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Will Labour Unrest Lead to More Democratic Trade Unions in China?

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China and ILO Fundamental Principles and Rights at Works

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CHAPTER 6
Will Labour Unrest Lead to More Democratic Trade Unions in China?

Cynthia Estlund & Seth Gurgel∗

§ 6.01 INTRODUCTION

China does not recognize the international labour law principle of ‘freedom of association’,1 nor does it recognize the right of collective bargaining as that concept is understood in international labour law – that is, the right to bargain through independent trade unions formed by workers themselves and free from outside interference.2 That is because China has only one lawful trade union, the All-China Federation of

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1. International Labour Organization (hereinafter ILO), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), adopted 9 Jul. 1948, entry into force 4 Jul. 1950, Art. 2 provides that, ‘workers and employers, without any distinction whatsoever, shall have the right to establish and…join organizations of their own choosing without previous authorization.’ This Convention is one of the ILO’s ‘fundamental conventions’; that is, according to the ILO Declaration on Fundamental Principles and Rights at Work, adopted 18 Jun. 1998, Annex revised 15 Jun. 2010, ‘all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the [ILO] to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights …’.

2. ‘Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.’ ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98), adopted 1 Jul. 1949, entry into force 18 Jul. 1951, Art. 4.
Trade Unions (ACFTU) and its branches,\(^3\) which is controlled by the Chinese Communist Party (CCP). This has been the case for many years, and there is no sign that China intends to loosen either party control of the ACFTU or the ACFTU’s monopoly on collective worker representation.

Of real concern to China’s leaders, however, is that the ACFTU has been widely seen as ‘useless’ to China’s workers, especially migrant workers in the private and foreign-invested sector, during a decade of rising labour unrest.\(^4\) The point was underscored by a township ACFTU official who told reporters, in the midst of the 2010 Honda strike, that workers’ efforts to secure higher wages was ‘a matter between labor and employers. It is inappropriate for the trade union to intervene’.\(^5\) As collective labour disputes have proliferated, however, the ACFTU has come under growing pressure from above, below, and within to reform itself and to become a more effective and genuine representative (or overseer) of China’s unruly workers.

The current labour relations climate in China is reminiscent in some ways of the labour unrest of the early twentieth century in the West, out of which emerged the national framework statutes that secured workers’ rights to form unions and bargain collectively. So it may be illuminating to throw a comparative light on the current labour relations scene in China for what it might suggest about the direction of labour law reform there. Will rising labour unrest lead in China, as it did in much of the West in the early to mid-twentieth century, to the establishment of new collective labour rights? Will China move a step closer to compliance with international labour standards regarding worker representation by democratizing the official union in some manner?

One problem (out of many) with the ACFTU’s ability to represent workers is that workers do not choose ACFTU leaders. At the lowest level of the organization – the ‘grassroots’ chapters within the enterprise – elections are nominally required and have often occurred. But elections – even ‘direct’ elections – have been dominated by managers, who typically control the nomination process and often choose one of their own to lead the union chapter. Recently, however, electoral democracy in grassroots unions has become a focal point of reform.

That has been especially true in the comparatively tolerant environment of Guangdong Province, where relatively well-organized labour protest has been concentrated. By early 2012, some groups of workers who had organized themselves sufficiently to carry out a strike were able to demand direct and open ‘haixuan’ elections – that is, elections in which workers nominate their own candidates – for union offices within the enterprise. Guangdong may be a special case, but China’s

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leaders are paying close attention to that case, and may see it as a test of the value and viability of electoral democracy in securing peace in the labour context.

To the powers-that-be in China, open *haixuan* elections appear to be a risky departure from prevailing conceptions of Party-led ‘democratic centralism’; yet it is sometimes the lesser of two evils, as compared to continued agitation from below. To the workers, electoral democracy may initially appear to be at best a means to an end; yet once secured, the ability to select one’s own leaders may acquire intrinsic value, and may be hard to roll back even when tensions abate. To international observers, electoral democracy at the grassroots level might be seen as a step in the direction of both ‘freedom of association’ and genuine collective bargaining, albeit a modest step given those grassroots unions’ subordination to an official union structure that is still controlled by the CCP.

Part II of the paper provides some crucial background on the rise of labour unrest in China, and on the ACFTU, with particular attention to impediments to the union’s accountability to workers and to its ability to help solve the problem of labour unrest. Part III begins by taking a step back and considering (in very broad comparative and historical strokes) the importance of unions’ accountability to workers in achieving industrial peace, and the relationship between labour unrest and workers’ ability to secure fundamental labour rights. We then turn to current proposals in China for more democratic elections for union officers at the enterprise-level. Part IV briefly examines what is driving both supply of and demand for *haixuan* elections.

We conclude by posing some questions and venturing some hypotheses about the future of democratic elections in Chinese unions (and perhaps beyond). Many leading labour relations scholars and some policymakers regard the labour relations arena as a testing ground for democratizing reforms. They see democratization as a process that proceeds step by step – *yì bù, yì bù* (though the steps do not lead to what Westerners would regard as full-fledged electoral democracy). Some of those steps may be taking place today as a result of growing collective consciousness and collective action among China’s beleaguered workers.

§6.02 CHINA’S LABOUR QUESTION AND THE URGENCY OF REFORM IN THE ACFTU

We begin with a brief introduction to the contemporary problem of labour unrest in China, its origins, and the nature and structure of China’s leading labour relations actor, the ACFTU.

[A] Rising Labour Unrest and the Turn to Labour Relations Reform

China’s contemporary labour question began to emerge with the liberalization of China’s economy in the late 1970s. Foreign companies began to beat a path to China’s factories and its low-wage labour market. China’s rural peasants, spurred on by poverty and family necessity, dreams of prosperity, and duty to country, began to beat their own tortured paths to those factories. For many, the long hours, low wages, and
dangerous and degrading conditions that they found there were apparently preferable to a rural life devoid of prospects. At the same time, the rapid growth of private and foreign-owned enterprises helped drive rationalization and partial privatization of state-owned enterprises (SOEs). These changes, in turn, led to the shattering of the ‘iron rice bowl’ – the encompassing if modest set of workplace-based entitlements to housing, food, education, and health care that urban workers enjoyed under Mao.6

Workers in both the declining ‘rustbelt’ – the state-owned factories in the north – and the booming but brutal factories of the ‘sunbelt’ of the southeastern coast each developed their own characteristic set of grievances.7 Urban SOE workers protested their loss of standing as ‘masters of the factory,’ and of their relatively high wages, encompassing benefits, and lifetime security in the more competitive environment that followed liberalization; they protested both the crumbling of their own entitlements and the enrichment of the elite few.8

In the rapidly expanding foreign-owned, jointly owned, and domestic private enterprises of the ‘sunbelt,’ poor migrant workers endured very low wages, very long hours, and abysmal working conditions. Collective representation was non-existent, for the ACFTU ignored these workers, while the state suppressed any sign of independent organizing.9 In such conditions, the rise of collective labour unrest could come as no surprise.10 The resulting tens of thousands of ‘mass incidents’ each year – each of which involving anywhere from ten individuals to thousands – have become a major preoccupation of the regime.11

Until recently, most labour protests arose from ‘rights disputes’ – alleged violation of legal or contractual entitlements. Many disputes stemmed from simple non-payment of wages owed; and most arose from collective grievances. On paper, the


law may have afforded remedies for these claims, but the reality fell far short.\textsuperscript{12} In addition to lack of legal representation and footloose employers that stymie many low-wage workers, even in the US, Chinese workers were often unable to prove the existence of an employment relationship, or were rebuffed because of the sensitivity of the dispute.\textsuperscript{13} Collective claims in particular were mostly rejected. Even when workers prevailed, they were rarely awarded full compensation; they were expected to compromise regardless of the merits. It was often after one or more fruitless visits to the local labour bureau or labour arbitration office that workers took to the streets.\textsuperscript{14} When they did so, their claims were usually expressed in terms of ‘rights’.\textsuperscript{15}

Rising labour unrest, mainly over ‘rights disputes,’ had become a major social issue by 2007, when China enacted three major labour laws, including the sweeping Labour Contract Law (LCL).\textsuperscript{16} This suite of reforms sought to afford workers an official avenue for peaceful redress of ‘rights disputes’. The result has been a dramatic rise in labour-related complaints through official arbitral and judicial channels, but not a decline in street-level labour protest. That is partly because of the persistence of many of the problems that workers faced before the reforms: workers still lacked legal representation; tribunals still mostly insisted on individual treatment of collective disputes. Moreover, the flood of post-LCL claims swamped tribunals, leading to delays and pressure to ‘mediate’ or settle claims for very partial relief. For some white collar workers, the LCL proved quite helpful.\textsuperscript{17} But for most factory workers, it simply failed to afford reasonable redress of widely shared grievances.

In the meantime, a larger labour relations challenge has emerged. While policymakers sought to expand official channels of redress for workers’ rights disputes, China’s workers have decided they want more – not only enforcement of their legal rights and minimum standards, but higher wages. The rise of ‘interest disputes’ started with a bang in May 2010, with the highly publicized strike by over 1800 workers at the

\begin{itemize}
\item \textsuperscript{12} For an excellent account of the evolution, structure, and implementation of the law governing pay and hours of work, see Sean Cooney, Sarah Biddulph & Ying Zhu, \textit{Law and Fair Work in China} (Routledge 2013).
\item \textsuperscript{16} See Sean Cooney et al., supra n. 12.
\item \textsuperscript{17} Indeed, many employers complained that the law tipped the balance too far in workers’ favour.
\end{itemize}
Nanhai Honda component factory. The Honda strike, the biggest and longest-running strike ever in a foreign-invested Chinese factory, virtually shut down three downstream Honda assembly plants for nearly two weeks, costing Honda up to US Dollars (USD) 350 million a day. It triggered strikes at other automotive factories, foreign and domestic, and ushered in a new wave of economic interest strikes, mostly seeking higher wages.18

The post-Honda strike wave has dramatically underscored the inadequacy of the government’s favoured reform strategy of improving and enforcing minimum labour standards, and highlighted the need for institutional reforms that enable workers to press their own demands. As China’s leaders well know, in the history of industrialization, resolution of workers’ collective interest disputes has been found in some form of collective bargaining. That is what workers have demanded and that is what governments have instituted, grudgingly or willingly. China is no exception. Collective bargaining has been on the policy agenda for several years (although many official sources continue to insist on the term ‘collective consultation’). But the Honda strike brought new urgency to these discussions.

Many questions about collective bargaining are on the table. For example, will bargaining take place at the enterprise or sectoral level? The practice so far includes some of each, and varies by province and industry; that sort of heterogeneity is likely to persist. Another crucial question is what leverage workers will have to induce management to grant concessions. Historically, workers’ main leverage in collective bargaining has been the strike; and lately Chinese workers have been getting quite a lot of leverage out of strikes. But strikes are not legally protected in China,19 and since 1949 the ACFTU has had almost nothing to do with strikes (except for trying to stop them).20 So it is nearly certain that strikes will not be the officially sanctioned recourse for workers unsatisfied with employers’ offers. What then is supposed to induce employers to bargain? Interest arbitration? Government persuasion? These two possibilities are not entirely distinct from each other, and are likely to be more viable in China than our own history and experience might suggest.

But the most vexed question of all, and the focus of this chapter, is about whether and how workers are to be represented at the bargaining table. The ACFTU is not really a trade union as we understand the term in the West (and in international labour law): it is not freely formed or controlled by workers themselves. But as the official representative of all of China’s workers, it will be central to any official strategy for dealing with the problem of labour unrest.

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19. See Cooney et al., supra n. 12, at 102.
20. ‘The trade union shall assist the enterprise or institution in properly dealing with the matter so as to help restore the normal order of production and other work as soon as possible.’ Trade Union Law of the People’s Republic of China, 3 Apr. 1992, amended 27 Oct. 2001, Art. 27.
The ACFTU is a nation-wide federation with branches at the provincial, municipal, county, rural township, and district levels, as well as 1.7 million ‘grassroots’ branches within enterprises. So why is the union commonly said to be ‘useless’ to workers seeking to improve wages and working conditions? One answer is simple: the ACFTU is not the workers’ chosen representative but a creature of the ruling CCP and a vehicle for promoting party rule. While there is much that is true and important in that simple answer, there are also important complications, contradictions, and changes within the ACFTU. To begin with, one must distinguish between the enterprise chapters of the ACFTU and the rest of the ACFTU hierarchy. While the latter is an arm of the party, the former typically function (if they function at all) as an arm of enterprise management. But these generalizations, too, may obscure important variations and developments.

The ACFTU Outside the Enterprise and the Complexity of Party Control

The ACFTU serves as one of the major Leninist ‘transmission belts’ by which dictates of party leaders are conveyed down to the masses, and the masses’ concerns up to the leaders. The ACFTU’s mission is to protect worker interests and advance the interests of ‘the working class as a whole’ – which include maintaining production and promoting economic growth – while ‘upholding the Party’s cause’ and ‘consolidating the Party’s basis of rule’. At its modern re-inception in 1978, the ACFTU was adapted to function in a planned economy dominated by SOEs managed on behalf of ‘the worker state’, not shareholders. The union’s constituents were urban workers, whose entire life centred around their ‘work unit’ (dân wèi). The ACFTU retained that limited constituency for many years – even as private and foreign-owned capital and rural migrant workers began to flow into China’s ‘sunbelt,’ even as SOEs began to contract

and to mimic their market-driven private counterparts, and even as wealth and salary disparities mushroomed. In short, the dramatic transition from a state-controlled economy to a market economy brought no fundamental alteration to either the AFCTU’s structure or its official mission.

The ACFTU hierarchy largely mirrors the organization of the party, from national to provincial and local levels of administration; and ACFTU positions are staffed by party cadres – career civil servants – whose AFCTU tenure is often a stepping stone in a career within the party apparatus. The ACFTU is obviously subject to party-state control, but control is not complete, and it is not simply hierarchical. Party control of the ACFTU operates mostly ‘horizontally’, from national party to national ACFTU, from provincial party to provincial ACFTU chapters, and so on down to local level. Horizontal control by the relevant party branch dominates vertical control either by the national ACFTU or by its industrial branches.

As many scholars have observed, the sheer size and complexity of China confers a measure of de facto local autonomy from the central government, the ancient roots of which are captured in the Chinese aphorism, ‘the sky is high, and the emperor is far away’. Local ACFTU and CCP officials have often exercised their local autonomy in the interest of local businesses that are both engines of economic growth and often a source of personal enrichment for local officials. But de facto local autonomy has also created space for innovation on behalf of workers. For example, officials in Guangdong province (in the Pearl River Delta near Hong Kong), in Zhejiang province (south of Shanghai), and increasingly elsewhere have experimented with direct election of union officials.

Especially since the Honda strikes, powerful voices within the ACFTU have questioned its two-way ‘transmission belt’ function, as well as its role in reconciling the interests of workers and employers. They believe that employers are represented through other channels, and see the ACFTU’s function as the more coherent and traditional one (internationally speaking) of representing workers’ interests vis-à-vis

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27. Traub-Merz, *ibid.* at 20.


employers. That does not mean that they see the union’s role in adversarial terms, nor that they seek to arm themselves with the ‘economic weapons’ by which unions contest employer power in the US. But it is a major change that may both explain and trigger other changes in the ACFTU’s structure and conduct.

The ACFTU at the Grassroots and the Problem of Management Domination

The enterprise chapters of the ACFTU, or ‘grassroots unions’, have a very different character. Their official task is to represent workers within the enterprise. But even apart from the conflict posed by their assigned role in promoting discipline and maintaining production, it has long been the case that ‘firm level union branches are weak, non-democratic and subordinate to management’. That is partly because unions’ charge to represent workers is rarely backed up by democratic mechanisms of selection (as we will see in more detail below). It is more than just ironic that the ACFTU encompasses both a massive nationwide wing of the CCP and over a million enterprise-level unions, many of them effectively pawns of profit-seeking capitalist corporations. The contradictory nature of the ACFTU reflects some of the central contradictions within contemporary China’s political economy. Like many features of China’s labour market institutions, the subordination of enterprise unions to management is partly a holdover from the SOE era in which managers’ responsibilities ran to the workers of the enterprise and the ‘worker state’. But that begs the question of why the union structure has not been overhauled to suit the needs of workers within privately owned profit-making enterprises. One answer is that, until the last decade, the ACFTU had almost no presence in the private and foreign-owned sector (where rural migrant workers predominated), and mostly struggled to quell the anger and cushion the fall of urban SOE workers whose security, benefits, and status were crumbling in the wake of ‘restructuring’.

More recently, it has become clear to the regime that social harmony and political stability required addressing the concerns and quelling unrest among the millions of mostly migrant workers in the enormous and growing non-state sector. In 2006, the ACFTU set out with much fanfare to ‘organize’ the operations of large, Fortune 500 firms in China. By the end of 2008, the ACFTU claimed to have organized more than 82% of the Fortune 500 companies that do business within China. The ACFTU now

31. The unions are not the only institutions for workers’ democratic participation in the enterprise. That function is to be carried out chiefly through the Staff and Worker Representative Congress (SWRC). See generally Tongqing Feng, An Overview of the Workers’ Congress System in China, in Industrial Democracy in China: with additional studies on Germany, South-Korea and Vietnam 195 (Rudolf Traub-Merz & Kinglun Ngok eds., China Social Sciences Press 2012). SWRCs have rarely played an active role in the private sector, but that might be changing. Interview with Tongqing Feng, Labour Professor in China Institute of Industrial Relations, Beijing (23 May 2012). The SWRCs are deserving of fuller treatment than we can give them here.
32. Lubman, supra n. 21.
33. Clarke et al., supra n. 25, at 237, 242.
34. Clarke et al., supra n. 25, at 237.
35. See Traub-Merz, supra n. 26, at 29.
has as its stated goal ‘to establish union organizations in all foreign-invested enterprises in China’. But what does this ‘organizing’ mean for workers?

Most of the ACFTU’s organizing of foreign-owned enterprises followed this pattern: local ACFTU officials, faced with quotas for enterprise union formation, would announce to managers that the enterprise had been targeted for formation of a union chapter. As managers soon learned from their lawyers, the ‘bad news’ was that they had little choice but to accede to the ACFTU’s demand, and to channel 2% of the firm’s payroll to the union, as required by law. But the ‘good news’ was that the union’s presence would otherwise make little difference to the firm’s operations. Management could select (or arrange for the election of) a union chair who was not only friendly to management but part of management. Any resulting ‘collective agreement’ would add little to the law’s minimum standards – perhaps better food and breaks for women workers. Moreover, ACFTU unions never organize strikes, and indeed take seriously their responsibility to avoid work stoppages.

As we have noted, management domination of grassroots unions in China has its genealogy in the Maoist state-owned economy. But management domination is also traceable to some structural features of the grassroots unions. For one thing, the unions are largely reliant on management for funding. Some Chinese labour law scholars recognize that this ‘undermines the independence of labour unions, whose leaders find themselves in an awkward position. While they are supposed to defend workers’ rights, they do not dare offend company management that pays their salaries’.

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37. This description of the unionization process was garnered from interviews with anonymous lawyers working in international law firms in Shanghai and Hong Kong (April 2010).
38. See Trade Union Law of the PRC, Art. 42(2).
41. Some Chinese labour law scholars recognize that this ‘undermines the independence of labour unions, whose leaders find themselves in an awkward position. While they are supposed to defend workers’ rights, they do not dare offend company management that pays their salaries’.

workers in the enterprise, including managers, even though the latter seem likely to side with ‘the employer’ on many issues of concern to rank-and-file workers, and in any case simply do not share the same conditions of employment.

One might have thought that the conflict of interest between capital (and its managers) and labour would be especially obvious in China with its nominally Marxist ideological commitments. But even as the ACFTU is refocusing its mission on representing workers, there is resistance to the notion of institutionalizing conflict within enterprises. The prevailing view remains that, among and within legitimate social actors (which now include private corporations), ‘contradictions’ should be mediated within comprehensive institutions, not fought out between contesting ones.42

The wall-to-wall, top-to-bottom definition of the union’s constituency thus seems unlikely to change. But neither does it inevitably preclude union representation of front-line workers’ interests, as the latter clearly outnumber managers. We will shortly turn to the actual mechanisms for choosing grassroots union officials, but for now it is enough to know that they have typically been chosen, with or without ‘election’, by managers in consultation with CCP cadres. Indeed, at least until very recently, the union chairs typically were top managers.

As a result of these patterns, the unions are widely seen by workers, and especially migrant workers, as ‘useless’ in resolving their disputes with employers. Some in the regime have begun to recognize that unions that are useless to workers in resolving their disputes are also useless to the regime in promoting labour peace. Management domination of grassroots union chapters has come to look like more of a problem than a solution to labour unrest. That is the context in which electoral democracy has become a leading reform goal.

§6.03 WHY REFORMING UNION ELECTIONS IS CRITICAL AND WHY IT IS SO HARD

China’s leaders face a dilemma: on the one hand, they are anxious to maintain party control of the official labour movement. On the other hand, they are also anxious to get a handle on the problem of worker unrest, and their prescribed mechanism for doing that is proving deficient. The ACFTU’s ability to lead or control the workers is deeply compromised by the workers’ perception that the union is merely a tool of the party-state and, within the enterprise, of management. As party control is thus far

www.chinadaily.com.cn/china/2010-07/09/content_10084430.htm (accessed 5 Aug.). Recently the ACFTU has begun to plan for funding of enterprise unions through the union rather than the employer: see Traub-Merz, supra n. 26, at 44.

unquestionable, it is management control that has come under scrutiny. Making the ACFTU more responsive and accountable to workers vis-à-vis management has thus become a major focus of reform efforts. Yet those efforts still face daunting hurdles – deeply entrenched structural barriers to democratization and powerful interests in maintaining control of workers. In this part we explore both the logic behind the recent push for more democratic union elections and some of the challenges that lie ahead.


It may be helpful to step back and view China’s current labour pains in a historical and comparative perspective – painted here with a very broad brush: in the major industrial economies of the world, workers have generally won basic rights of freedom of association and collective bargaining not (or not only) by electing pro-labour legislators, or by persuading elites of the justice of their cause, or by invoking ILO principles. Workers won their fundamental collective labour rights in large part by making those rights the price of industrial peace – by creating a problem of labour unrest to which independent unions and collective bargaining became the solution.

The US provides a case in point. To compress the history ruthlessly: during the early decades of the twentieth century, labour organizing, agitation, and collective action, often aimed at inducing private employers to bargain and grant concessions, were frequently met with state repression – police action, criminal sanctions, injunctions, civil penalties. The labour movement and its leadership were bruised, battered, and often weakened by these confrontations; but they were also hardened and politicized. Labour conflict became more violent and more political, and sometimes seemed to pose an existential threat to the political and economic order.43

Some combination of workers’ votes and a growing belief among elites in the justice of their demands pushed forward the New Deal labour reforms that legitimized unions and collective bargaining. But indispensable to their success, both in Congress and in the Supreme Court, was the conviction that industrial peace and basic social order could not be secured without creating a legal framework for union recognition, collective worker action, and collective bargaining. And it worked: although strike levels actually rose along with rising union density for well over a decade, strikes were much less violent and rarely political. ‘The labour question’ in the US, and the perceived threat to social and political stability, was thus largely resolved by the New Deal reforms.

Extrapolating from this drastically compressed account, we offer a hypothesis: once workers gain the capacity to pursue shared economic aims through strikes and other forms of collective protest, direct public regulation of workers’ collective action

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43. For an excellent account of this tumultuous period, see Irving Bernstein, *The Turbulent Years: A History of the American Worker, 1933–1941* (Haymarket Books 2010).
becomes costly and counterproductive. Governments in modern industrial societies regulate workers’ collective dissent indirectly, and mainly through the intermediate institution of trade unions. Unions regulate workers; governments regulate unions. Let us explain.

Governments have limited tools for direct regulation of workers’ strike and protest activity; and these mostly entail use of force – police on the street. But that sort of intervention tends both to escalate and intensify the conflict and to politicize it – to broaden the focus of workers’ collective discontent from private employers to public officials and institutions. The solution to the ‘labour question’ in the US, and in many industrialized societies in the early to mid-twentieth century, was found in the very institutions that were leading workers’ protests: the trade unions. The labour law frameworks that took hold in the mid-twentieth century across much of the industrialized world offered unions a quid pro quo: unions gained public legitimacy, a bundle of privileges and protections, and the ability to secure gains for workers through peaceful channels; but all these gains were conditioned, more or less explicitly, on the unions’ acceptance of a regulatory role in securing industrial peace.

In the US, for example, unions were enabled by the labour laws to tap workers’ collective power to disrupt production and social order, to direct it into peaceful forms of economic conflict, and to strategically deploy it to achieve instrumental ends. But unions could only use workers’ collective power by regulating it – by being able to end or avoid strikes as well as to start them. Unions were induced to keep collective action within lawful bounds through a combination of rewards (including better contracts, dues payments, and a seat at the table among policymakers) and punishments (fines and injunctions against certain potent labour tactics and violent or trespassory activity). That allowed the government to step back from the front lines in the regulation of workers’ labour activity. Wider society (including employers and the public) could thus secure industrial peace, and the de-politicization and de-escalation of labour conflict, by regulating the unions. The mid-twentieth century settlement of the ‘labour question’ made unions central to the regulation of labour conflict.

Of course, it is ironic to draw this lesson from US history, given today’s historically low levels of both union density and strikes. Somehow the US had

44. The capacity to act collectively may require both a degree of internal organization, solidarity and cohesion and a labour market context in which workers can effectively hold up production – that is, in which they cannot be easily replaced, e.g., by moving production elsewhere or hiring replacements.
45. In the US, the rewards came first with the National Labor Relations Act of 1935; restrictions on unions and the sanctions backing those restrictions came later with the Taft-Hartley Act of 1947, which prohibited or restricted some of the unions’ most powerful economic weapons.
46. Collective labour unrest – in terms of both work stoppages and socially disruptive protest activity – has dropped precipitously since the 1950s, and has continued to drop with union density. Both the number of major work stoppages (i.e., those affecting more than 1000 workers) (470) and the number of workers affected (2.75 million) peaked in 1952, around the peak of union density in the US; in 2009, both hit the lowest level since 1947, with five major work stoppages affecting 13,000 workers. Bureau of Labor Statistics, Economic News Release: Work Stoppages Summary, USDL-13-0193, 8 Feb. 2013 (available at http://www.bls.gov/news.release/wkstp.nr0.htm (last modified 8 Feb. 2013). There has been a slight uptick since then: 2012 saw nineteen major work stoppages involving 148,000 workers. Bureau of Labor
managed by the late twentieth century to secure ‘industrial peace’ without a large labour movement or a large role for collective bargaining; and that ‘peace’ has reigned even as economic inequality has returned to pre-New Deal levels. That is another story, ripe for recounting, but not here. Suffice it to say that, as long as China’s workers are taking to the streets in large numbers, the lessons of the 1930s and 1940s in the US may be more relevant for China than those of the past few decades (though that is debatable and debated within China).

If it is true that, in a time of collective labour unrest, trade unions can play a crucial regulatory role, what does it take for them to play that role? Stated differently, what does it take to get workers, once they have gained the capacity to carry out disruptive strikes, to submit to the regulatory control of unions? We think two things are required: first, workers have to be able to secure gains by acting through the union. (Otherwise why submit to union regulation and discipline?) Second, workers have to trust the unions and regard them as their true representatives. If unions are to be able not only to call a strike but also to end a strike, workers have to believe union leaders when they say, ‘This is the best deal we can get right now.’ Otherwise, why should the workers go back to work?

In the US of the 1930s, this was the first element that was missing, and that the National Labor Relations Act of 1935 (NLRA) sought to supply: the law had to compel employers to recognize unions and sit-down at the bargaining table with them. As for the second element, the accountability of the major US unions to their worker-constituents was not much in doubt in the 1930s. Whatever quibbles one might have about that in the US, it is immediately apparent that this is where China’s official unions fall short: most workers simply have no reason to trust the union, and to return to work, if it cuts a deal and tells the workers it is the best deal possible. They did not elect the ACFTU or its officers at any level, and the ACFTU’s long history of control by some combination of local CCP officials and managers inspires little loyalty, confidence, or trust on the part of most workers.

At least some of China’s leaders may recognize that, for the ACFTU to be an effective regulator of restive workers, it must be more representative of and responsive to those workers. Two obvious ways to pursue that end are simply not on the table: one is to give up the ACFTU’s monopoly on worker representation and allow workers to form their own independent unions. The other is to give up CCP control of the ACFTU and allow it to reconstitute itself as an independent trade union federation. For the foreseeable future, there is no political prospect of either course, and thus for genuinely independent union representation for workers in China.

The union reform agenda instead consists of more modest reforms that would make the existing ACFTU more accountable to workers. Much of the focus has been

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47. The major unions had either a long history of independent worker representation and internal self-governance or, in the case of the newly formed Congress of Industrial Organizations (CIO) unions, strong bona fides on this score.
48. For e.g., there is some discussion of funding the ACFTU with public revenues so as to decrease its economic reliance on employer funding.
on ways to combat management domination of grassroots chapters, leaving party
domination of the rest of the ACFTU essentially untouched. For example, various
regulations and directives now bar top managers and their relatives from serving as
union chairs. More ambitiously, reformers have sought to promote more democratic
elections for ‘grassroots’ (enterprise-level) union officials.

Judged by the benchmark of fundamental labour rights as defined by the ILO, the
reform agenda may appear modest. But even a modest step in the direction of greater
freedom of China’s workers to choose their own leaders must be a welcome develop-
ment. And so it is worth investigating the move toward ‘direct elections’ of grassroots
union officials. It turns out that direct elections come in many forms, more and less
democratic, and more and less likely to make unions accountable to rank-and-file
workers who most need representation and who most threaten industrial peace.

How Do Elections Work? Existing Models for Grassroots Union Elections

Generally, some constellation of management and union and party officials chooses the
election method for grassroots union officials. In many elections, especially in large
companies, most workers cast no direct vote at all. Rather, workers are represented
through ‘electors,’ who form a committee that chooses union officers. But workers do
not necessarily choose either the electors or the candidates. For example, in one large
US multinational firm as of 2011, managers would go to each working group or
department and say, ‘We think workers X, Y, and Z would be good representatives of
this group; anyone who disagrees please raise your hand.’ No one would disagree. The
management-chosen electors would then vote on management-nominated candidates,
and would eliminate the one or two lowest vote-getters. Management then assigned
union board positions to those who remained.

Increasingly, however, the law on the books (or official guidance) at the national
level calls for ‘direct elections’ in which all workers vote. ‘Direct elections’ are now
becoming routine in many parts of the country. Still, Chinese labour law and national
ACFTU guidelines remain rather vague about procedures for elections; in particular,
the law does not prescribe the nomination process, or the precise consequences of

49. See Trade Union Law of the People’s Republic of China, Art. 9; see also
企业工会主席产生办法（试行） (Qiye gonghui zhihu chiandao banfa (shixing)), (Mea-
sures for the Election of the Trade Union Chairman of an Enterprise (for Trial Implementation)),
50. This procedure was described to the authors in an interview with an anonymous former labour
relations counsel of a large ‘Fortune 500’ firm in Shenzhen (June 2011).
51. See Measures, supra n. 49, Chapter IV, Art. 15, which provides ‘the trade union chairman of an
enterprise may be directly elected at the members’ meeting or the member representatives’
meeting.
52. This was confirmed in confidential interviews with anonymous labour law professors in Beijing
(16 Apr. 2013), Shanghai (6 and 20 May 2013), and Nanjing (22 May 2013); and with
anonymous local union officials in Nanjing (22 May 2013), Shanghai (20 May 2013), and
Zhejiang (19 May 2013).
workers’ vote, and leaves those matters largely to the discretion of lower level officials and managers.\textsuperscript{53} At least until early 2012, this meant that nearly all ‘direct’ elections for grassroots unions began with nomination of candidates by some combination of management, the chair of the enterprise’s CCP committee (usually a manager), and local ACFTU officials (who tended to defer to management). This management-dominated group would nominate at least one more candidate than there were positions available (e.g., nine candidates to fill seven or eight positions). Then workers would vote on these management-approved nominees. In one variant of this procedure, the lowest vote-getter lost, and then management proceeded to assign officer positions from among the ‘winners.’ In a slightly more democratic variant of this model, union officer positions were assigned on the basis of vote totals, with the highest vote-getter becoming union chair.

There are differences among these election methods: in the last variant, workers determine which candidate will run the union chapter. Moreover, both ‘direct’ election procedures permit workers to eject an unpopular incumbent union chair. And they do. In 2008, the ACFTU’s official website reported on a recent experiment with ‘direct elections’ in the Dalian Economic Development Zone: ‘[S]ince direct election was introduced in 2003, 13 trade union chairpersons have come up for re-election but not a single one of them got elected.’\textsuperscript{54}

So even a little democracy can send a loud message to unresponsive incumbents. Still, none of the prevalent election procedures allows ordinary rank-and-file workers to choose their own leaders, or to elect a candidate not approved by management. Rather, elections served largely as a rubber stamp for the choice of managers (and the CCP cadres with whom they overlap and enjoy close ties).

[C] The Rise of Open Haixuan Elections

There is a third type of election, the so-called haixuan or ‘sea-election’, in which the workers themselves choose the nominees, and can even nominate themselves. Haixuan elections – familiar in China from their use in village committee elections since the 1980s – would seem to be just what is needed to make grassroots unions more accountable to workers.

Yet haixuan elections for union officials have heretofore been exceedingly rare. For example, in Zhejiang in May 2011, just one or two teachers’ unions were experimenting with haixuan elections. Even in December 2011, with union reform on the front burner, we were told that any new central directive on union elections would

\textsuperscript{53} ‘The candidates for the trade union chairman of an enterprise shall be deliberated and recommended by branches or groups of the trade union, or recommended in secret ballot by all the members, and the trade union committee in the last term, the trade union at the next higher level or the trade union preparatory group shall propose a list of candidates based on the opinions of the majority of members.’ Measures, supra n. 49, Chapter III, Art. 8. In practice however, it is far more common for management to cherry-pick favoured workers for election. See supra, text at notes 51–54.

allow local managers or local ACFTU or party officials to conduct *haixuan* elections, but would surely not require them to do so – and that *haixuan* elections would in fact be rare. Why?

The reason given for both lack of a mandate for *haixuan* elections and for the expected rarity of their use, was simple: opening up elections to workers’ own nominees would threaten control by current powers-that-be – managers and union and party officials, both local and central – of the union apparatus. As factory managers in Zhejiang explained to a union official: ‘We’re most afraid that either we’re not going to like their guys, or that they’re not going to pick our guys.’

This statement is worth parsing. The ‘right guys’ may be defined in part by their intelligence and appreciation of the realities of running a successful business – qualities that managers tend to see in their peers. (We found that many people in China, including those who are very supportive of union reforms, shared the view that ordinary workers were not capable of leading a union, and that education and administrative or managerial experience were important qualifications for holding union office.) But the ‘right guys’ are surely also those who are not too aggressive or unyielding in their demands. Union and CCP officials may not know individuals as management does, but they share the goal of avoiding conflict, and are inclined to defer to managers’ judgment on who the ‘right guys’ are. Election procedures are thus designed to allow managers and officials to oversee the process to ensure that the ‘right guys’ – or at least not the ‘wrong guys’ – are selected.

At the same time, events on the ground seem to be running ahead of the planned scope of reforms. By May 2012, striking workers had begun to demand, and authorities to allow, open *haixuan* elections for enterprise union offices (especially in Guangdong); and there were scattered reports of workers simply conducting their own elections in the course of a strike, and of management and party or union officials acceding to the results. As of the spring of 2013, experiments, pilot projects, or at least instances of *haixuan* elections could be found throughout China. *Haixuan* elections still make up a small minority of elections, and there was still no sign of a national policy requiring or even favouring these open elections. But there was at least a limited trend toward use of *haixuan* procedures. Let us turn briefly to what lies behind this apparent trend.

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55. For one thing, a nationwide mandate of *haixuan* elections would run against a strong historical pattern, even a norm, for reform initiatives of vagueness from above and discretion below. Dictates from Beijing – for example, ‘direct elections of enterprise union officials’ – were expected to leave wide room for local interpretation and discretion in implementation.


57. Professor Liu Cheng, Interview, Shanghai Normal University (6 May 2013); other interviews cited at supra n. 52.
§6.04 WHAT IS DEMOCRACY FOR? SUPPLY AND DEMAND FOR HAIXUAN ELECTIONS

Haixuan elections would seem to be just what is needed to promote greater union responsiveness at the grassroots level—and thus greater union ability to lead workers and manage their collective discontent.58 Haixuan elections would be a positive step in the direction of (though far from the embodiment of) ‘freedom of association’ in ILO terms. But it remains highly unlikely that haixuan elections will become mandatory across the country. Rather, haixuan elections are being dealt out on an ad hoc basis, often as a concession in the midst of labour conflict. (Even in the village election context, with decades of law and policy favouring village self-governance, villagers may have to agitate for this more democratic form of election, and higher level officials may have to decide whether to grant it, as occurred in Wukan recently).59 But both demand for and supply of more open haixuan elections have increased. Let us begin with the supply side.

[A] Official Willingness to Supply Haixuan Elections

Why and when do local and national party-state officials and enterprise managers agree to open haixuan elections? This we probably know. This democratizing reform is not being instituted for its intrinsic virtues, but because it sometimes looks like the ‘lesser of two evils’. That is, some savvy, mobilized workers have been able to make electoral democracy part of the price for industrial peace. For officials, grassroots democratization then becomes a strategy for fostering stability in localized arenas that have threatened to become unmanageable.60

Some government officials may see beyond the short-term goal of ending a disruptive strike. They might recognize that democratically elected union officials could help to reduce unrest and promote stability, and even to shore up political legitimacy. Some managers, too, may take a longer view; they may hope that fairer

58. To be sure, haixuan elections are not a ‘magic bullet’; they do not guarantee genuine grassroots control of the union, even at the grassroots level. Even if haixuan elections take hold, enterprise management and the party-state retain many levers of control and many mechanisms of influence over the functioning of the grassroots unions. For one illuminating illustration of how the election of grassroots leaders can end in frustration, see Ziqian Liu, Directly elected in Shenzhen labour union president pleads: I beg you, dismiss me!, China Newsweek [中国新闻周刊], 22 Mar. 2013 (available in Chinese at http://news.ifeng.com/shendu/zgxwzk/detail_2013_03/22/23404716_0.shtml) (accessed 11 Jul. 2013).


60. That is one way of seeing the rise of village elections. See Gunter Schubert & Anna L. Ahlers, Participation and Empowerment at the Grassroots: Chinese Village Elections in Perspective 11–12 (Lexington Books 2012).
institutional arrangements will lead to a more engaged, loyal, and productive workforce. (A few employers, with encouragement from progressive local union officials, have begun to introduce *haixuan* elections before unrest breaks out, as a good industrial relations practice). To the extent that open elections become paired with higher wages as the price of labour peace, and especially to the extent that employers and party-state officials begin to recognize the link between labour peace and democratic trade union elections, we may expect the trend to continue.

The perceived price of greater democratization – and a major hurdle to demands for *haixuan* elections now as before – is of course loss of control by officials and managers. But loss of control may be tolerable at the lowest levels of society. For the trend toward more open and democratic union elections is strictly confined to the lowest level of the union hierarchy, where it compromises management control, not party control, of union activity. ‘Grassroots’ union chapters, though part of the ACFTU ‘transmission belt,’ are peripheral to party-state governance structures.

Official receptivity to *haixuan* elections may also reflect the changing character of workers’ leaders – and of workers’ ideas about who they want to lead them. According to Professor Shi Xiuyin of the Chinese Academy of Social Sciences, some workers are deciding that the firebrands who first led them onto the streets or into a sit-down strike are not necessarily the most effective in gaining concessions from management once bargaining occurs. Once workers gain the right to elect their own leaders and to bargain, they have sometimes passed over strike leaders in favour of more educated, skilled, and ‘responsible’ leaders who seem better suited to dealing effectively with management. Perhaps this pattern reflects not workers’ genuine preferences but their ‘adaptive preferences’ – adaptive, that is, to managers’ recalcitrance in dealing with more militant leaders. One way or another, however, workers may be taking a more pragmatic view of who is best suited to lead and most able to secure tangible gains for workers (and elections might even facilitate the shift from militancy to pragmatism). These recent changes in demands, tactics, and leadership choices have helped make *haixuan* elections both more tolerable and more necessary from the standpoint of social stability and productivity – that is, from the standpoint of union and party officials and enterprise managers.

### Bottom-Up Demand for *Haixuan* Elections

So officials have become more receptive to demands for *haixuan* elections. But why and when do workers seek open *haixuan* elections? That may seem obvious to Westerners schooled in the virtues of democratic self-governance. But it is worth asking when and why China’s poor migrant workers would demand not just wage

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61. We were told this happened in some Western (mainly German) companies. Professor Shi Xiuyin, Interview, Institute of Sociology, Chinese Academy of Social Sciences (Beijing, 26 May 2012).
62. Professor Shi Xiuyin, Interview, Institute of Sociology, Chinese Academy of Social Sciences (Beijing, 26 May 2012). However, sometimes that is because the strike leaders have been fired by the time of elections!
increases but institutional reforms like this. Again, it may be useful to look to the history of village elections for some possible answers.63

Village residents initially regarded open haixuan elections instrumentally – as perhaps a useful tool in securing tangible improvements in their lives. Yet the experience of open and direct elections often fostered a growing sense of entitlement to self-governance – at least at the village level.64 Over the years villagers began to value elections intrinsically, and to demand cleaner and more open election procedures.65 They did not always succeed; official manipulation of village elections, especially by discouraging or disqualifying disfavoured candidates, is still common.66 (One may anticipate the same problems in trade union elections.) Opinions differ on the efficacy of village elections, but there have not been wholesale rollbacks of either entitlement to elections or formally democratizing reforms once won.67

The labour setting is arguably seeing an accelerated reprise of this pattern. Demand for haixuan elections has been growing among workers with experience in self-organization and collective action, especially in the coastal south where the strike wave is concentrated. Workers initially see the instrumental value of greater democracy, hoping that more responsive unions will help to secure and sustain economic gains through collective bargaining. But they, like the village residents described above, may also begin to see democracy as intrinsically valuable, and even as a civic entitlement. Moreover, the experience of village elections in China suggests that these democratic reforms will be difficult for the government to take back once granted, even after tensions abate. The wider experience of democratic elections, actual and vicarious, might spur more demands for democracy – at least ‘horizontally’ to more enterprises, if not ‘vertically’ to higher levels of the union.

So in spite of ambivalence at all levels of the party-state, and in spite of calculated vagueness in the terms of all relevant legal directives, the current policy push for ‘democratic elections’ is easing the way for spontaneous grassroots demands for democracy to succeed, at least at the grassroots.

§6.05 CONCLUSION

Many questions remain about the viability and spread of haixuan elections in trade unions and the consequences for China’s future, both in labour relations and beyond. Will genuine collective bargaining through democratically accountable union officials continue to serve as a limited tactic for restoring social stability in the face of occasional popular outbursts? Or will it become institutionalized? Will limited introduction of electoral democracy at the grassroots satisfy popular demands for political voice and self-governance, or will it stoke those demands? Will elected grassroots union officials

63. The village election experience deserves broader consideration than we can give it here. We leave that for another venue.
64. See Schubert & Ahlers, supra n. 60, at 15.
65. Schubert & Ahlers, supra n. 60, at 143.
66. See Shi interview, supra n. 61.
67. Schubert & Ahlers, supra n. 60, at 22.
and their worker-constituents create pressure for democratic accountability at higher levels of the ACFTU and CCP? Or will officials’ fear of that very result strengthen official resistance to democratic reforms? Or will the growing grassroots experience of voting and self-governance (in villages as well as unions) encourage those within the regime who favour wider political reforms, and reassure those who doubt that China’s citizens are ‘ready’ for democracy?

For now, the ACFTU, managers, and party officials seem to be trying to create institutions that are just democratic enough that workers will accept their leadership within the factory and stay off the streets. Still, what is ‘democratic enough’ for workers appears to have shifted in a democratic direction just in the last year or two. Many of China’s leaders presumably fear precisely what many Western observers hope – that real elections for grassroots union leaders will lay the foundation and increase the pressure for further democratization both at higher levels of the ACFTU and in other spheres of society.

Democratization at the lowest levels of society might have ripple effects on citizens’ attitudes and capacities with regard to democratization at higher levels of the polity. Democratic processes foster ‘civic skills’ and, in a society with relatively few participatory opportunities, perhaps civic demands for greater voice. On the one hand, several decades of experience with village elections has produced neither strong vocal demands for nor official receptivity to open, democratic elections at higher levels of the polity, at which party control remains (for now) unquestionable. But on the other hand, direct open haixuan elections in the trade unions would introduce the experience of democracy into urban areas for the first time. Such an experience may have political repercussions beyond what village elections have had in the rural areas.

If workers continue to push for a genuine voice in their working lives, and gain a sense of entitlement to democratic mechanisms of voice, then the current round of reforms may push popular demands for democratization up one level, and into the political system. Moreover, if elections produce grassroots union leaders who are responsive to workers’ demands, those leaders themselves might put added pressure on the unelected local union officials and party-state officials that sit above them on the ‘transmission belt’. With those prospects in mind, both employers and powerful local union and government officials can be expected to continue to use what levers they have to bring about ‘election’ of friendly or moderate worker representatives. It remains to be seen whether the end result will be frustration of democratic reforms (perhaps softened by economic concessions) or their extension to higher levels of governance.

The labour arena may be serving as a gigantic laboratory in which to test competing views within China’s leadership over the best strategy for maintaining political stability, and the right mix of control and flexibility, repression and responsiveness, cooptation and democratization. Behind these competing views lie different theories about what Chinese workers, and indeed Chinese citizens, want. Will workers be content with material improvements or will they hold out for a meaningful voice in their working lives? The former might be achievable through top-down governance structures. The latter will require real change in those structures.