

EAST ASIAN LAW -  
UNIVERSAL NORMS  
AND LOCAL CULTURES

*Edited by Arthur Rosett, Lucie Cheng  
and Margaret Y. K. Woo*

 RoutledgeCurzon  
Taylor & Francis Group  
LONDON AND NEW YORK

2003

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76 Visit <http://www.migrant.or.kr>.

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78 For a more detailed discussion of the *talukja* issue, see Chulwoo Lee, 'Us' and 'Them' in Korean Law: The Creation, Accommodation and Exclusion of Outsiders in South Korea', in *Rule of Law and Group Identities Embedded in Asian Traditions and Cultures*, Proceedings of the Wagatsuma Hiroshi Memorial Conference, 19-20 January 2001, University of California, Los Angeles.

79 See the title of the book by Im Jihyeon, *Minjokjueni neun hanryeok ide* [Nationalism is Treason] (Seoul: Sonamu, 1999).

## INTERNAL MIGRANTS AND THE CHALLENGE OF THE 'FLOATING POPULATION' IN THE PRC

Dorothy J. Solinger

Why should we link the internal migrants of China with the word 'challenge'? Indeed, that people moving about across their own native terrain should be dubbed 'migrants' is already a bit of a puzzle. This is especially the case for the ones in China, since they are very much viewed and dealt with as if outsiders, even outcasts, surely as elements who do not 'belong' where they have arrived.

This chapter considers a double challenge surrounding their persons - one not just for the Chinese state and metropolitan communities, but also facing the urban-situated Chinese peasant transients themselves. These peasants away from home are the occupants of an awkward category, the 'floating population', whose members populate a nebulous space that is neither their home nor their host, and who yet must negotiate an existence somewhere in between the two.

Even to survive in this bedevilling domain - much less to thrive there - these sojourners need to navigate amidst a sobering array of contradictory poles. These are the antinomies of nationalism and localism, citizenship and foreignness, community and officialdom, the rhetoric of rights and the reality of an absence of rights, the socialist superstructure still lingering about and the base of capitalism now closing in on its landscape, and, perhaps most challenging of all, between two realms that ought not be mutually conflicting at all, but which surely are in China today: the market and the law.

At the heart of the plight of the incoming peasants in cities is the immaturity - or, less optimistically but conceivably more accurately - one might say the stubborn, nagging, ongoing inadequacy of that elusive element, law, in Chinese society today. For could it come of age, could it fulfil its function, law could stand as the bridge that links up the nation with local exclusivism, the full citizen with the sojourning denizen, the subcommunity of the sidelined with the sphere of officialdom. Thus it is up to the law to bring together the discourse of rights with their delivery, and to bend the institutional legacies of socialism to fit the immediacy of capitalism. It could also probably manage to tame the madness of the current Chinese marketplace.

I proceed by reviewing in turn each of these conflicts characterizing the challenges of (in the double sense of 'posed by' and 'for') the floating population, as they affect the triangular tie between state, local society and alien in Chinese cities today, and as they have been affecting it over the past two decades, without much of a fundamental alteration. But first I need to supply some background, so that the reader can comprehend just why so much bother surrounds the movement into the municipalities of their own nation by ethnic Chinese from the countryside.

### A bit of background

How have Chinese peasants, treated as so out-of-place, come to be found in the cities, and why is this an issue? In the socialist times of Mao Zedong, following the institution of the Communist Party's reign (1949), Party leaders almost immediately essayed to keep the cities clear of rural folk.<sup>1</sup> At first, in the 1950s, their effort was meant to ensure order, keep better track of the populace, and guarantee that the numbers of urbanites would be manageable, thereby reserving urban resources for the pursuit of heavy industrialization and the city workers who engaged in it.<sup>2</sup> Probably too, in cities, potential popular discontent would have been deemed much more serious; also there, the hope of building a modernized economy seemed within reach, if only the numbers of people residing there could be kept within strict bounds.

This quotation from the 1950s, of the then Minister of Public Security Luo Ruiqing, reveals concerns about chaos and criminality that disposed early, post-1949 Communist Party elites to attempt to dispel farmers from crossing the urban frontier:

During the last few years the phenomenon of rural migrants blindly flowing into the cities has become a comparatively serious problem. This type of thing [recruiting people without urban household registrations to work in city enterprises] helped to make a bad situation really chaotic and created enormous difficulties for various aspects of city planning and the maintenance of social order. It led to a whole series of problems emerging in the areas of city transportation, accommodation, supply, employment, study, etc. ... and thus created a very tense situation. The rural population that blindly drifts into the city is unable to find work and consequently suffers great difficulties. Some of these people roam idly in the streets, and some even go as far as to be enticed into evil activities, becoming pickpockets or swindlers or adopting other criminal activities, all of which destroy the social order of the cities.<sup>3</sup>

After the disastrous Great Leap Forward of the late 1950s, concerns over food grain shortages and potentially serious urban hunger led the leadership to

banish back to the countryside tens of millions of country workers who had somehow slipped into town in the previous decade, or been recruited during the Great Leap Forward.<sup>4</sup> For the urban population had increased by 31.7 million, or 32 per cent in just the three years of the Leap, with 90 per cent of the increase the result of migration.<sup>5</sup>

Repatriation of peasants back to the countryside had occurred in 1955 and again in 1957. But the forced exodus after 1960 was totally unprecedented.<sup>6</sup> John P. Emerson cites figures of 20 million for 1961 and 30 million for the following year.<sup>7</sup> These deportations were not just more sizable than earlier ones; they were also far more successful.<sup>8</sup> Most importantly, they set down the model for migration control that lasted for the next two decades.

And so, once repatriated, these farmers languished in field labor for the next twenty years. The early 1960s saw the start of a most rigid enforcement of a system of household registration (the *hukou* system), which consigned peasant households to the region of their birth and deprived them of rations and of the entitlements of employment, housing, medical care, education and pensions paid out to city inhabitants. That system of distinction had been pushed rather gingerly and ineffectively beginning in 1955,<sup>9</sup> but gained real force with the failure of the Leap. The evolution of the resultant status order is captured in this quotation:

Just after liberation, peasant households did not feel lower-rank [*di'erren yideng*] and urban households did not feel higher ... Later, a great difference in interests came from the difference in where one lived. ... A ranking structure was gradually established with the peasant household at the lowest level.<sup>10</sup>

Thus, within a short time after 1960, the following situation began to prevail:

There are two social classes; [the difference between] the agricultural and non-agricultural *hukou* makes the rural population exert its utmost strength to squeeze onto the rolls of the urban *hukou*.<sup>11</sup>

As illustration of the extremity of the lifestyle distinctions involved, a popular ditty had it that it is 'better [to have] a bed in the city than a house in the suburbs' (*ning yao shiqi yizhang chuanyang, buyao jiaocun yitiao fang*).<sup>12</sup>

But, in the early 1980s, with the shift at the doctrinal level (at first, and gradually at the level of practice, little by little) away from allegiance to the orthodox, socialist planned economy to one granting legitimacy to market forces, China's leaders let the ruralites leave the villages, where they had been quite literally landlocked onto the fields. Peasant workers, freed from the farms, unceasingly poured into the cities, driven by the sudden, headlong and steadily marketized industrialization that got underway within just a few years of

Chairman Mao's demise in 1976, and the frantic building in the cities, combined with the ending of the socialist era's starvation of the service sector.

But even as the economy became steadily more marketized, even as planning and rations fell away bit by bit, the cumbersome shadows of socialist-era institutions and biases, especially the stigma attached to farmhands, have not easily been eradicated. So despite the hefty contribution to urban prosperity of the peasant-workers' toil, and the rather questionable nature of the actual drain they truly put on urban resources, they have remained pariahs for the most part up to the present, once ensconced in town.<sup>13</sup> I proceed to consider the six contradictions noted above that are posed by Chinese rural people's social exclusion from urban Chinese society, even as they live beside it, challenging it and its state and being challenged by them.

### Nationalism and localism; citizenship and foreignness

In spite of the raucous nationalism emanating from China in recent years, internally the country is – and has historically been – replete with many restrictive local identities, each of them the foundation for fierce loyalties to place. Emily Honig has even likened these region-based particularisms, with their lasting power and mutual suspicions, and their antagonistic inter-relations, to ethnic differences, even though all the people involved are properly speaking Han Chinese.<sup>14</sup>

The concept of a separation between a permanent residence and a temporary abode has a venerable pedigree in China. Sojourning was common in historical times; while the wanderer traveled, and even settled away from home, his family would remain at the old homestead.<sup>15</sup> The term *jiguan* referred to the place of residence that defined a person's origin, and both social custom and government policy emphasized this attribute.<sup>16</sup>

Scholars have termed regional groupings within the historical Chinese labor market an 'ethnic division of labor'.<sup>17</sup> Writing of the eighteenth century, Susan Naquin and Evelyn Rawski report that 'native place was the principle most often invoked as grounds for affiliation and assistance by men who left their homes to work in an alien environment'.<sup>18</sup> Work on the late nineteenth and early twentieth centuries similarly identified native place bonds that structured residence, work experiences, mutual aid, conflict, and power formation in the urban areas of that time.<sup>19</sup>

And yet, in these historical cases, the principle of exclusion was purely inter-provincial; no sharp distinction was ever drawn between urban and rural, either in acknowledging or in assigning identities.<sup>20</sup> Instead, city and country were perceived as linked in a seamless web of comings and goings, by family diversification strategies in which roles and assets could be split between different locales.<sup>21</sup>

It was only in the early twentieth century when what Myron Cohen has termed 'a major crisis of cultural integration and national identity' occurred –

sparked in large part by China's brush with the West and its urban-based imperialistic 'treaty ports' – that there arose a novel style of urban 'elite intellectual nationalism'. Cohen goes on to explain that this new elite 'reject[ed] and condemn[ed] the traditional culture of the Chinese masses', thus disdaining to make common cause with its fellow nationals. This elite also invented a new word to set them apart, namely *nongmin* (literally, 'rural folk'), a term with a pejorative twist still in use today. This movement can be said to have paved the way for combining the much more timeworn xenophobic stance toward extralocals with a new, equally disparaging one toward peasants, a position that the communists' policies later nurtured and expanded upon.<sup>22</sup>

Even as Chinese people may unite today against the American bombing of their embassy, or perceived current slights from and distant shameful memories of the Japanese, relations between Chinese 'floaters' and Chinese urban dwellers remain tinged with vigilance, with sub-segments of the same Han Chinese ethnic family divided by distrust, and even, it has been discovered, disgust.<sup>23</sup> Either in spite of or because of the very limited interaction between these two groups, 97 per cent of an educated sample of Shanghai natives admitted in a 1995 survey that they felt disturbed by the outsiders in regard to at least one of four issues (transportation, security of property, the environment or employment), while as many as 71 per cent believed themselves to be threatened either somewhat or seriously by the migrants.<sup>24</sup> The quotations from popular journals below illustrate the clannish separatism practiced by both parties:

Lots of outside construction teams have come into Shanghai from [the nearby provinces of] Jiangsu, Shandong, etc. ... these people use their work sites as their home. Their mobility is great and their quality is lacking; they're without any legal knowledge or concept of the law. Their livelihood customs and speech are each different and they display a thick hue of local cliquism. If one suffers a loss, all will attack. ... They protect each other if there are problems. ... This can even lead to disturbances. They provoke quarrels: a team at a local glass factory's construction site provoked a brawl with a Shanghai team, leading the Shanghai team not to dare even to go to work.<sup>25</sup>

Another:

In feuds, local people get more supporters among the onlookers; there are few dissuaders. The contradiction between local and outside people has now become a social contradiction. ... They treat outsiders as second-class citizens and see them as the snatchers of local people's interests.<sup>26</sup>

And yet one more:

Their thinking, morality, language, and customs are all different, their quality is inferior. The places they inhabit are very likely dirty places. ... They lack a concept of public morality ... so that behavior that harms prevailing social customs occurs time and time again. City residents are dissatisfied because they disturb normal life and livelihood.<sup>27</sup>

Given their outrage against the outsiders, it is unremarkable that members of the urban 'host society' harass their guests:

When they ask the way, Beijing people intentionally send them in the opposite direction; if they carelessly bump someone getting off the bus, it can lead to a brutal attack. When they enter a restaurant, the waiter creates difficulties. When they knock on the door and ask for old things to buy, the owner might fiercely spit!<sup>28</sup>

In the very typical words of one of my own interviewees in the major northern city of Tianjin in 1992, 'We couldn't possibly [*hukou*] accept them as regular urban people ... people look down on them as peasants ... Tianjin people don't want to marry outsiders'.<sup>29</sup>

Besides this discrimination against extra-locals at the level of city folks' feelings, urbanized peasants' historical exclusion from benefits and entitlements once the birthright of urbanites (but no longer so, with the now rapid incursion of the market into the world of welfare) surely makes it possible to argue that only locals native to a given city have had the status of 'citizens'. Here I am drawing on the conceptualization I gave of this notion in my 1999 book, where I state that

as a Chinese scholar remarked, the *hukou* - very much as a badge of citizenship in a Western society would do - [before about 1995] determined one's entire life chances, including one's social rank, wage, welfare, food rations, and housing.<sup>30</sup> ... These are the kinds of 'goods and opportunities that shape life chances' which only citizenship can guarantee.<sup>31</sup>

I further justified my somewhat unusual use of the concept of citizenship in this context because the term has, after all, been variously defined.<sup>32</sup> In the words of Brian S. Turner, for instance, 'The modern question of citizenship is structured by two issues': The first of these has to do with social membership, or, one might say, with belonging to a community; the second concerns the right to an *allocation of resources*.<sup>33</sup> Interestingly, these conditions are much the same as those that pertained to the possession of the urban register (*hukou*) in China through the early 1990s, and still carry some influence today. Also in the broader literature, a number of scholars find that the hallmark of citizenship is exclusivity, as it 'confers rights and privileges' (again, as has the urban *hukou*)

just to those legally living within specifically designated borders.<sup>34</sup> Though the boundaries that define 'members' (namely citizenship) are most typically drawn around the urban (or national) geographical community, historically and even sometimes today around the world, they have also delineated only some of the groups within such geopolitical spaces.

Working with such a formulation, I was able to argue that 'the values and behaviors that citizenship endorses in a society will reflect the norms of whatever might be the dominant participatory and allocatory institutions in the community with which the citizen is affiliated', and to emphasize 'not the political but just the identity/membership and distributive components of citizenship'. Given this understanding, I considered as full, official, state-endorsed urban citizens only those who enjoyed a form of valid, official membership in or affiliation to the city, and who consequently were the recipients of state-disbursed goods. Even up to the present, officially ruralites in big cities are still denied genuine membership, namely the right to belong officially.<sup>35</sup>

If law were to intervene in this battle of localisms and city versus country folk, it could override the prejudice and discrimination that consigns peasants to a lower order, thereby allowing them to take their place as equals under the urban administration, and among those who are now judged full-fledged urban residents. For, after all, the current version of the Chinese state constitution, adopted in 1982, announces in Article 33 that '[a]ll persons holding the nationality of the People's Republic of China' are citizens, equal before the law, and enjoying the rights while performing the duties prescribed in the constitution and the law'.<sup>36</sup>

### Subcommunity and officialdom

But this issue is actually more complex. As I contended in my 1999 book, migrants in Chinese cities are by no means all of a kind. I differentiated between those from the less prosperous inland, who tended to become sorted into manual laborers (employed, usually in comparatively short-term slots, in construction, hauling or transport teams, or else in some form of household labor) or manufacturing (often in the foreign-invested firms along the coast, but some in state-owned enterprises, too). A second category was those from the wealthier, coastal provinces, who were heirs to a legacy of marketing or specialized crafts and skills (such as tailoring, shoe repair or barbering), who took up these tertiary-sector occupations once having arrived in a town. And a third group was comprised of indigent drifters who might end up as scrap collectors or beggars, and who largely hailed from very poor locales.<sup>37</sup>

In my book, I went on to show that the state of belonging in urban society was a variable condition. Most of the incomers were unable to create any kind of connection at all to the original urban society - that is, to establish any personal bond with the people who had long lived in the city where the

migrants had landed and who possessed urban registration there. But, by the early and mid-1990s some had contrived, either through their affluence – acquired in urban commerce, which eventually enabled them to accumulate enough funds to purchase an urban registration – or else via some form of prior personal tie to local officialdom, to find an entrée for themselves. Still, the overwhelming majority of the newcomers were treated just as transients by the locals, no matter how lengthy their period of time in the town. They were, upon their appearance there, and forever after, quite clearly outsiders, with no hope or pretense of being a part of the municipal populace.

But just because most could not become urban or members, not every migrant remained a single unit within an anomic mass. Migrants of the second, more skilled group with coastal roots, I demonstrated, frequently congregated in what the Chinese term urban ‘villages’, spaces within cities where, at the extreme end, the residents in them live by their own rules and mores, communicate in their original local dialects, run their own shops and services for their co-provincials, and even organize business networks. Among the Wenzhouese,<sup>38</sup> who are the most successful of the migrants of this type, such networks have developed an international scope. Since their communities are constructed over time by chain migration and bonds of interpersonal patronage (as are those of migrants the globe around), their operative mode in managing their internal affairs is not the state’s laws or its informal regulations (which, granted, they flaunt at their peril), but the trust they can generate among themselves.<sup>39</sup> Indeed, the rules they live by lack any reference to the laws of the state.

True, migrants of the first type (the inland manual workers) might pass substantial periods laboring and traveling in a particular team. Frequently the contractors who gathered them into a company, however, were an arrogant and peremptory lot, wielding enormous arbitrary and fearsome command over their underlings.<sup>40</sup> Similarly, those of the third, drifter, category were occasionally combined into beggar bands, or collected their garbage and scraps under orders from a tyrannical chieftain. But the internal relations in crews of this kind tended, like those of the manual workers, to be steeply hierarchical, with bosses lordling it over frequently shifting and rank-ordered underlings.<sup>41</sup> So we cannot conclude that genuine communities cohered with shared understandings and common goals and responsibilities, as they could among the skilled and more mounted migrants.<sup>42</sup>

Yet the one thing shared by a great many of the incomers – of whatever type – is that they simultaneously inhabited two different spaces: the immediate and more or less known one of their own subcommunity, and the more nebulous and distant one of officialdom and the larger society beyond their own nested realm. In that greater, all-encompassing space, most migrants were at the mercy of urban administrators’ caprice, without being able to cry out for any compelling legal appeal that could serve as a bridge between this more foreign space and the one to which they had been consigned by native place and occupation.

Standing against the trust that made business thrive for the community and the successful itinerants, and enabled its arteries to extend across continents, were two other principles of contemporary Chinese urban life, neither relying on mutual confidence, and both nearly wholly lawless. These are, first, market precepts undergirding profit and greed, eventuating of late in China in the crassest and grossest breeds of corruption, a ‘market’ run wild; and second, the remnants of the worst of the maxims of socialism, including official privilege and perquisites, making for an easy milieu for rent-seeking by the empowered, along with politicized statuses for the underdogs which are carved in concrete.

All three of these realms have some overlapping regions, but most of the participants of the first realm, the enclave community, are totally barred from the third, the official one. Only an effective societally-wide, all-inclusive and serviceable legal process – which, alas, is currently absent in China for these people in all but the very most rudimentary of forms – could have the power to brake the utter licentiousness of these two latter worlds, and to include in a larger frame, not to mention a fair one – the members of the first, the ‘floating’ urban farmers.

### The rhetoric and the reality of rights<sup>43</sup>

An important current in the study of globalization<sup>44</sup> and its impacts holds that the spread of economic liberalism and of the concept of human rights globally has led to new notions of citizenship. What has been termed a ‘postnational’ citizenship, granted ‘on the basis of personhood’, has increasingly offered to immigrants the rights and privileges once granted just to nationals, in this view. Whether the mechanism at work is said to be principally ideational – as, by ‘changes in the institutional and discursive order of rights at the global level’<sup>45</sup> – or ideational-cum-material – as, in the words of another author, through the dissemination of notions of social justice and human rights which accompany the spread of market relations, both domestically and internationally – this analysis claims to see underway a new ‘extension of rights to individuals who are not full members of the societies in which they reside’.<sup>46</sup>

In another, similar formulation, the proliferation of international human rights law, which ‘recognizes the individual as an object of rights regardless of national affiliations or associations with a territorially-defined people’, has meant in recent years that ‘states [have] had to take account of persons qua persons as opposed to limiting their responsibilities to their own citizens’.<sup>47</sup> Whether or not these claims are valid, one could make a very different argument as well: this is that the ‘globalization’ of economic and market entanglements among states has probably done as much to *minimize* the granting of citizenship and membership rights and privileges to individuals as it has done to extend it.

Thus, although with the onset of marketizing reforms in China in 1979 myriad new laws were written to suit an economy progressively more and more

fully engaged in worldwide commercial relations,<sup>48</sup> even at the turn of the century the country continued to lack a legal system capable of governing a truly market-driven economy.<sup>49</sup> A pervasive rhetoric of rights, which does obtain, is rarely realized in practice, and defendants have often lost their cases before they begin.

As for the migrants, despite much discussion and debate, and even talk of fundamental reform, the basic features of the *hukou* policy itself hang on. A few notable alterations were the availability of a new, 'temporary' household registration in the cities in the mid-1980s, the *zhennazhushengji*,<sup>50</sup> a widespread resort to the sale of the urban *hukou*, on black markets by the late 1980s,<sup>51</sup> and, by the early 1990s, openly by city administrations themselves, in the form of a 'blue *hukou*'. But these *hukou* are only affordable for those who have amassed a fair amount of wealth and who are thus no longer living at subsistence level.<sup>52</sup> And most lately, an important provision passed by the State Council in summer 1998, permitting permanent residence rights to be accorded 'qualified investors' and to an urban citizen's spouse, parents and children.<sup>53</sup>

But ongoing reluctance to eliminate the household registration system entirely, with its very unequal granting of citizenship rights, even in the face of widespread marketization, seems to signify that there may be at the root a persisting and even heightening official paranoia in the face of mobile peasants. This appears to be the case in that, beginning in 1995, the issue of the floating population was described as

No longer a question of the transfer of surplus rural labor, but a major economic and political issue which has a direct bearing on economic development and social stability.

This was a formula that has been repeated thereafter on many occasions.<sup>54</sup> In one formulation, this stark statement of apprehension was, suggestively, combined with a warning that

Infringements on the legitimate rights and interests of migrant workers and businesspeople are serious and signs of migrant workers becoming a source of trouble have appeared in some places.<sup>55</sup>

That statement explicitly links anxiety about public order to a movement toward legal rhetoric. It seems that this fear may have paired the two in leaders' minds.

Migrants themselves started to display a concern with rights and injustice – if mainly economic rights – almost as soon as they had made their way into the municipalities. One of the earlier manifestations was their feeling of unfairness over the blatant inequality they were forced to confront there. Journalists picked up the anger this engendered, much of it directed against the permanent population of the city. As an example:

The peasants and semi-peasants who enter the city feel comparatively deprived by the tightly locked city walls. Peasants coming in want to enjoy this fat meat with city people. When in the countryside, they feel that everyone is poor, so [their poverty] can be tolerated. But differences in wealth become obvious after entering the city. They feel, 'The more you city people look down on me, the more I oppose you'.<sup>56</sup>

With time, members of the floating population came to demand legal protection against the treatment they were receiving on the job, by remonstrating at public security stations and by calling in the press at least as early as 1988 for the authorities to 'please support our rights and interests' (*qing weihu women quanxi*).<sup>57</sup> In 1989 two roving journalists quoted a peasant informant who raised her lament to the level of the law:

'They say everyone is equal before the law', complained a glass seller bullied and beaten up by thugs sent by a native competitor in Lanzhou, then given little solace by the local police. 'Why can't we outside peasant workers be equal too?' she seemed to be howling.<sup>58</sup>

In response to these feelings, organized agitation had already begun to appear by the mid-1980s, with the emergence of unauthorized unions and illicit strikes. By 1986, work stoppages and strikes were frequent among the temporary workers of the Shenzhen Special Economic Zone, home of a multitude of foreign-funded firms.<sup>59</sup> Issues of treatment, hours, contract violation and unsafe working conditions often figured in the resistance, though by far the majority of grievances – as many as 86 per cent – in at least one city where statistics on this were recorded, were about pay.<sup>60</sup> There were also reports that many of the strikes specifically had revenge as a motive, surely evidence of feelings that rights had been wronged.<sup>61</sup>

There were also scattered stories of migrant workers agitating for the right to form their own unions. For only the official All-China Federation of Trade Unions was recognized by the government, and its cadres were much more likely to suppress rather than to support signs of worker discontent,<sup>62</sup> while any other association of workers was automatically labeled illegal.<sup>63</sup> In one case employees in a joint-venture hotel in Shanghai attempted to set up their own organization in the summer of 1993.<sup>64</sup> In addition, some bold members of the floating temporary workers went ahead without permission and created unregistered unions of their own. These organs sprang up mainly at foreign-invested, joint-venture plants.<sup>65</sup>

By 1994, according to a survey undertaken among transient factory hands in the Pearl River Delta, at least 10 per cent and sometimes as many as 61 per cent of the workers in the firms there expressed each of the following demands: a guarantee of basic livelihood, higher wages, improved livelihood conditions, better working conditions, and equality of various sorts.<sup>66</sup> And, remarkably, in

an early 1995 survey of leavers in 318 villages, as many as 79 per cent of the respondents admitted that they felt that they lacked any guarantee of their rights and interests (*quanxi*).<sup>67</sup> But in nearly all cases of worker protest that found voice in the printed media, attempts at relief met with varying degrees of repression or rejection. Given how easily these efforts to express and realize rights were generally squelched,<sup>68</sup> it seems fair to judge that even as of the year 2000 the discourse of rights – for urban workers and rural farmers, as well as for peasants sojourning in cities – was well developed, but distribution of such rights to them nonetheless remained denied.

### Socialist superstructure and capitalist base

Certainly, since 1980 the Chinese politico-economy has been moving steadily further from the former Maoist regime. Yet with the continuing rule of the Communist Party, not only the repressiveness but also the values, alliances and allegiances of that regime – the culture and politics of socialism – have proven far stickier, harder to outgrow or discard than have the material practices of the old planned economy. Ironically, the superstructure has outlived the base. Indeed, these socialist behavioral and belief patterns serve to enhance any impediments to migrants' welfare and rights introduced by the new market regime. These impediments, the residue of China's socialist past, make the plight of the excluded and legally unprotected even more serious in China than it would be from the impact of untrammelled market customs alone.

In particular, behavioral remnants from a couple of the central institutions that the nation's rulers installed long ago in order to implement their socialist system linger on, even as the more material dimensions of the institutions weaken and atrophy. These institutions include the socialist-era legal system (or, one might say, the absence of one), recently revamped to appear more predictable, procedural and just, but still quite unreliable, and as we have seen, socialism's household registration system. The free-wheeling, free-market economic habits of today – the capitalist analog of what I just referred to as 'the [socialist] material practices of the old planned economy' – that make for 'efficiency', competitiveness, and 'flexibility' are easily enough incorporated into a still-authoritarian regime. But, to the contrary, the prior legal, management and control systems of socialism are much more difficult to dislodge and replace than is the slower, more 'comradely' and rigid workstyle of the past.

Under the reign of Mao Zedong, from 1949 to 1976, law was considered to be a 'bourgeois' construct, inapplicable – at least in its Western incarnation – to a socialist society.<sup>69</sup> Nonetheless, China's often harsh socialist version was enshrined up until the Cultural Revolution, which began in 1966. With that movement, all legal institutions were dismantled for over a decade. But regardless of the many laws on the books today, the style of implementing them is still quite reminiscent in many ways of the one under Mao. For mistreated migrant laborers, this means that the 1994 Labor Law and its promises of protection

and inclusion are almost always honored only in the breach.<sup>70</sup> Thus, despite the attempt of the past two decades to bolster legality, authoritarian and lawless habits from the past persist.

The aspect of this situation relevant to my purposes here is twofold: first, migrant rural labor makes up the great bulk of the workforce in foreign-invested firms, especially those along the coast. Here, their willingness to toil under often seemingly intolerable circumstances effectively places these workers outside a rights regime of any kind. Second, as local urban managers, even in Chinese state firms, grew increasingly profit- and competition-conscious as the 1990s wore on, they more and more turned to the recruitment of peasants migrating into town – people who could safely be hired with lesser or no benefits than urban folk, and who, with their impermanence in town and lesser education, were seemingly less likely to struggle for legality.<sup>71</sup>

In addition, as the numbers of laid-off and idle urbanites mounted after the mid-1990s (partly for domestic economic reasons but also, arguably, in preparation for China's entry into the World Trade Organization), city officials bent on worker quietude in their domains clashed with firm managers hungry for the profits made possible by cost-cutting measures. For urban officials were demanding that higher-paid local city labor be privileged over peasants when hiring and firing occurred,<sup>72</sup> much as foreign migrant workers were pushed out of Southeast Asian communities in the midst of the late-1990s financial crisis in that region.<sup>73</sup>

The manifestations of this bias are multifold: besides being let go with more arbitrariness than before, peasants-in-cities have not been encompassed within the regular rules of the contract system for city labor. And even a regulation that was to apply to them alone, which specified a three-to-five-year contract as the norm, was far from fully honored,<sup>74</sup> with many so-called contracts lasting under a year. Unemployment insurance has yet to apply to these workers,<sup>75</sup> nor does a national Reemployment Program that aims to place only the furloughed city laborers.

Beginning in 1995, major cities such as Beijing and Shanghai began publicly requiring that certain occupations be reserved for city people (though the repetition of these demands a few years later raises questions about the extent of compliance they commanded).<sup>76</sup> Thus rural migrants' now forty-plus-year-old lack of an urban *hukou*, or household registration, an institution established under socialism, continues to mark them as excluded noncitizens when they work in cities. In the words of a laid-off Chinese worker – words which fit the urbanized farmers even more – 'Workers today suffer under both socialism and capitalism'.<sup>77</sup>

### Conclusion: market and law

The final contradiction that the Chinese migrant worker brings to mind is one that may appear odd from a broader perspective. After all, it is often argued that



the state is necessary in order for the market to operate effectively, to underwrite contracts, enforce regulations and standardize procedures, thereby easing transaction costs, as well as to offer predictability and stability to those in business. Surely the state is best equipped to provide these services dependably where a reliable legal infrastructure guides its moves in these regards.

In the case of the People's Republic, however, market and law (in the modern, Western sense) arrived on the scene more or less in tandem, both of them subsisting to this day in their most infantile versions. This means that neither can nascent legal institutions truly govern market transactions, nor, until the law develops much further, can the marketplace mature into a site of safety. Migrants who are ill treated and excluded economically cannot call upon a calculable politics or a stable law to bail them out.

Because there is no commonly accepted, legitimized, statutory structure in China that could support the 'strangers' in its cities - persons who, oddly enough, are ethnically identical to those who reject them - the 'floating population' from the country's farms is indeed challenged. But at the same time, in its very essence as a social form, it furnishes both the state and Chinese urban society with contradictions to resolve - between nationalism and localism; citizen and outcast; community and officialdom; rhetoric and reality when it comes to rights; the socialist superstructure and the capitalist base - thereby challenging the state and its more privileged city people as well.

### Notes

- 1 See my book, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Berkeley: University of California Press, 1999) pp. 36-9.
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- 3 Zhang Qingyu, 'Basic Facts on the Household Registration System', *Chinese Economic Studies*, vol. 22, no. 1 (1988) pp. 96-7.
- 4 Kam Wing Chan, *Cities With Invisible Walls: Reinterpreting Urbanization in Post-1949 China* (Hong Kong: Oxford University Press, 1994) p. 76; Wang Feng, 'Invisible Walls Within Cities: Migration and the Emergence of a Dual Society in Urban China', paper prepared for Conference on the Social Consequences of Chinese Economic Reform, Harvard University, 23-4 May 1997, pp. 5-6.
- 5 Andrew G. Walder, *Communist Neo-Traditionalism: Work and Authority in Chinese Industry* (Berkeley: University of California Press, 1986) p. 36.
- 6 For relevant documents, see Lu Feng, 'The Origins and Formation of the Unit (Danwei) System', *Chinese Society and Anthropology*, vol. 25, no. 3 (1993) p. 68.
- 7 John P. Emerson, 'Employment in Mainland China: Problems and Prospects', in US Congress, Joint Economic Committee (ed.) *An Economic Profile of Mainland China* (Washington DC: Government Printing Office, 1967) vol. 2, p. 422; and *idem*, 'The Labor Force of China, 1957-80', in US Congress, Joint Economic Committee (ed.) *China Under the Four Modernizations: Part I* (Washington DC: U.S. Government Printing Office, 1982) p. 242. This latter article cites Deng Xiaoping as having admitted to 'more than 20 million' thrown out of cities between 1959 and 1961.

- 8 R. J. R. Kirkby, *Urbanisation in China: Town and Country in a Developing Economy, 1949-2000 AD* (London: Croom Helm, 1985) pp. 27, 49.
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- 11 Zhongguo nongcun laodongli liudong yu zhuanyu ketizu [Chinese rural labor forces' mobility and transfer study group], 'Zhongguo nongcun laodongli juyue xiankuang ji fazhan qingting yanjiu' [Investigation of China's Rural Labor Forces' Employment Situation and Development Prospects], *Nongcun wenti* [Rural issues], vol. 12, no. 7 (1989) pp. 12-20.
- 12 'Huji yanjiu' ketizu [Household Registration Research' Task Group], 'Xianxing huji guanli zhidu yu jingji tizhi gaige' [The Present Household Registration Management System and Economic System Reform], *Shanghai shehui kexueyuan xueshu jikan* [Shanghai Academy of Social Science Academic Quarterly], no. 3 (1989) p. 85.
- 13 D. J. Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Berkeley: University of California Press, 1999) ch. 4.
- 14 Honig, Emily, *Creating Chinese Ethnicity: Sabei People in Shanghai, 1850-1980* (New Haven: Yale University Press, 1992) ch. 1; *idem*, 'Regional Identity, Labor, and Ethnicity in Contemporary China', in Elizabeth J. Perry (ed.) *Putting Class in Its Place: Worker Identities in East Asia* (Berkeley: Institute of East Asian Studies, University of California, 1996) p. 241.
- 15 G. William Skinner, 'Mobility Strategies in Late Imperial China: A Regional Systems Analysis', in Carol A. Smith (ed.) *Regional Analysis, vol. 1* (New York: Academic Press, 1976) p. 335.
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- 21 Myron L. Cohen, *House United, House Divided: The Chinese Family in Taiwan* (New York: Columbia University Press, 1976).
- 22 Myron L. Cohen, 'Cultural and Political Inventions in Modern China: The Case of the Chinese "Peasant"', *Daedalus*, vol. 122, no. 2 (spring 1993) pp. 153, 156.
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- 29 Interview in Tianjin, 8 June 1992.
- 30 Gong Xikui, 'Zhongguo xianxing huiji zhidu toushi' [A Perspective on China's Present Household Register System], *Shehui Kexue* [Social Science], no. 2 (1989); see also Michael Dutton, 'Editor's Introduction', in Zhang Qingwu, 'Basic Facts on the Household Registration System', *Chinese Economic Studies*, vol. 22, no. 1 (1988) p. 8; Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge MA: Harvard University Press, 1992) p. 24. In *ibid.*, p. 180, he lists as crucial elements of citizenship 'not only political rights but the unconditional right to enter and reside in the country, complete access to the labor market, and eligibility for the full range of welfare benefits'.
- 31 This comes from D. J. Solinger, *Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market* (Berkeley: University of California Press, 1999) p. 4.
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- 33 Bryan S. Turner, 'Contemporary Problems in the Theory of Citizenship', in Bryan S. Turner (ed.) *Citizenship and Social Theory* (London: Sage, 1993) pp. 1-18, p. 2.
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- 40 These impressions are ones I gleaned during several unpleasant encounters with such bosses at worksites, in Nanjing, 19 May 1992, and in Wuhan, 10 August 1994. Yuan Yue, *Laoren: Beijing liumin di zuzhihua zhuanxing yanjiu baogao* [The Exposed: A Research Report on the Condition of the Organization of Migrants in Beijing] (Beijing: Beijing Horizon Market Research and Analysis Company, 1995) p. 47, (cont.)
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- 42 My information about these latter two kinds of groupings comes mainly from Yuan Yue, *Laoren: Beijing liumin di zuzhihua zhuanxing yanjiu baogao* [The exposed: a research report on the condition of the organization of migrants in Beijing] (Beijing: Beijing Horizon Market Research and Analysis Company, 1995).
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- 45 Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago Press, 1994) pp. 3, 12.
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- 48 Pitman B. Potter, 'Riding the Tiger: Legitimacy and Legal Culture in Post-Mao China', *China Quarterly* no. 138 (1994) pp. 325-58; and Pitman B. Potter (ed.) *Domestic Law Reforms in Post-Mao China* (Armonk: M. E. Sharpe, 1994).
- 49 This is an argument in Stanley B. Lubman's book on the law, *Bird in a Cage: Legal Reform in China After Mao* (Stanford: Stanford University Press, 2000).
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- 56 Tang Xiaotian and Chen Donghu, 'Qiangxing jiu yu chengshi shehui fazhui' [Forced Residence Away from Home and Urban Society's Criminals], *Shehui*, no. 9 (1989) p. 20.
- 57 *Nanjing ribao* [Southern Daily] (Guangzhou) 14 December 1988, p. 2.
- 58 Ge Xiangxian and Qu Weiyang, *Zhongguo Mingyongchao: 'Mangliu' Zhuanxiangshu* [China's Tide of Labor: A Record of the True Facts about the 'Blind Floaters'] (Beijing: Chinese International Broadcasting Publishing Co., 1990) p. 103.
- 59 *FBIS*, 23 August 1988, p. 41, from Beijing Domestic Service, 19 August 1988.
- 60 The 'defensive' nature of these strikes bears out the point made in Elizabeth J. Perry, *Shanghai on Strike: The Politics of Chinese Labor* (Stanford: Stanford University Press, 1994) pp. 60ff, that unskilled workers (in that study, in late nineteenth- and early twentieth-century Shanghai) tend to strike over purely economic grievances, and do not raise political demands.
- 61 *FBIS*, 31 March 1994, p. 27, from *Eastern Express*, 31 March 1994, p. 9.
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- 65 *Ibid.*
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- 72 Cao Jingxing, 'A Good Trend or a Reason for Worry?', *China Focus*, vol. 5, no. 8 (August 1997) p. 8; Lin Lean Lim and Gyorgy Sziraczki, 'Employment, Social Security, and Enterprise Reforms in China', in Gregory K. Schoepfle (ed.) *Changes in China's Labor Market: Implications for the Future* (Washington DC: US Department of Labor, Bureau of International Labor Affairs, 1996) p. 53; and Summary of World Broadcasts, FE/3162 (22/7/98) p. G/5 (from *Xinhua*, 20 February 1998) for an official source.
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- 74 'Provisions on Employing Contract Workers from Among the Peasants by State-owned Enterprises', in *Zhonghua renmin gongheguo guomuyuan gongbao* [Bulletin of the State Council of the Chinese People's Republic] (Beijing) no. 28 (18 October 1991) pp. 1001-16.
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