JILPT Report

Change and Challenge: Regulation on the Internet Platform Based Labor

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Abstract: The new working form rendering of service, based on the Internet platform, has risen with the "sharing economy" and has changed the employment pattern of independent labor and dependent labor in the past. The network platform rendering of service mode can be divided into an autonomous platform and an organization platform. The former only provides virtual network labor transaction space, and the platform does not participate in labor transaction; the latter is the platform actually organizes its entire labor transaction process, meanwhile Labor Requester and the Labor Provider are as transaction object based on the platform. In the organizational platform mode, in addition to the labor providers directly employed by the platform or indirectly through agents, there are some network labor providers who have the autonomous determination of labor independence and are economically subordinate to the network platform. This will lead to differences in legal relations between the labor provider and the platform. The analysis of existing judicial decisions shows that a few courts have determined that they constitute a employment relationship, and most courts have denied it. In terms of academics, the application scope of labor law is based on the subservience theory, and it emphasizes that employees must be under the command and supervision of employers, while that type of network labor providers are not fully possessive subservience because of their autonomy, thereby resulting in labor law of applicable dilemmas. Some scholars regard it as a challenge to workers, and advocate the revision of the subservience theory in whole or in part. The legal regulation model for constructing network platform labor should be under the framework of

"independent labor-dependent labor". Such new labor service transactions belong to the transitional zone from independent labor to dependent labor. It should not be regulated by expanding the scope of labor law, but should extract some systems from the labor law system based on the necessity of social protection in order to build an independent legal guarantee mechanism, and form a multi-level protection network for labor providers.

Keywords: Network labor services, Labor law, Independent labor, Dependent labor

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1. Introduction: The main types of network platform services

The transaction form based on the rendering of service by the Internet, as part of the "sharing economy", has developed under the impetus of network technology. Today, when the Internet is closely tied to everyone through mobile terminals, the dissemination and utilization of transaction information can penetrate into the subtle pores of social life. In addition to the sharing of idle property represented by Airbnb, the integration and allocation of idle labor has gradually become an important part of the "sharing economy". Through the network platform to collect and disseminate labor information, enterprises and other labor demand can establish contact with countless labor providers, however network and information can be used to decompose massive tasks into unspecified labor pools.[1] With the increase and accumulation of job opportunities, some labor providers gradually deviated from the traditional labor mode, and changed from idle participation

[1] See Alek Felstiner, Working the Crowd: Employment and Labor Law in the Crowdsourcing Industry, (2011) 32 Berkeley Journal of Employment and Labor Law, p.145.

to the main network labor transaction, thereby separating the "gig economy" of "service demand-oriented" (on-demand) from the "sharing economy". [2]In China's media and related discussions, it seems that the network labor service providers have become a "network contractor", and in the academic discourse of the field, such work methods are regarded as a new form of "crowd-work" in the network age. It is used to summarize certain tasks in the context of business crowdsourcing.[3] The concept of "crowdsourcing" was originally proposed by Jeff Howe,[4] which can be understood as the outsourcing of work tasks to crowds. The World Bank divides the crowdsourcing work type into a "bilateral model" and a "trilateral model". The former refers to the labor service main body self-built platform using rendering of service. This type of platform is "managed service platforms" ; the latter refers to the third-party establishment and operation platform, the labor demand and the provision of the two sides to conduct transactions on the platform, this is "open service platforms".[5] In practice, the former has a small scope of application, and both practice and academic focus on the latter. Based on the existing major platform trading methods, we further divide the platform under the "three-party main model" into two categories:

1.1 Autonomous platform. The positioning of such platforms is to provide virtual trading places and their trading rules. Labor Requester and labor providers are registered on the platform respectively. Compared with entering the trading place, Labor Requester publish work tasks, deadlines and quotations, and labor providers select jobs. The task, which completes the offer-committed transaction process, does not participate in labor transactions and pricing, but charges a fee after the transaction is successful, typically Amazon's Mechanical Turk (AMT). The types of labor on such platforms are usually microwork that requires only basic computing and language skills, such as selecting pictures, modifying articles, paragraph translations, questionnaires, and so on.[6] After the transaction between the labor supply and demand sides is successful, the labor demand side shall pay 20% of the payment service consideration to the AMT as the platform usage

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[2] See Antonio Aloisi, Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms, Comparative Labor Law & Policy Journal, Vol. 37, No. 3, 2016, p.654.

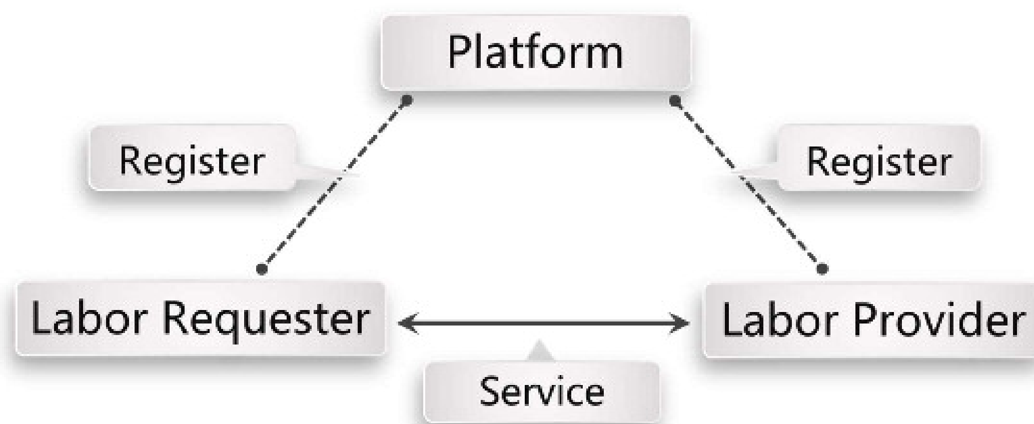
[3] See Bernd Waas, Wilma B. Liebman, Andrew Lyubarsky, Katsutoshi Kezuka, Crowdwork – A Comparative Law Perspective, HSI-Schriftenreihe 2017, p.13.

[4] Jeff Howe, 'The Rise of Crowdsourcing', (2006) Wired 14.06, http://archive.wired.com/wired/archive/14.06/crowds.html, August 19, 2018.

[5] World Bank, The Global Opportunity in Online Outsourcing (2015), p.1. https://openknowledge.worldbank.org/handle/10986/22284, August 20, 2018.

[6] Panagiotis G. Ipeirotis, Analyzing the Amazon Mechanical Turk Marketplace, http://crowdsourcing-class.org/readings/downloads/platform/analyzing-mturk.pdf, August 20, 2018.

fee (MTurk Fee), which is at least 0.01 US dollars.[7] The trading structure of such platforms is shown in the Figure:

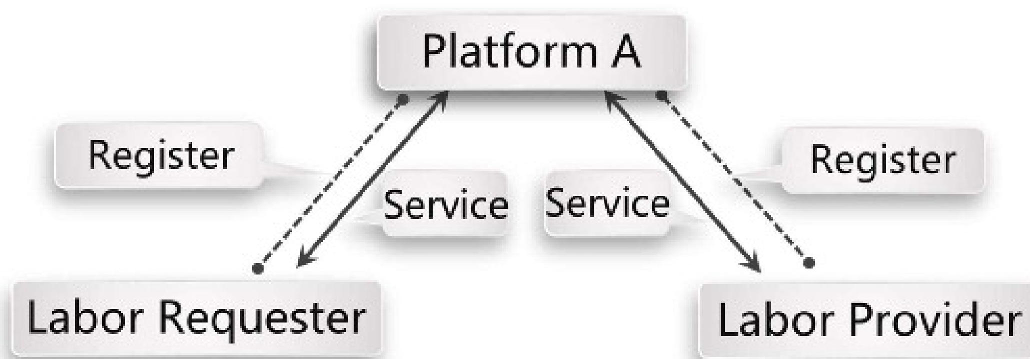


It can be seen that the platform is in a relatively neutral position, and the labor provider does not regard the platform as accepting and managing laborers. For example, in the CrowdFlower case, CrowdFlower is a data analysis company that splits the analytical workload and subcontracts it to the service providers on the AMT platform as Requesters. The labor provider sued CrowdFlower and demanded that it assumed the employer's obligations, but did not use the AMT platform as an employer or a joint employer.[8]

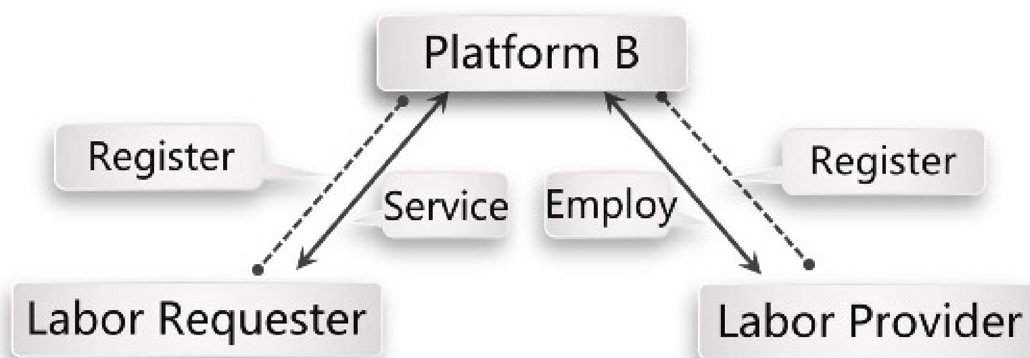
1.2 Organizational platform. Such platforms provide not a virtual trading place, but based on the Internet to construct remote trading access and formulate trading rules. Representatives such as Uber and major domestic transporting and food delivery companies in China, like Didi, Meituan, and Elema, Flashex, Dada, etc. Because such platforms directly participate in market development and competition, they are more proactive and expandable. Their business is related to people's daily life, with more popularity and numerous participants. It is the most important way to provide network services in China. Some scholars have examined the provision of such rendering of service for a certain network car platform. The first stage is registration. The driver provides relevant information such as name, ID number, driver's license, etc. The platform reviews the information and informs the software operation and service process through video. The registration can be completed; the second stage is the driver opens the

[7] This regulation is a general platform usage fee. If a certain service needs to be decomposed into 10 or more tasks, the labor demand side shall pay an additional fee to the platform at 20% of the labor consideration. See https://www.mturk.com/pricing, 2018/8/23.
[8] Otey v. CrowdFlower, Inc., No. 12-CV-05524-JST, 2013 WL 5734146 (N.D. Cal. Oct. 22, 2013).

software, and the platform sends the order, the driver confirms the order and completes the work task.[9] Existing such platforms follow this transaction structure, but the second stage of work content is different due to different service areas. We summarize the specific rendering of service such as network car, driving, and distribution into the "transaction" with labor as the target. Therefore, the transaction structure can be expressed as "registration-transaction", which is the basic mode, and we call "organizational platform A".



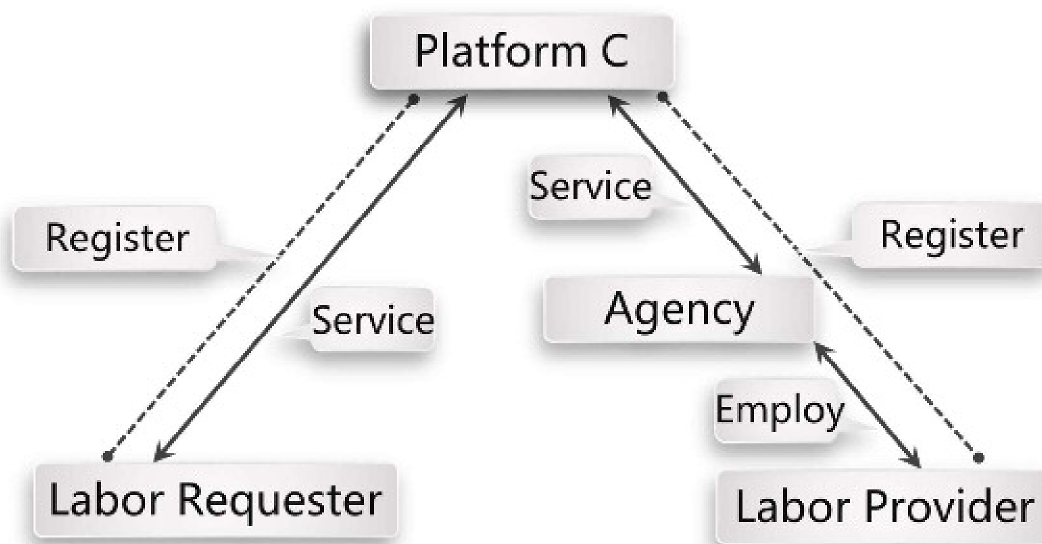
This basic model derives two other modes in practice. One mode is that the platform enters into a labor contract with the labor provider, and the two parties are clearly defined as labor relations. At this time, the “transaction” in the A model has been embodied as the meaning of labor law. On the "labor", the platform serves as the "employer unit" to manage and supervise the working hours, workload, work flow, etc. of the labor providers as "laborers". This is the organizational platform B. From the current practice point of view, the B mode is relatively small, and still shows a decreasing trend.



Another derivative model is that the platform packages the workload of its specific

[9] Wu Qingjun and Li Wei: "Labor Control and Work Autonomy in the Sharing Economy--A Mixed Study on the Work of Drivers of Network Cars", "Sociology Research", No. 4, 2018.

area as a whole to the agent, and the agent organizes the labor provider to complete the task. The agent signs the labor contract with the labor provider, and the labor provider accepts the command and supervision as the “employee” hired by the agent, and registers with the platform to accept the order. This model is “Organization Platform C” and its transaction structure is shown in the figure.



In a case, a large-scale distribution network platform explained the three ways of rendering of service: one is APP crowds of riders, the natural person downloads and registers the platform APP, and uses their own spare time to receive orders; the second is “self-operated rider” ", that is, the labor provider and the network platform enter into a labor contract; the third is the agent rider, and the platform agent and the labor provider enter into a labor contract. [10] The three parties correspond to the three modes of organizational platforms A, B and C respectively. That is to say, the same platform can have three labor organization modes. For example, some network car platforms also have self-employed drivers, and the same as the self-employed riders of the distribution platform. From the perspective of legal relationship, the platform or agent under the B and C modes has signed a labor contract with the labor provider, and there is a clear employment relationship. The court also recognizes the result of the autonomy of both parties. After the accident, the referee is judged according to the employment relationship.[11]

[10] Case No.: (2017) Su 0106, Minchu 1322.
[11] Case No.: (2018) Shanghai 0107 Minchu 4036"; (2017) Jin 0104 Minchu 9557; (2017) Ji 0102 Minchu No. 223.

2. Judicial trial positions and differences

The divergence of the nature of the network labor contract is concentrated in the organizational platform A mode, that is, the labor provider completes the work task through platform registration and order taking, which is a typical " rendering of service based on the Internet." The common point between the A mode and the B and C modes is that the Labor Requester sends an offer to the platform to complete the specific work results. The platform organizes the labor service provider through the grab or dispatch system to complete the work task. The control of performance and the autonomy of workers' work are only "work tasks become more fragmented and labor control becomes fragmented." [12] Platform organization services involve tripartite relations that do not conform to typical contract characteristics, resulting in two types of views on the nature of contractual judicial decisions:

The first type of judgment states that labor providers and online platforms do not constitute labor relations. Specifically, it includes two situations. One is that the labor provider directly appeals to the court to determine the employment relationship, and the other is that the third party has personal damage caused by the labor service. The court needs to judge the relationship between the labor provider and the network platform. The main points of the court's investigation include the flexibility of the labor service provider's working mode. It has the right to decide whether to work, the time and place of work. The work income is not the labor compensation; the network platform does not provide labor tools, and there is no management and control over the labor providers or mandatory constraints, do not meet the characteristics of the subservience, the two sides do not constitute an employment relationship.[13] Therefore, the network platform does not assume labor law obligations to labor providers, nor does it assume liability for third party damage caused by labor providers.

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[12] Professor Wu Qingjun pointed out that compared with traditional employment organizations, the sharing economic platform has undergone new changes in the control of the labor process through new Internet technologies and new forms of employment. The platform only controls the process of the laborer to complete the work task, while the other time is self-management by the laborer; at the same time, the laborer can also freely choose the working time and the work place, and has certain work autonomy. See Wu Qingjun and Li Wei: "Labor Control and Work Autonomy in the Sharing Economy--A Mixed Study on the Work of Network Drivers", "Sociology Research", No. 4, 2018. It should be noted that in the sociological sense, "laborers" are different from "laborers" in the sense of labor law. The former does not presuppose the existence of labor relations, and corresponds to labor employment in the general sense.

[13] Case No.: (2018) Jing 03 Minzhong 5233; (2016) Shanghai 0109 Minchu 22401; (2017) Jing 0102 Minchu 32348; (2017) Jing 0101 Minchu 6586; (2017) Jing 0102 early No. 10084; (2017) Wan 11 Min Zhong 938; (2017) Lu 10 Min Zhong 1858; (2017) Su 0106 Minchu 1322; (2016) Beijing 0107 Minchu 4021.

While negating the employment relationship, some courts further analyzed the nature of the contract, pointing out that the network platform engaged in intermediation services in the form of providing information, and it was an intermediary contractual relationship with the labor provider.[14] In the cases of personal injury, a few courts did not use the existence of labor relations as the starting point of analysis, but directly identified them as intermediaries based on the behavior and function of the network platform .[15]

The second type of judgment considers that labor providers and labor platforms constitute labor relations. In the judgments that have been retrieved, the focus of such cases is the issue of liability for personal injury during the performance of rendering of service. The minority of them are personal injury suffered by labor providers themselves, and most of them are third-party damage caused by labor providers. The court examines the legal relationship between the labor provider and the online platform in order to determine the subject of responsibility. In the analysis of legal relations, each court has determined that the labor provider is engaged in the business provided by the platform, accepts the management of the platform and is bound by the relevant system. The platform pays the labor remuneration. There are also individual cases that have not been characterized using the above concepts, using only the descriptive concepts of “staff” and “execution of duties”.[16]

The combing judgment can find that the main differences in the contract nature of the judicial judgment include:

First, whether the network platform has “use labor service” for labor providers. The judgment of non-labor relations position holds that there is no fact of using labor service between the network platform and the labor provider. The judgment that advocates the intermediation relationship more clearly indicates that the behavior of the network platform is only providing information. The judgment that the two are labor relations is based on the fact that the use of labor is recognized. The difference lies in the fact that the judgment of the employment relationship is based on the "Notice on

[14] Case No.: (2017) Beijing 0106 Minchu No. 14428; (2017) Su 0213 Minchu 8149; (2017) Lu 0213 Minchu No. 187; (2018) Jing 0102 Minchu No. 4883; (2017) Tianjin 0102 early No. 7604; (2017) No. 5396, Su 0102, No. 5396; (2016) Shanghai 0115, the beginning of the 81742; (2017) Shanghai 0115, the early 25255; (2017) Shanghai 0115, the early 25257; (2017) Shanghai 0106 early No. 8770; (2017) Shanghai 0104, the beginning of the 8948; (2017) Zhejiang 0108 early 1626; (2017) Zhejiang 0108 early 1046; (2017) Beijing 0107 early 13804.

[15] Case No.: (2017) Su 0104 Minchu No. 937; (2015) Drum Minchu No. 7340.

[16] Case No.: (2017) Zhe 01 Min Zhong 4425; (2017) Shanghai 01 Min Zhong 10822.

Establishing Labor Relations Related Matters" issued by the former Ministry of Labor and Social Security (The Ministry of Social Affairs issued [2005] No. 12, hereinafter referred to as Circular No. 12).[17] The main judgments of other personal injury cases are based on Article 34, paragraph 1, of the Tort Liability Law. "If the staff of the employer causes damage to others due to the execution of work tasks, the employer shall bear the tort liability". In the legal sense, the judgment applies to the No. 12 document that the employment relationship is also the judgment of the contract nature, which of course includes the fact of using rendering of service. However, the application of the provisions of Article 34, paragraph 1, of the *Tort Liability Act* does not imply a contract. The Supreme Court's use of the concept of employers and employees in the Interpretation of Several Issues Concerning the Application of Laws in the Trial of Personal Injury Compensation Cases (hereinafter referred to as "Humanity Interpretation") establishes the responsibility of the employer, and *Articles 34 and 35 of the Tort Liability Act* changed to the responsibility of the user. The difference is that in the case of the responsibility of the employer, the court should be responsible for determining the employment relationship. The premise of the application of the responsibility of the user is to use the relationship. "The use relationship is not a legal relationship, but a factual relationship, that is, the fact that one party uses the other party."[18] Therefore, in the case of a third party's damage caused by the labor provider, the legal relationship between the platforms is not the judgment of the court. The court only needs to verify the fact that the platform has the use of rendering of service.

Second, whether the network platform has "management control" for labor

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[17] The "Notice on Establishing Matters Related to Labor Relations" is the basic norm for judicially recognized labor relations in China. Article 1 of the notice stipulates that if the employer recruits the laborer without entering into a written labor contract, but at the same time, the labor relationship is established. 1. The employer and the employee meet the qualifications of the subjects stipulated by laws and regulations; 2. The labor rules and regulations formulated by the employer according to law apply to the laborer, the laborer is employed by the employer, and the employer is paid by the employer. Labor; 3. Labor provided by workers is an integral part of the employer's business.

[18] Porf. Liang Huixing pointed out that the responsibility of employers is the earliest one of the civil law tort liability. Later, in the referee practice, a problem was found. If the employer's responsibility was strictly followed, the court should first examine whether there is an employment contract relationship between the defendant and the person causing the damage. In the early practice, if it was examined that there was no employment contract between the person who caused the damage and the defendant in the case, the court would reject the plaintiff's (victim) request. Because the name of the employer's responsibility will make the judge think of the employment contract and the employment contract relationship as a prerequisite. Later, I noticed that such a treatment was inconsistent with the legislative purpose of the system, so I changed the name and renamed it as the responsibility of the user...that is, to prevent the judge from dying at the time of application or not. See Liang Huixing: "Several Issues in Civil Legislation, Theory, and Practice", China Law Network http://www.iolaw.org.cn/showArticle.aspx?id=3999, August 10, 2018.

providers. In the process of using labor service, whether the platform has management control over labor providers is the main basis for distinguishing labor relations from other types of civil labor contract relationships. In the first type of judgment, the court found that there was no employment relationship or the fact that the intermediation relationship was denied when the use of labor was denied, and of course there was no management control. In the second type of judgment, the court's analysis of "management control" in cases of personal injury is the factual determination of serving "use of labor", so only the appearance factors such as work cards, uniforms, pricing power, charging standards, etc. As long as it can infer the fact that there is labor service between the platform and the labor provider. However, in cases where labor relations are recognized, management control analyzes the labor payment method based on the facts of using rendering of service, based on the subservience theory. [19] In the widely-recognized "Flashex Confirmation Labor Relations Case", the court's interpretation of "management control" includes: First, personality is subordinated, platform company and flasher are in line with the qualifications of labor relations; platform companies work mode, characteristics, income calculation and other aspects of the description belong to the recruitment information, there are work standards requirements, belonging to the company's recruitment and training; the platform company issued the badge and the service process requirements after the badge; the delivery staff can decide whether to take the order, but the company's rules and regulations must be followed after receiving the order. Second, in terms of economic subservience, the flasher working hours and remuneration are relatively stable, and this remuneration constitutes its main labor income. Third, the business composition requirements, the court believes that the platform company actually organized the entire process of cargo transportation, so the nature of the company is the cargo transportation company, the delivery service of the flasher is part of its business. In addition, the court also admitted that the flasher can decide whether to take the order or not, and decide which kind of transportation to use. The platform company has no attendance, does not limit the working time, place, workload, and does not provide labor tools. The above-mentioned labor characteristics are classified as the flexibility of labor

[19] The theory of subservience is the basis for the recognition of labor relations recognized by academic circles and the judiciary in China. The so-called subservience refers to the laborer's payment of labor under the command and supervision of the employer, including personality and economic and property. From the origin of subservience theory in Germany, through Japan and Taiwan to the mainland, please see Wang Tianyu: "The Distinction between Manager Employment Contract and Appointment Contract", China Law, No. 3, 2016.

relations by the court, and are the characteristics of new job jobs after Internet information technology intervenes in traditional labor relations.[20]

3. Subservience theory based on literature study

The so-called "subordination" refers to that the employees provide the labor under the command and supervision of the employer, which is the essential characteristic of employment relations, and also the basis for the determination of employment relations recognized by academic circle and judicial practice.[21] Some scholars have pointed out that "subordination" is the most prominent feature of the labor contract, and all concepts of labor law different from the concept of traditional civil law are carried out on this concept.[22]

German academic theory of takes the "personality subordination" (persönlichen Abhängigkeit) as the general theory, namely, the difference between the employment relations and other labor service providing relations like the commission and the contract is "the different degree of personal dependency of labor service provides (den unterschiedlichen Grad der Persönlichen Abhängigkeit)".[23] Academic community in Japan and China's Taiwan Region also agree to take the personality subordination as the core standard. According to Prof. Wagatsuma's point of view, the commanding power of the user (employer) is only to facilitate their own interests, while to bind the labor person's (laborer) personality improperly...... so that "to a certain extent to form a personality combination relation" between employers and employees, which makes the labor service community (Arbeitsgemeinschaft) with a large number of personality law color (personenrechtliche Farbe). While in other labor supply contracts, such as the appointment, the inseparability between the labor service and personality does not

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[20] Case No.: (2017) Beijing 0108 Minchu 53534.

[21] Refer to academic argumentation: Zheng Shangyua. Law Boundary of Employment Relation Adjustment--The System and Idea of the Adjustment of Employment-type Contractual Relations in Civil Law and Labor Law. China Legal Science, 2005(3); Feng Yanjun, Zhang Yinghui. Rethinking and Determination of Standard for the Determination of Employment relations. Contemporary Law Review, 2011(6); Xie Zengyi. The Connotation of Employment relations and The Identification Determination of the Employer and the Employee. Journal of Comparative Law, 2009(6); Li Haiming. On the Labors in Labor Law. Tsinghua Law Review, 2011(2); Lv Lin. On the Standard for Determining the Subject of "Laborers". Studies in Law and Business, 2005(3); There are so many relevant judicial case, for the cases recommended by Beida Fabao, refer to [2013] Tian Min Yi Chu Zi 1109, [2012] Hu Yi Zhong San (Min) Zhong Zi 1344, [2010] Hu Er Zhong Min Yi (Min) Zhong Zi 58, [2015] Tong Zhong Min Zhong Zi 01440.

[22] Huang Yueqin. *New Discussion on Labor Law*. China University of Political Science and Law Publishing House, 2003:94.

[23] Rimund Waltermann. *German Labor Law*, translated by Sheng Jianfeng. Law Press, 2014: 47-48.[23]

constitute the improper restraint on the personality of the debtor.[24] Academic community in China's Taiwan Region stresses on the employer's command and discipline on the interpretation of personality subordination. For example, Professor Huang Chengguan believes that "the employer should be disciplined to protect the normal production and operation of enterprises and authority of the investor's operation and management."[25] Professor Huang Yueqin also points out that "the subordination of the personality instructs the relation of subordination, and it also includes the issue of disciplinary power in the order. Because of the existence of disciplinary power, the employer can reach a certain degree of interference and coercion concerning the internally psychological activities of the labor, which is therefore the strongest effect of personality subordination, and also the most fundamental point." [26]

In the process of judging employment relations by the application of subordination theory, countries' judiciary has accumulated a large number of practical experiences, which has detailed the interpretation of academic theories by case-based reasoning. In the judicial practice, the German Federal Labor Court sums up the characterization of personality subordination into three aspects: first, the laborer provides the labor under the command and supervision of the employer, and the time, place and manner of labor are determined by the employer, not autonomously determined by the labor; second, the laborer enters into the employer's business or production organization to provide labor services; third, laborer provides the labor services for the purpose of realizing the employer's interests.[27] In the judgment of specific cases, the court "has the necessity to comprehensively consider all relevant situations to make an overall evaluation",[28] and the judgment that are finally made shall be in accordance with the "typical method" (Typologische Methode), namely, "the inclusion of a legal type requires in specific cases the assessment and weighing of all indicators that are symbols for objecting and supporting the existence of employment relations or autonomous working relation.[29] For example, in the case of "employment status of TV journalist", the court held that in

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[24] Wo Qirong (わがつま　さかえ) . *Notes of Civil Law. Individual Discussion on Obligation Law (Vol 2)*, translated by Zhou Jianghong. China Legal Publishing House (2008): 4,13.

[25] Huang Chengguan. *Labor Law*. Open University of Kaohsiung Publishing House (1997): 64.

[26] Huang Yueqin. *New Discussion on Labor Law*. China University of Political Science and Law Publishing House (2003): 94.

[27] BAG NZA 1993, 174, 175; 1992, 36, 37; 894, 895.

[28] BAG 19.1.2000, AP Nr. 33 zu § 611 BGB Rundfunk. Cited from Wang Qian, Zhu Jun. Studies on the Typical Judgment Cases from German Federal Labor Court. Law Press, 2015: 15.

[29] Rimund Waltermann. *German Labor Law*, translated by Sheng Jianfeng. Law Press, 2014: 48.

the field of media, the judgment of employment relations could not pay too much attention to the external manifestations. Under the long-term cooperation framework between two Parties, defendants could dominate the plaintiff's time like the employer, while the plaintiff always kept the state of being on standby, then this situation showed a typical personality subordination.[30]

Japan's judicial judgment for the subordination of employment relations is also based on the employer's command and supervision as the core. For example, in the "Yamazaki Securities Incident", the Japanese Supreme Court held that the securities export sales stuff engages in the export sales act, accepts and makes orders on behalf of clients, and bears corresponding obligations independently. From the content point of view, it is not an employment contract, but an appointment or contract similar to the appointment, which is applicable for the labor law.[31] In the Daping Paper Event, a business appointment contract was signed between the technician and the company, while the Japanese Supreme Court held that the technician's working hours is fixed, and the technician is subject to the company's command and management. Therefore, although the Parties has signed the appointment Contract, which in essence should be the employment contract.[32]

Judiciary in China's Taiwan Region is deeply influenced by the "theory of dichotomy" between personality and economy subordination. Therefore, both of them are discussed in the case judgment. For personality subordination, the reviewing elements proposed by the court include: first, whether the providing of labor services is under the command and supervision; second, whether the laborer has the right to refuse to implement the instructions; third, whether the working hours and the workplace are determined by the other Party.[33] For economy subordination, the court interpreted it as "the employee works not for his own business, but subordinate to others, and works for the purpose of others."[34] Specifically, "the labor service provider works not for his own business, but subordinate to others, and works for the purpose of others. The labor service provider works not by his production tools, and cannot implement

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30 Wang Qian, Zhu Jun. Studies on the Typical Judgment Cases from German Federal Labor Court. Law Press, 2015: 6.

31 Yamazaki Securities Case. Decision Made by the First Small Tribunal of Supreme Court in 25 May, 1961, Civil Law 15-5-1322.

32 Daping Paper Case. Decision Made by the Second Small Tribunal of Supreme Court in 18 May, 1962, Civil Law 16-5-1108.

33 *[2014] Zhong Lao Shang Zi 19*, the civil judgment made by "High Court" in China's Taiwan Region.

34 *[1992] Tai Shang Zi 347*, the civil judgment made by "High Court" in China's Taiwan Region.

the influence on his work with commanding, planned or creative approaches."[35]

Based on the analysis of subservience theory, network labor providers cannot be included in the scope of labor law adjustment due to lack of subservience. Then, if we insist on the use of labor law as an institutional tool to adjust network labor, or insist on incorporating this network service into the scope of labor law adjustment, then the subservience theory becomes a "roadblock". The reluctance and weakness of labor law for network labor lies in the boundary defined by subservience theory. Therefore, in response to the "challenge" of labor service on labor law, there is a "challenge" on the subservience theory. The viewpoints worthy of reflection include:

First, the overall challenge, that is, the generation of subservience theory in the era of large industry, is no longer in line with modern production methods, and the labor law based on subservience theory is also a "traditional labor law" and should be changed. However, we can see that the transformation of production methods in Germany and Japan was earlier than in China, but it still adheres to the subservience theory and continues to develop richly in the judiciary. In Germany, in the non-large industries case of the "TV reporter employee status" case [36]and Japan "securities exporter case",[37] it is still based on the analysis and judgment of the subservience. The reason is that, although the production mode has changed, the nature of the labor service under the supervision of the employer has not changed. China's current production methods are already rich and diverse, and judicially generally based on the subservience theory to identify labor relations. We believe that what needs to be done is to improve the system norms based on the subservience theory in the "Notice on Establishing Labor Relations Related Matters" (Labor and Society Department [2005] No. 12), instead of negating it from the outdated subservience theory. The subservience theory is the "tradition" of labor law. This kind of "tradition" needs to be studied and understood in more depth, rather than giving up.

Second, local challenges. This view recognizes that personality traits are the essential characteristics of labor relations, but considering that some network labor providers use this as their main source of life, they have formed economic subordination.

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[35] *[2007] Lao Shang Zi 6*, the civil judgment made by "High Court" in China's Taiwan Region.

[36] Wang Qian, Zhu Jun. Studies on the Typical Judgment Cases from German Federal Labor Court. Law Press, 2015: 2.

[37] Yamazaki Securities Case. Decision Made by the First Small Tribunal of Supreme Court in 25 May, 1961, Civil Law 15-5-1322.

Therefore, personality and economics should be separated from subservience, based on economic subservience. Introduce the concept of "analogous workers in Germany" and construct a new type of "laborers", thereby expanding the scope of identification of labor relations and giving certain protection measures for labor laws. However, "analogous laborers" are not "laborers" in the sense of labor law, and they have special protection because of economic subservience. Although applicable labor law systems such as paid annual leave, labor safety protection, and collective contracts can be applied, labor laws and regulations other than this basically do not apply.[38] This is a kind of independent legal protection object, not a new type of labor law adjustment object. The application of certain labor law protection measures does not mean expanding the scope of application of labor law. Therefore, it is possible to define the economics from the subservience from the list of subservience to define the labor providers with protection needs, which does not negate the integrity and validity of the subservience theory under the labor law framework. These two are separate systems that are independent but interconnected.

An analysis misunderstanding that seems to exist is to set the network labor provider into the scope of labor law adjustment as a logical starting point, and to achieve the purpose of expanding the scope of application of labor law by "challenging" and correcting the subservience theory. However, this "result-oriented" thinking ignores that the adjustment of the law to social life should proceed from objective reality. Since cyber labor is different from dependent labor, the corresponding guarantee mechanism should be constructed based on the characteristics of the labor service, instead of "cut the feet to fit the shoes", and changing the labor law in order to apply the labor law. If so, how does the labor law stabilize, and how most of the employment groups that have concluded labor relations based on existing rules and from the subservience theory will be affected.

4. Dichotomy of legislation based on comparative study

Most countries in the world have constructed a rule system based on employee/self-employed dichotomy based on the dichotomy of "independent labor-

[38] Wang Qian, "The Determination of Labor Relations in German Law", Journal of Jinan (Philosophy and Social Sciences), No.6, 2017.

dependent labor", such as the United States, Japan, and France. France's recent judgments have determined that online food delivery staff are not laborers,[39] and Japanese justice tends to limit the scope of laborers, but recognizes that the scope of workers in the collective labor relations law is larger than the individual labor relations law.[40] This type of legislative model is “one or the other”. This is in line with institutional logic that labor law protects workers, not other labor providers.

Another legislative model is to regard "independent labor-dependent labor" as two poles, to construct a transitional type of labor from independence to dependent, and to provide corresponding protection measures according to the degree of protection needs of various types, representing the country as Germany, the United Kingdom and Canada. Among them, the scope of "workers" in English law is wider than "employee". In 2017, the British government Taylor Review proposed to change "workers" to "dependent contractors" that can obtain protective measures such as wages and working hours [26]. Canadian law on the “dependent contractor” and its collective bargaining mechanism. This type of legislative model is “progressive” and can be expressed as “independent labor...dependent labor”.

Regardless of the legislative model, the scope of adjustment of the labor law is bounded, and the basis for delineating this boundary is the subservience theory. With the gradual weakening of the subservience, labor relations and appointments. There may be unclear borders on other labor service payments, such as contracting, but it should be recognized that the general boundary exists. Within the boundary of this dependent labor, the problem of insufficient flexibility of labor law is that different protection measures are not given to workers who have different strengths and weaknesses, so that company executives and migrant workers apply the same rules, resulting in partial labor. The level of protection is too high, and the level of protection of some workers is insufficient. This is the realistic basis for the classification adjustment mode of labor law. However, due to lack of subordination, network service providers have not entered the boundary of the scope of labor law adjustment. Regardless of how the labor law is classified and flexible, it does not actually involve network labor providers. Of course, network labor service does not pose a challenge to

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[39] E.g. Paris, pôle 6, 2e ch. 20 avr. 2017 n° 17/00511, confirmant une décision du cons. prud'h. Paris, 17 nov. 2016.
[40] Bernd Waas, Wilma B. Liebman, Andrew Lyubarsky, Katsutoshi Kezuka, Crowdwork – A Comparative Law Perspective, HSI-Schriftenreihe 2017.

labor law.

Labor law is a set of rules system, which can be regarded as a “toolbox” of protection measures, such as minimum wage, working hours, labor safety protection, paid vacation, collective bargaining, etc., which can be extracted from the “toolbox”. On the basis of the contract of civil labor payment, a new type of protection mechanism is constructed. Through the referral and sham between public and private law, the relationship between regulation and autonomy is formed. It cannot be said that the introduction of the institutional tools of the labor law falls within the scope of adjustment of the labor law, just as the administrative contract is not within the scope of adjustment of the contract law. For example, the “analogous laborers” in German law, although applying certain labor law systems, are not the subject of adjustment of labor laws.

Therefore, the real problem for network labor providers is how to provide them with appropriate protection mechanisms, rather than discussing their inclusion in the scope of labor law adjustments. The direction of our efforts should be to explore the establishment of a multi-level legal protection network in addition to the dependent labor adjusted by the labor law, so that those who overflow from the labor law due to insufficient property can obtain the next level of legal protection. At the same time, it needs to combine a variety of institutional tools of the public and private laws to build a gradual protection system, and to achieve the normative model from "independent labor - dependent labor" to "independent labor ... dependent labor", rather than to obsess with expanding the scope of labor law adjustment and to trap in a anxiety of "Challenge".

5. Conclusion

The transaction form of rendering of service based on the Internet platform is mixed with a variety of forms of employment. The current literature has been explained in general. The research in this paper emphasizes the type of network labor, and extracts the labor service providers with work autonomy. It advocates providing corresponding guarantee mechanisms on the characteristics of its work and the social risks it faces. The main conclusions are three:

First, among the transaction models formed by network labor providers and

organizational platforms, only labor service providers with work autonomy have the necessity of special research and special protection. In the transaction model formed by the organizational platform as the core, there are labor providers hired according to labor contracts, and there is no substantive difference from the regular labor relationship. It should be noted that a group of labor service providers with work autonomy created by their information advantages and flexibility can independently decide whether to work and the time and place of work, so that they are different from the workers in the general sense. This labor providers are new types created by the Internet platform, and to some extent represent the development direction of network services. It is also a new problem what kind of legal relationship between the labor provider and the platform. The judiciary mainly has differences on whether it can constitute a labor relationship. The mainstream opinion does not constitute a labor relationship.

Second, the network labor service provider with work autonomy does not have the subservience of labor relations, and does not belong to the scope of labor law adjustment. The subservience theory is the legal basis for determining labor relations, and it is also the theoretical basis for determining the scope of application of labor law. The subservience requires the laborer to provide labor under the command and supervision of the employer, and the laborer does not have work autonomy. The network labor service provider is independent in personality and has work autonomy, but it is economically subordinated to the platform, and the labor income is the main source of life. It should be acknowledged that this type of network labor service provider has the necessity of social protection, but its working mode is intrinsically different from the labor relationship because it does not have the subservience. It should not be included in the scope of labor law adjustment, but should give corresponding protection according to its own characteristics.

Third, the law should establish a protection mechanism for network labor providers between “independent labor” and “dependent labor”. The development of network information technology has enabled labor to break away from organized enterprise units, and individuals have gained greater autonomy. In the past, the legal framework for adjusting the "labor trade" was established on the basis of organized employment, that is, the labor mode in the organization is subservience labor, and the labor mode outside the organization is independent labor, and the two correspond to labor law and civil law respectively. However, the Internet platform has gradually

structured and organized the production system, which has resulted in the formation of a new type of labor provider with independent personality and economic subservience between “independent labor” and “dependent labor”. It doesn’t meet its characteristics and needs that simply adjusted by labor law or civil law. Therefore, some systems should be drawn from the labor law, civil law and related social security laws, and an independent legal guarantee mechanism should be constructed.