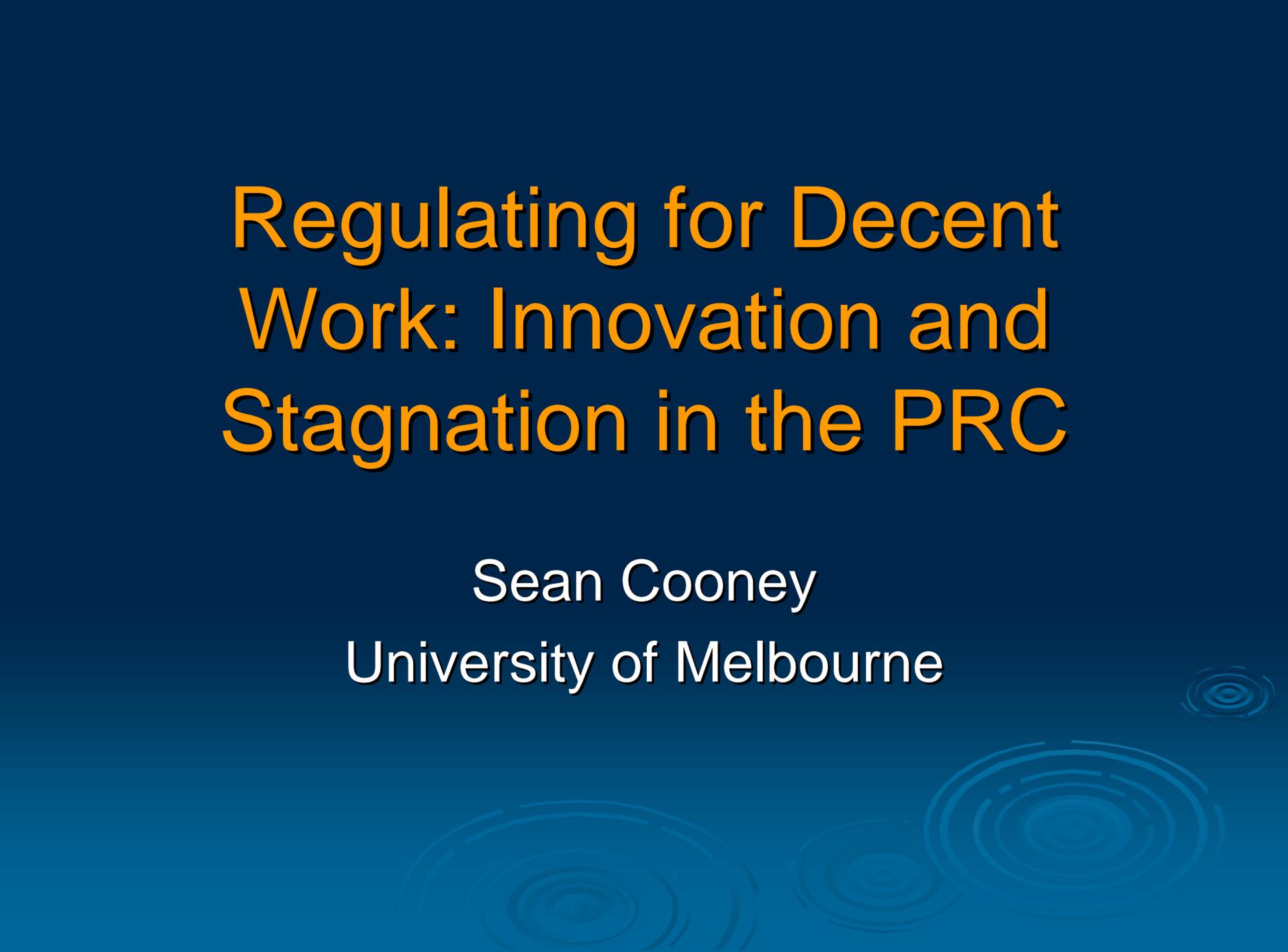


Regulating for Decent Work: Innovation and Stagnation in the PRC

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Structure

1. Some definitional issues:
 - Core and non-core
 - Labour rights and human rights
 2. The local variation issue
 3. The key areas
 - Wage protection
 - Working time
 - Leave
 4. Agency work
- Collaboration with Sarah Biddulph and Zhu Ying, as well as with a number of PRC labour law scholars
 - Recent laws are set out in Professor Fang Lee Cooke's paper

Definitional issues

- Chinese legal system understands labour rights as emanations of **right to subsistence** (生存权) and **right to development** (发展权)
 - Obligations upon, rather than limitations asserted against, the State
- Constitution does **not** distinguish between core and non-core rights; remuneration, rest and leave are constitutional rights
- Constitution rights impose *non-justiciable* obligations: state enacts laws to give effect to rights

Significance of rights to decent work in China

Constitution influences political debates about labour, and legislative content



Legislation gives specific form to certain decent work rights, which are enforceable by individuals



Individuals access formal dispute resolution processes or inspectorate

Despite widespread violations of rights to decent work, they are increasingly taken seriously....

- e.g. rising number of formal disputes
- employer concern at new laws
- compliance measures in high end firms

Local variation

- National laws set out broad principles pertaining to conditions, specifics are frequently set at provincial or municipal level:
 - Considerable variation
 - Scope for innovation or curtailment
 - Exception: Labour Contract Law is relatively specific
- Enforcement processes are subject to high degree of local influence (条块)
 - Commitment and professionalism are also highly variable
 - Some cities are areas seem more innovative and effective

Wage Protection

- Unpaid wages are a major cause of social unrest
- National and local legal and administrative responses, many quite innovative
- Currently completing research project on the issue with Sarah Biddulph and Zhu Ying: 80 interviews in four cities

The issue is not simply one of minimum wage regulation, it is being paid *agreed wages*



Even 'neo-liberal' critiques of labour regulation support enforcement of contractual entitlements

Problem	Wage protection measure
Legal system denied employment relationship where no written contract	<ul style="list-style-type: none"> ❑ LCL imposes penalties on employers who do not prepare written contracts (limited exception) ❑ Undocumented workers can claim remuneration ❑ LDMAL shifts burden of proof in some cases
Payments subject to arbitrary deductions, bonds, delays	<ul style="list-style-type: none"> ❑ LCL greatly limits range of deductions and penalises delay
Firms have inadequate pay systems	<ul style="list-style-type: none"> ❑ Some provinces have detailed requirements for firms on pay systems, including formal record keeping, providing pay slips and displaying wage scales
Bankruptcy or Absconding	<p>In some provinces:</p> <ul style="list-style-type: none"> ❑ Wage protection funds (esp in construction) ❑ Head contractor responsible for wages ❑ Individual director liability ❑ Interim relief orders in LDMAL (not used?)

Working hours

- Key standards are there: 40 hour week, day of rest, limitations on overtime, penalty rates for overtime
- BUT local governments can grant exemptions for:
 - Forms of work with irregular hours
 - 'Accumulated hours' schemes
- Some governments have placed substantive or procedural limits on opting out

Family leave

- Multiple sources of norms
 - Old leave regulations which assume state ownership
 - Family planning laws
 - Social insurance regulations (for paid leave)
 - ‘Women’s protection’ laws
- As a result family leave is a by-product of other policies; it is not conceptualised as a stand-alone right

Family leave: examples

1. Women are 'protected' through prohibitions on performing certain kinds of work when:
 - Pregnant
 - Breastfeeding
 - Menstruating
 2. (State-owned?) enterprises are directed to establish child care facilities
 3. Amount of leave depends on compliance with family planning policies, and age of parents
 - Paternity leave is not referred to in labour laws at all
- Many Chinese scholars are arguing for reform

Note on agency workers (劳务派遣)

- The LCL provides detailed regulation of agency workers (previously unregulated nationally)
 - Minimum capital requirements for hire agencies
 - Minimum pay obligations
 - Responsibilities of hirer and user firm
- LCL art 63: 被派遣劳动者享有与用工单位的劳动者同工同酬的权利。 ...
- ‘Agency workers have the right to the same remuneration as employees of the using entity performing the same work’
- But employers may divert work to ‘casual’ workers : 非全日制用工 (>24 hours per week) who do not need to be documented and who do not have the same pay rates