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Perspectives on the regulation of working conditions in times of globalization

Hu, Q.

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Author: Hu, Q.

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1 MAIN FINDINGS

This research demonstrates several of the multifarious challenges for contemporary countries to legislate on domestic working conditions in times of globalization. Through dissecting the particular situations in which divergent stances, defective mechanisms and practical straits are entangled, it reveals where the vitality of working conditions law lies in the changing economic world. This research plays a part in the effort to depict the global impasse in terms of working conditions legislation, but there has been no ambition to examine all relevant problems. The whole thesis consists of five in-depth topics. The main findings of the five independent studies are as follows:

Chapter 2 suggests that working conditions legislation can gain a foothold in deepening globalization, despite the criticisms and doubt from opponents. Firstly, respecting the justifications for working conditions law, the instrumental value approach and human rights approach are both found to be defective. However, an alternative interpretation based on Kantian legal philosophy may overcome the drawbacks of the above primary approaches. Now that people, who are born with free will, are the ends of law, and the paramount goal of the law is to preserve the inherent freedom of individuals to the greatest degree, it is appropriate for the law to create various conditions needed by individuals to realize these freedoms, including necessary level of working conditions. Apart from the intrinsic legitimacy, it has been found that the effectivity of regulations on working conditions has been more or less underestimated, while the threats to the competitive power and to the employment level have been overestimated. It is argued that a country which is active in improving domestic working conditions is likely to achieve stronger internal growth, and has access to more international cooperation and preferential trade deals, with the increasing attention paid by the international community to CSR and the worldwide adjustment of FDI strategies. Moreover, the negative effects of working conditions law on employment are not as clear as is asserted by many economists. Lastly, it is put forward 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.

Chapter 3 analyzes how legislative deficiencies have worsened the antipathy of potential laborers towards construction jobs and have played a

negative role in the ongoing labor shortage in China's construction industry. This section also reflects on solutions that may bring about fundamental improvement. To summarize, Chinese legislation associated with construction safety features low practicability and insufficient comprehensiveness, giving little consideration to the plight of millions of rural migrant workers, the primary construction workforce in China. A sound liability system and effective accountability mechanisms to deter various violations of construction safety obligations are also lacking. Five reformative measures are raised to ameliorate the current crisis: generalizing the IT system platform that has already been applied in a few provinces so as to facilitate the management of national construction labor, strengthening the combination of liabilities and incentives to guide hesitant building enterprises, attaching importance to absorbing migrant construction workers into unions, guaranteeing workers easy access to post-accident remedies, and promoting the role of NGOs.

Chapter 4 questions the momentum and efficiency of the German wage floor introduced in 2015 from a legislative perspective. By inspecting the German Minimum Wage Act in relation to the general minimum wage rate, flexibility in application, adjustment method and frequency, and its system of implementation, this section concludes that this legislation is an incomplete breakthrough which has a huge potential for improvement. Firstly, the entry point (8.5 euros) of the German minimum wage is not a very proper one. In line with the Kaitz index measurement, 8.5 euros is far from being able to curb the nationwide in-work poverty. A less pessimistic conclusion is reached by an evaluation in terms of PPS among EU countries, though. The main beneficiaries of the new wage floor are the serious poor, in particular female mini-jobbers, while the average poor can hardly benefit from it. In addition, the lack of successful coordination between the minimum wage law and the preexisting income support and tax and contribution collection systems may also detract from the appropriateness of the entry point of the German minimum wage. Secondly, the German Minimum Wage Act has established a distinct model regarding the flexibility within the general wage floor – only a standard rate is applied, and strict restrictions in relation to vocational training and education are put on the exempted groups. Such a system is easier to implement compared with those comprising several minimum wage rates, and in good cooperation with the dual vocational training for young people. The disadvantages are also obvious: it is difficult to exert actual influence on different levels of working poor, and on the other hand, the ethical and legal concerns faced by multi-rate systems cannot be avoided. In the meantime, Germany is unique within the EU by its adoption of a bipartite negotiation method of determining adjustments of the national minimum wage, and the biennial rhythm of adjustments is consequently fixed. This adjustment mechanism is unable to ensure timely and efficient adjustments in Germany. Lastly, the implementation system of the German minimum wage is found defective. There is no comprehensive guidance over the calculation of an employee's hourly remuneration or over the measurement of working hours. The FKS is responsible for checking

employer compliance with the minimum wage, but its present staff level is far from adequate to undertake the responsibility. German employees also face a higher risk of having to turn to judicial proceedings to protect personal interests, since the legislation fails to force offenders to repay wage arrears.

Chapter 5 makes a comparison between Swedish and American legislation on parental leave, clarifying the differences between the models, underlying ideas, and results in practice. The two countries are poles apart on the adoption of mandatory paid parental leave, the length of the leave period, and the flexibility and coverage of the benefits. Practically opposite philosophies are held by the two countries giving rise to the divergent institutional arrangements. The Swedish policymakers insist that the social and economic benefits brought by a generous parental leave policy make up for the costs, whereas in the US, the federal and most state legislatures are afraid that the implementation of paid parental leave will result in economic turmoil. In reality, Sweden has obtained strong economic competitiveness and managed to maintain high employment of both men and women, partly due to the great level of work-family balance achieved by dual-earner households. As one of the few exceptions that have failed to introduce paid parental leave, the US has been outperformed by Sweden in many areas with regard to economic growth, competitive power, or employment. In fact, the American federal legislation overlooks that paid parental leave is desired not only by most American employees but also by increasingly more employers. Based on the experiences of the states that guarantee paid parental leave above the federal standard, employer resistance and government budget crises are not likely to be caused by a national policy mandating paid parent leave.

Chapter 6 observes the possibility of coordinating the three channels of employee participation in the British context. The three channels are representative participation (RP), direct participation (DP), and financial participation (FP). These channels can constitute a self-complementary system if coexisting in the workplace, because they all possess some attributes that enable complementation. In theory, the 'alliance' that has been built between RP and DP in recent years should be further enlarged to encompass FP, which would enhance the aforementioned two channels and increase its individual efficiency as a stand-alone channel of employee participation. When RP, DP, and FP interact in a ternary system, a better balance is likely to be made between employee voice and organizational performance. However, such an ideal conception has been thwarted by a practical difficulty that is hard to figure out by legal measures. This barrier illustrates that even in Britain, a jurisdiction which features relatively rich experiences in developing RP, DP, and FP, huge gaps exist between the prevalence rates and coverage of the three channels. The three channels rarely coexist and overlap in practice.

2 MESSAGES BEHIND THE KALEIDOSCOPIIC SCENE OF THE CURRENT GLOBAL IMPASSE

Two central research questions are presented in the 'Introduction'.

- 1) What is the main dilemma facing the regulation of working conditions in times of globalization?

Based on the above review of the five studies included in this research, the main dilemma always rests in the tension between labor protection and the economic objectives of countries and enterprises, although the challenges facing legislation on working conditions take on a variety of appearances. However, such a conclusion is not to restate the simple conflict between product prices, which are partially affected by labor costs, and a country's competitive position in comparison with other countries producing the same products. On the contrary, a 'zero-sum' approach to understanding the relation between labor protection and the economic performance of a country has been argued against in this book. From the author's point of view, the 'tension' between labor protection and the realization of economic objectives has two extra implications at the current stage of globalization. Firstly, reducing labor costs does not necessarily result in better economic performance, in particular in the long run, since many more factors have started to play important roles, such as the capability of integrating global resources, the productivity level, technological advantages, international cooperation and enterprise reputation. Policymakers ought to realize the growing significance of the new factors that influence global competition. Secondly, labor protection is not always in conflict with economic objectives. Policymakers should not be charmed by the idea that there is a direct and unchangeable negative relation between labor protection and the realization of economic objectives, but should perceive the potential to combine the two goals.

- 2) How effectively have policymakers reacted to the foregoing dilemma?

In general, many policymakers fail to emancipate themselves from the way of thinking before tackling the practical challenges. For instance, the German legislation on minimum wage implies that it is difficult for policymakers to get rid of the existing pattern of thinking, despite the significant changes to the institutional framework. The cautious stance that held back the introduction of a national wage floor continues to constrain the legislature from establishing an efficient minimum wage regime. As a result, the primary purpose of enacting the Minimum Wage Act has been partly brought to naught.

Analogously, the stark contrast between the American and Swedish legislation on parental leave suggests that political ideologies play a crucial part in countries' setting up models and formulating rules for regulating domestic working conditions, sometimes transcending the role of the objective environment required for the enforcement of the law.

Chinese law on construction safety exemplifies another type of inappropriateness of legislators' perceptions of reality. There are a variety of chronic issues obstructing the overall efficiency of the legislation on construction safety, but the severity of these problems has been long underestimated in the culture centered on economic prosperity. It is noticeable that the economy has recently begun to pay the price for the serious labor shortage in the construction sector due to the generally unacceptable working conditions, in particular the poor protection of construction safety. National policymaking is expected to respond at once. There is a very real prospect that some solutions which have been proposed widely by society would effectively ameliorate the economic and social crises triggered by the construction safety problems. Nevertheless, it is unclear whether the central government is fully aware of the potential effects of these strategies and will take immediate actions through different levels of legislation and implementation.

It has to be acknowledged that under a few circumstances objective barriers, rather than legislators' defective perceptions, play a critical part in restricting the level of working conditions legislation. Take the last study on the three channels of employee participation in the British context, for instance. The rare coexistence of the three channels in the workplace is the first and foremost obstruction to the coordination of them, and this problem is difficult for legislators to cope with. In another word, the existing mechanisms for realizing the employee right to participation are hard to be optimized directly by legislative measures. Instead, the will of employers is the crucial factor that tips the balance, depending on the extent to which the potential effects of the three channels on company-level productivity are understood.

Specific advice is provided in each of the five studies included in this research. However, it is necessary to reiterate a few important points that have been made, in order to illuminate the path in which a country may be able to improve the efficiency of domestic legislation on working conditions in future. Firstly, policymakers should get rid of the outdated stereotype that improving domestic working conditions and promoting the competitive power of the economy must be contradictory. With a view to fitting in with the global trend towards more intensive economic growth, a country needs to recognize the potential of decent working conditions to boost productivity and to facilitate long-term cooperation with other countries. Secondly, this research has no intention to peddle the idea that offering good working conditions is certain to lead to good economic performance, but there is room for national legislators to coordinate the goals of labor protection and economic development by applying appropriate rules and strategies, despite the huge challenges brought about by the advancement of globalization. Lastly, there might be objective barriers prohibiting the law from responding effectively to the changing economic world. However, the legislation should endeavor to guide relevant social actors and create conditions for surmounting these barriers.

