

## Compte rendu

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par Mathieu Dupuis

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enterprises with different types of ownership and between migrant and non-migrant workers. They show the striking difference in working conditions between workers in the private sector, in SOEs and migrant workers. Chapter 9 touches upon working conditions in Vietnam. Dao reviews recent policy developments and labour market outcomes. The author underlines the role of corporate social responsibility (CSR) in advancing employment conditions among the subcontractors of multinational companies. He stresses the need for revision of the labour laws to cover employment security and equality issues.

In sum, this book is a complex picture of changes in employment conditions that do not fit well into the stereotypical vision of the world of work in the context of globalization. For example, one can learn how countries that used to be the key beneficiaries of globalization are becoming the “victims” of its next wave. The book does not suggest that poor employment conditions allowing stronger competition are necessary preconditions for globalization. Rather, the book raises questions with policy implications. However it does not offer any satisfactory answers due mostly to the lack of reliable data mentioned above. That’s why new research is needed to allow a deeper understanding of the world of work in Asia.

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### **Understanding Labour and Employment Law in China**

By Ronald C. Brown, New York: Cambridge University Press, 2010, 332 pp., ISBN 978-0-521-19148-7.

Since its rapid transition from a planned economy to a socialist market economy started in the late 1970s, China’s actions have raised numerous questions regarding labour and social rights as well as the capacity of the Communist Party to justify and renew itself. Throughout this transition, China has repositioned its economic development from being predominantly based on agriculture and State-owned Enterprises (SOEs), to a labour-intensive economy specializing in industrial sectors such as textiles, electronics

and mining, making it the new “workshop of the world.” This fantastic development raised issues not only concerning the competitive pressures it exerts on the global economy, but also regarding the rights of Chinese workers who have, in some cases, responded with violent protests. This led China’s political powers to implement a series of reforms, beginning with the 1994 Labour Law, that progressively gave Chinese workers an almost complete set of rights, remedies and forums to use regarding labour contracts, labour disputes and collective bargaining. Ronald C. Brown’s book tries to make sense of this series of reforms and its main objectives are trying to understand workplace regulations and the legal environment in China. Specifically, the book focuses on the recent developments of the labour and employment laws put in place between 1994 and 2008 and centres on the following question: “With the adoption of a succession of new labour laws in the country, how are China’s workplaces regulated?”

Brown’s book is divided into seven parts. The first part, “Understanding China’s regulation of the workplace,” introduces us to China’s labour and employment law developments and to the architecture of the juridical environment. Brown argues that these new forms of regulation are a result of both internal and external pressures. Until now, it has had an uneven impact on Chinese workers: regional differences tend to be strong and the rapid economic transition has created new “classes” of workers, such as the migrant worker and his counterpart, the urban worker. Furthermore, the implementation and enforcement of various laws and settlements is subject to regional differences. Even though the Ministry of Human Resources and Social Security – a so-called “Super Ministry” – is in charge of the supervision of social security and legislation for urban, rural and government workers, a multitude of forums are devoted to the enforcement of labour regulations (local and regional bureaus, Supreme People’s Court, Labour Arbitration Commission, etc). Therefore, the regulations depend on regional interpretations and are subject to major divergences (p. 12).

The second part of the book deals with employment relationships legislation in China. The legal definition of the employee/employer

"couple" arises from the 1994 Labour Law and has been substantially clarified in subsequent laws. The term enterprise refers to organizations engaged in production, servicing and distribution while the term state organization refers to the government and its agencies (pp. 25-26). Similarly, the term employee/worker is explicitly defined in the Labour Law. The 2001 Trade Union Law describes the term as an individual who performs physical or mental work in enterprises, institutions or government authorities within Chinese territory and who earns their living from wages or salaries (p. 29). There is no distinction between contingent or temporary employees and regular employees. However, part-timers are excluded from the obligation to have a written contract. Migrant workers must enjoy labour rights equal to those of urban workers even though some local dispositions exclude migrants from certain privileges. Since the 2008 Labour Contract Law (LCL), written individual employment contracts are mandatory. This new labour law provide a significant power of enforcement over employers that refuse to give contracts to vulnerable groups. Contracts must also specify: duration of employment, wage rates, job descriptions, hours worked, etc. As a consequence, labour disputes have risen significantly since 2008.

The LCL also reaffirmed the right to collective negotiations. Labour unions can engage in negotiations at the enterprise level, county level, or lower, and also across industrial or regional sectors. In addition to the LCL, collective labour contracts and collective negotiations are governed by a series of laws including the 2001 Trade Union Law and the 2004 Collective Contract Provisions. The only legal trade union in China is the All-China Federation of Trade Union (ACFTU) with which every local union must be affiliated. Brown argues that the purpose and role of the ACFTU have been major issues in China. The union is a quasi-government organization by nature and must further Communist Party "doctrine," as well as work to promote economic development, employers' interests and labour protection. Although the ACFTU recently unionized Foreign-invested Enterprises (FIEs), questions arise regarding the capacity of the union to represent workers' interests

– especially in enterprises where union representatives are also managers. Another mechanism for workers' representation also exists, the Workers' Congresses. Present in SOEs, but not so much in FIEs, the functions of the Workers' Congresses include reviewing and approving (or disapproving) of all management plans and collective agreements signed in the enterprise. Brown carefully analyses this mechanism, arguing that the post-1979 transition has significantly reduced its usefulness (p. 46).

The third, fourth and fifth parts of the book describe hiring and employment practices, working conditions, wages and hours, and employee benefits legislation in China, respectively. The 2008 Employment Promotion Law (EPL) is a special regulation concerning requirements for the fair treatment of employees. Also, the 1994 Labour Law and the more recent LCL have promoted dispositions against discrimination based on gender, race, religion, ethnic groups and "social origin." A major issue with the introduction of the LCL in 2008 has been the protection of the migrant worker status and that, in theory at least, the law has given workers with this status access to equal employment opportunities (p. 87). This "class" – mainly composed of young women coming from rural regions – is present in the low-wage sectors of the Special Economic Zones and is vulnerable to discrimination.

In response to a growing number of accidents, health and safety legislation was implemented. The 2002 Work Safety Law introduced special dispositions for the mining and construction sectors as well as for the specific issues of women in the workforce. The State Administration of Work Safety is responsible for the enforcement of the law and local unions have some supervisory responsibilities. In 2004, the Chinese government introduced a work-related injury insurance program financed by the employers in accordance to "levels of dangerousness." Also, a regulation concerning minimum wages was instituted in 2004. The 1994 Labour Law put a comprehensive scheme in place to deal with the number of hours worked, employee leave (annual, medical, maternity), holidays, overtime and wages, while the LCL included these requirements in an employee's contract. Unemployment legislation is also present in

China but, according to Brown, it only covers about 15 per cent of the workforce. In fact, this insurance, financed by both employees and employers, is restricted to urban workers in a certain age group. There is also a pension plan scheme financed by both employers and employees, which together with supplementary pension plans and personal savings, form the “three-tier” structure of pension benefits (p. 140).

The sixth part of the book, “Discipline and Termination under Employment Agreements,” describes the legal environment relating to employers’ work rules, discipline, termination, restrictive covenants and the mediation, arbitration and litigation system. In theory, the work rules must be discussed with the Workers’ Congresses. However, before the implementation of the LCL, these rules were subject to unilateral decisions and abuse by employers (p. 152). In China, there are certain criteria for termination and severance pay. Generally, the employer must give the employee 30 days’ notice or one month of wages and, under the LCL regime, must inform the labour union of the unilateral decision to terminate employment. In addition, employees can be held liable for any damages inflicted on the employer following termination. Restrictive clauses also exist concerning employee loyalty and the protection of employers’ interests. Generally, these employment contract clauses apply to senior managers and, notably, cover confidentiality and competition issues. Finally, disputes in China are resolved by the three-step process of mediation, arbitration and litigation that originates from the 2008 Labour Mediation and Arbitration Law (LMA) – in addition to several preceding laws. Mediation is a voluntary process that takes place inside the firm, unlike the arbitration system governed by the Labour Arbitration Commission, which is an independent institution. The 2008 LMA seeks “finality” through the use of the arbitration system, though there are certain provisions in place for litigation and enforcement by courts. As Brown affirms, arbitration cases are generally won by employees and a sharp decline of collective complaints is notable (p. 169).

The seventh and final part of the book, “Rights, Remedies and Multiple Forums,”

presents working labour and employment law illustrations and illustrative – individual and collective – contracts. The illustrative cases are: labour arbitration, restrictive covenants, and contract (individual and collective) disputes. Brown’s book also includes a rich appendix of the different labour and employment laws currently in effect in China.

Overall, Brown offers a good summary of the legal environment relating to labour and employment laws in China. The book is comprehensive, well structured, well presented and is certainly a great contribution to understanding how China’s workplaces are regulated. However, with the exception of certain passages, the book lacks a broader analysis of the implications and consequences that this series of reforms has created. Although Brown offers an almost complete description of the laws and settlements, after reading the book, several questions arise: Have working conditions improved in China since these reforms were implemented? Have the wages and conditions of migrant workers increased? Why are there still protests in Chinese workplaces? What are the consequences for the Chinese economy? As Wang et al. (2009) argue, the success of the 2008 LCL is doubtful, both economically and politically. Employers have used various strategies to bypass the LCL, close some labour-intensive operations and move their production capacities to Vietnam, Burma or Bangladesh. Also, even with the recent wave of unionization, the ACFTU’s capacity to represent workers is questionable. These consequences have led some workers to protest independently and thus demonstrate their scepticism towards these reforms.

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### **Gender and the Contours of Precarious Employment**

Sous la direction de Leah F. Vosko, Martha MacDonald et Iain Campbell, London; New York : Routledge, 2009, 283 p., ISBN 978-0-415-49454-0.

L’évolution du marché du travail dans la plupart des pays industrialisés a été marquée ces dernières années par des transformations sectorielles (un déplacement de l’industrie vers le