their employers through persuasion and mediation. 'Little Bird' helps migrants, inter alia by establishing links with the media, government bureaux and lawyers. More than 100 lawyers are currently registered with this NGO, which enhances its ability to advise migrant workers and prepare their cases. Officials from government bureaux are invited to intervene in labour disputes and in the mediation process. Finally, the media are engaged to highlight reprehensible practices by employers. This has been especially in evidence among those NGOs established outside the mainland. Thus, the Hong-Kong based SACOM, formed in 2005, has been extremely active in investigating and publicising abuses especially by foreign companies (SACOM, 2010).

In addition, many migrant worker NGOs fulfill a further apparently innocuous but also potentially 'dangerous' role. Most of the NGOs surveyed by He & Huang (2008) provided cultural and recreational opportunities for migrant workers free of charge. The significance of these activities is considerable. Migrant workers, cut off from their villages and families live in a world in which recreation is largely absent. Opportunities for them to associate together and enjoy themselves through karaoke evenings and other social activities are greatly valued. This social role has historically been one of the most important functions carried out by the ACFTU. Nissen and Jarley (2005) suggest that such activities can build associative links between workers that may be the basis for mutual support and collective action. This associative building of social capital may be used both for workers to support each other through the rigours of legal cases and also for collective action. Thus, there is a high level of overlap between the ACFTU and the NGOs in at least three important areas: legal services, political activity and recreation.

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<sup>15</sup> See "Making a Difference" *Beijing Review*, 18 April, 2007, at <<http://www.china.org.cn/english/MATERIAL/207808.htm>> (downloaded 18 March 2010)

NGOs have also worked at a ‘consciousness-raising’ level to develop workers awareness of their own rights, thereby raising social capital. SACOM emphasizes this type of role:

“We believe that the most effective means of monitoring is to collaborate closely with *workers* at the workplace level. We team up with labor NGOs to provide in-factory training to workers in South China. Through democratic elections, we support worker-based committees that can represent the voices of the majority of workers.”<sup>16</sup>

Other NGOs have set up mobile education stations to help migrant workers improve their prospects of finding better jobs. Many have made good use of the internet and mobile phone technology to communicate with them as well as with each other.

Overall, NGOs have shown ingenuity in developing further services beyond those described above, as required by their constituents. For example, Little Bird Hotline, the Institute of Contemporary Observation, Chinese Women Workers’ Network, Zhiqiang Migrant Labour Service Centre and the Panyu Worker Service Centre in Shenzhen all provide extensive counseling and medical advice. The ICO also conducts research into workers’ injuries, overtime, wages and living conditions (Greenwood-Bentley, 2004; He & Huang, 2008; Salmenkari, 2009; Wang & Liu, 2009).

## **GOVERNMENTAL REGULATION**

NGOs are perceived with suspicion by the state mainly for three reasons – first, they are regarded as a threat to the status quo, since the increasing influence of locally-based groups might create instability by becoming covers for those engaging in hostile political activities (Edele, 2005:12), and secondly, due to the presumption that there was little need for intermediaries between the state and the masses, except those designated by the state, such as the ACFTU (Greenwood-Bentley, 2004). Third, the fact that many have foreign links increases state nervousness.

Thus, the state tolerates NGOs’ existence but has a variety of measures to control them. An example is the *Regulations on the Registration and Management of Social Organisations 1998*.<sup>17</sup> The regulatory requirements are onerous. The

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<sup>16</sup> Sacom.hk (downloaded 23 March, 2010)

<sup>17</sup> Published by the State Council at the 8<sup>th</sup> ordinary session, September 25<sup>th</sup> 1998. See “China Development Brief”, at <<http://www.chinadevelopmentbrief.com/node/298>> (downloaded 1 May 2009).

first means of regulation is the formal registration procedure. In order to obtain legal status, an NGO must be registered with the Ministry of Civil Affairs. To be registered, an NGO must first find a sponsor (usually a government authority carrying out work in a similar area). The sponsor is expected to exercise a supervisory role over the NGO, for example, by carrying out annual reviews, approving budgets and staffing plans. Predictably, very few organisations are able to register because they are unable to find a sponsor since to do so they need good connections with local officials. Additionally, the Regulations on the Registration and Management of Social Organisations (Article 13) state, “If in the same administrative area, there is already a social organisation active in the same or similar area of work, there is no need for a new organisation to be established”. Organisations which have not been able to register as NGOs often resort to registration as corporations – however, by doing so they attract higher tax liabilities and lower charitable donations (Wang & Liu, 2009: 27 – 30). These researchers note (p. 29) that unregistered NGOs are ten times as numerous as registered. Further, NGOs are not allowed to operate outside the region in which they are registered. Since the competences of the Ministry of Civil Affairs departments are restricted to their respective regions, this condition is designed to prevent NGOs from spreading outside the departments’ sphere of influence. Given these difficulties, very many NGOs either avoid registration and operate illegally or register themselves as commercial enterprises or subsidiary organisations associated with universities.<sup>18</sup>

The second, a crucial means of regulation is control of resources. In many cases, funding comes entirely from international donors such as the Ford Foundation, the Danish Institute for Human Rights and others since the majority of NGOs are not entitled to public funding. International funding is also set to be restricted by the Chinese government, evidently concerned by the wider international interest in their internal human rights affairs (Asia News, 2010). NGOs in China cannot rely on membership fees for funding, and enjoy very limited donations from philanthropic individuals or organisations (unless they are associated with the party state). Many NGOs cannot afford to employ full time employees and have to rely on either a small number of part time staff or volunteers (Edele, 2005: 24 – 25; Wang & Liu, 2009: 26 – 27). As a result, they are often small, lack influence, ineffectual and unable to extend the range of services they want to provide (Salmenkari, 2009).

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<sup>18</sup> Edele (2005) points out (at pgs.15-16) that non-registered NGOs cannot act as independent legal entities, which means that they cannot enter into contractual relations. It is also very difficult for them to attract qualified staff because they are not able to provide for basic social services for their employees, such as pension, medical insurance, and household registration. Finally, without registration an NGO cannot open its own bank account, which makes it difficult to attract funding.

Third, the suppression of NGOs showing signs of developing independence has occurred. The state has been willing to tolerate NGOs working in areas such as environmental protection and social welfare provision, and indeed has begun to shift functions previously performed by itself to them. However, it has suppressed civil society organisations which promote a ‘rights awareness’ or which threaten to challenge its legitimacy. NGOs have expressed concern over the narrow field in which they are permitted to work, are critical of their relationship with the state and express frustration that operating within ambiguous political parameters has hindered their development in their fields and limited the discourse to those which are officially tolerated by the state (Beja, 2006; Liu, 2006; Salmenkari, 2009: 406 – 408). Nevertheless, governmental attitudes (although ambivalent) may be shifting in a more positive direction, in particular toward NGOs which can help ameliorate social problems and social unrest (Greenwood-Bentley, 2004). It has been demonstrated, for example, that local government has recently proved more helpful in assisting them to register as legal NGOs (He & Huang, 2008). They constitute significant competition for the ACFTU in an important representational arena and have already stimulated the official unions to make certain changes.

## **CONCLUSION**

The first contribution of this article has been to show that neither increased social spending nor repression have been deployed in isolation against migrant workers’ self-activity, since attempts to reform the institutions of representation have also been significant within state policy. The second contribution has been to show the content of Chinese state activity: change within the official unions is encouraged not only by stimulating internal change, but also by permitting a limited degree of external competition. This in turn has provided activists with new sites of contestation in the legal sphere. The Chinese unions are bureaucratic, corporatist structures led by political appointees. It is arguable that the state, by continuing to tolerate NGOs functioning as legal representational and recreational organisations, is indirectly exerting pressure on unions to change. This competition has brought some benefit to migrant workers since from their viewpoint, the services of the ACFTU and NGOs are complementary in that their co-existence provides improved coverage. In this way, the state can begin to integrate a separate segment of the working class into the mainstream, reducing its tendency to participate in social unrest.

The emergence of competition, albeit in submerged and partial form, has broken the ACFTU’s previous monopoly on representation, an historic change of considerable symbolic importance since it shows that the régime may not be prepared unequivocally to maintain their exclusive rights. The competition in

question is primarily for organisational utility to the state, i.e. to demonstrate effectiveness as acceptable channels for worker grievance handling.

Organisational vehicles for diffusing discontent must balance credibility with both state and migrants since competition over the primary utility is related to a second, related one, for the allegiance of migrant workers. Obviously, the official unions are relatively politically reliable and it would clearly be preferable to the élite if they, rather than NGOs could be pushed towards embracing the new roles. But NGOs have organisational advantages in the second competition which is the precondition for success in diffusing discontent. First, those NGOs which originated from migrant workers enjoy spatial, social and experiential proximity to their constituency; they have constant contact with migrants. This is a significant organisational resource given the continuing consciousness of migrant workers that they constitute a separate group. Second, NGOs have shown considerable organisational flexibility and adaptability, proving persistent and innovative in defending migrant workers' interests despite significant difficulties. These competitive advantages raise incentives for the ACFTU to reform. The sequence of innovation in representing migrant workers, whereby NGOs have led, the state has legislated and the official unions have responded, tends to suggest that competitive pressures have indeed had some effect on the official unions. Thus, the official unions now admit migrant workers within a neighbourhood structure which mirrors that of the NGOs. In addition, the ACFTU now has many local centres that borrow the community-based practices of the NGOs in offering legal advice and support to migrant workers. This demonstrates a certain reactive capacity on their part.

The scope of competition does not extend across the whole range of union functions however, since NGOs, lacking a workplace presence, cannot carry out collective bargaining. But it is nevertheless extensive since it includes legal assistance, recreation and even to some extent political action. Moreover, collective bargaining in the Western sense has only a narrow base in the official unions. Yet the official unions' strong tendency to adopt solutions that emphasise 'social harmony' continues to pervade their organisational culture and daily practice, suggesting strict boundaries to likely future results. Whether they can make a further transformation towards more genuinely representative bodies remains unclear. The state permits NGOs to operate both as a stimulus for them to attempt to do so and as a potential basis of alternative or complementary mechanisms should they fail. Thus, the state appears serious, albeit always within strict political limits, about encouraging representative institutions to develop.

Our third contribution at the theoretical level has been on the nature of Chinese corporatism. In terms of the debate on how far if at all the Chinese situation is moving towards a 'societal' rather than a 'state' form of corporatism, our analysis broadly supports the view that the former is indeed arising. It is clear

that it is developments at the *base* of society that have driven the Chinese form of corporatism. Whilst the Chinese state is clearly hesitant and reserved in allowing institutions to develop at this level, it has also felt compelled to recognise that some such development is in fact required. All such judgements must clearly be provisional in the context, but the state has established a competitive dynamic between official unions and NGOs. In so doing, it raises incentives for both to adopt increasingly representative roles.

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