Recent labour legislation highlights the tension between justice and efficiency in Chinese jurisprudence. This tension originates with competing institutional and ideological trends. Legal reformers are increasingly focusing on ‘big society’, if not ‘civil society’. In this context, jurist debate over the drafting of labour law has highlighted the protection of worker rights and interests, contract equality, enhanced mediation and dispute settlement mechanisms, the devolution of labour discipline to enterprise and the cultural shift from ‘administrative labour relations’ to ‘legalized labour relations’.

Along this same continuum of politics, jurisprudence and law, there is a growing opinion to the effect that labour law, in its intimate relation to social justice, is different from civil law. While some reformers might emphasize that the civil law has a lot to do with justice in terms of establishing subject equality before the law and the autonomy of the rights bearing individual vis-à-vis the state, this opinion emphasizes that labour law *per se* must encourage a ‘progressive’ state activism so as to guarantee social justice and the protection of the human rights of workers.

The 1994 Labour Law (hereinafter 1994 LL) is the centrepiece of what has been until recently a surprisingly underdeveloped ‘socialist’ labour law. Its modernizing task is to legalize the entire labour management process from establishing to terminating employment or labour relations, so as to promote economic efficiency. But, for many Chinese legal scholars, labour management efficiency cannot be achieved without maintaining justice and fairness in labour relations. As generally discussed in Chapter 1, social justice is part of the ‘balance of values’ needed to consolidate the market economy on the basis of the rule of law. The current rationale for the rule of law also includes a political
emphasis on ‘market order’. China’s jurists are often in agreement with political leaders who believe that social justice forms the very foundation for social stability as is thus the necessary condition for the success of market reform.

Clearly, the recent concern of legal experts with the notion of social justice in the labour process originates with the introduction and the radical expansion of private enterprises in the past decade and with the recent structural reform of state enterprise. These reforms have already contradicted the Maoist three-tiered interests structure and the harmonious labour relations which were lauded under the old planned economy.

Contemporary labour law has been greatly influenced by policy perspective concerning China’s transition to the ‘socialist market’. The rate and quality of related socio-economic change has always been deliberately benchmarked in Chinese constitutional law which pointedly records the prevailing ideas on labour and capital in relation to what is a self-declared ideological understanding of the structures of distribution and ownership in society. The recent history of constitutional amendment tells the story of transition from the planned to market economy and highlights some of the substantive issues concerning the rights and interests of workers.

The 1988 revision to the 1982 State Constitution merely tolerated the existence of private ownership as a ‘supplement’ to the legally dominant form of public ownership. The 1993 amendment virtually abolished the central planned economy in favour of building a ‘socialist market economy’. The state constitutional amendments of mid-March 1999 included the elevation of private economy as an ‘important component’ of the socialist market economy. Jiang Zemin’s thinking on distribution was sanctioned in the following addition to Article 6:

In the initial stage of socialism, the country shall uphold the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side, and it shall uphold the distribution system with distribution according to work remaining dominant and a variety of modes of distribution coexisting.

This dual complexity of pluralized ownership and distribution conflicted with the simplicity of Article 6 of the 1982 State Constitution which originally stated: ‘The system of socialist public ownership supersedes the system of exploitation of man by man; it applies the principle of “from each according to his ability, to each according to his