Perspectives on the regulation of working conditions in times of globalization

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2 Gaining a Foothold: Working Conditions Law in Globalization

Abstract

In the face of warnings from economists, tenable reasons are needed for regulating the labor market and workplaces in a globalized world. This chapter is devoted to examining the vitality of working conditions law on three levels. Firstly, in answering the question of why regulations on working conditions should not be discarded, the author puts forward an explanation, conquering the vulnerabilities of the mainstream philosophical justifications. Secondly, by referring to a wide range of economic studies, she points out the cursoriness of the standpoint that regulating working conditions is bound to backfire. Finally, it is raised that an approach that places stress on the coordination, rather than the prioritization, of economic efficiency and labor protection may enable working conditions legislation to remain viable in today's globalization.

Key Words: Working conditions law; Globalization; Competitiveness; Employment

1 Introduction

Keen global competition has pushed working conditions legislation to the forefront. In the presence of strong market forces, is it possible to make effective law on working conditions? If the answer is affirmative, how can the conflict between the increase of labor costs and enterprise desire for competitive advantages be addressed? There are contending viewpoints about the issue under discussion. In the eye of the critics, regulations cannot improve working conditions as planned, but in effect cause a general deterioration. For instance, according to Flanagan (2006), the regulatory costs may induce employers to slash formal employment and simultaneously to increase the exploitation of informal workers who are not under the legal roof, so that the laborers who are really disadvantaged (e.g., young workers and the unskilled) are harmed in the end. In addition, working conditions regulations inappropriately lessen the international competitive power of advanced economies and prevent those relying on cheap labor from surviving and growing (Bhagwati 1995; Heintz 2002).The proponents, represented by Heymann and Earle (2010), hold that mandating high standards on domestic working conditions can promote the sustainable growth rather than impeding the development of enterprises within a country.

In a way that corresponds to the academic debates, policymakers of different countries take sharply divergent views on the orientation of working conditions legislation. The EU, the US and China – the three most important economies of the world – are the best examples. The EU, an economy with social values and goals at its core, features comprehensive and well-implemented legislation on working conditions. The strategic intention is to make the European labor market a preferred place to work, which then provides a robust impetus for improving productivity and competitive power of the economy (European Commission 2014). The US exhibits a different model, however. Attaching great importance to market flexibility, and being alert to any impairment to the national competitive advantages, the American legislature has opted for limited and cautious legislation. It mandates strict standards on the central aspects of working conditions, for instance OSH, while applying extremely low requirements to the 'nice-to-have' aspects, such as paid sick leave and paid maternity leave, both of which are considered to be indispensable and fundamental in the remaining parts of the world, though. Compared with the EU and the US, China has displayed a somewhat ambivalent attitude. Social unrest arising from the inadequacy of labor protection hampers the healthy growth of the Chinese economy, and needs to be appeased by upgraded legislation. Moreover, international criticism of developing countries' responsibility for the downwards spiral in global working conditions, together with the trade sanctions and preferential measures adopted by developed countries, are forcing China to improve its domestic working conditions by all possible means. On the other hand, there is a tacit fear that the increased labor costs as a consequence of huge improvements in Chinese working conditions will cause a loss of millions of

jobs and diminish the cheap labor-based competitiveness. Hence, although China has made striking progress on labor legislation in recent decades, some noticeable tolerance – especially towards foreign investors – can be perceived in the legal enforcement (*Associated Press* June 29, 2007).

Confronted with the above issues in both theory and practice, this chapter makes the following levels of observations. Firstly, it looks into the (to a large extent philosophical) foundation of mandatory constraints on working conditions. This helps explain the fact that despite the wish of enterprises to acquire competitive advantages in labor costs no country has abolished domestic legislation on working conditions. The second layer returns to a discussion of the main economic arguments against labor regulation, given that economic consequences will in turn affect the realization of labor law values, or, to put it another way, that the culture and discourse of labor law is impossibly anti-consequentialist. The primary consideration behind the first two layers of discussions is that the existence of working conditions law will be justified if it has intrinsic legitimacy and no decided harm to the economy. Still, necessity and harmlessness are not sufficient for ensuring the viability of working conditions law. Based on identifying the transformation of the global competition mechanisms, the last section of this chapter provides a tentative analysis of what can be a real foothold of working conditions legislation nowadays.

2 The Intrinsic Foundation

2.1 Mainstream Approaches with Vulnerabilities

So far there have been two primary approaches to arguing for the legitimacy of legal constraints on working conditions. One is based on the instrumental values of working conditions law, and the other classifies employee right to a certain level of working conditions as a fundamental human right. Both can be called into question.

In the first approach, working conditions legislation is justified by the contribution to market efficiency, welfare maximization, social equity, individual capacities, or other values. Nonetheless, this approach is put at risk when there are alternative measures for promoting these values, or when there are important social values arguing against labor regulation. For instance, working conditions law might be capable of preventing some market failures and protecting the interests of individuals who do not make a risk assessment in concluding a contract. However, in the view of anti-paternalists, these merits are not worth pursuing at the expense of the autonomy and liberty of the labor market. Rather, employers and employees should be left free to offer and accept particular working conditions, since they are adults who know their own preferences (see Collins 2011). Analogously, the argument that working conditions law improves the position of disadvantaged social members might be challenged by asking

why such a goal cannot be reached by taxation and social welfare measures, which are less interfering and leave labor market more freedom to create wealth (see Collins 2011).

The second approach must envisage the difficulty of including all rights relevant to working conditions in the framework of human rights, which, according to Griffin (2008), should be natural, universal and urgent, owned by human beings because of their personhood and humanity, and characterized by peremptory force. The right to a certain level of working conditions merely covers the employed, and varies with the policy orientation and financial condition of a country, whereas human rights apply to everyone, and represent timeless and borderless fundamental needs of human beings. Furthermore, the interests maintained by working conditions law are important, but not as imperative as the values enshrined in human rights discourse, such as liberty, security and subsistence (Risse 2009). Although the rules on maximum working hours and OSH overlap with the protection of human rights with regard to securing individuals' life and health, most other regulations on working conditions do not carry such compelling moral weight.

2.2 An Alternative Interpretation Inspired by Kant

Treating individuals as ends rather than means, a significant idea of Kantianism, possibly provides a starting point for another construction, one managing to avoid the vulnerabilities of the above approaches. It is important to note here that seeking help from Kantian theories does not mean reverting to the arguments on human rights.

Kant clearly states that *the human being is his own final end*, at the very beginning of his *Anthropology from a Pragmatic Point of View* (See Kant 1798, translated by Louden 2006: 3). This opinion accords with his philosophy of law, placing great emphasis on people. According to Kant, the law is made by men with inherent free will, in order that the freedom and actions of all men may coexist in harmony; the ultimate goal of the law is to maintain men's freedom and all derived rights (see Kant 1790). To put it simply, the law is made for men, not men for the law. This central tenet may lay the foundation for the justification of working conditions legislation.

To start with, the law should guard people's freedom to the largest extent, as long as the actions of an individual do not hinder the freedom of others (see Kant 1790). For the working population, a rational legal system is supposed to regulate working conditions that are essential for the maintenance of life, health, capacity, dignity, and other elements of freedom. Even though other means may serve similar purposes, the absence of legislation on working conditions would violate the original basis and the paramount objective of the law. Moreover, only the law can protect the all-round freedom of individuals. Other means, such as taxation and social welfare instruments, perhaps make up for low wages, help distribute wealth, and improve the financial capacity of individuals to develop themselves. How-

ever, an employee cannot finally enjoy these benefits if working 'around the clock' or deprived of life or health by a hazardous job.

One may further wonder what would happen if other values went against the regulation of the labor market and workplaces. Indeed, based on the fundamental principle that people are the final ends, rational legislators should take into account the way in which each value relates to the freedom of individuals, and then make a balanced scheme. The liberty and autonomy of the labor market is the best-recognized value that opposes mandatory protection for workers. Its logic is that a free man should be allowed to make his own choices rather than being told what to do, and, more importantly, that more dynamism and momentum is injected into the economy when social members are left free to make efficient decisions independently. When economic prosperity makes the 'pie' big enough to share, individuals will not be obstructed by unmet material needs on the road to freedom. Nevertheless, this ratiocination has been disproved in practice. Because of information asymmetry, a person in search of employment may not be aware of the actual working conditions of a job, and thus may have trouble in making a truly efficient decision in his or her own interests. Besides, in an intensely competitive labor market, a person who has no substantial freedom to make a choice is very likely to accept the only available job, even one with unpleasant working conditions. The former situation can be compared to that a person does not realize that a bridge in front is unsafe, and in the latter scenario the person has to cross the river, and an unsafe bridge is the only route. Both cases demand well-intentioned interference: impeding the person who is ignorant of the danger from crossing the unsafe bridge, or reinforcing the bridge to reduce the danger. Such interference does not constitute paternalism, but protects the liberty of individuals (see Spector 2006). What legislators need to work out is the amount of regulations and the forms that they should take; legislative interventions aimed at helping people achieve genuine liberty and autonomy cannot go so far as to cause substantial detriment to the vigor of the labor market.

Besides, justifying working conditions law grounded on the idea that individuals are the ends for the law does not have to invoke human rights. Various conditions are required to promote the freedom of the working population, not only the protection of liberty, dignity, safety, and health, but also material support and sufficient time for family life and self-development. It is the need for these conditions to be met, instead of the imperative force of universal human rights that calls for legislation on working conditions. For instance, workers are entitled to a paid annual holiday in some countries, not because the right to a paid holiday is regarded as a human right with peremptory force, but because it has been perceived that people need to be free of the shackles of work to revive their weary minds from time to time. Labor rights *per se* do not necessarily carry the same moral weight as human rights.

Meanwhile, legal standards for working conditions do not feature the invariability or infrangibility of human rights protection. The conditions

that need to be met to promote working people's (negative and positive) freedom vary with the form of work and over time, and the level of labor protection that can be ultimately provided usually relates to a particular society's fiscal capacity.

Lastly, justifying labor protection does not rely on the universal applicability of human rights. The nature of people being the ends is that the law not only addresses problems shared by the whole society, but also cares about the requirements of a part of members of the society. Labor law conforms to this essence by taking account of the realistic needs of the working population.

3 Doubting the Economists' Doubts

3.1 Making No difference? Examples from China and the US

Heymann and Earle (2010:70) generalize about two major arguments against 'getting better labor laws passed'. The first argument questions the usefulness of labor regulations radically, contending that the necessary resources for enforcement are not always available in developing countries, and that developed economies can perform just as well without labor law (see Heymann and Earle 2010:70).

The stance taken by the author of this book is as following: It is true that the enactment of labor law is the result of long legal and political battles, and the enforcement depends on the availability of the requisite resources. Nonetheless, it is irrational to deduce that labor legislation has little practical influence in developing countries whose wealth and resources may not be on a par with those of their developed counterparts, or that advanced economies would voluntarily offer superior working conditions in the absence of legal requirements.

Take the Chinese legislation on minimum wages, for example. With the world's largest labor force (773 million)[2] and the second largest number of people in poverty (approximately 99 million),[3] China faces huge challenges stemming from having insufficient manpower and material and financial resources to enforce the labor protection laws. In recent decades, the rather low minimum wage standards of this country have become a spur for intensified social contradictions. Low minimum wages give enterprises more room to exploit low-paid workers who may already have suffered from wage arrears or illegal wage reductions (Zheng 2007). Simultaneously, the slow growth in minimum wages cannot match the soaring prices, leaving many working families struggling in poverty (Zhao 2013). Against this

2 See China Labour Statistical Yearbook 2015, available at: http://tongji.cnki.net/kns55/Navi/YearBook.aspx?id=N2016030140&floor=1### (accessed 1 April 2017).

3 See the Overview of The World Bank, http://www.worldbank.org/en/country/china/overview (accessed 1 December 2015).

backdrop, the State Council is refocusing its efforts on the establishment of reasonable standards for minimum wages, and it perceives this as one of the main approaches to a more fair and efficient distribution of national income. The central government has set a goal of raising the minimum wages in most areas of China to 40 percent [4]of the local median monthly earnings (State Council of China 2013).

A favorable condition for the realization of this objective is the adjustment system instituted by the *Labor Law of 1994* and the *Provisions on Minimum Wages of 2004*. The former empowers provincial, autonomous regional and municipal people's governments to lay down local minimum wages, with comprehensive references to the lowest living costs of workers themselves and the number of family members they support, the local average wage, productivity, the employment situation and the level of economic development. The latter supplements this by providing that minimum wages should be adjusted promptly when there are variations in the above factors, and that the adjustments must be made at least biennially. In accordance with these provisions, thirty-one provincial administrative divisions, as of 2014, have set up local mechanisms for adjusting minimum wages.[5] In response to the appeal of the central government, most provinces have made an effort to propose substantial rises in minimum wages in the last few years. Data disclosed by the Ministry of Human Resources and Social Security shows that minimum wages rose by an average of 22 percent over 24 provinces in 2011 and by an average of 20.2 percent over 25 provinces in 2012; the years 2013 and 2014 respectively saw average increases of 17 percent over 27 provinces and 14 percent over 19 provinces (CLSSN 2014).

The above information indicates that, even in a country with insufficient resources, the law does not exist in name only. There might be no guarantee of full implementation, but the law constructs the normative premise on which political initiatives are based. More importantly, when legislation moves faster than social realities, laws on paper will become motivators of social reforms, by shaping political debates and public attitudes, making possible court action for enforcement, and driving the follow-through by the government (Heymann and Earle 2010:xii).

A counter-example to falsify the proposition that affluent countries will perform equally well in offering decent working conditions when there is no corresponding legal obligation for employers to do so is the well-known and oft-cited absence of federal legal requirements for paid sick leave in

4 Setting a minimum wage equivalent to 40 percent of the local median wage is indeed far from being able to meet the standards established by the international economic research, which determines that two-thirds and fifty percent of the local median wage are respectively the 'low-pay' and 'poverty' thresholds. However, '40 percent' is a rational objective for China to accomplish at the present stage, considering a number of EU developed countries have not yet achieved this goal(see Chapter 4).

5 See the transcript of the Press Conference of Q2 2014 of the Ministry of Human Resources and Social Security of the People's Republic of China. Available at: http://www.mohrss.gov.cn/gkml/xxgk/201408/t20140812_138218.htm (accessed 1 December 2015).

the US. Paid sick leave is provided in nearly 150 countries globally, but the US only guarantees unpaid leave for serious illnesses under the Family Medical Leave Act of 1993 (FMLA)[6], and this limited benefit does not cover all workers (Heymann, Earle, and Hayes 2007). Consequently, quite a high number of workers, especially vulnerable ones in the private sector, are not eligible for paid sick days when they are ill or injured. The US Bureau of Labor Statistics disclosed in 2014 that paid sick leave was available to 61 percent of workers in private industry and 89 percent of state and local government workers. Within private industry, only 24 percent of part-time workers were offered paid sick leave, compared with 74 percent of full-time workers. A similar gap existed among government workers – 98 percent of full-time workers versus 41 percent of part-time workers had access to paid sick leave. There was also variation in access to paid sick leave depending on the size of the establishment – 52 percent of workers in small establishments (with fewer than 100 employees) and 72 percent in medium and large establishments (with 100 employees or more) were given paid sick leave. Another trend was that low-wage workers were much less likely to have paid sick leave – only 30 percent of employees whose wages lay in the lowest 25 percent had paid sick leave, in contrast with 84 percent of workers in the highest 25 percent (US Bureau of Labor Statistics 2014).

The examples from China and the US suggest that there is no inherent causality between an abundance of social resources and the quality of labor protection. In both affluent and less-affluent economies, enterprises are, by their nature, profit-driven. When they are not legally bound to offer decent working conditions, a race to the bottom (rather than to the top) is likely to take place. Proper legislation on working conditions has the potential to curb vicious competition in this regard.

3.2 Harming Competitive Power? Incentives to Provide Good Working Conditions

In accordance with Heymann and Earle (2010:70), the second argument against the implementation of high labor standards is that mandating decent working conditions leads to lower competitive power and higher unemployment. As a matter of fact, this has been a common concern over the whole world. Laggard economies surviving on cheap labor dread to think about implementing labor standards as high as some of their developed competitors, and advanced countries that have started from a high baseline may fear that any further labor costs imposed on domestic enterprises will be 'the last straw'.

The above proposition that mandating decent working conditions is bound to diminish the competitive power and employment rate of an economy has contradicted the reality, however. Firstly, the conjectured

6 Family and Medical Leave Act, Public Law 103-3, codified as 29 U.S.C.A. § 2601-2654.

tradeoff between decent working conditions and low competitive power is questionable. Heymann and Earle themselves are the first researchers to look worldwide at whether countries suffer from a lack of competitiveness because of mandating good working conditions. It is found that among the fifteen countries with the highest competitiveness,[7] namely Australia, Austria, Canada, Denmark, Finland, Germany, Iceland, Japan, Netherlands, Norway, Singapore, Sweden, Switzerland, the United Kingdom (hereafter 'UK') and the US, the overwhelming majority go beyond basic labor standards (e.g., a prohibition on forced labor, child labor, and discrimination, and permission for freedom of association) and provide good working conditions, including an overtime premium, paid annual leave, paid sick leave, paid maternity/paternity leave, and even breastfeeding breaks (Heymann and Earle 2010: 55-62).

At the center of the argument that high labor standards will reduce competitiveness is the *priori* conviction that squeezing labor costs is the key to winning in commercial rivalries, which, to some degree, is true under the traditional model of competition. In an era of deepening economic globalization, however, the simple equation between cheap labor and strong competitiveness is becoming unworkable. The competitive power of an enterprise does not lie in labor costs only, but rests with a series of factors such as technological level, innovation capability, organizational efficiency, staff quality, popularity and reputation, and adaptability to market volatility.

In fact, for contestants striving for higher competitiveness amid fierce global competition, there are both internal and external incentives to provide good working conditions. For a start, decent working conditions contribute to the internal growth of an economy. The improvement in OSH alone can produce enormous economic value, given that work-related injuries and diseases usually result in astronomical losses[8] for the whole of society, in both direct costs[9] and a string of consequential costs[10] (ILO

7 These most competitive countries are chosen from the twenty countries with the highest competitiveness rankings in at least eight of the ten years from 1999 to 2008 according to the Global Competitiveness Report of the World Economic Forum (Heymann and Earle 2010: 55).

8 The ILO estimates that occupational diseases and injuries cost approximately 4 percent of annual global GDP (ILO 2009). The following data from diverse sources roughly show the loss to various countries: the total costs of hazardous working conditions in the US reached 1.8 percent of GDP, or US$250 billion, in 2007 (Leigh 2011); the corresponding loss in the UK was £13.9 billion for 2009/10, accounting for nearly 1 percent of GDP (ILO 2012); Australia incurred a loss of AUD 60.6 billion (4.8% of GDP) for 2008/9 (Safe Work Australia 2012); Singapore lost SGD 10.45 billion (3.2% of GDP) in 2011 (WSH Institute 2013).

9 For instance, payments made by enterprises to diseased or injured workers, and medical expenses.

10 For example, downtime, collateral damage to equipment and materials, negative effects on co-workers, compensatory overstaffing, the reduced productivity of 'presenteeism' (ill workers attending work), intense scrutiny, and additional recruitments.

2012). It has been borne out that the OSH level has a positive correlation with national competitiveness, and that firm-level investment in OSH is an efficacious and high-return strategy for achieving higher productivity and other economic objectives (ILO 2006).

Analogously, paid sick leave is found to reduce losses for employers by preventing the spread of diseases and other adverse effects on productivity (Chatterji and Tilley 2002; Goetzel et al. 2004; Lovell 2004). Female workers who are granted paid maternity leave show a stronger inclination to return to the previous jobs after childbirth, greatly reducing employee turnover and the costs incurred by the recruitment and training of new employees (Waldfogel, Higuchi, and Abe 1999; Waldfogel 1998). Workers are more productive and efficient with an appropriate length of the working week, whereas markedly extended working hours prove to lower productivity (Shepard and Clifton 2000; Shimizu et al. 2004; Thomas and Raynar 1997).

Extra benefits may arise out of the combination of different regulations. An illustration is the contribution of working time limits to OSH. A positive relation between overtime work and the incidence of occupational accidents, injuries and some illnesses has proven correct by a great deal of studies (e.g., Dembe et al. 2005; Ettner and Grzywacz 2001; Folkard and Lombardi 2006; Hayashi et al. 1996; Macedo and Silva 2005; Shields 2000). It thus becomes increasingly significant to establish reasonable working schedules among enterprises in order to bring down the occurrence rates of work-related accidents and diseases. The overall costs to the society, employers, workers, and other stakeholders can be reduced accordingly. In a similar vein, workplaces characterized by a high OSH level can develop a healthier and fitter labor force, in return contributing to a reduction of the various costs of paid (unpaid) sick leave (Ahonen 2010).

In addition, there are external stimuli for providing good working conditions. First, because of consumer pressure, multinational companies are showing growing concern for Corporate Social Responsibility (CSR) and reputations, and hence prefer cooperative partners who offer humane or at least acceptable working conditions. The story of Foxconn (also known by the name of the parent company, Hon Hai) is illustrative. As the world's largest contract manufacturer and Apple Corporation's key supplier, Foxconn owns notorious sweatshops in China, and has been accused of violating labor rights for many years due to the horrible working conditions, such as the overcrowded dormitories run by military-like security forces, low wages, extremely long working hours and no compensation for overtime work (*Facing Finance* 2015). In 2010, a spate of suicides of migrant workers in Foxconn's Shenzhen industrial park triggered a global scandal about the 'bloody' production of Apple electronics (*The Guardian* May 27, 2010). Since then, Apple Corporation has been under fire for the lax supervision of the key supplier. To save its own global reputation, Apple asked the Fair Labor Association (FLA) to carry out in-depth investigations into the working conditions in Foxconn factories, and held critical meetings with the top executives of the supplier to force immediate and effective improvements

(*Apple Insider* December 27, 2012). As Apple is too big a client to lose, Foxconn has no choice but to commit itself to wide-ranging reform, including a sharp increase in wages and a significant curtailment of working hours (*New York Times* December 26, 2012). A tracking report by the FLA suggests that Foxconn has greatly improved its working conditions, although many chronic problems remain for the future (*Fair Labor Association* December 12, 2013).

Simultaneously, there is an evident trend towards the incorporation of labor provisions into trade arrangements by open economies. As of 2009, a total of thirty-seven North-South and South-South trade agreements had included conditional or promotional labor provisions. It is a steep numerical rise from the 1990 position (Ebert and Posthuma 2011). Besides, both the US and the EU have introduced conditional labor provisions into their Generalized System of Preferences (GSP), and similar provisions exist in other unilateral instruments of the US, such as the Caribbean Basin Recovery Act (1990), the Andean Trade Preference Act (1991) and the African Growth and Opportunity Act (2000). Promotional labor provisions in trade agreements provide for some rewards (e.g., extra quotas for market access, knowledge sharing and technical or financial assistance), in order to encourage the involved parties to comply with certain labor standards or to improve working conditions. In comparison, the mechanism of conditional labor provisions is more like a carrot and stick game: if the parties or recipient countries follow certain labor standards (e.g., the ILO core labor standards referred to in the EU GSP), or take steps to protect worker rights (which is required by the US GSP legislation, for example), they will be eligible for lower tariffs or completely duty-free access; otherwise, they will probably face the elimination of tariff preferences and sanctions that may or may not be related to trade, such as huge monetary fines, the reduction of technical assistance, or the suspension of cooperative activities (Ebert and Posthuma 2011).

In short, the contention that regulations designed to improve working conditions harm competitiveness disagrees with the reality. Instead, the amelioration of working conditions is a part of the competitive strategy in the current phase of globalization. While some developing economies have achieved economic growth in the past few decades on the basis of the vast supply of cheap labor and the excessive consumption of natural resources, only higher labor standards and decent working conditions can foster the lasting competitiveness of enterprises and countries.

3.3 Reducing Employment? The Connection Remains Unclear

The European unemployment crisis of the 1980s and 1990s is frequently cited as evidence of the link between generous labor protection and unemployment (Heymann and Earle 2010: 54). Yet, by reviewing a fair number of empirical studies, some researchers (e.g., Baker et al. 2003; Blank and Freeman 1994) find that numerous factors may cause a rise in unemployment,

and that the adverse effects of labor policies and institutions on employment is far from being solidly asserted. Gregg and Manning (1997) make the following comments: 1) plenty of econometric work that appears to be successful in explaining the changes in unemployment across countries and over time builds implausible models and uses dummy variables, and therefore, fails to provide convincing evidence of the relationship between unemployment and increased labor protection. 2) Making simple comparisons across countries to judge labor market performance is unreasonable too, since the results could be very sensitive to the measures used. 3) Conventional analyses that emphasize the disemployment effects of labor market regulations only see how employers' motivation to hire workers influences the employment rate, but overlook that job attractiveness to the labor supply side also matters considerably.

Apart from estimates at the overall level, studies that assess the employment effects of specific working conditions regulations have achieved very mixed conclusions. A causal relationship between better working conditions and lower employment cannot be deduced from these either. Above all, great controversy exists in the burgeoning discussion of the influence of minimum wages. The proponents contend that moderate hikes in minimum wages do not impinge on the employment rate (Card and Krueger 1995: 389-90; Freeman 1994), and that the elasticity of the labor market is likely to 'absorb minimum wage increases' (Miller 2008: 274). The growth in the minimum wage just offsets the value lost in persistent inflation, and hence it cannot possibly lower businesses' profits or induce disemployment (Batra 2005: 184-9). In contrast, the opponents of mandated minimum wages are firmly convinced that an increase in minimum wages is not cost-free – businesses must make adjustments to adapt to the higher labor costs, and thus low-skilled workers, young people and minorities ultimately suffer, whom the policy intends to help indeed (Wilson 2012).

According to a review of the earlier literature, amongst more than 100 minimum wage studies published since the 1990s when the new minimum wage research began to thrive, nearly two-thirds endorse the negative employment effects of minimum wages, whereas only eight give a relatively consistent indication of positive employment effects. Among the 33 most reliable estimates, up to 28 (85 percent) point to negative employment effects (Neumark and Wascher 2007).

Nevertheless, the predominance of estimates that prove the disemployment effects of minimum wages does not of itself corroborate the negative relation between minimum wages and employment. Firstly, while more studies claim that minimum wages have negative employment effects, not all of them provide statistically significant evidence. On the contrary, some studies with the minority conclusion present very persuasive data to show that minimum wages have a non-negative influence on the employment rate (see Neumark and Wascher 2007). Secondly, jumping out of the research mode of most orthodox studies that concentrate on how minimum wages affect the employment rate, a small set of studies reveal that in some

areas a reduction in the hiring rate as a result of minimum wage increases is accompanied by a distinct decline in the dismissal rate (e.g., Brochu and Green 2012; Dube, Lester, and Reich 2012; Portugal and Cardoso 2006). It means that an increase in the minimum wage may reduce the chance that an unemployed person will find work but also reduce the probability that a job will end. This finding inspires a reflection on the question of whether it is problematic to describe the employment effects of minimum wages simply as 'negative' or 'positive'. Last but not least, the relevant literature has probably been contaminated by publication selection bias. In other words, the genuine negative effects of minimum wages on employment are not necessarily as large as has been commonly reported by the majority of the existing studies. By applying recently developed meta-analysis methods to 64 US minimum wage studies, Doucouliagos and Stanley (2009) found that once publication selection bias was removed, little or no evidence for the negative employment effects of minimum wages would remain.

Similarly, there are as yet no conclusive results about the employment effects of overtime regulations. On the hypothesis that less work for some will create more jobs for others, some scholars praise the reduction of working time as an instrument against unemployment. However, this verdict has been accused of ignoring the consequential increases in labor costs and of resting on assumptions that lack empirical support (Börsch-Supan 1999). A few other theoretical studies (e.g., Anxo 1998, citing Federal Planning Bureau 1997; Oaxaca 2014) take into account several complex scenarios, and arrive at the conclusion that a general reduction in working time has employment-boosting potential only when the resulting increase in wage costs is suppressed; otherwise, shortened working time tends to influence employment negatively. Original wage costs will be maintained if there is no wage compensation (or increase in hourly wage rates), or if the wage compensation is diluted by an accompanying reduction in production costs, which may come from a re-organization of production methods (Anxo 1998), a direct increase in labor productivity that does not replace employees (Zachmann 1986), or supporting policies aimed at reducing employers' charges (Anxo 1998, citing Federal Planning Bureau 1997). In terms of empirical evidence, the data from different countries exhibit rather contradictory results: positive employment effects of reducing working hours were detected in Germany (Franz and König 1986) and Finland (Holm and Kiander 1993), whereas non-positive influences were found in Japan (Brunello 1989), Germany (Hunt 1999), Canada (Skuterud 2007) and France (Chemin and Wasmer 2009; Crépon and Kramarz 2002). It therefore seems too simplistic to draw a conclusion that overtime regulations influence employment either favorably or adversely.

The employment effects of paid sick leave are not less debatable. However, in the literature, there is more immediate and convincing evidence pointing to the non-negative employment effects of paid sick leave. For instance, in a comparative study of employment levels in San Francisco – the first US city to implement a paid sick leave law, in 2007 – and five

neighboring counties, none of which had a paid sick leave law, between 2006 and 2009, San Francisco was found to outperform the other counties in job growth in spite of the occurrence of the worst recession since World War II (Petro 2010). This finding echoes earlier data that demonstrate that San Francisco managed to maintain a higher employment level than nearby counties in the first year after the implementation of its paid sick leave flaw (Lovell and Miller 2008). In another study, this one carried out worldwide, Earle and Heymann (2006) examined the labor-related legislation as well as the individual country reports of more than 150 countries, and found no evidence of a negative correlation between the availability of paid sick leave and the macro-economic performance measured by unemployment, productivity, Gross Domestic Product (hereafter 'GDP'), and competitiveness. Afterwards, they explored whether the duration of paid sick leave could cause more unemployment, by analyzing comparable data of 22 countries with the highest scores on the United Nation's Human Development Index. The upshot remained consistent with the foregoing findings: the national unemployment rate does not have a statistically significant relationship with the length of mandated paid sick leave (Schmitt et al. 2009).

To conclude, the true employment effects of working conditions law are not yet clear. The disemployment outcome seems to be a preconceived and shaky ground for denouncing the economic efficiency and far-reaching social influence of working conditions legislation.

4 The Real Foothold of Working Conditions Legislation

Cheap labor used to be a significant factor that induced the movement of capital from industrialized countries to emerging economies. However, the situation has been gradually changed. The international community pays increasing attention to CSR, and there is a worldwide adjustment of Foreign Direct Investment (FDI) strategies. Relying on low labor costs to gain competitive advantages is no longer a wise choice. Instead, an enterprise and a country are more like to obtain strong and sustainable competitiveness from effective integration of global resources, high productivity, technological advantages, and good reputation. Understanding this transformation is the basis for figuring out the ultimate foothold of working conditions law.

Legislatures of both developed and developing countries may have to dismantle the ideological systems where improving working conditions and promoting the competitive power of domestic enterprises are considered conflicting objectives. With a view to fitting in with the global trend towards more intensive economic growth, a country should recognize the potential of decent working conditions to boost the productivity of the labor force and to create long-term cooperative relations with foreign countries. This is not to overstate the motivational effect of high labor standards or to suggest that the increased costs for enterprises can always be justified and offset, but to remind the probable existence of a point where the economic and social

benefits of decent working conditions are balanced. This balance is a goal that may never be realized but can be infinitely approached. The higher the level of such equilibrium and the better the relations between enterprises, employees and government may be stabilized due to the harmonized interests of all three parties. The main idea put forward here is that a country will not find a real foothold for domestic working conditions legation at the current stage of globalization unless continuous endeavor underlies the making and revision of relevant regulations in order to achieve a greater degree of forgoing balance.

Undoubtedly, numerous challenges may stand in the way of a country reaching an ideal balance between economic efficiency and labor protection in domestic legislation on working conditions. Above all, it is a prerequisite that an optimistic stance is taken by the policymakers towards the coordination between economic and social objectives in working conditions legislation. The key is a firm belief in the prospect of moving beyond the 'zero-sum' approach to dealing with employment relations, based on which a policy package must be in place to arrange the distribution and redistribution, resource allocation, and cost sharing among different social actors in order to support the implementation of the law. Secondly, great demands are made on the capability of the legislature. The extent to which the necessary soundness, flexibility, and timeliness can be met in lawmaking determines the internal rationality and practicability of relative rules, and relies on the mastering of a high level of legislative expertise, thorough understanding about domestic conditions, and systems of effective evaluation. It is unrealistic to presume that concrete and efficient strategies can be developed when the above conditions are absent. Moreover, there might be some barriers that are unsurmountable in the short run. For instance, it is impossible to make prompt changes to unfavorable social environment and the level of economic development so as to facilitate the enforcement of a law, even if it has evident significance for transforming the 'tug-of-war' between employers and employees into a 'win-win game'.

What is intriguing is that many countries fail to make the first step in emancipating the mind from traditional ideas before being faced with further practical difficulties. American parental leave legislation is a typical example. As is shown in Chapter 5 of this book, the US has implemented one of least generous and most ineffective parental leave policies in the world, while the humane and efficient model established by Sweden has contributed to national employment and competitive power. In fact, the widest gap exists between the philosophies adopted by American and Swedish policymakers, rather than between the capability of the two countries to make sophisticated legislation or the availability of resources for law enforcement.

5 Final Remarks

The academic disagreements and the disparities between the legislative stances of different countries inspire an exploration of the foothold of working conditions law against the background of intense global competition. In an effort to address this issue, this chapter looks at the following key questions: why is the regulation of working conditions indispensable, in spite of the widespread worry that enterprises are carrying too heavy a burden to compete? To what extent do the propositions that throw doubt on the efficiency and predict the negative economic influence of working conditions legislation prove correct? What is the real foothold of working conditions legislation in globalization?

By rights, the legitimacy of the regulation of working conditions should be uncontroversial, considering the conspicuous significance for employment fairness and for the living standards of the working population. However, it is not an easy task to clarify the theoretical foundation for the legal constraints on working conditions. This chapter categorizes the existing justifications for labor law into two primary approaches. Both are found to be defective. The instrumental value approach fails to highlight the fact that labor legislation is irreplaceable for achieving certain values, and does not consider whether other values argue against legislative interference. For the human rights approach, it is difficult to explain away the visible differences between human rights and the rights to certain levels of working conditions in terms of moral weight and applicability. In order to conquer these vulnerabilities, this chapter proposes an alternative interpretation based on the core idea of Kantian legal philosophy – people, who are born with free will, are the ends of law. This is not to resort to the human rights approach again. Since the paramount goal of the law is to preserve the inherent freedom of individuals to the greatest degree, the existence of other means for the same purpose cannot free labor legislation from the responsibility of creating the conditions for the employed to realize the freedom. Meanwhile, legislators will be able to judge the priority of different values according to whether and how they are related to the preservation of individuals' freedom. This construction also avoids the danger of classifying all labor rights as human rights. It adopts a dynamic explanation that the regulations on working conditions derive from the need of the working population for certain conditions to preserve the basic freedom, rather than from the imperative force of human rights. By the same token, working conditions law does not have to feature the universal applicability or unified standards of human rights protection.

The author then considers whether the inefficiency or the negative influence of working conditions law on the economy has been overstated. Obviously, the arbitrary assertion that regulation is useless does not stand up to scrutiny, because there is no lack of counter-examples. The experiences of China and the US illuminate the fact that, regardless of whether a society has sufficient resources to implement the law, the relevant legislation is

needed to 'raise the floor' for workers. Many studies have tried to rebut the long-believed equation between cheap labor and high competitiveness, but Heymann and Earle (2010) provide the most direct evidence that a majority of the fifteen countries with the highest competitiveness in the world offer decent working conditions. The main reason for this unexpected consequence is that there are apparent internal and external incentives to lift labor standards in a globalized world. To be brief, a country that is active in improving domestic working conditions is likely to obtain stronger internal growth, and has access to more international cooperation and preferential trade deals. Lastly, abundant studies seem to have corroborated the disemployment effects of working conditions law, but not all of them find significant evidence, and some even depend on implausible models or dummy variables. In contrast, a few findings indicative of non-negative employment effects are relatively convincing.

The author finally raises the idea that working conditions legislation can gain a reliable foothold in globalization only by making an unflagging effort to approach the balance point where the economic and social benefits are bound in perfect unity.