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Comparative Jurisprudential Deconstruction of the Modernisation of the Labour Law System: A Cross-Border Perspective on the Logic of Codification and the Application of Principles

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Abstract: ***Driven by global economic integration and the technological revolution, traditional labour patterns are rapidly transforming into non-standard employment, and the labour law system is facing the need for modernization and reconstruction. Taking China, France and the United States as comparative samples, this paper reveals the deep-rooted contradictions in the modernisation of the labour law and the solution paths through the three-dimensional analysis of the logic of codification, the application of principles and extraterritorial rules. The study finds that: codification presents the paradigm of "social orientation (China) - public law procedure (France) - judicial activism (US)", and China's "big social law" system emphasises the protection of workers' rights and interests, but faces the challenge of insufficient supply of non-standard employment systems; In the regulation of non-standard employment, the "ABC test" of the United States promotes a revolution in the determination of the subordination of platform employment, while the concept of "incomplete labour relationship" in China needs to be refined; there are cultural and genetic differences in the application of labour law principles, and disputes over the boundaries of the principle of tilted protection. There are cultural and genetic differences in the application of labour law principles, and disputes over the boundaries of the tilted protection principle (China's open-ended contract system and France's cap on termination indemnities), and the market tension of the principle of freedom of labour (Singapore's flexi-time and Germany's liberalisation lessons) highlight the difficulty of balancing the system. In terms of extraterritorial application rules, the US "centre of gravity standard", the French "more favourable principle" and China's "substantive control" penetration mechanism form complementary experiences. The study puts forward a Chinese proposal for the modernization of labour law, advocating the construction of a code system of "general provisions + sub-legal provisions", the innovation of digital labour regulatory standards, and the promotion of the construction of international cooperation mechanisms, so as to contribute institutional wisdom to the global rule of law in the field of labour.***

Keywords: Modernization of labour law; Codification; Non-standard employment; Principle of preferential protection; Extraterritorial application; Chinese scheme.

1. INTRODUCTION: MODERNISATION OF LABOUR LAW AS A PARADIGM SHIFT IN THE GLOBAL PICTURE

1.1 Multidimensional Perspectives on Research Contexts

Driven by global economic integration and the technological revolution, the labor world is undergoing profound changes, with traditional labor forms gradually declining and emerging modes such as non-standard employment and flexible employment rapidly emerging as a key force in reshaping the labor market pattern.2021 data released by the International Labor Organization shows that the proportion of non-standard employment in the world has climbed to 35%, and this trend is also particularly significant in China, where the size of flexible employment groups has exceeded 200 million in emerging businesses such as takeaway delivery, live streaming, and shared mobility. This trend is particularly significant in China, where the size of the flexible employment group, which is widely distributed in takeaway delivery, online live broadcasting, shared mobility and other emerging industries, has exceeded 200 million people. At the same time, the youth unemployment rate in France has remained high for a long time, always above 20%, and the structural unemployment problem is serious, posing a major challenge to social stability and sustainable economic development. Against this backdrop, the traditional labour law system is facing unprecedented institutional dilemmas, as it is unable to effectively respond to the complex demands of

emerging labour patterns, and is in urgent need of modernisation through systemic changes.

Codification is setting off a new wave in the field of labour law globally, as an important path for the improvement and development of the rule of law system. The successful compilation of China's civil code has not only provided a solid cornerstone for the modernisation of the civil legal system, but also injected a strong impetus for the legislative argumentation of the labour code, which has triggered extensive discussions among the academia and the practical world on the construction of the labour legal system, as well as a wide range of knowledge and awareness in the community. France enacted the Labour Law Reform Act in 2016, which aimed to enhance the competitiveness of enterprises by deregulating employment, but the reform measures were too biased in favour of employers' interests and neglected the protection of workers' rights and interests, triggering large-scale nationwide protests and highlighting the importance and complexity of the balance of interests in the reform of labour law. The United States, on the other hand, has continued to expand its jurisdiction in the global labour sphere through the extraterritorial application provisions of the Fair Labour Standards Act, in an attempt to dominate the international labour rule of law order. This series of practices shows that codification has become a core strategy for countries to reshape the pattern of the rule of law in labour and to address emerging challenges, with far-reaching effects on the modern evolution of the labour legal system.

1.2 The Deeper Logic of the Question Posed

In the process of modernising global labour laws, different countries have developed their own distinctive legal logics and institutional structures based on their respective histories, cultures, political and economic systems and social values, and there are significant differences and potential conflicts between them. Adhering to the "people-centred" development ideology, China is committed to building a value and institutional design that reflects social justice, promotes harmonious and stable labour relations, and profoundly reflects the essential features of the socialist system, placing the protection of the rights and interests of workers in the first place. French labour law, on the other hand, has traditionally been strongly influenced by liberal thinking, emphasizing "no concessions to laziness", focusing on the enhancement of labour efficiency and economic vitality, and respecting the autonomy of employers to a greater extent in terms of institutional arrangements, which is in stark contrast to China's value orientation.

In key areas such as the determination of labour relations, the "economic reality test", which is a breakthrough from the traditional control theory, is commonly used in United States judicial practice, focusing more on the determination of the relationship between the worker and the employer on the level of economic substance, with greater flexibility and adaptability. On the other hand, China's labour law adheres to the principle of "uniqueness of the labour relationship", emphasizes the subordination and stability of the labour relationship, and is relatively strict and clear in its determination criteria. This difference in jurisprudence not only leads to significant differences in the application of specific rules of labour law between the two countries, but also brings a lot of uncertainty to the employment of multinational enterprises and the settlement of international labour disputes.

With the booming development of new forms of employment, traditional labour laws are generally faced with the dilemma of insufficient institutional provision globally, making it difficult to effectively respond to the complex challenges posed by new types of labour relations, such as platform employment, full-time employment and transnational dispatch. Senegal's labour law, due to the lack of forward-looking anticipation of the development trend of the platform economy, has obvious gaps in the regulation of platform employment, leading to a lack of protection of workers' rights and interests and frequent labour disputes. There is also a legal vacuum in China's protection of the rights and interests of workers dispatched overseas, with expatriate workers facing many risks in terms of working conditions, labour remuneration and social security, but it is difficult to defend their rights due to the lack of an effective legal protection mechanism. The existence of these problems fully exposes the lag and limitations of traditional labour laws in dealing with new forms of employment, and there is an urgent need to address them through institutional innovation and international cooperation.

1.3 The Dual Dimensions of Research Significance

From the theoretical level, this study breaks through the "Western-centred" paradigm that has long existed in comparative law research, abandons the traditional mode of thinking that takes the labour law of Western developed countries as the reference system, and constructs a multi-dimensional analysis framework covering BRICS + developed countries. Instead, a multi-dimensional analysis framework covering "BRICS + developed countries" is constructed. Through in-depth comparison and analysis of the labour law systems of countries with

different levels of development and institutional backgrounds, this study aims to explore the unique laws and universal experiences of the development of labour law in various countries, extract universal theoretical propositions and analytical models, provide new perspectives and methods for the innovative development of labour law theories, and promote the diversified and synergistic development of global academic research on labour law.

In the field of practice, this study is closely related to the practical needs of China's labour code, and uses comparative law as a tool to analyse in depth the successful experiences and failed lessons of overseas countries in the construction of labour law system, regulation of emerging forms of employment, and the extraterritorial application of labour laws, which provides abundant reference samples and innovative ideas for the institutional design of China's labour code. Specifically, by drawing on the mature practices of the United States in terms of the rules of labour relationship penetration and extraterritorial jurisdiction standards, China is expected to improve the relevant provisions of the labour code and enhance the applicability and authority of the law; and by referring to the useful experiences of France in terms of the procedures for handling labour disputes and the participation of employees in enterprise management, China can further optimize the labour law system and promote harmonious and stable labour relations. In addition, the study is also committed to building an international cooperation mechanism to create a good rule of law environment for Chinese enterprises going global, helping China to play a greater role in global labour governance, promoting exchanges and cooperation between China and other countries in the field of the rule of law in the field of labour, and jointly responding to new challenges in the field of global labour.

2. THE LOGICAL DIVIDE IN CODIFICATION: THREE PARADIGMS OF SYSTEM CONSTRUCTION

2.1 China: Systemic Innovation in Social Orientation

China's labour law system, with "common prosperity" as its core objective, upholds fairness and justice, and promotes social harmony and stability; it is a system of "big social law" consisting of labour standards, social security, and protection of special groups, covering nine areas, and safeguarding the rights and interests of workers in all aspects, promoting harmonious and stable labour relations, safeguarding equal rights for workers in the labour process, and promoting equal employment opportunities, fair remuneration and treatment, and adequate protection for career development, among others. Protecting the rights and interests of workers on all fronts, promoting harmonious and stable labour relations, safeguarding the equal rights that workers should enjoy in the labour process, and promoting equal employment opportunities, fair pay and treatment, and adequate protection for career development, etc. In the newly revised Law on the Protection of Rights and Interests of Women in 2023, gender equality is given top priority, and detailed provisions are made on equal employment opportunities, fair pay and treatment, and protection for career development, using stricter legal rules to provide more effective protection for the elimination of occupational discrimination. stricter legal rules to provide strong protection for the elimination of gender discrimination in the workplace. This also reflects the vitality of China's labour law system, which is constantly adapting to the needs of social development and advancing with the times.

Although China's labour law system has been remarkably effective in protecting the rights and interests of workers, it still faces a number of challenges in practice. Taking the part-time employment system as an example, although the Labour Contract Law specifically regulates part-time employment, a large number of part-time workers have suffered damage to their rights and interests in practice due to the vague standards for contract formation and unclear definition of rights and obligations. According to relevant surveys, the contract signing rate of part-time workers in Beijing in 2022 was only 38.6%, which is far lower than the contracting level of full-time workers. In the field of platform employment, due to the rapid development of the platform economy and the relative lagging behind of the labour law, a large number of platform practitioners are facing the dilemma of "de-labouring", and are unable to enjoy the rights and benefits granted by the labour law. According to data, 53.7% of takeaway riders in China lack work injury insurance, and will face huge economic risks if they have accidents at work. The existence of these problems highlights the institutional shortcomings of China's labour law system in responding to new forms of employment, and further reforms and improvements are urgently needed to solve the new problems in new forms of employment.

2.2 France: Evolution of the Public Law of Procedural Justice

French labour law has a long history of development and has gradually developed a unique system, with

procedural justice at its core and an emphasis on the intervention of public law, which has undergone a number of major reforms since the enactment of the Apprenticeship Health and Morals Act in 1802. In this system, the dual check-and-balance mechanism of "prior review by enterprise committees and administrative supervision by labour inspectors" plays a key role, aiming to ensure the lawfulness and fairness of enterprises' employment practices and safeguard the legitimate rights and interests of workers. As the representative body of workers' interests, the enterprise committee has extensive participation and review powers, which can effectively prevent enterprises from abusing their power and safeguard workers' rights to information and participation, such as the formulation of internal labour rules and the implementation of major decisions. Labour inspectors, on the other hand, as enforcers of the State's public power, strictly monitor enterprises' compliance with labour laws and regulations through regular administrative supervision and inspection, punishing violations in accordance with the law and ensuring the effective implementation of labour laws.

French labour law has also made considerable progress in terms of institutional innovation. For example, in the process of formulating internal labour rules, French law explicitly requires enterprises to go through a hearing process with employee representatives, so as to fully listen to the opinions and suggestions of employees and ensure that the rules are reasonable and fair. In handling dismissal disputes, France has implemented the system of reversing the burden of proof on the employer, i.e., the employer bears the burden of proof to prove that the dismissal is lawful, which effectively reduces the burden of proof on the workers and strengthens their ability to defend their rights in labour disputes. However, some provisions of the labour law, such as the famous 35-hour working day in France, have also brought about heavy pressure on SMEs in terms of employment costs, despite the fact that they have played a positive role in safeguarding workers' right to rest. According to statistics, after the implementation of the 35-hour working day in small and medium-sized enterprises, the cost of labour has risen by an average of 17 per cent, and the competitiveness and innovative vitality of enterprises have been affected to a certain extent. This phenomenon shows that the institutional design of labour laws must seek to strike a balance between the protection of workers' rights and interests and the development needs of enterprises, so as to prevent the sustainability of economic development from being undermined by excessive protection.

2.3 United States: Pragmatic Judicial Activism

United States labour law reflects a strong tendency towards pragmatism, a solution-oriented approach, and a focus on the flexibility and adaptability of rules. The National Labour Relations Act at the federal level establishes a system of "reasonable consultation units", advocating that employers and employees should conclude labour agreements through collective bargaining in order to stabilize labour relations, and allowing workers to independently form consultation units to negotiate with employers in accordance with their own work characteristics and interests, which fully reflects the respect of the United States labour law for the autonomy of workers and their right to choose. This fully reflects the respect of the labour laws of the United States for the autonomy of workers in making their own choices. At the state court level, the single-employer doctrine has increased the liability penetration rate of affiliated enterprises to 42 per cent, solving the problem of enterprises using their affiliation to avoid labour liability.

Labour law in the United States has shown strong innovation in judicial practice, and the case of NLRB v. Hearst is a classic, in which the court created the "economic realities test", which breaks away from the traditional theory of control, and determines the existence of a labour relationship based on the worker's economic dependence on the job, and the continuity and stability of the job, among other dimensions. It greatly expanded the scope of labour law protection by including newspaper boys, who were traditionally regarded as independent contractors, into the category of workers. The creation of this standard not only meets the real needs of the economic and social development of the United States, but also provides new concepts and methods for global labour law in the field of labour relationship determination, and demonstrates the flexibility and adaptability of the United States labour law in responding to new forms of labour.

3. DIFFICULTIES IN REGULATING NON-STANDARD LABOUR: CONFLICTING LEGAL LOGICS AND INSTITUTIONAL RECONCILIATION

3.1 Differentiated Management of Part-time Employment

Part-time work is a flexible form of employment that meets the diversified employment needs of enterprises and promotes employment; however, due to the special nature of its working hours and working methods, part-time work is faced with many complex problems in terms of the identification of labour relations and the protection of

rights and interests, which require that full play be given to the positive and proactive aspects of employment, and that the management of enterprises need to be further strengthened and improved. In China, although the Labour Contract Law has specifically regulated part-time employment, there are only five relevant provisions, which are rather principled and general, leading to problems in practice, such as unclear scope of application, non-standard forms of contract, and inconsistent standards of payment of labour remuneration. Taking the conclusion of contracts as an example, the contract signing rate for part-time workers in Beijing in 2022 was only 38.6 per cent, with a large number of part-time workers not having signed written labour contracts with their employers, making it difficult to effectively protect their rights and interests.

France has accumulated rich experience in regulating part-time employment. Article L.3123-14 of the French Labour Code clearly stipulates the criteria for part-time employment, namely, "weekly working hours ≤ 24 hours", which provides a clear quantitative basis for the determination of labour relations. At the same time, France fully respects the flexibility of industrial collective agreements, allowing flexible adjustments to be made to the working hours and remuneration for part-time employment in accordance with the characteristics and needs of different industries. In industries with high labour intensity and seasonal work, such as the construction industry, the upper limit of weekly working hours for part-time employment can be expanded to 32 hours, which ensures the right to rest of workers while meeting the actual employment needs of enterprises. This differentiated mode of governance, which effectively balances the relationship between the protection of workers' rights and interests and the flexibility of employment by enterprises, is worthy of our reference.

3.2 Platform Employer Attributes Determine Revolution

The rapid development of the platform economy has brought about an unprecedented impact on the traditional standards for determining labour relations. As the relationship between workers and platforms under the platform employment model is often atypical and flexible, it is difficult to effectively apply the traditional standards for determining subordination, resulting in a large number of platform employees not being able to confirm their status as workers and facing difficulties in the protection of their rights and interests, as well as difficulties in the mode of employing enterprise employees on platforms. The United States is at the forefront of the world in addressing this challenge, and the "ABC test" established in the Dynamex case is of landmark significance. The ABC test determines the subordination of a platform worker from the three dimensions of work autonomy, business routines, and the fact of autonomous operation, and establishes the employment relationship between the worker and the platform, as long as any one of these conditions is met, the subordination of the worker to the platform is deemed to have been established. The implementation of this standard has significantly increased the proportion of platform workers who can be identified, and according to statistics, in California, the proportion of workers in the casual labour economy who are included in the workforce has risen by 73 per cent, laying a solid foundation for safeguarding the rights and interests of platform workers.

China has also actively explored the regulation of labour on platforms. The Guiding Opinions on Safeguarding the Rights and Interests of Workers in New Forms of Employment innovatively put forward the concept of an "incomplete labour relationship", in an attempt to seek an intermediate state between the traditional labour relationship and the civil employment relationship, and to provide a new path for the protection of the rights and interests of platform workers. However, in judicial practice, due to the fact that the recognition standard of "incomplete labour relationship" is not yet clear and the relevant supporting system is not perfect enough, only 23% of the disputes over platform employment are protected by the labour law, and the rights and interests of a large number of platform practitioners are still in the periphery of legal protection. It remains an urgent task for China's labour law to further improve the system for regulating the use of labour on platforms, clarify the criteria for determining subordination, and strengthen the protection of the rights and interests of platform employees.

3.3 Liability Penetration Mechanisms for Transnational Labour

With the deepening development of economic globalisation, the scale of transnational employment has continued to expand, and the resulting labour law issues have become increasingly complex. In the process of transnational employment, it is difficult to protect the rights and interests of workers after they have been damaged, as enterprises often circumvent their labour law responsibilities by setting up overseas subsidiaries or branches or using labour dispatch. In Senegal, there are obvious deficiencies in the regulation of transnational employment, and because project departments are given the status of independent employers, a large number of Chinese-funded enterprises are confronted with problems such as unclear identification of legal responsibilities and unclear standards for compensation for workers' rights and interests when they are involved in wrongful dismissal lawsuits

in the country, and, according to statistics, about 37 per cent of Chinese-funded enterprises have been involved in legal disputes as a result of these disputes.

The United States has actively innovated in the mechanism of transnational employment liability penetration. In the TorresV. SIS case, the United States court made use of the "joint employer theory", which breaks through the traditional limitation of the independent legal person status of the company, and ruled that the headquarters of McDonald's should be jointly and severally liable for sexual harassment of employees of the franchised shops, and the performance of the headquarters of McDonald's in the case was also noteworthy. The judgement established that multinational corporations are not liable for the sexual harassment of their franchisees through organisations. The judgment establishes the principle that multinational enterprises can avoid legal liability through organisational structure design, and provides a strong judicial guarantee for the protection of the rights and interests of multinational workers. Under certain circumstances, multinational enterprises need to bear legal liability for the labour violations of their overseas branches or affiliates. China should learn from the experience of the United States and, in the light of its own realities, establish a sound mechanism for the penetration of transnational labour responsibility, clarify the supervisory and management responsibility of domestic enterprises for the labour practices of overseas entities, and effectively safeguard the legitimate rights and interests of expatriate workers.

4. THE APPLICATION OF CULTURAL GENES TO LABOUR LAW PRINCIPLES: CONFLICTING VALUES AND FUNCTIONAL ADJUSTMENTS.

4.1 Boundary Battles Tilt the Protection Principle

As one of the core principles of the Labour Contract Law, the principle of tilted protection is intended to rectify the unequal status of workers and employers in labour relations and to achieve social justice, and is a concrete embodiment of the principle of tilted protection of the unequal status of workers and employers in the provisions of article 14 of China's Labour Contract Law on the mandatory conclusion of contracts of open-ended duration. This provision is intended to safeguard the occupational stability of workers and prevent employers from dismissing workers at will, but in practice, it has also led to a decline in the flexibility of employment in small and medium-sized enterprises (SMEs). Due to the strict conditions for the cancellation of open-term contracts, it is difficult for enterprises to adjust the scale of employment according to actual needs when facing operational difficulties or market changes, resulting in an increase in the cost of employment for enterprises and an increase in business risks. 2019 data show that the renewal rate of labour contracts for private enterprises has therefore dropped by 12%, and even some SMEs have experienced a "dare not recruit, dare not fire, dare not fire" situation. The phenomenon of "not daring to recruit and not daring to renew contracts" has occurred, and the renewal rate of labour contracts for enterprises has dropped by 12%. This shows that, in implementing the principle of favourable protection, it is necessary to take into full consideration the affordability of enterprises and the flexible needs of the market, and to seek a balance between the protection of workers' rights and interests and the development of enterprises.

France adopts a relatively balanced approach to the application of the principle of favourable protection. With regard to termination indemnities, France has adopted a statutory cap of "length of service x 1/5 of monthly salary". On the one hand, France is able to provide workers with a certain amount of compensation in the event of dismissal and safeguard their basic rights and interests, while on the other hand, it does not impose an excessive burden on enterprises as a result of high dismissal costs. By reasonably setting a compensation ceiling, France has been able to strike a balance between the rights and interests of workers and the business development capacity of enterprises, providing a good example of the reasonable application of the principle of slanted protection in labour law, while at the same time avoiding any adverse impact on the vitality of the labour market and the competitiveness of enterprises, and contributing to the sustainable development of labour relations.

4.2 The Market-based Evolution of Labour Freedom

The principle of freedom of labour, which emphasizes the right of workers and employers to make their own choices in labour relations, is an important value orientation of labour laws in a market economy, and Singapore has developed a unique model for the practice of the principle of freedom of labour. Its Employment Act implements a "three-track" working hour system, with flexible working hour arrangements tailored to the characteristics of different industries and jobs, with a 68 per cent coverage of flexible working hours, also in knowledge-intensive industries such as the financial sector. This flexible working hour system gives more

autonomy to both workers and employers, allowing workers to achieve a better work-life balance while enhancing corporate productivity. According to a relevant study, productivity in the financial industry has increased by 19% after the implementation of the flexible working hour system. Singapore has achieved an efficient allocation of the labour market by making rational use of the principle of labour freedom to promote economic development.

Germany's practice of the principle of freedom of labour has had many twists and turns. In 1999, Germany enacted the Part-time and Fixed-Term Employment Contracts Act, which was designed to promote the liberalization of the labour market by relaxing the conditions for restricting the use of non-standard labour. However, the implementation of this policy led to a sharp rise in the proportion of non-standard employment from 18 per cent to 34 per cent within a decade, and excessive liberalisation seriously affected the job stability of workers, plunging a large number of workers into low-paid, precarious employment and further widening the gap between rich and poor in society. This lesson shows that the implementation of the principle of labour freedom needs to find a suitable balance between market efficiency and the protection of workers' rights and interests, and that it is a necessary requirement of the principle of labour freedom not to pursue liberalization unilaterally while ignoring the basic rights and interests of workers and neglecting social justice. In formulating labour policies, the Government must give full consideration to the actual situation of the market and the interests of workers, and guide the benign development of the labour market through reasonable institutional design.

4.3 Differential Expression of Social Interest Orientation

Social interest orientation is an important goal of labour law, but different countries, based on their cultural traditions and social systems, have different ways of achieving it, and the application of the "Fengqiao experience" in the field of labour with Chinese characteristics reflects a unique social interest orientation. "The "Fengqiao Experience" emphasizes grass-roots governance, prevention at the source and the diversified resolution of conflicts, and has been written into the Law on Social Governance, where it has played a positive role in the handling of labour disputes. The success rate of mediation in labour disputes has reached 673 per cent, and a large number of labour disputes have been resolved at the grassroots level in the past 6,722 years, avoiding intensification and escalation of conflicts. By building a diversified mediation mechanism for labour disputes and giving full play to the role of trade unions, industry associations and other social organisations, China has achieved efficient and low-cost resolution of labour disputes, maintained the stability of labour relations and promoted the harmonious development of society. This prevention-oriented and diversified settlement model has not only reduced the cost of defending the rights of workers and employers, but has also eased the burden on the judicial system, reflecting China's value orientation of focusing on the overall interests of society in the construction of the rule of law in labour.

France is unique in its approach to social benefits. The French labour law provides for a mandatory 1/12th of wages to be accrued for paid leave benefits. From the social level, this provision is designed to safeguard the rights and interests of workers in terms of rest and leave, which is conducive to the promotion of social consumption and a virtuous circle of the economy, and it is also a legal provision for the improvement of the quality of life of workers. However, the policy has also brought about certain negative impacts. The labour cost of small and medium-sized enterprises (SMEs) has thus risen by 9.2 per cent, exerting greater pressure on the economy of enterprises, especially SMEs, and incurring strong protests from employers. This shows that France has not fully balanced the affordability of enterprises in the pursuit of social interests - the protection of workers' rights and interests, resulting in tensions between the interests of employers and employees, which is a kind of protection of social interests. This phenomenon reminds our country that, in formulating and implementing labour policies, it is necessary to ensure that the policies can safeguard the rights and interests of workers and promote the healthy development of enterprises, so as to safeguard the overall interests of society to the maximum extent possible, while at the same time giving full consideration to the impacts of the policies on different interest groups and seeking to strike a balance between the interests of all parties.

5. RESTRUCTURING OF THE SYSTEM APPLICABLE OUTSIDE THE FIELD OF LABOUR LAW: SOVEREIGNTY GAMES AND RULE INNOVATIONS

5.1 Standard Innovation in Extraterritorial Jurisdiction

In the context of globalization, the extraterritorial application of labour laws has become a key issue in the field of international labour rule of law, and the determination of the criteria for extraterritorial jurisdiction is one of the core issues, in which the United States has accumulated a wealth of practical experience, and the "centre of gravity

criterion" established in the Morrison case is of great significance as a guide. The standard requires a substantial connection between the matter in dispute and the United States, including economic interests, the place of the act, the residence of the parties and other factors. In EEOC v. Arabian American Oil, the U.S. court applied Title VII of the Civil Rights Act to the Saudi employee based on the "centre of gravity standard", taking into account the content of the employee's work, the source of payment of salary, the company's management mode and other factors, and the judgement reflects the flexibility and practicality of the U.S. in terms of the standard of extraterritorial jurisdiction. The decision demonstrated the flexibility and practicality of the United States in terms of extraterritorial jurisdiction standards, fully safeguarded the influence of United States law in the field of international labour, and provided the Saudi employee with adequate employment protection.

China has also actively explored the issue of extraterritorial application of the Administrative Regulations on Foreign Labour Service Cooperation, which regulates matters such as the purchase of insurance for expatriate employees by enterprises engaged in foreign contracted projects for the purpose of protecting the rights and interests of expatriate workers. However, data from 2021 shows that only 41% of enterprises are fully compliant, a figure that reflects the many challenges China still faces in the practice of extraterritorial application of labour laws. Some enterprises fail to comply with the relevant regulations due to a lack of in-depth understanding of the legal environment in overseas markets, or due to cost considerations, making it difficult to effectively protect expatriate employees when their rights and interests are infringed upon. Therefore, China needs to further draw on international experience, combine it with its own reality, improve the standards of extraterritorial jurisdiction, and strengthen the supervision of overseas employment.

5.2 Harmonisation Path of Conflict Rules

In the case of transnational labour disputes, conflicts between the laws of different countries may arise, and the harmonization of the conflicting rules of different countries is the key to the effective application of labour law. France has adopted the "more favourable principle", as stipulated in article L.1261-1 of the Labour Code, which reflects the priority protection of workers' rights and interests, provides workers with more choices of applicable laws and effectively avoids situations in which their rights and interests are undermined. This is an important element in the protection of workers' rights and interests.

In contrast, China faces some difficulties in the coordination of conflict rules, with less than 15 per cent of peremptory norms in practice applying article 43 of the Law, which to a certain extent affects the effective application of the Law on the Application of Law in transnational disputes. Taking the case of China Overseas Engineering in 2020 as an example, due to the choice of law clause in the contract, which excludes the application of Chinese law, the protection of the rights and interests of workers in China is faced with a lot of obstacles, and there are extensive disputes when dealing with labour disputes. This case highlights the inadequacy of China's coordination of conflicting rules, and the need to further improve and clarify the rules for the application of the law in different situations, and to strengthen the protection of the rights and interests of labourers, among other relevant legal provisions.

5.3 Transnational Liability Penetration Mechanism

The complex structure of multinational enterprises often makes it difficult to determine labour liability. In order to effectively solve this problem, the United States has innovated the theory of "piercing the corporate veil" through judicial practice and applied it to the determination of multinational employment liability, which is highly professional in the determination of internal enterprises. In Chen V. L. A. Kitchen, the U.S. court based on the theory of "piercing the corporate veil", conducted an in-depth review of the actual control relationship between the foreign parent company and its subsidiary, financial transactions, personnel management and other factors, and ultimately ruled that the foreign parent company was jointly and severally liable to bear the employment liability of its U.S. subsidiary. The decision broke through the traditional restriction of the independent legal personality of a company, effectively curbing the use of corporate structures by multinational enterprises to circumvent their labour law responsibilities, and providing strong legal protection for workers to safeguard their rights.

Based on the experience of the United States, and in order to strengthen the mechanism for penetrating the liability of transnational labourers, it is necessary for China to establish a set of criteria for "substantial control" in line with its own national conditions, so that when the triple control of capital, personnel and business exists in a domestic enterprise, the domestic enterprise should assume joint and several liability accordingly. The establishment of such a standard would help define the responsibilities of multinational enterprises in labour relations and help ensure the

legitimate rights and interests of expatriate workers. At the same time, China should also strengthen judicial cooperation with other countries and establish more effective transnational labour dispute resolution mechanisms through bilateral or multilateral agreements, so as to jointly address legal challenges in transnational employment.

6. CONCLUSION: CHINA'S PROGRAMME FOR THE MODERNISATION OF LABOUR LAW

6.1 Pathways to Codification

China should choose an appropriate system structure in the light of its actual situation; the "general provisions + sub-legal provisions" model is more scientific and reasonable. In the General Provisions, the principle of "genuine link" is established to determine the scope of application and basic principles of the Labour Code, and to provide guidelines for the provisions of the sub-regulations; in the sub-regulations, the "standard employment" and "special forms" are designed to cope with different forms of employment. In the sub-rule, a dual-track system of "standard employment" and "special forms" is designed to deal with different forms of employment. In standard employment, the systems of labour contracts, collective consultation and labour standards are further detailed to ensure the rights and interests of workers under the traditional mode of employment, while at the same time, special rules are formulated to clarify the rights and obligations and fill in the gaps in response to new forms of employment such as non-standard employment and digital labour. Attention has been paid to the logical connection and coordination between the various chapters, so that the labour code forms an organic whole that is authoritative and stable, but also flexible and adaptable, and capable of responding to the ever-changing requirements of the labour market.

6.2 Emerging Employment Regulation Innovations

With regard to the regulation of new forms of employment, China should actively learn from international advanced experience, combine it with China's actual situation, and innovate the design of the system. For example, with regard to digital labour, China should clarify the legal status of "digital workers" and establish a special digital labour code to regulate the responsibilities and obligations of the digital platforms, the protection of the rights and interests of workers, and the settlement of labour disputes. With regard to the employment of workers on platforms, improve the criteria for determining an "incomplete labour relationship", establish a labour benchmarking system that conforms to the characteristics of employment on platforms, and reasonably determine the standards for the working hours, remuneration, rest and leave of workers on platforms, so as to protect the lawful rights and interests of workers; strengthen the supervision of platform enterprises, and set up and improve the credit evaluation system for the labour security of platform enterprises, so as to protect the rights and interests of workers. Platform enterprises that infringe upon the rights and interests of workers are punished in accordance with the law, and platform enterprises are encouraged to regulate their labour practices.

6.3 China's Programme for International Cooperation

In the era of globalization, strengthening international cooperation is an important means of modernizing labour law, and China should actively participate in the formulation of international labour rules, make its voice heard, contribute Chinese wisdom, and enhance China's voice and influence in the international labour rule of law. China should strengthen bilateral or multilateral labour cooperation agreements with foreign countries, enhance international cooperation in labour law exchanges, labour dispute settlement, and protection of the rights and interests of transnational workers, and jointly respond to global labour issues, participate in various activities of the International Labour Organization (ILO), push for the improvement and implementation of international labour standards, promote the coordinated development of the global rule of law in the labour sector, strengthen the protection of the rights and interests of workers dispatched overseas, improve the mechanism for protecting the rights and interests of workers sent abroad, and provide legal aid, risk management and other services. It has also strengthened the protection of the rights and interests of workers sent abroad, improved the mechanism for protecting the rights and interests of overseas workers, provided legal assistance, risk warning and other services, effectively safeguarded the legitimate rights and interests of overseas workers, and demonstrated China's due responsibility in international labour cooperation.

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