

就业变革

Digital Business Models
and New Forms of
Employment In China

数字商业与
中国新就业形态

Employment
Transformation



张成刚——著

 中国工人出版社

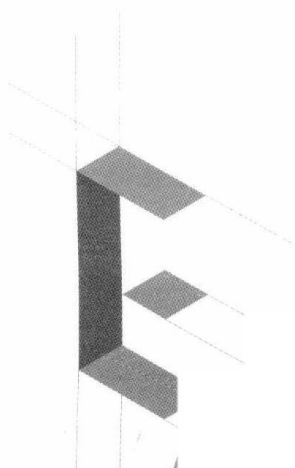
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介 绍

2018年，我受国际劳工组织委托，对中国数字经济下的新商业模式所带动的新工作进行研究。最终，我与江三角律师事务所的陆敬波主任、史庆律师共同完成了《中国新商业模式下的新工作研究》(Study on the new jobs generated by new business models in China)报告的中英文版。这篇报告中所指的新商业模式是随着互联网发展与数字技术的大规模应用而出现的数字经济、共享经济、零工经济、应需经济等数字商业模式。“新工作”一词指的是电子商务或在线平台等技术革新动员起来的劳动力所开展的工作类型或就业类型。在中国的政策文件与学术研究中，也使用“新就业形态”这一术语来概括数字商业模式下的新工作。

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数字商业与中国新就业形态

由于报告篇幅的限制，我们在研究中发现和总结的大量精彩中国案例和理论见解无法与读者分享。因此，在该报告的基础上，我又增补了大量关于新就业形态的理论和实践内容，最终形成本书。

中国的数字商业模式以及与之相关的新就业形态的快速发展，引起了包括国际劳工组织等国际机构在内的全球关注。作为劳动年龄人口近9亿人，就业人口总量7.8亿人的巨型劳动力市场，中国劳动力市场微小的变化，在全球范围内也会是规模超凡的巨大变化，更不用说数字商业模式带动出现新就业形态这样巨大的变革。

过去5年间，中国的新就业形态快速发展，一方面为数千万劳动者提供了就业机会，另一方面也改善了原本处于非正规就业状态劳动者的就业质量。我们最希望看到的是，在这样大规模的变动中，劳动者，即人的价值得以增加。中国在新就业形态发展中的走向和选择，既会对世界其他国家劳动力市场产生影响，也可以对其他国家的政策制定产生启示。

国际劳工组织发布的《未来的劳动世界》(ILO,

2015)中提到:“新的力量正在改变劳动世界。”国际劳工组织强调的一些改变劳动世界的力量,在中国也同样出现并发挥着巨大的作用,包括科技进步的力量、资本推动的力量、劳动人口结构变动等。但我认为,国际劳工组织遗漏了带来劳动世界改变以及塑造未来劳动世界的最重要的力量,也是推动中国劳动力市场进步最大的力量——创新的力量。无数普通的劳动者,正在努力适应着快速变革的世界,尝试利用新的技术、平台、基础设施和政策机遇,创建新的商业模式,扩展产品和服务的市场,提升个人的市场价值。无数普通劳动者的能动性和创新精神在数字商业模式中被激发出来,蜕变为“企业家”,即成为能够发现和利用新市场的人。在中国,我们可以看到这种趋势正在不断生长。

在可预见的未来,创新的力量仍然是推动中国经济和社会进步,推动走向未来劳动世界的最重要的力量。依托于创新的力量,劳动者才能有更多的选择、更多的工作和更多实现自身价值的机会。尽管我们要对劳动世界可能遇到的风险保持警醒,但仍然应该努力呵护创新、鼓励创

新、影响创新的方向，使其更好地为经济发展的最终目标——人，进行服务。

本书描述和分析了中国数字商业模式下产生的新就业形态的发展趋势、类型和特征，包括了在中国制度环境中，对从事新就业形态的劳动者法律地位的详细描述。为了展示新就业形态的细节，本书考察了中国数字商业模式的三个典型代表，滴滴出行、阿里巴巴和猪八戒网。本书展示了中国和新就业形态相关的五个典型案例和劳动争议，显示了平台运营公司和法院采取的态度和行动。基于以上分析，本书提供了有关如何利用和发展新就业形态并应对新就业形态的挑战的政策建议。

本书最终完成要感谢的人很多。感谢滴滴出行发展研究院的冯馨、薛岩、线伟华、陈雨虹、王本喜等各位同人长期以来的支持。感谢阿里研究院高红冰院长、谭崇钧副院长、郝建彬主任、徐飞主任提供的调研机会。感谢猪八戒平台合作伙伴杨俊。本书第六章的初稿，即原研究报告中的第六章是由江三角律师事务所陆敬波、史庆两位律师合作完成的，本书在其初稿基础上进行了部分修改，在此

介 绍

特别感谢江三角律师事务所两位律师的卓越贡献。此外，我还要特别感谢妻子廖毅，在本书成书之际，诞下小女，谢谢你的付出。

由于本人学识有限，错误与不当之处，还请读者与专家批评指正。

Preface

In 2018, I have been honorably sponsored by the International Labor Organization to conduct the research on the subject of new jobs generated by digital business models in China. In the end, Mr. Lu Jingbo, the director of the River Delta Law Firm, Shi Qing, the lawyer of the River Delta Law Firm and I completed the research report *Study on the New Jobs Generated by Digital Business Models in China* in both Chinese and English. The digital business models defined in this report are business models related to the digital economy, sharing economy, gig economy and on-demand economy that emerged with the development of the Internet and the large-scale application of digital technology. The term “new jobs” refers to the jobs or

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employments carried out by the workforce who are mobilized by digital technological innovations such as e-commerce or online platforms. In China's documents of policy and academic researches, the terminology “new forms of employment” are also used to summarize new forms of employment generated by the digital business model.

Due to the limitations of the report length, many brilliant cases and theoretical insights that we found in the process of research cannot be shared with readers. Therefore, based on the original report, I finished this book by adding a lot of theoretical and practical cases of new forms of employment.

The rapid development of China's digital business model and associated new forms of employment has attracted global attention, including international organizations such as the International Labor Organization. As a huge labor market with a working-age population of nearly 900 million and a total employment population of 780 million, even small changes in China's labor market will be a huge one in scale around the

world, not to mention the emerge of new forms of employment, such a huge rather than a minor change.

In the past five years, new forms of employment dramatically surged in China. On the one hand, it provides employment opportunities for tens of millions of workers, and on the other hand, it improves the job quality of workers who were originally stuck in informal employment. What we mostly hope to see is that in such changes, the value of workers (people) appreciate. The direction of development of new forms of employment and the choice made by Chinese people will influence on the labor markets in other countries, and it can also inspire policy makers around the world.

The Future Of Work Centenary Initiative issued by the International Labor Organization (ILO, 2015) mentioned that the new forces are changing the world of labor. Some of them emphasized by ILO have also played a huge role in China, including science and technology, capital, and the changes in the structure of workforce, etc. However, in my opinion, ILO

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missed the most important force that brings about changes and shapes the future of the world of labor, which also drives the greatest advancement in China's labor market – innovation. Countless ordinary workers are making great effort to adapt themselves to a rapidly changing world, trying to use new technologies, platforms, infrastructure and policy opportunities to create digital business models, expand markets for products and services, and enhance individual market value. The innovative spirit and entrepreneurship of countless ordinary workers have been spurred in digital business models and transformed into “entrepreneurs”, those who can discover and utilize new markets. In China, we have seen this trend growing.

In the foreseeable future, the power of innovation is still the most important force driving the economic and social progress of China and promoting the future of work. Only by innovation, workers can have more choices, more job opportunities and more chances to realize their own values. Although we must be watchful about the potential risks that future world of work may

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encounter, we should still protect and encourage innovation, and guide the direction of innovation to better serve the ultimate goal of economic progress, which is the people.

This book describes and analyzes the trends, types and features of new forms of employment generated by the digital business models in China and describe the legal status of workers in new forms of employment under Chinese law. To display the details of new forms of employment, this book examines three typical representatives of digital business models in China, Didi Chuxing, Alibaba, and Zhubajie, which attracted tens of millions of workers. This book shows five typical cases and labor disputes related to the new forms of employment in China, presenting the attitudes and actions took by the platform operating companies and the court. Based on the above analysis, this book provides policy suggestions on how to use and develop new forms of employment and tackle the challenges raised by them.

The completion of this book attributes to many people's

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help. I appreciate the colleagues Feng xin, Xue yan, Xian Weihua, Chen Yuhong, Wang Benxi etc., from Didi Institute of development research. Thanks to Gao Hongbing, Dean of Aliresearch Institute, Tan Chongjun, Deputy Dean of Aliresearch Institute, Hao Jianbin and Xu fei, directors in Aliresearch Institute for providing chances of surveying. I also owe gratitude to Zhu Bajie platform and its cooperative partner Yang jun. I give special dedication to Luo Rongbo, the editor of the Chinese Worker Publishing House, who has done a lot of work for the publication of this book. It is his constant concern and enthusiasm for the new forms of employment that ultimately led to the completion of this book. The sixth chapter of this book is based on the sixth chapter of the original research report, which was completed by Lu Jingbo and Shi Qing, the lawyers of River Delta Law Firm. The sixth chapter of this book has been partially revised based on its first draft of the research report. Special thanks to the Lu Jingbo and Shi Qing for their contributions to the original research report. Particular thanks also to my wife Li

Yi, who gave birth to my daughter when I finish this book and took care of families with all her best when the book was being revised and finally be published.

The organization of this book also uses the versions of the ILO report in both English and Chinese. Due to the limited knowledge and experience, I guess there will be unavoidable mistakes and inadequacies. Warmly welcome all the readers to connect the author.

前 言

随着数字技术的快速发展，主要工业国家的劳动力市场正经历着数字化转型与商业模式的变革。数字商业模式主要是基于互联网平台，具有开放性和平台化的特征，能够不受空间限制，高效匹配服务的供给和需求方。Uber, Lyft, Airbnb, TaskRabbit 和 Feastly 等典型的采用数字商业模式的企业在人们的日常生活中越来越受欢迎，也深刻地影响着劳动力市场的发展方向。像 Uber 或 Lyft 的司机，Airbnb 的房主或 TaskRabbit 的接受任务者等“新就业形态”，不仅为劳动者提供了灵活的选择，而且正在塑造着劳动世界的未来。在本书中，“新就业形态”一词指的是电子商务或在线平台等技术革新动员起来的劳动力所开展的获取酬劳的工作活动。

新就业形态与数字商业模式密切相关。人们使用不同术语来概括数字商业模式及新就业形态，如数字经济（digital economy）、共享经济（sharing economy）、零工经济（gig economy）、按需经济（on-demand economy）等。本书认为，不同的术语有各自的时代背景和强调重点的差异。数字经济概念和其他几个概念的差别最大。数字经济所描述的内容从 20 世纪 90 年代末已经产生，包括商业模式从实体经济中的数字采集（digitization）以及应用数字化到更广泛的社会和制度环境的过程（digitalization）。数字经济发展到今天，其概念外延已经大为扩展。数字经济已经发展为由人、企业、设备、数据和流程之间的数十亿项日常在线连接产生的经济活动。在数字经济的基础上，在 21 世纪的第一个 10 年，分享经济、零工经济、按需经济等所描述的经济活动诞生了。分享经济这一概念所描述的活动，在 21 世纪初就已经应用于商业实践^①，但在进入移动互联网时代之前，该类商业实践的规模比较小。人类进

^① 罗宾·蔡斯与安特耶·丹尼尔斯于 2000 年共同创办了 Zipcar 分时租赁互联网汽车共享平台，被视为共享经济最早的实践。