An Analysis of the Roots of Modern Chinese Labour Law with Particular Reference to the PRC Labour Law 1994

—— Crossing the River by Feeling the Stones

By

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I am a fortunate person. This topic allowed me to study a period of courage and hope, full of ideas of fairness and justice. It also made me meet many people who adhere to these concepts. Since the idea of doing the topic of the historical development of China's labour law up to the completion of this article, countless pairs of warm hands have helped me. Without you, I could not finish this thesis.

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Even though I know clearly in my heart that this paper is far from perfect, I know that, in the future, I will spend my whole life telling this story.

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Declaration

I, Yixuan Wu, declare that this thesis is my own work and has not been submitted for a degree at another university.

Abstract

This thesis tells the birth of China's modern labour law system by restoring the legislative process of the Chinese Labour Law in 1994. As a part of the legal system reform, the birth of the Labour Law was also following the guiding strategy, 'Crossing the River by Feeling the Stones', of the Chinese macro institutional reform. This thesis attempts to solve two questions. What are the 'stones' in the river? How those stones have paved the way or direction? In order to answer these questions, this article combs and studies China's reform and adjustment of the labour system and legislative work from the end of the 1970s to 1994. At the same time, in order to restore the process and supplement the information, this article collects and sorts out the memories of some legislators. Through interviews with those who have experienced the legislative process, this thesis discovered the main controversial issues in the legislative process, which was also the original design of this law. There are three main innovations in this thesis: First, this article reveals the main factors (the stones) considered by the legislator in the process of labour law legislation; Second, this article discovered the holistic discussion of drafting process of labour law might not be able to provide insightful picture of how the river has been crossed. Indeed, there were at last four set of branches (components) of the river (Labour Law), which need to be crossed (to be formed) and therefore to be reviewed separately. Third, the same type of stones in different branches actually played different roles in deciding the directions. In the end of the day, the river of Labour Law was crossed with hybrid nature, where not only the stones but also the branches have their joint influence that shall not be oversimplified or overlooked. The conclusion restores the trajectory of river crossing process during the birth of the modern Chinese labour law system. A number of topics attracted attention during the research process and clearly call for further studies in this field: For instance, the role and functions of legislators during the policy-making process need to be recognized;

compare the labour laws of different countries with comparable historical context; and, a further discussion concerning the extent to which the professional and academic background can affect the legislation in China. Further studies on these topics would undoubtedly be valuable and will contribute to the historical research on the 1994 PRC Labour Law.

Abbreviations

ACFTU	All-China Federation of Trade Unions
ACFIC	All-China Federation of Industry and Commerce
CASS	Chinese Academy of Social Sciences
CCP	Chinese Communist Party
CEA	China Entrepreneurs Association
CEC	China Enterprise Confederation
CMC	Central Military Commission
CPPCC	Chinese People's Political Consultative Conference
HRM	Human Resource Management
ILO	International Labour Organization
NBSC	National Bureau of Statistics
NPC	National People's Congress
NPCLAC	Legislative Affairs Committee of the National People's Congress
NPCSC	National People's Congress Standing Committee of the National People's Congress
MHRSS	Ministry of Human Resources and Social Security
MOL	Ministry of Labour
MOP	Ministry of Personnel
PRC	People's Republic of China
SDPC	State Development Planning Commission
SOE	State Owned Enterprise
SME	Small and Medium-sized Enterprise

Chapter 1 Introduction

1.1. Research Questions and Objectives

'Crossing the river by feeling the stones' is the overall strategy guiding China's progressive institutional reform model since 1978.[1] Such a reform strategy set the basic principles for political reform, and provided a simple and practical epistemological and methodological tool. As an important part of the reform of the political and economic system, Chinese legislation since then also followed this strategy. In 1994 a fundamental Labour Law statute for the People's Republic of China (PRC) was promulgated in the shape of the Labour Law of the People's Republic of China 1994.[2] The legislative process leading up to enactment of that 1994 Labour Law lasted for some fifteen years and underwent revision to various drafts on more than thirty occasions. This thesis offers a study and structural overview of the gestation of China's 1994 Labour Law. The presentation does not seek to concentrate simply upon a linear historical presentation or upon contextual political research. Rather, it seeks to offer a socio-legal study through which to illustrate the origins, context and development of the mechanisms which eventually gave rise to the final design of the articles making up the 1994 Law.

The significance of this thesis is to find out the 'stones' (influencing factors) in the process of 'crossing the river by feeling the stones' and the reform direction of crossing the river by searching for evidence. This thesis suggested to present the influencing factors and reform directions of the birth 1994 PRC Labour Law as deriving from three aspects. First, **the context** of the 1994 Labour Law is complicated and has remained largely unrevealed. That context reflects a significant period of transition for the People's Republic of China from the late 1970s to the early 1990s.

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[1] Xianglin Xu, '"Crossing the River by Feeling the Stones" and the Policy Choice of China's Progressive Political Reform' ["mō zhe shí tóu guò hé" yǔ zhōng guó jiàn jìn zhèng zhì gǎi gé de zhèng cè xuǎn zé] (2002)03 Tianjin Social Sciences 43-46

[2] Labour Law of the People's Republic of China was adopted at the Eighth Meeting of the Standing Committee of the National People's Congress on 5 July 1994, effect on 1 January 1995, amended on 27 August 2009 and 29th December 2018.

This was the period during which China was transforming its economic institutions from "planned" to "market-oriented". In particular, prior to this legislation, work-related issues had been the subject of regulation through administrative policies, whereas, throughout the gestation period leading up to adoption of the 1994 Labour Law one was witnessing a transition from such administrative policies to regulation through the law. At the same time, the labour institutions were also undergoing a period of transition in accordance with the developing national macro-economic policy. Thus, the old rigid labour institutions were being transformed into new, modern, marketized flexible institutions. So, too, the roles of the main objects of labour relations were being transformed during this process – "labourer" is no longer a status; "employer" starts to include new ownership; and the "labour relationship" is undergoing diversification as well. As a result, the whole transition background contributed special characteristics to the birth of the 1994 Labour Law. Given that specific process, therefore, the focus of this presentation is not confined merely to the Law itself, but also draws in the context of the time for Chinese legislation and institutional reform.

Second, **the actors** working within this transition background were not yet clearly acknowledged. During the process of creating the 1994 Labour Law, there were several groups of people who were working on different positions and who dedicated themselves to the legislative work. Those individuals were making decisions under restricted conditions, with limited resources, measures and power to make strategic choices while considering different influential factors. What was taken into consideration by those individuals makes up the most relevant factors for the birth of the Labour Law, and what they eventually undertook laid out the pathway to that Law. They make up the group of people who might be described as being "closest to the truth".

Third, **the system of labour law** is itself worthy of further discussion. It may be generally acknowledged that, for the purposes of academic development of the field of labour law study and legislative research, it is of value to discover and reveal the legislative history of the law. However, while there have been many studies on various specific institutions of labour law, there have been very few studies which have sought to learn from the legislative process itself. Scholars generally pay more attention to

the implementation and enforcement of the law, and appear rarely to carry out comprehensive legislative research of this kind.[3]

The legislative and developmental process of the Labour Law can help with institutional research and study of the subject of labour law. Indeed, because the gestation of the Labour Law is a need of academic research, labour legislation itself constitutes an interdisciplinary research topic. The combination of legislation and labour law itself constitutes a cross-disciplinary field, and legal science often combines the perspectives and methods of political science, sociology and history. By so doing, interdisciplinary research can thus open ideas and perspectives for this discipline.[4]

In addition, the gestation and birth process of labour law is an important part of institutional transformation, and its history helps to fill a void in research data on transition economies. For the purpose of future legislative works, the birth of the Labour Law in 1994 was a sign of the emergence of modern labour law in China. The key characteristics of that 1994 Labour Law can be seen from the following aspects: It is the first labour law of the socialist country and the first labour law of the People's Republic of China; It is the basic law in China's labour law system and enjoys the highest legal effect; It directly reflects the various labour provisions stipulated in the Constitution and provides a legal basis for other labour laws and regulations; It has the widest scope of application, including all employing units and labourers that have

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[3] This thesis benefited from a number of valuable studies which reviewed the implementation and enforcement of, or more specific perspectives on, the 1994 Labour Law. These included (inter alia): Malcolm Warner, 'Chinese enterprise reform, human resources and the 1994 Labour Law', (1996) 7 The International Journal of Human Resource Management 779-796; Tim E. Pringle & Stephen D. Frost, '"The absence of rigor and the failure of implementation": occupational health and safety in China', (2003) 9 International Journal of Occupational and Environmental Health 309-319; Sean Cooney, 'China's labour law, compliance and flaws in implementing institutions', (2007) 49 Journal of industrial relations 673-686; and Mary Gallagher et al, 'China's 2008 Labor Contract Law: Implementation and implications for China's workers', (2015) 68 Human Relations 197-235.

[4] For a general introduction to the legislative procedure and the function of different legislatures in China, see the Chapter 4, section 1of this thesis.

employment relations in the country; its content is the most comprehensive in all aspects. Thus, its formulation and implementation have marked the entry of China's labour legislation into a brand-new stage of progression.

Other features of the 1994 Labour Law are also of significance. Thus, it underwent the longest drafting process of any piece of legislation, while it has been the first legislation to have been reviewed twice by the State Council Executive Meeting[5] of the PRC. As well as having gone through the most versions of legislation drafts, it is also regarded as the most "advanced" legislation having regard to its implementation. Its gestation reflects the transformation process towards the labour legal institution. The transition from a planned system to a labour market system under the market-oriented economic system represents many important sub-institutions which have been created and confirmed through this legislation. At the same time, there has been a process of summarizing various policies, local customs and practical local experiences. Any piece of legislation draws upon various factors which are then contained in the legislation, and these factors reflect the political, social and economic backgrounds of the time. In consequence, the combing through of the legislative process provides an invaluable introduction to the history.

Furthermore, there is a real need in the world for labour legislation research. Legislation represents the first step towards the establishment of a legal system. Depending upon actual development needs, along with the needs for application in practice, the law needs to be revised and new legislation is then needed. Studying how a law was brought about can provide a basis for, and ideas about, later revision of legislation or the introduction of a new law.

The legislative history of a law is the cornerstone and starting point for academia. If it is a puzzle, it is a most unmissable piece. In the initial stages of learning about the labour law, whenever students might have sought advice from almost any Chinese judge, lawyer or professor on a question about the labour law – such as “Why is there

[5] The Executive Meeting of the State Council is the statutory representative assembly of the Prime Minister's Office of the State Council. It is composed of the prime minister, deputy prime ministers, state councillors, and secretary general of the State Council, and is convened and presided over by the prime minister. The Meeting’ agenda is to discuss and decide on major issues in the work of the State Council. Generally held once a week. Relevant departments leaders can be arranged to attend the meeting as non-voting delegates.

a procedural prerequisite for labour arbitration in the Chinese system?" – the answer which they might have received would be almost the same: "It's down to historical reasons". That answer – "historical reasons" – might appear as plain as the nose on our face, but, of course, it totally fails to encourage a good many student to undertake the necessary theoretical research into basic issues and to trace developments back to their source. What is more, there is a need to clarify what might be those so-called "historical reasons", and what might have been the reasons why the law-makers made various choices at particular junctures along the development path. When looking for answers to these questions, one very quickly discovers that a great deal of the available research simply repeats previous results.

With an understanding of its significance, scholars and reviewers have spent time searching for relevant historical materials, only to find that there were very few first-hand historical materials. It has also become clear that many of the existing materials and related research suffer from being clearly one-dimensional. However, this thesis suggests that the influential factors and significance of the legislation go far beyond the scope of people's imagination or existing literature.[6] This makes it somewhat confusing as to how the eventual highly consistent results were concluded. On the other hand, it has to be recognised that the Labour Law, in its use of the Chinese language, may employ different terminology on the same issue, or may use the same terminology in relation to different subjects. This can give rise to misunderstandings when legal experts from different cultural backgrounds or different generations endeavour to communicate with each other.

At its core, this thesis is a study of the developmental process of the 1994 Labour Law, with emphasis on the gestation period involving context, actors and institutional factors. The underpinning evidence has been assembled through in-person interviews, giving rise to a collection of legislators' memories providing an oral data-set, which has then been tested against the available written documentation to justify or to challenge the reliability of the data.

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[6] Since this is a study focus on one Chinese legislation and its legislative process, many sources cited will be the original Chinese sources rather than translations for the interest of accuracy. The title will be translated into English and present with their Chinese title and *pinyin*.

Against that background, this thesis raises three key research questions which are addressed in turn. These are: (1) What was the legislative context of the China's labour law?; (2) Which actors were relevant to which systems in the development of China's labour law?; and (3) What factors were influencing in relation to various systems in the development of China's labour law?

With a view to developing and addressing these research questions, the research hypothesis has been that there is not one single or dominant influential factor in play during the birth process of the 1994 Labour Law. Rather, that legislative instrument has come about as a consequence of multiple factors interacting together on particular institutional levels. Those factors can be traced in the contemporary history of the legislative process of the 1994 Labour Law.

It should also be stressed that this project has proved particularly challenging in respect of the research method, since it has been widely believed that some – indeed, much – of the legislative debates and discussions are inaccessible.[7] As a result, this research recognised that the research methodology to be adopted for this phase in the history was in need of innovation and break-throughs. It is suggested that this thesis demonstrates that oral history is a particularly helpful data collection method for reconstruction of a specific period in history, especially when it comes to legislative research. As a starting point, the simplest and most straightforward evidence is that, to date, nobody has been able to show specific versions of every single draft through which the developing Law passed. Given that problem, it has also been generally believed that it is impossible to find out what changes were made from the first draft to the final version of the Labour Law. Clearly, since it is well recognised that a single word in a Law in a Civil Law system can affect a standard (or even an entire institution), it follows that the basic task of evidence collection is particularly important (and difficult) for this thesis. Nevertheless, the evidence in the case of this thesis shows that the legislative process is not completely inaccessible, and, indeed,

[7] Susan Xue provided three channels to for public to observe information of legislative debates and discussion. Which are official reports, newspapers and official government website. Among which, the first channel is not published. See Susan Xue, 'China's legislative system and information: an overview' (2005) 22 Government Information Quarterly 322-341

that there are some aspects of the work that has already been the subject of public discourse on the parts of the legislators.

At the same time, a reality that has added urgency to the need for moving swiftly ahead with the collection of oral evidence is that the number of people who actually witnessed at first hand the legislative gestation and birth process is fast dwindling. At the time of writing the age-range of the interviewees for this thesis varies from 55 to 80 years old. Given that retirement age for Chinese people is presently 55 for females and 60 for males, this means that either these witnesses were already retired or were about to retire at the time when their interviews were conducted, so that, even for those still working, they would soon be about to empty their offices and might discard even more documents and materials which might be of relevance for the research. Furthermore, there are also increasing risks as times passes in relation to the reliability of those witnesses in terms of recall from their memories. Indeed, more and more objective factors are occurring and are probably unavoidable.

One clear example of the risk posed by an aging pool of potential witnesses can be seen in the case of Professor GUAN Huai[8], one of the earliest group of experts and scholars on labour law in the PRC, who participated in the process of labour legislation from 1950 onwards. Professor Guan's opinions were heeded by legislators throughout that time and it was his ideas that provided the foundations for modern labour law jurisprudence in China. Sadly, Professor Guan passed away only a short time after this author had first begun to develop the subject focus for this thesis. It is a matter of great regret that this project was deprived of the opportunity to interview and incorporate the recollections of Professor Guan Huai.

As well as the passing of witness participants in the legislative processes, many written sources have also lain buried or lost. This is partly a consequence of the passing of time, but it nevertheless poses a real problem that the researcher cannot ignore. Chinese labour law is a product of a time in which legal experts and scholars have democratically participated into the legislative process;[9] they have brought their ideas

[8] This thesis will write the Chinese surname in capital letter if it appears the first time in the context in order to facilitate the understanding of readers with different cultural backgrounds.

[9] Legal exports (including foreign exports) and scholars participated into the legislative procedure is not the

into the law and therefore arguably created a better position when interpreting the law. The treasures that history left to us should not be left in the long run of history for nothing. This thesis is to integrate the memories of these people to generate answers, to document the phase in the history and to lay a foundation for the discipline.

From the perspective of this author, labour law and policy is not an isolated and static issue, but an inter-disciplinary and multi-perspective research topic. It thus particularly requires an inter-disciplinary approach and material to support that. So far as the legislative process leading to the 1994 Labour Law is concerned, the background features at that time included not only China's factual position, but also influences deriving from labour policy and legislation in other countries at the same period. These also have to be taken together with broader aspects involving not only reform in the labour field but also the embedding of political policy and economic reform into the legislation. At the same time, partly due to the fact that the legislators were more cautious in the preliminary stages in the light of their lack of experience, they looked to learn lessons from the experience of other countries, as well as spending substantial time creating their own experience on the basis of institutional experiments in local areas. That being the case, this thesis also seeks to present a global perspective from the historical process of the factors that may have influenced the birth of Chinese labour law. In doing so, it attempts dynamically to explain the global history, social, political and economic backgrounds, and their interaction, as well as to illustrate the texts and concepts of labour law, the evolution of labour relations, and other related issues. In doing so, it attempts to provide a point of reference in an overarching picture of the macro-analysis in relation to the existing problems, along with some possible directions for future research. At the same time, it serves as a form of "coding manual" – setting out the process of when a problem arose, who raised it, and how it was resolved – with a view to helping future researchers avoid searches for answers taking on the quality of "finding the needle in a haystack", or simply becoming a repetition of the conclusions of others.

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first time in the PRC Labour Law 1994, but also in the making of the PRC Bankruptcy Law in 1986, which is a significant sign of democratic legislation. See Ta-kuang Chang, 'The Making of the Chinese Bankruptcy Law: A Study in the Chinese Legislative Process' (1987) 28 Harvard International Law Journal 333-372

On the basis of those ambitions, this thesis essentially contains three perspectives: (1) presentation of a first-hand historical data-set, collected through use of the oral history method and drawn from the evidence of the actors involved; (2) a higher level of analysis, focusing on the transition economic context in China coupled with a broader perspective designed to demonstrate the influence of the international situation and international organizations where these can be discerned; as well as (3) a deeper exploration as to how China actually brought about the legal reform of labour institutions through the 1994 Labour Law.

In summary, therefore, the core research objective is to show the legislative process giving rise to contemporary Chinese labour law through the activity of the legislators against the backdrop of the evolving historical system. What factors were there and how did those factors affect the design of the legal system and provisions of labour law? In doing so, it is hoped that this presentation can contribute to resolving a number of major issues:

To demonstrate a clear legislative time-line – explaining the relationship between historical events, the time-line and the Labour Law eventually enacted in 1994. The time-line for the legislation shows the trajectory for the development of Chinese labour law, and indicates the sequence for the reform and the re-establishment of labour law institutions.[10]

To analyse and introduce separately the sub-institutions of labour law. By introducing the policy reform process and the debate between legislators on each sub-institution, it can help to clarify the influential contextual factors bearing upon the legislation, the actors involved, and the institutions upon which they were acting.

To raise questions for future research. By combining problems in the field of labour law and regulation, discussed mainly in the labour legislative process and current research, to put forward some directions and ideas for future research. While this thesis is by no means able to furnish an exhaustive list of answers to these questions, it aims to provide evidence and guidance for future research.

[10] The detailed timeline of the legislative process of the 1994 PRC Labour Law is listing in the Thesis Chapter 4, Section 1.

To discuss the pathway and basis for Chinese contemporary legal construction. What choices did China make in the historical environment of the time, and what are the compromises which reflect the historical background and environment of the time? Here, for instance, it is necessary to address basic questions, such as: Where does the term "employer" come from?; How is the retirement age and the system of working hours determined?; Why should China's labour policy be established through legislation?; How does policy transfer into law?; Who are the actors in play during the legislation?; and Which group or groups of actors can be said to have been more influential than others?

1.2. Limitations

The research for this thesis has been faced with a number of difficulties and limitations. Thus, for example, since much of the early legislative information has been placed in the archives and is confidential, there is relatively little official documentary information. As a result, obtaining credible data becomes crucial. In order to address this, the author has made use of oral history to obtain information, in the hope of discovering the missing data outside the normal currently available public information and research sources, through the memories and self-reports of legislators who were personally involved in the legislative process. The hope is to offer a study of how the labour system under the planned economy is transformed into a labour system under the market economy – the primary contribution to which can be found in the data section of oral history.

That having been said, however, the most important innovation in oral history also constitutes the biggest research limitation. In the first place, oral history requires cross-verification. Yet, in many instances, the opinions of various interviewees can be seen to be almost contradictory. This therefore calls for other written records and information to support the analysis. Second, for the analysis of oral materials, the author needs to interpret the words of the interviewee according to their own experience and knowledge accumulation to conduct semantic analysis. This is, in many ways, the hardest part. In particular, because the Chinese speak very implicitly, the full meaning and import of sentences will not completely or directly be expressed in the Chinese grammar and culture. It is therefore important to conduct a semantic analysis of the words uttered. The analysis in this thesis is not based upon textual

analysis, but is based, rather, on the analyst's own understanding of the words used and recorded. In summary, therefore, there is a danger that some parts of the presentation are not completely objective, or may have shortcomings because of the memory bias of the respondent witness, or may be subject to the author's own misunderstanding of its meaning. While the author has endeavoured to avoid such problems in the research and writing of this thesis, those very real dangers must always be borne in mind.

1.3. Structure of the Thesis

This thesis consists of nine chapters, of which the first chapter has introduced the research context, and, based on that context, the objects of investigation for the historical development of contemporary Chinese labour law, in order to address three primary research questions. Following on from that, **Chapter 2** offers a literature review of writings on labour law legislation and influencing factors. It concludes that the debate in this field has been biased or not comprehensive, with gaps in the literature largely occasioned through a lack of sufficient evidence and historical analysis. In consequence, it has not been possible to uncover the legislative intention of the law, or to pinpoint the problems for this legislation. It is suggested that the contribution of this thesis is not only in demonstrating how the historical material can contribute to labour law academic research and research on Chinese legislation and policy-making, but also in illustrating how it can provide practical value in the future legislative work for the legislators. In **Chapter 3** the author sets out the main research methods, data acquisition techniques, and analytical methods based on the framework for analysis. The presentation sets out by demonstrating the importance and necessity of using oral history as a research method for this thesis. **Chapter 4** introduces legislative procedure and the timeline of the Labour Law in section 1. In section 2, the guiding idea of 'crossing the river by feeling' of the law reform. This guiding idea analyses the construction of this process for the purpose of organizing and presenting the historical materials. This includes introducing the meaning of stones under the river as possible influencing factors including context, the actors and the system in the study. The influencing factors for the gestation and birth of this legislation have been categorized into these three layers of analytical category. This is followed by enunciation of fourteen questions that has been dived into four main branches of the law system,

constituting the main debate themes of the legislative process. The main design logics of the legislation are illustrated, as is the theme upon which the legislators were focused during this process. From Chapter 5 to Chapter 8, the developmental process of each sub-system is introduced by showing how the specific provisions of labour law are designed, different influencing factors are showing in the context. **Chapter 5** contains the theoretical selection and analysis of the labour law, including its main subject-matter and scope, together with its legal principles. **Chapter 6** deals with employment and contract institutions, such as employment promotion, labour contracts, and dismissal protection. Thereafter **Chapter 7** introduces labour standards including working hours, rest and vacation, and wages. This then enables **Chapter 8** to introduce China's social security and labour dispute resolution systems, in order to explain how the administrative matters of the Labour Law with the guarantees implementation. In this chapter, the order of these sub-systems of labour law follows the sequence of chapters in the 1994 Labour Law. Finally, **Chapter 9** draws together the research and offers a set of conclusions for the thesis.

Chapter 2 Literature Review

2.1. Controversy

The history of the evolution of labour law in the People's Republic of China (PRC) since 1949 echoes that of the country's economic and political transition. Understanding the history of modern Chinese labour law is not only particularly essential to revealing its roots in the Chinese socio–legal context but also helps to reflecting on the trends and inner logic of its development. Although modern Chinese labour law developed as China transitioned away from the old institutions and moved towards the new and was influenced by multiple factors, there is a dearth of information in the literature in terms of the substantive analysis of the primary sources on this topic.

Firstly, the research on Chinese labour law expanded and become extensive and highly focused after 2008 when the Labour Contract Law was promulgated. However, scholars often take the Labour Law, enacted by the Standing Committee of the National People's Congress in 1994, as a starting point when examining the subsequent development of labour law in China. While the importance and significance of implementing the Labour Law in 1994 are well recognised, the historical roots and rationale of the design of this legislation prior to 1994 are relatively unexplored.[11] Moreover, research on the legislative process behind this law fails to identify essential questions and lay the foundations for further research on this subject in following ways. This hinders researchers and commentators from fully understanding the development of Chinese labour law and developing further theories on this basis.

Both Chinese academics and Western commentators tend to focus on labour laws as they apply in the present rather than looking at them historically. In the case

[11] As of 24 March 2020, searching China's biggest online database CNKI for the Chinese characters for "labour law" (lao dong fa) and "legislative process" (li fa guo cheng) as keywords yields only 27 articles—two of which feature both labour law and employment law as keywords while the rest discuss the legislative process of enacting the PRC's Employment Law, which was promulgated in 2008.

of Chinese labour law, academics mostly analyse labour regulations after the Labour Law was enacted in 1994.[12] In contrast to the scant literature on the Labour Law and labour regulations in China, there is plenty of literature reviewing the Labour Contract Law, which was promulgated and entered into effect in 2008.[13]

For example, Mary E. Gallagher and Baohua Dong's chapter in the book *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China*[14] presents a concrete study of the legislative process behind the 2008 Employment Contract Law of the PRC, showing how China's political structure has influenced labour legislation by analysing the role and functions of different actors (not only legislators but also influential social actors) participating in the process. By reviewing the period prior to and during the legislative process, they claim that the legislative process clearly reflects the conflicts within the PRC's political system. They view the regulations and other legal documents as creating a chaotic and unequal environment due to bias against regulating certain types of enterprises. They have also tried to compare the process of passing this law with the 1994 Labour Law's legislative process by setting each law within its own social and historical context. The purpose of this comparison was to show that the transparency of and public participation in the development of Chinese legislation had increased. This does provide a unique point of view on Chinese legislation and the legislative process, but only after the Labour Law was promulgated. The authors then provide a different legislative draft of the

[12] The researcher has interviewed a well-informed Chinese scholar who is a professor at Peking University Law School and considered the 'mother' of Chinese labour law; she witnessed the entire development of Chinese labour law unfold but has not come across any research that comprehensively outlines this process.

[13] See Kan Wang, 'International Forces Fight behind the Chinese Labour Contract Law' [guó jì lì liàng àn zhàn zhōng guó <láo dòng hé tóng fǎ >] (2007) 11 Business Watch Magazine 62-67; Liisi Karindi, 'The Making of China's New Labour Contract Law' (2008) 66 China Analysis 1–15; Gallagher M and others, 'China's 2008 Labor Contract Law: Implementation and implications for China's workers' (2015) 68 Human Relations 197-235; Xin Meng, 'The Labor Contract Law, Macro Conditions, Self-Selection, and Labor Market Outcomes for Migrants in China' (2017) 12 Asian Economic Policy Review 45–65; and Chenyu Cui and others, 'Employment Protection and Corporate Cash Holdings: Evidence from China's Labor Contract Law' (2018) 92 Journal of Banking & Finance 182–194.

[14] Mary E. Gallagher and Baohua Dong, 'Legislating Harmony: Labor Law Reform in Contemporary China' in Sarosh Kuruvilla, Ching Kwan Lee and Mary Elizabeth Gallagher (eds). *Frank W. Pierce Memorial Lectureship and Conference: From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China* (Cornell University Press 2011)

2008 Labour Contract Law in order to prove that harmonization and systemization has not yet been achieved in the Chinese legislative process. Regrettably, the legislative drafts of the 1994 Chinese Labour Law were not presented in this chapter.

Other scholars have focused on more specific angles to discuss the labour legislations in China, such as collective labour issues. For example, Fuxi Wang's article 'On the Characteristics of Collective Labour Disputes in China' discusses establishing and perfecting a collective labour dispute settlement mechanism by making reference to a number of regulations, most of which are post-1994 despite some pre-1994 regulations in this field still being in effect.[15] Similar phenomena that only paid attentions to the post-1994 laws and regulations can be found in many other academic articles, such as 'On China's Industrial Injury Insurance System' by Qingfang Mao and Guizhi Zhang.[16]

Moreover, all the current literature that has somewhat historical components has often been either oversimplified or is too descriptive to expose the historical continuity in the evolution of the labour law. Even Chinese scholars do not know the roots of the labour law or the legislative process behind it. For instance, in existing labour law textbooks, only a few consider the theoretical developments underlying the labour regulatory framework. A widely used textbook published in 2001 is *Labour Law*, edited by Huai Guan, in which two chapters outline the history of Chinese labour laws, but they fail to address the logic driving those regulations to progress from one stage to another.[17] This huge gap illustrates the difficulty of finding information on the legislative process. Nonetheless, since Professor Guan has documented the creation and development of labour laws from the beginning of the People's Republic of China, his works are considered seminal studies in labour law history.[18]

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[15] Fuxi Wang, 'On the Characteristics of Collective Labour Disputes in China' (2010) 21(6) Journal of China Institute of Industrial Relations 80–85

[16] Qingfang Mao and Guizhi Zhang, 'On China's Industrial Injury Insurance System' [gōng shāng de fā lǜ jiù jì zhì dù yán jiū—zhōng guó gōng shāng bǎo xiǎn zhì dù de fā zhǎn yǔ wán shàn] (2007) 04 Journal of Lanzhou University (Social Sciences) 107–112

[17] Huai Guan (ed), *Labour Law* (China Renmin University Press 2001) 37–48

[18] Huai Guan (1927–2014) was a professor at Renmin University of China Law School who has specialized in labour law since 1956 and edited the first Chinese labour law textbook in 1983.

Within the small body of literature on the history of current Chinese labour laws, none discuss Chinese law within the Chinese context. For instance, most of them present the normative rules in a descriptive manner without looking at the shifts in the fundamental concepts within labour relations, such as the meaning of 'labourer', 'employer', 'state', and 'labour relations'.[19] As a consequence, there is not a coherent theoretical framework with which to understand the root of Chinese labour laws. Only against this backdrop can one understand why China does not recognize the international labour law principle of 'freedom of association' and why it does not recognize the right of collective bargaining in the way that that concept is understood in international labour law.[20] This creates a dilemma when discussing Chinese issues in international fora, since scholars from different jurisdictions can hardly reach an agreement when they are approaching the issues from very different points of view.

Secondly, even if some scholars have paid attention to the birth of the 1994 PRC Labour Law, the observation perspectives of those are rather single and convergence. Many fundamental problems have not been resolved through substantive analysis and solid evidence. Some researchers agree that the purpose of the Labour Law was to make an adjustment to the institution of labour regulation itself, with the aim of creating jobs, increasing production efficiency, and increasing an enterprise's employment autonomy. For instance, Kinglun Ngok provides the most detailed research materials on the reform of China's labour policy during the economic transition, and his work comprises the most comprehensive English-language research

[19] For example, it is argued that the development of the Labour Law in China was underpinned by changing notions of labour in modern Chinese labour law scholarship that fundamentally differed from Maoist concepts. Studying the origins of these terms and their political and social implications will yield deep insights into how the development of China's labour laws was made possible as well as understand its limits.

[20] International Labour Organization (hereinafter ILO), Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), adopted 9 Jul. 1948, entry into force 4 Jul. 1950, Art. 2 provides that 'workers and employers, without any distinction whatsoever, shall have the right to establish and…join organizations of their own choosing without previous authorization.' This Convention is one of the ILO's 'fundamental conventions'; that is, according to the ILO Declaration on Fundamental Principles and Rights at Work, adopted 18 Jun. 1998, Annex revised 15 Jun. 2010, 'all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the [ILO] to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights'. See Cynthia L Estlund and Seth Gurgel, 'Will Labour Unrest Lead to More Democratic Trade Unions in China?' in Roger Blanpain, Ulla Liukkunen, and Yifeng Chen (eds) *China and ILO Fundamental Principles and Rights at Work* (2014) 13–82

on the reform of labour policy and its modern historical context. In his article, 'The Changes of Chinese Labour Policy and Labour Legislation in the Context of Market Transition', he claims that the development of China's new labour policy was motivated by the mass unemployment experienced during the late 1970s and 1980s and triggered by the reform of state-owned enterprises (hereinafter SOEs).[21]

Further, some researchers have taken a broader economic or political reform perspective in their analyses, but much of the literature overlaps due to the similarities in their approaches. One claim is that this law aims to establish a labour market that did not exist in the past, and protect worker's rights.[22] However, due to the historical context of this transformation period, the guiding ideology has not been adjusted to fit the new system and has to be used to guide the legislation. For instance, Jianyong Li links the guiding ideology of the 1994 PRC Labour Law and concludes that there was a negative effect on the protection of workers' rights due to its contradictions with the past.[23] But due to a lack of evidence related to the process of developing labour legislation, he was unable to prove how and why the theories he presented in his article guided the drafting of the legislation of the 1994 PRC Labour Law.[24]

Thirdly, there are limited discussions of the legislative process and the principles underlying the design of the 1994 PRC Labour Law. Those who have attempted it have overlooked the details of the legislative process. For instance, in 'Chinese Enterprise Reform, Human Resources and the 1994 Labour Law' by Malcolm Warner, the 1994 Labour Law has been introduced from a historical perspective.[25] This article summarized the background events of the Labour Law in

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[21] Kinglun Ngok, 'The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition' (2008) 73 International Labor and Working-Class History 45–64

[22] Quanxing Wang and Chao Shi, 'Review and Reflection on Labor Laws of New China in 70 Years' [xīn zhōng guó 70nián láo dòng fǎ de huí gù yǔ sī kǎo] (2020) 03 Seeker 118-129

[23] Jianyong Li, 'Impacts of the Chinese Historical Background on the Legislation of the Current Chinese Labour Code' (2006) 3 US-China Law Review 62

[24] For example, despite the objectivity or correctness of his conclusion, Li states that 'the dilemma of "Grasping with Two Hands" reflected in the Labour Code represents the dilemma between C.P.C.'s political control and delegating more protective power to the Labourers', but without offering enough evidence on the logical connection between this specific theory and the theory guiding the 1994 Labour Code legislation. See ibid 63.

[25] Malcolm Warner, 'Chinese Enterprise Reform, Human Resources and the 1994 Labour Law' (1996) The

China since 1949, and the institutional reform of the labour-management system. It also combed the labour legislations prior to 1994. All of this background information has set out the time nodes and important historical events of the Labour Law. Combined with introduction of the legal framework, theoretical and practical justification and evaluations of the main features of the Labour Law, this helped its readers for a better understanding of the comparisons with formerly 'socialist' economies. However, this article was based on the events and legislations selected by the writer, which was unavoidably incomplete. No reasons for the selections has been given in this article to explain the relations between those historical events and the introduction of the Labour Law. In other words, the existing literature lacks primary source materials, and most study the Labour Law only from an economic perspective. The 'three old iron' (Lao San Tie)[26] and 'Chinese characteristics' are mentioned numerous times in the research. For instance, some discussed the period prior to the formal legislative stage, some scholars agree that what triggered the legislative process was the management and efficiency crisis of the state-owned enterprises in the 1970s due to the rigid 'three old irons' system.[27] Others believe that both domestic and foreign investment entities have influenced the reform of labour law and policy in China.[28]

Someone explicitly mentioned 'crossing the river by feeling the stones' as the background of the labour law reform in research. Mimi Zou evaluates the historical transition period from 1950 to 2008 in her article 'The Evolution of Collective Labour Law with "Chinese Characteristics?" Crossing the River by Feeling the Stones?'[29] In

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[26] Three old irons (Lao San Tie) is a national human resource management mechanism used in China's centrally planned economy. It refers to the 'iron rice bowl' (Tie Fan Wan), 'iron wages' (Tie Gong Zi), and 'iron lifetime posts' (Tie Jiao Yi).

[27] See Mimi Zhou, 'Chinese Labour Law at a Critical Point in History' 1–4 <www.ilera-directory.org/15thworldcongress/files/papers/Track_4/Wed_W2_ZOU.pdf> accessed 24 November 2019; Changzheng Zhou, 'People in Labour Law--Also on the Influence of the Choice of the "Labourer" Prototype on the Implementation of Labour Legislation' (2012) 34 Modern Law Science.

[28] See Sarosh Kuruvilla, Ching Kwang Lee, and Mary Elizabeth Gallagher, *From Iron Rice Bowl to Informalization Markets, Workers, and the State in a Changing China* (Cornell University Press 2011)

[29] Mimi Zou, The Evolution of Collective Labour Law with 'Chinese Characteristics'?: 'Crossing the River by Feeling the Stones'?. in Roger Blanpain, Ulla Liukkunen and Yifeng Chen (eds) CHINA and ILO

this article, the old administrative regime for labour in the centrally planned economy, the 'three old irons', is vividly and briefly introduced to English language readers. She points out that from a historical perspective, the roots of collective labour relations in China are shaped by different factors including law, economy, politics, society, and culture. This comprehensively describes the factors influencing the collective labour regime. However, in the article, the 1994 PRC Labour Law is mainly presented as fulfilling the role of attracting foreign investment to create autonomy in the private sector and flexibility in the public sector in the transitional economy. Economic requirements, especially for foreign capital, seem to dominate the influential factors.

Foreign capital and contributions from multinational corporations are very typical influential factors considered from an economic perspective. Ding and Warner examine China's labour management system in the reform period from 1978 to 1999 by systematically introducing the 'three old irons' and how this mechanism was reformed from a historical perspective. They argue that the factors influencing this reform include economic development and cultural factors. They conclude that the system is a compound model with 'Chinese characteristics' mainly due to the foreign investment from multi-national corporations.[30] This article offers a very clear background study of this particular period of reform. However, without more substantive data analyses, their argument lacks a conceptual and theoretical analysis of the causes of the reform.

Other influencing factors can be observed in the literature, for instance, scholars are generally aware that China's legislative framework and institutions are imperfect and overly principled, raising many concerns regarding interpretation of the letter of the law and the effects of its implementation. Sean Cooney examines the factors underlying the compliance failures in the implementation of the Chinese Labour Law in the article 'China's Labour Law, Compliance and Flaws in Implementing Institutions'.[31] Cooney concludes that there are four flaws in the Labour Law's

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FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, Bulletin of Comparative Labour Relations Vol. 86 (Kluwer Law International, 2014) <https://ssrn.com/abstract=2522794> accessed 24 November 2019

[30] Daniel Z Ding and Malcolm Warner, 'China's Labour-Management System Reforms: Breaking the "Three Old Irons" (1978–1999)' (2001) 18(13) Asia Pacific Journal of Management 315–334.

[31] Sean Cooney, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49(5) Journal

structure: insufficient detail, ineffective inspections, weak dispute resolution systems and institutions, and limited trade union power. The article highlights that the structure of the law itself is complicated. This complexity and disordered structure hinder its ability to set credible labour standards. However, what it does not provide is the function of supporting the regulations and policies that were initially made to implement this law in the Chinese context. This thesis aims to prove that the reason for promulgated several supporting regulations and policies is that the law itself was designed as structurally complicated.

Another article written by Cooney, 'Making Chinese Labour Law Work: The Prospects for Regulatory Innovation in the People's Republic of China', specifically points out that one main inefficient aspect—the underpayment of wages—is due to the differences between the design of labour contracts and other civil contracts based on the ideology that Chinese workers are not commodities.[32] Still, only discussing this from an ideological perspective is insufficient. Although this article mentions that the legal flaws are due to the elaborate process of rule-making in China that cannot compare to Western legal systems, this argument is not bolstered by evidence.

International commentators have concluded that the inefficiency of the implementation effect is mainly because the Chinese Labour Law is too principled and lacks operational rules, but the reasons why have rarely been revealed. Comprehensive analyses, such as Josephs present the new Chinese labour legislation implemented in 1995 as a reference for the U.S. government to adjust its foreign policy accordingly to maintain a rather unaligned position.[33] This study is relatively accurate on the most salient features of the 1994 PRC Labour Law and compares domestic U.S. law with Chinese law on the basis of whether it meets international human rights standards or not. She deems the 1994 PRC Labour Law a synthesis of the basic principles of the existing administrative regulations in a civil law jurisdiction without changes on the collective labour relations and dispute resolution towards the attitude of the

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of Industrial Relations 673–686

[32] Sean Cooney, 'Making Chinese Labour Law Work: The Prospects for Regulatory Innovation in the People's Republic of China' (2006) 30 Fordham Int'l LJ 1050

[33] Hilary K Josephs, 'Labor Law in a Socialist Market Economy: The Case of China' (1995) 33 Colum J Transnat'l L 559

government. This argument is based on the law itself having failed to give workers the essential right to take collective action. What is more, Josephs comments that this law is an expression of the international image of the labour rights protection granted under the Chinese ideology of a two-track system, which is what raised doubts from Western economists. This article emphasizes the essential issues considered by legislators during the legislative process, such as the 'floating population' and 'benefitting both sides', which I will further explain in later chapters. It also raises many questions regarding whether the protection is enough or should only exist under certain historical perspectives.

So far, the most detailed and comprehensive record and explanation of the various versions of the legislative process behind the 1994 PRC Labour Law is found in Kinglun Ngok's book, *China's Labour Problems and Labour Policies During the Transition Period*, which uses a multiple streams model.[34] Most significantly, Ngok provides a comparative text analysis of three drafts of this legislation: the 1983 draft (presented on 7 July 1983), the 1991 draft (presented on 5 April 1991), and the 1994 draft (presented on 5 July 1994 as the final version of the 1994 PRC Labour Law). He draws similar conclusions to those of other researchers who have worked on this topic, finding that the legislation has three main shortcomings. First, the law has not defined labour relations, using the terms 'labourer' and 'employing unit' to replace those of 'employer' and 'employee' (see more on this in Chapter 5 of this thesis). Second, the law has ignored the conflict between labourers and employing units, therefore failing to enshrine the right to strike in law (see an analysis of this issue in Chapter 6 of this thesis). And finally, the law is in fact cannot be fully implemented (see the Conclusion of this thesis). Since Ngok's work relies on different information, his perspectives on the problem and the conclusions drawn are partly different from those presented in this thesis.

Admittedly, other researchers have pursued the exact same research objectives for the same period as I do in this thesis. As mentioned earlier in this section, Kinglun Ngok's thesis does provide valuable reference materials.[35] Ngok's contribution is significant

[34] Kinglun Ngok, *China's Labor Problems and Labor Policies During the Transition Period* [zhuǎn xíng qī de zhōng guó láo dòng wèn tí yǔ láo dòng zhèng cè] (Orient Publishing Centre 2011)

[35] Kinglun Ngok, 'The Formulation Process of the Labor Law of the People's Republic of China: A Garbage Can

because he answered one question in particular—when and why the 1994 is a timing of the legislation. His main conclusion is that the reason for the law was that the conditions for reform were ripe, and he uses the trash can model to explain this. Because his main research problem is the timing of the legislation, and the research framework used is the trash can model, he uses a linear description method. However, his thesis cannot solve the problem of who was the actor behind the legislation (only at the government agency level), nor does it specifically explain what the background is and what legal systems and mechanisms influenced the law's development. Therefore, his research is insufficient.

Although the significance of Kinglun Ngok's work for my own research is undeniable, it merely proves that the legislative process is a complicated process affected by multiple factors. The most essential differences between our studies is that his is focused on the facts, which can be seen as the minor premise in Aristotle's theory of the syllogism; however, this thesis provides the major premise and conclusion of the legislation, thereby enabling the whole picture of this process to be seen. As a result of our different analytical frameworks and different perspectives, how we analyse the data differs in three respects. First, the way we present the same history is different. What Ngok offers is a linear analysis. However, I think that the details of the factors differ at different points in time. Second, we focus on different points. He pays attention to the process of policy formulation and the factors that influence the policy in order to conduct a political analysis, whereas this thesis focuses on the design of a specific legal system, which is an institutional analysis of legal science. Third, based on the fact that we adopted two different approaches, our points of reference and conclusions are different (e.g. with regard to the contributions of scholars and experts, personal contributions, and so on). These differences will be explained in detail in later chapters.

In general, Ngok's thesis is a great source of reference and enlightenment. It answers a major question of legislative timing by explaining why the Labour Law was established in 1994. We inadvertently became interested in the same legislative issue

Model Analysis' (Unpublished doctoral dissertation, Department of Public and Social Administration, The City University of Hong Kong 1998)

in the same period and inevitably adopted similar research methods, although our conclusions differ.

With the exception of Ngok's research, the other studies abovementioned do not pay enough attention to another important factor at play during the legislative period, which is the agency of legislative actors/agents. It is not rare to observe actors during the policy-making process able to present or evaluate one policy or law. Liisi Karindi overviews the process and evaluates the 2008 Labour Contract Law of the PRC by analysing the actors' interest, goals, and opinions regarding the law.[36] Also, some may argue that the reasons for making this principled law that lacks enforcement can be attributed to the legislators. For example, Kai Zhong evaluates the significance of the 1994 PRC Labour Law during the special transition period, describing its role during the transition period as the vanguard of marketization and an indicator of the dominant social conflicts.[37]Zhong also points out that due to the legislators' lack of foresight, because of the limitations of the legislative techniques, they violated the legislative plan and created legal loopholes in the law. Such loopholes are manifested in certain provisions being too principled and lacking operability, such as the provisions on collective agreements that are too simple and guarantee mechanisms. In the meantime, the legislators deviated from the concept of making legislative policy owing to the fact that they were enslaved to the historical and social factors.[38] By only looking at the articles of the law superficially, this conclusion lacks supporting evidence, and making this judgment based on the existing literature alone is arbitrary. From a legislative technical perspective, the inner logic of this legislation can be explained by why and how this flaw exists in the law.

Despite the fact that the literature on Chinese labour law is expanding, there are few, if any, studies that can explicitly introduce the legislative process and techniques used to make the Labour Law, and the normative rules prior to the 1994 Labour Law are particularly underexplored. In this thesis, the legislative actions undertaken during different stages of the legislative process are considered holistically. As Wangsheng

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[36] Liisi Karindi, 'The Making of China's New Labour Contract Law' (2008) 66 China Analysis 1-15

[37] Kai Zhong, 'Why Is the Labour Law Being Overhead?' [<láo dòng fǎ> wéi shí me bèi jià kōng] (2006) 19 Study Monthly 31–33

[38] ibis 32.

Zhou points out in his book *Legislative Theory*, the legislative process is a complete process that can be divided into three stages: the legislative preparation stage, the stage of turning a bill into a law, and the stage of perfecting the law.[39] Based on his theory of division, this research examines the modern Chinese labour legislative process through the lens of these three legislative stages and also considers the preparation stage that took place prior to the formal legislative actions as a significant part of the whole process.

Besides, researchers tend to believe that there is a very limited number of records containing the original intent of the legislators and that the interpretations of the 1994 Labour Law by the legislative members cannot be found in documents since they have not been officially collected and sorted. When relying on official archives or government records alone, it can seem that there is little evidence of the legislative process behind the 1994 Chinese Labour Law from 1978 to 1994. Looking at the existing relevant literature, as Professor Alan Neal claims, there is hardly any substantial research chronicling the developmental platform for the emergence of modern Chinese labour law in this period.[40] There are two reasons for this. First, the documents recording that period are not easily accessible. Second, for both foreign and domestic empirical studies on the subject, since the controversies seems only appeared after the 1990s, scholars have rarely dug into the past to investigate their origins.

Indeed, China's legislative process has always been an important area of research. The key mechanisms, key nodes, and conceptual design of all legislative decisions are of vital importance to each law itself. Due to the complexity of the legislative system and the particularities of the Chinese text, there are insurmountable research obstacles for external observers, especially observers of the English legal system, to overcome to understand the statute law of the mainland. Therefore, for external observers, explaining the decision-making process and the legislative process behind the 1994 Labour Law will undoubtedly answer many of the questions surrounding the design of the Chinese labour law system. However, due to the lack of written documentation (the Ministry of Labour [hereinafter MOL] did not have its own

[39] Wangsheng Zhou, *Legislative Theory* [lì fǎ lùn] (Peking University Press 1994) 133

[40] Alan C Neal, *Cross-Currents in Modern Chinese Labour Law* (Kluwer Law International 2014)

archives at that time) covering the initial legislative stage, scholars have not been able to verify what was happened during the legislative phase. But perhaps this process is not so mysterious. In fact, there are many ways to reveal information about the development of this legislation. For example, many legislators' opinions can be found in Chinese-language public newspapers and books, but these materials have not been clearly connected to the Labour Law, nor have they interpreted the meaning and core concepts of the law from a historical perspective. Also, translations into other languages are almost impossible to find due to they are fragmented existing in many old publications from years ago, which consuming large time and efforts to translate. Therefore, studying the 1994 Labour Law, or even studying the factors influencing its development, is a elaborate but necessary contribution due to the lack of research on Chinese labour law in general.

At the same time, three documents form the official government record of the Labour Law (Draft) based on the 6th Meeting of the Standing Committee of the Eighth National People's Congress on 2 March 1994. At this meeting, Minister of Labour Boyong Li made a speech entitled 'Explanation of the "Labour Law of the People's Republic of China (Draft)', Cheng Cai made a speech on the 'Report of the National People's Congress Law Committee on the Review of the "Labour Law of the People's Republic of China (Draft)"', combine with the Ministry of Labour issued the 'Several Provisions of the Labour Law of the People's Republic of China'.[41] The evolution of the various draft versions of the Labour Law can actually reflect the legislative thinking of the time. But unfortunately, no one can present the written records of the versions drafted at that time. Therefore, it is necessary to explain the logic of this legislation through historical combing.

Based on the current documents and data that this research collected, there are still many academic issues related to the development of labour law in China that are worth discussing. This systematic project was more complicated than could have been

[41] Boyong Li, *Explanation of the "Labor Law of the People's Republic of China (Draft)" - At the 6th meeting of the Standing Committee of the Eighth National People's Congress on March 2, 1994* (1994); Cheng Cai, *Report of the National People's Congress Law Committee on the review of the "Labour Law of the People's Republic of China (Draft)"* (1994); Ministry of Labour, *Explanation of the Ministry of Labour on Several Provisions of the Labour law of the People's Republic of China* (1994), issued on 5th September 1994.

imagined and more necessary as well. Therefore, none of the scholars' current review is comprehensive or complete.

Furthermore, when looking at reform of the labour institution, what is the reason behind that reform? Why use the law as a tool to carry out the reform? Those are the questions hiding in the past that can only be answered by looking at the history. In addition to the questions that have not been raised, many questions have been raised but have not been thoroughly answered using enough supporting data.

What is more, many international factors have affected the legislative process of developing Chinese labour law, such as the influence of German law, the International Labour Organization, and the International Labour Standards. However, because the international factors are deep and invisible in the early stages of legislation, only a few scholars know about or have noticed them. Mary Gallagher and Junlu Jiang mention that China was seeking the most suitable labour law model for its labour legislation by examining both its own experience and those of foreign countries, listing three dominant influences: the labour laws in the 1950s, during the Republican era, and German labour laws.[42] Also, Yanling Lin elaborates that in the process of drafting the 1994 PRC Labour Law, in accordance with the relevant principles and provisions of the Constitution and the actual situation, China also used provisions taken from international conventions and considered the recommendations and experiences of foreign labour legislation.[43] For instance, China drew on relevant conventions to develop the institution of minimum wage, equal pay, and weekly leave and drew on unratified conventions and recommendations to develop the institution of anti-discrimination, the prohibition of forced labour, and implement social insurance and employment promotion.

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[42] Mary E Gallagher and Junlu Jiang, 'Labor Regulations: China's Labor Legislation' (2002) 35 Chinese Law and Government 6

[43] Yanling Lin, 'A Study of the Historical Contribution of the International Labor Organization (ILO) and Its Influences on China's Legal System Construction of Labor and Social Security—Commemorating the 100th Anniversary of the Founding of the ILO' [guó jì láo gōng zǔ zhī de lì shǐ gòng xiàn jí qí duì zhōng guó láo dòng shè huì bǎo zhàng fǎ zhì jiàn shè de yǐng xiǎng—jì niàn guó jì láo gōng zǔ zhī chéng lì 100 zhōu nián] (2019) 33 Journal of China University of Labour Relations 1–24

Finally, this literature review concludes that the existing studies may all offer historical perspective—some more accurate and objective than others—but rarely are they comprehensive or empirical, largely due to the lack of primary sources. Therefore, the evaluation criteria for conducting research of the 1994 PRC Labour Law could not be comprehensive from every perspective. However, labour legislation is such an essential legal subject that information must be found. Due to a lack of archival and secondary sources, the only way to reveal the legislative history and motivation for the Labour Law is through interviewing the actors who participated in or witnessed the drafting of the relevant labour regulations. In order to fill the gap in the literature, this thesis argues that there are multiple influencing factors that combine and interact on both geographic and temporal dimensions. Those factors eventually generated the PRC Labour Law in 1994, which is the foundation of the modern Chinese labour law system.

To conclude, the main gap that exists in the literature today is the lack of detail about the law-making process. However, there are many versions that scholars have introduced, and none of them is clear or comprehensive. Even when researchers wrote about the crossing the river by feeling the stones, they were inconsistent. There was no unified conclusion, nor did they say which stones. The foundational first-hand data needed to pursue research on the Chinese Labour Law; without it, solid and reliable arguments or comments on the 1994 PRC Labour Law cannot be made. It is like missing a piece in the centre of a jigsaw puzzle. This thesis argues that the factors influencing the development of the 1994 PRC Labour Law are varied and complex, including political, economic, domestic, and international perspectives. However, no one has yet suggested this. At the same time, this thesis also analyses the legislative process and the whole process of reforming the labour system to show that the conclusions presented in the current literature are partially correct, but not comprehensive—researchers have been unable to see the forest for the trees.

In the meantime, this thesis does not intend to measure the effectiveness of the implementation of the Labour Law because it only focuses on the developmental process that occurred before the law was passed. Also, since a large number of researchers have already pointed out the problems with the implementation of the Labour Law, this thesis does not elaborate on the practical effects of this law—although some of the influencing factors concentrated in the legislative process are

considered within the broader historical context. Therefore, this thesis will not merely agree or disagree with the consensus that the law lacks teeth; it aims to provide a historical background for why the law is what it is. According to Chinese culture, the art of 'leaving blank space' has been fully applied to the legislative technology, and it is essential to point this out when critiquing the 1994 Labour Law. What is more, although this research shows that many legislative materials have been made public and democratic conciliations were conducted in the process, most of the publicly available information that this thesis relied on was not used in the prior research.

2.2. Contributions

The existing literature on one hand shows that the research of labour law from a historical perspective is important. On the other hand, the existing literature are vast and complex, but missing details on evidence. The contributions of this thesis are manifold. First, it offers a theoretical innovation to the research in this area by seeing the process of developing a law as a dynamically divisional process. It is a three-dimensional dynamic analysis model that can explain not only what factors influence the decision-making process but also how and who. It can also explain the trade-offs between different legislative actors. It creates a new narrative for the decision-making mechanism between the two economic institutional transformations (from Socialist planned economy to Socialist market-oriented economy). Second, the historical data will be provided in the form of a conversation corpus supplementing the decision-making objectives of the legislators, who are the most influential actors and responsible for developing the final system. Third, combine the 'crossing the river by feeling the stones' to analyse the oral history data. Therefore, the study's methodological contribution is that the legislative factors uncovered can be used to further legislative research into the transitional economy and facilitate a comparative study. These influencing factors may have been noticed but were only treated in isolation before. In this thesis, the influencing factors will be presented comprehensively for the first time to form a corresponding design system. That is, this thesis proposes an analytical framework and provides a case analysis.

This thesis contributes to the literature by providing oral history data on labour legislation, especially the Chinese Labour Law. According to the 2016 Archives Law of the People's Republic of China, chapter 4, article 19: 'Archives kept by State

archives repositories shall in general be open to the public upon the expiration of 30 years from the date of their formation'. This thesis, therefore, will investigate the roots of Chinese labour law, particularly prior to the development of the 1994 Labour Law, by collecting oral data from the then legislators (from the 1970s to 1990s) and data found in the legislative archives. The oral recordings from a handful of living legislators will be used to create a dataset that can reflect the original intent underlying the law. This research hopes to recover the lost history of the Labour Law and settle the long-lasting debate on its origins to connect it to an historical analysis of the current challenges faced by Chinese labour law.

To tell the history of China's legislative decision-making, this innovative thesis uses an oral interview method to detail the legislative process. This research aims to identify the actors who participated in the process. It indicates that some actors and their contributions to the process have not yet been recognised, as well as identifies the articles and provisions of the legislation to which they contributed. The list of (anonymous) interviewees and their positions (before and after the legislation was passed) are as follows:

A: Labour expert; the Labour Science Institute of the Ministry of Labour and Social Security (now named the Chinese Labour Security Science Institute of the Ministry of Human Resources and Social Security of the PRC); December 2014, Beijing

B: Senior official; All-China Federation of Trade Unions; March 2014, Beijing

C: Senior official and labour law professor; former official of the Department of Policy and Regulation of the Ministry of Labour; March 2016, Beijing, May 2017, Cambridge, and June 2019, Beijing

D: Labour law professor; Peking University; December 2013, October 2015, and October 2019, Beijing

E: Labour law professor; Peking University; June 2017, January 2018, and March 2018, Beijing

F: Former journalist at *Labour Daily*; February 2014 and October 2015, Beijing

G: Lawyer and labour law professor; East China University of Political Science and Law; May 2016, Beijing

H: Legal official; the Administrative Law Office of the Legislative Affairs Committee of the National People's Congress; December 2015, Beijing

I: Senior official and lawyer; former official of the Legislative Affairs Bureau of the State Council (now called the Legislative Office of the State Council); April 2017, Beijing

J: Former official; Labour Law Department of the Ministry of Labour; May 2017, Beijing

K: Labour law professor; Shanghai University of Finance and Economics; October 2019, Beijing

L: Labour expert; Labour Science Research Institute of the Ministry of Human Resources and Social Security; April 2016 and July 2019, Beijing

M: Lawyer; former official of the Department of Policy and Regulation of Ministry of Labour; August 2018, Shanghai

N: Lawyer; December 2018, Shenzhen

At the same time, this study links newspaper reports, academic articles, and meeting minutes that were published on government websites of the 1994 PRC Labour Law. This kind of publicly accessible information was not widely used by previous researchers, who observed limitations on the available sources on the legislative process, believing that the information was not open to the public and concluding that the decision-making process was not transparent. New research methods to provide solid evidence were therefore required.

The other main contribution of this thesis is to provide new research perspectives on the labour system, especially the labour system transformation model. Transformation research is an emerging discipline. The labour legal system can fully reflect the strategic planning and trade-offs in institutional transformation. Especially after the different complex transformation process of the Soviet Union and Eastern European countries, the development paths and transformation results that have their characteristics but also have commonalities. More and more people now realize the sheer complexity of this process, and it is necessary to put this process into a theoretically analytical model to undergo comparative analysis.

The transformation of China's labour system is also a process that needs contextualization. Labour is an essential element of production. China once benefited from the demographic dividend due to its relatively low costs of labour and the size of its labour force; additionally, its relatively stable and comprehensive labour security system also played a role. Viewing the legislative process behind the 1994 Labour Law as a process of evolution, the law can be seen as linking the old and new labour regulation systems; it has played a transitional role in the reform of the old system under the planned economy and transformed it into a labour system under the market economy. However, the transformed labour law system also has some drawbacks: the structure of the system is complicated, and the law itself is too principled and programmatic. These drawbacks are all because each labour institution was designed against a transformation background and this has led to a law that is challenging to enforce and implement. Labour marketization reform has been profoundly complex and transformative in China; therefore, it has a special significance and research value. Studying the nascence of this legislation can complement the crucial data in the research model of the transitional economy.

To conclude, by reviewing the existing literature, this thesis first aims to uncover clues pertaining to legislative process and the process of formulating specific laws. Second, it aims to study the main factors influencing the legislation by studying the problems discussed in the process of formulating laws. Third, it aims to summarize modern Chinese labour law by offering a new narrative based on these influencing factors. Legislative principles, methods, objectives, and fundamental concepts will be defined in this thesis to find answers for how the labour system was designed by developing the Labour Law.

Moreover, the main hope is that this thesis will become an academic index. The most critical element in achieving this will be tracking down sources to provide context for the legislative development. Readers can discover which time nodes, events, and people have made corresponding contributions will make the most valuable contribution to the historical research. Because the selection of each node represents the researcher's ideas, the logic behind their connections also represents the researcher's point of view. Therefore, by outlining the development of the 1994 Labour Law, the hope is that other links will be made to the origins of Chinese labour law and point future researchers in the right direction. When looking at a specific

article of the law, reading this thesis is equivalent to guiding the reader to find the time node and event to understand how the rule was made, where each statement came from, and why such expressions and exact words were used. It will also help researchers to search for the views and contributions of the corresponding groups of legislative actors.

Additionally, if we can abstract the logic from the dynamic status quo after clarifying the developmental context, then we will make further contributions to the amendment of the current legal system. Therefore, this abstracted logic can also provide some ideas for future research directions. Although the institutional experimental results in the field of labour law in China during the transformation period yield fruitful empirical data, especially in the local provincial area, there are still many fundamental problems (i.e. infrastructure) that make it difficult for researchers to know where to contribute to. This thesis hopes to lay the groundwork for future research. Although every crucial issue is worthy of further discussion (such as the basic principles of labour law, the status of collective labour contracts, the establishment of specialized labour courts, etc.), because of word length constraints, additional terms and concepts that have been misunderstood will have to be examined in future work for further studies.

Chapter 3 Methodology

Through literature review, I have found that the research gap is to study the legislative process. The best way to study this legislative process besides consulting information and files is to ask people who experienced it at that time. Therefore, the research method of this thesis is to ask them to sum up the real path. This study uses an oral historical research method to obtain and analyse data. It is an ideal method for this particular study because it can prove the existence of different groups of actors that acted on different issues based on different influencing factors. First, those actors need to be identified and interviewed. Then, to trace the influencing factors, this study situates the key actors within the different 'rooms' (institutions) they occupied in the system and considers their backgrounds, occupations and ideas that affected their legislative actions. These data are then analysed to draw conclusions. This chapter will explain in detail how this method works.

3.1. Oral History: The Key Method

It is commonly known that the requirements for the explicit textual interpretation of laws are harsh. However, controversies arising from their lack of clarity still arise in practice and research; and in the event of a change in context, legislative research needs to be conducted on the existing laws to make a decision on whether to enact a new law or amend the existing laws. If the legislative window is short, it will be a race against the clock to allow legislators to fully express their opinions in order to clarify the intention of the law itself and offer evidence for the revision and promulgation of the law. In order to solve the interpretation problem, the common meaning of the words used in the legislative process should be examined; these serve as an important point of reference for future legal interpretation. Quantitative historical research offers a very useful research method for compiling a comprehensive and sufficient corpus, introducing statistical techniques, and explaining the meanings of terms used during the drafting of legislation.[44]

[44] Thomas R Lee and James C Phillips, 'Data-Driven Originalism' (2018) 167 U Pa L Rev 261

The key method used in this research is collecting oral history from the legislators in order to compile the text corpus for data analysis purposes. This research will create an oral dataset based on interviews held with legislators on their experiences during the legislative process. It will extract core concepts from the interviews to uncover the legal history behind the Labour Law's legislative process. This dataset aims to provide evidence of emerging labour law concepts in modern Chinese legal history.

This thesis uses an oral historical research method based on the dynamic research approach, and the dataset is created by recording and gathering the oral recollections of the interviewees shared during the interview process. According to the UK Oral History Society's definition of oral history, it is 'the recording of people's memories, experiences and opinions'.[45] In this research, the method is used to record the memories of those involved in the legislative process regarding their legislative drafting experiences and their opinions on the legislative process, techniques, and the history of law in China.

This research method is significant and necessary to the study of legislative history as a whole, and to this study in particular. Oral history is a traditional historical method used to gain insight into events in the past by conducting interviews with those who were there and remember them.[46] Records of those interviews have the potential to become a sound archive because they recount contemporary first-hand experiences, traditions, and culture. They represent a living history of legislators' unique working experiences and offer an opportunity for those people who have been 'hidden from history' to have their voices heard. They recall the processes in which each interviewee was most likely to have had the highest level of participation and thereby offer the most impressive description. They present history from the perspectives of witnesses and provide different angles from which both government and academics can record and study the archives. Oral history is a good tool for documenting a vanishing culture in an era of radical social change.

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[45] On Oral History Society homepage, 'the oral history is the recording of people's memories, experiences and opinions.' See Oral History Society, 'Homepage' (Oral History Society) < https://www.ohs.org.uk/ > accessed on 20 November 2020

[46] Donald A Ritchie, *The Oxford Handbook of Oral History* (Oxford University Press 2011) 2

Oral history is best understood as a process. This research is based on traditional oral historical studies but uses an innovative method that follows a three-step, dynamic circulating approach: 1) the project launching stage; 2) the data collection and transfer stage; and 3) the deconstruction and reconstruction stage. This research is characterised by the fact that the three steps are cyclical. I adjusted the interview questions according to the progress made in the research process. Also, with the snowball sampling, the possibility of finding new interviewees increased. What is more, the dynamic process is helpful to cross-check the reliability of the collected data.

The reason for using this method is twofold. First of all, because this research is focused on fairly recent legislative history, some witnesses from that specific period are not only still alive but also still actively work as academics or in the labour law field. Their memories are essential for the perspectives they offer on both historical legal studies and legislative research in the contemporary era. However, it becomes increasingly difficult to collect their memories as time passes. Despite the limitations of the oral history method, my interview questions tried to take an objective position with no hypothetical premise. The accuracy of verbal data needs to be cross-checked with each interviewee by repeating interviews and confirming other interviewees' explanations. The written data will be cross-checked as well, but only those that were provided or established by official channels will be accepted.

Second, a complete and detailed official written archive is almost impossible to find. As presumed, there are some written documents regarding the Labour Law, including minutes of the legislation drafting conferences and different versions of the drafts, in the archives. As mentioned in Chapter 2, according to chapter 4, article 19 of the 2016 Archives Law of the People's Republic of China: 'Archives kept by State archives repositories shall in general be open to the public upon the expiration of 30 years from the date of their formation'. Therefore, the archives pertaining to the legislative process behind the 1994 Labour Law will not be released for another four years at least.

What is more, as confirmed by Interviewee C, who was the deputy director of the Policy and Regulation Office of the Ministry of Labour during the legislative process, there was no archives office within the Ministry of Labour at that time, and there were no official archives of this legislation kept. Besides, he said that after

moving offices a few times, he had thrown out almost all the documents relating to the legislative work. In that sense, his memories are the only evidence remaining (Interviewee C, 2019). Interviewee C was not the only participant to confirm the limitations of the legislative achieves. Interviewee I (who worked in the Public Transport and Labour Law Department of the State Council during the State Council legislative stage) described the preservation of the archives in the State Council at that time. When the State Council carried out an institutional reform in 1995, the legislative work of the Public Transport and Labour Law Department of the State Council was passed to the Department of Political, Law, Personnel, and Social Society. The documents submitted by the ministries and commissions to the State Council were confidential. However, due to the adjustment of departmental work, the archives needed to be sorted and handed over. Interviewee I was responsible for organising the archives and handing them over to various departments, which gave him access to relatively more files on labour legislation than others:

> The legislative files are confidential, and the draft versions are not made public. These legislative files include drafts for review, solicited comments from various departments and provinces, municipalities and autonomous regions, versions of previous revisions, and so on. [Although the files are sealed during the legislation process] all these files indicate the semi-public participation in legislative processes, which had never been done before the Labour Law. (Interviewee I, 2017)

In addition, scholars who have done similar historical legislative research have relied more on the secondary source material that has been posted on the Internet or published in newspapers. Therefore, the oral materials collected in this study are the most direct available; they are primary source materials related directly to this legislative process that can expose the original history in detail.

Third, the roles and functions of the 'invisible legislators' have been always neglected by researchers.[47] Legislative research and theory focuses on the role of the

[47] The roles and functions of the legislative staff have not attracted enough attention. The Chinese legislative staff, especially people working in the Legislative Affairs Commission of the NPC, had actual impacts on the legislative work done in China as 'invisible legislators'. This thesis shares their views and recognizes their functions. Besides, the other groups of actors, such as officials working in the Legislative Affairs Office of the State Council and various ministries, also played a role during the legislative process. See Qunxing Lu, 'Invisible Legislators: The

legislature and concluded a result of 'bureaucratization' in Chinese legislations,[48] which from my point of view is one-sided in the case of the Labour Law legislation process. Classic legislative theory cannot fully explain how a bill becomes law in China due to its legislative process involving different stages conducted on different levels of government. It also cannot fully reveal the significance of by whom and how legislation is drafted; it cannot demonstrate the conflicts and discussions throughout the legislative process. Therefore, a complete narrative of the inner logic and original design of the Labour Law and its mechanisms cannot be revealed without reviewing all the legislative stages. After a law has been enacted and implemented, situations such as conflicts with other laws or interpretations by practitioners may be misunderstood. For this reason, the testimony from actual legislators that has been either long neglected or undocumented is significant.

Another important finding is that through snowballing, somewhat surprising legislative participants can be found. Several decades have passed since the legislative period. Some participants in the legislative process have since retired, some have changed units, and others have changed occupations (e.g. from civil servants to teachers or lawyers, from reporters to lawyers, etc.). These clues to conduct modern legislative and policy-making research are very valuable. In addition, this research interviewed some interviewees more than once. In subsequent interviews, they recalled new memories and brought up new topics at different times and in different locations. This led to more unexpected information being revealed during the research period.

3.1.1. Design of the Data Collection Process

1) Interview Questions

Function and the Legitimacy Problem of Legislative Staff in Legislation in China' [yǐn xìng lì fǎ zhě: zhōng guó lì fǎ gōng zuò zhě de zuò yòng jí qí zhèng dāng xìng nán tí] (2013) Journal of Zhejiang University (Humanities and Social Sciences) 43 74–89

[48] See Liwan Wang, 'Legislative Bureaucratization: A New Perspective to Understand the Process of Chinese Legislation' [lì fǎ guān liáo huà :lǐ jiě zhōng guó lì fǎ guò chéng de xīn shì jiǎo] (2016) China Law Review 114-142

The interview questions can be found in Appendix 1.

2) Interviewees Introductions

The interviewees are listed in the Chapter 2, section 2 of this thesis.

3) Interview Process

I. Identify research questions and limit the time period.

II. List potential interviewees and classify them into different categories according to their professions.

III. Design interview questions. Conduct the first round of interviews.

IV. Collate answers to basic questions and review the research gaps.

V. Conduct the second round of interviews. Discover that some people's interviews were more revealing than others.

VI. Target new interviewees according to the second round of interviews.

VII. Amend the interview questions.

VIII. Summarise the results of the second round of interviews and prepare for the next round.

3.1.2. Interviewee Selection

Because of the incompleteness and scarcity of documentary sources, I needed to find people who had participated in or witnessed the legislative process of the 1994 PRC Labour Law themselves. Based on the report of Vice Minister of Labour Zuoji Zhang on the promulgation of the Labour Law,[49] I determined that the target group and institutions fell under three categories: academics (and legal practitioners), government departments (including the Ministry of Labour, the State Council, the National People's Congress, and the Chinese People's Political Consultative Committee), and trade unions (including local trade unions). This established the

[49] See China Lawyer Reporter, 'The Deputy Minister of Labour Zhang Zuoji Answered Questions on the Promulgation of the Labour Law' [láo dòng bù fù bù zhǎng zhāng zuǒ jǐ jiù <láo dòng fǎ >bān bù dá jì zhě wèn] (1994) 08 China Lawyer 40–42. Zhang Zuoji, the then Vice Minister of Labour, stated the participants and roles in the entire legislative process.

institutional unit and target populations of the interviewees. I first found possible connections from the academic world: Professor Li Jianfei of Renmin University, Professor Jia Junling of Peking University, and Professor Guan Huai of Renmin University. Using snowball sampling, these people then identified other potential participants based on their personal experience and networks by pointing out who they thought was actually involved in the legislative process and giving me their contact details.

I also used collections of internal documents, reports, and data from Ministry of Human Resources and Social Security (MHRSS), All-China Federation of Trade Unions (ACFTU), and other institutes, as well as media reports and news, as source materials.

3.1.3.Data Analysis Method

This research has a threefold nature. First, it focuses on the quality of the data over the quantity. Second, it is a cross-disciplinary research project that covers law, sociology, industrial relations, etc. Third, this research involves large numbers of historical events during the legislative process that need historical research methods. Therefore, the methodology of this research mainly adopted historical research methods applied in the following order: 1) data collection; 2) data coding; and 3) data analysis.

1) Data Collection

In order to discuss the developing trajectory of Chinese labour law, it is necessary to collect both the oral and written data from three main types of people who were involved in creating legislative history: scholars, legislators (officers), and practitioners (lawyers, factory workers and leaders). Each interviewee will provide further connections to one or two people, as promised.

This research is inspired by oral historical studies, which collect data by interviewing scholars, legislators, and legal practitioners. The interviewees are chosen by investigating the legislative process to find the people who were involved. For instance, one of the targets worked in a senior position of the Administrative Law Office of the National People's Congress Law Committee and witnessed the process of development behind the Labour Law. The oral data are a crucial part of the dataset.

Nevertheless, oral history research methods have limitations. The interview questions were designed objectively without making hypotheses. The reliability of oral data needs to be cross-checked with each interviewee by repeating interviews and confirming other interviewees' accounts. The written data are used to cross-check as well, but only those that are provided or confirmed by official channels will be accepted.

Local written data refer to historical documents issued by local governments; those reports released by government institutions can increase their credibility. However, the academic literature produced in different research fields can also be used as source materials. International data can be gathered from the official websites of the United States and the International Labour Organisation. The official statistics of China and other countries can be used to check the influence of the development of Chinese labour law. Yet, since some of the materials cited in this study are still not publicly available, they needed to be handled anonymously. However, the information they offer can be cross-checked with other evidence to prove their reliability.

Based on the methods outlined above, the research results become more achievable and reliable. It is also important to engage in a comparative historical analysis by looking at society through the lens of the past and the present and from the perspectives of domestic legal theory and foreign legal theory.

This study was carried out by a researcher who was exposed to the best documentary resources and personal resources. The researcher has a four-year undergraduate education in Chinese law and access to the best academic resources on the subject. The researcher has convenient access to the resources of Peking University and senior labour law scholars in China. In addition, the researcher has finished one year of a master's degree in international economic law at the University of Warwick and has the skills and international perspective on legal research required to do comparative analysis.

2) Corpus Selection

To analyse the data, this study selects the factors influencing the labour system and uses data collected from the interviews and the official published documents to form a corpus. These data are divided into different categories in order to define and analyse the themes during different evaluation stages of the Labour Law. Changing

conceptions of the themes and ideologies during the development period will be introduced. Two data coding methods are used. First, the word frequency analysis method uses the highest rate of repetition as an influencing factor by distinguishing those words (and their synonyms) that are used most frequently. Seeing that scholars and officials are concerned about personal contribution to the legislation. The difference that conflicting to each other in the same issue is appeared rather frequently. The second is the keyword analysis method, which examines the cause and mainly considers the reasons behind using these words as influencing factors. The two methods are combined to analyse the corpus.

3) Analytical Method

This research mainly focuses on qualitative analysis; the quantitative analysis is merely supplementary. Due to the subjectivity of interviews, the first step of the data analysis is using other objective evidence to confirm the data. Based on the collection of data from official documents, the data can be divided into different groups for comparison according to year, legislative branch, and legal field. The oral data and written data can be used in the research only when they are fully supported. In addition, to guarantee the impartiality and comprehensiveness of the research, academics have been used as a third party to confirm whether the qualitative data is accurate and from sufficiently broad range of sources.

In addition, this thesis will introduce the legislative history of China's Labour Law with two lines. The abovementioned timeline of the promulgation of laws and regulations will be the first line to identify the legislative stages. Another line will be the introduction of the words and thoughts shared in the interviews of the main participants involved in drafting the legislation. Those participants personally witnessed the development of Chinese labour legislation. Based on the interviews that I conducted, I began to realise that some of the participants had been involved throughout the entire legislative process: some were the main drafters of the Labour Law; some scholars provided the theories on which the law was based and offered outside perspectives; and some worked as leaders of the legislative drafting groups, guiding and pushing forward the Labour Law's legislation. They also brought their views on the law and perspectives on the future direction of society into the legislative process, which became the main guiding principles and theories behind the law.

Therefore, I will also introduce them in my thesis. Most of the current literature is written from an institutional perspective or from a practical perspective. Few have written about the development of the Labour Law from the level of consciousness and conceptualisation. The professional backgrounds and philosophies of the legislators affected the change in and development of labour policy in China, and as a result, the Labour Law has particularly Chinese characteristics. Institutional change is inseparable from legislators' values, and the birth of this law was the result of the joint effect of policy development and the impact of individual legislator's values on the legislative process. If we do not look at this issue in depth, it is difficult to explain what the Chinese characteristics are and why certain choices were made in certain historical contexts.

3.2. Summary

The method of this thesis is based on the hypnosis that the existing written materials are hardly to accessed. This study's methodological innovation is that it is based on an oral interview method that offers a dynamic and multi-dimensional means of creating a text corpus for researching the history of China's legislation and policy-making. This chapter proposes that different groups of actors personally participated in the legislative process, making significant contributions to the form of the legislation and certain legislative provisions. Moreover, different influencing factors have influenced different institutions during the development of China's Labour Law. In addition, publicly available newspaper reports and academic articles can be linked to the legislative process for the first time based on the information provided by the legislators interviewed for this research. Overcoming the methodological limitations of previous studies will show that while the process of drafting the Labour Law was not open to the public, it was not an entirely closed circle of elites making the decisions that led up to its promulgation in 1994.

Chapter 4 Crossing the river by feeling the stones

The goal of China's economic system reform was established during this period, with the economic system changing from a planned economy to a market economy. Therefore, this thesis argues that the most important point for study the birth of modern Chinese labour law is that the context of which was in transition, and the move combined institutional transformations. China's reform is often described as 'crossing the river by feeling the stones' and the reform of Chinese labour regulatory framework is without exception.[50] The goal of this thesis is to discover how 'the river was crossed' – the way of which the task of drafting Labour Law was completed, including tracing the 'branch of rivers'- the specific problems that need to be overcome in the legislation process, and exploring the 'stones'- key influencing factors.

Before embarking on the deployment of 'Crossing the river by feeling the stones' as the analytical framework, it is necessary to throw some light on this idiom itself. The complete sentence is 'cross the river by steadily touching the stepping stones under the river, then take another step'. The meaning of this sentence refers to a steady progress step by step through exploration in an unknown environment. The Reform and Opening Up, the documents of the Party Central Committee and the State Council have often quoted this sentence. For instance, At the end of 1978, in preparation for the Third Plenary Session of the 11th Central Committee, the CPC Central Committee held a working meeting. At this meeting, Deng Xiaoping delivered a famous speech entitled *'Emancipating the Mind, Seeking Truth from Facts, and Uniting Forward.'* He said that 'before the national unified plan is brought out, it can start from the local area, start from one region and one industry, and gradually push it out. All central departments must allow and encourage them to conduct such experiments. Various contradictions will appear during the experiment, and we must discover and overcome these contradictions in time. Only in this way can we make progress faster.'[51] It can

[50] Yudong Niu and Yu Zhai, 'Analysis on the Path of Strengthening the "Three Self-confidence" and Adhering to the Reform of State-owned Enterprises' [guān yú zēng qiáng "sān gè zì xìn ",jiān chí guó qǐ gǎi gé fāng xiàng de lù jìng tàn xī] (2016) Modern SOE Research 8

[51] 'Emancipating the Mind, Seeking Truth from Facts, and Uniting Forward' is a speech by Xiaoping Deng at the

be seen that Deng Xiaoping regarded "crossing the river by feeling the stones" as a method to guide China's reform.

In October 1981, the State Council's 'Opinions on Several Issues concerning the Implementation of the Economic Responsibility System for Industrial Production' emphasized that 'the implementation of the economic responsibility system is still in the exploratory stage. All regions and departments must strengthen their leadership and cross the river by feeling the stones. The depth of the water is not very clear. It is necessary to take one step at a time, and balance the two feet.' [52] On 16 December 1980, Yun Chen, the central leader in charge of economic work at the time said on the Working Conference of the CPC Central Committee that pointed out the because the issue of China's reform is complex, stability must be maintained, and it must not be too hasty and need to cross the river by feeling the stones.[53] Chen Yun's speech was not only a specific requirement for economic adjustment at the time, but also a method of reform. [54]

Not only the top leaders quoting this idiom frequently to guiding the reform works. During my interviews, almost all of the interviewees mentioned that the process of making the 1994 Labour Law is cautious, gradual, and steady. Through further analysis of research questions and literature review, research methods are found and introduced in the last chapter of this thesis. I found that there are 'stones' (influencing factors) existing in current researches, but they are all fragmented or not discovered at all. No one knows what the stones are and what the direction that those stones are leading to. Especially, I found out that different systems of the labour law actually having different stones. This thesis is aiming at find the stones, put them on, correspond to them, and find the true path of the reform the Chinese labour law.

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closing meeting of the CPC Central Committee Work Conference on 13 December 1978.

[52] The State Council, 'Opinions on Several Issues concerning the Implementation of the Economic Responsibility System for Industrial Production' [guān yú shí háng gōng yè shēng chǎn jīng jì zé rèn zhì ruò gàn wèn tí de yì jiàn] issued on 11 November 1981.

[53] Zhenfeng Han, 'Chen Yun: The first person to put forward the theory of "crossing the river by feeling the stones"' [chén yún :tí chū "mō zhe shí tóu guò hé "lǐ lùn dì yī rén] (2015) Yun Ling Xian Feng 53

[54] Xi Wang and Yuan Shu, '"Crossing the River by Feeling the Stones": Theoretical Reflection' ["mō zhe shí tóu guò hé ":lǐ lùn fǎn sī] (2011) The Journal of World Economy 3-27

This thesis argues that the entire legislative process is a typical example of the policy-making process in China. Nevertheless, it is unique because of its specific background. Therefore, 'crossing the river by feeling the stone' is using as an original analytical framework of the policy-making process for corpus collection and analysis is applied here. This framework is an analytical model that not only refers to countries with economies in transition, it can also provide ideas for comparing labour laws. It can also offer a new narrative with which to describe the legal analysis of the decision-making process by connecting changes in context and decisionmakers to the consequences of shaping a new legal system.

4.1. The River: Legislative Procedure of the Labour Law

In this section, I will briefly introduce the general legislative procedure and the timeline of the 1994 PRC Labour Law. The current Legislation Law of the People's Republic of China was promulgated on 15 March 2000 and implemented on 1 July 2000. Because the Legislation Law was introduced later than the promulgation of the Labour Law in 1994, it is necessary to briefly introduce the legislative procedures and legislative traditions that were then in place, including the introduction of the legislature, legislative procedures, and legal hierarchy. Even without legislation, labour legislation has certain procedures. This procedure determines the textual thinking of this thesis—why do the drafting bodies change in different stages of the legislative process? Why are there some systemic problems in the Labour Law? Reviewed legislative procedure of the 1994 PRC Labour, it proved that throughout the legislative process, the Labour Law was in line with procedural norms. The thesis reflects a problem in that the decision process is not open to be tracked only because no complete written material archive was required to be saved at the time, not because they did not consult the public opinions.

Then, the timeline of the development of the labour legislation and the labour law system will be examined. This section focuses on the traditional legislative procedures and models documented, including legislative bodies, processes, and legal effects. This will demonstrate that even prior to the Legislation Law, the 1994 Labour Law was still in accordance with established procedures.

4.1.1. The General Legislative Procedure

China's legislative system can be divided into two parts: the legislative bodies and legislative procedure. The legislative bodies refer to the bodies that exercise national legislative power and includes the scope of their legislative activities and the relations between them. Legislative procedure refers to the steps that a legislative body must take to make a law, including the procedures for enacting, approving, amending, and repealing laws. At the moment, China's legislative procedure is mainly specified by the Constitution, the organic laws of different levels of the National People's Congress (NPC),[55] and the provisions of the National People's Congress and its standing committee on authorization. The legislative bodies that enjoy legislative powers mainly include the NPC and its standing committee, the State Council, the people's congresses of the provinces, autonomous regions, and municipalities directly under the central government and their standing committees. The abovementioned bodies enjoy the national legislative power to make laws, the administrative legislative power to formulate administrative regulations and issue decisions and orders and formulate provisional regulations and provisions, the local legislative power to formulate local laws and regulations that are locally effective, and the autonomous legislative power to formulate autonomous regulations and separate regulations that are effective in autonomous areas.

China's legislative procedure follows four main steps. First, bodies that are eligible to make proposals to the NPC put forth a bill. Such bodies are the presidium, the Standing Committee, and the Special Committee of the NPC, the State Council, the Central Military Commission (CMC), the Supreme People's Court, and the

[55] For instance, The Organic Law of the Local People's Congresses and Local People's Governments of the People's Republic of China was issued on April 1979, effected on January 1980. This law stipulated the organizational nature of the local people's congress, the form of formation, and the scope of authority. Article Six also stipulated that the people's congresses of provinces, autonomous regions, and municipalities directly under the Central Government may formulate and promulgate local laws and regulations based on the specific conditions and actual needs of their administrative regions, and on the premise that they are not inconsistent with the national constitution, laws, policies, statutes, and decrees, and report to the Standing Committee of the National People's Congress and the State Council for the record. Also, in the Organic Law of the National People's Congress of the People's Republic of China, which issued and effected on December 1982, stipulated the legislative authorities of the National People's Congress.

Supreme People's Procuratorate. Such bills are legal bills within the scope of the authority of the NPC and are placed on the agenda by the presidium. Alternatively, such bills are proposed by the bodies that are eligible to make proposals to the NPC. The Meeting of the Chairmen, the State Council, the CMC, the Supreme People's Court, the Supreme People's Procuratorate, and various special committees of the NPC can propose to the Standing Committee the legal bills that fall within the scope of its authority. The submission of such bills to the Standing Committee meeting for review is decided by the Meeting of the Chairmen.

In the second step, legal bills are reviewed through two processes. In the preparation for review stage, the legal bills to be submitted to the meeting for review are distributed by the Standing Committee of the NPC to representatives one month before holding the NPC; the Standing Committee will notify its members of the points for discussion in the proposed meeting. For the legal bills included on the agenda, the proposer, relevant departments of special committees, and the Standing Committee should provide all the relevant information: they should identify major problems with the bill, offer opinions from all sides, and include relevant foreign provisions. The Standing Committee of the NPC may announce the basic legal bills to be submitted to the NPC for review in advance to solicit opinions from all sides.

Then, legal bills undergo a formal review procedure at the NPC meeting. At the meeting, representatives first listen to the explanation of the bill by the sponsor and then discuss it in groups and ask questions according to the review opinions. Meanwhile, legal bills are submitted to the Law Committee and relevant special committees for review. After the review, the opinions are unified to submit the review results report and revised draft to the Meeting of the Chairmen. Upon the approval of the Meeting of the Chairmen, the modified law will be submitted to the NPC for a plenary vote. Major issues that need further study after the review will be proposed by the Meeting of the Chairmen and decided by the plenary assembly. The Standing Committee of the NPC may be authorized to make a review decision and submit this decision to the next session of the NPC for the record or submit it to the next session of the NPC for review. In the process of the review of laws at meetings of the Standing Committee of the NPC, the legal bills included on the agenda of the Standing Committee meeting will be reviewed at a minimum of two Standing Committee meetings before being put to a vote. At the first Standing Committee meeting,

representatives listen to the explanation of the bill by the proposer, and it undergoes preliminarily review and discussion in groups. Next, the bill will be submitted to the special committees and law committees of the relevant departments for a unified review. According to the results of the opinions of the preliminary review, special committees will make suggestions for the bill's revision. The working bodies of the Standing Committee further investigate and solicit opinions on the main questions raised during the review. The Law Committee will then review the bill in a unified manner according to the opinions from all sides and propose a review results report and make suggestions for revision at the next or subsequent meeting of the Standing Committee. At the second or subsequent Standing Committee meeting, the Law Committee will submit the review results report and revised draft to the Standing committee and introduce the opinions from the relevant special committees and all sides. The Standing Committee will review it in groups according to the revised draft. At the meeting, the Law Committee will make supplementary suggestions on the bill's revision according to the review opinions. Finally, the Meeting of the Chairmen will decide whether to submit the bill to a plenary vote according to the results of the discussion.

For some bills that still have significant differences in opinion after two Standing Committee meetings and need further study (as proposed by the Chairmen or the Meeting of the Chairmen and agreed upon by the plenary meeting of the Standing Committee), such bills may not be put to a vote (temporarily), submitted to a special committee for further review and the submission of review report, and voted on after the review by subsequent meetings of the Standing Committee. For decisions on legal issues and bills to revise laws, the Law Committee may submit a review results report to the Standing Committee meeting after the review. Such issues and bills may be put to a vote upon their review by the Standing Committee meeting. If there are important issues to be studied, such issues may be put to a vote upon their review at the next or subsequent meetings.

In the third step, bills are voted on after repeated review and revision. Bills are adopted by the plenary meeting of the NPC if more than half of the representatives cast an affirmative vote; the constitutional amendment is adopted by the majority if two-thirds of all representatives cast an affirmative vote. For the legal bills put to a

vote, their amendment (if any) should be voted on first. The results of the vote should be announced at the meeting.

In the fourth step, legal bills are announced as law upon their adoption by the NPC or its Standing Committee. The President of the People's Republic of China announces laws in the form of presidential orders based on the decisions of the NPC and the Standing Committee.

4.1.2. The Timeline of the Legislative Procedure of the 1994 PRC Labour Law

The timeline of the formal legislative process leading to the 1994 PRC Labour Law is as follows:

I. Stage of Start-up (1979-1984)

1979: The Labour Law was inspired by Deng Xiaoping's initiative. At the end of 1978, in preparation for the Third Plenary Session of the Eleventh Central Committee, the CPC Central Committee held a working meeting. At this meeting, Xiaoping Deng delivered a famous speech entitled 'Emancipating the Mind, Seeking Truth from Facts, and Uniting Forward', which was the prelude to China's eventual reform. In this speech, Deng Xiaoping emphasized that it was necessary to speed up the construction of the socialist legal system and proposed enacting 10 laws, including the Labour Law, as soon as possible. The formal legislative process leading up to the Labour Law began in January 1979.[56] At that time, a drafting group was established by the former State Labour Administration.[57] During the initial drafting phase, experts,

[56] The initial preparations started in the Ministry of Labour. In Guangzhao Yue's personal autobiography, *Crossing the Sword Gate* (unpublished), some of the initial preparations made by the Ministry of Labour are recorded. The book reads: 'After studying the above speech (Deng Xiaoping's 1978 speech), I was very excited, thinking that the time for enacting the "labour law" that I have been waiting for many years has finally come. After deliberating in the Policy Research Office, in January 1979, it formally submitted a proposal to the General Administration of Labour, hoping that the party group could put the drafting of the "Labour Law" on the agenda, and arrange the forces to start work quickly.' Yue, *Crossing the Sword Gate* (unpublished) 172

[57] In September 1975, the State Council decided to separate labour affairs from the State Planning Commission and set up the State General Administration of Labour. Until May 1982, the State General Administration of Labour, the National Personnel Bureau, the National Organization, and the State Council's Bureau of Science and Technology Cadres merged to form the Ministry of Labour and Personnel.

scholars, and staff from the All-China Federation of Trade Unions (ACFTU), the Ministry of Agriculture (MOA), Peking University, Beijing Economics College, China University of Political Science and Law, and the Institute of Law of China Academy of Social Sciences (CASS) were invited to participate in the discussion and drafting work.[58]

In July 1979, the first version of the Labour Law (Draft) was ready.[59] From September 1979, the drafting team went to Hunan, Hubei, Sichuan, Shaanxi, Henan, Hebei, Beijing, Tianjin, Shanghai, Zhejiang, Guangxi, and other places to solicit opinions on the first draft.[60]

1980: Implementation of the 'Three-in-One' employment policy began in 1980 when the 'Labour Legislation Collection of China' was edited and published internally

[58] Before the completion of the first draft, the Ministry of Labour made a series of preparations: 1) They sorted out labour, wages, insurance, welfare, technical training, labour protection, and other laws and regulations that had been passed in the 30 years since the founding of the People's Republic of China. These were collated in 1980 as the *Compilation of Chinese Labour Legislation Materials*, published by Workers Publishing House; 2) They held a symposium on drafting the labour law. Participating scholars included Fushan Ren and Gong Jianli from Beijing University of Economics, Guan Hua and Li Jingsen from Renmin University, Jia Junling from Peking University, Jingzhai Bian from the National Federation of Trade Unions, Wenyuan Chen from the School of Political Science and Law, and Zhongying Wu from the Ministry of Agriculture and Reclamation. (These scholars and commissioners also put forward their own opinions many times during the drafting process, so this thesis also interviews some scholars as research subjects.); 3) They collected, translated, and published foreign labour laws and regulations. A total of 50 labour laws and related regulations from Japan, Turkey, Canada, Hungary, the Soviet Union, the Philippines, North Korea, Bahrain, Saudi Arabia, Iraq, Poland, Bulgaria, Nigeria, Libya, the United States, India, Belgium, and other countries, totalling 155 translations and 10,000 characters, were divided into three volumes and successively published by Labour Publishing House and Labour Personnel. See Ngok (n 57) 174–175.

[59] The members who participated in the initial drafting were not actually from the same government department. The chapters, contents, and structure of the Labour Law were first agreed upon by all members participating in the drafting, and the specific content of each chapter was drafted by members of different departments. The general rules were completed by the School of Political Science and Law; ACFTU was responsible for writing the chapters on trade union democratic management, labour discipline, awards, competitions, and labour disputes in the first draft; and the Rural Committee was responsible for writing the chapter on rural people's communes. The contents of the other chapters, including labour, wages, benefits, training, and protection, were written by the relevant business units under the State Administration of Labour and then unified by the Policy Research Office. The first draft consisted of 15 chapters and 89 articles covering general provisions and supplementary provisions, which is very different from the final version. See ibid 175.

[60] Over about a year, the drafting team held 163 symposiums to solicit opinions. Four hundred and thirty-three units participated in the symposiums, including 36 grassroots units such as factories, mines, scientific research institutions, schools, hospitals, restaurants, and shops. See ibid 176.

by the Policy Research Office of the State Administration of Labour. In November 1980, a seminar on the draft of the Labour Law was held in Fuzhou City, Fujian Province. It was hosted by Guang He, and representatives from most provinces, autonomous regions, municipalities directly under the central government, central government departments, and the ACFTU participated in it. After the meeting, the first draft was revised and supplemented. Since 1980, the State General Administration of Labour, the General Office of the State Council, and the Standing Committee of the National People's Congress have successively distributed drafts of the Labour Law to provinces, autonomous regions, municipalities directly under the central government, various departments of the State Council, and different levels of the ACFTU for comments.[61]

1981: In 1981, the Sixth Plenary Session of the Eleventh Central Committee of the Communist Party of China adopted the 'Resolution on Several Historical Issues of the Party since the Founding of the People's Republic of China', which put forward the theory that 'the planned economy must be implemented on the basis of public ownership, and at the same time play the auxiliary role of market regulation'.[62] National Labour the Policy Research Office of the General Administration of the People's Republic of China published the 'Labour Policies and Regulations Collection' for internal distribution.

1982: The Economic Regulation Research Centre of the State Council, under the auspices of Ming Gu, convened three meetings with executive officers and personnel from relevant departments to discuss the draft of the Labour Law and then revised it based on the opinions discussed during the meetings.[63]

1983: From 1979 to 1983, the drafting work continued. In March 1983, the seventeenth version of the Labour Law (Draft) was completed.[64] On 29 March 1983,

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[61] ibid 117

[62] The Central Committee of the Communist Party of China, *Resolution on Several Historical Issues of the Party since the Founding of the People's Republic of China* (June 1981) < http://www.gov.cn/test/2008-06/23/content_1024934.htm > accessed 20 December 2020

[63] Ngok (n 57) 117

[64] Liuqin Yang, 'Drafting Process of the "Labour Law (Draft)"' [<láo dòng fǎ (cǎo àn)>de qǐ cǎo guò chéng] (1990) China Labour 14

the Standing Committee of the State Council discussed and approved this draft in principle. In July 1983, the eighteenth version of the Labour Law (Draft), which was revised and submitted, was submitted to the Standing Committee of the NPC for deliberation. On 23 July 1983, the China Labour Law Research Society was established and held an academic seminar. Participants including the represents from the Legal Committee of the Standing Committee of the National People's Congress, the Legal Affairs Bureau of the State Council, and the Economic and Law Research Centre, the Rural Policy Research Centre of the Central Committee of the Communist Party of China, the Chinese Law Society, and the Institute of Law of the Chinese Academy of Social Sciences. Some provinces and municipal labour bureaus, political courts, and other units had more than 70 representatives participated. The seminar discussed the legal status, scope of application, basic principles, and the relationship between labour legislation and reform in China's Labour Law. At the same time, the characteristics and functions of the emerging labour contract system and the handling of labour disputes were also discussed.[65]

1984: In February 1984, the Labour Law was modified according to the Standing Committee of the NPC's Legal Affairs Committee's discussion to form the nineteenth draft. However, this version failed to enter the re-consideration stage, and the internal drafting work of the government was paused for four years.[66]

II. Stage of Experiments (1986-1989)

1986: In 1986, the State Council issued four provisions: 'Interim Provisions on the Implementation of the Labour Contract System in State-owned Enterprises', 'Interim Provisions on the Recruitment of Workers by State-owned Enterprises', 'Interim Provisions on the Dismissal of Disciplinary Workers by State-owned Enterprises', and 'Interim Provisions on Unemployment Insurance for Employees of State-owned Enterprises'.

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[65] Boding Shao, 'China Labour Law Research Association was Established and Held an Academic Seminar' [zhōng guó láo dòng fǎ yán jiū huì chéng lì bìng jǔ háng xué shù tǎo lùn huì] (1983) Journal of Zhongnan University of Economics and Law 47

[66] According to Liuqing Yang and Shouqi Yuan, the work of drafting the legislation was suspended until February 1989. See Yang, 'Drafting Process of the "Labour Law (Draft)"' 14; Shouqi Yuan, 'Progress in the Formulation of the Labour Law of the People's Republic of China' [zhì dìng <zhōng huá rén mín gòng hé guó láo dòng fǎ> de jìn zhǎn zhuàng kuàng] (1993) 05 Law Science Magazine 32–33

III. Stage of Drafting in the Ministry of Labour (1989-1992)

1989: In February 1989, the drafting work recommenced on the Labour Law. The Labour Law Research Group and Drafting Group established working groups within the Legal Work Committee of the Chinese People's Political Consultative Conference (CPPCC), the Legal Advisory Committee of the ACFTU, the Chinese Labour Association (CLA), and the Policy and Regulation Department of the Ministry of Labour (MOL). From February to April, several meetings were held to discuss the basic principles and basic systems of the law, and the issues of the framework and content arrangement of the Labour Law (Draft) were redefined.[67] At the same time, many collections and arrangements of the relevant research materials were collected. In June 1989, the new first version of the Labour Law (Draft) was redrawn after carefully studying and referring to the manuscript. In September 1989, the second draft was revised. The third draft was then put together in October, printed, and sent to various departments for consultation. In December 1989, more than 200 experts and staff members representing labour administrative departments, trade unions, enterprises, and employees from North, Northeast, Northwest, and East China attended legislative discussion meetings held by the MOL. At the same time, the Ministry solicited opinions from the subnational labour departments. The draft was discussed at the meeting of the National Labour Department Directors and the National Labour Policy Regulations Directors.

1990: In 1990, the Labour Law Drafting Leaders Group was established, comprised of the ministers or vice ministers of different State Council departments. Ruan Chongwu, minister of the MOL, was appointed head of the Leaders Group. Officials from the MOL, the State Council Legal Affairs Bureau, the ACFTU, the

[67] On 1 February 1989, the National Committee on the Rule of Law of the Chinese People's Political Consultative Conference, the Advisory Committee of ACFTU, the Chinese Society of Labour, and the Department of Policies and Regulations of the Ministry of Labour jointly initiated the establishment of a labour legislation research group to coordinate and strengthen research on labour legislation to promote the early adoption of labour laws. On 9 March, the Labour Legislation Research Group held its second regular meeting to discuss the urgency of labour legislation at the time and believed that the early promulgation of the Labour Law could strengthen the publicity of issues related to this law so that leading comrades, cadres, and the masses would pay attention to and care about the Labour Law. From 10 to 15 April, the research team held its third regular meeting. At the regular meeting, issues such as the guiding ideology, scope of application, style and structure, basic content, and legislative techniques of the Labour Law were discussed. See Yue, *Crossing the Sword Gate*, 179–182.

State Planning Commission, the State Council Production Committee, the State Commission for Reform, the Ministry of Health (MOH), the Ministry of Personnel (MOP), the Ministry of Electrical and Mechanical Services (MEMS), the Ministry of Energy, and the Ministry of Agriculture jointly formed this Leaders Group and re-examined and determined the basic principles and main contents of the drafting of the Labour Law. This Leaders Group was a special institution that was only active during the legislative phase of the 1994 Labour Law. A similar legislative group was not put together during the legislative stage of the Labour Contract Law. After the establishment of this Leaders Group, field research was conducted in various regions of China. Guo Jun, former chairman of the ACFTU, recalled that the research sites included Wenzhou, Zhejiang and Shenzhen, Guangdong.

In the meantime, the Legislative Working Group was established inside the Ministry of Labour. The Legislative Working Group and the Leaders Group formulated a new Labour Law (Draft) based on the nearly 300,000 words of domestic and foreign materials that had been collected and the labour laws and individual labour statutes of more than 50 countries that had been translated. A demonstration meeting was held in Beijing in August and in Chengdu, Chongqing, and Wuhan in November. More than 100 people attended the meetings. At the same time, the legislative team solicited opinions from more than 150 units including State Council departments, commissions, bureaus, various enterprises and social organizations, and democratic parties. The Leaders Group and the Legislative Affairs Bureau of the State Council revised eight drafts after summarizing the opinions. A total of 27 drafts had been drafted by then.

1991: In July 1991, the Leaders Group discussed the adoption of the twenty-seventh draft and submitted the Labour Law (Draft) to the State Council. The Legislative Affairs Bureau of the State Council then sent the draft to various provinces and cities for comment and review. The labour departments of various provinces and municipalities returned their feedback one by one. Later, the Legislative Affairs Bureau of the State Council made further revisions to the investigative opinions.

The first draft of the Labour Law (Draft) was submitted to the National People's Congress. After that, different agencies officially participated in the drafting work together. As such, the final version of the draft in this period had been thoroughly

discussed by various departments, and each department discussed and commented on the terms of its most relevant relationship. For example, the addition of specific rights of trade unions, such as terms relating to the workers' congress and employee participation, was proposed by the trade union participants when drafting the legislation.

IV. Stage of Drafting in the State Council and National People's Congress (1993-1994)

1993: During August and September 1993, the Leaders Group went to Xinjiang, Qinghai, and Gansu for a second round of consultations in the field. They had travelled to six provinces and eight cities in South China, South Central, and Northwest China. There were 14 symposiums held with more than 300 attendees. From 30 October to 13 November 1993, a delegation led by Deputy Minister Zhang Zuoji visited Germany for a field study on the German labour and social security system.[68]

1994: On 7 January 1994, the fourteenth executive meeting of the State Council reviewed and approved the Labour Law (Draft) and submitted it to the Standing Committee of the National People's Congress for deliberation. From 2 to 5 March 1994, a preliminary review of the 'Labour Law of the People's Republic of China (Draft)' that was submitted by the State Council was held at the sixth meeting of the Standing Committee of the Eighth National People's Congress. From 12 to 15 April 1994, the National People's Congress Law Committee, the NPC Financial and Economic Committee, and the NPC Standing Committee Legal Work Committee invited relevant labour law experts, some enterprise leaders, and relevant departments of the State Council to hold a symposium to solicit comments on the draft. From 26 June to 5 July 1994, the eighth meeting of the Standing Committee of the Eighth National People's Congress was held in Beijing. The first item on the agenda of the meeting was a review of the draft. On 28, 29, and 30 June, the 'Labour Law of the People's Republic of China (Draft)' was reviewed, and the NPC Law Committee issued the 'Report of the National People's Congress Law Committee on the Review of the Labour Law of the People's Republic of China'. On 4 July 1994, at the eighth meeting of the Standing Committee of the Eighth National People's Congress, the

[68] A record of this is found in the unpublished book 'Overview of the Achievements of the Sino-German Labour Legislation Cooperation Project (1993–1996)'.

‘Report on the Amendments to the Labour Law (Revised Draft), the Urban Real Estate Management Law (Revised Draft) and the Decision to Punish Crimes against Copyright (Revised Draft)’ was announced, which formed the final revision of the draft. On 5 July 1994, 126 members of the Standing Committee attended the closing of the meeting. The meeting passed the ‘Labour Law of the People’s Republic of China’ with 121 votes. The Standing Committee of the National People’s Congress formally reviewed and approved the PRC’s Labour Law.

1995: On 1 January 1995, the Labour Law officially entered into effect.

4.2. The Stones under the River: The Possible Factors

Based on the perspective of national policy development strategy research, this thesis hopes to complete an analytical framework, namely a triple-layer (background–actors–system) analysis. Within this framework, the objective conditions and constraints of society are the background and mainly viewed from the perspective of institutional reform and transition. The actors are the main groups involved in the legislative process and are composed of people in society. The labour legal systems are the platform for the interaction of actors, which is divided into different sub-systems, and the process of interaction is completed through a systematic transformation within a certain period. The result is the introduction of legislation to achieve the final strategic outcome and other goals. The above suffices as the main structure outlining the various factors influencing the legislation. The critical factors extracted from the data can be classified according to this structure. In order to more clearly describe the method of analysis, this chapter will mainly build on this analytical framework. This section will also detail the legislative background of the Labour Law from three aspects – social, political and economic - as a general background information to the studied historical period. From the background information, the key words can be concluded in order to locate them from the collected corpus of the interviews. In the meantime, as the influencing factors to the legislative process of the Labour Law, these key words being classified into three main perspectives: the context, actors and systems.

4.2.1.Legislative Background of the Labour Law

This section examines the background of the motivations, intensions, beliefs, and choices of actors to understand their environment and find out what caused the result. The background mainly refers to the critical period of institutional transformation after China's reform and opening from economic, political, and social aspects. The 'Reform and Opening-Up' policy was announced in 1978, but the first Labour Law was not promulgated until 1994.[69] What kinds of 'reforms' were made to the country's labour policy in the intervening years?

The story begins 36 years ago when Wuhan's municipal government made a decision that shocked the whole country: a retired foreign expert was invited to serve as director of Wuhan Diesel Engine Factory in 1984. Werner Gerich, a German engine manufacturing and core technology expert, was sent by a federal German retired expert group to Wuhan as one of three foreign experts who spent four months at Wuhan Diesel Engine Factory as technical advisers. This is unique in the history of the People's Republic of China, not only because he was the first foreigner to be eligible for permanent residence in PRC, but because it was also the very first time after the establishment of a socialist country that a foreigner with a different ideology was hired to 'manage' Chinese workers. Even China's highest leaders went to meet him.[70] After two years of being the head of the factory, Gerich suggested that the main

[69] The Reform and Opening-Up policy is a basic national policy decided by the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China in December 1978. Since then, China has been implementing the policy that reforms the country domestically and opens it up internationally.

[70] The reason why he became such a special witness to Chinese history can found in his book *Gerich in Wu Chai* (in Chinese 1987). The book contains three parts. The first part records the speeches he gave during his tenure as manager of the factory. The second part presents his work diary from September 1984 to December 1985. The third part is his proposal for a reform of the factory's management system, including a plant-level management system solution, a technical deputy director management system solution, a general manager of the quality management system solution, and an explanation of employee salaries. This book reveals the personal experience of an outsider and his perspectives on state-owned factory management at that time and the solutions he offered to improve the Chinese factory management system. Because of the circumstances at that time, Gerich's proposals were not understood by the employees, but his report on the establishment of enterprises and the labour restructuring plan attracted the attention of Chinese officials. See Wuhan Foreign Affairs Office and Wuhan Economic Commission, *Ge Li Xi Zai Wu Chai* [gé lǐ xī zài wǔ chái] (Enterprise Management Press 1987) 2–5; Mingli Zhou and Ya Ou, 'The Ups and Downs of the First "Foreign Director"' Gerich and Wuchai' [shǒu wèi "yáng chǎng zhǎng "gé lǐ xī yǔ wǔ chái chén fú] Da He Bao < http://news.sina.com.cn/o/2008-04-11/073613720145s.shtml > accessed 03 July

problems in Chinese industry were due to the current production management system ignorance the quality review and flaws in their human resource management and wage system. The latter problem even determined the future of Chinese industry. He concluded that the current labour system was the reason why Chinese economic reform could not proceed and argued that the reform of the labour system could not progress because there was no motivational mechanism behind it. This reflected the impact of the 'iron rice bowl', which is particular to the Chinese context. It refers to holding a fixed post for life that comes with comprehensive welfare protections that include education, healthcare and housing. As many outsiders had also observed, the iron rice bowl bound Chinese workers to a lifelong 'socialist social contract' and restricted their mobility as a result of the planned economy.[71] The iron rice bowl is demotivating laziness.

But in 1981, the Chinese Communist Party (CCP) decided that China's planned economy should be 'implemented on the basis of public ownership while at the same time give play to the auxiliary role of market regulation'.[72] With the economic reform, non-state-owned economic entities became more competitive without the restrictions of the administrative labour management system. This decision weakened the competition in state-owned sectors.[73] The bowl needed to be broken; the rules needed to change. Undoubtedly, in a country with such a huge population, reforms had to be carried out, and the reform process was complicated, especially when people realized that the employment system was likely to become a huge obstacle to China's economic development. Ultimately, this reform process would affect the rights and interests of more than seven hundred million people.[74]

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[71] Eli Friedman and Ching Kwan Lee, 'Remaking the World of Chinese Labour: A 30-Year Retrospective' (2010) 48 British Journal of Industrial Relations 507–533

[72] The 'Resolution on Several Historical Issues of the Party since the Founding of the People's Republic of China', adopted by the Sixth Plenary Session of the Eleventh Central Committee of the Communist Party of China in 1981, put forward a theory 'based on planned economy and supplemented by market regulation'. Central Committee of the Communist Party of China, 1981, Resolution of the Eleventh Central Committee of the Communist Party of China on Several Historical Issues of the Party since the Founding of the People's Republic [zhōng guó gòng chǎn dǎng dì shí yī jiè zhōng yāng wěi yuán huì guān yú jiàn guó yǐ lái dǎng de ruò gàn lì shǐ wèn tí de jué yì] issued and effective since 27 June 1981

[73] Friedman and Lee, 'Remaking the World of Chinese Labour: A 30-Year Retrospective' 509

[74] Statistics show that in 1994, the year that the PRC Labour Law was promulgated, the total number of working-

This thesis's study period, from 1978 to the early 1990s, is a special period in Chinese history from an economic, social, and political perspective. First of all, from an economic perspective, China's economic context at that time was special because it was a period of economic institutional transformation, which economists have referred to as an 'economic miracle'.[75] Before the reforms, the Chinese economy was dominated by state ownership and central planning, with neighbouring capitalist economies, such as Japan, South Korea, and Singapore, outstripping the PRC's rate of growth.[76] It was a period that Sato Tsuneaki has described as a case of transition economies pushing 'forward the marketization of the economy before political transformation and simultaneously achieved rapid economic growth'.[77]

The economic transition in China is a general summary of the characteristics of the Chinese economic system after the Third Plenary Session of the Eleventh Central Committee in December 1978.[78] The birth of Chinese labour law and the economic transition have had a linear and logical development over the years.[79] The 'giant' taking off from the agriculture leading economy to the industrial prosperity. The innovation of rural collective ownership enterprises and the introduction of foreign-funded enterprises provided the original revolutionary capital allocation for new types of economy. Combined with the experimental reforms conducted within the state-owned economic sector, these factors contributed to the rapid raise of China over the next few decades.

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age (15–64 years old) people in China was 794,860,325. See Kuai Yi Data, 'Statistics on the Total Population of the Working Age Group (15 to 64 Years Old) in China' < https://www.kuaiyilicai.com/stats/global/yearly_per_country/g_population_15to64/chn.html > accessed 08 August 2020

[75] Yifu Lin, Fang Cai, and Zhou Li, *The Chinese Miracle: Development Strategy and Economic Reform* [zhōng guó de qí jì : fā zhǎn zhàn luè yǔ jīng jì gǎi gé] (Shanghai Renmin Press 2016) 14

[76] Loren Brandt and Thomas G Rawski, *China's Great Economic Transformation* (Cambridge University Press 2008)

[77] Sato Tsuneaki, 'Convergence and Divergence in Transformation: Comparison of Experiences of CEECs and China' in Shinichi Ichimura, Tsuneaki Sato and William James (eds), *Transition from Socialist to Market Economies* (Springer 2009) 10

[78] The economic transition in this thesis refers to the fundamental transformation of the Chinese economic system from a planned economy to a market economy. This transition began at the end of 1979 and is still ongoing.

[79] The economic transition is a complicated systematic project, and the adjustment of the labour system is an important part of this project. See Jiyun Gong, 'Research on China's Labor Relations in the Transition Period' (Ph.D. Thesis, Nanjing Normal University 2004)

Second, the social backdrop of this period was also unique. While the economy needed to be developed, social problems in China also needed to be resolved in the late 1970s, particularly those relating to urban unemployment. In 1979, millions of 'sent-down youths' (Zhi Qing)[80] who stayed down in the countryside went back to the city where they set off. Meanwhile, the household registration system (Hu Kou), which was established in 1958,[81] was used as a means of controlling mobility and as an arm of the centrally planned employment system.[82] This system objectively restricted the movement of workers across regions and affected their mobility between rural and urban areas.[83] After a few years of the sent-down movement and the process of counter-urbanization, the original urban employment problem had yet to be solved and had also created new problems for the sent-down youths and their children.[84] Until the end of 1970s, there were 5.7 million unemployed people in urban areas, and the unemployment rate had reached 5.4%.[85] Employment suddenly became China's

[80] The sent-down youth are also known as the educated youth. From 1967 to 1978, more than 17 million urban youths in China migrated and relocated to the rural countryside for re-education by living and working in local rural and mountainous areas. Historically, this event has been known as the sent-down movement. Their lives and experiences have been studied by many researchers. For more information, see Kevin A. Gee, 'The Sent-down Youth of China: The Role of Family Origin in the Risk of Departure to and Return from the Countryside' (2011) 16 The History of the Family 190–203. Also, see Yang You, *Educated Youth Should Go to the Rural Areas: A Tale of Education, Employment and Social Values* (2018).

[81] National People's Congress, 1958, Regulation on Household Registration [zhōng huá rén mín gòng hé guó hù kǒu dēng jì tiáo lì] issued on 9 January 1958

[82] The Hu Kou (household registration) system refers to a set of political, economic, and legal systems related to the management of household registration, including certifying personal identity and performing resource allocation and wealth distribution.

[83] For more information, see Dong Yan, 'Labour Laws and Hukou Inequality in the People's Republic of China' (Ph.D. Thesis, University of Warwick 2010)

[84] Yilong Lu, 'Structure and Change: The Household Registration System in China after 1949' [1949 nián hòu de zhōng guó hù jí zhì dù :jié gòu yǔ biàn qiān] (2002) Journal of Peking University (Humanities and Social Sciences) 123–130

[85] For the unemployment rate, see National Bureau of Statistics Social Statistics Bureau and Department of Comprehensive Planning of Ministry of Labour (eds), *China Labour Wage Statistical Yearbook (1989)* (Labour and Personnel Publishing House 1989) 52. The National Bureau of Statistics of the People's Republic of China (NBS) is responsible for providing nationwide statistical data, although some might question the credibility of these data, especially during the 1990s when local data were used as a key criterion for gauging political achievements. To be clear, this thesis is fully aware of the possibility of shifts in the statistical standards. Nonetheless, under the planned economy, data collection was rather straightforward and there was less pressure to manipulate the data. Therefore, the data for this thesis's research period are relatively reliable. The figures are comparable with those found in other international standards. For a detailed discussion on the shift in statistical

first urgent problem to resolve. Some domestic analysts started to notice that the rate of development of the national economy had slowed and opportunities for employment had reduced. When combined with the return of the sent-down youth, employment concerns were reaching their peak.

Further complicating the matter was that despite the 'Family Planning' policy, which had been implemented in the 1970s[86] (although less restrictive than that which was implemented in the 1980s and 1990s), the total amount of natural growth in the labour force since the founding of the PRC had led to the accumulation of employment conflicts since the end of the 1970s.[87]

Besides, Interviewee I (2016) said that in the 1980s, there was absolutely no legal protection for the mass movement of personnel, explaining: 'In the past, farmers who came to work in the urban area used to be called 'Mang Liu' (blind influx)'.[88] The movement of people between cities and from rural areas to urban areas was very restricted. At that time, the labour contract was not commonly used; under the planned economy, having an urban resident identity was the only protection that people had

standards and the reliability of the NBS, see Yan, 'Labour Laws and Hukou Inequality in the People's Republic of China', 116–117

[86] The Family Planning policy states that families shall plan births according to the country's policy on controlling the population. It encourages late marriage and places limits on childbearing to control the total population. In the 1970s, due to the previous fertility peak and the sent-down movement, the population trend was one of excessive growth; hence, the Family Planning policy was formed and promoted nationwide. But at this time, the main content of China's family planning work was mainly conducted by call out and promoting the policy, and was supplemented by appropriate administrative power. In September 1982, the Family Planning policy was written into the Constitution of the PRC as a basic national policy. Only in a few special circumstances and with the approval of the administrative department could couples have a second child. However, in October 2015, the Fifth Plenary Session of the Eighteenth Central Committee of the Communist Party of China proposed a 'full implementation of the policy that one couple can have two children' and thus ended the strict one-child policy. See Faxiang Yang, 'Historical Research on Family Planning of Contemporary China' (Ph.D. Thesis, Zhe Jiang University 2004)

[87] See Yubai Lin, 'Analysis of "Iron Rice Bowl"' ['tiě fàn wǎn'xī] (1983) Social Sciences Shanghai China 52–53; Bingwen Gan, 'The Entrepreneurial Approach to Employment is Getting Wider and Wider' [chuàng yè shì de jiù yè dào lù yuè zǒu yuè kuān] (1985) China Labour 22; Dongling Xuan, 'Discussion on the Legislation of Labour Contract Regulation' [guān yú zhì dìng láo dòng hé tóng zhì fǎ guī de tàn tǎo] (1983) Law Science 38, 39, 41; Kunli Hu, 'Expanding Enterprise Autonomy Needs Strengthening Economic Legislation' [kuò dà qǐ yè zì zhǔ quán jí xū jiā qiáng jīng jì lì fǎ] (1981) Social Science Shanghai China 70–73

[88] Interviewee I used to work in the Department of Industry, Transportation, and Labour Regulations of the State Council Legislative Affairs Bureau from 1988 to 1999. 'Mang Liu' means an unchecked (unauthorized) flow of people (from the countryside to the cities) who usually lack education and skills.

from the existing rules.[89] This appellation shows that rural workers were unwelcome, were not given any residence permits to live or to work in cities, and were not protected under the law. Only after a few years, when the Labour Law legally implemented the employment contract in 1994, did this situation finally change, as labour relations shifted away from a worker's status to focus on employment contracts instead.

Third, during the study and preparation period for the legislation, Chinese political turmoil had subsided, and the new leadership and elite groups had decided to adjust their previous policies. On the one hand, the impact of policy adjustments affected society as a whole, as many of the previous problems evolved into new social problems at that time. On the other hand, economic development required the continuous support of a relatively stable social and political environment. As a result, this transition period inevitably proceeded with caution—the political achievements that had been achieved under socialism were not completely abandoned, but the existing system could not support such a variety of economic actors. Until reaching a crucial juncture in 1992, the Chinese leader Xiaoping Deng gave talks in the South,[90] new policies, and the introduction of new laws served to stabilize the entire situation.

China had determined that the transition to a market economic system would be gradual. In 1981, the Sixth Plenary Session of the Eleventh Central Committee adopted the 'Resolution on Several Historical Issues of the Party since the Founding of the People's Republic of China', proposing the theory of a mainly planned economy supplemented by market regulation, with the theory of deposit still adhering to the

[89] Under the planned economy, labour relations have very distinctive administrative characteristics. State-owned enterprises do not have independent management autonomy and employment autonomy. Enterprises mainly establish labour relations with employees through government administrative actions. At the same time, labourers do not have the right to choose their own jobs. Jobs are mainly designated and assigned by the state, subject to the labour rules formulated by the state and accepted universal treatment and benefits. It was not until 1986 that the State Council promulgated the 'Interim Provision on Implementing the Labour Contract System in State-Owned Enterprises' and the 'Interim Provisions on the Recruitment of Workers by State-Owned Enterprises' and China began to widely use labour contracts as the main form of labour relations. For a more detailed discussion, see Chapter Six of this thesis.

[90] 'Deng Xiaoping's Talk in the South'(Nan Fang Tan Hua), refers to a series of talks that Xiaoping Deng gave during his inspection tour in the South part of China in Spring 1992. The theme of these talks emphased to deepening and strength the economic reform. See China Economic Net, 'Source: Deng Xiaoping's Talks on His Southern Tour in 1992 (Full Text)' [zī liào: 1992 nián dèng xiǎo píng nán xún jiǎng huà (quán wén)] (2014) < http://gd.people.com.cn/n/2014/0811/c123932-21952148.html > accessed 27 November 2019

planned economy.[91] The general framework would remain the same, but economic activities began to enter the people's consciousness in accordance with the requirements of respecting and using the law of value. Therefore, economic activities were gradually incorporated into the true development of the commodity economy. In 1987, in the Report of Thirteenth National Party Congress, 'the system of a socialist planned commodity economy should be a system of internal unity between planning and market'.[92] In 1992, the Report of Fourteenth National Congress confirmed that 'the goal of China's economic system reform is to establish a socialist market economic system'.[93] At this point, the strategic objectives of economic reform had been formally established in the system.

Despite the social, economic, and political context from 1978 to 1993, the Labour Law remained under discussion and was not yet officially promulgated. The acceleration of the labour legislation process, as discussed by Ngok Kinglun, was mainly due to two relatively significant events that aggravated the entire process.[94] One was an incident at Zhili Toy Factory in Kuiyong Town, Shenzhen, in November 1993, and the other was an incident in a textiles factory in Fuzhou City, Fujian Province, one month later.[95] In both factories, accidental fires caused a large number of casualties. These incidents sparked widespread concern, so it is believed that they were the direct cause of the government's sudden decision to speed up the process of developing labour legislation.

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[91] Resolution of the Eleventh Central Committee of the Communist Party of China on Several Historical Issues of the Party since the Founding of the People's Republic, 1981, issued on June 1981

[92] Ziyang Zhao, *Report of the Thirteenth National Congress of the Communist Party of China* (October 1987) < http://cpc.people.com.cn/GB/64162/64168/64566/65447/4526368.html> accessed 27 November 2019

[93] Zemin Jiang, *Report of the Fourteenth National Congress of the Communist Party of China* (October 1992) < http://cpc.people.com.cn/GB/64162/64168/64567/65446/4526308.html > accessed 27 November 2019

[94] For a more detailed discussion, see Ngok, 'The Formulation Process of the Labor Law of the People's Republic of China: A Garbage Can Model Analysis', 211–214

[95] On 19 November 1993, a fire broke out at the Zhili Toy Factory in Shenzhen which killed 84 people and injured 51 others. < https://baike.baidu.com/item/1993_年深圳致丽玩具厂大火/12787984 >; On 13 December 1993, another fire broke out in in Mawei Gaofu Textile Co., Ltd. in Fuzhou City, Fujian Province, killing 61 people. < http://www.china.com.cn/aboutchina/txt/2009-12/11/content_19050408.htm > accessed 28 November 2019

4.2.2.The Key Words of the Influencing Factors

(1) Context

From the previous macro background, this thesis has summarized the following keywords about background. Specific to the context analysis presented in this thesis, the main corresponding factors and the keywords that reflect them are as follows:

A. Marketization: This term mainly refers to the national policy guidelines for the reform of the socialist market economic system. In the interviews, marketization was a keyword.

B. SOE Reforms: This term mainly refers to the reform of property ownership in state-owned enterprises. In the interviews, SOE reforms and ownership reform were keywords.

C. Legalization: This term mainly refers to the process from moving from a policy to creating a legal system.[96] In the interviews, the rule of law, lack of laws, lack of regulations, filling the gaps between laws, and constitutional rights were keywords.

D. Economic Situation: The economic reform provides the fundamental context of the research. Therefore, during the interviews, the economic related terms or expressions such as descriptions of the economic situation, the economic reform and economic system were keywords.

E. New Techniques: This term refers to industry upgrades. Under the old system, all the investment (capital or intelligence) from the employer went with the worker, and the industry structure was singular. But with the upgrades to industrial structures, property rights segmented with the workers and brought about a new form of industrial relations. The keywords in the interviews were 'status' and

[96] Before the promulgation of the 1994 PRC Labour Law, China did have labour regulations concerning certain labour issues. However, scholars have deemed these regulations 'policies' rather than 'laws' or 'legislation' because they had an administrative nature which used propagandistic language, were implemented by administrative agencies, and did not have a distinguishable legal hierarchy. Therefore, it has been argued that there was lack of labour law. See Ngok, 'The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition', 49

'contracts'.

F. Foreign Investments and Joint Venture Enterprises

(2) Actors

In this study, 'actors' mainly refers to people who took action under the context of the birth process of the 1994 PRC Labour Law. Different people have different interests and ideas, and those who share common interests and ideas form an interest group. These actors participated in the legislative process. Some interest groups utilized their ideas or others' ideas in order to acquire benefits during the legislative process.[97] This may have led to a change on the institutional level and substantially changed the legislation. Some played a promotional role, whereas others may have impeded the process.

The actors in this study can be divided according to their interests, as follows:

A. Public: In this study, workers (trade union) in the legislation are equal to the public. Their common interest is for the rights of workers to be protected.

B. Elites: In this study, elites include enlightened bureaucrats and public officials; they represent the interests of the government. In this thesis, elites mainly refer to the officials and leaders working in government departments who participated in the policy-making and legislative process and who had administrative authority to influence the essential content of the 1994 PRC Labour Law.

C. Scholars: In this study, scholars share a common interest in legislation, the rule of law, and the introduction of new laws.

(3) Systems

Actors take action on the system level. This thesis mainly sees the Labour Law as a general system. Its themes can be divided according to its specific chapters and articles. Each system and the actors acting on this level will be discussed in the following chapters. For the Labour Law's scope of application, see Chapter Five. Employment rights protection and employment contract-related institutions are listed in Chapter Six. Fundamental labour standards including the wages and working hours, leave, and

[97] See Chapter 5, section 4, for more on the public attitude towards and the change in the media's tone on the publicity of the reform of Chinese labour policies.

vacations systems are discussed in Chapter Seven, and finally, the administrative related systems including social insurance and dispute resolution institutions are discussed in Chapter Eight.

4.3. Four Branches： Problems to Solve

Based on the concept selection and research methods above, I found 14 issues that were mainly discussed in the legislation which can be classified into four major subsystems according to: 1) the scope of application; 2) the advent of the labour contract; 3) the labour standard including wage and working hour systems; and 4) and the administrative matters including social security and dispute resolution. I will use these as the main topics of the following chapters to introduce the historical process behind the development of the Labour Law in China. These 14 questions were the most common issues raised during this period in China's legislative history, and they represent pieces of the puzzle of labour law history. Connecting the pieces by discussing the issues raised will reveal information about the formation and development of Chinese labour law legislation, such as some core aspects of the regulations and laws that have been gradually promulgated over the past 40 years covering such things as workplace health and safety. These issues were discussed each and every time new regulations were made so that when the legislation drafting group formally discussed the draft, they thought that the rules regulating the relevant issues had been fully discussed and developed.

Because those versions of the draft legislation cannot be found today, what we can use are the discussions that were record by the legislators. According to Rufen Song's book *Participated in the Legislative Work (Volume 2)*[98] and Interviewees I[99] and G,[100] there were about 14 main questions that the Legislative Working Group and the NPC Standing Committee mainly discussed during the legislative process when

[98] Rufen Song, Former Deputy Director of the Legal Work Committee of the NPC Standing Committee. See Rufen Song, *Participated in the Legislative Work (Volume 2)* [cān jiā lì fǎ gōng zuò suǒ jì (xià)] (Legal Publishing House 1995) 342–351

[99] Interviewee I is a former official of the Legislative Affairs Bureau of the State Council who participated in the drafting work of the 1994 PRC Labour Law.

[100] Interviewee G is professor of law in the School of Political Science and Public Administration, East China University of Political Science and Law. He participated in the demonstration and drafting of the 1994 PRC Labour Law.

drafting the Labour Law. Also, *Labour Daily* published an article 'Why Is the Labour Law Drafting Difficult?' that summarised 14 difficulties associated with debates regarding the legislation.[101] From what we can tell, during the legislative process, the Legislative Working Group did not list these kinds of aspects in the formal documents and archives. However, they did mention that workplace health and safety should be connected to the relevant laws. Asking and answering these questions will help uncover the legislative history of China's Labour Law.

The 14 legislative questions are as follows:

1. Why did this law need to be introduced? Should it be written into the Civil Law as a chapter or enacted separately?
2. What is the Labour Law's scope of application?
3. Who are the subjects of the labour market and the Labour Law?
4. What are the basic principles of the Labour Law?
5. Shall the labour contract system be implemented step by step or uniformly?
6. What is the applicable working hours system? What is the applicable leave and vacations system?
7. What is the applicable wage system?
8. What is the applicable vocational skills assessment and identification system?
9. Shall there be specific stipulations on collective agreements in the Labour Law?
10. How the law can stipulate relative issues upon the enterprises facing serious difficulties in production and business operations under the circumstances of bankruptcy or major difficulties in terms of production or operation?
11. What is the applicable social insurance system?
12. What is the applicable labour dispute resolution mechanism?
13. Which organs are responsible for implementing labour inspections?
14. What other issues arose?

[101] Junlu Jiang, 'Why Is the Labour Law Drafting Difficult?' [láo dòng fǎ qǐ cǎo nán zài nǎ lǐ?] *Labour Daily* (Beijing 29 July 1993)

The arrangement of the 1994 PRC Labour Law's chapters established a basic labour system which was taken into consideration when designing the structure of this thesis. The first chapter of the 1994 PRC Labour Law clearly outlines its legislative purposes and principles. The second chapter outlines the employment promotion system and establishes the principle of equal employment. The third chapter of the Labour Law outlines the system for establishing employment relations through the conclusion of employment contracts. In this chapter, the Labour Law also establishes some relevant regulations on layoffs as well as collective labour contract systems from the collective labour relations perspective. The fourth chapter of the Labour Law outlines the rest and vacation system, as well as establishes a basic working hours system. The fifth chapter outlines the wages system by setting out the principles of 'distribution according to work', 'equal pay for equal work' and minimum wage guarantees. The sixth chapter identifies the relevant provisions of occupational health and safety and determines the powers and responsibilities of the labour-related government administrative department. The seventh chapter covers the protection of women and underage workers; the anti-discrimination content is in line with international labour standards. The eighth chapter identifies the national vocational training system. The ninth chapter establishes the basic system of social insurance. The tenth chapter establishes the mechanism for handling labour disputes. The eleventh chapter establishes an administrative departmental supervision and public supervision system for the implementation of the Labour Law by employers.

In general, throughout the structure of this law, this thesis argues that it is a relatively comprehensive law. However, since discrimination is not a problem in a planned economy, the discussion during legislative stages does not focus heavily on it. According to Interviewee H,[102] when the NPC Law Committee review the legislative draft, the content relating to employment discrimination was removed. Because the problem was not prominent under the planned economy, it was considered unnecessary to enshrine those protections in law (Interviewee H, 2016). This proves that what was not listed in the 14 abovementioned questions was not written into the law, and is therefore not discussed in this thesis.

[102] Interviewee H was a legal official in the Administrative Law Office of the Legislative Affairs Committee of the National People's Congress and participated in the legislative work on the 1994 PRC Labour Law.

This thesis divides the 14 questions into the following chapters by classifying them into main themes. Thus, this thesis reflects the structural logic of the Labour Law itself. Each theme can be seen as a small piece of the labour system puzzle. Elaborating on their developmental changes reflects the changes in the labour system in general.

The key argument and basic logic of this paper is that the transformation and development of each small element of the system at that time ultimately manifested in the Labour Law of 1994 and shaped the contemporary labour legal system as a whole. Through the transformation of these smaller elements, we can identify some common influencing factors and trace the path of change in the labour legal system. But these elements are not exactly the same as those reflected in the design of the final Labour Law. Some of the discussions during the legislative process of the Labour Law are more in-depth and some are relatively broad. Some aspects, such as the vocational education, the occupational health and safety, have followed the previous system that existing before the Labour Law and economic system reform, and a large number of separate regulations have been introduced. Therefore, looking at this kind of issues are not the subject of key labour law development and reform, and I will not focus on them in this thesis. Other aspects, such as anti-discrimination, labour inspection, and collective labour contracts, have become loopholes in the law because of the lack of discussion in the legislation. This thesis investigates the main areas of discussion, controversial issues, and problems raised in the labour legislative process.

4.4. Summary

To change the context from a planned economy to a market economy, the law supported the new system by creating new rules, but it also needed to consider the factors that previously existed, such as the actors, the old customs, policies, and rules. At the same time, when formulating rules, we will also refer to foreign labour laws and regulations in other countries. The law is a mixture of all these factors. The main actors, based on their common interests and shared ideals, formed different groups of actors that interacted with and influenced each other on the institutional and sub-systematic level. The birth of the Labour Law is the river cross task that need to be finished.

Furthermore, this thesis hypothesizes that the process leading up to the 1994 PRC Labour Law was affected by and interacted with different factors. Different

(groups of) actors focus on and adopt different factors. The factors adopted by different actors will have different effects on different institutions. Also, different contexts will also have different types of influences on actors and turn into different institutions. Therefore, the hypothesis is that not all actors and factors are equally important in the period leading up to the 1994 PRC Labour Law, so this process should be looked at in detail instead of as a whole.

Based on this hypothesis, this thesis presents the 'crossing river' process to explain the birth of the Labour Law. When the legislative process is considered as a whole, researchers believe that all the factors influencing the law are single, and all the rules are based on the same premise, so that the consequences are consistent. They also believe that the goals of all actors are consistent and the demands are the same; actors are homogenous, and their views are basically the same. Therefore, the more common narrative is to describe more integral and fundamental changes as a process of 'reform', 'transition', or 'revolution'. Yet, if the purposes and demands of actors are consistent, why are there so many arguments during the legislative process and the need for repeated redrafts?

It has also been suggested that the legislative process is a power struggle between government organizations.[103] However, in the field of labour law, other interest groups, such as labourers and employers, cannot fully represent their sectoral interests—they are representing their group. What they see is not the power of a certain bureaucrat, but how they apply this law in a way that affects their legal identity. Therefore, a power struggle between bureaucrats cannot explain the role of non-governmental groups in the drafting of legislation. During the legislative process, different actors are the designers of the project and in charge of their own areas, stepping on different stones. In addition, different levels of actors have more power in the decision-making; higher level actors have more power in designing broader issues.

This thesis applies an oral historical research method because every actor sees different parts of the process as important and considers different influencing factors. Therefore, all of their thoughts are important and worth looking at in detail. Through this model, it is also possible to uncover the weights of the effects of different factors on each institution. For instance, for one dataset, such as the rate of signing

[103] Philip Zelikow and Graham Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Longman 1999)

employment contracts, different actors will look at the proportion of unsigned contracts, whereas others will pay attention to the proportion of contracts that were signed. When an actor chooses to focus on the rate of unsigned contracts, they will perceive the employment contract institution as needing promotion and thus establish it as a formal institution stipulated in the law.

One of this thesis's main contributions finding the 'stones', which are the factors that influencing the legislative actors' idea during the process of making a new legal system. If legislators need to amend a law, it is difficult to do so without considering the different influencing factors. It is more effective to see the law as a systematic project and adjust the factors accordingly.

In the labour law research area, common historical research expressions are chronological and linear descriptions. The other is that labour law professionals will choose to express themselves from the theme of the field of labour. Scholars who study China's legislative issues may also divide different legislative stages based on the perspectives of the legislature (from the ministries and commissions of the State Council to the State Council and to the National People's Congress). Combining this thesis is a research feature of the history of labour legislation, and I chose the third road. Use main themes as the discussion framework and use time only as the nature order of the representation. The structure of this thesis is also based on this analytical framework. Chapters 5 to 8 will illustrate the four branches of this river. It also explains why some issues that were covered by the law did not create controversy, as the decision-making power was delegated to the group of actors that needed more autonomy to design its own rules.

Chapter 5 The Scope of Application

In this chapter, I will start to discuss 14 legislative questions.[104] These questions are then discussed in detail in the following four chapters. Of these 14 questions, questions two and three outline the key terms used in the Labour Law that laid the foundations for and defined the scope of the application of the Labour Law. These need to be addressed before we discuss the institutions involved in greater detail. Since discussions surrounding defining the key concepts and the scope of application were had many times throughout the legislative process, they are relatively more controversial than any of the other questions and issues and are therefore the most essential issue of the legislative process.

This chapter expounds on the discussions surrounding the definitions of the key terms used in the 1994 PRC Labour Law, particularly those that applied to the subjects and scope of application of the Labour Law: labourers, employing units, the state, and labour relations. The first section of this chapter presents the debate on the scope of worker protection by examining how the legislators narrowed down the scope of labourer from all citizens to the current definition that only refers to subjects that established an employment relationship. Then, the definition of an employing unit in the Chinese context is provided in section two, showing the iterations and trade-offs between different government departments and different enterprise ownership types. Section three mainly discusses the role and function of the state, explaining how the state gradually exited, give concessions to the labour market main subjects, and balanced labour relations. Finally, in section four, the structure of Chinese labour relations is explained, along with the definitions of the key concepts that formed the backdrop of the labour system reform. These terms are the foundation of the 1994 PRC Labour Law. Debating the meaning of these concepts also reflects the ideas and decisions of the legislators and during the institutional transition process. It highlights the role and actions of the different groups of actors participating in the legislative process, including the public, elites, and scholars. Also, the factors influencing the

[104] The list of the 14 questions are listing in Chapter 4, section 4.3.

structural design of the Labour Law, such as the impact of international factors, are also discussed in this chapter.

5.1. The Applicable Scope of the Labourer

The core concept of the Labour Law is what constitutes a 'labourer' (劳动者). Defining this term within the scope of application of the Labour Law requires understanding labourers as subject to protections provided by the Labour Law, labour rights, and the labour and employment contract. This is the prerequisite for discussing all issues related to the Labour Law. Therefore, it is the very first element that needs clarification.

Does the term 'labourer', as it was used in the Labour Law, carry the same meaning today? According to the *Labour Law Dictionary* edited by the China Labour Law Research Association, the term 'worker' (工人) is defined as follows:

> a type of manual labourer which is an important part of employees and has the status of the subject of labour legal relations. … In a capitalist society, it refers to labourers who do not own the means of production and rely on selling labour for their livelihood. … In a socialist society, based on the public ownership of the means of production, workers have got rid of their exploited and oppressed status and become the masters of the country. In our country, it mainly refers to those who directly engage in material production and auxiliary production and obtain labour remuneration in industrial enterprises. … Sometimes it is a general term for manual workers other than farmers.[105]

Another essential term used in the labour law that is particular to the Chinese context is 'workman' (劳工). This usually refers to 'people that are hired by the employer and sign [a] service contract to work and get [a] salary. … In old China, [this was] called [a] "workman"'.[106] The term 'labourer' (劳动者), however, was defined in the dictionary as follows:

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[105] China Labour Law Research Association, *Labour Law Dictionary* [láo dòng fǎ cí diǎn] (Liaoning People's Publishing House 1987) 10

[106] ibid 208.

> citizens within the working age that [were] stipulated by the Labour Law [as having] the ability to work and obtain legal income from manual labour or mental labour as their main source of subsistence. The working age stipulated in our country is generally 16 to 60 years old for men and 16 to 55 years old for women… Socialist society has eliminated the exploiting classes. Workers are the masters of the means of production and the country. They are all equal in politics and economy. Only the division of labour is different. There is no distinction between [the] lowlines and nobleness of their status. The labourer consciously and voluntarily conducts labour for society and for themselves.[107]

From the above definitions, before the introduction of the Labour Law, the definitions of 'worker', 'workman', and 'labourer' had distinct differences in meaning. The most outstanding differences were in their scope. 'Worker' had a relatively narrow definition and usually referred to employees working in industrial enterprises. 'Workman' had a specific historical meaning and referred to a hired servant. However, the scope of the term 'labourer' was much broader. It covered almost all citizens and only had capacity, remuneration, and age as conditions. The list in the *Labour Law Dictionary* shows that the categories listed covered all industries and all types of work, including but not limited to industry, commerce, agriculture, and state agency workers. In the 1994 Labour Law, the most extensive definition was ultimately adopted once it was finally promulgated. This section will consider the discussions surrounding the usage of this term in the Labour Law and the purpose of the legislator.

According to Interviewee H,[108] who worked for the Legislative Affairs Commission of the NPC (NPCLAC), when they received the draft of the Labour Law, the Ministry of Labour (MOL) asked how to define the scope of the term 'labourer' before they review the draft. The original design of the scope of the definition of labourer was much wider than in the final legislation and once covered almost all citizens who were 'entitled to work'. 'We used to call it "big hat, small body"', Interviewee H said. In the 1994 PRC Labour Law, the final salary system was not applicable to government agencies and public institutions, so the scope of the

[107] Ibid 213.

[108] Interviewee H was a legal official in the Administrative Law Office of the Legislative Affairs Commission of the National People's Congress. The interview was conducted in December 2015 in Beijing.

definition of the labourer was ultimately greatly reduced. Moreover, if the scope of the applicable legal subjects of the Labour Law were expanded, then the labour contracts and salary system would have to be adjusted accordingly. The changing process of the definition is the adjustment process of this applicable scope of the 1994 Labour Law.

In the 1994 PRC Labour Law, the definition of labourer is stated in article 2. Some scholars have pointed out that the definition of labourer excludes non-standard workers.[109] How did this occur? According to the interview with Interviewee C, during the legislative process, there was a debate over the 'big, medium, or small' scope of labourers,[110] in other words, whether to apply a wide, medium, or narrow scope to the definition.

5.1.1. The 'Big' Labourer and the Peasant

Applying a 'big' scope to the definition of labourer would include all people within China. As the Interviewee C gave a more detailed description of the discussion held at the time with the Ministry of Labour, stating that the 1994 Labour Law was the first of its kind in socialist countries and widely applicable and there were debates over the 'small, medium, or big' scope of application of the term 'labourer'.

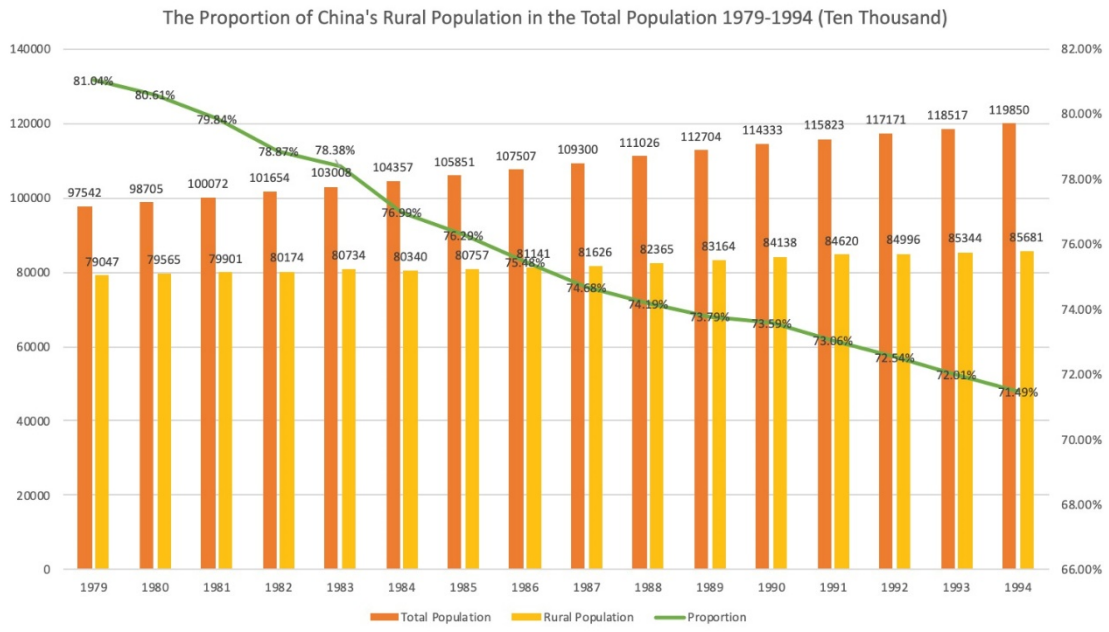
This discussion was also recorded in the written material, although the most intense debates held when drafting the law were about peasants. In 1983, at the China Labour Law Research Association meeting, the participants began to discuss the applicable scope of the labour law. One opinion was that the labour relations applied to this law should exclude rural collective ownership workers; the number of rural workers accounted for the majority of workers, and the laws that regulated them should be formulated specially. Another opinion held that since agriculture was the

[109] Restricting the application to certain categories of workers sets a boundary between 'standard workers' and 'non-standard workers'. See Sean Cooney, 'Making Chinese Labour Law Work: The Prospects for Regulatory Innovation in the People's Republic of China' (2006) 30 Fordham Int'l LJ 1050

[110] Interviewee C is a professor of labour law at Renmin University and a former official at the Department of Policy and Regulation of the Ministry of Labour. The interviews were conducted in March 2016 in Beijing, in May 2017 in Cambridge, and in June 2019 in Beijing.

foundation of the entire national economy, any labour law reforms should include rural labour relations as characteristic of China.[111]

Indeed, China is still a largely agrarian country and peasants account for the majority of the population (see Chart I below). People supporting the 'big' Labour Law believed that the definition of labourer should cover all people who work in China. This would mean employing a much broader scope of application. The most prominent difference in the broad-based interpretation of the term labourer was that the proportion of peasants in the population then was much larger than it is today—as of the end of 1994, there were over 800 million peasants in China. Although they accounted for the majority of those who were 'working' in China, their employment rights were not protected by law. Therefore, it was argued that the Labour Law should provide legal protection for them. From this perspective, we can see that the concepts of labourer and worker were much broader and vaguer when compared with the definition that now used in judicial adjudication (only refers to the employee that has concluded a contractual employment relationship with the employer).



[111] Boding Shao, 'China Labour Law Research Association was Established and Held an Academic Seminar' [zhōng guó láo dòng fǎ yán jiū huì chéng lì bìng jǔ háng xué shù tǎo lùn huì] (1983) Journal of Zhongnan University of Economics and Law 47

Chart I: Total Proportion of China's Rural Population (in Tens of Thousands): 1979–1994[112]

Jingzhai Bian, the then deputy director of the Division of Law under ACFTU, commented on this view. He said that the regulations of the Labour Law were not applicable to peasants at all. For instance, if the Labour Law ruled that employees should stop working at 4:00 pm if they started work at 8:00 am, this would not apply to peasants. China's territory is vast and the climate is different according to the region. In southern China, especially during the busy season in farming, peasants start working at 4:00 pm because it is too hot to work during the daytime, and they work late into the night when the temperature is cool. Otherwise, they would get sunstroke. Therefore, they cannot be considered labourers under the Labour Law, so the 'big labourer' perspective was rejected by lawmakers.

However, based on the above discussion, we could conclude that during the legislative process, the legislators did not actually predict the emergence of a group like 'rural migrant workers' at the time. This paved the way for problems after the law was promulgated and implemented. The current literature on the Labour Law pays considerable attention to the special identity-based groups of workers appearing in China, such as the rural migrant workers. If viewed from an historical perspective, it is clear that migrant workers and peasants have a common identity, but they were born under different circumstances, so there are also great differences in their respective characteristics.

Since the 1970s, when a large number of Educated Youths were sent to the countryside,[113] rural migrant workers have migrated to the city, creating security

[112] According to the official data from the National Bureau of Statistics, the total population of China in 1979 was 975.42 million, of which the rural population was 79.47 million, accounting for approximately 81.04% of the total population. As of the end of 1994, the total population of China was 1198.5 million, of which the rural population was 856.81 million, still accounting for 71.49% of the total population. (The population data prior to 1981 are based on the household registration statistics; population data for 1982, 1990, 2000, and 2010 are calculated from the census data for those years; and the data for the remaining years are calculated from the annual population census. Soldiers on active duty are counted as part of the urban population.) See < http://data.stats.gov.cn/easyquery.htm?cn=C01&zb=A0301&sj=1994 >

[113] Educated Youths (Zhi Shi Qing Nian) refers to youths that have educational background and received educations before. This is a specific historical terminology under Chinese context. Also see Gee (n55) 190

problems and social risks. The interviewee I[114] pointed out that the large transient population had no legal protection at that time. When peasants had migrated to the city in the past, they were called a 'blind stream' or referred to as 'vagrants' (Mang Liu).[115]

At the end of 1970s, as a result of the restrictions placed on the household registration system (Hu Kou system), the flow of agricultural labourers to the city began to slow down.[116] Although this reduced the pressure to find employment for these labourers, it also reduced the substitution and competitiveness of urban labour and inhibited the decline of urban labour costs. Therefore, with the further development of the economy, the drawbacks of urban and rural labour segregation became more obvious: the labour force could not distribute throughout society, it excluded the role of the market mechanism as a mediating factor, and it hindered the flow of labourers engaged in agricultural production to other industries.

However, a large labour force was still attracted by the development opportunities and excellent living conditions offered by urban life, especially after the implementation of the 'Reform and Opening-up' policy. As the statistics show, in 1988, after 10 years of economic reform, the number of urban employees had reached 142.67 million, representing an increase of 50% since 1978.[117] At that time, there was no antidote to joblessness, and it was impossible to cancel the household registration system quickly enough to release the complete and unrestricted flow of the urban and rural labour force. It is believed that the decision-making class thought that complete liberalization of the household registration system would lead to social unrest and that social

[114] Interviewee I is a lawyer and former official in the Legislative Affairs Bureau of the State Council (now known as the Legislative Office of the State Council). The interview was conducted in April 2017 in Beijing.

[115] Vagrants (jobless; Mang Liu) refers to rural people who seek food, shelter, a livelihood, and permanent residence in urban centres. Urban dwellers without stable jobs and or permanent residences are known as the jobless population. The vocabulary has discriminatory undertones and is backward. From 1953 to 1989, China witnessed the spontaneous migration of the surplus rural and township labour force to cities to earn a living.

[116] In November 1977, the State Council approved the 'Provisions of the Ministry of Public Security on Handling Hukou Relocation'. The statistics show that in 1978 and 1979, those living in municipalities accounted for 17.9% and 19.0%, respectively, of the total population, and in 1980, this number increased to 19.4%. See Yilong Lu, 'Structure and Change: The Household Registration System in China after 1949' [1949 nián hòu de zhōng guó hù jí zhì dù :jié gòu yǔ biàn qiān] (2002) Journal of Peking University (Humanities and Social Sciences) 123–130

[117] Jianxin Wang, *China Labour Yearbook (1988-1989)* [1988-1989 zhōng guó láo dòng nián jiàn] (China Labour Press 1991) 83

stability was guaranteed to improve the economy.[118] Therefore, according to the historical conditions, the identity of the peasantry was linked to the land, and the household registration policy restricted their mobility. The fact that the peasants were not included in the legislative adjustments made to the Labour Law actually created a vacuum for the protection of this group. Subsequently, this led to problems in terms of the status of rural migrant workers and the arrears of their payments.

Although the Labour Law at that time did not cover peasants, this chapter argues that the introduction of the Labour Law, and especially the birth of the labour contract system, actually brought peasants within the scope of labourers and led to a positive change in this regard. According to Interviewee I, rural migrant workers could only be defined as labourers on the basis of the Labour Law, under which they had to be protected by labour contracts. The introduction of the Labour Law initiated a process that made peasants citizens by moving away from social status and focussing on labour contracts instead. The planned economy was characterized by power being based on identity, but the labour contract ended this situation. In fact, the implementation of the Labour Law served to standardize the employment of migrant workers. Ching Kwan Lee pointed out that workers who left the land initially lacked urban 'hukou', resulting in their lack of an identity due to being landless.[119] Yet, it was the introduction of the Labour Law that confirmed their labour rights through the signing of labour contracts and actually allowed them to break free from the boundaries placed on peasants' identities, thus providing them with protection.

Similarly, this thesis argues that the emergence of a platform economy now poses a challenge to the traditional identity of Chinese labourers, forming an extension of the question of whether rural migrant workers should be included within the scope of the legal definition of labourer or not. Labourers working for the online platform in

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[118] See Lu, 'Structure and Change: The Household Registration System in China after 1949' 127

[119] Pan Yi stated: 'There were no powerless and isolated migrant workers as precariat resulting from varied employment conditions under the control of the nation and capital, as depicted by Ching Kwan Lee. Unstable employment was not new in China. From 1980 to 1990, the employment of rural labour in China was disordered as well. In the 21st Century, the employment of rural labour is legalized due to the introduction of the Labour Law.' See Guy Standing, Yi Pan, and Ching Kwan Lee, 'Guy Standing, Pan Yi, and Li Jingju talk about the Precariat: The New Dangerous Class in Contemporary China' < https://new.qq.com/omn/20180317/20180317A0V8UO.html > accessed on 31 March 2018

many developed countries usually are white-collar workers and technicians, while China's online platform economy labourers are mainly rural migrant workers.

Today, China's academic community takes two different views on solving the platform employment problem using the Labour Law. The first is to identify platform employment as an atypical labour relationship—that is, the Labour Law extends the definition of labour. However, this extension of the concept of labour cannot make full use of the various legal methods offered by the Labour Law's labour relations adjustments, such as protection from cancellation of the labour contract and the social security system that follows the identity of labourers. How to use the resources of the existing Labour Law to protect rural migrant workers has become a challenge. Another approach is to identify platform employment not as a labour relationship but as a service relationship, which is then protected by making reference to labour relations. This approach directly avoids the definition of the concept of labourers and can be adjusted using the Civil Law rather than current Labour Law. Both measures are now very difficult to enforce, since judges have discretion to define various kinds of relationships rather than use the definitions provided by law. Consequently, this may result in similar cases being treated differently in the absence of a precedent system. In fact, this problem can only be solved through legislation. Before the legislation is developed, it comes down to the judiciary to solve this problem. The current academic consensus is to maintain the basic principles of the Labour Law and protect the rights and interests of labourers.

5.1.2. The 'Small' Labourer

Another option to define labourer during the legislative process was the so-called 'small labourer'. It was believed that the Labour Law should only cover and protect factory workers, leading some people to call it the 'corporate labour law' (Interviewee H, 2015). According to Interviewee C, this idea was inspired the Factory Act and excluded workers from many industries and occupations from the Labour Law. In fact, the staffs of many industries, particularly the service industry, did not want to be included in the applicable scope of the Labour Law when they were asked for their opinion during the drafting process. The most obvious example of this kind of rejection would have been discovered from the social insurance system in China.

There were 17 industries excluded from social insurance coverage, including rail, civil aviation, banking, petroleum, and state-owned shopping malls, because the ability of staff in these industries to enjoy national welfare and social security was based on their 'cadres' status'. Along with centrally administered businesses, they requested to be excluded from the applicable scope of the Labour Law.

The most obvious difference in the scope of application of the 'small labourer' was found in tertiary industries, particularly banking. Interviewee C recalled that the staff working at banks strongly requested not to be covered by the Labour Law. There was only one bank at that time—the People's Bank of China.[120] Similarly, other industries, such as non-ferrous metal smelting and petroleum and every industry that formed an independent system, did not want to become subject to this law. These industries were mostly tertiary industries such as state-owned enterprises. Their staff were considered 'national cadres' who did not want to lower their identity and be considered labourers.[121] After the adoption of the socialist market economy system, these 'exceptions' were included in the applicable scope of the Labour Law; otherwise, they would have been free from the constraints of the Labour Law. This concept was inspired by the masses, grassroot organizations, and special status workers rather than the country's top leaders. It shows that during the legislative process, not only officials who sat in government offices contributed to the birth of modern Chinese labour law but many other groups of people were involved as well. What is more, their ideas were heard. Ultimately, the banking system become subject to the Labour Law in China long after it was passed.[122]

Legislators thought that if the concept of 'small labour law' were used, it would theoretically lead to a huge gap existing in the law meaning that the majority of people

[120] From 1949 to 1978, China implemented a centralized and unified banking system. The People's Bank of China was the only bank that was not only a state agency that managed finances but also a national bank that comprehensively oversaw banking.

[121] 'Cadre' in this thesis generally refers to public officials in state organs, the military, and other public organizations who hold certain leadership or management positions.

[122] In 1996, the Ministry of Labour, the People's Bank of China, the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, China Construction Bank, and People's Insurance (Group) Company of China jointly issued the 'Notice on Accelerating the Implementation of the Labour Contract System by State-owned Commercial Banks and Insurance Companies' and promoted the full implementation of the labour contract system in the financial system. Prior to this, employees of the state-owned banks were recruited through the headcount (Bian Zhi) and social welfare.

would not be covered by the law. According to the traditional division of the labourer, it becomes an industry development and can only adjust the secondary industry. This is the process by which the concept of 'small (scope of application) labour law' is assigned.

Interviewee I, who worked for the Legal Affairs Office of the State Council, suggested that such a debate revealed there are some recurring argument and the conflicts of interest among the legislators during the law-making process. Within government bodies, the Ministry of Labour handled all affairs related to workers, but the employees of public institutions fell under the administrative authority of the Ministry of Personnel. Therefore, the competencies of the Ministry of Labour and the Ministry of Personnel overlapped and went through repeated discussions before they were re-organized.

Since 1949, the central government of the People's Republic of China has undergone 12 institutional reforms. The institutions in charge of labour and human resources have been restructured and renamed four times (see Chart II). In this thesis, the contemporary names of each institution are used according to the time period.

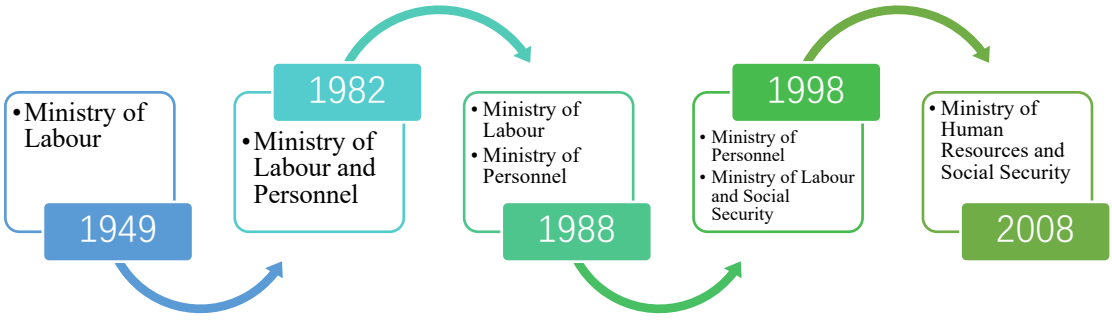

Chart II: The Institutional Restructuring Process of Labour-related Institutions in China's Central Government

Interviewee I said that when he participated in the legislation drafting work, he proposed that the public institutions should be included within the applicable scope of the Labour Law as well because public servants were employees too (Interviewee I, 2016). However, this proposal was not widely accepted during the law-making process.

5.1.3. The ‘Medium’ Labourer

Ultimately, the Labour Law took the middle road and applied the ‘medium labourer’ concept. The final version of the 1994 PRC Labour Law was the result of compromise. Although the Labour Law does not define ‘labourer’ , the ‘Explanation of the Ministry of Labour on Several Provisions of the Labour Law of the People’s Republic of China’ adopted a positive and negative two-way definition of labourers based on enumeration and exclusion to limit the scope of the concept of labourers.[123] The positive definition is that a labourer is one who signs a labour contract with an enterprise or institution. At the same time, civil servants and the staff of government-affiliated institutions, peasants, military personnel, and domestic workers come under the negative definition. It can be seen that the definition of labourers is based on contractual relationships and industrial management needs.

In addition, in order to resolve the differences of opinion on the definitions of labourers and to create consistency in the historical classifications and titles, legislators chose to make more subtle adjustments to the definitions of labourers in different clauses in specific chapters of the Labour Law. For example, in the general provisions, as many workers are included as possible: all collectives, individuals, and urban and rural workers; in the sub-provisions, according to the provisions of the general, collective, individual, and rural people’s communes, for the sake of a better care of the workers. This division is based on different situations that workers facing when worked for different ownerships of enterprises. If it is really inconvenient to make uniform regulations, it is left to the provinces, autonomous regions, and municipalities to pass legislation to resolve them.[124]

[123] Explanation of the Ministry of Labour on Several Provisions of the Labour Law of the People’s Republic of China, 1994

[124] See Yue, *Crossing the Sword Gate* 176–177.

5.2. The Applicable Scope of the Employer

5.2.1. Issue One: 'Employers' or 'Employing Unit'? Role of the Employers

English readers are often confused to see the direct translation of employer in Chinese as the 'employing unit' (用人单位) in English. Rejecting the use of the term employer (雇主) was based on more than just the fact that it is a Western concept with a capitalist nature–it was probably a conscious decision made by Chinese lawmakers.

One very representative opinion is based on the interpretation of the articles of the Labour Law. According to Interviewee J, based on article 2 of the Labour Law, the term 'employer' refers to enterprises and individually owned economic organizations (with no more than eight employees) within the territory of China that are governed by the 1994 PRC Labour Law. State organs, institutional organizations, and other social organizations are excluded. Later, there were some more specific interpretive provisions provided for enterprises, private enterprises, and individually owned economic organizations.

However, there are other interpretations. For instance, many at that time held the opinion that in the context of socialist China, the working class was the ruling class, but the term employer in a capitalist system had implications of ownership, which contradicts the concept of a ruling class because no one can be the owner of the 'ruler'. This ideological interpretation was once taken as the main origins of the term employer. For instance, Interviewee I stated that the phrase 'employing unit' was coined at the Jinhai Lake meeting (which was similarly mentioned by more than one other interviewee).

What I want to mention here is that when the development of the legislation progressed in 1993, it had entered the stage of deliberation and drafting by the State Council. In that year, the then Legislative Affairs Bureau of the State Council (now the Legislative Affairs Office of the State Council) convened legislative work meetings. Interviewee I personally attended some of those meetings. Several of the more important meetings he mentioned, for example, the meeting held at the old

Customs General Administration building next to the Baita Temple, were attended by Minjie Gui, then deputy director of the Department of Labour and Labour Regulations of the Legislative Affairs Bureau of the State Council, and directors and deputy directors of the Department of Industrial, Transportation, and Commercial Laws of the Legal Affairs Bureau of the State Council Keming Hu, Chaojie Dong, and Huiding Xie, along with leaders and staff members who performed duties in the State Council. At this meeting, the staff of the State Council drew up 15 major issues for the Labour Law to address. (As a reporter for *Labour Daily*, one of the interviewees reported on these 15 questions.[125]) After these 15 questions were raised, they were sent to various parts of the State Council and local governments for a month of consultation. One month later, all the opinions were collected and the State Council drafted new clauses.

Another important meeting that was also mentioned by several interviewees was the Jinhai Lake meeting held in the guest house of the Beijing Municipal Labour Bureau. This meeting lasted for four days and culminated in the first version of the Labour Law (Draft) being drafted by the State Council. Interviewee I believed that this version was more pragmatic than the Ministry of Labour's version, and it incorporated the concept of the market economy. However, more forms of ownership have emerged since the policy changed. According to Interviewee I, using the term 'employer' in the Labour Law was not acceptable because one of the main propositions of Marxism is that there should be no employment relationship in socialism. Terms such as 'employment contract' and 'employer' were foreign to this ideological concept. According to Interviewee I, some of the actors at the leadership level had studied Marxist economics and did not agree with such expressions either, hence the term 'employing unit' came into being and was used in the legislative draft. Henceforth, all references to the employer changed into references to the employing unit: 'The expression employer is related to ideology. The law cannot be passed if it contains phrases like employer' (Interviewee I, 2015).

Others saw the issue from a different perspective. For instance, Interviewee D held that this expression was the result of custom. That is to say, the notion of an 'employing unit' had existed long before the promulgation of the 1994 PRC Labour

[125] Junlu Jiang, 'Why is the Labour Law Drafting Difficult?' [láo dòng fǎ qǐ cǎo nán zài nǎ lǐ?] *Labour Daily* (Beijing 29 July 1993)

Law. In the past, all businesses were state-owned and there was no concept of an employer. Some suggested using 'employing unit' in references to state-owned businesses and 'employer' in references to businesses with of other ownership types in the law. 'Fortunately, we did not adopt such a suggestion', said Interviewee D (Interviewee D, 2015). Indeed, it does seem as though the drafters of the law lacked options. The idea of the 'employing unit' being a historical one comes from the interviewee D who has been engaged in teaching and research on labour law, social security law, and related fields for more than 50 years in China.

What is more interesting is that there was also an anecdote about this expression. Bin Qi, who worked for the Regulations Division of the Ministry of Labour then and as a lawyer on the Labour Law, noted in the preface of his book *In-depth Analysis of Classic Cases of Labour Disputes and Non-litigation Labour Issues: The Counter Measures of Employers in the Context of Labour Contract Law* that:

> I was new to the Ministry of Labour then. Later, I became the clerk officially at the Regulations Division, engaged in drafting the Labour Law. Professor Li Jianfei, the first doctor of legislative science in China, was invited to work for the Ministry of Labour as the deputy director of the Regulations Division. He now is a professor of the People's University of China. In 1991, the director of the Regulations Division Xing Xinmin and I visited Shanxi, Ningxia, Gansu, Shandong, and Liaoning to carry out investigations on the drafting of the Labour Law. In late 1991 or early 1992, I typed the final version of the draft Labour Law with a Si Tong brand typewriter. I worked as an editor instead of a typist. But I needed to read through and review each word of the draft typed by the female typist, which was time-consuming. So, I just did the typing myself. In addition, there was no computer like what we have today. The typing would then be delivered to the Legal Affairs Bureau under the State Council (the Legal Affairs Office now). So, it is no exaggeration if I say I was once engaged in drafting the Labour Law.
>
> There was something fun related to me when the Labour Law was drafted. It was supposed to be confidential but has been shared by Professor Li on public occasions. So, I think it's OK now [that] I share it with you. Anyone engaged in drafting the Labour Contract knows that neither 'employing unit' (用人单位) nor

> ‘labourer’ (劳动者) was used in the draft Labour Law. ‘Corporate administration’ (企业行政) and ‘corporate staff’ (企业职工) were used instead. In addition, the Labour Law was applicable to the service staff in the government bodies, public institutions, and social organizations as well. Therefore, it was improper to refer to one specific type of subject of the Labour Law with the expression ‘corporate staff’. With the advent of more forms of ownership, the expression ‘corporate administration’ became an ambiguous legal concept as well. There were scholars and officials noting this issue. But expressions of corporate administration and corporate staff were found in the final Labour Law draft handed over to me. I replaced corporate administration with employing unit and corporate staff with labourer with the Si Tong typewriter. It was bold. I do not remember why I did that: [perhaps] having no time to ask for the approval of the leadership or just believing it was not necessary to do so. The draft was then submitted to the Legal Affairs Bureau. Such expressions were adopted in the Labour Law passed on July 5, 1994. Frankly speaking, as a public servant, what I did was bold because it was beyond my terms of reference. I regretted much. Luckily, no grave consequences were caused. Therefore, I decided to share it with you today. Nonetheless, I believe that the Legal Affairs Bureau or the Standing Committee of the National People’s Congress would have made the same revision if I had not. In conclusion, there would be no expressions corporate administration and corporate staff in the officially released Labour Law otherwise.[126]

Bin Qi has proved several important points. First, for the legislation, people who has established the labour law subject were involved in the work. Second, at that time, China was conducting field research in various places and comparing the findings to the actual situation in China. Third, it reveals a new influencing factor on the concept and scope of application of the term employer—it was surprisingly rejected by a public servant and the revised terminology in the draft law was the result of his imagination. Fourth, the scope of discussion among workers does have disputes in different industries. Fifth, legislative participants had a very important influence on the core

[126] Bin Qi and Yifan Chen, *In-depth Analysis of Classic Cases of Labour Disputes and Non-litigation Labour Issues: The Counter Measures of Employers in the Context of Labour Contract Law* [láo dòng zhēng yì jīng diǎn àn lì jí fēi sù láo dòng wèn tí shēn dù jiě xī : láo dòng hé tóng fǎ bèi jǐng xià de yòng rén dān wèi duì cè] (China Legal Publishing House 2008) 1-2.

concepts of the legislative work. What is more, the scope of application of the Labour Law has been controversial since the legislative stage.

In summary, the use of each of these terms was the result of defining the concepts. If the fundamental concept of this law was not clearly defined in the labour legislation, the application of the Labour Law would generate more problems. In the future, it will be necessary to enact new laws or supplementary rules to fill in the gaps in those basic concepts of the law and lend weight to the definitions. The one and only Chinese Labour Law has not been revised in more than 25 years. This is a crucial detail in the legislative technique.

However, due to controversies and repetition in the drafting process, the specific connotation of the fundamental concept has not been written into the law itself and only has a relatively vague definition. This is because legislators made some compromises to successfully introduce this law. More importantly, this quotation highlights the role and significance of legislative drafters and influential actors at the time. If Bin Qi had not taken the initiative to change the terminology, there might not have been a discussion of the scope of application of the law since then.

5.2.2. Issue Two: The Choice between 'One-Size-Fits-All' or 'Step by Step'

Drafting the Labour law took longer and it appeared in more versions than any other Chinese law. Some think that the reason the legislative process took so long was because it was difficult to compress the vast number of labour issues into one code.[127] But due to the fact that the drafts were not archived, it is difficult to detect how much these 'vast and difficult' issues affected the legislative process. This section gives a clue as to one of the issues that delayed the introduction of the law.

There were more than 20 drafts of the Labour Law. This thesis has found that one possible reason for the multiple drafts could have been due to the debate over the application of the term employer. During the legislative process, the scope of application was one of the issues that the legislators discussed repeatedly and debated

[127] Josephs, 'Labor Law in a Socialist Market Economy: The Case of China' 559–581

whether the labour legislation and labour system reform should be implemented in a radical 'one-size-fits-all' manner or more progressively. They considered how to reflect the 'double track system' found in economic reform in the Labour Law.[128] In other words, how should the Labour Law define employers?

The other question was how to determine who should be protected by the Labour Law and how should the 'inclined protection' principle be established (and who is targeted by this principle). When drafting the Labour Law, the debate on the scope of its application took a lot of time, and the preference of the legislators was to find the main aim of the Labour Law and the principle on which it was based.

To figure out whether the implementation of the Labour Law and the labour system reform was radical or not, we have to first consider further the differences between the state organs and other organizations and between the cadres and workers, especially whether civil servants of state organs and institutions needed to sign labour contracts and whether they were protected by the Labour Law, and second, we have to consider whether the enforcement of the Labour Law should be a 'one-size-fits-all' or 'step-by-step' process.

A. Debate One: Debate on the Nature of State Organs and Public Servants

Regarding the scope of application of the Labour Law, Interviewee H pointed out that in the final stage of the drafting process (draft submitted to the NPC Law Committee), the scope of application of the Labour Law had been narrowed, not by excluding some people from its protection, but by actually setting out its implementation and gradually expanding its scope of application. This is especially related to the reason why there are two paragraphs in article 2 of the Labour Law.[129] The article set out two different ways to implement the law in different organizations. Paragraph one stipulates the kinds of organizations to which the law applies, and paragraph two outlines other

[128] 'One-Size-Fits-All' (in Chinese, Yi Dao Qie) is a slogan that refers to a metaphorical approach to dealing with situations or things of a different nature.

[129] Article 2, paragraph 1 of the PRC Labour Law stipulates: 'Enterprises, individual economic organizations (hereinafter collectively referred to as the employing unit) in the People's Republic of China and the labourers with whom it forms labour relations shall apply this Law'. Paragraph 2 stipulates: 'State organs, public institutions, social groups and the labourers with whom the labour contract relationship is established shall follow this law'.

organizations which shall follow this law is including the state organs, public institutions, social groups.

One possible reason for the second article of the 1994 PRC Labour Law having two paragraphs and emphasis the differences of organizations is because of the central ministries' struggle at that time to divide and delegate power. Before the restructuring of the ministries, cadres were appointed by the Ministry of Personnel and managed by the central government. Therefore, when the draft was submitted to the NPC and discussions were had among its representatives, two different opinions formed on whether a cadre or a civil servant needed to sign a labour contract. One opinion was shared by Sun Wei, An Hongzhang of the Beijing Institute of Economics, and some other organizations such as the State Planning Commission, the State Reform Commission, the State Education Commission, the National Federation of Trade Unions, and the Ministry of Machinery. They proposed that the scope of application of the Labour Law should include all workers.[130] They claimed that although the state organs and their staff had a special labour relationship, they were also engaged in labour relations. They thought that the current draft version (that they reviewed) of article 2 was feasible and more suitable for China's local circumstances.[131] The law could generally apply to the labour relations of all national civil servants, institutions, and social groups while excluding the aspects that made these relationships special. From this discussion, we can presume that this version of the draft covered all industries and state organs across the whole country and broadly applied the scope of the definition of 'employer'.

Another opinion was offered by then Vice Minister of Personnel Lianchang Cheng and Fushan Ren and shared by other representatives from organizations such as the Economic and Trade Commission, the Ministry of Culture, the China National Petroleum Corporation, and the Light Industry Association. They held that the state organs were not employers. They proposed that the relationship between the state organs and their staff was different in nature from the labour relationships between

[130] Song (n 99) 339

[131] This version of article 2 refers to the draft that at that time stated: 'This Law applies to enterprises, institutions, state organs, individual economic organizations and labourers with whom labour relations are formed within the territory of the People's Republic of China…laws and regulations of the state organs, institutions, social organizations and their staff have special provisions on labour relations [that] shall prevail'. See ibid.

enterprises and employees. A labour relationship is an economic relationship, whereas civil servants have an administrative relationship with the state and their activities are part of the state's superstructure. The state must establish a national civil service system, and the state's civil servants are personnel who have certain rights to perform certain duties given to them by the state. Therefore, many of the contents of the drafts of the Labour Law could not be applied to the staff of state organs. For example, the staff of state organs do not sign contracts and their employment is relatively stable and permanent. From the perspective of foreign legislation, the labour laws of most countries, such as the United States, the United Kingdom, France, Hungary, etc., do not apply to civil servants. The Ministry of Health added its opinion that whether public institutions should be affected by the Labour Law needed to be clearly defined, they thought that the definition was unclear in the draft they reviewed.[132]

Throughout the legislative process and prior to the institutional reform of the State Council, the Ministry of Personnel proposed a different interpretation of the scope of application of the Labour Law. Among the enterprises and economic organizations referred to in article 2, paragraph 1, those that did not form a labour relationship were defined as 'cadres' and were assigned to the management of the personnel department; for the state-owned organs, institutions, and social groups referred to in paragraph 2, where labour relations were formed, workers were to be managed by the Ministry of Labour instead of their own departments.

Therefore, article 2 exemplifies the struggle for power between and the different interests of the government departments. Interviewee C said that the dispute over the interests of departments can be found in the discussions held over the status of cadres and the workers instead of other phases and discussion in the legislative process. Theoretically, the staff of state-owned enterprises and state organs could not be managed by the Ministry of Labour, and after the introduction of the Labour Law, the problem directly encountered in practice was whether a factory manager should sign a contract.

The final result of the power struggle was a compromise between the Ministry of Labour and the Ministry of Personnel:

[132] ibid.

> (For example) before the promulgation of the law, the technical secondary school graduates were appointed directly as deputy directors after graduation, but their average education level was low. The identities of workers and cadres were hardly interchangeable at that time, and the cadres did not have to sign a labour contract. (Interviewee C, 2019)

The introduction of the 1994 PRC Labour Law affected this phenomenon. As a result of promoting the labour contract and the Labour Law, the cadres of corporations also needed to sign labour contracts and be protected by the Labour Law. Therefore, the scope of the Ministry of Labour's administrative powers was extended, but state organs and public servants were still excluded from the applicable scope of the Labour Law.

A similar point was also made by Interviewee G,[133] who said that the Ministry of Personnel had been consulted in the later stages of the drafting of the Labour Law but the situation at the time was that the Ministry of Labour and the Ministry of Personnel worked in their own ways. The Ministry of Labour did not want to annex the Ministry of Personnel to consult on opinions regarding issues related to the drafting of the labour legislation. While the Ministry of Labour was more interested in the labour contract, the Ministry of Personnel was focused on creating a lifelong employment system with contractual appointments[134] to public institutions. This tacit agreement (the division of labour between different organizations) was there from a very early period (Interviewee G, 2016). This situation confirms that the drafting process of the Labour Law did to some extent feature a power struggle between government departments. However, there were cadres in enterprises that were traditionally managed by the Ministry of Personnel for whom the introduction of the Labour Law shifted authority to the Ministry of Labour. The Ministry of Labour particularly emphasized the signing of labour contracts in the Labour Law (Interviewee G, 2016).

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[133] Interviewee G is a lawyer and professor of labour law at East China University of Political Science and Law. The interview was held in May 2016 in Beijing.

[134] In the interview, Interviewee G used the word 'Pin Yong' to distinguish a contractual appointment from a labour contract.

Of course, the struggle for power between government departments also affected other mechanisms of the Labour Law, such as workplace health and safety. The drafting of the Labour Law involved various ministries and commissions, and some departments pushed up against those that had authority in that area. Consequently, the provisions of the Labour Law were the products of compromise between those ministries.

The most typical example is that of double compensation. The Ministry of Labour and the Supreme Court, as well as the Ministry of Coal, negotiated the division of authority relating to mine safety, and this resulted in the establishment of the General Administration of Work Safety. 'The workers have no influences during these departmental disputes,' Interviewee C argued. The management of social insurance funds also involved different departments struggling for control, and this will be discussed further in Chapter 8 of this thesis.

Interviewee J,[135] one the main drafters of the Labour Law when he worked in the Ministry of Labour, also confirmed that the controversy over competing departmental interests was not as serious as many people think. He remembered many details about the debates and negotiations that happened during the drafting process, recalling that there were not only disputes among officials in the labour legislation stage but also debates between trade unions and the government. At that time, different departments discussed the suggestions from each department in a comparative manner. Interviewee J pointed out that the focus of the disputes was not on the framework or the principles but on the specific details of the legislation, such as the formation, the terms, and the discharge of the labour contract and dealing with disputes relating to the rights and obligations of the employing units and employees. As for resistance to the Labour Law legislative process, it was actually very rare:

> At that time, all parties expected such a law, so they were very proactive. This is very different from the legislation of the Labour Contract Law, whose content is relatively simple with only one dimension, which is the labour contract, while the Labour Law is more comprehensive, with more dimensions including wages, working hours, and vacations. (Interviewee J, 2017)

[135] Interviewee J is a former official of the Labour Law Department of the Ministry of Labour. The interview was conducted in May 2017 in Beijing.

B. Debate Two: The Implementation of the 1994 PRC Labour Law

The legislative actors' views on the implementation (which entities are subject to the law) began to attract my attention very early on. One important point raised in the interviews regarded the consensus that was reached in each department on the essential issues of the Labour Law. The so-called 'one-size-fits-all' problem was actually a choice between the gradual and stable reformation and radicalization of the labour system, or even a question of expanding into an economic reform. This was particularly prominent in the debates during the labour legislation process. Implementation and the one-size-fits-all mechanism actually revealed the actors' views on whether the law should break the ownership restriction and apply to all types of employers (thereby questioning the scope of the definition of employer). This issue was repeatedly discussed during the legislative process.

Some believed that one-size-fits-all was unrealistic. For example, Jiazhen Zhu believed that enterprises in the socialist market economy that had truly become independent legal persons that were self-employed and self-financing could not be included in one-size-fits-all. Instead, he recommended step-by-step planning with free choice and the participation of enterprises and employees in the reform. For example, in the implementation of the labour contract system, qualified regions and enterprises could be in place in one step, but those do not have the conditions can firstly optimize the labour combination, labour contract management, and then go to full labour contracts. For those who are laid off in the optimized portfolio and will lose their wage, but not all of them are back the labour market. They can be resettled by retreat in the factory, through training and transfer, establishing tertiary industry enterprises, and inter-enterprise adjustments.[136] A small number of laid-off workers need a strengthened social security system.

[136] Establishing tertiary industry enterprises is a measure that in order to provide occupations for redundant personnel of SOEs, the government encourages State Owned Enterprises (SOEs) to establish independent accounting enterprises in tertiary industries and use the profits enjoyed from tax reductions and exemptions for business development in order to expand the ability to resettle surplus personnel and not use it for other purposes. See State Administration of Taxation and Others, 1993, The State Administration of Taxation, National Commission for Economic Reform, the Economic and Trade Office of the State Council, and the Ministry of Finance' s Regulation on the Exemption of Income Tax for the Tertiary Industry Established by the Industrial Enterprises under the Ownership of Whole People for the Resettlement of Surplus Employees [guó jiā shuì wù jú 、

This idea is reflected in article 16 of the 1994 PRC Labour Law,[137] which actually considers whether the labour contract system should implement a one-size-fits-all or a two-track system: 'New Ways for Newcomers, Old Ways for Old Workers'.[138] The results of different drafts are different. Interviewee G said that he thought the establishment of the contractual relations between the employers as well as the rights and duties of both parties were not clearly defined in article 16 of the Labour Law (Interviewee G, 2016). As for the specific legislative process leading up to article 16, Interviewee G said:

> At that time, when the Ministry of Labour's Law Department was drafting the Labour Law, article 16 had been repeatedly reviewed and discussed. The controversy at that time mainly focused on the negotiation between two ways of implementing the labour contract system. One was the 'New Ways for Newcomers, Old Ways for Old Workers'; the other was the 'One-Size-Fits-All'.

Interviewee J, who was then the director of the Ministry of Labour, said in the interview that 'the minister once agreed with the two-track system but later changed into one-size-fits-all a few days later. When the minister mixed the conclusions, he reprimanded us'. (Interviewee J, 2017) This shows that the legislative process behind the Labour Law involved repeated changes in decision-making by the legislators. Ultimately, the Ministry of Labour chose the one-size-fits-all approach. But with 80% of the workers being 'old' (numbering nearly 100 million people), it was unrealistic for all of them to sign labour contracts at once. Therefore, the final solution was that newly recruited employees needed to sign a labour contract and the existing workers retained the original management mode (Interviewee G, 2016).

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guó jiā tǐ gǎi wěi 、guó wù yuàn jīng mào bàn 、cái zhèng bù guān yú quán mín suǒ yǒu zhì gōng yè qǐ yè wéi ān zhì fù yú zhí gōng xìng bàn de dì sān chǎn yè miǎn zhēng jiǎn suǒ dé shuì de guī dìng] Guo Shui Fa [1993] No. 047 issued on 13 April 1993.

[137] Article 16, paragraph 1 states: 'Labour contracts are agreements reached between labourers and the employer to establish labour relationships and specify the rights, interests and obligations of each party.' Paragraph 2 states: 'Labour contracts shall be concluded if labour relationships are to be established.'

[138] '"New Ways for Newcomers, Old Ways for Old Workers"' (in Chinese: as Xin Ren Xin Ban Fa, Lao Ren Lao Ban Fa) is a slogan that particularly specifically refers to the transition between the old and new mechanisms of China's labour regulation system. 'New ways' refers to the labour contract system, and 'old ways' refers to the previous system that in which workers were recruited with a formal headcount (Bian Zhi). For more on this headcount system, see Chapter 6, section 2 of this thesis.

But a problem did arise. With the gradual formation of the market economy in 1992, the legislators believed that if they changed to the two-track system, they would have to recognize that there were two kinds of workers (the old workers and the new workers). Then there would be a contradiction within the working class, and the existing workers and the new contractual workers would have to coexist until the last 'old' worker retired in 2015. Article 16 of the Labour Law aimed to prevent this, showing that the legislators were determined to utilize the one-size-fits-all system to push the old workers to leave the old system. However, in order to make up for the loss of benefits of older workers, article 20 was drafted.[139] Article 20, paragraph 2 stipulates:

> When the labourer has worked continuously for more than ten years for the same employer, and both parties agree to renew the labour contract, if the labourer proposes to conclude a labour contract without a fixed term, it shall conclude an unfixed-term labour contract.

This aimed to help smooth the transition of long-term, older workers in permanent jobs.

Later, in the deliberation stage of the Labour Law (confirmed by the Interviewee H),[140] additional clauses were added, and the Labour Law was gradually applied to all country, all industries and all workers, giving a fixed worker buffer period.

The answer to one-size-fits-all can be found in the last chapter of the Labour Law, in two paragraphs at the end of chapter 13, article 106.[141] Article 106 stipulated that 'The people's governments of provinces, autonomous regions, and municipalities shall stipulate the implementation steps of the labour contract system in accordance

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[139] Article 20, paragraph 1 stipulates: 'The time limits of labour contracts shall be divided into fixed and flexible time limits and time limits for the completion of certain amount of work.' Moreover, 'Labour contracts with flexible time limits shall be concluded between the labourers and the employer if the former request for the conclusion of labour contracts with flexible time limits after working continuously with the employer for more than 10 years and with agreement between both of the parties involved to prolong their contracts.'

[140] Interviewee H was a legal official in the Administrative Law Office of the Legislative Affairs Committee of the National People's Congress. The interview was conducted in December 2015 in Beijing.

[141] Chapter 13, article 106 stipulates the implementation of the law: 'People's governments at the provincial, autonomous regional and municipal level shall work out rules on the steps of the implementation of the system of labour contracts according to this Law and their local conditions and report the rules to the State Council for registration.'

with the actual conditions of the region, and report them to the State Council for the record.' From the time that the Labour Law was promulgated in July 1994 to its implementation in January 1995, the country had five months to learn about the Labour Law and make adjustments. It is worth mentioning that article 106 was added as a supplementary rule during the NPC legislative discussion stage (Interviewee H, 2015; Interviewee I, 2016). However, Interviewee H, the former director of the Administrative Law Committee of the National People's Congress (who was involved in several legislative conferences in the early 1990s), claimed that the debate back then was actually over the scope of the definition of workers in the Labour Law. Because there was no use of the labour contract and almost all citizens in China could be called workers based on their 'master status' according to socialist ideology, the drafting members inserted a statement in chapter 13, article 106 of the supplementary provisions. This article revealed the complicated situation the government found itself in: due to its inexperience in using the labour contract, the government had no confidence in applying the labour contract system to all workers. Instead, the government used regional pilots combined with institutional reform in order to gather experience little by little. This was one of the most important legislative changes made by the National People's Congress.

At the same time, Interviewee C also proved that the enterprise-breaking ownership boundary was applied uniformly to all types of enterprises and that this feature appeared in the final stages of the legislative process. Interviewee C said that another major feature of the Labour Law was that it was totally different from all the other regulations and policies that were named, adjusted, and managed in accordance with enterprise ownership. In fact, the various drafts of the Labour Law in the early stages made adjustments just like other laws, but the situation changed in the final two or three months leading up to the promulgation of the Labour Law (Interviewee C, 2019). This also confirms that breaking the restriction of the ownerships of enterprises was an important revision of the draft law by the National People's Congress, and it was after the introduction of the Labour Law that the ownership type made no difference in law. This was a fundamental change in the legal concept of the employer.

Article 106 implies that the executive approach to the labour contract system was ultimately not fully promoted throughout the country in a clear-cut way. 'A lot of

people didn't understand the whole thing at that time', Interviewee I said. 'There may have been a problem in shaping the public's view'. (Interviewee I, 2017) Until it reached the legislative stage at the National People's Congress, there were still objections on breaking the barrier of ownership in applying the law to all types of enterprises. For example, Dijun Wang, the director of Beijing No. 2 Plastic Factory, suggested:

> It is not appropriate that the Labour Law treats different types of enterprises, including state-owned, foreign-owned, and private companies, the same. In the state-owned enterprises, how does the factory manager sign a contract with the deputy manager and the secretary of the Party branch?[142]

When we look at the implementation of the labour contract from the level of economic development, the rapidly developing private economies in coastal areas signed more contracts than the inland areas mostly under the planned economy system. This lopsided development resulting from the economic reform led lawmakers to consider moderating the pace of regional development.

From the perspective of the lawmaker, this supplementary article to some extent indicates that the legislators were not that determined to implement the new labour system all at once. The formal entry into force of the Labour Law was set aside for half a year after the promulgation. In the scope of application of the law, the additional clauses offered some convenience in the transition for smoothed the transition. Interviewee D said that the state organs and public institutions did not emphasize the signing of labour contracts at that time but that labour contracts could also be signed in these units. 'The legislators regarded this annex as a transition term and believed that the labour contracts had to be applied to all workers' (Interviewee D, 2016).

Article 106, as a 'buffering clause', made the reform somewhat incomplete. After the promulgation of the Labour Law, the Ministry of Labour required the provinces to increase the rate of labour contracts being signed—that is, to carry out signing labour contracts with administrative means. But the limitation only worked in state-owned enterprises. At the time of the promulgation of the Labour

[142] Song (n 99) 345.

Law in 1994, the number of labour contracts signed reached 35 million.[143] At the end of 1995, a government document showed that the labour contract-signing rate had reached 80%–90%.[144] However, 'this rate could only be achieved by enterprises of a certain scale or above and may be limited to state-owned enterprises,' said Interviewee H (2015).

State-owned enterprises failed to grasp the opportunity posed by the implementation of the Labour Law to thoroughly reform the employment system, thus fully turning to a market economy. They were still operating under the planned economy, with university graduates assigned by the state still being managed according to the status of cadres, and workers recruited by the planned economy were still difficult to dismiss, and turned to the market economy only after the huge recruitment of dispatched workers. As for non-public enterprises, the signing rate was more difficult to guarantee due to the amount of administrative dysfunction.

The problem of one-size-fits-all was that it stymied institutional transformation. This issue was reflected in both the lawmakers and the public lacking confidence in the reform, which resulted in a delayed implementation and a reduction in scope of application of the Labour Law.

5.3. The Shifting Role of the State

Defining the labour market was also fundamental during the legislative process of the Labour Law. From 1979 to 1983, markets (such as commodity markets) had appeared sporadically in China, but due to the strong administrative intervention of the state, such markets played a limited role in the economy and the non-market system prevailed until 1984–1992 when the product market, labour market, financial market,

[143] Cheng Cai, *Report of the National People's Congress Law Committee on the Review of the 'Labour Law of the People's Republic of China (Draft)'* (June 1994) < http://www.npc.gov.cn/wxzl/gongbao/2001-01/02/content_5003186.htm> accessed 28 November 2020

[144] General Office of the Ministry of Labour, 'Circular of the General Office of the Ministry of Labour on the Progress of the Implementation of the Labor Contract System in 1995' (26 January 1996) <http://www.law-lib.com/law/law_view.asp?id=61897> accessed 28 November 2020

and so on appeared.[145] The definition of the labour market attracted much attention during the legislative stage.

Intense theoretical discussions on the labour market were had in the long period leading up to the drafting of the Labour Law because the concept was unclear prior to the legislation. As former Minister of Labour Jiazhen Zhu said, before the promulgation of the Labour Law, people's ideas of the labour market were different from what they are today.[146] The labour market before the promulgation of the Labour Law served as an employment agency and provided vocational training services and relief benefits. Until 1993, at a seminar on law-making theory, Xiaowu Song (deputy head of the International Labour Research Institute under the former Ministry of Labour) was still working on defining the terminology of the labour market. According to Song, the labour market was more of a market mechanism regulating the supply and demand of labour than a physical job agency. Flawed interpretations of this term resulted in the pervasive stereotype that the labour market was only about increasing the employment rate.[147] To correct this, the position and roles of the labour market should be defined. Here, the inner logic of the definition of the labour market will be briefly described.

Theoretically, unlike the planned economy, the labour market is neither a labour management body nor a labour exchange site but a mechanism for labour allocation and regulation that helps boost the market economy by leveraging the law of value in the market. In fact, the term 'labour market' is the abbreviation of 'labour market regulation mechanism'. Businesses and labourers should be the main market players with the right to make decisions independently.[148] The government, as the middleman, regulator, and controller, should stay out of the decision-making process. Therefore, a

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[145] Shaoguang Wang, *Polany's 'The Great Transformation' and China's Great Transformation* [bō lán ní <dà zhuǎn xíng> yǔ zhōng guó de dà zhuǎn xíng] (SDX Joint Publishing Company 2012) 100–101

[146] Jiazhen Zhu, 'China's Labour Market and Social Security System' [wǒ guó láo wù shì chǎng hé shè huì bǎo zhàng zhì dù] in Huan Ling, Guanxue Liu, and Xiaoyi Hu (eds), *Labour Wage Social Insurance System Reform* (China Labour Publishing House 1993)

[147] Xiaowu Song, 'Several Questions about the International Comparison of the Labour Market' [yǒu guān láo dòng lì shì chǎng guó jì bǐ jiào de jǐ gè wèn tí] (1993) Economy Management and Cadre Management 1–8

[148] Xiaojian Zhang, 'Several Practical Issues on Fostering and Developing the Labour Market, Reform of Labour Salary and Social Insurance System' [péi yù hé fā zhǎn láo wù shì chǎng zhōng de jǐ gè shí jiàn wèn tí] (1993) Review of Economic Research 822–827

more accurate description would be the ‘labour force market’ rather than the ‘labour market’, the ‘labour service market’, or the ‘workers market’. Traditionally, it has also been (incorrectly) referred to as the ‘talents market’, an ‘employment agency’, and a ‘job-seeking market’. Labourers, or the labour force, as the most important production factors in the economy, should be released into the market and be open to recruitment by employers. The concept of the labour market is a key component of the market economy system reform. The market economy should play a role in allocating labour resources.

The economic benefits that the key market players reap drive the engine of market operations. The market would not function correctly if the expectations of both businesses and labourers were not met. In the labour management sector, businesses can increase their benefits by properly controlling for the costs of labour, including salaries, bonuses, insurance, and training expenses. At the same time, labourers can earn higher salaries if they increase their professional capacity, and the ratio of macro-policies should aim to motivate the key market players by allowing businesses to make decisions on employment and salaries independently and increase the lower limit of competence-based salaries. The labour optimization portfolio is a solution that combines performance with salaries. Taxation and financial policies play an essential role in regulating the benefits of the key market players. The government should help establish institutions such as a labour services agency, a labour exchange centre, and other service-oriented bodies to efficiently match the supply and demand of the labour force, optimize labour resource allocation, and monitor market dynamics. A functional labour market guarantees sustainable social development.

Based on previous analyses of the Western concept of the labour market, although the law-making actors in China realized the importance of the market for social growth, the politics and the economy could not complete the transformation immediately after understanding the strong dependence and personal attributes of both the employer and the workers. However, there was some turbulence in the international political environment in the 1980s. Chinese lawmakers decided that the government should play a regulatory role rather than a participatory role to prevent any extreme behaviours in pursuit of short-term benefits in the labour market. The government was expected to put a law in place, supervise market activities, provide

social security, and set the minimum standards rather than concrete ones, thereby levelling the playing field of the labour market as a whole in a transparent manner.

Reflected in the preceding discussion of the concept of the labour market, based on international experience and academic theories, the legislative actors were fully aware that because of the personal attributes of the labourers and their strong attachment to their property, maintaining the stability of the labour market was of great significance for the stable development and smooth operation of Chinese society, politics, and the economy. [149] In looking back at the large-scale unemployment witnessed by the Soviet Union in the 1980s and the country's frequent international worker's movements, Chinese legislators believed that the government's role was to maintain market stability in order to prevent some extreme behaviours of pursuing short-term benefits rather than participating in the long-term benefits of market competition. Therefore, the main scope of the state's responsibility in the labour market was clear, and it included legislation and supervision, social security, tax adjustments and subsidies, and labour market information. The role of the government was not to set specific standards, but to set minimum standards. It should provide the market with a just, open, and fair labour system framework from a global and social perspective.

5.4. The Applicable Scope of the Labour Relations

After several rounds of field study and discussion, the legislators found that the subject of reform had shifted from the national level to the enterprise level. Labour relations in the traditional labour system needed to be redefined. The disadvantage of the traditional labour system and the wage distribution system was that the state directly managed employees beyond the enterprise and the state was the actual employer and source of distribution. Once an employee entered a state-owned enterprise, they became a national employee and a national cadre, and their identity remained unchanged for the rest of their life. Therefore, the key to reform was to realize the transformation and separation of employers and distribution entities so that enterprises would become the source of employment and distribution and labourers would

[149] Song (n 99) 344-45.

become the subject of the labour force, giving workers the right to choose their profession.

Jiaxuan Zhu believed that enterprises and employees were two independent and equal subjects, and the role of the government was to regulate the employment behaviour of enterprises, guide enterprises and employees to perform their labour contracts, and safeguard the legitimate rights and interests of both parties by improving legislation, policy guidance, contract management, and dispute mediation in order to promote social harmony and stable development.[150] Thus, the model of the three-party relationship and status was established in China. The primary purpose of reforming China's labour relations was to give enterprises and workers the right to choose their work independently from the state's allocation.

Xiaowu Song believed that labour relations were a relationship between labour supply and demand, which is also called management relationship.[151] Before the reform of the labour management mechanism, the owner and the operator were the same: the state. The state managed all state-owned assets. In the market economy model, the owner and the actual operator of the assets were divested, and the owner of the value of the asset (which may be the state or individuals) and the physical asset (the actual operator) could be separated, whereas the value owner presented in a diversified form and decentralized state in the stock company and was attributed to the shareholders. Therefore, the labour relationship changed form.

On the other hand, as the traditional supply of labour, workers are not completely without assets, because employees can own shares of their own or other's companies. The intersection of shareholders (including the employees) appears in the final stage of the division of the fruits of their labour, but the labour force is still delivered and controlled by the business operators in the labour process. In this process, the conditions of labour, such as remuneration, vacations, and working hours, still

[150] Jiaxuan Zhu, 'China's Labour Market and Social Security System' [wǒ guó láo wù shì chǎng hé shè huì bǎo zhàng zhì dù] in Ling H, Liu G and Hu X (eds), *Labour Wage Social Insurance System Reform* (China Labour Publishing House 1993) 1-8

[151] Xiaowu Song, 'Several Questions about the International Comparison of the Labour Market ' [yǒu guān láo dòng lì shì chǎng guó jì bǐ jiào de jǐ gè wèn tí] (1993) Economy Management and Cadre Management 1-8

require labourers and managers to negotiate a contract, and this will not change based on the assets owned by the employees (their shareholder ratio). At the same time, these conditions are not affected by state interference. The state offers neither supply nor demand in the industrial relationship and should not be involved or assumed to be in a management role. The operators of enterprises should enjoy full autonomy of employment, and the remuneration of workers should also change according to the changing relationship between supply and demand, thus realizing full competition in the market.

Before the reform of the labour policy, the state allocated labour resources according to the planned economy, and the supplier of the labour force was the state. However, after the national economic reform, the demand side of the labour force increased, adding the self-employed and private and foreign-funded enterprises, as well as the state-owned enterprises. More importantly, in line with the reform of state-owned enterprises, the demand for labour in state-owned enterprises has shifted from the state to enterprises. From the perspective of the labour supply side, the labour system reform has fully confirmed that workers have the right to choose their own work, that is the state no longer assumes the function of supply of labour. For the first time, the state withdrew from the comprehensive plan of labour relations, and the tripartite mechanism with Chinese characteristics began to be established.

Therefore, the tripartite labour–capital–government relationship became more reflected in the relationships between large and medium-sized enterprises, governments, employers, and trade unions. Interviewee H pointed out that legal provisions of the regulation of labour relations appear more in the Trade Union Law, e.g. the right of workers to join a trade union. The employer unions are not as concentrated as the trade unions. The All-China Federation of Industry and Commerce represents one party of the negotiation, and the China Enterprise Confederation represents another one, with member asking whether they can integrate the parties and form a corporate association [152] (Interviewee H, 2015).

[152] The All-China Federation of Industry and Commerce (ACFIC) was established in 1953. It is not only a group of people's organizations led by the Communist Party of China but also a chamber of commerce. It is also known as the Chinese Chamber of Commerce. The National Federation of Industry and Commerce is an organization with

Public participation in the legislative process not only manifests in the participation of trade unions, the opinions of the wider community are collected and adopted as well. This also allows for the construction of a tripartite mechanism because the opinions of workers are widely heard. According to the interviewees, although the legislative process behind the Labour Law was almost a closed process limited to officials and labour experts, policy makers have since then consciously expanded the scope of legislative research and consultation to embrace public opinion. For example, according to Interviewee C, the Ministry of Labour had produced 28 versions of the Labour Law and the daily drafting work required conducting field research all over the country, including collecting opinions in another round of field work This process was repeated with each draft. For example, Interviewee C recalled that he went to Xinjiang to seek locals' opinions with then Deputy Minister of Labour Zuoji Zhang. Then, the drafted manuscript was sent to various ministries and commissions of the State Council, including the People's Insurance Company of China and the General Manager in accordance with the legislative management rules. The contents of the chapter on social insurance in the Labour Law were discussed and then revised, and the procedures for field research and collecting local democratic opinions began to be implemented during the legislative phase of the Labour Law.

After obtaining a draft from the Ministry of Labour, the Legislative Affairs Office of the State Council would continue to seek opinions from the whole country. Interviewee I said:

> The Labour Law legislation was special. It requested the opinions of local departments, which was new and different from other laws. The Labour Law started a totally new system. We made questionnaires, collected opinions, and

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a united front and a unit of the National Committee of the Chinese People's Political Consultative Conference. The China Enterprise Confederation (CEC) and the China Entrepreneurs Association (CEA) are registered by the Ministry of Civil Affairs as the national non-profit corporate social groups. The CEC and CEA is jointly organized by businesses, entrepreneurs (employers), and enterprise groups, business representatives, entrepreneurs (employers) with the participation of the Tripartite Meeting of the National Coordinating Labour Relations of the Ministry of Labour and Social Security of the People's Republic of China, and the All-China Federation of Trade Unions(ACFTU). Therefore, the All-China Federation of Industry and Commerce is one of the constituent units of the Chinese People's Political Consultative Conference, and the China Enterprise Confederation and the China Entrepreneurs Association are registered non-profit national social organizations.

> drafted the law based on our own study and the opinions [we gathered]. It (seeking for public opinion) was really rare at that time in the Legislative Affairs Office. It didn't have enough staff to carry out a wide range of opinion soliciting. For most legislation, we drafted the law before soliciting opinions. But the Labour Law was special. The original draft by the Ministry of Labour was carried with too strong characters of the planned economy. We have exchanged this opinion with those from the State Council. (Interviewee I, 2016)

Interviewee B,[153] who once represented the trade unions in the legislative work, pointed out in an interview the following:

> Each step of the marketization of China's labour relations needed on the one hand to realize of the legalization of labour relations in order to open the channel for the reform of state-owned enterprises and change the fixed employment to contract labour and to achieve a high degree of duality of labour relations on the other. (Interviewee B, 2016)

Limiting the role of the state in the labour relationship and handing over the allocation of resources to market regulation was the most crucial change made in the reform of the labour system.

Despite the actual situation in China, the legislative process needed to consider the position of, relationships between, and mechanisms of labour, capital, and the government. Under the planned economy, there was a labour relationship, but it was a direct relationship between the state and the people, not a labour–management relationship. This was characteristic of the early planned economies of socialist states. The position of the capitalists in the labour–management relationship and labour relations at that time reflected neither those seen in the modern Western context (meaning the presence of a labour–management dialogue and the government as the third party) nor an industrial relationship (as seen in modern socialist countries, meaning government centred).

At the same time, the legislators also believed that there should be an equal status between the labourers and the employers with the state in between, but neither

[153] Interviewee B was a senior official in the All-China Federation of Trade Unions. The interview was conducted in March 2014 in Beijing.

as an equal party nor in a central position (Interviewee D, 2019). The state viewed policy intervention or guidance on labour relations from the perspective of protecting national interests. Interventions by the state in workers' and employers' relations are common throughout the world. Since then, labour relations have had a new connotation under the conditions of the market economy.

In addition to the above-mentioned scholars' and officials' self-reports, the concept of modern labour relations was formally established in 1993 with the establishment of the Labour Relations and Inspection Department within the former Ministry of Labour. At this point, the academic discussion on academic labour relations had become clear, and labour contracts, labour standards, labour disputes, and inspections were all based on the clearly defined concept of labour relations. In 1994, the term 'labour relations' was written into the first article of chapter 1 of the Labour Law and officially began to be applied to the labour legal system.

The concept of labour relations in modern China gained new meaning. In summary, the core of labour relations was the protection of labour rights. The main line of adjustment of labour relations was based on the implementation and improvement of the labour contract system, which gradually transformed the employment system from planned allocation to independent market allocation. The scope of application of laws and regulations expanded from the enterprises to national institutions and from in-system units to all employers inside and outside the system. The content of labour relations' adjustment and regulation is from the labour rules of enterprises to the rules of both employers and employees. Management methods changed from direct administration to legal governance. The final effect of the adjustment of labour relations was to adjust the role of the government to safeguard the legitimate rights and interests of enterprises and workers and to maintain production and operation levels. The role of the state has become one of minimum standards protection, social welfare protection, and supervision instead of being the distributor of resources. It can be seen that the concept of labour relations has a modern and new connotation based on the transformation of the role of the state after the roles of workers, employers, and the labour market were clarified in the Labour Law.

5.5. Summary

Fundamental concepts are the basics of and also inform the law. The construction of the fundamental concepts was a process in which the state took a step back and let the labour market adjust the labour relations. Labour relations is a concept on the surface, but in fact it is also a background to this legislation, constructing a basic legal framework to the 1994 PRC Labour Law. Using this relationship as the framework for adjustments of the law drafting, determined that subsequent policies that the state issued during 1980s and early 1990s is also moving in this direction.

The definition of the core concepts in the Labour Law was vital in the legislative process, and the lawmakers determined the subjects and the scope of the application of the Labour Law based on the debate surrounding big, medium, and small labourers. On this basis, the legislators further discussed the nascent labour market, and once it was defined, the role of the government retreated from a planned and controlled economy to shoulder new responsibilities for offering safeguards and monitoring the new economy, resulting in a modern tripartite mechanism. The scope of application of labour contracts and the spirit and principles of the Labour Law are reflected in the discussion of these core concepts throughout the labour legislation process.

All the concepts discussed above formed the basis of the Labour Law. China's legislation had very strong political overtones, which was highlighted in the drafting process of the Labour Law, but the professionalism of the legislators became apparent during the legislation period. Those legal professionals shied away from political slogans and used legal principles, language, and frameworks to form the Labour Law instead.

In addition, the factors influencing the Labour Law legislation reappeared when examining the legislative process. First of all, the definition of the core concepts was determined by the values and views of the elites, which echoed the professionalism of the lawmakers. Regarding defining the concept of 'labourer', it was mainly a matter of considering workers with different identities. The decision makers listened to the opinions of not only farmers but also 'special' workers (civil servants, bank employees, and those working in state-owned department stores); however, the opinions of a some decision makers, such as Interviewee I, on the scope of employers covering public institutions, were rejected, leading to controversy.

I hope to have highlighted the role of the legislators and their professional backgrounds in the drafting of the Labour Law. Interviewee C, who was mainly responsible for drafting the law at that time, become a typical example of the elite's role and contributions during the legislative process was based on their personal experience and view. In 1990, he had just obtained his Ph.D., was recruited into the Ministry of Labour, and entered the Department of Labour and Regulations because of the need for people to carry out legislative work. He held the country's first Ph.D. in the field of legislation law. According to his recollection, the Labour Law leading group and the Labour Law drafting office became the Labour Law Department. In that year, the Ministry of Labour recruited legislative professionals to make it clear that the Ministry of Labour planned to draft a labour law. At that time, the minister of labour was Chongwu Ruan, who used to be the Chinese Science and Technology Counsellor in Germany. He had lived in Germany for more than a decade and was the reason why the Labour Law was inspired by German law. He paid more attention to the guidance of knowledge, theory, and legislation. His academic background leading him to get the position of the first and only doctor at the Ministry of Labour at that time. This also proves that drafting the labour legislation began in the 1990s and that the Ministry of Labour was responsible for drafting the Labour Laws. As demonstrated, the Ministry of Labour took the legislation very seriously (Interviewee B, 2019).

In addition to the academic backgrounds and experiences of the legislators, the decisions of the political elites also affected the promotion of the Labour Law. The origins of the legislation could be traced to the 1950s when Dong Biwu mentioned in a speech entitled 'Further Strengthen the Country's Legal System and Guarantee the Cause of Socialist Construction' that making imperative laws (including a labour law) was the most important part of the national rule of law.[154] When the legislators decided to draft a labour law, professionals were recruited and richly rewarded. Interviewee C said he was given quite favourable pay and conditions and was warmly welcomed. Interviewee G experienced the same, and he confirmed that the government's offer was extremely attractive for him, manifested in the legislative

[154] Biwu Dong, Further Strengthen the Country's Legal System and Guarantee the Cause of Socialist Construction (Speech at the CCP Eighth National Presentative Conference on 19 September 1956) < http://rmfyb.chinacourt.org/paper/images/2016-07/01/07/2016070107_pdf.pdf > accessed 28 November 2019

actors' determination to form the Labour Law. Their influence was quite essential during the whole legislative process.

The institutional setting and international labour laws also played a role in the legislative process behind the Labour Law, with the former affecting the transformation of the government's role and the latter serving as a point of reference. The power struggles between the Ministry of Labour and the Ministry of Personnel led to disputes over the definitions of terms such as cadres and workers in the legislation. These controversies were brought about by the institutional setting. Interviewee G said that he was dissatisfied with the whole structure of the Labour Law and proposed that the chapters should be restructured into two chapters: a labour standards chapter and a labour contracts chapter.[155] However, the chapter and article structure of the Labour Law was based on the framework of German labour law and the labour laws of various other countries. As the main drafting organ for the legislation, the Ministry of Labour conducted field research within and outside of China. Two of this study's interviewees (both of whom worked for the Ministry of Labour) confirmed that before the 1990s (around 1989 to 1990), a great deal of translation of over 50 foreign labour laws was carried out in the Ministry of Labour, producing nearly 300,000 words that a played significant role in the drafting stage.

In summary, the elite group's decisions, institutional settings, and international factors played the most crucial roles in the process of defining the core concepts and the scope of application of the Labour Law leading up to its promulgation in 1994.

[155] Baohua Dong, *Sacred Guardian of Labour: Labour Law* [láo gōng shén shèng de wèi shì : láo dòng fǎ] (Shanghai People's Publishing House 1997)

Chapter 6 Labour Contract System

The foregoing chapter introduced the core concepts in the 1994 PRC Labour Law legislation, which laid the foundations and established the scope for applying labour law in China. However, these merely demonstrate why labour law needed to be introduced. To answer the core question of how to determine the specific content of labour law, we need to examine the specific provisions and mechanisms of the 1994 PRC Labour Law.

In conjunction with the layout of the 1994 Labour Law, this chapter details the original appearance of each specific system, the process of reform, and the design of the legislation that ultimately formed the specific content of labour law provisions. This chapter mainly introduces the advent of the labour contract system and the process whereby it gradually broke the 'iron rice bowl'. This process is discussed in three parts: first, the original appearance of the iron rice bowl and the old personnel system before the use of labour contracts; second, the adjustment and trial implementation of experimental labour policies made to replace the old policies; and third, the process of labour law legislation, concerning how legislators planned to break the iron rice bowl. After the introduction of the labour contract system, the iron rice bowl was cracked with the emergence of more types of labour contract and written in the 1994 PRC Labour Law.

6.1. Advent of the Labour Contract System

The labour-management model under the planned economy was overseen by state administrative authorities and known as the iron rice bowl system—a metaphor for a very stable position. In China, having an iron rice bowl means holding a lifelong post under the headcount system of the employing unit, with entitlement to all kinds of welfare. The staff within the system who has a cadre status will hold certain leadership or management duty in a unit. Before the reform and opening-up of China, in addition to the self-employment of individual labourers, recruitment to the jobs in state-owned enterprises (SOEs), public institutions, government agencies, and other units were arranged by the state.

The iron rice bowl system became so deeply rooted into urban workers' ideology that there was overwhelming resistance to the early introduction of the labour contract system. Even after a long period of institutional adjustment, there was still little success before 1994. For instance, the signing of labour contracts was rare before 1986 and had not become much more common when the 1994 Labour Law was introduced. Therefore, this section will present the transforming process of how the labour contract system was born, detailing the form of the labour contract before and during the birth of the 1994 PRC Labour Law.

The establishment of the labour contract system also affects legislators' attitude toward the format and timing for introduction of the labour contract system, even though this was a predefined goal of the reform. According to legislators' recollections, the controversies concerned the following questions:

(1) What was the basis for changing and ending labour relationships that had not been subject to the 'contract system'?

(2) Were the establishment, alteration, and dissolution of a labour contract individual rights of the parties to the labour relationship or should they be restricted by law?

(3) What was the responsibility of the party in violation of the labour contract, especially in the case when the employee applying for resignation? How could it be ensured that the employee took responsibility?

(4) Should the labour contract be administered by the state administrative organ? What was the means of management?

(5) Should collective labour contracts be regulated? What should be the nature, role, form, and content of collective labour contracts under socialist ideology?

(6) How should a collective agreement be signed? What is the relationship between a collective agreement and an individual labour contract, and how do they differ? Should the state organs manage the collective labour contracts? Through what form and means of management?[156]

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[156] Yuan (n 87) 33

In general, there were many attempts on establish the labour contract system have been made in the labour contract system legislation process, and some traditional ideas were broken. Notably, all these discussions were based on previous adjustments to the scope of the application of labour contracts. This section mainly describes the birth of the labour contract system.

6.1.1. Departing point of the labour contract system: employment without contract

Prior to the reform of the labour system, labour contracts in China were considered a feudalistic 'indenture of personnel bondage' (hereinafter the 'indenture'), and so were strictly controlled. Although there is no consensus in academia and the judiciary on the identifying factors or characteristics of an employment contract, the contemporary employment contract has the characteristics of both parties having bargaining power.[157] By contrast, the so-called signed 'indenture' lacked equality, freedom, and negotiation. This explained people's unwillingness to sign a labour contract, which they regarded as an indenture, rather than an agreement.[158] The provisions on such contracts were very limited in scope. For example, on 20 May 1950, the Ministry of Labour stated in the Measures for the Registration and Introduction of Unemployed Technical Employees that when recruiting technical employees, the recruiter must draft a labour contract with the recruited person, clearly specifying the salary and other items; for a worker residing in a different location from the employer, though travel expenses usually apply to commuters whereas settling-in allowances usually apply to workers who relocate for a job, the contract also had to stipulate the travel expenses and settling-in allowances.[159] On 15 May 1951, the Ministry of Labour stipulated in the Provisional Regulations on Recruiting Employees Residing in a Different Location (from the employer) that when both the recruiting employer and recruited employee

[157] John Fabian Witt, 'Rethinking the nineteenth-century employment contract, again' (2000) 18 Law and History Review 627

[158] Hongyong Sun, 'Non-state-owned Enterprises Have Many Problems in Implementing the Labour Law' [fēi guó yǒu qǐ yè guàn chè luò shí <láo dòng fǎ > wèn tí jiào duō] [1995] Shandong Labour 27.

[159] Ministry of Labour, 'Measures for the Registration and Introduction of Unemployed Technical Employees' [láo dòng bù bān fā shī yè jì shù yuán gōng dēng jì jiè shào bàn fǎ], 20 May 1950.

should directly sign a labour contract and file it with the local labour administrative department; this contract must include wages, benefits, working hours, and probation period, as well as the travel expenses and settling-in allowances for workers residing in a different location from the employer.[160]

In May 1954 the Ministry of Labour introduced the Measures on Concluding a Labour Contract for Construction Engineering Units to Recruit Workers Residing in a Different Location; in 1959, the MOL issued the Measures on Concluding a Secondment Contract with the Construction Workers.[161] These measures stipulated that when recruiting temporary workers from different locations, the recruitment unit (Party A) and the workers or workers' representatives (Party B) shall sign the labour contract regardless of the length of recruitment, according to the regulations of the labour administrative department in the local area; the contract shall clearly stipulate the duration of recruitment, the type of work, the technical level, the number of people, the construction site, and the salary and other benefits; during the period of validity of the contract, if a contractual dispute arises that the parties cannot resolve, they may apply to the local labour administrative department for dispute resolution.[162] Also in May 1954 the Ministry of Labour issued regulations on the contract status of seconded workers, which stipulated that the borrowing unit should sign a secondment contract with the original unit and the worker. Subsequently, in April 1957, the State Council issued a notice covering several issues regarding seconded workers, including a requirement that the receiving unit sign the labour contract with the worker.

These were the very few cases in which the signing of labour contracts was mandated and handled by the government. Although the contents of these contracts covered the matters of wages, types of work, and working hours that were supposed

[160] Ministry of Labour, 'Provisional Regulations on Recruiting Employees Residing in a Different Location' [láo dòng bù guān yú gè dì zhāo pìn zhí gōng de zàn xíng guī dìng], 15 May 1951.

[161] Ministry of Labour, 'Measures on Concluding a Labour Contract for Construction Engineering Units to Recruit Workers Residing in a Different Location' [guān yú jiàn zhù gōng chéng dān wèi fù wài dì zhāo yòng jiàn zhù gōng rén dìng lì láo dòng hé tóng de bàn fǎ], May 1954; Ministry of Labour, 'Measures on Concluding a Secondment Contract with the Construction Workers' [guān yú dìng lì jiàn zhù gōng rén jiè diào hé tóng bàn fǎ], 1959

[162] Shilin Huang, 'On the Legal System of Labour Contract' [lùn láo dòng hé tóng fǎ lǜ zhì dù] (1984) Modern Law Science Xiandai Faxue 44.

to be managed by the government at that time, and somewhat conformed to the formal standards of modern labour contracts, they still had strong administrative features.

Where labour contracts were not used, how to identify an employee? The answer is the headcount system (*Bian Zhi*), which was first adopted by Chinese state organs and SOEs.[163] For these institutions administratively managed by the government and financed by fiscal funds, the headcount system was established to uniformly recruit and manage government employees, adjust departmental institutions, and formulate financial plans. In December 1958 the State Council mandated enterprises and institutions to also gradually implement the headcount system in its Instructions on Further Improving the Streamlining of State Organs.[164]

In the 1960s the headcount system became stricter and more rigid. Pursuing nationally unified economic development, the government believed that the plan of how many posts a year per unit should be formulated in advance and not arbitrarily changed after formulation. On 11 February 1960 the Ministry of Labour issued Several Provisions on Strengthening the Headcount System (Draft), requiring state-owned and public–private joint ventures and their affiliated institutions to establish a headcount system and implement an 'advanced headcount standard' for staff personnel in a rational and cost-effective manner.[165] Here, the advanced standard meant that, in similar enterprises with similar (operation) conditions, the organisational structure should match the needs of production, with a relatively small number of employees, a small proportion of management personnel (external engineers and technicians) and service personnel, but high work efficiency and labour quotas. Issued on 26 September 1960, the Report of the State Planning Commission and the Ministry of Labour on Current

[163] It is an administrative fixing personnel system that determines the number and posts by the administrative department. The finance department allocates funds according to this system. Brødsgaard loosely translates 'Bian Zhi' as 'establishment from posts', based on the Soviet Union's 'nomenklatura'. See Kjeld Erik Brødsgaard, 'Institutional Reform and the Bianzhi System in China' (2002) 170 China Quarterly 361.

[164] The State Council, 'Instructions on Further Improving the Streamlining of State Organs [guān yú jìn yī bù zuò hǎo guó jiā jī guān jīng jiǎn gōng zuò de zhǐ shì], issued on 29 December 1955, expired on 10 June 1987.

[165] Ministry of Labour, 'Notice of the Ministry of Labour on the Trial Implementation of "Several Provisions on Strengthening the Establishment and Appointment of Enterprises (Draft)"' [láo dòng bù guān yú shì háng 'guān yú jiā qiáng qǐ yè biān zhì dìng yuán gōng zuò de jǐ xiàng guī dìng（cǎo àn）' de tōng zhī], issued on 13 February 1960, expired on 10 December 1986.

Labour Arrangements and Staff Wages provided as follows: all employers must act in accordance with the labour plan approved by the state; to increase the number of personnel in the plan, it must be approved by the party committee at the next-highest level, and should be settled within the scope of the planned indicators already mastered; private recruitment and poaching (from rivals) are strictly forbidden, and violators must receive a discretionary punishment in addition to sending new personnel to the primary unit; cadres' practice of appointing private individuals should be seriously corrected; the management of wage funds, household registration, and food management should be further implemented, and for any new personnel without approval, the bank should not pay wages and the grain department should not supply rations. In its instructions concerning this report, the Central Committee of the Communist Party of China stipulated that 'the future allocation and application of labour must be comprehensively and reasonably arranged and incorporated into the national plan to ensure that the national economy has a planned and continuous leap forward'.[166]

In September 1972 the Statistics Group of the State Planning Commission issued the Interpretation of the Main Indicators of Labour Wage Statistics (Trial Copy), which added management personnel transferred to the production line or directly engaged in production to the direct production personnel classification—the first management personnel to be so assigned.[167] Workers and apprentices who left a production post for non-productive activities were also added to indirect production personnel, forming a new fourth category of this classification. These developments imply that worker classification at this time was based on direct engagement in front-line production, rather than simply political identity.

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[166] State Planning Commission and Ministry of Labour, 'Report of the State Planning Commission and the Ministry of Labour on Current Labour Arrangements and Staff Wages [guó jiā jì wěi dǎng zǔ, láo dòng bù dǎng zǔ guān yú dāng qián láo dòng lì ān pái hé zhí gōng gōng zī wèn tí de bào gào], 11 September 1960; The Central Committee of the Communist Party of China, 'Instructions of the Central Committee of the Communist Party of China on the Report on the Current Labour Arrangements and Staff Wages Issued by the Party Group of the State Planning Commission and the Party Group of the Ministry of Labour [zhōng gòng zhōng yāng zhuǎn fā guó jiā jì wěi dǎng zǔ, láo dòng bù dǎng zǔ <guān yú dāng qián láo dòng lì ān pái hé zhí gōng gōng zī wèn tí de bào gào> de zhǐ shì], 26 September 1960.

[167] National Bureau of Statistics, 'Interpretation of the Main Indicators of Labour Wage Statistics (Trial Copy)' (1978), unpublished internal document.

The problem with such job division was that the flows between positions were subject to very rigid requirements and did not keep up with the needs of enterprises and production, let alone the upgrading of new production technologies, which requires flexible adjustment of positions. Personnel quotas were set annually, resulting in a serious lag in re-planning, reporting, and adjustment when it became necessary to increase or decrease personnel, which seriously affected enterprises' production and development. For the economic structure of the entire country, this institution evidently slowed the upgrading of various industries.

On 5 May 1979 the State Economic Commission and the State Planning Commission issued their Notice on the Establishment of Enterprise Headcount and Labour Quota, calling for enterprises to determine their labour organisation and institutional settings based on the principles of strengthening production, improving efficiency, and saving labour expenditure. In accordance with the quotas for each unit and position, enterprises were instructed to formulate a quota plan and report it to the higher authorities for approval.[168] The headcount of the enterprise should be set in advanced with the improvement of enterprise management, the adoption of advanced technology, and the improvement of labour productivity. The notice also stipulated that after determining the headcount, the enterprise was not allowed to add further institutions or transfer production workers to engage in non-production activities. Existing non-production workers and secondment personnel had to be carefully counted and returned to production positions within a specified time. If it was necessary to retain workload due to needs, this had to be approved by the higher authorities overseeing the transfer procedures. No enterprise department could make a secondment request without the approval of the competent supervisor of the enterprise, and the approved secondment personnel had to be paid by the borrowing unit. The abovementioned headcount and labour quota were introduced and operated in the context of the planned economy and old labour institutions. Nowadays, such rules are only found inside public institutes and government bodies.

[168] State Economic and Trade Commission and State Planning Commission, 'Notice of the State Economic and Trade Commission and the State Planning Commission on the Establishment of Enterprise Personnel Quota and Labour Quota' [guó jiā jīng wěi guó jiā jì wěi guān yú zuò hǎo qǐ yè biān zhì dìng yuán hé láo dòng dìng é gōng zuò de tōng zhī], 5 May 1979.

6.1.2. Experimental trial of labour contract system

At the beginning of the labour reform, research on the advantages and disadvantages of domestic and international labour-management systems promoted the view that the institution of fixed occupations ought to be changed. However, the content, roadmap, and ultimate goal of the reform were vigorously debated, and addressing these issues was like crossing the river by feeling the stones, if not drawing a vague picture blindly. Prior to 1985, reform of the labour employment system, especially the implementation of the labour contract system, was mainly carried out in non-state-owned arenas such as foreign-invested enterprises, with few SOEs participating in the pilot. Moreover, formal policy design was primarily in the experimental and exploratory stages. After several years of theoretical and practical exploration, understanding of the labour contract system had been greatly improved. This system was not considered to be a simple form of employment but rather a new type of labour employment system. In this context, the Ministry of Labour and Personnel issued the Notice on Actively Implementing the Labour Contract System in February 1983, requiring all localities to actively carry out pilot projects, and the scope of the pilot began to be officially expanded to SOEs.[169]

Since the beginning of the reform, some Chinese theorists had proposed reforming the fixed worker system and implementing the labour contract system, which was then regarded as a way to invigorate enterprise employment, or as a labour system coexisting with the fixed worker system. This idea was also reflected in the Resolution on Several Historical Issues of the Party since the Founding of the People's Republic of China, adopted by the Central Committee of the Communist Party of China in June 1981.[170] This resolution affirmed the 'parallel labour system' proposed by Liu Shaoqi in the 1950s, which combined the fixed worker system and contract worker system.

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[169] Guanxue Liu and Shihai Lu, 'The Establishment of Labour Contract System Is the Most Successful Reform in our Country: Review and Prospect of China's Labour Contract System Reform (I)' [láo dòng hé tóng zhì dù de què lì shì wǒ guó láo dòng zhì dù zuì chéng gōng de gǎi gé: wǒ guó láo dòng hé tóng zhì dù gǎi gé huí gù yǔ zhǎn wàng (shàng)] [1996] China Labour Science 4.

[170] Resolution of the 11th Central Committee of the Communist Party of China on Several Historical Issues of the Party since the Founding of the People's Republic, 1981.

As is well known, Shenzhen, a southern coastal city of mainland China that is close to Hong Kong, took the lead in experimenting with this system. Guided by the 'two labour systems' design, the first Sino-foreign joint venture hotel in China, Zhuyuan Hotel, was incorporated in Shenzhen in October 1980.[171] In March 1981 the hotel also established China's first trade union organisation of a Sino-foreign joint venture hotel. Later, in April 1982, the hotel also took the lead in implementing reform of China's wage system, breaking the iron rice bowl and creating a system with salary and floating wages. These initiatives made Shenzhen a pioneering and immense test field for China's labour system, with many reforming projects based, practiced, and realised in the city.

After trialling the labour contract system in 1980, China began piloting the system and gradually expanded it to a few SOEs. However, due to the long-term implementation of the fixed worker system since the founding of the People's Republic of China, many people instinctively linked this system to socialist ideology. There was great divergence over whether the labour contract system needed to be or could be implemented in the socialist country. In addition, SOEs implementing the labour contract system would fundamentally change the identity of 'national official staff', which shocked current recruiting workers and made obtaining their support rather challenging. Therefore, the pilots at that time were not widely promoted and mainly limited to non-state-owned organisations such as foreign-invested enterprises. By the end of 1983, only 650,000 employees were in China's labour contract system.[172] In 1986, the State Council issued four regulations on labour system reform, including the Interim Provisional Regulations on Labour Contracts for State-Owned Enterprises and the Interim Provisional Regulations for Recruiting Workers in State-Owned Enterprises, which officially confirmed the reform of the labour contract system in SOEs.[173] The reform seemed to start smoothly, but there was soon

[171] See Appendix 2.1.

[172] Liu and Lu (n 16).

[173] State Council, 'Interim Provisions on the Recruitment of State-Owned Enterprises' [guó yíng qǐ yè zhāo yòng gōng rén zàn xíng guī dìng], 12 July 1986; State Council, 'Interim Provisional Regulations on Labour Contracts for State-Owned Enterprises' [guó yíng qǐ yè shí háng láo dòng hé tóng zhì zàn xíng guī dìng], 12 July 1986.

divergence between different groups of actors and the reform initially had limited effectiveness.

Labour scholars and experts held two different views, with some believing that rolling out the labour contract system would promote workers' motivation and productivity； whereas others believed that a better social security system is the precondition for implementing the labour contract system, which should be considered before the productivity. While some scholars passionately advocated the reform of labour institutions, enterprises leaders were concerned that with slowing economic development and rising unemployment, the need for social stability was leaving many traditional industries' factories afraid to terminate the contracts of contract workers they no longer needed and to dismiss those who violate discipline. Before the implementation of the labour contract system, the propaganda expectations of the labour contract system were too high and there were many difficulties in practice, leading to widespread dissatisfaction among enterprise leaders who had originally been eager to implement the system. Meanwhile, attitudes towards the use of labour contracts differed among workers. Some technicians and skilled workers desired a more flexible system to facilitate career development, but most workers were still reliant on the iron rice bowl due to lack of professional skills and competitive abilities. The public were unable to sympathise with the use of the labour contract system.[174] These differences of opinion of different actor groups set the stage for future reforms, and were considered by legislators when drafting subsequent rules.

6.1.3. Final shape of the labour contract system

In the process of legislating, how was the design of the labour contract system discussed? Why was the labour contract to be specifically prescribed under labour law, rather than under contract law? Interviewee D recognised that when the formulation of the Labour Contract Law was being discussed in 1999, there was tension between labour law scholars and legislators. (Interview, D, 2016) Labour law scholars worried that the legislators will consider that the labour contract belong to a type of civil

[174] Linghu An, 'Informal Discussion on the Labour Contract System' [láo dòng hé tóng zhì màn tán] in An Linghu, Guanxue Liu and Jianxin Wang (eds), *Labour, Wage and Social Insurance System Reform* (China Labour Press 1991).

contract when drafting the 1999 Contract Law, they believe that there are great differences between the two, with full-compliance feature of the labor contract being one of the most important differences. Labour law scholars maintained that the principles of equality and equal value exchange in civil law should not be applied to labour contracts. Although labour law should protect workers given the implied unequal position of the two parties to the labour contract, this inequality meant that the civil-law principle of equal value exchange should not be applied to labour law. Therefore, during the drafting of the Labour Contract Law, the interviewee D called several legislators to express concern over the potential inclusion of the labour contract within the scope of contract law. She believed that 'using the principles of civil law to protect labour contracts is actually protecting the interests of the employers.'

However, in the legislative stage of the labour law, the importance of labour contracts had gradually surfaced during the process of institutional reform. According to an interview with Interviewee C (2019), in the 1980s it was very difficult to implement labour contracts in SOEs:

> Non-state-owned enterprises had long used labour contracts, but state-owned enterprises had encountered problems and were not willing to offend employees. The authorities had to choose some provinces as a pilot, and Shandong Province became a key pilot province because the directors and deputy directors of the Policy and Regulation Department of the Ministry of Labour all originally came from Shandong Province. Within state-owned enterprises, due to the failure to set contracts for decades, the labour contract system encountered great resistance and could only be implemented step by step in the order of province, city, county, factory, workshop. At that time, there was an incident in which a factory director was stabbed, reflecting that the grassroots did not want to implement the labour contract system.

This illustrates that after the policy was released, many areas were still reluctant to implement it due to the associated risks.

The legislators then realised that public attitudes and common values were the main impediments to the implementation of the labour contract system. It was therefore necessary to change public attitudes, so the interviewee C said he began to find a way to solve this problem.

The 1994 Labour Law introduced the requirement of a written contract, whose role was to ensure that labour relations were market-oriented and legalised. The specific historical context for this requirement warrants consideration. Interviewee H proposed that due to the Chinese tradition of oral expressions having no evidentiary value, a written contract gives people a sense of security: 'During the drafting process, some legislators asked if a verbal contract could be established, but in the end the legislators still believed it would be more appropriate to use only a written contract'. Interviewee I recalled that when working in the State Council and participating in drafting the labour law, he had strongly advocated requiring a labour contract to be in writing: 'There is a relatively complete social credit system in foreign countries, but for China it means nothing without written form.' Legislators considered whether to stipulate thresholds in terms of contract length (e.g. above one year or five years) or salary level (e.g. more than 1,000 yuan), below which the contract would not need to be written. However, these conditions were perceived as too rigid and complicated, and legislators finally decided that written form should be a necessary condition if the forms of contract were not determinable. As Interviewee I reasoned, 'In any case, this will also promote the development of China's paper industry… Similarly, for important contracts in other civil relations, the law also requires a written form.'

Interviewee C recalled that

> Five of the 28 initial drafts of the labour law sought to recognise verbal contracts. However, a few work-related injury cases had been reported to the Ministry of Labour. [One case] was due to factories were pursuing the production rate of the undertaking contracted projects. A worker was seriously injured while repairing a gate, but due to the lack of a labour contract, this incident could not be solved. For this reason, we decided to make the written format a compulsory rule. It was originally stipulated that for short-term employees within one month in the legislation draft, verbal contracts could be used, but later it was found not feasible to classify the contract form by the length of the employment period.

A written contract as evidentiary proof was the original design intention. These cases influenced legislators' ultimate decision on the institution of employment contracts.

Another reason for requiring the written format was legislators' belief that by increasing the signing and use rate of employment contracts, the iron rice bowl could

be broken. During the deliberation stage of the National People's Congress, Guan Huai and Sun Wei proposed to increase the relevant provisions of labour contract verification to standardise labour contracts. The Economic Development Research Centre of the State Council proposed establishing a normative form of labour contracts, while the Supreme Court and the Ministry of Coal proposed increasing the provisions that a contract must meet to be considered valid. In fact, the original intention of all these designs of the contract paradigm was to improve the contract signing rate.

The signing rate of labour contracts at that time also reflected the difficulty of implementing the labour contract system. Interviewee H pointed out that the root cause of disputes among the legislators in the legislation was that labour contracts were not widely implemented, especially in SOEs. The labour contract system in 1986 only represented a reform to the form of employment that was slowly breaking the iron rice bowl. It was not until the promulgation of the 1994 Labour Law that the legal contract in the market economy was determined as the basic form of employment. Given the difficulties encountered in promoting labour contracts at the time, mandating the written form increased the signing rate of labour contracts and promoted the application of the labour contract system. This also reflects that the legislation was influenced by ideals, which could in turn promote change in public attitudes.

After a series of pilots, the number of labour contract workers in China exceeded 17 million by the end of 1992, and over 60,000 enterprises had trialled the labour contract system for all employees. The total number of people participating in the reform exceeded 30 million. In terms of wage distribution, 100,000 enterprises and over 40 million employees had trialled the performance-related payment approach. The pilot system of skill-based pay had also been launched nationwide, covering over 10 million employees in various enterprises.[175] The Regulations on the Transformation of Operating Mechanisms for Industrial Enterprises under the Ownership of the Whole People were promulgated and implemented in 1992, marking a new step in corporate reform as new problems had arisen in labour management.[176]

[175] Zhu (n 149) 1-8

[176] State Council, 1992, The Regulations on the Transformation of Operating Mechanisms for Industrial Enterprises under the Ownership of the Whole People' [quán mín suǒ yǒu zhì gōng yè qǐ yè zhuǎn huàn jīng yíng jī zhì tiáo lì], 23 July 1992.

From the formulation of the Labour Law to its promulgation and implementation, the labour contract system was always a core component. There is no modern labour legal system without a labour contract system. The reform represented not only the transition from political identity to contract, and particularly from the socialist social contract to the market-driven legal contract, but also the transformation of ideas in popularising the rule of law. Li Jianfei argued that the success or failure of the labour system reform depended on the implementation of the labour contract system, and the most critical issue was the design of terms in the labour contract.[177] Labour contract legislation was of great significance in eliminating the differences in political identities of workers within the enterprise and ending the shortcomings of the parallel labour system. For example, this reform 'eliminated the identity differences of the workers that did not conform to the socialist principles', and promoted 'breaking the boundaries of identity by implementing the enterprise employee system'. Whether managers, technicians, fixed workers, labour contract workers, rotation workers, or temporary workers, all employees working in the enterprise were referred to as 'enterprise employees' and treated equally: 'All employees, including management personnel at all levels, signed labour contracts with the enterprise and were given equal responsibilities, rights and interests, thus breaking the boundaries among various personnel.'

Although the abovementioned importance was known, many people still had difficulty accepting the changes, especially the tens of millions of employees of SOEs who had the status of 'fixed workers'. The direction and path of reform was

[177] Li Jianfei once pointed out that the Interim Provisions on the Implementation of Labour Contract System in State-owned Enterprises lack provisions on some important matters concerning labour contracts, and contains some provisions that are difficult to implement due to inaccurate expressions. For example, if' 'dismissal' is equivalent to 'termination', some regulations and the development of the reform is not coordinated. It is stipulated that contract workers are treated like fixed workers, and that the implementation of the full-employee labour contract system should no longer be based on fixed workers. As Li explains, 'The Labour Contract Law is important, but the date of its promulgation is in years. It is better to take action. We can formulate administrative regulations based on the powers granted in previous years' Interim Provisions and Article 90 of the Constitution, such as labour contract conclusion methods, labour contract termination methods, etc., and single-line regulations constitute a legal network of contracts. This is a problem in practice as China has failed to formulate a civil code for more than 30 years, and then changed to the practice of promulgating the general principles of the civil law and separately promulgating the inheritance law'. See Jianfei Li, 'Chinese Labour Contract Legislation in Social Change' [shè huì biàn gé zhōng de zhōng guó láo dòng hé tóng lì fǎ] [2009] Jurist 80.

unquestionable, but the legislative reform of these workers' original identity had to take into account the triple consequences. The first was the ability to sustain of the fixed workers themselves: 'The introduction of labour contracts in the labour system required people to truly change their mindsets, which was undoubtedly very difficult. As one economist said, most of us are immersed in the interiorised old doctrine, thus the difficulty is not in the new doctrine itself but in getting rid of the old doctrine.' The second issue was the ability of society to withstand the changes. At least one family's livelihood depended on each employee, so a change in employee status affected several associated individuals, which meant that social stability had to be prioritised and could never be ignored. The third issue was the question of fairness for these fixed workers and older workers in particular. The shift in identity had changed their fixed status, meaning these workers would be pushed towards uncertainty and had to 'learn to swim in the wilderness', especially for those with only simple skills and unique posts. Therefore, in the process of drafting the labour law, there was much debate over whether a 'one-step plan' or 'incremental reform' should be followed (see Chapter 5 for further discussion of the 'one size fits all' approach).

Incremental reform, the so-called 'original system for original employees and new system for new employees', would require the identity of existing fixed workers to remain unchanged until they retired, while all new employees would be required to sign labour contracts. Thus the two employment systems would merge together over time. This legislative model was the fairest, with the smallest social shocks and the lowest short-term reform costs. However, the long-term reform costs were raised, as well as the implications of postponing for decades the reform process of China's labour and employment system, and particularly the effective implementation of the labour contract system. In addition, enterprises would have to accommodate long-term parallels of the already contradictory dual or even multiple employment systems, which would affect their production operations and economic benefits. Given these conflicting considerations, the one-step plan and the incremental plan appear alternately in the 28 drafts of the Labour Law during the period that Ministry of Labour were drafting the law.

Interviewee I pointed out that 'the foothold of the labour law was to determine the labour relationship by means of labour contracts. Many of the subsequent legal relationships would be based on this. For example, the wage system and the social

security system reforms were compatible with the labour law.' Interviewee H also commented that the biggest contribution of the Labour Law was to determine the labour contract system. He recalled that, at that time, the 'top leader' (party secretary and director) of an SOE did not need to conclude a labour contract but was simply treated as a cadre according to the primal plan. Ultimately, however, the law stipulated that all members of the enterprise must sign labour contracts, in addition to the very few cadres appointed by the state. The expanded legal relationship introduced by the Labour Law narrowed the scope of relations based on administrative appointments.

After the promulgation of the Labour Law in 1994 and its entry into force in 1995, there was still a grace period for the transition to the labour contract system. At that time, the State Council required local governments to formulate their own implementation plans and then submit the time schedule to central government for approval. According to Interviewee I, the time plan for completing the transition to the labour contract system in most provinces was two years, and in some provinces only one year.

6.2. Various Forms of Labour Contract

6.2.1. The open-ended labour contracts

When the Labour Contract Law was promulgated in 2008, there was huge controversy regarding open-ended contracts, which were used as an important content and method of dismissal protection. Their purpose is to stabilise labour relations and prevent employers from arbitrarily firing employees.[178] China's open-ended labour contract mechanism was established when the Labour Law was promulgated in 1994. This section will discuss the origin of the design of the open-ended contract as an important measure of dismissal protection.

Under Article 20 of the PRC Labour Law, the employment contract can be divided into three types according to the written terms: fixed term, open ended, and ending upon completion of specific tasks.[179] The most controversial type is the open-

[178] Baohua Dong, 'On China's Open-ended Labour Contract' [lùn wǒ guó wú gù dìng qī xiàn láo dòng hé tóng] [2007] Studies in Law and Business 53.

[179] Article 20, Paragraph 1 stipulates: 'The time limits of labour contracts shall be divided into fixed and flexible

ended contract. All the interviewees in my research expressed their view on this type of contract. To establish which factors influenced the design of this type of contract, this section will systematically present their views and comments on what was contemplated when designing this institution.

The design of open-ended contracts was particularly affected by old economic institutions during the transition to the market economy. Interviewee H (2015) explained that

> inside Chapter Three, the 'Employment Contract and Collective Agreement', the problem faced in establishing the employment contract system was the 'old workers' who were recruited under the planned economy. 'Old' workers not only refer to the workers who were ageing but also to those who had worked under the old iron [rice bowl] system for their entire life. But what if their iron rice bowl has been broken? Therefore, we designed an article for the signing of open-ended employment contracts. The purpose of this article is to use this form of contract to continue the jobs of old-type workers who are used to having the iron rice bowl.

Therefore, the design of the open-ended contract was not learned from other countries' rules but shaped by domestic demand: 'Other countries were more flexible on the terms of the contract, but in our country, it was a kind of "binding" with a relatively long-term contract' (Interviewee H, 2015).

The interviews also revealed that besides the 'one size fits all' view of the labourer mentioned in the previous chapter, another design intention of the 1994 PRC Labour Law was to strike a balance between flexibility and stability in labour market reform. Interviewee J pointed out that it was time to break the iron rice bowl but also necessary to secure the stability of the term of employment contracts. J mentioned that, when drafting the law, the officers were afraid that most units would only sign one-year contracts with their employees. If the open-ended contract were used, there would be no termination date in the employment contract. The officers considered that the parties should be free to decide the term of a contract but that it needed to be reasonable. Enterprises should have a long-term plan with a strategic periodicity objective. J said that the term of a contract shall be echelon. It is better to have all types of contract,

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time limits and time limits for the completion of a certain amount of work.'

including short-term, long-term, and open-ended, in the labour market and different terms should be decided by the nature of occupations and personnel.

Interviewee J personally thinks that although a resignation does not violate the Labour Law, it is still a breach of contract for which the employee should be liable. The 2008 Labour Contract Law only stipulates the legal obligation to fulfil the service period, but the breach of contract is not employee's responsibility: they can leave whenever they want, without any legal consequences, such that the term is a unilateral constraint mechanism only on employers. J believes this resulted from the law not clearly defining the core concepts. The Labour Law is not clear enough on stipulating the term of the contract and legally defining workers' rights and obligations. This is one of the main regrets of his participation in the legislating process.

Interviewee D also confirmed that the open-ended contract was designed to protect workers' rights under dismissal. Besides the consideration that the capital class is more powerful than labourers, she thinks that the design of this mechanism also considered age discrimination. As mentioned in the Chapter Three, there was a severe unemployment crisis in the late 1970s and workers recruited under the old employment institutions who were subsequently laid off faced the impossibility of learning new skills and never being employed again. A contract system that gave more flexibility on terminating employment relations would worsen this situation. Therefore, the legislators set conditions on termination in the design of employment contracts to protect older workers. These rules were entirely informed from local experiences; although they used foreign terminology, they did not reflect learning from others' concepts.

Interviewee G (2016) agreed with this argument and offered an explanation for the 'ten years' provision in Chapter Three, Article 20 of the Labour Law.[180] To understand this provision, we need to look back to 1983 and 1984 when the first generation of contractual workers was recruited.[181] The purpose of this ten-year

[180] The 1994 PRC Labour Law Chapter 3, Article 20, Paragraph 2 stipulates that if a worker has worked for the same employer for more than ten consecutive years, both parties agree to renew the employment contract, and the worker proposes to enter into an employment contract without a fixed period, then they shall conclude an open-ended employment contract.

[181] On 22 February 1983 the Ministry of Labour and Personnel issued the 'Notice of the Ministry of Labour and Personnel on Actively Trialling the Labour Contract System' [láo dòng rén shì bù guān yú jī jí shì háng láo dòng

period was actually to protect those workers who had signed contracts with a term of ten years. Another labour contract institution that was designed for those 'old workers' was to have two separate rules on the end of the contractual relationship: termination (*Zhong Zhi*) and revocation (*Jie Chu*).[182] According to Interviewee G, these two rules are based on the principles of non-retroactivity of law and exception to retroactivity, and serve different functions. The former is to 'loosen' regulation, and the latter is to 'tighten' regulation. Both functions are intended to protect old workers. Before the birth of modern Chinese labour law institutions, the contract could be revoked but not terminated.

Interviewee G also shared his stance on the open-ended employment contract rule. Referring to Articles 26 to 40 of the 1994 PRC Labour Law, he thinks there should be more openness on the conditions of termination protection. He specifically emphasised that Article 26, which stipulates the notice period of early termination, was designed based on Shanghai local experiences, particularly 'Er Fang Ji' ('Textile Machinery').[183] He believes that Article 26 is controversial because it gives more rights to employees than employers. Interviewee G pointed out that before the promulgation of the 1994 Labour Law, enterprises could choose to use a fixed-term contract or open-ended contract, and had freedom to decide the conditions for terminating the contract. However, at the time of legislation, the atmosphere was mainly focused on 'breaking the three irons', so the law did not mandate a termination condition in open-ended contracts.

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hé tóng zhì de tōng zhī], calling for an active trial of the labour contract nationwide and at every level, for the purpose of further advancing labour institution reform. The notice expired on 11 November 1994.

[182] In the 1994 PRC Labour Law, Thesis, Article 23 stipulates the rule on the circumstances for terminating the contract. The rule relates to revoking an employment contract as stipulated in Articles 24 to 32, 91, 98, 99, and 102.

[183] 'Er Fang Ji Experience' (Er Fang Ji Jing Yan), formerly the Shanghai Second Textile Machinery Factory, was established in 1923. At the end of 1986 it initiated the plan to reform the contract responsibility management system in national enterprises. In 199, it initiated the creation of SHANGHAI ERFANGJI CO., LTD. Published in 1992 the book *Practice of the Reform of the Full Labour Contract of Shanghai Second Textile Machinery* (Shanghai Renmin Chubanshe) introduced the factory's recent labour & personnel and wage system reforms, including the experience of leaders, practical work experience, and labour system reform programs. Interviewee G also discussed in his article that after the transformation of textile mills, the change of the main body of labour relations does not affect their survival.

Especially interesting is Interviewee G's observation that, contrary to the current stage of economic development, it is now generally believed that southern China is relatively more exoteric whereas northern China is relatively conservative. By contrast, at the time of the legislation, the south was actually relatively conservative and the radical reforms were to be carried out in the north. G said that the conservative south believed that it was necessary to write the termination condition of employment contracts into the law: 'The right to resign and the 30-day notice period is clearly written in the Summary Report of the "Er Fang Ji Experience"'. On the other hand, regarding Article 30 (he may refer to Article 29 instead), Professor Dong said that employment should be non-revocable in the following three circumstances: during the prescribed period, on disqualification, and when major changes occur in the objective situation. This is a specific design targeting the 'new workers' in foreign-invested enterprises. Interviewee G states that he personally contributed to the Labour Law by proposing these three circumstances to the legislative drafting team, who accepted his proposals. He is most satisfied with this part of the legislation, which is the most legally observing point of view of the entire Labour Law.

The focus on 'old workers' is not odd: it reflects the issue I discussed in Chapter 5, section 2, namely the influence of the term 'labourer' on the design of employment contracts. Differences in understanding of the labourer prototype exist not only in different industries but also in enterprises with different ownership types. One typical hypothesis is that the use rate of employment contracts reflects the original definition of 'labourer' coming from SOEs ownership reform. Notably, there are three different views among scholars on the status and usage of labour contracts in the reform of SOEs. First, Changzheng Zhou believes that the Labour Law was introduced to support the reform of SOEs, such that the original design prototype of 'labourer' is workers in SOEs.[184] Second, and by contrast, Dong Yan contends that the Labour Law was designed to protect the workers of private enterprises, rather than SOEs, as the implementation of labour contracts was only trialled in private enterprises in 1984. Although the reform of SOEs initiated the legislative process of the Labour Law, this reform was needed to protect older employees and compromises on the applicability

[184] Changzheng Zhou, 'Person in the Labour Act: Effects of Choice of Prototype of Laborer upon Labour Act's Implementation ' [láo dòng fǎ zhōng de rén: jiān lùn "láo dòng zhě" yuán xíng de xuǎn zé duì láo dòng lì fǎ shí shī de yǐng xiǎng] (2012) 34 Modern Law Science 103.

of labour contracts resulted in open-ended contracts to protect these older employees. Accordingly, Dong Yan contends that Changzheng Zhou has identified the wrong prototype. Interviewee H (2015) confirmed this view, asserting that the employment contract was barely used in SOEs in most places in China before 1986. The third view on which actor group had the greatest influence on the design of employment contracts was offered by Interviewee E (2019), a labour law professor at Peking University. She argues that there was a development process in the use of the term 'labourer'. The labour contract was initially piloted with newly recruited workers in SOEs; with the gradual establishment of private enterprises, all labour contracts were then trialled in private enterprises. Therefore, the workers of both types of ownerships were considered. According to Interviewee E, the first and second views are partially correct. The design of the labour contract system protects not only workers in SOEs but also private enterprises; it protects both 'old workers' and 'new employees'.

Returning to the matter of open-ended contracts, Interviewee C (2016) holds a different view on their design. He thinks that the open-ended contract system was not based on China's local situation but instead informed by German labour laws. He raised the interesting observation that most scholars proposing views on the source of open-ended contract provisions did not participate in the core decision-making process on this specific legislation. Actors in different roles had varying degrees of influence in different agencies:

> For instance, Guan Huai's idea had more influence on the ACFTU [All-China Federation of Trade Union]. However, despite their achievements and position in academic circles, the scholars still played a marginal role in the Labour Law legislation. Their functions during the legislative process were not as significant as those of ordinary civil servants working in the ministry. (Interviewee C, 2016)

This is a very significant explanation for the purposes of this thesis. It argues that the voice of legislators is missing from contemporary research, while the scholars that offer views did not participate in the entire legislative procedure.

In general, although the goal of the labour contract system was to break the iron rice bowl, allowing open-ended contracts was intended to ensure relative stability. At that time, the demand for breaking the iron rice bowl was greater. When the labour contract system was first implemented, there were no dismissal rules aside from a very

general provision on discipline violation. When the labour contract was written into the law, it legally enshrined dismissal, making dismissal possible at the national level for the first time. This created the need for dismissal protection. There are dismissal protection rules that superficially make dismissal more difficult, but in fact dismissal is feasible.

However, based on the recollections of several interviewees, when labour law rules had no fixed duration, the scope of protection was relatively specific, focused mainly on protecting 'old workers' employed under the old system. This protection has certain historical rationality. Since the founding of the People's Republic of China, the original permanent labour system has played an important role in ensuring employment for labourers and economic construction in the primary stage of socialism. Under the planned economy system, China's employment rate was consistently high. With no transition period in the process of economic transition, arbitrarily dismissal would have inevitably induced high unemployment and severe social shocks. Therefore, the legislation design recognised that some people would not fully participate in market competition within a certain period of time.[185] By contrast, the Chinese Labour Contract Law, which was promulgated in 2008, changed the conditions for signing a fixed-term contract from only meeting the two conditions of time and negotiation, increased the number of signing conditions, and becoming unilaterally proposed by the worker. This signing condition increases the possibility of entering into an open-ended contract and reduces the possibility of terminating the labour relationship. This has shifted the balance between flexibility and stability in the labour relationship set by the Labour Law in 1994.

6.2.2. Collective agreement

This section will discuss the domestic idea and international reference points on the collective agreement institution in the birth process of the 1994 PRC Labour Law. Collective agreement in China featured in the Common Programme in 1949.[186] In

[185] Dong (n 24) 59.

[186] Chinese People's Political Consultative Conference, 'Common Programme of the Chinese People's Political Consultative Conference [zhōng guó rén mín zhèng zhì xié shāng huì yì gòng tóng gāng lǐng], 1949. Article 32 stipulates that 'In privately-owned enterprises, in order to carry out the principle of benefitting both labour and capital, collective agreements shall be signed by the trade union, representing the workers and employees, and the

June 1950 the Trade Union Law of the People's Republic of China, passed by the Central People's Government Committee, stipulated that

> In state-owned and cooperative-run enterprises, the trade union has the right to represent the employed workers, and the employees participate in production management and conclude collective agreements with the administration.…In private enterprises, the trade union has the right to represent the employed workers, the group of employees, and the management to negotiate, participate in the labour-management consultation meeting, and conclude a collective agreement with the management.

As shown by these two legal documents, only private enterprise have collective agreements. The reason is that, under the planned economy, public-sector organisations are owned by all the people. As discussed in Chapter 5, the state is the owner of the means of production, not an employer. Theoretically, employees of SOEs have common interests with these enterprises, and so will not stand against or seek to negotiate with them. After China completed its socialist transformation in 1956,[187] the collective agreement system gradually disappeared.[188] However, the 1994 Labour Law included clauses on collective agreement. Therefore, debate on the design of collective agreement was another focusing issue during the legislative process.

Some scholars persist in believing that the collective agreement provides a means for trade unions and organisations to negotiate, while others believe that collective agreement concerns security and welfare. The latter view prevailed among

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employer.'

[187] The Socialist Transformation, also known as the 'Three Great Remolding' (sān dà gǎi zào), refers to the socialist transformation of agriculture, capitalist industry and commerce, and handicrafts organized by the Communist Party of China nationwide following the founding of the People's Republic of China. By the end of 1956, China had completed this transformation, with the social economic structure fundamentally changed, the socialist economy gaining an absolute advantage, and socialist public ownership becoming the economic foundation of society. See Jianhua Sun and Wanhua Yu, 'The "Three Major Reforms" Laid the Institutional and Economic Foundation for China's Socialist Modernization' ["sān dà gǎi zào "diàn dìng le zhōng guó shè huì zhǔ yì xiàn dài huà jiàn shè de zhì dù hé jīng jì jī chǔ] [2019] Studies on Mao Zedong and Deng Xiaoping Theories 71.

[188] Xiangqian Wang, 'The Historical Development of the Collective Agreement System and Its Enlightenment' [jí tǐ hé tóng zhì dù de lì shǐ fā zhǎn jí qí qǐ shì] [2000] Journal of Qinghai Nationalities University (Education Science Edition) 52.

the legislators. This section will expound the ideas of the legislative actors on collective agreements in China and the influencing factors.

The transition to the collective labour legal system is a hard process. Legislative actors were especially cautious regarding collective agreements and how to regulate them. Their greatest concern was the uncertain direction of the reform. The idea related to the new thing is still tentative, so it must leave some spaces. During the legislative process, both experts and officers contended that collective agreement would be an important component of the law. The starting point of discussion, again, concerned the definition of the key terminologies. With little use of collective agreements domestically, actors referred to international rules. Article 4 of the ILO Convention C098 – Right to Organise and Collective Bargaining Convention, 1949 encourages and promotes the machinery of negotiation between employers or employers' organisations and workers' organisations on the terms and conditions of employment by means of collective agreements.[189]

Xiaowu Song thinks that individual behaviour in labour law is based on the contractual relationship between individual workers and individual employers, while organisational behaviour refers to the behaviour of labour unions and employers' organisations to determine labour conditions through collective bargaining in the labour market.[190] The role of collective agreement is to resolve disputes in accordance with the terms of autonomous agreements between employers and employers in the event of conflict. Third parties generally play an intermediate role in arbitration and mediation. As long as the negotiated terms are within the scope of the minimum standards, they should be stipulated by both employers and employees. Therefore, issues such as wages and working conditions in the labour market are addressed through conciliation between enterprises and trade unions. The government does not make specific regulations but only guarantees minimum standards. Song's idea closely resembles Article 4 of ILO Convention C098. Similarly, when explaining the

[189] International Labour Convention No. C098, Article 4: 'Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

[190] Song (n 189)

legislation, Zuoji Zhang asserts that the establishment of the collective labour agreement system was based on internationally accepted practices and successful experiences of corporate reform pilots; China uses collective agreements as an important mechanism for adjusting labour relations and the basis for signing individual labour contracts. [191]

Having reviewed the legislation drafts, Guan Huai counters that although the importance of collective agreement was recognised, the law did not completely follow international practice; only three articles in the law are devoted to such an important rule.[192] Moreover, using the word 'can' (*ke yi*) in the stipulation 'Employees and companies can sign collective agreements on matters such as labour compensation' greatly affected the establishment of the collective agreement system. In general, Guan thinks that the clauses on collective agreement in the 1994 PRC Labour Law are inadequate to meet practical needs. The lack of clear and sufficient stipulations on collective agreement may be due to the legislative pressure facing legislators at that time: as Guan explains, 'The guiding idea of this legislative work is "fast"'. The urgent need for this law allowed insufficient time for a more detailed rule.[193] Therefore, to fit China's domestic situation and promote the introduction of the Labour Law, the provisions on collective agreements are not as detailed as in international practice.

Regarding the nature of collective agreements in China, Interviewee D thinks that socialism was crucial to the design of this mechanism.[194] D recalled that in the

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[191] China Lawyer Reporter (n 50) 40.

[192] Song (n 99) 346.

[193] Qiaoling Liu, 'Professor Guan Huai and His Love with the Labour Law' [guān huái jiāo shòu yǔ tā de láo dòng fǎ qíng yuán] *Legal Daily* <http://big5.workercn.cn/big5/character.workercn.cn/364/201404/02/140402112210699.shtml> accessed 20 December 2018.

[194] To be clear, some narratives contend that 'collective agreement' in the context of the 1994 PRC Labour Law refers to something very different from Western market-economy notions of 'collective agreement'. In China, this term does not refer to agreements between freely representative workers through trade unions and enterprises, nor to free contractual or quasi-contractual agreements. Instead, they are dictated through organs that all form part of the planned economy. There has nearly always been only one trade union in China's socialist planned economy: the All-China Federation of Trade Union (hereafter the ACFTU). Its role in the socialist economy differs greatly from that envisaged for trade unions under international conventions on freedom of association (eg ILO Convention C087) and the right to collective bargaining (eg ILO Convention C154). In short, the distinctive differences lie in

early stage of the PRC, labour law was taught in higher education. Law school students studied the Soviet Union's labour law and regulation. Although the 1994 PRC Labour Law was informed by not only the Soviet Union but also many other countries' experiences, the collective conciliation system followed the Soviet model of collectively consulting on the terms of the collective agreement in order to plan for the production index, but not to negotiate.

The legislative actors saw collective agreement as a 'new idea for China; collective agreement is put into the new law only on a trial basis'.[195] Because this system involved collective relations between the working and capital classes, many ideological orientations are assumed to have shaped this legislation. Hilary Josephs speculates that, perhaps on the surface, the Chinese government may consider that allowing the independent union activities existing in other countries to spread to China would threaten the country's political and economic development.[196] Legislators were undoubtedly informed by foreign experiences. Evidence shows that since 1989 the Ministry of Labour has submitted many research materials on foreign systems to the State Council. In the process, administrative staff members like my interviewees have been studying foreign labour law systems,[197] including the social status and international development trends that occurred during the 1980s.

The collective agreement in China is actually a special type of contract, which under the Chinese socialist system is a use of public power to provide benefits and security for workers, instead of allowing opposition, conflict, or negotiation. In this regard, the collective labour contract under the market economy system and the collective labour contract with Chinese characteristics are substantially different.

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the functions of the trade union. In socialist countries, it is a transmission belt for state policy. For more detailed discussion and comparation between the two notions under socialist and market economies, see LM Nagy, *Socialist Collective Agreement* (Akadémiai Kiadó 1984); F Schmidt and AC Neal, 'Collective Agreements and Collective Bargaining' in O Kahn-Freund and BA Hepple BA (eds), *International Encyclopedia of Comparative Law, vol XV: Labour Law* (1984).

[195] China Lawyer Reporter (n 50) 41.

[196] Hilary Josephs, 'Labor Law in a socialist market economy: The case of China' 571.

[197] Most interviewees were working in the government during the legislation process. For more detailed information, see the interviewee list in Chapter 2, section 2.

Given that China refuses to admit that there are conflicts between labour and management,[198] what did the government recognise when introducing the Labour Law? Interviewee C (2019) offers a different idea about the mechanism of collective agreement, contending that it serves as a 'double protecting contract' (*Shuang Bao He Tong*). C explained that 'double protecting' means that the enterprise administration guarantees workers' wages and benefits growth plan, while the trade union guarantees that workers can complete production tasks.

On this basis, the term 'mutually guaranteed contract' seems appropriate.[199] If based on the concepts of 'double protection' or 'double guarantee', these are new terms in China that do not come from other jurisdictions. In China, this type of contract is not concluded based on confrontation but is instead used to guarantee benefits and production. Chinese industrial relations were deemed to be characterised by converging interests and objectives. Interviewee C (2016) explained that the annual wages raises are not due to negotiation or bargains but to the socialist mechanism.

During the official legislative process, the designer of this special mechanism was Jichen Liu, who used to be leader of the Legal Work Department of the ACFTU. Interviewee I (2016) recalled the first legal enshrinement of the idea of collective agreement in the history of the People's Republic of China. During the legislative process of the PRC Labour Law, the guiding principle was being practical, which suited the purpose of putting this idea into law.

The abovementioned concepts reflect basic understanding of the thoughts of legislative actors on the nature and origin of the collective agreement. Based on their statements, it seems that they all noticed the differences between collective and individual contact, yet they were ultimately listed in the same chapter of the 1994 Labour Law. My research shows that this was decided in the last stage of the legislative process. Until the legislative work entire in the People's Congress legislative stage, the participants also discussed this issue. Huai Guan understands that the collective agreement differs from the (individual) labour contract and argues that it should be stipulated in a separate chapter. The final legislative process in the

[198] Ngok, 'The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition' 53.

[199] In Chinese, 'guarantee' (*Bao Zheng*) and 'protection' (*Bao Zhang*) are using the same abbreviation here.

People's Congress was conducted only a few years after the strenuous vibrations in the international political environment in the late 1980s. Against this background, Chinese policy makers were more conservative on the issue.

From Interviewee C's perspective, the double guarantee or double protection mechanism does have Chinese characteristics but essentially does not differ from the system abroad. C asserts that some domestic scholars misunderstand foreign countries. China's two-way protection actually endorses the internationally recognised rights and obligations of both parties to the contract, that is, mutual promises and guarantees. Thus, this thesis questions not how China differs from other countries but why it emphasises differences between two matters that are the same. This thesis argues that the essence of the labour law system China has introduced is the same as that of other countries, albeit framed using different notions. Only in this way can everyone accept the implementation of this system and the entire Labour Law. Whereas Western legal concepts start from rights and their protection, China has historically emphasised duties and is still influenced by the ideas of 'planning', 'collectivism', and 'dedication'. Also, this emphasises only the employer's obligations, not rights. In other words, emphasise the obligation and everyone can accept it. Letting everyone accept this approach first is also for the needs of reform.

Overall, the so-called Chinese characteristics may not been understood correctly or may overemphasise the differences. It is just a narrative that employs more acceptable terms. At the time of the legislative process, the idea of collective agreement abroad was confrontational, so China had to make a statement that was gentler and more acceptable to everyone. This once again reflects the importance of studying the text in the legislative process of the Labour Law. To overcome the theoretical obstacles encountered in the market economy reform. Although the interviewees firmly believe that China's system differs from that used abroad, it is essentially the same.

6.2.3. Hidden logic behind various form of labour contract

If the contract system does not, as many have argued, distinguish with other countries that have Chinese characteristics, then what is the hidden logic behind the design of this entire system? From a historical perspective, the labour system of the People's Republic of China began with the relief and placement of unemployed people. Two

terms have predominated: *Shi Ye* ('unemployed') and *Dai Ye* ('awaiting job assignment'). During the 1980s and 1990s, those not in employment were referred to as *Dai Ye*, which is softer in tone than *Shi Ye* but has no practical difference.[200] This reflects the public fear of unemployment under the planned economy.

The interviews clearly indicate that the fundamental principle and core objective is to protect workers' labour rights. The various interpretations propose three main bases of the legislative principle of the Labour Law: the Constitution, civil and commercial law, and the principle of inclined protection.[201] This section will discuss how these principles may have influenced the legislative process and propose that the Labour Law was based on the principle of inclined protection (or 'leaning protection' in some articles) from the perspective of legislative spirit. This assertion is supported by the relevant records of the legislative process.

The principle of inclined protection forms the basis of the Labour Law given the consensus on protecting labourers and labour rights at the time of its design. In fact, legislators foresaw that the weak position of capital was short term and that the market economy reform would lead to a situation of strong capital and weak labour. Therefore, the Labour Law was shaped by the long-term prediction and belief that market economy reform necessitated support from the state. A very important feature of elite legislation is that instead of public pressure leading to change, the elites' ideas are transformed into the final policy choice.

In the 20th century, with the 'ghost of communism' lingering in the European continent, the image of 'human' in civil law had changed from the original contractual relationship with freedom, equality, and autonomy to a weak and dependent position in the relationship. Shangkuan Shi believes that this justified state intervention and that the birth of labour law is based on this assumption.[202] However, was the inclined

[200] Interpretation of the People's Republic of China Social Insurance Law (Fourteen) 2012, Ministry of Human Resources and Social Security tr.

[201] Yanjun Feng, 'On the basic principles of Labour law' [lùn láo dòng fǎ de jī běn yuán zé] [2000] Law and Social Development 25.

[202] Weiling Zhong, 'Distinction between Strength and Weakness: "Labour" in Chinese Labour Law Theory [qiang ruò zhī biàn :zhōng guó láo dòng fǎ xué lǐ lùn zhōng de "láo dòng zhě "] (2018) 17 Law and Social Sciences 134.

protection principle established since the birth of China's Labour Law in the late 20th century? How was the principle established?

Historically, labourers in the socialist planned economy were the ruling class, rather than weak as in the modern sense, and their status at that time deviates from the basic principle of and theoretical basis for labour law. For the introduction of labour legislation, this theoretical basis has clearly changed. In socialist theory, the purpose of labour law and policies is to serve the victorious ruling class in its class struggle by creating equality and providing welfare.

Under the conditions of China's market economy, modern labour legislation has changed the theoretical basis once again. Yuling Zhong found that there was a hybrid approach to achieve compromise and progression, namely the survival of political discourse and the transformation of 'modernisation'.[203] Looking back at the process of the legislation itself in an interview for this research, he/she asserted that there are two different concepts in modern labour legislation.

Some scholars contend that the principle of inclined protection of labourers was not prominent in the 1994 Labour Law. According to Zuoji Zhang,

> The main purpose of the 'Labour Law' is to protect the legitimate rights and interests of workers, and to consider the equality of rights and obligations of both the employers and the employees. For example, while stipulating that employees can resign, they also stipulate employers have the rights to dismiss employees in accordance with law, so as to ensure the employment autonomy of both workers and employing units.[204]

Thus, the legislation was intended to emphasise the equality of employees and employers, since Marxist socialism decrees that the labourer is the master of the state and the weakness of labourers did not form part of the political discourse.

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[203] ibid. Zhong believes that during the labour legislation, scholars have continued to interpret the socialist attributes of labour contracts based on political discourse. The labourers remain unchanged for the ruling class. The flaw in this formulation is that it denies the workers' subordination. At the same time, labour contract theory emphasizes modernization, specifically using the Western legal concept to find the meaning of reasonable existence for the legitimacy of labour law norms.

[204] China Lawyer Reporter (n 50) 40.

In other words, it was only when the Labour Law was being designed that lawmakers recognised the weak position of labourers compared to the capital class. Interviewee I proposed that several years after the Labour Law was implemented, the problem of equal protection gained prominence and legislators began to realise that workers were relatively weak. Given the impossibility of individual labourers negotiating with enterprises, the ACFTU recommended collective labour contracts. From around 1997–1998 the lawmakers discarded the original labour contract regulations and began to draft many versions of the Labour Contract Law. When Interviewee I resigned from the State Council, the legislation work was almost complete. The wage arrears of rural migrant workers had become so serious and social appeals were becoming so strong that the government resolved to legislate, especially when Wen Jiabao became the Premier. The legislation of the Labour Contract Law was laid before the Standing Committee of the State Council on three occasions and was passed at the third attempt. The terms of the Labour Contract Law are not well established, as too many changes were made in reaction to social circumstances. Unlike the Labour Law, the Labour Contract Law was introduced against the background of the violation of rural migrant workers' rights and unpaid wages.

The Labour Law had created a loophole. Since this legislation did not recognise the idea that capital holds the power and workers are weaker (particularly regarding negotiation), scholars such as Huai Guan asserted that 'the Labour Law could not fit today's market economy' and the changed reality it represented. At the time of the Labour Law's implementation, China had just entered the early stage of the market economy and the legislative basis was still adjusting labour relations under the planned economy; the country lacked experience in dealing with problems arising under the market economy. Nowadays, China's labour relations have undergone tremendous changes, becoming complicated and legalised; non-public ownership labour relations have been soaring, leading to a diversified situation. Labourers are now more vulnerable than employers. Guan Huai believes that the Labour Law is weak in adapting to this environment to safeguard the rights and interests of workers.

Even during the legislative stage in the State Council, although some representatives raised the issue of protecting workers, they also emphasised the equal status of employers and workers (Interviewee I, 2016). This is in line with the historical background of the planned economy and the protection of workers' rights

and interests, notwithstanding the 'inclined protection' principle. The main considerations of legislators at that time were to break the three irons of the planned economy and promote equality of employment, rather than protect workers.

At that time, all SOE employees were guaranteed child education, medical insurance, pension, and other benefits. Thus, the protection of workers' rights differs between planned and market economies.

Interviewee G (2016) offers the alternative perspective that the principle of inclined protection was the original intention when designing the Labour Law. He explained that the principle of inclined protection appeared in legislation as early as in the 1950s: 'I have worked on the "Er Fang Ji Experience", which inspired the design of the Labour Law. It was me who proposed including the inclined protection principle in labour law legislation when I worked as the counsellor for the Ministry of Labour'. (Interview, G, 2016) Interviewee G takes the Er Fang Ji Experience as the origin of the articles precluding fixed-term contracts and providing dismissal protection. G claims that he proposed including the principles of protecting the weak, the compatibility of labour and capital, and inclined protection in the legislation. He recalled having been influenced by the German Civil Law applying private law principles to equality and the formation, change, and discharge of labour contracts, and public law principles to the labour standards. The viewpoint that the inclined protection principle was established during the labour law legislation was confirmed by Interviewee J (2017): 'the inclined protection principle shaped most articles to protect workers, and that is why people from economic circles complain about the Labour Law'.

Guanxue Liu and Jianfei Li, directors of the Ministry of Labour responsible for drafting labour laws, believe that the Labour Law has more social functions than purely economic legislation, with a focus on protecting workers' rights.[205] Jiazhen Zhu also believes that labourers and enterprises are two independent and equal subjects, and that labour contracts are legally concluded between the two entities. To establish labour relations according to the labour contract is to give employing units

[205] Guanxue Liu and Jianfei Li, 'Adapt to the Needs of the Socialist Market Economy and Formulate the Labour Law with Chinese Characteristics' [shì yīng shè huì zhǔ yì shì chǎng jīng jì de xū yào, zhì dìng jù yǒu zhōng guó tè sè de <láo dòng fǎ >] [1993] Review of Economic Research 818.

and employees the same autonomy to form, change, terminate, or discharge labour relations.[206] These views demonstrate that some legislators insist on the principle of equality of subjects and the sharing of rights and obligations.

Another concept opposite to the inclined protection of labourers is 'benefitting both labour and capital'. This idea first appeared in Article 32 of the Common Program in November 1949, which mentioned the advancement of production, promotion of the economy, considering public and private interests, and benefitting both labour and capital.[207] According to this policy, the main task of the labour departments at that time was to adjust labour relations and relieve jobless workers. Regarding contemporary Chinese workers' wages, welfare, and social insurance, a book published in 1987 records the concept of benefitting both labour and capital, according to which the government implemented the *Si Ma Fen Fei* (Four-horse Fattening) policy[208] requiring the profits of private enterprises to be divided into four equal parts: one quarter is paid to the state in the form of income tax; another quarter is reserved for the company's provident fund; one quarter is assigned to wages and bonuses for workers; and the other quarter is distributed to shareholders according to the size of their shareholding. However, the concept lost its ground after 1994. After 1994, pilot projects to establish a modern enterprise system were launched in state-owned enterprises. The goal of establishing a modern enterprise system is to reform the property rights structure so that state-owned enterprises become modern enterprises with "(have) clear property rights, clear the rights and responsibilities, separate the government and enterprise, and scientific management". Under the modern enterprise

[206] Zhu (n 149) 6.

[207] Common Program of the Chinese People's Political Consultative Conference, 1949 (issued on and effective from 20 September 1954.

[208] 'Four-horse fattening' (Si Ma Fen Fei) is a political Chinese slogan that means distributing the profits of enterprises between the state, tax, workers, and welfare. It was a way for capitalist enterprises to achieve redemption in the socialist transformation. In June 1952 Mao Zedong proposed a 'four-horse fattening' approach at a meeting within the Chinese Communist Party. See Chunlin Shi, 'Revision of the three main issues of "Four Horses and Fertilizers"' [guān yú "sì mǎ fèn féi "sān gè zhǔ yào wèn tí de dìng zhèng] (2016) CPC History Studies 117-122.

property right structure, the government cannot directly control and operate state-owned enterprises.[209] Four-horse Fattening has never been mentioned since then.[210]

Therefore, the idea about the strength of workers compared to capital has been discussed by legislators but has not reached a constant answer or written in text, while the inclined protection principle has been less disputed in comparison with the 2008 Labour Contract Law. Considering the various labour policies of the People's Republic of China, did the birth of the Labour Law put more emphasis on the protection of labourers? In fact, there was almost no change on this idea at the institutional level, and the principle of inclined protection existed before the legislation. The articles of the Labour Law used more mild and tactful words to overcome the barriers to legislation. However, it was not until the legislative stage of the Labour Contract Law that inclined protection began to be emphasised, as the idea of the employer as more powerful came to be recognised. However, protecting the rights of the workers was the legislative purpose of the Labour Law from the beginning, and the concept of protecting workers has always been pursued.

6.3. Summary

By presenting a comprehensive picture of the old system, we can clearly see that many of the provisions in modern Chinese labour law are creative and unprecedented at the level of national law. Specific technical issues, such as what should be included in the labour contract and how to sign, change, and terminate the contract, had to be considered in designing the terms. On the specific content of the labour contract, there were many discussions and differences in the Labour Law legislation process that shaped the finalised clauses.

To inform understanding of how China carried out labour contract reform before 1994, this section illustrated the characteristics of China's labour laws and regulations before the modern labour contract system was introduced, and presented the process

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[209] Ren Xi, 'State-owned Enterprise Reform in 1995' (*China.com.cn* 17 December 2008) <http://www.china.com.cn/news/zhuanti/zgztk/2008-12/17/content_16961083_2.htm> accessed 07 December 2019

[210] Liqun Deng, *Contemporary China's Employee Wages and Benefits and Social Insurance [dāng dài zhōng guó de zhí gōng gōng zī fú lì hé shè huì bǎo xiǎn]* (China Social Sciences Press 1987).

through which the new system was gradually formulated by introducing different labour policies. The introduction of labour policies, starting from the reform of recruitment system, began to break the iron rice bowl. Subsequently, the iron system of labour contract and employment began to be transformed into the modern labour contract system in China.

Although introducing the labour contract system and various form of labour contracts is generally believed to represent a neoliberal approach towards the market economy, these reforms in China actually retained the socialist idea of inclined protection for workers. The Labour Law technically avoided overt reference to the principle of inclined protection in order to avoid controversies. Judging from the legal text and interviews with the legislators, however, inclined protection is actually central to the 1994 PRC Labour Law.

Chapter 7 Labour Standards：Wage and Working Hour Systems

The wage and working hour systems are two important components of the basic labour standards in China. The working hour, leave, and vacation mechanism is stipulated in chapter 4 of the 1994 PRC Labour Law, articles 36–45. The wage mechanism is stipulated in chapter 5 of the Labour Law, articles 46–51. From a social perspective, the standards set by these two subsystems do not only guarantee the health and livelihood of workers, they also ensure employers' economic development and enable social stability. Moreover, these standards feature the economic control of labour cost accounting, making them a very important topic of discussion in the process of legislation. As mentioned in last chapter, however, all the labour standards under the mode of the planned economy were formulated by the state in a unified manner (the 'old three iron'). Therefore, the transformation of the wage and working hour systems reflected the respective institutional reforms in the field of Chinese labour law. Under the market economy, the three parties have their own needs: the state rationalizes resource allocation in accordance with its role; employers seek maximal profits; and employees pursue higher wages and welfare safeguards. The intersection of the three parties' interests is the basic labour standard. This chapter will briefly discuss the transformation process of the two subsystems—wages and working hours—which reflects not only the role of the market economy but also the spirit of labour law in protecting the right to work.

In fact, the 'equal treatment' dilemma on the wage and working hour mechanisms is currently quite controversial and concerning because it is difficult to enforce and protect labour standards in small and medium enterprises. In practice, it is especially reflected in the payment of overtime. Although academics generally believe that overtime work should be paid, and the law also stipulates the payment of overtime and sets wage standards, a huge number of labour dispute cases are claims for overtime pay.[211] While discussing why the standards are difficult to enforce in practice, we need to also understand the original intention of the 1994 PRC Labour

[211] Guoliang Zhou and others, 'Expert Point of View: Overtime and Overtime Pay' [zhuān jiā shì diǎn ： jiā bān hé jiā bān gōng zī] (2008) China Labour 6–17

Law in China. This chapter uncovers the basis of the labour standards established and the original legislative intent through a review of the formulation of the wage and working hour systems in the legislative process.

7.1.Working Hours, Leave, and Vacation

In China's working hour system, a large part of the provisions regulating the working hours that cannot be implemented concern overtime pay. Thus, it is necessary to clarify the scope of China's standard working hours in order to define overtime. Before the Labour Law was passed in 1994, a 48-hour work week was normal in China—that is, it was normal to work six days a week and for eight hours a day. In the legislative preparation stage during 1989 to 1992, the Ministry of Labour collected data on the working hour systems and practices of many countries and regions around the world for reference but was uncertain whether those various standards could be tailored to suit the national conditions and demands of China's economic development at that time. First, the economy was developing and needed workers to work a certain number of hours to increase the quantity of production. Second, since China is a socialist country, the legislators thought that it should not set a standard of working hours that exceeded the total working hours of capitalist countries. Therefore, the legislators decided to establish a working hour system with Chinese characteristics. Reflecting both production demands and labour protections, as well as China's national conditions, the Ministry of Labour proposed its preliminary questions for discussion on working hours at the legislative stage: (a) Is it feasible to implement a five-day or five-and-a-half-day work system in a unified manner at the present stage? (b) Is the working time stipulated by law a unified standard or the highest standard? In other words, can employers set their own working hours? (c) Should the practice of overtime work be restricted by law? (d) Should the international standards of rest and leave be incorporated into the Labour Law so that there is a law to guarantee workers' right to leave in a unified manner? (e) How can the relationship between paid leave and family reunion leave (with Chinese characteristics) be coordinated by law? (f) What are the conditions required for paid leave?

7.1.1. The Timeline Established by Law for the Working Hour System

The concept of the 10.5 hour workday was first proposed by a UK factory owner called Robert Owen in 1815.[212] He claimed that shortening working hours can produce products at the same low cost because the workers were less fatigued. Followed by his successful experiment, by the end of the century, more and more people were calling for eight-hour working day, and it was turned into the Factory Act in the UK.[213] After the positive impact on productivity were showed by various pioneering experiments in John Rea' report in 1894, the eight-hour workday system was ultimately incorporated into the 'Hours of Work (Industry) Convention 1919 (No. 1)', which was the first ILO convention.[214] According to this convention, the principle of working 'eight hours per day, 48 hours per week' was first established in the manufacturing industry, and then this system spread and was formalized within the domestic law of capitalist countries. In China, the 'Common Programme of the People's Republic of China' (hereinafter the Common Programme) established the first embryonic form of the 'eight-hour working system'. Article 32 of the Common Programme stipulated that state-owned and private enterprises should in general implement a working system of 8–10 hours and that special circumstances would be considered within reason. When the national economy had recovered from the destruction of the long war period in 1952,[215] the 'Decisions of the Government Administration Council on Labour and Employment Issues' stated:

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[212] Robert Owen, 'Observations on the effect of the manufacturing system: with hints for the improvement of those parts of the system which are most injurious to health and morals' printed by R. and A. Taylor, 1815. *The Making of the Modern World*, <https://link.gale.com/apps/doc/U0103306385/MOME?u=peking&sid=MOME&xid=34ebe0ab> Accessed 7 December 2019.

[213] Peter Dolton, 'Working hours: Past, present, and future' (*IZA World of Labor,* November 2017)<http://wol.iza.org/articles/working-hours-past-present-and-future> accessed 9 December 2019

[214] Jon C Messenger, Sangheon Lee, and Deirdre McCann, *Working Time Around the World: Trends in Working Hours, Laws, and Policies in a Global Comparative Perspective* (Routledge 2007)

[215] Tingxuan Chen, 'Commodity Market and Price Management in the Period of National Economic Recovery (1949-1952)' [guó mín jīng jì huī fù shí qī (1949—1952 nián) de shāng pǐn shì chǎng yǔ wù jià guǎn lǐ] (1995) Researches in Chinese Economic History 71-77

> In order to protect the health of employees, improve labour productivity, and increase the employment rate, the working system of 8-10 hours shall be implemented in a planned manner and step by step, and all the large mining and transport enterprises for public-private partnership shall carry out the 8-hour working system as much as possible. All the overtime work in state-owned and private enterprises shall be strictly restricted.[216]

Over the next few years, the Chinese authorities promulgated some provisions on working hours which were mostly industrial regulations for the construction, textiles, mining, and chemical industries. On 8 June 1956, the State Council issued the 'Provisions for the Implementation of the Eight-hour, Short Week Work System in the Construction Industry', pointing out the following:

> There was the disordered and non-unified management of the current working hour system in the construction industry, such as 8 hours, 8.5 hours, 9 hours, even 10 hours. Such long working hours affected the health of employees and their cultural and technical improvement. Therefore, it is decided that the construction industry shall implement the 8-hour week work system from July 1, 1956.[217]

In the 1970s, China reformed the working hour system in more areas such as the forestry and underground industries, the chemical industry, and the fields of metallurgy and textiles. At present, the system of 'working in three shifts with four groups' is employed in the textiles industry, and four shifts at six hours long are implemented in the coal mining industry. In accordance with the 'Opinions of the Ministry of Chemical Industry and the Ministry of Labour on the Reform of the Working Hour System for Workers with Toxic and Hazardous Operations in Chemical Industry' issued in 1981, the system of 'working for three days and one day for leave' and the working system of six-hour and seven-hour days was implemented for workers in the toxic and hazardous chemicals industry based on its characteristics and conditions. In order to protect the health of employees, it also stipulated that the practice of 'regular separation in turn from the toxic and hazardous operations' shall

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[216] Government Administration Council, 1952, Government Administration Council's Decision on Labour and Employment Issues [zhèng wù yuàn guān yú láo dòng jiù yè wèn tí de jué dìng] issued on 8 June 1952

[217] State Council, 1956, Provisions for the Implementation of the Eight-hour, Short Week Work System in the Construction Industry [guān yú jiàn zhù yè shí xíng 8 xiǎo shí，xiǎo lǐ bài gōng zuò zhì dù de guī dìng] issued on 8 June 1956

be carried out for one and a half months to two months before the employees' return to the original workplace after a work-related injury.[218]

There was also an overtime system in place that existed before the reform in China, as the Ministry of Labour regulated paying overtime to workers in May 1956. In July 1956, it sent a reply letter to the Labour Administrative Department (including the labour authorities in Liaoning, Jilin, and Heilongjiang provinces) on the examination and approval procedures for extending employees' working hours on holidays, in which overtime work would only be allowed if enterprises had a special need for it. However, rules at that time was primarily focused on working overtime on statutory holidays and public holidays (Sundays). In the 1960s, paying double wages for working on statutory holidays was considered a material incentive. Therefore, some employers in certain regions even stopped paying overtime.[219] It was not until 1969 that the Ministry of Labour granted the revolutionary committees (the then administrative agency in China) of provinces, municipalities, and autonomous regions the ability to decide on methods of paying overtime themselves. In 1978, the State Labour Administration approved the practice of overtime pay based on 200% of the daily standard wage.

Finally, a national unified system of working hours was enshrined in the Labour Law in 1994 which no longer distinguished between industries, trades, or ownership types. On 24 January 1994, the State Council issued the 'Regulations of the State Council on Working Hours of Employees' in accordance with the provisions of the Constitution of the People's Republic of China. It offered a logical system of working hours and holidays, maintained the worker's right to rest, mobilized their working initiative, and improved the development of socialist modernization. The regulations stipulated that 'the state shall practise a working system under which workers and staff shall work 8 hours a day and 44 hours a week.'[220] When necessary to shorten the

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[218] Ministry of Chemical Industry and Ministry of Labour, 1981, Opinions of the Ministry of Chemical Industry and Ministry of Labour on the Reform of the Working Hours System for Workers with Toxic and Hazardous Operations in Chemical Industry [huà gōng bù yuán guó jiā láo dòng zǒng jú guān yú zài huà gōng yǒu dú yǒu hài zuò yè gōng rén zhōng gǎi gé gōng shí zhì dù de yì jiàn] issued on 24 June 1981

[219] State Labour Administration Policy Research Office, *Decision on Labour and Employment Issues* [zhōng guó láo dòng lì fǎ zī liào huì biān] (Workers Press 1980)

[220] State Council, 1994, State Council Regulations on Working Hours of Employees [guó wù yuàn guān yú zhí gōng shy zuò shí jiān de guī dìng] issued on 3 February 1994, effective on 1 March 1994

working hours due to special conditions or in special circumstances, the special working hour system shall be implemented in accordance with the relevant provisions of the state; where it is necessary to implement the system of non-regular working hours due to the limitation of the nature and duty of work, the average working hours of the employees shall not exceed 40 hours per week.

The Labour Law of the People's Republic of China (1994) not only elevated the new system of working hours into a national legal system but also emphasized two 'no more than' rules in the working hour system. That is, 'the state shall practice a working hour system under which employees shall work for no more than eight hours a day and no more 40 than hours a week on average'. In addition, the Ministry of Labour issued the 'Examination and Approval Methods for Enterprises to Implement Irregular Work Schedules and Comprehensive Calculation of Working Hours' in 1994, which also stipulated the system of special working hours and regulated the work that did not apply to the regular working hours rules.[221]

7.1.2. Legislative Discussions on the Design of the Working Hour System

At the legislative stage, the discussions on working hours first referred to the existing labour law systems of other countries. Apart from the ILO's 'Hours of Work (Industry) Convention', France was the first country to set statutory standards for working hours. In 1919, France began to fully implement the eight-hour working system with a ceiling of 48 working hours per week. In the United States, the federal government extended the scope of the eight-hour system (that had only been applicable to child workers) to government employees in 1912. After the Great Depression, more states began to implement the eight-hour system. For example, the United States decided to apply the 'The Fair Labor Standards Act' to all employees in 1938.[222]

In reference to the traditional working hour standards in other countries at that time, Interviewee C pointed out that 'China is a socialist country, so the working hours

[221] Ministry of Labour, 1994, Examination and Approval Methods for Enterprises to Implement Irregular Work Schedules and Comprehensive Calculation of Working Hours [guān yú qǐ yè shí háng bú dìng shí gōng zuò zhì hé zōng hé jì suàn gōng shí zhì de shěn pī bàn fǎ] issued on 14 December 1994, effective on 1 January 1995

[222] Fushan Ren, *World Labour Legislation* [shì jiè láo dòng lì fǎ] (China Labour Press 1991)

cannot be too long.' (Interview, C, 2017) China's regulations on overtime work reflect the fundamental nature of socialism. The reason for the reduction from the original 42 hours per week to 36 hours was that the 1994 PRC Labour Law was the first labour regulation in socialist China. According to Interviewee C (2016), 'there are only 20 working hours per week in Brazil at that time', and 'China's working hours cannot be longer than those of the capitalist countries'. Also, it is obvious that the Chinese legislators referred to the international standards at that time while they attempted to develop a relatively higher standard of working hours to reflect the protection of workers in socialist countries.

Interviewee J, who participated in the Ministry of Labour's drafting of the Labour Law, pointed out in an interview that China's working hours in the past (before the legislation in 1994) were no more than eight hours a day and no more than 48 hours a week. After that, it was reduced to 40 working hours per week and 5 days per week, which should not be more than 44 hours per week. However, there were many problems in the implementation process:

> Someone says that the labour law stipulates no more than eight working hours per day, but can it be seven hours? If this practice does not violate the Labour Law but breaks provisions of the State Council's Provisions on Working Hours of Employees (in which the document stipulates eight working hours per day), is it illegal to work less than eight hours? (Interview J, 2016)

After determining the working hour standard, Chinese legislators failed to specify whether the standard set a ceiling or was a minimum one during the drafting process. According to the hierarchy of Chinese legal system, the State Council's 'Provisions on Working Hours of Employees' is an administrative regulation, which is lower than the Labour Law in effect, and the Provisions cannot change the content of the Labour Law. Therefore, in practice, it was applied as long as the working hours do not violate the Labour Law, which means that eight hours per day should be the upper limit.

This issue is obviously in keeping with the historical setting. Because all the standards were formulated in a unified manner under the planned economy, the word 'standard(s)' is translated as 'Biao Zhun', which refers to 'unified rules for repetitive

items and concepts in the Chinese context'[223] rather than 'Ji Zhun' (baseline), which refers to 'restriction on the basic level'. Although the developers of the Labour Law took lessons from general international practice, the law's development was ideologically restricted under the traditional planned economy. As a result, the legal provisions are very rigid, causing confusion as to whether the practice of working less than eight hours is illegal or not.

When it came to the legislative stage inside the State Council, legislators gave priority to the reference of China's national conditions. Interviewee I, as the leader in charge of the Labour Law (Draft) in the State Council, argued that the 44 working hours system derived from the continuation of China's current labour practice at that time. Given that the State Council's drafting stage was a mid-term stage of the whole legislative process further than the stage that preparation and drafting conducted inside Ministry of Labour, the legislators once again turned their eyes away from the ready-made foreign systems to consider the domestic situation instead. Interviewee I said that the State Council had formulated a separate rule on working hours before this initiative, and the working hours in foreign countries were very short, so it may be that the senior leaders were the ones who made the decision on the working hours system in China. For example, the Regulations of the State Council on Working Hours of Employees, issued on 3 February 1994, had stipulated not working on Saturday afternoon, but in 1995 this rule turned into the practice of working six days per week.[224] It was one of the national leader who felt that the 40-hour working system should be applied in keeping with international standards, while the five-day working arrangement was quite sufficient for workers to complete their work without affecting the country's economic development (Interview I, 2016). This highlighted the decisive role played by China's top leaders in the process of drafting the Labour Law.

When the Labour Law (Draft) was in the legislative stage in the National People's Congress, a new factor arose that required attention: views on the incorporation of working hours rules for foreign-invested enterprises. The results of

[223] Reference is made to the definition of 'standard' in GB/T 3935.1-83 (China).

[224] The State Council, Regulations of the State Council on Working Hours of Employees [guó wù yuàn guān yú zhí gōng gōng zuò shí jiān de guī dìng], issued on 3 February 1994; the State Council, Decision of the State Council on Amending the 'Provisions of the State Council on Working Hours of Employees' [guó wù yuàn guān yú xiū gǎi <guó wù yuàn guān yú zhí gōng gōng zuò shí jiān de guī ding> de jué ding], issued on 25 March 1995

this discussion on working hours in this legislative stage can be found in the final version of the Labour Law (Draft). For example, article 32 of the Draft clearly stipulates that 'the State shall practice a working hour system under which workers shall work for 8 hours a day and 44 hours a week on average'. Article 34 provided workers with the right to have at least one day off per week. Representatives from Beijing Panasonic Colour Image Corporation, the State Development Planning Commission (SDPC), China National Petroleum Corporation, and the Ministry of Finance raised the point that 'the 44 working hour system is only a transition, which ultimately shall be in line with international standards, and thus propose flexible provisions available in the Law'.[225] By attempting to align the law with international standards, this provision applied to foreign-invested enterprises as well.

Meanwhile, article 37 regulated the practice of flexible working hours, which were still largely affected by the definition of workers at that time. It stipulated that 'extended working hours shall not exceed 3 hours a day and the total extension shall not exceed 48 hours within a month'. In the interviews, for example, two different viewpoints appeared on the regulation of irregular working hours. One view was based on China's national conditions at that time, which related to the debate of 'large, medium and small' labour law/workers as mentioned in the chapter 5 of this thesis. As mentioned above in chapter 5, the 'Busy Farming Time' should conform to the nature of agriculture, which cannot be prescribed according to the standard working hour system set by the Labour Law. Therefore, the feasibility of a non-standard working hour system needs to be considered in China. Interviewee G (2016), on the other hand, argued for a flexible working hour system, breaking away from the original rigid provisions and leaving some room for discretion in the implementation of the Labour Law.

In addition, delegates from China National Petroleum Corporation, China Light Industry Council, and the Ministry of Agriculture argued that:

> Some industries are very seasonal, such as the seismic exploration, sugar and salt industries, farming and fishing industries, which cannot [be] guarantee[d] to

[225] Song (n 99) 346

operate during the production seasons in accordance with the working hours and off time provided in the Draft. [226]

Representatives from the Ministry of Coal suggested that the competent departments should consult with the labour department to determine the specific working hour mechanism. This is the origin of the non-standard working hour system. Delegates from the Ministry of Foreign Trade and Economic Co-operation believed that some enterprises, especially for the three types of foreign-funded enterprises (i.e. contractual joint ventures, cooperative ventures and solely foreign-funded enterprises), had no other choice but to ask workers for overtime in order to fill orders and guarantee contracts, especially as a result of frequent power outages, and thus they proposed more flexible provisions. In addition, representatives from the Economic Development Research Centre of the State Council, the Ministry of Health, and the All-China Federation of Trade Unions thought that the provision of overtime work for three hours a day and 48 working hours a week could not comply with the standard of international conventions and that the working hours should be reduced accordingly. Professor Guan Huai held the view that the financial compensation for extended working hours and the compensation standards that had been in place over the years should not be regulated separately again, arguing that it would be better to confirm the existing established practices by giving them a legal form instead.[227] Based on the discussions above, the application of the law after foreign-invested enterprises entered China, as well as the needs of different industrial structures, were taken into account when devising the flexible working hour system. Thus, international working hour standards were among the several elements that needed to be considered in the drafting of the legislation.

When the Labour Law was finally introduced, the then Minister of Labour, Li Boyong, summarized the impact of the Labour Law on working hours in the 'Explanations on the Labour Law of the People's Republic of China (Draft)':

> Regarding the working hours, the Draft mainly involves the standard and extended working hours. As for the standard working hours, the ILO Convention No. 1 in 1919 stipulated 8 hours a day and 48 hours a week, but in ILO Convention

[226] Ibid.

[227] ibid 347.

> No. 47 in 1935 [they were] reduced to 40 working hours per week. Although neither of the two international conventions has been ratified in China, the practice of reduced working hours has become a development trend in the world. There was no law governing the working hours in China, and as a result, the current working system of 8 hours a day and 48 hours a week still followed regulations of the *Common Programme*. In recent years, some enterprises and employees requested to shorten the working hours. On basis of the surveys and expert argumentation workshops, the conditions for shortening working hours on a universal scale are now ready. The State Council issued the *Provisions on the Working Hours of Employees*, which stipulated that the working hour system of 8 hours a day and an average of 44 hours a week should be put into practice as of 1 March, 1994. As far as the extended working hours are concerned, i.e., working overtime, there is a strict limitation in accordance with international conventions, that is, overtime work should not exceed one hour per day. However, the current actual situation in China was that on one hand, as the production tasks of enterprises were not balanced and labour productivity is generally not high, it was difficult to be in full compliance with the strict standard of international conventions; on the other hand, working overtime in non-public ownership enterprises was serious. Working for [an] additional 3-4 hours a day was a common practice, and sometimes even as long as 6-7 hours, which seriously affected the health of workers and resulted [in] casualties. Based on these situations, the Draft made restrictive provisions on the extension of working hours.[228]

This quotation summarizes how the Labour Law took into consideration both international standards and China's national conditions to reflect the domestic and foreign factors affecting the working hour system.

Finally, in the officially promulgated version of the 1994 Labour Law, all of chapter 4 is dedicated to working hours, rest, and leave. Articles 36 and 28 stipulate that the working hours of an employee shall not exceed eight hours a day, no more

[228] Boyong Li, Explanation of the Labour Law of the People's Republic of China (Draft) [guān yú <zhōng huá rén mín gòng hé guó láo dòng fǎ (cǎo àn) >de shuō míng] at the 6th Meeting of the Standing Committee of the Eighth National People's Congress on March 2, 1994, available at <http://www.npc.gov.cn/wxzl /gongbao/2001-01/02/content_5003185.htm> accessed 28 October 2019

than 44 hours a week, and they should have at least one day off in a week. Articles 37, 41, and 42 give the other forms of the calculation of the working hours and overtime, and flexible working hours are based on standard production quotas and piecework or decided through conciliations between trade unions and workers. Thus, the 1994 Labour Law created a complete legal system of working hours, rest, and leave for Chinese workers.

The working hours then became the benchmark for dividing the concept of full-time and part-time workers (非全日工) in 2008. Indeed, in the 1990s, there was a division of workers between permanent workers (the iron rice bowl, 正式工) and temporary workers (临时工). 'Temporary workers' included those workers who were working in a flexible manner (contrary to the formal work).[229] The expression of temporary worker was used very broadly.[230] Although part-time workers (as they would nowadays be descripted) did exist, they would not been discussed specifically as they were regarded as unusual form of temporary worker. The expression 'part-time worker' gradually became more widely uses after the turn of the century, and was eventually enshrined in the Labour Contract Law in 2008.[231]

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[229] On October 5, 1989, the State Council promulgated the 'Interim Regulations on the Management of Temporary Workers in Enterprises Owned by the Whole People'. Article 2 pointed out that the concept of temporary workers refers to temporary and seasonal employment with a period of no more than one year. Article 3 also stipulates that when an enterprise recruits temporary workers, the enterprise shall sign a labour contract with the temporary worker, and the enterprise shall file a record with the local labour administrative department. The contract must be terminated when the contract period expires. The labour contract is legally effective if signed following the principles of equality, voluntariness and consensus. According to the 'Reply of the General Office of the Ministry of Labour to the "Request for Instruction on the Forms of Employment of Temporary Workers"' on November 7, 1996, 'After the implementation of the Labour Law, all employing units and employees will fully implement the labour contract system. All types of employees have the same rights. Therefore, temporary workers no longer exist compared to formal workers. The employment of employers in temporary positions can be different in terms of the duration of the labour contract.' It can be seen that 'temporary workers' refers to a form of employment in the planned economy era relative to 'contract workers', and is not a legal term in the strict sense.

[230] According to Interviewee K, workers not in the headcount system of their working unit, no matter on the short-term or long-term post, were called temporary workers (or contract workers). It is a term that relative to the permanent workers who do not have to sign the employment contract. Therefore, the temporary worker was a term that covered a wide range of people, including workers working on normal working hours and flexible working hours, full-time and part-time. Among which, the part-time workers were much less than the other type of workers.

[231] Article 68 of the PRC Labour Contract Law stipulate that term of the part-time workers refers to the workers

Moreover, the interviews with the legislative actors revealed that the issues of rest and leave raised more debate than working hours. The formulation of the regulations on rest and leave should be considered within China's particular historical context. For example, the problems related to family reunion leave were mentioned by one of the interviewees. Annual leave, the two-day weekend, and the family reunion leave in the Labour Law are peculiar arrangements in China. The first time that the family reunion leave was written into law was in the 'Interim Provisions of the State Council on Holidays Treatment and Wages of Workers and Employees Family Reunion Leave' promulgated on 9 February 1958,[232] which reappeared in the 'Provisions of the State Council on Family Reunion Leave for Workers and Staff' promulgated in 1981.[233] These provisions were introduced from the 1950s to the 1980s when public transportation was not readily accessible in China, which made it difficult and expensive for workers to return home to visit their families. At that time, communications technology was less widespread, and ordinary workers could not enjoy the benefits of the telephone and telegraph due to their financial constraints. Consequently, family separation became a prominent social problem.[234] Meanwhile, from 1964 to 1980, the People's Republic of China introduced 'the Third Front Movement' policy, which was a large-scale industrial migration process.[235] The industrial development of economically backward regions required a large number of personnel to stay behind after transferring to a civilian servant status. Those workers were separated from their family members for a long time, and the families desired regular family reunions. In 1964, the Ministry of Labour promulgated the 'Circular on

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whose 'remuneration is mainly calculated on an hourly basis, the average working hours of a worker per day shall not exceed 4 hours, and the aggregate working hours per week for the same employer shall not exceed 24 hours', which inconsistent with the Part-Time Work Convention (No. 175).

[232] State Council, 1958, Interim Provisions of the State Council on Holidays Treatment and Wages of Workers and Employees Family Reunion Leave [guó wù yuàn guān yú gōng rén 、zhí gōng huí jiā tàn qīn de jiǎ qī hé gōng zī dài yù de zàn xíng guī dìng] issued on 9 February 1958

[233] State Council, Provisions of the State Council on Family Reunion Leave for Workers and Staff [guó wù yuàn guān yú zhí gōng tàn qīn dài yù de guī dìng] effective on 14 March 1981

[234] Shuhong Yu and Mengyun Li, 'The New Turn of the Family Reunion Leave in China' [wǒ guó tàn qīn jiǎ zhì dù de shí dài zhuǎn xiàng wèn tí] (70 Years of New China Labour Law: Symposium on History, Choice and Trends, 2019) <https://www.cnki.com.cn/Article/CJFDTotal-CJLT202003012.htm > accessed 9 February 2020

[235] CCTV News, 'Haven't Heard of the "Three-Front"? This Mysterious Strategic Project in the History of China is Now Everywhere' (2018) <https://www.jfdaily.com/news/detail?id=80356> accessed 9 November 2019

Whether Workers and Staff Whose Spouses Were Officers Could Enjoy Family Reunion Leave',[236] according to which if the worker or employee's spouse was an officer, the worker and employee could still enjoy family reunion leave and get paid since an officer could take annual leave to visit their family. This arrangement was a benefit for the family members of military personnel. Thus, the system of family reunion leave designed for workers has become a special element of the rules regarding rest and leave.

However, throughout the legislative process, some enterprises complained that it was unacceptable to expect them to allow family reunion leave that lasted as long as 20 days or even a month (unlike annual leave that applies in many other countries, the duration of family reunion leave is unique to China). Consequently, the current version of the Labour Law only stipulates provisions on working hours, rest, leave, and annual leave. The reason for this might be that the voice of employers was clearly heard as this mechanism was being legislated, thereby affecting how it was adopted by the legislators.

What is more, the State Council made arrangements for specific public holidays. In principle, all workers are entitled to holidays, but before 1994, only the staff of state-owned enterprises actually enjoyed the privilege of family reunion leave. Now, alongside the development of multiple forms of ownership, a number of enterprises are reluctant to implement the provisions on family reunion leave except the state-owned enterprises and state organs. This gives rise to the differential treatment of workers in various enterprises. This unequal treatment does not only exist in wage disparity and was foreshadowed long before the birth of the 1994 PRC Labour Law.

In general, the research revealed that the main factors affecting working hours and vacation in the Labour Law were mainly the decisions of legislative elites, the transplantation of and references made to foreign laws, as well as historical and traditional customs. At least four interviewees mentioned that they had participated in the design of this section of the Labour Law. However, although the debate over this mechanism lasted throughout the entire legislative process, the Ministry of Labour had

[236] Ministry of Labour, 1964, Circular on Whether Workers and Staff Whose Spouses Were Officers Could Enjoy Family Reunion Leave [guān yú pèi ǒu dān rèn zhí gōng de zhí gōng néng fǒu xiǎng shòu jiā tíng tuán yuán xiū jiǎ de tōng zhī]

already designed this mechanism at the drafting stage within its department, meaning that ultimately, the final legislation was effectively designed by the Ministry of Labour.

7.2.The Wage System

China's wage system has been constantly adjusted and regulated since the founding of the People's Republic of China in 1949. However, China had been implementing the system with a uniform wage standard under the planned economy, which was obviously no longer in line with the market rules under the market economy. Therefore, the wage system was one of the three core mechanisms (labour contract, wage and social security) in China's labour system reform and was also one of the for the Labour Law. Given that the wage system involves the interests of everyone, it has undergone a large number of modifications over the years. At present, in addition to the Labour Law, other legal documents related to the wage system include the 'Provisions on the Composition of Gross Wages' (1990), 'Interim Provisions on the Payment of Wages' (1994), and the 'Standards of Minimum Wage' (2004). In these documents, labour income mainly refers to a worker's total income from earnings such as wages, bonuses, and various allowances and subsidies. Non-labour income refers to the income obtained through participation in the distribution of such elements as capital, technology, and business management. Among them, income from capital includes the dividends and interest on share capital, the income from technology includes dividends from technical shares and the sale of patents, and income from business management is mainly obtained through such methods as share dividends gained from equity incentives. At the legislative stage, the main question with regard to adjusting the wage system is whether China should set a minimum wage standard, and if so, how? For example, should a specific amount of money and index (the principle related to the price index and average wage growth) be specified in the law?

7.2.1.The Original Appearance of the 'Iron Wage'

Although some adjustments and improvements were made and some incentive systems were initially implemented in the early days after the founding of the People's Republic of China, the old wage system has generally not been reformed in a fundamental manner.[237] The *People's Daily* published an editorial titled 'Learning to

[237] Liqun Deng, *Contemporary China's Employee Wages and Benefits and Social Insurance* [dāng dài zhōng guó

Manage Enterprises' on 6 February 1950,[238] in which it put forward the concept of implementing the planned economy and emphasized that the previous wage system was not only incompatible with the New Democratic principle of distribution according to work but also greatly impeded the unification of other systems.

In May 1950, the All-China Federation of Trade Unions and the Ministry of Labour and Social Security drafted such documents as the 'Draft Wage Regulations', 'Explanations on Wage Regulations', 'Draft Schedule of the Brand Numbers and Quantity of "Wage Points" in Each Main Region of China', and the 'Draft of a Wage Scale for Workers in Various Industries'. Three months later, the National Wage Preparatory Conference was held and a new wage system was established in China. It can be seen from this conference that the Central Committee of the Communist Party of China (CPC) did not guarantee socialist fairness and equality by setting a unified standard from the beginning, but it used a gradually changing method to unify the wage rate over time. The wage adjustment method meant that the (previously) higher wage was no longer higher and the (previously) lower wage was gradually aligned with the higher wage. This did not set only one wage standard, but it made both high and low wages align with the median wage. The lower wage standard would gradually reach the high level after following a schedule of three years, five years, eight years, and 10 years.

In February and March 1951, the Financial and Economic Committee of the Government Administration Council specifically stated that, in terms of wages, the policy of gradually cleaning up, unifying, and adjusting wages should apply to the whole country and not just certain regions. Consequently, the wages of all localities were unified into a wage system in which wage units were divided into units of wage points on an eight-grade wage scale. In September 1953, the CPC approved the 'Instructions Requested by the All-China Federation of Trade Unions on Strengthening the Work of Trade Unions in the Capitalist Industries' and stipulated that the wage standard and system in capitalist industries should also be roughly the same as in comparable state-owned industries in the same region. The central authority

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de zhí gōng ding zī fú lì hé shè huì bǎo xiǎn] (China Social Sciences Press 1987)

[238] Editorial, 'Learning to Manage Enterprises' [xué huì guǎn lǐ qǐ yè] *People's Daily* (Beijing, 6 February 1950) 1 < http://www.laoziliao.net/rmrb/1950-02-06-1#45927> accessed 23 October 2019.

pointed out in the document that the only logical approach to take to solve this complex problem would be to make progress while ensuring social stability rather than precipitance, which meant only making some adjustments in certain regions instead of applying the changes to the whole country. Accordingly, the wage system was gradually adjusted in the various regions of China. Northeast China was the first region to adjust its wage system. An eight-grade wage system was implemented according to three industrial standards—light industry, heavy industry, and general industry—and the 'wage points' were used as the units of wage calculation. According to the statistics for December 1954, the general 'wage point' was RMB 0.2-0.28 in China.[239] But wages varied widely across the country at that time.

Meanwhile, a different wage system was implemented in the state organs. For a few years after the founding of the People's Republic of China, the state organs implemented two systems to reward their civil servants: a supply system and a wage system. The supply system mainly applied to those who had worked for the state before the founding of the People's Republic of China, providing them with food, clothes, and allowances.[240] On 20 April 1954, the central government decided that the arbitrary determination of wages created confusion that would undermine class unity. In other words, the CPC at this time thought that the gradual implementation of a unified wage system was moving too slowly. This point is made clearly in the 'Report of the Central Committee of the Communist Party of China on Approving the Labour Administrative Leaders' Symposium by the Leading Party Group of the Ministry of Labour':

> There are serious chaotic and irrational phenomena in wages... The main reason for such confusion is the lack of a unified system, law, and management on the wages issues, and there is serious decentralism... In the past period of economic recovery, it was necessary and correct to adopt a gradual reunification of the wages from the region to the country. However, this gradual reunification must be accelerated when the country enters the period of planned economy. The national centralized and unified management of wages must be resolutely implemented, and the decentralism must be opposed. In addition, a strict system

[239] ibid 41

[240] The supply system was finally abolished in July 1955 with the aim of implementing a unified wage system in China.

of instructions, requests, and reports should be implemented gradually to overcome the confusion and change the current passive situation.[241]

In 1956, there was a second national wage reform in China. In July, the State Council issued a series of official documents such as the 'Decisions on the Reform of Wages, Provisions on Several Specific Issues in the Reform of Wages' and the 'Circular on the Procedures of Implementing the Wage Reform Plan'. These documents stipulated that the wage reform covered state-owned enterprises, supply and co-operative enterprises, public–private joint ventures, public institutions, and state organs, and the aim of the reform was to abolish the system of wage points. In the late 1950s, the principle of distribution according to work was severely challenged in China. In 1958, the piece-rate wage system, which was applicable to 2.3 million workers, was abolished in the industries of state ownership, infrastructural construction, and transport enterprises, and the proportion of workers who participated in the piece-rate wage system fell from 40% to 14.1%. However, the principle of distribution according to work and the piece-rate wage system were gradually reinstated later.

Shortly after abolishing the principle of distribution according to work, production incentives were not implemented in all regions. A national socialist education campaign began in 1964, and some enterprises began to abolish the incentive system by replacing it with 'additional wages'. The establishment and management of uniform wage standards at that time required following a set of procedures. On 27 May 1959, the Central Committee of the CPC approved the documents presented by the Party Committee of the SDPC and the Leading Party Group of the Ministry of Labour on the basic conditions of labour wages in 1958 and the proposal for wages in 1959, and stipulated that the units from the grassroots level all the way up to the ministries at the central level should prepare production business plans and workers' wage plans for approval. The plans of all units (including the units directly under the Central Committee of the CPC) had to be summarized by the local competent authorities and reported to the provincial and municipal autonomous regional party committees for approval (the units directly under the Central Committee of the CPC also had to report to the competent ministries and commissions at the

[241] Guangzhao Yue, Crossing the Sword Gate [kuà yuè jiàn mén] (Unpublished) 92

central level for approval); the plans of the provinces, cities, municipalities, and ministries had to be approved by the central authorities. After the reform of the wage system in 1956, the wages of employees were upgraded in 1959, 1961, and 1963, respectively—that is, every two or three years, employee wages were collectively increased. Then, no salary upgrade was scheduled for the next seven years. The average annual wage of employees working in state-owned units was RMB 609 in 1970.[242]

The principle of distribution according to work was not reintroduced until 1975. After Deng Xiaoping became the vice premier of the State Council, the Central Committee of the CPC drafted the document 'Several Issues Concerning Accelerating Industrial Development' to propose letting each person do the best according to their capacity and distributing the wages according to their work. However, the wage system did not officially begin its adjustment until 1977. On 10 August 1977, the State Council stated in the ''Notice on Adjusting the Salary of Some Employees' that the wage adjustment for employees in collectively owned enterprises and institutions could be carried out by the revolutionary committees of the provinces, cities, and municipalities in accordance with the spirit of this document, and that specific measures should be formulated in light of the actual situation of the region, which should be submitted to the State Labour Bureau for recording. However, the scope and proportion of the wage adjustments and the amount of individual wage increases were not to be higher than those in the units of state ownership.[243]

7.2.2.Adjustment and Reforms of the Wage System

Adjusting the wage system in China meant dismantling the 'iron wage' system as the principle of 'distribution according to work' was officially implemented. From 1979 to 1984, state-owned enterprises underwent such reforms as 'Release Authority and Transfer the Profits', 'Grant to Loans', and 'Two Steps Interest to Tax'.[244] Although

[242] ibid 141.

[243] State Council, 1977, Notice on Adjusting the Salary of Some Employees [guān yú diào zhěng bù fèn zhí gōng fen zī de tōng zhī] issued on 10 August 1977

[244] 'Release Authority and Transfer the Profits' (Rang Li Fang Dai) is a policy that releases the authority and partly transfer the profits to the SOEs instead of giving the total profits to the government. 'Grant to Loans' (Bo Gai Dai) is a policy that refers to the way SOEs benefit from China's infrastructure investment through tax-free loans from the People's Construction Bank of China. 'Two Steps Interest to Tax' (Liang Bu Li Gai Shui) refers to the policy

there was an unsuccessful push to reform wages in the mid-1970s, China's leadership continued to encourage such reforms. For example, on 26 October 1974, the then Vice President of China, Li Xiannian, expressed that the problems that the country encountered in the previous period are put off until later processing,[245] and after the 'Circular of the Central Committee of the Communist Party of China on the Convening of the 4th National People's Congress' was delivered, the authorities in many provinces and cities hoped that the People's Congress would finally be able to solve the wage issue. Li proposed that around 100 experienced cadres on wage management could be selected from various departments to conduct investigations and research and propose solutions through such study and analysis. On the evening of 29 October 1974, the SDPC held a meeting and gave instructions on to set up a labour wage group within the Planning Commission to discuss the main problems experienced in the current wage system (e.g. when to solve the problems, the scope of the impact, how much to spend in this regard, and the steps and measures to be taken). On 7 November 1974, the Labour Bureau of the SDPC heard and summarized the opinions of various trades and departments and expressed its hope to adjust wages as soon as possible. From 11 September to 26 November 1975, the SDPC held meetings to discuss how to adjust the work plan. However, the Central Committee ultimately sent the message not to adjust wages at the time.[246] Unfortunately, the reform of the wage system ended shortly after it started, but some problems were raised at these meetings that continued to be raised later in the wage reform period. For example, is the new wage system applicable to new workers, and should wage categories be linked to prices? Regrettably, these questions remained unanswered in the unified and planned framework and persisted as a result of adjusting wages according to rank.

The unified wage grading practice was somewhat relaxed in 1977. On August 10, 1977, the State Council pointed out in the 'Circular on Adjusting Wages of Some Employees' that the adjustment of wages should reflect the principle of letting each

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of reforming the transfer of total interests to the state through a new two-step taxation system. This was a gradual reform process from the taxation paying system of SOEs to a whole national taxation system. See Bin Liu, 'The History, Reflection and Trend of State-owned Enterprise Reform'[guó qǐ gǎi gé de lì shǐ, fǎn sī jí qū shì] (2016) Marketing Research 60–61

[245] On 26 October 1974, Li Xiannian met with Gu Mu and Yuan Baohua, deputy directors of the SDPC, and suggested that the core group of the SDPC should seriously discuss the issue of wages.

[246] Guangzhao Yue, *Crossing the Sword Gate* (Unpublished Book) 153–159

person do the best of their ability, and distribution according to work. This adjustment was also mainly according to the complexity of production labour and the degree of technical expertise, wages are divided into eight levels of employees. In addition to those working underground in the mines, the adjustment focused on employees who had worked for many years for low wages. To increase the wages of those workers, they should be evaluated by the masses and approved by the Party committees according to their political performance, working attitude, contribution, and skill level. The additional pay bonus system had also been reinstated and paid in combination with attendance and production.

On 20 April 1978, the Central Committee of the CPC made the following stipulations in the 'Decision of the Central Committee of the Communist Party of China on Several Issues Concerning Accelerating Agricultural Development (Draft)':

> In terms of distribution, we should adhere to the principle of distribution according to work, that is to say, more pay for more work, and less pay for less work. We should not only oppose the great disparity of incomes between high and low levels, but also oppose the equalitarianism, apart from recognizing the necessity of income differences. In this regard, the following approaches and measures should be taken: (a) Normal wage adjustment system shall be implemented. The adjustment of wages shall be based on the political performance, working attitude, technical level, and contribution of employees, which shall be reviewed by the masses and approved by the leaders; (b) The hourly wage system shall be mainly implemented, and a limited piece-rate wage system could be implemented for workers in a small number of heavy physical labour and manual operations; (c) A system of piece-rate wages plus award incentives shall be implemented; (d) The post allowance system shall be applied to the public with poor working conditions and high intensity of labour; and (e) The wage differences among workers in different regions shall be gradually reduced to match local price levels.[247]

[247] The Central Committee of the Communist Party of China, Decision of the Central Committee of the Communist Party of China on Several Issues Concerning Accelerating Agricultural Development (Draft) [zhōng gòng zhōng yāng guān yú jiā kuài nóng yè fā zhǎn ruò gàn wèn tí de jué ding (cǎo àn)] (20 April 1978) < http://www.cnki.com.cn/Article/CJFDTotal-XJLY1979S1000.htm > access 01 February 2019

This ended the unified and fixed wage standard, and the Chinese Academy of Labour Sciences began to formulate a new wage system.

From 1977 to 1983, the wages of some employees were increased almost annually. Although the wage system was based on the principle of distribution according to work, it was still rating based, which meant that employees were paid salaries depending on their wage grades. In 1978, Deng Xiaoping, the then Vice President of China, declared in one of his speeches: 'There must be clear rewards and punishments. For those who work well or poorly, after assessments they will be given different salaries… The bonus system will also be reinstated'.[248] Afterward, the state began to implement piece-rate wages and bonus wages for some workers. In 1984, the State Council issued the 'General Office of the State Council on Forwarding Several Opinions of the Ministry of Labour and Personnel on the Rational Use of Award Funds by Enterprises'[249] in which the provisions of incentive awards were formalized; the state then only controlled the amount of total wages (including bonuses), and enterprises were free to pay bonuses as they saw fit. In 1984 especially, state-owned enterprises carried out the reform of the economic responsibility system in their internal management mode.[250] The enterprises' internal economic responsibility system was combined with the original method of wage grading and introduced award mechanisms that allowed workers to receive the corresponding remuneration according to their work.

In 1985, a wage rating and classification management system was established in China, and the state no longer managed the adjustment of staff wages in a unified manner. Then, enterprises began to exercise autonomy in their internal wage distribution. In 1985, the state implemented the floating system, which linked the total wages of employees with revenues in large and medium-sized state-owned enterprises,

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[248] Xiaoping Deng, 'Insist on the Principle of Distribution According to Work' [jiān chí àn láo fèn pèi yuán zé] *Selected Works of Deng Xiaoping* (People's Publishing House 1983)

[249] General Office of the State Council, 1984, Notice of the General Office of the State Council on Forwarding Several Opinions of the Ministry of Labour and Personnel on the Rational Use of Award Funds by Enterprises [guó wù yuàn bàn gōng tīng zhuǎn fā láo dòng rén shì bù guān yú qǐ yè hé lǐ shǐ yòng jiǎng lì jī jīn de ruò gàn yì jiàn de tōng zhī] issued on 8 May 1984

[250] Enterprises' internal economic responsibility system was a form of interest distribution within the enterprise in which it focused on increasing profits and efficiency. Economic responsibility was subdivided into the specific positions by different manufacturing shops of the enterprise.

and started to reasonably divide the interest distribution between the state and enterprises. On 6 March 1989, the State Council approved and forwarded the 'Opinions of the Ministry of Labour, the Ministry of Finance and the State Planning Commission on Further Improving the Provisions on the Total Wages of State-owned Enterprises Linked to Economic Benefits'.[251] It was the first one to adopt the principles of 'two links, one float'.[252] On 30 March 1989,[253] the State Council approved and forwarded the 'Circular of the State Council on the Opinions of the Ministry of Labour, the State Planning Commission and the Ministry of Finance on the Arrangement of Wages and the Treatment of Retired Persons in State-owned Enterprises' on 19 December 1989.[254] At that point, China had basically fully implemented wage flexibility.

The creation of an enterprise contract management responsibility system quickly mobilized corporate enthusiasm and inspired enterprises to set post assessment standards and bonus reward standards independently for their employees. Taking the Shougang Group (the Capital Iron and Steel Company) as an example,

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[251] The State Council, Notice of the State Council on Approving and Forwarding the Opinions of the Ministry of Labor, the Ministry of Finance, and the State Planning Commission on Further Improving and Perfecting the Link between the Total Wages of Enterprises and Economic Benefits [guó wù yuàn pī zhuǎn láo dòng bù 、cái zhèng bù 、guó jiā jì wěi guān yú jìn yī bù gǎi jìn hé wán shàn qǐ yè gōng zī zǒng é tóng jīng jì xiào yì guà gōu de yì jiàn] (6 March 1989) < http://www.molss.gov.cn:8080/trsweb_gov/detail?record=840&channelid=40543> accessed 9 December 2019

[252] The Provisions on the Total Wages of State-owned Enterprises Linked to Economic Benefits gave suggestions on further improve the measure of link the total wage with the enterprises' economic benefits. According to the Provision, 'two links, one float' means that the state implements the linkage between the total wages of enterprises in the whole region and the department of the country with the total economic benefits for regions (referring to provinces, autonomous regions, municipalities directly under the Central Government, cities under separate state planning, the same below) and departments. Meanwhile, Within the range of the base and floating ratios approved by the state, regions and departments can determine the implementation of different wage distribution methods for different enterprises based on actual conditions. See Ministry of Labour and others, 1993, Provisions on the Total Wages of State-owned Enterprises Linked to Economic Benefits [guó yǒu qǐ yè gōng zī zǒng é tóng jīng jì xiào yì guà gōu guī dìng] issued and effective on 9 July 1993

[253] State Council, 1989, Notice on Further Strengthening the Management of Wages Funds [guān yú jìn yī bù jiā qiáng gōng zī jī jīn guǎn lǐ de tōng zhī] issued on 30 March 1989

[254] State Council, 1989, Notice of the State Council on the Opinions of the Ministry of Labour, the State Planning Commission, and the Ministry of Finance on the Arrangement of Wages and the Treatment of Retired Persons in State-owned Enterprises in 1989 [guó wù yuàn pī zhuǎn láo dòng bù 、guó jiā jì wěi 、cái zhèng bù guān yú yī jiǔ bā jiǔ nián guó yíng qǐ yè gōng zī gōng zuò hé lí tuì xiū rén yuán dài yù wèn tí ān pái yì jiàn de tōng zhī] issued on 19 December 1989

from 1978, the company had implemented a post responsibility system (that is, the contract responsibility system) that was specific to every post. In 1980, the Shougang Group formulated its own year-end general evaluation, reward, and assessment standards for employees, which were outlined in the employee handbook.[255] In July 1981, profit from processed products in the coking plant's coal preparation workshop increased by RMB 68,000 in one month.[256]

However, since there were no caps on enterprises' independent distribution of wages, and this could aggravate the phenomenon of unfair distribution within enterprises,[257] Jiang Zemin (the former president of PRC) put forward in his speech 'Seriously Eliminate the Unfair Phenomenon of Distribution in Society' that, along with a substantial reform of the distribution system, the equalitarianism of what had been a 'communal pot' in the past had been changed to some extent with regard to income distribution. Even though the government's direct control over income distribution has been significantly weakened, and the new macroscopic and indirect control system had not been completely established, the problems in the original distribution system had not been resolved, and this had generated new contradictions and social problems. Firstly, the entrenched belief in equalitarianism actually weakened the incentive effect of wages. Secondly, employees of state-owned enterprises began to seek part-time jobs in order to increase their earnings, which was sometimes to the detriment of their full-time jobs. This also created unfair and uncontrolled competition among small enterprises, and some market behaviours were interfered with by a large number of speculators.[258]

On 9 July 1993, the Ministry of Labour, the Ministry of Finance, the State Planning Commission, and the State Commission for Economics and Trade issued the 'Measures on the Implementation of Total Wages of State-owned Enterprises Linked

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[255] See Appendices 2.2 and 2.3.

[256] Xiuxiang Bao, 'The Pros of a Management Responsibility System' [jīng jì zé rèn zhì hǎo chù dà yī gè yuè zēng shōu liù wàn bā] *Shougang Daily* (Beijing, 26 June 1981) 3

[257] Jianxin Wang, *1988-1989 China Labour Yearbook 1988-1989* [1988-1989 zhōng guó láo dòng nián jiàn] (China Labour Press 1991) 32–37

[258] Zemin Jiang, 'Seriously Eliminate the Phenomenon of Unfair Distribution in Society' [rèn zhēn xiāo chú shè huì fèn pèi bú gōng xiàn xiàng] (1989) Qiushi < https://www.ixueshu.com/document/342ced7f944c1569318947a18e7f9386.html > accessed 12 December 2019

to Economic Benefits'.[259] Thus far, the design of wages had been promoted in the reform stage through various policy adjustments and this had provided numerous theoretical and practical references for the establishment of a wage system at the legislative stage of the 1994 PRC Labour Law. However, the wage problem had not been completely addressed at the institutional level. Interviewee C shared the following story in his interview: 'At that time, teachers worked in public institutions were originally within the headcount system as the civil servant. (They do not have to sign labour contract and having the iron rice bowl.) But someone who once was deputy minister of the Ministry of Education proposed that teachers should be covered by the scope of application of the Labour Law. Due to there were a serious wage arrears in China at that time. Although, what we want is to increase the protection level for teachers, rather than "degraded" to a contract worker.' (Interview C, 2019) It is clear that there was a serious problem of wage arrears at that time in China, but how was this problem addressed through the design of the Labour Law?

7.2.3.Legislation of the Wage System

The setting of labour standards through legislation—which included such matters as the employment contract (e.g. contractual conclusion and dissolution), wages, the rest and leave system, and labour disputes — was the purview of the Ministry of Labour when they drafting the Labour Law. Prior to formally launch the legislative process in 1992, the Ministry of Labour mainly defined the framework and then referred to some specific German regulations. In addition, it made reference to the international labour standards of more than 50 countries in the early legislative stage before 1992. Interviewee C expressed in his interview that the wage issue was the most sensitive:

> At that time, the wage division was the most 'powerful' department in the Ministry. However, only the wage division could not send its delegation abroad, as there was no exact counterpart [for it] in foreign countries, which meant that wages were not stipulated by the government but negotiated collectively by parties. From this point, we can realize that the wage issue was just market

[259] The Ministry of Labour, the Ministry of Finance, the State Planning Commission, and the State Commission for Economics and Trade, 1993, Measures on the Implementation of Total Wages of State-owned Enterprises Linked to Economic Benefits [guó yǒu qǐ yè gōng zī zǒng é tóng jīng jì xiào yì guà gōu guī dìng], issued on 9 July 1993

> behaviour under the market economy, and the state could not interfere with it. There were only two ways for the state to regulate the minimum wage and the individual income tax. (Interview C, 2019)

This quote shows why the wage issue was significant in the development of the Labour Law. However, as there were no directly relevant international provisions to learn from, China had to adapt to the market economy and changes and make its own decisions on wage issues. Therefore, the main factors influencing the wage system were China's own past experiences and customs. Interviewee I (2017) also argued that the provisions on wages should not stipulate specific wage rates but set the minimum standard in the wage system, both of which were innovations made in the Labour Law that diverged from linking total wages with bonus and tax systems.

As previously mentioned, China's reform process started in 1979. Although the system of wage distribution gradually shifted away from being dictated by the state's overall planning and control to allow enterprises to freely distribute part of their profits to employees in the 1980s, it was still largely controlled by the state, so total wages were linked with efficiency of production. The most significant adjustment made by the Labour Law in 1994 was to establish the minimum wage system, which was a process in which corporate costs and interest were fully regulated by the market.

At the legislative discussion meeting organized by the National People's Congress during 12 to 15 April 1994, representatives from all sectors of society discussed the wage system. Article 45 of the Labour Law (Draft) stipulated the reference factors of the minimum wage standards. Professor Guan Huai suggested that the minimum wage standard should be combined with the price level. Also, according to An Hongzhang, the minimum wage should be based on the hourly rate of pay.[260] Moreover, article 46 of the Draft stipulated that 'Wages shall be paid to workers in currency directly, and be paid at least once a month. The employers shall not illegally deduct or postpone the payment of wages to workers.' In response, representatives of the State Education Commission and the Chinese Federation of Trade Unions argued that the problem of wage arrears had to be addressed, that the law should stipulate that wages must be paid in full on a monthly basis, and that penalties should be

[260] Song (n 99) 347.

strengthened to protect the basic rights of workers.[261] Representatives of the Beijing Building Materials Group Corporation, the State Planning Commission, and An Hongzhang also pointed out that some state-owned enterprises were suffering serious losses or were on the verge of bankruptcy, but they could not declare bankruptcy without risking social instability, so wages could not be paid on time.[262] In addition, the law should be flexible on wage arrears caused by lower production in the off season or caused by natural disasters and other unforeseen events.[263] Discussion among the deputies to the National People's Congress went back and forth, linking wages to the reform of state-owned enterprises and allowing state-owned enterprises to exercise some discretion.

This raised another problem. For example, article 50 of the Labour Law stipulates that the wages of workers shall not be deducted or delayed, but it fails to stipulate how to deal with the situation of wage arrears, which reflects the difficulties in the enforcement of labour law. Interviewee D (2015) argued that when small private enterprises employed workers, they could not implement the rules completely; thus the need for clarity (a concrete way of enforcing the payment of wage arrears) in the law. This is among the failures of the legislation. The establishment of the Labour Law was more similar to a declaration than a law, but did this mean that the legislators had failed to take into account the enforcement of the Labour Law in the legislative process? Interviewee C (2016) provided an answer. It was not necessary to use the Labour Law to deal with wage issues since there was no concept of migrant workers at that time, the wage arears for teachers were more serious than the situation of rural migrant workers. Interviewee C (2016) explained that the legislators did not ignore the enforcement issues; rather, there were already a number of supports in place to address the problems, and the new type of employment relationship involving migrant workers was still emerging at the time that the Labour Law was being drafted. On the one hand, the provisions for the enforcement of the law did reveal the Labour Law's shortcomings, but on the other, in some respects, it was very ahead of its time in

[261] What the representative of the State Education Commission put forward was that college teachers' wages were in arrears, which was confirmed by Interviewee C.

[262] Song, (n 99) 347.

[263] Ibid.

establishing the principles of socialism, inclined protection on workers, fairness, and justice in the law.

Interviewee C recalled that there was an important amendment made to the Labour Law (Draft) before its final promulgation. The then Minister of Labour, Ruan Chongwu, said that any labour right mentioned in the Constitution of the People's Republic of China could be incorporated into the Labour Law. However, the Ministry of Construction raised the voluntary labour, arguing that it should be deleted from the draft. Meanwhile, at the legislative discussion stage of the National People's Congress, the representatives of the State Planning Commission also proposed deleting the provisions of article 6 of the Draft on 'promoting voluntary labour' (Interview Li Jianfei, 2017). This showed that the original draft of the Labour Law regulated voluntary labour, but the Ministry of Construction sent an official letter to recommend cancelling such provisions because working hours were already defined in the law. If the provisions on voluntary labour were regulated by law, would these hours be counted towards the total number of working hours? In addition, while voluntary labour is encouraged in the Constitution, it is not compulsory. According to the Ministry of Construction, it was wrong that many employers treated voluntary labour as compulsory labour in practice (Interview C, 2017). Consequently, the provisions on voluntary labour were eliminated from the Labour Law, and the assumption that labour should be paid and distributed 'according to work' was enshrined in law.

Interviewee A was the then president of the Chinese Labour Association, believes that to solve the problem of wage payment, improving the legislation is key.[264] He said that the Labour Law that was implemented 30 years ago set out principles for the payment of wages for employees, but it did not provide a clear and specific explanation on the issue of wage arrears, and other relevant laws did not clearly provide for enforcement either. Therefore, relevant regulations and rules, such as a wage law, should be formulated as soon as possible in accordance with the Labour Law to improve the Labour Law's implementation.

[264] Yunping Xu, 'Improving legislation is a permanent solution' [wán shàn lì fǎ shì zhì běn zhī cè] <http://www.npc.gov.cn/npc/c221/200404/2e620c57227c4621bf50904bc09162f8.shtml> accessed 20 December 2019

In summary, looking at the factors influencing the birth of the Chinese wage system, among them were transplanted foreign laws and references to the wage standards of other countries. However, Chinese legislators still took their own country's history and traditions into consideration when drafting the Labour Law. In addition, the major marketization reform also differentiated the wage system that was put in place after the Labour Law from the system that was in place before it, which was based on legalization. Different from using administrative means to uniformly formulate wage standards, the current wage standard is set in law. Moreover, a minimum wage system was created in line with the laws of the market; there had been no concept of a minimum standard before the Labour Law, when wage levels were divided according to fixed grades.

7.3.Summary

This chapter focused on two aspects of China's labour standards, namely, the wage system and the working hour system. The fact that these two systems evolved from completely unified systems under the planned economy to setting labour standards in the market economy represents a significant turning point in the history of the Chinese labour system. Evaluating the impact of the Labour Law as a whole, many observers have argued that China's labour standards were already very high, making the law ahead of its time. But how were these advanced standards formulated? This chapter briefly explained the process by analysing the transformation of the systems and the thinking of legislators at that time. Initially, the new labour standard was expected to reflect the existing international labour system; however, due to the limited applicability of international standards to China's unique social and historical context, China began to formulate its own wage and working hour systems instead. Although China's standard was certainly influenced by international standards, it raised the bar in the spirit of safeguarding the welfare of socialist countries. In turn, this advancement in labour standards had an impact on society as a whole, even though the introduction of labour legislation made it more difficult to enforce the standards in practice.

Generally speaking, before the Labour Law, relevant regulations on working hours and wages had already existed in China, but under the economic system at the time, their implementation was rather rigid. The entire process of developing the 1994

PRC Labour Law was one of gradually adjusting and relaxing that strict system. To explore the factors affecting the process of inserting wage and working hour standards into China's Labour Law, time and wage standards had to be considered by studying the traditional practices in various regions of China and also extensively collating those of other countries, including international labour standards. Finally, the systems' designs had to be able to break through the 'iron wage' and at the same time conform to the characteristics of a socialist country while protecting workers. Thus, the main factors influencing the development of both systems were foreign laws and Chinese historical tradition.

Moreover, Chinese elites were motivated to establish new systems through the Labour Law. Although the designs of the two systems gradually evolved, they reformed many old standards and established some fairly new regulations. The problem that this has brought up, as mentioned at the beginning of this chapter, is the incompatibility between the regulations and how they are enforced. How can the newly established system not only meet international standards but also meet the actual needs of the country and its unique conditions? This requires calculations to be minimized and adjusted to the calculation of wages in combination with the specific economic development in different periods.

According to Interviewee D, the most difficult part of the drafting process was to formulate the labour standards. From the perspective of developing the Labour Law, the first step in setting the standards was to discuss the prevailing international and domestic standards and to consider the extent of the reform at the same time:

> At that time, China had to consider the issues beyond law because there were many contradictory systems within this field. It was necessary to take into account those established measures governing working hours in China. For example, there were already provisions regarding the working hours in the policy, and even new rules in this regard were noted before the promulgation of the Labour Law. However, the [Labour] Law stipulates 44 working hours per week in the end. At that time, eight working hours per day could not be guaranteed, let alone the requirement of 44 working hours [a week]. When it came to the investment enterprises in the development zones, they stipulated [that employees had] to work at least 12 hours a day, [including the] night shift [and] without holidays or

> compensation, which caused great contradiction. Many of the regulations that are internationally applicable and stipulated in China could not be implemented in practice but had to be included in the Labour Law, causing public opinion [to be] that the provisions on working hours in China were ahead of their time but in fact impossible to implement. (Interview D, 2019)

Consequently, Interviewee D argued that although the legislation was not fully discussed at that time, there were feasible solutions. Therefore, China could refer to the relevant provisions of the ILO (International Labour Conventions) that all countries can ratify in order to adapt to their own domestic contexts.

Chapter 8 Administrative Matters: Social Security and Dispute Settlement

With changes in employment methods, including the conclusion of labour contracts and the establishment of wage and working hours systems, the social security system in China has also been adjusted. This chapter focuses on the social security and labour dispute resolution systems within the labour legislation. The modern Chinese social insurance and social security system can be traced back to 1951. After the exploration on way of reform in 1980s, the social security system was formally established in the form of law in 1994. The promulgation of the 1994 PRC Labour Law transformed 'labour insurance' into 'social insurance'.

China's current social security system covers four types of insurance: pension insurance, medical insurance, unemployment insurance, and work-related injury insurance. Chapter 9 of the 1994 PRC Labour Law is entirely dedicated to social insurance. Prior to 2019, China's social insurance covered maternity insurance as a separate type, but in March 2019, the General Office of the State Council issued the 'Opinions on Comprehensively Promoting the Combined Implementation of Maternity Insurance and Basic Medical Insurance for Employees', which combined maternity insurance with medical insurance from the end of 2019. On 28 October 2010, China promulgated and implemented the Social Insurance Law, and for the first time, there was a special law for the social insurance system. The first part of this chapter will introduce the social security system established by the 1994 PRC Labour Law.

This chapter mainly examines the design of chapters 9 and 10 of the 1994 PRC Labour Law by asking why social insurance was written into the Labour Law. Regarding the transformation of the social security system, the socialization of the insurance system and the establishment of the social security fund co-ordinating body are primarily discussed in this chapter, while the mechanism for settling labour-related disputes is also discussed. This chapter covers what the legislative actors considered when establishing the labour arbitration procedures and developing the labour dispute resolution institution. Therefore, this chapter focuses on the security and relief of

workers, which reflects an important issue previously discussed in chapter 5 in terms of the role and function of government.

8.1. Social Insurance

8.1.1. The Labour Insurance and Its Socialization

Generally speaking, the national insurance system in the early PRC was divided into two categories according to the employing unit. Taking medical care as an example, one employing unit was national free medical care for staff working in the state organs and public institutions and the other was labour insurance covering medical care for staff working in SOEs. Under the planned economic system, labour insurance took the form of corporate expenses, but it was actually paid for by the state. During the 1960s and early 1970s, there was a short period in which the Chinese public insurance system became corporate insurance both in form and in substance. All the burden of paying for expenses was on the enterprises until the Third Plenary Session of the Eleventh Central Committee of the CPC socialized this kind of 'corporate' insurance system. This process of socialization of insurance is the reason why social insurance is stipulated in the Labour Law. This section introduces the transformation that took place and outlines the legislative approach of the social insurance system.

China's labour insurance system began in 1951 with the 'People's Republic of China Labour Insurance Regulations'[265] promulgated by the Government Council.[266] These regulations stipulated that insurance expenses for the staff of state organs and public institutions would be covered by the state. No separate social insurance fund applied to them. The social security of urban enterprises was covered by the

[265] Government Council, 1951, People's Republic of China Labour Insurance Regulations [zhōng huá rén mín gòng hé guó láo dòng bǎo xiǎn tiáo lì] issued on 26 February 1951

[266] During 21 October 1949 to 28 September 1954, the Government Council was the highest executive body of the People's Republic of China national government. From 15 September 1954 to 28 September 1953, the first meeting of the First National People's Congress of the People's Republic of China was held, and promulgated the first Constitution of PRC. After this meeting, the Government Council changed name to the State Council. See Junhua Nie,' The Similarities and Differences between the Government Council of New China and the State Council' [xīn zhōng guó zhī zhèng wù yuàn yǔ guó wù yuàn de yì tóng] (*China.com.cn*, 3 September 2009) <http://www.china.com.cn/news/txt/2009-09/03/content_18456266.htm> accessed 10 December 2019

enterprises themselves, and individual employees did not need to pay. Each enterprise had to establish a labour insurance fund based on 3% of the total wages paid; any work-related disability pensions and disability subsidies for work-related injuries were paid from the fund, and other work-related injury compensation companies paid out according to the prescribed standards. Therefore, the compensation model for work-related injury combined with a corporate responsibility system was determined.[267]

The Labour Insurance Regulations of the PRC were amended by the Administrative Office of the Central People's Government on 2 January 1953. However, the scope of the labour insurance established in the early days was very limited. According to article 2, labour insurance was limited to state-owned, public–private partnerships, private and co-operative camps, mines, and their affiliates, railways, post and telecommunications, and shipping, as well as infrastructure construction units and state-owned construction enterprises. This amendment extended the scope of the regulations. It also further expanded in 1956. The scope of implementation of the Labour Insurance Regulations was further extended to cover 13 industries and departments such as commerce, foreign trade, food, supply and marketing, finance, civil aviation, petroleum, geology, aquaculture, forestry, state-owned farms, journals, and theatres. The main features of the regulations were that expenses were all borne by the enterprise, the amount paid out was based on the employee's own wages and due consideration was given to the length of service, and that various facets of modern social security were covered, such as work-related injuries, medical care, and childbirth.

After the promulgation of the first Constitution of the People's Republic of China in 1954, the Ministry of Labour established a drafting team to begin working on the 'Labour Law of the People's Republic of China'. At the same time, ACFTU also drafted the 'People's Republic of China Social Insurance Regulations (Draft)'. This draft attempted to change the name of 'labour insurance' to 'social insurance' and was submitted to the ACFTU in May 1956 for discussion. This was the first attempt to formulate labour and social insurance laws in China, but it ultimately failed to become a formal legal system.[268] In 1957, the 'Regulations on the Treatment of

[267] Mao and Zhang (n 15) 109

[268] Xiaoyi Hu, *History of Social Security Development in New China* [xīn zhōng guó shè huì bǎo zhàng fā zhǎn

Occupational Diseases and Occupational Diseases' was promulgated, which stipulated the same treatment for occupational diseases and work-related injuries.[269]

On the basis of individual townships' implementation of the social security system in the 1950s, the construction of the social security system in the first half of the 1960s mainly focused on enriching, supplementing, and improving relevant policies, and basically no new system was established. In 1969, the work-related injury insurance funds were changed from a national unified implementation and adjusted to self-raised funds and payments; thus, work-related injury insurance became enterprise insurance instead of social insurance. This formed the prototype of the modern Chinese social insurance system. However, the main recipients of the above were the employees of SOEs and public sector employees. In the mid to late 1960s, the operation of the social security system and policy implementation were interrupted by the social unrest. This situation was not resolved until the State Council issued the '104' document on 2 June 1978, which refers to the composition of two statutory documents numbered Guo Fa [1978] No. 104, which were the 'Interim Measures for the Placement of Old, Weak, Sick, and Disabled Cadres' and the 'Interim Measures on Workers' Retirement and Quit the Post'. These two documents started the retirement pension system and restored the halted social security system.

The period from 1977 to 1992 was one of comprehensive exploration as the corporate social security system gradually took shape. In 1978, the ACFTU reset the specialized department or person in all levels of trade unions to charge the insurance affairs and rebuild the labour insurance commission at local levels.[270] In the same year, the State Council issued 'Interim Measures of the State Council on the Placement of Old, Weak, Sick and Disabled Cadres' and 'Interim Measures of the State Council on Workers' Retirement and Resignation'.[271] In 1979, the General Administration of

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shǐ] (China Human Resources & Social Security Publishing Group 2019) 129

[269] Chinese Centre for Disease Control and Prevention, 1987, Provisions on the Scope of Occupational Diseases and the Treatment of Occupational Diseases [zhí yè bìng fàn wéi hé zhí yè bìng huàn zhě chù lǐ bàn fǎ de guī dìng] issued on 1 January 1988

[270] Chiwen Lu, 'Research on China's Social Insurance Overall Co-ordination Level' [zhōng guó shè huì bǎo xiǎn tǒng chóu céng cì yán jiū] (Doctoral thesis, Party School of Central Committee of C.P.C. 2007) 49

[271] The State Council, 'Interim Measures of the State Council on the Placement of Old, Weak, Sick and Disabled Cadres' [guó wù yuàn guān yú ān zhì lǎo ruò bìng cán gàn bù de zàn xíng bàn fǎ], issued on 24 May 1978; The

Labour has set up an Insurance and Welfare Department. In 1980, the General State Labour Bureau and ACFTU jointly released the 'Notice on Rectifying and Strengthening Labour Insurance Work'.[272] In October 1980, the State Council issued 'Provisional Regulations Regarding Resignation and Rest'.[273] All of these measures marked the start of recovered the functions of the social insurance macro management department of the Chinese central government from corporate social security management system. During this period, experts and scholars explored and discussed the establishment of the system. One of the important issues covered was how to truly transform what was 'corporate' labour insurance at the time into a 'social' insurance. On the one hand, this 'corporate' social insurance system overburdened the state. On the other hand, it lacked an effective cost control mechanism. Insurance funds were overdrawn and social resources were wasted.[274] Therefore, after the 1980s, various insurance reforms (e.g. work-related injury, medical, and pension insurance) began to be piloted. For example, the enterprise medical insurance system underwent two reforms. First, in terms of reimbursement, the workers had to pay for part of the expenses themselves as insurance premium; second, the corporate reimbursement review was more stringent. These reforms related to workers in SOEs, where the administrative measures were more effective in the short term (although they did not actually relieve the economic burden of the workers in order to fulfil the need for social security or reduce the enterprises' expenses). With the progress that was being made in transforming state-owned enterprises into stock companies, this problem shifted from the state and began to apply to all enterprises, as the privatized

State Council, 'Interim Measures of the State Council on Workers' Retirement and Resignation' [guó wù yuàn guān yú gōng rén tuì xiū tuì zhí de zàn xíng bàn fǎ], issued on 24 May 1978.

[272] General State Labour Bureau and All-China Federation of Trade Unions, 'Notice on rectifying and strengthening labor insurance work' [guān yú zhěng dùn yǔ jiā qiáng láo dòng bǎo xiǎn gōng zuò de tōng zhī], issued on 14 March 1980.

[273] The State Council, 'Provisional Regulations Regarding Resignation and Rest' [guān yú lǎo gàn bù lí zhí xiū yǎng de zàn háng guī dìng], issued on 7 October 1980.

[274] Zhichang Dong, 'The Status Quo and Reform of the Medical Insurance System for Employees in China' [wǒ guó zhí gōng yī liáo bǎo xiǎn zhì dù de xiàn zhuàng hé gǎi gé] in An Linghu, Guanxue Liu, and Jianxin Wang (eds), *Labour, Wage and Social Insurance System Reform* (China Labour Press 1991)

corporations were no longer managed under administrative measures. This problem continued until the introduction of the 1994 PRC Labour Law.

In 1986, the 'Interim Provision on Employees Waiting for Employment Insurance for State-Owned Enterprises' tried to accommodate workers during the marketization of state-owned enterprises and as the unemployment insurance system was being developed.[275] This provision tried to offer institutional protection for laborers during the marketization of enterprises as they waited for the employment insurance system to come into being.[276] From a systems function perspective, the 'Waiting for Employment Relief Fund' and the 'Unemployment Insurance Fund' played almost the same role; from an overall planning perspective, however, the 'Waiting for Employment Security System' was an upgrade. It directly corresponded to the market-oriented employment mechanism. As the economic system transformed, it filled an institutional gap before the establishment of the subsequent social security system. The 'Unemployment Insurance System' was a system test that broke through the national security model and had distinctive characteristics reflecting the times in which it was created. The reason why the system in this period did not use the internationally universal term 'unemployment insurance' was that a fundamental breakthrough had not yet been made in theory, so a unique concept was created. This 'Waiting for Employment System' was established in 1986 and expired in early 1999 before being replaced by the modern unemployment insurance system.

In the early 1990s, China's social security system was still in its infancy. In addition to unemployment insurance, reforms for work-related injuries, medical care, and maternity insurance were gradually being established. The labour system during this period was still characterized by the centralized implementation of state-owned enterprises and large-scale collective enterprises in urban areas. The social security of private enterprises, small and medium-sized enterprises (hereinafter the SMEs) workers, and farmers had not yet been fully implemented, and the social insurance

[275] Later in this chapter, the differences between labour insurance and social insurance will be explained in detail. See Jing Zuo, 'Discussion on the Abolishment of the "Social Insurance and Welfare" Clause of the Labour Law under the Amendment' [xiū fǎ bèi jǐng xià <láo dòng fǎ >"shè huì bǎo xiǎn yǔ fú lì "tiáo kuǎn cún fèi zhī lì fǎ tǎo lùn] (2018) 21 Tribune of Economic Law 194–208

[276] In Chinese, 'waiting for employment' is 'Dai Ye', which is softer in tone than 'unemployment', but there is no distinctive difference in the meaning between them. Also see Chapter 6.

system had not been ‘nationalized’ or ‘socialized’. The reason why is not difficult to understand. While large state-owned enterprises are easier to manage and can afford higher overheads, SMEs and private companies will try to avoid paying additional expenses that will cut into their profits. Thus, the shortcoming of this system was that it had limited objectives and limited applications. It could not be socialized or fully cover all of society and could not promote labour system reform. Moreover, with the increase in the autonomy of enterprises, the occupational risks of workers had increased and the problems had become more prominent.

The law is more efficient in solving problems in this respect than policy, if the law does not only apply to SOEs. Therefore, based on an analysis of the above-mentioned problem, it can be concluded that the process of transforming the social insurance system was one of moving from ‘state security’ to ‘enterprise security’ and then to ‘social security’. All of the insurance paid by enterprises before the transition covered the labourer from the cradle to the grave, and all the state-owned enterprises provided protection. This was in line with the ownership of SOEs under the planned economic system. However, after entering the market economy, Chinese enterprises were no longer solely owned by the state. At that time, there was still a lack of renewal of the social insurance system. As a party in the employment relationship, non-state-owned enterprises cannot afford to share the responsibility for providing social welfare and protection, so they have been calling for a reform.

The social background is relevant as well since at the time many youths were unemployed and needed social security to cover their living expenses in order to maintain social stability (see Chapter 1). In terms of pension insurance, the model of enterprises carrying the burden of individual pensions was being challenged as never before, and collecitve emergencies that occurred due to employee pensions being in arrears were frequent.[277] Therefore, based on the two-way relationship between employers and employees, the social insurance system had to be revised. The 1994 Labour Law transformed the insurance system from a system of corporate insurance to one of social insurance and established the underlying principles.

[277] Shangyuan Zheng, ‘Openness, Standardization and Stereotype: The Analysis of the Approach of China’s Social Insurance Legislation from the Policy to the Law’ [gōng kāi 、guī fàn yǔ dìng xíng —yǎng lǎo bǎo xiǎn zhì dù cóng zhèng cè dào fǎ lǜ —zhōng guó shè huì bǎo xiǎn lì fǎ de jìn lù fèn xī] (2005)09 Law Science 99–107

Certain factors needed to be considered in its design. The Labour Law's function in facilitating transformation and transition in this regard is fully reflected on here. The final version of the Labour Law (Draft) submitted to the National People's Congress provided for a social insurance institution, particularly in chapter 9 of the draft. At that time, most representatives suggested that the establishment and improvement of the social insurance system was the key to the reform of the entire labour system and the essence of the Labour Law—the drafting of the Labour Law offered an opportunity to make basic provisions for the social insurance system. As opposed to believing that the labour contract was at the core of the Labour Law, most representatives at the meeting believed that the problem with labour was mainly that the social security problem had not been solved.

Professor Hou Wenruo of Renmin University of China argues that the provisions of the chapter 9 of the Labour Law (Draft) were basically in line with international practices and clarifies that social insurance funds implement social pooling, which is in line with the basic principles of insurance. The representatives of the Economic Development Research Centre of the State Council pointed out that social pooling is an expedient measure of 'sucking and fattening'. It is not the theoretical basis of insurance, nor is it a rational choice. When the reform of the social insurance system has not been determined, it is not appropriate to fix this system in a legal form.[278] The above viewpoints show that the legislators at the time thought that the Labour Law would not only undertake labour-related institutional transformation tasks (such as labour contracts and labour relations adjustments) but also the task of establishing a social security mechanism. However, the establishment of the social security mechanism was actually the most fundamental reason why the labour contract system could not be transformed. The dissolution of labour relations brought about by the labour contract system, unemployment, and even the tide of layoffs meant that if there is no guarantee system, these factors will cause serious social unrest. Therefore, the actual and more important factors influencing the social security mechanism were political and social stability. This of course was directly determined by the nature and function of social insurance itself and was also influenced by China's own social factors in the historical context of the time—during the process of 'socialization'.

[278] Song (n 99) 348.

Moreover, international co-operation in developing Chinese social security was also very frequent and meaningful. For example, in September 1986, the Ministry of Labour and Human Resources and ILO organized a 15-day social insurance training course in Beijing. Seven senior experts taught the concepts, definitions, principles, and standards of social security of 10 countries implementation in France, the United Kingdom, and the United States etc. In September 1987, a Japanese exchange delegation visited China to introduce its policies and explain the implementation of its unemployment insurance and industrial accident insurance; in October, the Chinese delegation inspected Japan's pension insurance and medical insurance system. In 1991, China and the German government began a labour and social insurance legislation co-operation project, and the second phase extended to 1999. The implementation of the project provided many direct sources from which China could draw in order to draft its laws and regulations on unemployment insurance, social insurance premium collection, and industrial injury insurance. For reference, a group of experts on social insurance legislation were also trained. Therefore, the social insurance system has had very wide coverage in terms of the exposure it has had to international best practices.

8.1.2.Overall Co-ordination of the Insurance Fund

On the other hand, when legislators debated on the form the insurance fund's overall co-ordination would take, it was considered more of an issue that related to the decentralization of powers and responsibilities. The term 'co-ordination' (Tong Chou) was originally derived from the social security fund co-ordination office established in the 1970s in China. It referred to the overall management of the labour insurance system fund and was later used by various social insurance projects.

The overall planning level of China's insurance fund differed from those of other countries. Some countries set up organizations in different industries controlling the social insurance fund, such as the former Federal Republic of Germany and Japan; or the organizations were set up according to the administrative region, such as in the United Kingdom, Canada, and Sweden.[279] In March 1983, China's State Council decided to carry out pilot reforms of the medical insurance system in Dandong, Siping,

[279] Dong, 'The Status Quo and Reform of the Medical Insurance System for Employees in China'

Huangshi, and Zhuzhou. Since then, the 'corporate' insurance has been transformed into two models: the 'industrial overall co-ordination' or the 'regional overall co-ordination'. Meanwhile, the insurance fund was established, into which individuals and enterprises regularly contribute a certain amount. In 1993, the 'Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of a Socialist Market Economic System' decided to reform and legalize the social security system.[280] The decision proposed the need to establish a social insurance system for urban workers in a combination of unified accounts. Therefore, a unified social security management institution needed to be established, along with a unified social security management organization, and the administrative management and fund management had to be separated. It was also necessary to establish a social security fund supervisory body with the participation of relevant departments and public representatives.

In 1993, the 'Notice of the State Council Approving and Transmitting the Main Points of the Economic System Reform in 1993 by the State Council' established the organization of China's social insurance for the first time, distinguishing between 'social insurance management departments' and 'social insurance agencies' and their tasks. Article 10, paragraph 6, stipulates the following:

Combined with institutional reforms, a unified social insurance management system shall be established. Social insurance management shall be separated from administrative affairs, and social insurance management departments shall manage policies, systems, and standards from a macro perspective; social insurance agencies shall specifically undertake social insurance management insurance business and are also responsible for the maintenance and appreciation of funds.

The importance of this distinction lies in the reform of the administrative system to separate management and operation, and the purpose is to improve the administrative efficiency of the service. Theoretically, the social insurance agency, as a public institution, has become an administrative branch subject to laws and

[280] The Central Committee of the Communist Party of China, 1993, Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of a Socialist Market Economic System [zhōng gòng zhōng yāng guān yú jiàn lì shè huì zhǔ yì shì chǎng jīng jì tǐ zhì ruò gàn wèn tí de jué dìng] issued on 14 November 1993

regulations and separate from government departments; functionally, it assumes the role of the insurer in China's social insurance system.[281] However, the role of this insurer has not been fully realized. It does not have legal personality; it is subordinate to the social insurance administrative department and does not have an independent legal status. Therefore, when a dispute is encountered, it is impossible to deal with issues related to payment, premium payments, and related social security procedures through litigation.

When the social security agency was designed, the representatives who participated in developing the legislation evaluated the current system. Hongzhang An once shared a dilemma with the legislation conferences, explaining that there were two forms of co-ordination of the insurance funds: local co-ordination and the industrial co-ordination of 11 industries. This was contrary to the basic principles of social co-ordination, resulting in contradictions between local and industrial distribution. An then recommended stipulating a local social pooling system. The representatives from the China National Petroleum Corporation, the Ministry of Coal, and the Ministry of Machinery proposed that the integration of local and systematic co-ordination was a feasible way to meet the current national conditions. The representatives of the Ministry of Personnel, the Ministry of Civil Affairs, and the Ministry of Health believed that the principle of the co-ordination of social insurance funds should be expressed in accordance with the policy of 'combining social pooling and individual accounts' as determined by the central government.[282] Ultimately, co-ordination was a matter of institutional decentralization and power gaming.

It is also worth noting that in the final version of the Labour Law (Draft), article 70 stipulated the following: The social insurance fund handling agency shall manage and operate the social insurance fund in accordance with relevant state regulations. Relevant government departments and the public representatives form a social insurance emergency supervision organization to supervise the emergency income, expenditure, operation and management of social insurance.

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[281] Wenjing Li, 'Legal Orientation of the Medical Insurance Agency—On the Role and Function of the Social Executive Presentation Subject' [yī liáo bǎo xiǎn jīng bàn jī gòu zhī fǎ lǜ dìng wèi—lùn shè huì háng zhèng gěi fù zhǔ tǐ zhī jiǎo sè yǔ gōng néng] (2013) Administrative Law Review 42-48, 85

[282] Song, (n 99) 348

This stipulation was indeed in line with the reform requirements put forward by the Third Plenary Session of the Eleventh Central Committee. However, during the NPC legislation stage, Professor Ho Wenruo proposed that the application of insurance fund management was a very important issue. One of the functions of the insurance fund institution was to maintain and increase the value of the insurance fund, so it should have legal provisions and corresponding responsibilities. ACFTU also believed that insurance funds should be managed by a specialized agency. At the same time, based on the experiences of foreign countries, ACFTU argued that the insurance fund should not be managed by the government. It should be under the responsibility of an independent agency as prescribed by law, and there should be a corresponding supervision mechanism.[283] In addition, representatives of the People's Bank of China and the People's Insurance Company of China argued that while the reference to the 'handling agency' in the draft law avoided the current contradictions of which institution should be the agency, it would complicate future regulation of the insurance system. The aforementioned opinions were largely disregarded in the final Labour Law, and many of the vague terms used in the draft regarding social security were largely retained.

The legislators left room for interpretation in the law because the conclusions of the discussion were sufficient and unified. The provisions of the social security section also reflect the legislative techniques used and choices made during the legislative process with regard to avoiding the core concepts and principled provisions. In the relevant part related to the social security agency, a lot of gaps remain to be discussed. It can be concluded that in the labour legislation stage, the creation of a main body in charge of labour insurance was a major change, that should be transferred from the government to a specialized agency. However, the legislative actors were still hesitant about the overall co-ordination of social security funds.

8.2. Labour Dispute Settlement

This section aims to present the background the modern labour dispute settlement system, which can trace its origins back to the early days of the founding of the People's Republic of China. In November 1949, the ACFTU promulgated the 'Interim

[283] ibid

Measures for the Labour Relations'. In June and November 1950, the Ministry of Labour promulgated the 'Organization and Work Rules of the Labour Arbitration Commission' and the 'Regulations on Labour Dispute Resolution Procedures'. These legal documents established a multi-level labour dispute handling system that covered negotiation, mediation, arbitration, and litigation.[284] Article 4 of the 'Regulation of the Ministry of Labour on Labour Dispute Resolution Procedures' stipulated that within the scope of labour disputes were issues relating to wages, working hours, living expenses, employment, dismissal, disciplinary punishments and awards, labour insurance, labour protection, collective labour agreements, and labour indenture[285]. Article 5 stipulated that when a dispute arises, it should be settled by both parties through mediation. If the mediation failed, the dispute would be consulted on by the higher authorities of the trade union and the competent authority of the SOEs, or it would be settled with the assistance of the industrial association organization and trade union of the same industry. Article 8 stipulated that if the parties did not report the results of the arbitration to the court on time or disobeyed its instruction, they would be taken to court by the labour administrative agency. The above provisions constituted the labour dispute resolution procedures in place in the early days of the founding of the People's Republic of China.

In 1954, the Ministry of Labour gave instructions on the settlement of labour disputes in non-enterprise units. When the disputes could not be settled by the unit and superior state administrative departments, people's organizations[286], schools, hospitals, and other non-enterprise units could be directly sued in the People's Court. Yet, in July 1955, the Central Labour Department dissolved the Labour Dispute Settlement Institution. The People's Court stopped accepting labour-related cases. The disputes were transferred to the Department of Letters and Calls instead. The labour dispute

[284] Ministry of Labour, 1950, Ministry of Labour's Regulations on Labour Dispute Resolution Procedures [láo dòng bù guān yú láo dòng zhēng yì jiě jué chéng xù de guī dìng] issued on 16 November 1950

[285] Labour indenture here in this dissertation refers to the ancient meaning of contract in Chinese. For this part of discussion, please see chapter 6 more more detailed information.

[286] People's organizations are the general term for organizations other than the government, government official agencies, enterprises, companies, and public institutions.

settlement system was not recovered until after the 1978 Third Plenary Session of the Eleventh Central Committee.

In 1986, the State Council issued the 'Notice on the Serious Implementation of Several Regulations for Reforming the Labour System' and the 'Notice of the State Council on Issuing Four Provisions for Reforming the Labour System', along with the 1987 'Interim Provisions on the Handling of Labour Disputes in State-owned Enterprises'. These regulations aimed to strengthen the organization and construction of the labour and personnel departments and required the establishment of corresponding labour dispute arbitration institutions to provide norms and compliance for the settlement of disputes between employees.[287] Doing so restored the labour dispute resolution system which was led by the administrative authority, and the arbitration and trial were co-effecting, had been in place in the 1950s.

In October 1986, the section on the 'Political System Reform' in the political report of the Thirteenth National Congress of the Communist Party of China stated that several institutions should be established, including the Labour Arbitration Institution. From October 1986 to the end of 1992, 225,000 labour dispute mediation committees were established within SOEs. More than 2,800 labour arbitration committees were established in various local regions, with more than 5,000 full-time and part-time arbitration employees. However, despite the establishment of these new institutions, the total number of labour dispute cases did not increase.[288] The reason is because the scope of application of the 'Interim Provisions on the Handling of Labour

[287] State Council, 1986, Notice on the Serious Implementation of Several Regulations for Reforming the Labour System [guān yú rèn zhēn zhí háng gǎi gé láo dòng zhì dù jǐ gè guī dìng de tōng zhī] issued on 18 April 1986; State Council, 1986, Notice of the State Council on Issuing Four Provisions for Reforming the Labour System [guó wù yuàn guān yú fā bù gǎi gé láo dòng zhì dù sì gè guī dìng de tōng zhī] issued on 12 July 1986; State Council, 1987, Interim Provisions on the Handling of Labour Disputes in State-owned Enterprises [guó yíng qǐ yè láo dòng zhēng yì chù lǐ zàn háng guī dìng] issued on 31 July 1987, effective on 15 August 1987

[288] Statistics show that by the end of 1992, the country had handled about 1 million labour disputes. Among them, the enterprise labour dispute mediation committees had handled 710,000 cases, and about 290,000 of them applied for arbitration from the labour arbitration committees at all levels. See Statas Research Group of the Ministry of Labour on the Development of Labour Dispute Handling System with Chinese Characteristics, 'Research on China's Labour Dispute Handling System' [guān yú wǒ guó láo dòng zhēng yì chù lǐ zhì dù de yán jiū] in Linghu An and others (eds), *Labour, Wage, and Social Insurance System Reform (1993)* [láo dòng gōng zī shè huì bǎo xiǎn zhì dù gǎi gé] (China Labour Press 1993) vol 3, 265

Disputes in State-owned Enterprises' issued in 1987 only applied to the disputes arising from the performance of labour contracts and the discharge, expel, and dismissal of employees working in SOEs.[289] After the opening and reform of the economy that transformed state-owned enterprise ownership in China led to the development of non-public enterprises and foreign-funded enterprises, the settlement of labour disputes that only applied to state-owned enterprises failed to meet the needs of other enterprises with different ownership types. This created problems until the 'People's Republic of China Enterprise Labour Dispute Resolution Regulations' finally provided labour dispute resolution procedures that applied to various types of ownership.[290]

The promulgation of the Labour Law in 1994 made China's labour dispute resolution mechanism initially form a dispute resolution system within an administrative-led arbitration and trial system. The problem is that since the promulgation of the 1994 PRC Labour Law, China's labour disputes settlement procedure has continued to be controversial. Before the promulgation of the Labour Dispute Mediation and Arbitration Law of the People's Republic of China,[291] there had been many discussions on the existence and abolition of the labour arbitration institution.[292] Some of the debate at the time focussed on whether the 'one ruling and two trials' system needed reform.[293] 'One ruling' refers to the labour dispute

[289] 1987, Interim Provisions on the Handling of Labour Disputes in State-owned Enterprises

[290] State Council, 1993, People's Republic of China Enterprise Labour Dispute Resolution Regulations [zhōng huá rén mín gòng hé guó qǐ yè láo dòng zhēng yì chù lǐ tiáo lì] issued on 6 July 1993

[291] Standing Committee of the National People' s Congress, 2007, Labour Dispute Mediation and Arbitration Law of the People's Republic of China [zhōng huá rén mín gòng hé guó láo dòng zhēng yì diào jiě zhòng cái fǎ] issued on 29 December 2007 effective since 1 May 2008

[292] The 1994 PRC Labour Law provides a principled stipulation on the scope, institutional set-up, and arbitration procedures for labour dispute arbitration in China. See Wei Jiang and Jianguo Xiao, 'A Comparative Study of the Labour Dispute Arbitration System—On the Perfection of Labour Dispute Arbitration Legislation in China' [láo dòng zhēng yì zhòng cái zhì dù de bǐ jiào yán jiū─jiān lùn wǒ guó láo dòng zhēng yì zhòng cái lì fǎ zhī wán shàn] (1995) Law Science (Journal of Northwest Institute of Political Science and Law) 82–86

[293] See Wenzhen Wang and others, 'Experts Talk about the Reform of Labour Dispute Settlement System (I)' [zhuān jiā zòng tán láo dòng zhēng yì chù lǐ tǐ zhì gǎi gé (shàng)] (2006) China Labour 6–10; Wenzhen Wang and others, 'Experts Talk about the Reform of Labour Dispute Settlement System (II)' [zhuān jiā zòng tán láo dòng zhēng yì chù lǐ tǐ zhì gǎi gé (xià)] (2006) China Labour 13–18

arbitration committee making an arbitration ruling on the labour dispute if the mediation fails; 'Two trials' refers to the parties who disagree with the arbitration ruling made by the labour dispute arbitration committee and can bring a lawsuit to the people's court. After the court has rendered the judgment of the first instance, if the parties are still not satisfied, they may appeal to the people's court at a higher level. Since then, there has been a lot of research on the inertia of the system itself, finding that this historical factor is what led to the cumbersome procedures and the inefficiency of the arbitration process being experienced today.[294] During the interviews, a number of interviewees pointed out that the establishment of labour arbitration procedures was indeed based on historical inertia. So, what is this historical factor, exactly?

How was the legislation designed for this system? Interviewee C said that the Ministry of Labour (MOL) was not willing to give up the labour arbitration institutions that had been established in the past. Interviewee C said that the labour arbitration regulations were issued earlier than the Labour Law. At that time, the MOL already had a dispute resolution system. It was not easy to change. Since the early days of the founding of the PRC, the MOL has set up a labour dispute resolution department to settle labour disputes with national significance (Interviewee C, 2016). However, under the planned economic system, due to the single labour relations (only between the workers with SOEs), the number of labour disputes have been declining annually. For example, in 1952, a total of 28,117 labour dispute cases were accepted by the labour dispute resolution departments, representing a decrease of 38.7% from 45,588 in 1953; by 1955, only 17,514 cases were accepted with a decline rate of 37.7%.[295]

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[294] Typical arguments are presented in Jianfeng Shen and Ying Jiang, 'The Existence Basis, Qualitative and Ruling Relationship of Labour Dispute Arbitration' [láo dòng zhēng yì zhòng cái de cún zài jī chǔ 、dìng xìng yǔ cái shěn guān xì] (2019) Law Science 146–158. This article provides three perspectives on the factors underlying the current labour dispute settlement system: the historical perspective perceives historical inertia in this institution; the efficiency perspective views the efficiency of this institution; and the factual perspective sees the current system as having been built on the basis of the particularity of Chinese labour relations, laws, and the nature of the system itself.

[295] Statas Research Group of the Ministry of Labour on the 'Development of Labour Dispute Handling System with Chinese Characteristics', 'Research on China's Labour Dispute Handling System' [guān yú wǒ guó láo dòng zhēng yì chù lǐ zhì dù de yán jiū] in Linghu An and others (eds), *Labour, Wage, and Social Insurance System Reform (1993) [láo dòng gōng zī shè huì bǎo xiǎn zhì dù gǎi gé]* (China Labour Press 1993) vol 3, 254–285

After the social transformation of private industry and commerce was basically completed in 1956, although the Ministry of Labour's 'Regulations on Labour Dispute Resolution Procedures' did not need to solve disputes within private industry and commerce, this regulation did apply to state-owned and co-operative social enterprises.[296] In that sense, it should have continued to play an active role in resolving labour disputes. However, after a substantial increase and a decline to the extent of the decline at that time, the cognitive index of land occupation at that time was that under the conditions of socialist public ownership, people's fundamental interests were the same, and the development trend of labour disputes would tend to decrease and simplify. Some even argued that there would be no labour disputes in socialist enterprises since all kinds of disputes can be settled within the enterprises themselves. Following this logic, the specialized agencies dealing with labour disputes at all levels of government were revoked, and the 1950 Regulation actually lost its legal effect.[297] This effectively ended China's original system for settling labour disputes.

Eventually, China's labour arbitration system was re-established by Zhanjiang Fan.[298] Interviewee I confirmed that the current labour arbitration system was built by Fan and Dong Pin,[299] who had been learning about the arbitration mediation system and hope to reinstate an arbitration system in China. During the legislative process for the Labour Law, the State Council solicited the opinions of various departments, including the opinions of the People's Court. Before the promulgation of the 1994 Labour Law, the Court rarely heard labour-related cases, and there was no need to go to the Court to resolve labour disputes under the planned economic system (for the

[296] Ministry of Labour, 1950, Ministry of Labour's Regulations on Labour Dispute Resolution Procedures

[297] Wenyuan Chen, 'Talking about the Settlement of Labour Dispute' [shì tán láo dòng zhēng yì de chù lǐ] (1982) Tribune of Political Science and Law 64–67

[298] Zhanjing Fan, Labour and Wage Division of the Ministry of Labour and Social Security (formerly), former deputy director of the Labour and Human Resources Administration Office of the Ministry of Labour and Human Resources of China; director of the Labour Management and Employment Division of the Ministry of Labour; director of the Labour Dispute Arbitration Division; labour disputes of the Labour Relations and Supervision Department of the Ministry of Labour Director of the Department of Processing, responsible for relevant departments of the Labour and Social Security Bureau of 20 major cities including Beijing, Shanghai, Guangzhou, and Shenzhen.

[299] Dong Ping, former deputy director of the Department of Mediation and Arbitration Management, Ministry of Human Resources and Social Security.

reasons previously mentioned). Therefore, the judges of the People's Court were not familiar with the labour rules and regulations or the legal procedures. They worried that if all labour disputes directly entered litigation, the Court would be overwhelmed: 'If everyone goes directly to the Court, the Court can't parry' (Interview I, 2016). Meanwhile, the MOL was also motivated to discuss and explore the nature and feasibility of the labour arbitration system. The focus of the discussion has been on whether dispute resolution was a quasi-judicial approach or a method of arbitration. Also, the scholars and experts from different departments who have participated in the discussions have had different opinions. There has been controversy over the nature of arbitration, and no definitive conclusions have been reached thus far. Interviewee I stated that in fact, the litigation and arbitration systems are completely interchangeable from the perspective of a nationalize organizational structure: 'For the state, the cost of setting up arbitration is similar to the cost of setting up a specialized court, which is practically similar for the state' (Interviewee I, 2016).

Moreover, according to Interviewee C (2016), the People's Court is not willing to accept labour arbitration cases. As a labour lawyer, Interviewee F confirmed this point as well.[300] On the other hand, he said that the arbitrators trained before the new labour dispute settlement system established, could not be dismissed. Interviewee F pointed out in the interview that the original arbitrators and arbitration institutions used the administrative measures under the administrative system to deal with labour disputes. The original group of personnel who specialized in handling labour disputes became arbitrators and mediators. If the arbitration institution were incorporated into the court system, then this group of professionals would need to be relocated into the court system as well, which would mean that they would need to pass the national legal professional test and be trained as legal professionals in China. Moreover, the judges did not have the experience and expertise to regulate labour disputes on the same level of these mediators. From the perspective of institutional structure and professional development, changing the labour dispute resolution process requires a slow evolution so that the arbitrators can become legally specialized and the judges can accumulate more experience in dealing with labour disputes (Interviewee F, 2016).

[300] Interviewee F is a labour lawyer, specializes in labour issues and social security. He was one of the earliest lawyers to practise antitrust and competition law and environmental protection law in China.

On the other hand, judging from the interview results and the written materials, the labour arbitration system is also based on foreign institutions. In the article 'Research on China's Labour Dispute Resolution System' written by the Research Group of the MOL's of the project intitled 'Development of Labour Dispute Resolution System with Chinese Characteristics', the writers provided solutions for the procedural system for labour dispute settlements in 1993. First of all, the article pointed out that the labour dispute resolution system at that time referred to a legal system that used labour legislation to determine the institutions, principles, and procedures of settling labour disputes, so its full name should have been 'the legal system of labour dispute resolution'. The article confirms the necessity of using the law as the main means of settling labour disputes. Second, this article discovered a fast-track to reform by drawing on foreign experience. Global understanding of labour dispute resolution at that time was mainly characterized by the following: the implementation of the tripartite principle, the indiscriminate connection between the processing agency and the labour department, and the principle of focusing on mediation.[301] It has been confirmed by professors that this article has had an important impact on labour legislation and has become one of the important bases for the legislation of labour dispute arbitration in China.

The oral interview data also indicates that the establishment of the labour dispute resolution system reflects the impact of foreign law on Chinese labour law. From the perspective of studying international procedural regulations, in the legislative stage of the MOL, the country that has had the greatest influence on the content of international labour law is Germany. It recommends creating a special dispute resolution institute, not a specialized labour court; instead, it promotes an arbitration system like the one that used to be regulated under the administrative system. 'It is within the court's power to set up the labour court in their judicial system," said Interviewee C (2016). Therefore, unlike people might guess, in the early stage of the drafting of the Labour Law by the Ministry of Labour, the legislators could not solve the problem of establishing a specialized labour court system. The peoples' court

[301] Research Group of the Ministry of Labour on the Development of Labour Dispute Resolution System with Chinese Characteristics, (n 268) 254

are the institute that have the authority to build this mechanism, which is not within the applicable scope of the Labour Law.

What is interesting is what happened after the Labour Law was passed. The then Minister of Labour, Chongwu Ruan, was originally the Chinese Counsellor for Science and Technology in Germany. This experience made him very familiar with the rules in Germany. After Ruan left the MOL in 1993, he went to Hainan Province and become the secretary of the CPC Hainan Provincial Party Committee and Governor of Hainan Province (1993.01 - 1998.02). According to Interviewee C, Ruan studied the German model and tried to set up a labour court in the Hainan Higher People's Court (historically, China had a special labour court located in Hainan). However, because this special court was set up in the Higher People's Court, and in fact, there was no labour cases was big enough that could be appealed to this level of court.[302] Therefore, for three to five years, there were no cases heard in this special labour court. The short-lived specialized labour court did not become a formal judicial system in the People's Court (Interview C, 2017). This experiment shows that besides the arbitration and mediation systems, other measures like the litigation system were not mature enough for the current labour conditions. Despite the litigation system not yet being formally constructed, legislators influenced by the German labour dispute resolution system always attached great importance to the establishment of special agencies.

In the interviews, many examples of learning from German law are mentioned. In May 1991, Interviewee C visited the German Federal Employment Agency (Bundesagentur für Arbeit), the German Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales), the German Federal Parliament (Der Deutsche Bundestag), the German Federal Labour Court (Bundesarbeitsgericht), the

[302] According to the Organic Law of the People's Courts of the People's Republic of China, there are four levels of people's courts in China (basic, intermediate, higher people's court and the Supreme People's Court) and four special people's courts (military courts, maritime courts, intellectual property courts, and financial courts). The higher people's court at provincial level have jurisdiction over cases that are: first instance cases under their jurisdiction as prescribed by law, or requests submitted by lower levels courts, or designed by the Supreme People's Courts; appellate cases judged and ruled by the intermediated people's courts; retrial cased filed in accordance with the trail supervision procedures; and death penalty cases for which requests are submitted by the intermediate people's courts for approval. This means that only a few cases that meet the above conditions can be trialed by the provincial higher people's court, no need to mention labour cases.

German Trade Union Federation (Deutscher Gewerkschaftsbund), and German law firms. After this visit, he wrote a report on German labour law. He specifically asked local German lawyers if they would take and represent individual workers' cases. The answer he received was no. They explained that lawyers always represented the employers and that trade unions had their own lawyers. Based on this, he realized that workers are vulnerable. When he returned from Germany, Interviewee C began to think that the main measure for settling labour disputes should be mediation. (Interviewee C, 2019) The mediation system cannot be cancelled because it is difficult for the grassroots to obtain relief through litigation, lawyers tend to accept cases from the capital. Therefore, it is believed that the form of mediation can better protect the grassroots.

8.3. Summary

In this chapter discussed two main system that related to the administrative authorities in the 1994 PRC Labour Law. What is more, until this chapter, the three major labour systems—labour contracts (employment), wages, and social insurance—were all discussed. In general, the relationship between the three major systems is that the wage system is designed on the basis of labour contracts, which creates a flexible labour market and needs a system of guarantees to provide workers with assistance and protection.

First of all, the reform of social insurance, like the reform of the entire labour system, was carried out within the context of the transition of China's economic system. Therefore, it has also followed the path and method of the reform of the economic system reform overall by gradually carrying out reforms and establishing new systems through trial and error. First, the labour insurance system was implemented in collective enterprises, and then the social insurance of state-owned enterprises was restored. In reality, medical insurance was implemented in small, scattered commercial industries, and the experience was collated and then extended to various employers. However, the 1994 Labour Law outlined the 'social insurance and welfare' system in the form of a special chapter. For the first time, it put forward major concepts such as 'unemployment', 'work-related injury' and 'social insurance', and it initially outlined the composition of the social insurance system. The creation of a

system from scratch was also a major breakthrough in terms of the legislative concepts and systems concepts, which reflects the courage and foresight of the legislators.

Secondly, looking at the social security system in the Labour Law reveals that it is actually a process of socialization from 'national insurance'. This socialization refers to the process in which the main assurances and guarantees provided in the Labour Law emanated from the state outward to every unit in society and then from each unit to society as a whole. However, it should be pointed out that until the Labour Law was promulgated, this socialization process cannot be said to have been complete. The promulgation of the Labour Law only reduced part of the company's burden. The reason for mentioning this is not only to highlight how imperfect the social security system is in the Labour Law but to also show that the social insurance and security system was written into the Labour Law. Because the scope of use ranges from all personnel to labourers, and labourers are the subject of the law, because of this law, the scope is reduced.[303] This reduction is to the detriment of some members of society who cannot be guaranteed protection. It was not until the promulgation of the 2010 Social Insurance Law that this socialization process was officially completed; the Social Insurance Law covers almost all the provisions on social security and welfare in the Labour Law and supplements and perfects the provisions of the Labour Law as well.[304]

China's labour dispute resolution institution is a very distinctive system, mainly because it regards arbitration as a compulsory procedure and require it before litigation.

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[303] Article 70 of the Labour Law stipulates that 'the country develops social insurance, establishes a social insurance system, and establishes a social insurance fund to enable workers to receive help and compensation in the case of old age, illness, work-related injuries, unemployment, and childbirth'. It can be seen that the two subjects mentioned in this article are the state and labourers. The applicable scope of the latter, as discussed in Chapter 5 of this dissertation, was curtailed during the legislative process. It is no longer a guarantee for all people. Article 76 of the Labour Law also stipulates that 'the country develops social welfare undertakings and builds public welfare facilities to provide conditions for workers' rest, rehabilitation and recuperation. Employers should create conditions to improve the welfare of the organism and increase the welfare of workers'. The provisions in the first paragraph are still aimed at the workers, while the second paragraph is more clearly aimed at the unit benefits provided by the 'employer' to the workers.

[304] The 'Social Insurance and Welfare Clauses' in chapter 9 of the Labour Law have been almost completely replaced by subsequent related laws and policies. See Zuo, 'Discussion on the Abolishment of the "Social Insurance and Welfare" Clause of the Labour Law under the Amendment' 196, 206–207, Table 1

The pre-arbitration procedure combines administrative and judicial means. In the process of legislation, the questions raised by the legislators after the material analysis mainly focused on whether the pre-arbitration labour disputes settlement procedure was scientific and reasonable. Did it need to be changed? If so, what would be a better procedure?[305] In general, the institutional evolution of labour arbitration in China led to the creation of a labour law sub-system that followed its own path and was influenced by foreign institutions. The promulgation of the 1994 PRC Labour Law did not abandon China's original administrative settlement of disputes entirely, although the newly established system referred to foreign experience, so there was a certain divergence from the previous arbitration procedure that had been in place. This led to the problem of duplicate dispute resolution procedures and the inefficiency of labour arbitration. The labour dispute resolution mechanism was the last sub-system examined in this chapter. So far, the most important and controversial issues in the birth of modern Chinese labour law have been discussed, and the whole process of drafting the Labour Law has been presented.

[305] Shouqi Yuan, 'Progress in the Formulation of the Labour Law of the People's Republic of China' [zhì dìng <zhōng huá rén mín gòng hé guó láo dòng fǎ> de jìn zhǎn zhuàng kuàng] (1993) 5 Law Science Magazine 32–33

Chapter 9 Conclusion

9.1. Layout of the Stepping Stones

The 1994 Labour Law is significant as not only the very first piece of legislation on labour in the People's Republic of China but in socialist countries as a whole. Its legislative process created not only a law and a labour institution but also a new model for the policy-making process in the transitional period since 1978. A crucial question when approaching a new piece of legislation is how to draft the articles, but evidence of the legislative record and policy-making process (for this dissertation, the 1994 PRC Labour Law in particular) is rarely found in transition economies[306]—especially those new to the market economy, like China.[307] However, this dissertation proved that the process is not mysterious that enough evidence can be found for restore the fact.

Some researchers have examined the main purpose, legislative background, and reforms introduced by the Labour Law.[308] However, what they do not share are the legislators' voices and ideas that led to its creation. To interpret the articles of the Labour Law from this perspective and to uncover those thoughts that once seemed lost to history, in this study in-depth interviews were conducted with the legislative actors who participated in the legislative process and drafted the law. The recollections of the legislators were also combed to reveal the institutional adjustments made during the legislative process and the reform process prior to the promulgation of the Labour

[306] China's policy-making process is of often criticised as taking place within an authoritarian framework. For more information on analysis of China's policy-making process, see, for example, Andrew Mertha, '"Fragmented Authoritarianism 2.0": Political Pluralization in the Chinese Policy Process' (2009) 200 The China Quarterly 995-1012

[307] For the significance of China's economic transition compared to other economies, see Andrew G. Walder, 'China's Transitional Economy: Interpreting its Significance' (1995) 144 The China Quarterly 963-979

[308] For detailed analyses, see, inter alia: Robert Taylor, 'China's Labour Legislation: Implications for Competitiveness' (2011) 17 Asia Pacific Business Review 493-510; Kinglun Ngok, 'The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition' (2008) 73 International Labor and Working-Class History 45-64. For more literature, in chapter 2 of this thesis.

Law. The policy-making process is therefore presented in this thesis in two ways: one by tracing the policies used to construct the new institution and the other by tracing the discussions of and efforts made by the legislative actors in this regard.

What is more, by analysing the records and data, a model was created with which to examine the policy/law-making processes of transition economies by uncovering the influencing factors of the sub-institutions in the Chinese labour law system. It answered the question of why different clauses and sub-institutions were drafted using specific terminology by showing that every phrase used in the law had a hidden history and ideas behind it. This study is the first to view the nascence of the Labour Law from the perspective of the drafting of the legal provisions. It summarizes as many of the influencing factors as possible that could be supported with evidence.

This thesis used oral data from legislative actors to form the text corpus and reveal the influencing factors. Four steps were taken to discover the factors. The first was word frequency. The words that were used repeatedly in the interviews were listed as factors. Second, the words (and their synonyms) were connected with the relevant sub-institutions. The third step was to find out who said the word and link the term to the position the person held during the legislative period in order to connect it to any interest groups they represented. By doing so, this research found out that different interest groups may have focused on different perspectives of the Labour Law. Fourth, the logical connectives representing causal connections were identified by searching for keywords such as ‘because’, ‘we considered’, ‘we are doing X for Y reason’ in both the written and oral materials. Once the keywords were located, the reasons following those keywords were listed as factors.

In sum, the Labour Law was the result of the culmination of multiple factors that came together within the context of the institutional transition period in China. Different factors comprehensively influenced the Labour Law’s development on different institutional levels, while diverse groups of legislative actors had different focuses and influences on various sub-institutions. Some factors supported the birth of modern Chinese labour law while others hindered the process.

During this study, 16 factors were discovered that possibly influenced the drafting process, including public attitudes and values, new enterprise ownership types, public interests, organizational structure, support of elites and government leaders,

transplantation of foreign laws, marketization, reform of state-owned enterprises, labour field legalization, social stability, local experience, economic situation, efforts of experts or scholars, customs, new techniques, and protection of workers' rights. These factors were grouped into three categories: context, actors, and institutions.

To present the drafting process of the Labour Law, the strategic guiding idea of the economic reform, 'crossing the river by feeling the stone', was used. The river and its branches mainly aimed to show that the entire legislative process is not only an entire system but should also be regarded as separate sub-systems on which actors have different degrees of influence and in which multiple factors should be considered. Actors take actions based on their ideas of understanding the fundamental legal concept of the labour law, the policies and the reform of China economic system. In this case, they interacted on the institutional level within an objective (social, political and economic) context to build a new system that featured old, new, and borrowed elements. Moreover, additional administrative regulations and rules were used as tools of implementation.

Here, 'actors' refers to the people who participated in the drafting of the Labour Law and had actual influences on the legislation. If categorized according to their shared interests and common ideas, there were mainly three groups.[309] The first group was the public. In this specific legislation, that equated to workers, and their shared interests were workers' rights and benefits. They joined forces as a trade union. The public/workers group had two subcategories: new workers (employed after 1986) and old workers (assigned jobs under the old system). They had shared interests in rights protection and social welfare but had different ideas of the law and needs due to their different social contexts. The old workers wanted to maintain the benefits they enjoyed based on their status, whereas the new workers needed to gain more protection under the new labour contract system. Therefore, in this legislation, their attitudes and values had to be considered separately.

The second group was employers. This group also had two subcategories: factory managers of SOEs and the owners of joint venture enterprises and private

[309] This division of interest group and their common interests during policy-making process in China was inspired by Cho Young Nam, 'The Politics of Lawmaking in Chinese Local People's Congresses' (2006) The China Quarterly 592-609

enterprises. In the drafting of this legislation, they shared the same goal, which was to gain employment autonomy, but they had different interests. The factory managers were used to being treated as cadres under the old system, meaning that their jobs and benefits were secure; however, the owners of joint ventures and private enterprises did not enjoy such security. Thus, during the legislative period, they argued in support of their divergent interests.

The third group was social elites. The elites could be divided into two subcategories as well: government officials and scholars. During the legislative process, they shared the same goal of making a new law and legalizing and marketizing the labour institution. The slight difference between their beliefs was that the former represented and acted in the government's best interests. They prioritized social stability and the government's organizational power and authority. By contrast, scholars and labour experts promoted the law on behalf of the labour law subject and mainly acted on the fringes.

If we see the labour legal system as a platform from which the actors could take action and each theme they discussed as the main sub-systems, there were 14 sub-systems (four branches of the river) addressed during the legislative process.[310] After collected and analysis the information from both written and oral historical materials, each sub-system was influenced by different influencing factors.

Among the legislative actors, there were two directly contradictory opinions on the scope of application of this law. One argued that the applicable scope was influenced by governmental organizational structures and divisions of authority (Interviewee I). However, the other view was that the law raised no conflicts of interest between different governmental departments (Interviewee G).

The definitions and uses of the scope of application of the Labour Law were unexpectedly complicated. The decision to use the term 'labourer' instead of 'employee' was made by elites in order to apply this law to all employees. However, the reasoning differed among the legislative actors interviewed. One thought that this

[310] The system of 14 (listed in chapter 4, section 4.3) was drawn up on basis of the collected and summarized information from the interviews, with supplemental evidence from the China Labour Daily's newspaper article. See Junlu Jiang, 'Why is the Labor Law Drafting Difficult?'láo dòng fǎ qǐ cǎo nán zài nǎ lǐ ？ *Labour Daily* (Beijing 29 July 1993)

particular expression had political connotations according to socialist ideology (Interviewee H). Another believed that this term was preferred because one of the legislation drafters personally believed in preventing the law from being applied to different types of enterprise ownership (Interviewee M). The term also has implications for the protection of workers' rights.

The use of the term 'employing unit', however, was influenced by three factors. Interviewee G claimed this term was no longer used differently by different enterprise ownership types, which was his personal contribution to the legislation. Interviewee D thought this term was customary in China because the subject of employment had always been called a 'unit' instead of an 'employer'. Interviewee I, on the other hand, believed that the term was used as a result of the combined actions of the public and the elite: the legislative elites created the term 'employing unit' because the word 'unit' was more accepted by the public. The term 'labour relations' was also affected by multiple factors, including the context of legalization reform, the study and influences of foreign laws, the formation of trade unions and workers idea.

The elite mainly influenced the establishment of the labour contract system. This system was specifically designed by the officials who were involved in the drafting process of the Labour Law. The Supplementary Provisions (Article 106 and 107) related to using two steps to implement the law and contract system show that the legislators lacked confidence in China's social stability. On the other hand, workers, especially the old workers under the iron rice bowl system, also influenced this theme. Considering that the old workers dominated the system at that time, the legislative actors believed it was unrealistic to apply a new employment contract system over a short period to them.

From the legislative technique perspective, officials wanted to promote the Labour Law's promulgation and chose to be pragmatic. To that end, they made the law more of a principled, declarative, and programmatic law. This type of law-making made sacrifices with regard to its implementation to avoid addressing controversial and unresolved issues. It was also a compromise between the desires of the public and the elites (Interviewee J, see Chapter 7, Section 3 on the wage system). On the other hand, it was also a requirement for China's marketization and economic transition. To

save time and make this law to regulate the new economic institutions, the only choice the legislators had was to solve the problems they could in the moment.

Now, when examining the specific sub-systems, the system of working hours and leave and vacation was mainly influenced established by scholars (Interviewee G), foreign laws, and local contexts. Also, the national leaders believed that China should have a working hours system that could meet the international standard (Interviewee J). On the other hand, the wage system had a long historical tradition under the planned economy. For the purpose of marketization and economic system transition, it is needed to legalize the administrative system and write into the law.

The employment contract system is the core institution of the Labour Law and was also the most controversial system drafted during the legislative period. The legislative actors argued that 12 factors were taken into consideration during the design of this institution, including scholars' suggestions, officials' ideas and input, the public interest of workers, local experiences, SOE reforms, foreign (German) laws, marketization, legalization, the emergence of new types of enterprise ownership, public attitudes, local customs, and the protection of workers' rights. It is, therefore, the most complex institutional design in this legislation. The system of collective agreement was designed to protect both the interests of employers and employees. Dismissal protection was to protect the two types of workers, but especially the old workers under the old system. These were also influenced by both local context and experiences and foreign laws in the form of international labour standards.

Moreover, both social stability and marketization were considered by the legislators. When examining the rights protection mechanism, the original intention was clear when set against the backdrop of the reform of SOEs. Interviewee G also claimed that this was his own contribution to the law and was based on the local experience of Shanghai's reform of SOEs. Interviewee D, by contrast, believed this institution was influenced by foreign laws but was not an individual legislator's innovation.

In general, a hidden logic behind the labour contract system is that the law is inclined to protect workers.[311] The system developed through the influence of factors

[311] Suixin Mu, 'The Justice Value of Labor Law "Tilt Protection Principles"' (PhD, Shanxi Normal University 2011)

ranging from the efforts of workers' groups (trade unions) to foreign (German) laws and the efforts of scholars.

The social insurance system was also influenced by Germany's labour laws and in accordance with the policy target of marketization. This institution was ahead of its time. It took into consideration the fact that after the institutional economic transition and the implementation of the employment contract system, workers would need social security to protect them from the risk of losing their previous entitlements. On the other hand, it was a process of socialization, shifting insurance fees away from enterprises to be paid by society as a whole.

The labour dispute resolution institution was mainly a government initiative. The Ministry of Labour hoped that the arbitration team that had already been established would continue to function, since the traditional way of settling disputes was through arbitration rather than litigation. Therefore, although the officials did learn about the process of dispute resolution from Germany, they did not want nor have the authority to set up a special labour court. Nonetheless, the arbitration priority procedure does act as a special agency to settle disputes.

Other issues were discussed during the legislative period, such as when should the law be promulgated and was it necessary to make a labour law. These questions were also affected by different factors. Some believed that the law was a requirement of legalization and marketization reform, as the reformed SOEs needed to be regulated under a new law. The timing issue was also affected by the trade unions, but lesser known factor was the impact of the legislators' insistence on the promulgation of the law, which speeded up the legislative process.

All in all, the factor most strongly influencing the Labour Law seemed to have been Chinese elites and leaders. The legislation of the Labour Law was an elite-led process. However, that is not to say that they did not consider public opinion or involve the public in the process, because there is substantial evidence that they conducted field research and went to different regions of the country to seek out the public's views. Also, although some scholars were involved in the drafting process, their role in the process was still relatively peripheral, and their opinions differed from those of the legislative officials. The officials held a more dominant role in the process (showed ten times by the interviewees related to different institutions). Other than the elites'

and leaders' contributions, public opinion was secondary, as this factor was mentioned seven times by different interviewees connected to different sub-institutions. Tertiary influential factors, unsurprisingly, were foreign laws (especially German labour regulations), marketization, and legalization. These three factors were mentioned six separate times by my interviewees in total. The least influential factors were the opinions of the new enterprise types, including private and joint ventures, the economic situation, and the latest legislative techniques. These three factors were only mentioned once by each interviewee. All of these factors combined comprehensively influenced the different sub-institutions of the Labour Law and affected its final version.

9.2. The Trajectory of the River Crossing Process the Birth of 1994 PRC Labour Law

The current Labour Law in China was developed within a particular context and was influenced by specific factors. In this study, the main topics discussed during the legislative process were revealed by finding the underwater stones to identify the influencing factors and examining the subdivision system generated by each interviewee in blocks or themes. Through the changes in these sub-systems, we explored which factors in the labour legal system led to the changes in the larger system, which factors from the old system were retained, and which systems were replaced and updated in the legislative process.

How did these factors influence the choices of legislators? The introduction of the Labour Law in China was essential, and many academics believed that the Labour Law was created through the interaction of multiple influencing factors,[312] but what were the influencing factors? From the perspective of internal and external factors, the internal factors mainly determined the content of the articles and the external factors affected the structure of the legal framework. International law had less impact on the Labour Law's specific content, and references were mainly made to German labour laws and international labour standards. However, other parts of the law, such as wages, working hours, rest, and vacation, have particular articles that were somehow influenced by the laws of other countries. But because of the lack of direct

[312] Taylor (n 308) 504

correspondence in the content of international provisions, the legislators were ultimately decided to draft articles with references on both local and foreign context. This sparked a discussion on whether the law was not suits with the Chinese contexts and be much more ahead of the time, [313] that went unresolved in the later stages of the implementation of private and joint venture enterprises.

Internal factors, local practical experiences, and institutional traditions mainly generated specific content and provisions of the Labour Law. From the perspective of policy theory, the influencing factors included political reform, economic reform, institutional reform, and critical nodes. From the standpoint of labour law theory, the influencing factors consisted of labour marketization, development of the labour contract system, and social security and welfare reform. From the perspective of institutional changes, political reform (administrative management of the legal system), economic reform (state-owned enterprise reform), changing consciousness, critical moments, elite decision-making, etc. all affected the birth of the Labour Law. After a long and full discussion during the legislative period from 1978 to 1994, some issues become significant and clear. Such as the implementing of the labour contract, the wage system and social securing system. However, without enough discussion, some issues remained unsolved and became problematic in the implementations after the introduction of the Labour Law. For instance, the discussing the concept of labour relations based on a specific historical background led to the ambiguity of the subject of labour relations, which resulted in many problems in the subsequent implementation process. Such as the adjustment scope of the Labour Law excludes foreign-related labour relations with overseas employers in China. [314]

The ideologies of the actors involved in the legislative process, including the extent of the legislators' confidence in the law and the public attitudes towards it, was most reflected in the problem of taking a 'one-size-fits-all' approach to the Labour Law. A pair of ideologies, 'inclined protection' or 'double protection', were typically discussed during the legislative process; those two opposites determined the extent to

[313] Hui Xiong, 'The Historical Contribution and the Future Development on Labor Law' (2015) China Labour 45-48

[314] Zhongda Ren, 'Labour Rights Protection of Employees in Foreign Enterprises' (Master's Thesis, Jilin University 2011)

which the iron rice bowl would be broken and the rights of workers would be protected. Another ideological pairing was ‘economic development’ and ‘political/social stability’. The former determined the objectives prioritized in the labour legislation, and the latter determined the Chinese characteristics present in the Labour Law. The two were not entirely in opposition, but they were the two main tasks and considerations at that time. China’s economic development encouraged the law to be a little bit ahead of its time, but the country’s social stability actually postponed the pace of the law’s application.

Judging from the division of labour and the degree of the legislature’s decision-making, the central role of the Ministry of Labour in the law was to carry out the preliminary investigation and preparation work. The State Council was responsible for the drafting of specific provisions. The NPC Law Committee had the job of soliciting opinions and holding discussions. The first two played a more significant role in the overall legislation of the Labour Law, and the impact of the NPC’s revisions was less significant.

The trade unions also had a significant influence on the relevant provisions of the collective labour system referred to in the Labour Law, and their degree of participation in the discussions was also profound, especially once the State Council became involved in the legislative drafting process. From the perspective of legislators, the basic principles of the law, the drafting of its specific provisions, the use of particular terms, and the style were particular to each organization involved in the drafting process. The Labour Law also reflects the wisdom of the collective discussions held collectively by different official organizations. However, this reflected there are relatively less scholars have participated in the legislations. At the same time, the officials who participated in the legislation had a strong legal professional background, which also made up for the weakness of the lack of scholars' participation and the relative lack of legal professional opinions at that time.

With regard to the timing of the promulgation of the Labour Law, this thesis has argued that it was promulgated in 1994 once the model needed for strategic decision-making was finally finished. First, a subset of the strategic objectives of institutional reforms such as enact new laws was gradually clarified, and the overall goal (the establishment of a market economy) was also finalized in 1992 at the 14th National

Congress. Second, there were too many objective constraints, such as the voice of opposition from the grassroots. However, the basic principles were always consistent.

The interviews showed that the Ministry of Labour's legislators mostly discussed how China looked to other countries for points of reference when drafting the Labour Law. Consequently, the Labour Law seems to reflect foreign systems and their regulations. However, interviewees from the State Council and the NPC Law Committee believed that many of the creations were based on their own considerations, showing that the legislation in the middle and late drafting period began to return to its national conditions. This was an exciting transition process, demonstrating that while the legislators first looked for a foreign, ready-made system they soon realized that none applied to China's own unique situation.

A critical legislative technique that affected the legislative process and was raised in the interviews with legislative participants was the principle of pragmatism. To speed up the promulgation of the Labour Law, the drafters decided that the content of the law needed to be general. Some scholars still believe that China's legislation is too broad and that most laws must be put into practice by implementing supporting policies.[315] Interviewee I explained:

> The practical effect of the Labour Law must have been considered. A law needs to be brought into effect, but legislation in China has a feature with general content and principled beliefs, especially during the transition period from the planned economy to the market economy. (Interviewee I, 2016)

The reason for this may have been the desire to introduce the legislation as soon as possible, and in order to improve its implementation since then, the government has tended to introduce more supporting regulations and policies. The result is that most of the implementation of the law has been carried out through administrative regulations. Interviewee I stated: 'One of the reasons is whether it could meet the real needs of society.... The other one is whether it would hinder the reform.'(Interviewee I, 2017) From the perspective of legislation, this law focuses largely on the practical demands that needed to be met at the time. Its general content suited the uncertain

[315] Stanley B Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University Press 1999)

transformation period, and the passing of complementary regulations and policies have since compensated for its imprecision.

This method of introducing a law reflects a significant difference between China's and other countries' legislative principles. For example, the German and French Civil Codes are structurally complicated (the German Civil Code has five parts and 2385 articles, while the French Civil Code has two parts and 2281 articles), their articles are very detailed, and the contents of their employment contracts are also very clear. By contrast, the Chinese Labour Law is full of blank on specific implementation measures that many researchers have been criticized for not having considered how they would be implemented. However, the Labour Law is pragmatic, as indicated by the aim outlined in the introduction, which is to achieve labour system reform. It was because of the urgency of the introduction of this law that the lawmakers adopted pragmatic principles. For example, one of the interviewees said that after the law was promulgated, the Ministry of Labour had proposed issuing 'Labour Contract Regulations' to provide more detail on the content of the labour contracts mentioned in the Labour Law. These abortive labour contract regulations also included work arrangements in many similar programmes. Because the State Council's legislative tasks at that time were burdensome and the workload was heavy, this regulation was not actually introduced, but it was finally released in the form of the Labour Contract Law. However, after the Labour Law was promulgated in November 1994, the Ministry of Labour issued a document entitled 'Explanation of the Ministry of Labour on Several Provisions of the Labour Law of the People's Republic of China' in which it elaborated on the articles in the Labour Law one by one.[316] The legal effect of these administrative legislative regulations was also legally binding.

In summary, there were more than 60 major laws and regulations that either supported or were related to the Labour Law before its promulgation and 17 administrative rules and regulations were released after. Due to the significant amount of supporting legal documents, there was not a lot of controversy like there was surrounding the Labour Contract Law. This method of prescribing the general principles and implementing them through regulations succeeded because of the

[316] Explanation of the Ministry of Labour on Several Provisions of the Labour Law of the People's Republic of China, 1994, issued and entered into effect on 5 September 1944, expired on 1 January 2001

relatively single labour relations at that time. This law, as a link to the past and the future, did not cause much controversy during the legislative discussion stage; however, this method of closing the loopholes in the law through supporting regulations has apparent drawbacks that are not problematic when implementing the Labour Law but create difficulty in attempting to modify it. In fact, as mentioned above, any modification of the Labour Law would undoubtedly require changes to be made to many of its supporting regulations at the same time. If new content were introduced to the core part of the labour contract system, it would inevitably affect a large number of the law's supporting structures. The scholarly literature only focused on the final result of the dysfunction of the Labour Contract Law but ignored the impact that the Labour Contract Law has had on the labour contract system, which is the core element of the Labour Law. The failure to modify the Labour Law and its supporting regulations has resulted in the inability to implement the Labour Contract Law.

The overall conclusion is that the development of the 1994 PRC Labour Law was influenced by more than one contributing factor. Research on the history of Chinese legislation shows that many factors influenced the Labour Law and it cannot be attributed to one single factor. In particular, the essential factors are easily overlooked. For example, the social environment and the people's opinion is more a combination of factors affecting different legal systems. Even the ideas of the people involved in the drafting of the legislation had considerable relationships with the design of the particular system and the social conditions of the specific operators. Different methods create significant differences in particular details. Underlying these differences are a choice of a system and a means of reform during the transition period.

Based on the analysis of all the evidence, the core recurrent themes were those that best struck a balance between flexibility and stability during the development of the Labour Law:

1. The scope of application of the law focuses on the scope of the labourer—more specifically, on whether the law should cover farmers or not. The debate over the role of the employer is between the public and private institutes.
2. The design of the labour contract system is the key to this legislation.
3. Old workers need protection and a smooth transition (this is the origin of the

'10-year rule' for open-ended contracts), while the determination on introducing a more flexible employment system is also strong enough for legislative actors.

4. Experimenting with and developing supplementary regulations to support the implementation of the law not only helped China gain law-making experience but also technically sped up the promulgation of the Labour Law.

5. The concept of the employment contract entered the field of labour resource management and the state took a step back to let the market allocate labour resources.

At the same time, this dissertation introduces the labour law system. Although this thesis is based on the legislative process leading up to the 1994 Labour Law, it argues that the phased reform of the labour legal system began with the promulgation of this law. Therefore, the birth of the Labour Law in 1994 is used to describe the nascence of the broader labour law system in contemporary China. This system also inevitably includes other relevant areas of law, including trade union law, social security law, and other labour administrative laws and regulations. The position of the Labour Law in the legal system in 1994 determined that it was a basic labour law and a legal foundation for the labour code. This dissertation argues that many of the specific regulations introduced at the same time compensate for the fact that the Labour Law has been criticised for being too principled and impossible to implement. In general, this entire legislative process originally intended to be effective, but the critical problem (besides its lack of implementation and conflict between the provisions and regulations) is that it is difficult to amend. Although the modifications need to consider the whole system, including the context, interest groups and institutions only see one part of the system. This study suggests that in future legislation, understanding that the current law is made up of numerous elements is necessary in order to identify which parts have changed and which functions will need to be changed.

This paper divides the influencing factors into public attitudes and values, social differences, general interests, institutional structural settings, the support of elites and leaders, and the international environment. These factors continue to affect the current legislation. As mentioned in Chapter 5 of this thesis, after several years of

implementing the Labour Law, equal protection issues have emerged, and labourers have become relatively weak. However, the problem of labour contracts has not been properly resolved. In accordance with the supporting rules and regulations, the labour contract regulations should have been introduced after the labour legislation. The Labour Contract Law was promulgated 15 years later then the Labour Law and caused a huge controversy for its legislation. The factors such as the public opinions was still influencing its legislation, because at that time the problem of the wage arrears of migrant workers is serious, and the voice of society is getting stronger and stronger.

9.2. Further Questions for Future Studies

This research first intended to record history. However, during the research process, it became increasingly evident that there are certain factors that legislators and scholars have commonly paid more attention to in terms of studying the history of Chinese labour law. What is more exciting to me is that the whole process of developing the Labour Law was far more sophisticated than once thought, even though it has not attracted as much attention as the debate over the Labour Contract Law did in 2008. Therefore, recording its history is significant. For legislative practice, this study serves as a reference for both scholars to analyse the history of the law and for legislators to consider as they legislate in the future. From a theoretical perspective, this study adds a new angle on the institutional transition to the Labour Law by not only identifying the influential factors but also showing their corresponding sub-institutions and therefore providing a solid theoretical foundation for understanding these mechanisms.

What is more, during the research process, the functions and ideas of the legislators were revealed through their own words. Some stories during the legislation, such as how the open-ended labour contract has been established were released to my readers. I believe that no one has a better understanding of this law than the legislators themselves. Those legislators with professional backgrounds contributed mostly to the legalization and the rule of law in China and throughout this process implemented the national economic transition strategy and created a democratic legislation process by widely consulting the public. They gradually enacted new policies in local areas as institutional experiments. This shows that using an oral history method was not only functional but effective for this type of research. The following are the hypotheses that

were raised as a result of this research but could not be explored further due to the time and length restrictions:

1. A new perspective, therefore, has been discovered. Suppose the introduction of the market economy model is seen as the result of the transformation of the labour system (the use of products or failures with the use of position presupposition and value orientation was avoided). Then the result of the transformation of China's labour system is because the 'public interest group' in this case, the legislators, make a positive decision to promote the development of the process. It is not a bureaucratic legislative idea to benefit from the reform of the profit seekers; rather, it is to benefit from the interests of a small group of reformers. [317] Therefore, in the process of development, whenever this decision-making group agrees with other profit-making groups (new entrepreneurs, workers, and experts), the process will speed up, and when opinions diverge, the process will be delayed. But this process is not replicable and contingent because it is affected by numerous uncertainties in a complex and variable process that cannot make future predictions. Therefore, this thesis is only from the historical perspective and does not construct theoretical models or make mechanism predictions to judge the success or failure of this process. The legislation was thus led by the so-called enlightened bureaucrats who sought democratic participation when making their decisions.

2. For a future comparative study of labour laws, it is vital to find a common platform for international scholars to discuss and compare their findings. Researchers firstly need to find a reasonable frame of reference, compare this law with other Chinese laws, the second level is compared with other similar emerging economies, the third level is compared with Asian countries with similar cultures, the Asian 'four dragons'.[318] These three levels are compared

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[317] For instance, as identified by Andrew Mertha in '"Fragmented Authoritarianism 2.0": Political Pluralization in the Chinese Policy Process' the policy makers were seen as 'policy entrepreneurs.' Mertha (n 306) 996

[318] For instance, the authors of 'industrial relations in Asian socialist-transition economies: China, Vietnam and Laos' compared three countries undergoing the transition from socialist to mixed or market-based economies. This comparation was based on the idea that the three countries have similarities in economic transformation although having different labour regimes and types of labour disputes. See Simon Fry and Bernard Mees, 'Industrial relations

to the labour legislation of those countries. From the vertical comparison of the elite legislative process, compared with other economies, this is a more programmatic law.

3. The legal professionals and their academic background have benefited and affected the legislation.[319] During the process of drafting the Labour Law, several of the elites who participated came from professional legal backgrounds, such as Gui Minjie (bachelor's and master's degrees in law, PhD in finance), Hu Keming (bachelor's degree in law), Liu Jichen (part-time professor of law, professional lawyer), Xie Huiding (bachelor's degree in law, master's in civil law), Li Jianfei (master's degree and PhD in law), Guan Huai (the founder of the Labour Law Academy in China), Dong Baohua (professor of law, professional lawyer), Guo Jun (bachelor's and master's degrees in law), and Jia Junling (professor of law).

Also, for further research, the loopholes in the Labour Law can be connected to the legislative principle underlying it. The introduction of the Labour Law was in order to correct the layout of the strong capital and the weak labourer. This requires the Labour Law to have a more practical effect after its promulgation to better protect the workers' rights. However, it was established under a single labour relationship and is no longer suitable for legislating complex and diverse labour relations. What is more, from the interviews, it is very likely that the negotiating power of workers (strong or weak on negotiation), did not even enter into legislative consideration at the time due to theoretically, there were not conflict of interests between the labourer and the working unit. On the other hand, as a law that has higher legal hierarchy, there is an absolute contradiction between the legal level and the Labour Contract Law, and naturally, there will be problems in practice.

The internal mechanisms of the labour law system are too cumbersome (too much needs to be supplemented, and all is carried out in a patchwork manner so the design looks very complicated). There is national legislation, local legislation, and

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in Asian socialist-transition economies: China, Vietnam and Laos' (2016) 28 Post-Communist Economies 449-467

[319] For use of research models, see, Ulrich Matter and Alois Stutzer, 'The Role of Lawyer-Legislators in Shaping the Law: Evidence from Voting on Tort Reforms' (2015) 58 Journal of Law & Economics 357-384

local regulations that must be considered. If in practice a local government stipulates on some rules, judges will tend to looks at the local regulations instead of the Labour Law. So, is there a parent law in the labour law system? The 1994 Labour Law and the 2008 Labour Contract Law were adopted by the Standing Committee of the National People's Congress. Their legal effectiveness was the same. Naturally the Labour Law is not being implemented. Some scholars (like Interviewee L from the Academy of Labour) have undertaken special research on which articles of the Labour Law have been replaced by the laws and regulations that enacted after it, showing that almost half of the content has been replaced, and the other half has not been replaced because it could not be executed (failure of the enforcement apparatus) and had no practical effect. Which is the mother law and commander of this legal system? The system is complex, diverse, influenced by multiple factors, and constantly changing.

The reason for the complexity of the system lies in the path taken, which was one following a pre-determined principle with a broad framework and a general direction that addressed specific issues that have been supplemented by other documents. On this path, decisions have been influenced by multiple factors simultaneously, leading to many changes in the system. As a result of these complicated laws, Chinese legislators need to work hard to introduce appropriate patches to close the gaps, the judiciary needs think carefully when applying the law, and the enforcers of the law must focus on how best to do so. The main problem caused by these multiple factors is that the process of institutional change is lengthy. In the middle of this institutional transition process, the law-makers needs constant summarization and generation of experience, constant adjustment, and needs to approach this process patiently. China's labour legal system is still incomplete, and many historical factors still affect the application of the current legislation. For example, when the Labour Contract Law was introduced, some elements were expanded on and this caused a heated debate, and many issues relating to the Labour Law have yet to be resolved. Ultimately, China's labour legal system is still in the process of being shaped and the work is ongoing.

Bibiliography

Chinese Literature

Chen W, 'Talking about the Settlement of Labour Dispute' 试谈劳动争议的处理 (1982) Tribune of Political Science and Law

China Lawyer Reporter, 'The Deputy Minister of Labour Zhang Zuoji anwsered Questions on the Promulgation of the Labour Law' 劳动部副部长张左己就《劳动法》颁布答记者问 (1994) China Lawyer

Deng X, 'Insist on the Principle of Distribution According to Work' 坚持按劳分配原则, *Selected Works of Deng Xiaoping* (People's Publishing House 1983)

Deng X, 'Bring Order Out of Chaos in Education Front' 教育战线的拨乱反正问题 in Editorial Committee on Party Literature of the Central Committee (ed), *Deng Xiaoping's Selected Works*, vol II (People's Publishing House 1983)

Dong B, 'On China's Open-ended Labour Contract' 论我国无固定期限劳动合同 (2007) Studies in Law and Business

Dong B and Qiu J, 'On the Change of the Main Body of Labour Relations in Enterprise Restructuring' 论企业改制中劳动关系主体的变更 in Dong B (ed), *Labour Contract Research* (Peking University Press 2005)

Dong Z, 'The Status Quo and Reform of the Medical Insurance System for Employees in China' 我国职工医疗保险制度的现状和改革 in Linghu A, liu G and Wang J (eds), *Labour, Wage and Social Insurance System Reform*, vol 1 (China Labour Press 1991)

Fan X, 'The Obstacles and Countermeasures of the Reform of Employment System for University Graduates in China' 我国大学毕业生就业制度改革的障碍及对策 (1995) Journal of Central China Normal University (Philosophy and Social Sciences Edition)

Feng Y, 'On the basic principles of Labour law' 论劳动法的基本原则 (2000) Law and Social Development

Gan B, 'The Entrepreneurial Approach to Employment is Getting Wider and Wider' (1985) China Labour

Gan B, 'The path of entrepreneurship employment is wider and wider' 创业式的就业道路越走越宽 (1985) China Labour

Gong J, 'Research on China's Labour Relations in the Transition Period' 转型期中国劳动关系研究 (Ph.D. Thesis, Nanjing Normal University 2004)

Guan H, 'Conception of Improving China's Labour Dispute Settlement System' 对改进我国劳动争议处理制度的构想 (2005) 1 Labour Law Review

Han Z, 'Chen Yun: The first person to put forward the theory of "crossing the river by feeling the stones"' 陈云:提出"摸着石头过河"理论第一人 (2015) Yun Ling Xian Feng

He X, 'The choice of history: from the planning of the package to the two-way selection of the market - the review of the allocation of talent resources for 50 years' 历史的选择:从计划统包统配到市场双向选择——人才资源配置五十年回顾 (1999) Chinese Talents Magazine

Hou L and Wang Q, 'Research on the Concept of Laborers in Labour Law' 劳动法上劳动者概念之研究 (2006) Journal of Yunnan University (Law Edition)

Hu A and Cheng Y, 'The Evolution of China's Employment System' 中国就业制度演变 (2003) Review of Economic Research

Hu A and Cheng Y, From planning system to market mechanism: evaluation of China's employment policy (1949-2001) (I) 从计划体制转向市场机制:对中国就业政策的评估(1949—2001 年)(上) (Chinese Academy of Sciences - Tsinghua University National Studies Center 2012)

Hu K, 'Expanding Enterprise Autonomy Needs Strengthening Economic Legislation' 扩大企业自主权亟需加强经济立法 (1981) Social Science Shanghai China

Huang J, 'Rationalism and Incrementalism in Policy-Making Theory' 决策理论中的理性主义与渐进主义及其适用性 (2002) Journal of Nanjing University (Philosophy, Humanities and Social Sciences)

Huang S, 'On the Legal System of Labour Contract' 论劳动合同法律制度 (1984) Modern Law Science

Huang Z, 'Promulgation of the “Reformation of Capital" Decision' “对资改造”决策的出台(2015) Ling Dao Wen Cui

Jiang W and Xiao J, 'A Comparative Study of Labour Dispute Arbitration System--On the Perfection of Labour Dispute Arbitration Legislation in China' 劳动争议仲裁制度的比较研究──兼论我国劳动争议仲裁立法之完善 (1995) Law Science (Journal of Northwest Institute of Political Science and Law)

Jiang Z, ‘Seriously Eliminate the Phenomenon of Unfair Distribution in Society’ 认真消除社会分配不公现象 (1989) Qiushi < https://www.ixueshu.com/document/342ced7f944c1569318947a18e7f9386.html > accessed 12 December 2019

Labour Work, 'New Progress in China's Employment Work Last Year' (1982) Labour Work

Li J, 'Chinese Labour Contract Legislation in Social Reformation' 社会变革中的中国劳动合同立法 (2009) Jurist

Li J, 'Retrospect of Enactment of the Labour Law of Our Country' 中國《勞動法》制定的回顧 (2014) China Law

Li W, 'Legal Orientation of Medical Insurance Agency — On Role and Function of Social Executive Prestation Subject' 医疗保险经办机构之法律定位——论社会行政给付主体之角色与功能 (2013) Administrative Law Review

Li Z, 'China's Employment System is Gradually Moving Towards Marketization' 我国就业制度正逐步走向市场化 (1998) Financial Digest

Lin J, 'Legislative Value, System Innovation and Impact Evaluation of Labour Contract Law' 《劳动合同法》的立法价值、制度创新及影响评价 (2008) Jurists Review

Lin Y, 'Analysis of “Iron Rice Bowl"' “铁饭碗”析 (1983) Social Sciences Shanghai China

Lin Y, 'A Study of the Historical Contribution of the International Labour Organization (ILO) and Its Influences on China's Legal System Construction of Labour and Social Security —— Commemorating the 100th Anniversary of the Founding of the ILO' 劳动社会保障法制建设的影响——纪念国际劳工组织成立100周年 (2019) 33 Journal of China University of Labour Relations

Lin Y, Cai F and Li Z, 'On the Progressive Path of China's Economic Reform' 论中国经济改革的渐进式道路 (1993) Economic Research Journal

Linghu A, 'Informal Discussion on the Labour Contract System' 劳动合同制漫谈 in Linghu A, Liu G and Wang J (eds), Labour, Wage and Social Insurance System Reform (1991) (China Labour Press 1991)

Liu B, 'The History, Reflection and Trend of State-owned Enterprise Reform' 国企改革的历史、反思及趋势 (2016) Marketing Research

Liu G and Lu S, 'The Establishment of Labour Contract System is the Most Successful Reform in Our Country: Review and Prospect Of China's Labour Contract System Reform (I)' 劳动合同制度的确立是我国劳动制度最成功的改革──我国劳动合同制度改革回顾与展望(上) (1996) China Labour Science

Liu Q, 'Professor Guan Huai and His Love with the Labour Law' 关怀教授与他的劳动法情缘 Legal Daily (http://big5.workercn.cn/big5/character.workercn.cn/364/201404/02/140402112210699.shtml accessed 20 December 2018

Lu C, 'Research on China's Social Insurance Overall Co-ordination Level' 中国社会保险统筹层次研究 (Doctoral Thesis, Party School of Central Committee of C.P.C 2007)

Lu Q, 'Invisible Legislators: The Function and the Legitimacy Problem of Legislative Staff in Legislation in China' 隐性立法者:中国立法工作者的作用及其正当性难题 (2013) 43 Journal of Zhejiang University(Humanities and Social Sciences)

Lu Y, 'Structure and Change: The Household Registration System in China after 1949' 1949 年后的中国户籍制度:结构与变迁 (2002) Journal of Peking University (Humanities and Social Sciences)

Mao Q and Zhang G, 'On China's Industrial Injury Insurance System' 工伤的法律救济制度研究——中国工伤保险制度的发展与完善 (2007) 04 Journal of Lanzhou University (Social Sciences)

Mu S, 'The Justice Value of Labor Law "Tilt Protection Principles" 劳动法"倾斜保护原则"正义价值探究' (PhD, Shanxi Normal University 2011)

Niu Y and Zhai Y, 'Analysis on the Path of Strengthening the "Three Self-confidence" and Adhering to the Reform of State-owned Enterprises' 关于增强"三个自信",坚持国企改革方向的路径探析 (2016) Modern SOE Research

Ren Z, 'Labour Rights Protection of Employees in Foreign Enterprises 外资企业员工劳动权益保护之研究' (Master's Thesis, Jilin University 2011)

Research Group of the Chinese Academy of Social Sciences Law Institute, 'Theoretical Thinking and Countermeasures for Establishing the Legal System of Socialist Market Economy' 建立社会主义市场经济法律体系的理论思考和对策建议 (1993) Chinese Journal of Law

Statas Research Group of the Ministry of Labour on the Development of Labour Dispute Handling System with Chinese Characteristics, 'Research on China's Labour Dispute Handling System' in Linghu An and others (eds), *Labour, Wage, and Social Insurance System Reform (1993)* (China Labour Press 1993)

Shao B, 'China Labor Law Research Association was Established and held an Academic Seminar' 中国劳动法研究会成立并举行学术讨论会 (1983) Journal of Zhongnan University of Economics and Law

Shen J and Jiang Y, 'The Existence Basis, Qualitative and Ruling Relationship of Labour Dispute Arbitration' 劳动争议仲裁的存在基础、定性与裁审关系 (2019) Law Science

Shi C, 'Revision of the three main issues of "Four Horses and Fertilizers"' 关于“四马分肥”三个主要问题的订正 (2016) CPC History Studies

Song X, 'Several Questions about the International Comparison of the Labour Market' 有关劳动力市场国际比较的几个问题 (1993) Economy Management and Cadre Management

Song Y, 'Determination and Adjustment of the Employment Guidelines Since the Founding of the People's Republic of China' 建国以来我国劳动就业指导方针的确定与调整 (2010) 26 Journal of West Anhui University

Sun H, 'Non-state-owned Enterprises Have Many Problems in Implementing the Labour Law'非国有企业贯彻落实《劳动法》问题较多 (1995) Shandong Labour

Sun H, 'The Main Supporting Regulation and Provisions Since the Promulgation of the Labour Law'《劳动法》颁布以来的主要配套法规、规章 (1996) Labour World

Sun J and Yu W, 'The "three major reforms" Laid the Institutional and Economic Foundation for China's Socialist Modernization' “三大改造”奠定了中国社会主义现代化建设的制度和经济基础 (2019) Studies on Mao Zedong and Deng Xiaoping Theories

Tang S, 'Idea，Action，and Outcome: The Objects and the Tasks of Social Sciences' 观念、行动和结果：社会科学的客体和任务 (2018) 453 World Economics and Politics

Tian Y, 'International Policy Diffusion and Domestic System Transformation - China's Path of Collective Bargaining' 国际政策扩散与国内制度转换——劳资集体谈判的中国路径 (2014) World Economics and Politics

Tu W and Wang R, 'The Gradual Change of Labour Contract Institution in the Perspective of Historical Institutionalism' 历史制度主义视角下的劳动合同制度变迁 (2018) 35 Human Resouces Development of China

Wang A, 'A Tentative Analysis of the System of the Offspring Filling Up a Job Vacancy Left by the Parent in the History of the PRC' 试析中华人民共和国历史上的子女顶替就业制度 (2009) CPC History Studies

Wang F, ‘On the Characteristics of Collective Labour Disputes in China’ (2010) 21(6) Journal of China Institute of Industrial Relations

Wang K, ‘International Forces Fight behind the Chinese Labour Contract Law’ 国际力量暗战中国《劳动合同法》 [guó jì lì liàng àn zhàn zhōng guó <láo dòng hé tóng fǎ >] (2007) 11 Business Watch Magazine

Wang L, 'Legislative Bureaucratization: A New Perspective to Understand the Process of Chinese Legislation' 立法官僚化:理解中国立法过程的新视角 (2016) China Law Review

Wang Q, *Review and Reflection on the 70 Years of New China Labour Law (PKU) 新中国劳动法 70 年的回顾与思考（北大）* (Peking University 2019)

Wang Q and Shi C, ‘Review and Reflection on Labor Laws of New China in 70 Years’ 新中国 70 年劳动法的回顾与思考 (2020) 03 Seeker

Wang Q and Yang H, 'On the Equal Pay for Equal Work in Labor Dispatch——Also on the 2012 "Labor Contract Law Amendment"' 试论劳务派遣中的同工同酬——兼评 2012 年《劳动合同法修正案》 (2013) 34 Journal of Soochow University (Philosophy & Social Science Edition)

Wang W and others, 'Experts Talk about the Reform of Labour Dispute Settlement System (I)' 专家纵谈劳动争议处理体制改革(上) (2006) China Labour

Wang W and others, 'Experts Talk about the Reform of Labour Dispute Settlement System (II)' 专家纵谈劳动争议处理体制改革(下) (2006) China Labour

Wang X, 'The Historical Development of Collective agreement System and Its Enlightenment' 集体合同制度的历史发展及其启示 (2000) Journal of Qinghai Nationalities University (Education Science Edition)

Wang X and Shu Y, ‘"Crossing the River by Feeling the Stones": Theoretical Reflection’“摸着石头过河”:理论反思 (2011) The Journal of World Economy

Wu W, 'Reflections on the Evolution of and Approach to China's Social Law Theory' (2019) 22 ECUPL Journal 华东政法大学学报 75-89

Xiong H, 'The Historical Contribution and the Future Development on Labor Law《劳动法》的历史贡献与未来发展' (2015) China Labour 45-48

Xu P, 'Predicament and Relief Practice of Remaining Employees in State-owned Enterprises in the Early Stage of New China——A Microscopic Investigation Centered on Beijing People's Printing House (1949-1957)' (2019) CPC History Research and Teaching 党史研究与教学 66-76

Xu X, '"Crossing the River by Feeling the Stones" and the Policy Choice of China's Progressive Political Reform' "摸着石头过河"与中国渐进政治改革的政策选择 (2002)03 Tianjin Social Sciences

Xuan D, 'Discussion on The Legislation of Labour Contract Regulation' 关于制定劳动合同制法规的探讨 (1983) Law Science 38-41

Yan J, 'China's Legislative System' 我国的立法制度 (1994) NPC Work Communication

Yang F, 'Historical Research on Family Planning of Contemporary China' 当代中国计划生育史研究 (Ph.D. Thesis, Zhe Jiang University 2004)

Yang L, 'Drafting process of "Labour Law (Draft)" ' 《劳动法(草案)》的起草过程 (1990) China Labour

Yu S and Li M, 'The New Turn of the Family Reunion Leave in China' 我国探亲假制度的时代转向问题 (70 Years of New China Labour Law: Symposium on History, Choice and Trends)

Yuan S, 'Progress in the formulation of the Labour Law of the People's Republic of China' 制定《中华人民共和国劳动法》的进展状况 (1993) 05 Law Science Magazine

Zhang X, 'Several Practical Issues on Fostering and Developing the Labour Market, Reform of Labour Salary and Social Insurance System' 培育和发展劳务市场中的几个实践问题 (1993) Review of Economic Research

Zhao W, 'The Blindly Outflow of Peasants in the1950s and the Formation of a Modern Household Registration System' 20 世纪 50 年代农民盲目外流与现代户籍制度的形成 (2012) Journal of Capital Normal University (Social Sciences Edition)

Zhao Y, 'Historical Review and Prospect of Our Party's Labour Legislation ' 对我党劳动立法的历史回顾与展望 (1996) Theory & Practice of Trade Unions

Zheng S, 'Openness, Standardization and Stereotype: The Analysis of the Approach of China's Social Insurance Legislation from the Policy to the Law' 公开、规范与定型——养老保险制度从政策到法律——中国社会保险立法的进路分析 (2005) Law Science

Zhong K, 'Why is the Labour Law be Overhead?' 《劳动法》为什么被架空? (2006) Study Monthly

Zhong W, 'Distinction between Strong and Weakness: "Labour" in Chinese Labour Law Theory' 强弱之辨:中国劳动法学理论中的“劳动者” (2018) 17 Law and Social Sciences

Zhou C, 'Person in the Labour Act：Effects of Choice of Prototype of Labourer upon Labour Act’s Implementation' 劳动法中的人——兼论“劳动者”原型的选择对劳动立法实施的影响 (2012) 34 Modern Law Science

Zhou G and others, 'Expert Point of View: Overtime and Overtime Pay' 专家视点：加班和加班工资 (2008) China Labour

Zhou W, 'On the Legalization and Institutionalization of Chinese Legislative Principles' 论中国立法原则的法律化、制度化 (2003) Legal Forum

Zhu J, 'China's Labour Market and Social Security System' 我国劳务市场和社会保障制度 in Ling H, Liu G and Hu X (eds), *Labour Wage Social Insurance System Reform* (China Labour Publishing House 1993)

Zuo J, 'Discussion on the Abolishment of the “Social Insurance and Welfare“ Clause of the Labor Law under the Amendment' 修法背景下《劳动法》“社会保险与福利”条款存废之立法讨论 (2018) 21 Tribune of Economic Law

English Literature

Biddulph S, Legal reform and administrative detention powers in China (Cambridge University Press 2007)

Brødsgaard KE, 'Institutional Reform and the Bianzhi System in China' (2002) 170 China Quarterly 361-386

Burton C, 'China's Post-Mao Transition: The Role of the Party and Ideology in the" New Period"' (1987) Pacific Affairs 431-446

Bush GH and Scowcroft B, A world transformed (Vintage 2011)

Capoccia G and Kelemen RD, 'The study of critical junctures: Theory, narrative, and counterfactuals in historical institutionalism' (2007) 59 World politics

Chan A, 'Revolution or corporatism? Workers and trade unions in post-Mao China' (1993) The Australian Journal of Chinese Affairs

Chan KW, 'The Household Registration System and Migrant Labor in China: Notes on a Debate' (2010) 36 Population and Development Review

Chang T-k, 'The Making of the Chinese Bankruptcy Law: A Study in the Chinese Legislative Process' (1987) 28 Harvard International Law Journal

Chen C, *The Politics of Labor Protection in Authoritarian Systems: Evidence from Labor Law and Enforcement in Post-reform China* (University of California Publication 2011)

Cho YN, 'The Politics of Lawmaking in Chinese Local People's Congresses' (2006) China Quarterly

Clarke DC, 'Legislating for a Market Economy in China' (2007) 191 The China Quarterly

Cohen JA, 'Law's Relation to Political Power in China: A Backward Transition' (2019) Social Research: An International Quarterly

Collins H, Ewing KD and McColgan A, Labour law: text and materials (Hart 2001)

Cooney S, 'Making Chinese Labour Law Work: The Prospects for Regulatory Innovation in the People's Republic of China' (2006) 30 Fordham Int'l LJ 1050

Cooney S, 'China's Labour Law, Compliance and Flaws in Implementing Institutions' (2007) 49 Journal of industrial relations

Cui C and others, 'Employment Protection and Corporate Cash Holdings: Evidence from China's Labour Contract Law' (2018) 92 Journal of Banking & Finance

Deakin S, 'Does the 'Personal Employment Contract' Provide a Basis for the Reunification of Employment Law?' (2007) 36 Industrial Law Journal

Ding DZ and Warner M, 'China's labour-management system reforms: Breaking the 'Three Old Irons'(1978–1999)' (2001) 18 Asia Pacific Journal of Management

Dittrich M, 'Transition Economies: Political Economy in Russia, Eastern Europe, and Central Asia' (2011) 16 Journal for East European Management Studies

Eckes AE, The contemporary global economy: a history since 1980 (John Wiley & Sons 2011)

Estlund CL and Gurgel S, 'Will labour unrest lead to more democratic trade unions in China?' (2013) Forthcoming in China and ILO Fundamental Principles and Rights at Work (Roger Blanpain, Ulla Liukkunen, & Yifeng Chen, eds, 2014)

Fioretos O, Falleti TG and Sheingate A, Historical institutionalism in political science (Oxford University Press Oxford 2016)

Fox JB, Donohue JM and Wu J, 'The Arbitration of Labor Disputes in China Today: Definition and Implications' (2005) 17 Employee Responsibilities and Rights Journal

Friedman E and Lee CK, 'Remaking the World of Chinese Labour: A 30-Year Retrospective' (2010) 48 British Journal of Industrial Relations

Fry S and Mees B, 'Industrial relations in Asian socialist-transition economies: China, Vietnam and Laos' (2016) 28 Post-Communist Economies

Gallagher M and others, 'China's 2008 Labour Contract Law: Implementation and implications for China's workers' (2015) 68 Human Relations

Gallagher ME, '"Reform and Openness": Why China's Economic Reforms Have Delayed Democracy' (2002) 54 World Politics

Gallagher ME, '"Time is Money, Efficiency is Life": The Transformation of Labor Relations in China' (2004) 39 Studies in Comparative International Development

Gallagher ME, Jiang J and Regulations L, 'China's Labour Legislation' (2002) 35 Chinese Law and Government

Gee KA, 'The Sent-down Youth of China: The Role of Family Origin in the Risk of Departure to and Return from the Countryside' (2011) 16 The History of the Family

Josephs HK, 'Labor Law in a socialist market economy: The case of China' (1995) 33 Colum J Transnat'l L.

Karindi L, 'The making of China's new labour contract law' (2008) 66 China Analysis

Kuo M-F, 'Reframing Chinese labour rights: Chinese unionists, Pro-labour societies and the nationalist movement in Melbourne, 1900-10' (2017) Labour History

Lee TR and Phillips JC, 'Data-Driven Originalism' (2018) 167 U. Pa. L. Rev.

Li J, 'Impacts of the Chinese Historical Background on the Legislation of the Current Chinese Labour Code' (2006) 3 US-China Law Review

Lindner J and Rittberger B, 'The Creation, Interpretation and Contestation of Institutions—Revisiting Historical Institutionalism' (2003) 41 JCMS: Journal of Common Market Studies

Luo SQ, 'Agendas, Alternatives, and Collective Labour Law a Case Study of Local Collective Bargaining Legislation in South China' (2017) 39 Employee Relations

Martinek M, Experimental Legislation in China Between Efficiency and Legality: The Delegated Legislative Power of the Shenzhen Special Economic Zone (Springer 2018)

Matter U and Stutzer A, 'The Role of Lawyer-Legislators in Shaping the Law: Evidence from Voting on Tort Reforms' (2015) 58 Journal of Law & Economics

Meibauer G, 'Interests, ideas, and the study of state behaviour in neoclassical realism' (2019) Review of International Studies

Meng X, 'The Labor Contract Law, Macro Conditions, Self-Selection, and Labor Market Outcomes for Migrants in China' (2017) 12 Asian Economic Policy Review

Mertha A, '"Fragmented Authoritarianism 2.0": Political Pluralization in the Chinese Policy Process' (2009) 200 The China Quarterly

Messenger JC, Lee S and McCann D, Working time around the world: Trends in working hours, laws, and policies in a global comparative perspective (Routledge 2007)

Mitra P, Selowsky M and World B, Transition, the first ten years: analysis and lessons for Eastern Europe and the former Soviet Union (World Bank 2002)

Nam CY, 'The Politics of Lawmaking in Chinese Local People's Congresses' (2006) The China Quarterly

Neal AC, Cross-currents in Modern Chinese Labour Law (Kluwer Law International 2014)

Ngok K, 'The Formulation Process of the Labor Law of the People's Republic of China: A Garbage Can Model Analysis' (1998) Unpublished doctoral dissertation, Department of Public and Social Administration, The City University of Hong Kong, Hong Kong

Ngok K, 'The Changes of Chinese Labor Policy and Labor Legislation in the Context of Market Transition' (2008) 73 International Labor and Working-Class History

O'Brien KJ, Reform without Liberalization: China's National People's Congress and the Politics of Institutional Change (Cambridge University Press 1990)

Owen R. 'Observations on the effect of the manufacturing system: with hints for the improvement of those parts of the system which are most injurious to health and morals' printed by R. and A. Taylor, 1815. *The Making of the Modern World*, <https://link.gale.com/apps/doc/U0103306385/MOME?u=peking&sid=MOME&xid=34ebe0ab> Accessed 7 December 2019

Périsse M, 'Labor Law in China: How Does It Contribute to the Economic Security of the Workforce? A Commonsian Reading' (2017) 51 Journal of Economic Issues

Philipsen N, Weishaar SE and Xu G, Market Integration: the EU Experience and Implications for Regulatory Reform in China, vol 2 (Springer 2015)

Pierson P and Skocpol T, 'Historical institutionalism in contemporary political science' (2002) 3 Political science: The state of the discipline

Pringle TE and Frost SD, '"The absence of rigor and the failure of implementation": occupational health and safety in China' (2003) 9 International Journal of Occupational and Environmental Health

Ritchie DA, The Oxford handbook of oral history (Oxford handbooks series, Oxford University Press 2011)

Schmidt F and Neal AC, 'Collective Agreements and Collective Bargaining' in Kahn-Freund O and Hepple BA (eds), *International Encyclopedia of Comparative Law*, vol XV: Labour Law (1984)

Simon KW, Civil society in China: the legal framework from ancient times to the new reform era (Oxford University Press 2013)

Steinmo S, 'Historical institutionalism' (2008) Approaches and methodologies in the social sciences: A pluralist perspective

Strøm K, 'Rules, Reasons and Routines: Legislative Roles in Parliamentary Democracies' (1997) 3 The Journal of Legislative Studies

Tanner MS, The Politics of Lawmaking in Post-Mao China: Institutions, Processes and Democratic Prospects (Oxford : Oxford University Press 1999)

Thelen K, 'Historical institutionalism in comparative politics' (1999) 2 Annual Review of Political Science

Tsuneaki S, 'Convergence and Divergence in Transformation: Comparison of Experiences of CEECs and China', Transition from Socialist to Market Economies (Springer 2009)

United States. Congressional-Executive Commission on C, Working conditions in China : just and favorable? : roundtable before the Congressional-Executive Commission on China, One Hundred Ninth Congress, first session, November 3, 2005 (2006)

Walder AG, 'China's Transitional Economy: Interpreting its Significance' (1995) 144 The China Quarterly

Warner M, 'Chinese enterprise reform, human resources and the 1994 Labour Law' (1996) 7 The International Journal of Human Resource Managemen

Witt JF, 'Rethinking the Nineteenth-century Employment Contract, Again' (2000) 18 Law and History Review

Xue S, 'China's Legislative System and Information: An Overview' (2005) 22 Government Information Quarterly

Yan D, 'Labour Laws and Hukou Inequality in the People's Republic of China' (Ph.D. Thesis, The University of Warwick 2010)

Yan D, 'Chinese Labour Law Development and Hukou Discrimination', Fundamental Labour Rights in China-Legal Implementation and Cultural Logic (Springer 2016)

You Y, Educated Youth Should Go to the Rural Areas: A Tale of Education, Employment and Social Values, 2018)

Yu S and Li M, 'The New Turn of the Family Reunion Leave in China' (70 Years of New China Labour Law: Symposium on History, Choice and Trends) <https://www.cnki.com.cn/Article/CJFDTotal-CJLT202003012.htm > accessed 9 February 2020

Zou M, 'The Evolution of Collective Labour Law with 'Chinese Characteristics'? : 'Crossing the River by Feeling the Stones'?' (2014) 86 CHINA and ILO FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK, Bulletin of Comparative Labour Relations

Book

State Labour Administration (ed), *China Labour Legislation Compilation* 中国劳动立法资料汇编 (Worker Press 1981)

Brandt L and Rawski TG, *China's Great Economic Transformation* (Cambridge university press 2008)

Brown RC, *Understanding China's Regulation of the Workplace* (Understanding Labor and Employment Law in China, Cambridge University Press 2009)

National Bureau of Statistics Social Statistics Bureau and Department of Comprehensive Planning of Ministry of Labour (eds), *China Labour Wage Statistical Yearbook (1989)* 中国劳动工资统计年鉴(1989) (Labour and Personnel Publishing House 1989)

Chan A, *Chinese Workers in Comparative Perspective* (1 edn, Cornell University Press 2015)

Editorial House of Contemporary China (ed), *Contemporary China's Labour Management* 当代中国的劳动力管理 (China Social Sciences Press 1990)

Chinese Academy of Social Science and Central Archives (eds), *Selected Economic Archives of the People's Republic of China: 1949-1952 (Labour Wage and Employee Benefits)* *中华人民共和国经济档案资料选编：1949-1952（劳动工资和职工福利卷）*(China Social Science Press 1993)

Collins H, Ewing KD and McColgan A, *Labour Law: Text and Materials* (Hart 2001)

Cooke FL, *HRM,* W*ork and Employment in China* (Routledge 2004)

Cooney S and others, *Law and labour market regulation in East Asia* (Routledge 2003)

Deng L, *Contemporary China's Employee Wages and Benefits and Social Insurance* *当代中国的职工工资福利和社会保险* (China Social Sciences Press 1987)

Contemporary China Book Series Editorial Departmen, *Contemporary China's Employee Wages and Benefits and Social Insurance* *当代中国的职工工资福利和社会保险* (China Social Sciences Press 1987)

Dong B, *Sacred Guardian of Labour: Labour Law* *劳工神圣的卫士: 劳动法* (Shanghai People's Publishing House 1997)

Gallagher ME and others, *From Iron Rice Bowl to Informalization Markets, Workers, and the State in a Changing China* (ILR Press, 2011) < http://muse.jhu.edu/books/9780801462931/ > accessed 20 December 2019

Haggard S, Lafay J-D and Morrisson C, *The Political Feasibility of Adjustment in Developing Countries* (OECD 1995)

Ho P, *Unmaking China's Development: The Function and Credibility of Institutions* (Cambridge University Press 2017)

Hu X, *History of Social Security Development in New China* *新中国社会保障发展史* (China HUman Resources & Social Security Publishing Group 2019)

Kuruvilla S, Gallagher ME and Lee CK, Frank W. *Pierce Memorial Lectureship and Conference: From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China* (Cornell University Press 2011)

Lin Y, Cai F and Li Z, *The Chinese Miracle: Development Strategy and Economic Reform 中国的奇迹: 发展战略与经济改革* (edn, Shanghai Renmin Press 2016)

Liu S, *Historical Institutionalism Comparative Historical Analysis to Institutional Chan 历史制度主义：制度变迁的比较历史研究* (Shanghai People's Publishing House 2010)

Liu X, *Chinese Educated Youth History: The Tide 1966-1980 中国知青史: 大潮 1966-1980 年* (Contemporary China Publishing House 2009)

Lubman SB, *Bird in a cage: Legal reform in China after Mao* (Stanford University Press 1999)

Nagy LM, *Socialist Collective Agreement* (Akadémiai Kiadó 1984)

National Bureau of Statistics, *Interpretation of the Main Indicators of Labour Wage Statistics (Trial Copy) (1978) 劳动工资统计主要指标解释（试行本）*

Neal AC, *Cross-Currents in Modern Chinese Labour Law* (Kluwer Law International 2014)

Ngok K, *China's Labor Problems and Labor Policies During the Transition Period* (Orient Publishing Centre 2011)

Nørgaard O, *Economic Institutions and Democratic Reform: A Comparative Analysis of Post-communist Countries* (Edward Elgar Publishing 2000)

State Labour Administration Policy Research Office, *Decision on Labour and Employment Issues* (Workers Press 1980)

Wuhan Foreign Affairs Office and Wuhan Economic Commission, *Ge Li Xi Zai Wu Chai 格里希在武柴* (Enterprise Management Press 1987)

Qi B and Chen Y, *In-depth Analysis of Classic Cases of Labour Disputes and Non-litigation Labour Issues: the Counter Measures of Employers in the Context of Labour*

Contract Law 劳动争议经典案例及非诉劳动问题深度解析：劳动合同法背景下的用人单位对策(China Legal Publishing House 2008)

Ren F, *World Labour Legislation 世界劳动立法* (Contemporary Labour Science Series, China Labor Press 1991)

Shanghai Renmin Press, P*ractice of the Reform of the Full Labor Contract of Shanghai Second Textile Machinery 上海二纺机全员劳动合同改革实践* (Shanghai Renmin Press 1992)

Song R, *Partisipated in the Legislative Work (Volume 2) 参加立法工作琐记（下）* vol 2 (China Legal Publishing House 1995)

Tang S, Dong J and Zhu M, *The Social Evolution of International Politics 国际政治的社会演化: 从公元前 8000 年到未来* (CITIC Press Group 2017)

Wang J, China Labor Yearbook (1988-1989) 1988-1989 中国劳动年鉴 1988-1989 zhōng guó láo dòng nián jiàn (China Labour Press 中国劳动出版社 1991)

Wang J, China Labour Yearbook (1992-1994) 1992-1994 中国劳动年鉴 1992-1994 zhōng guó láo dòng nián jiàn (China Labour Press 中国劳动出版社 1996)

Wang S, Polany's "The Great Transformation" and China's Great Transformation 波兰尼《大转型》与中国的大转型 bō lán ní 《dà zhuǎn xíng 》yǔ zhōng guó de dà zhuǎn xíng (SDX Joint Publishing Company 2012)

Wang Z (ed), *China's New Era of Reform and Opening Up Yearbook 中国改革开放新时期年鉴* (China Democracy and Legal System Publishing House 2015)

Yue G, *Crossing the Sword Gate 跨越剑门* (Interne Version)

Zelikow P and Allison G, *Essence of decision: explaining the Cuban Missile Crisis* (New York: Longman 1999)

Zhou W, *Legislative Theory 立法论*, (1 edn, Peking University Press 1994)

Speech

Cai C, Report of the National People's Congress Law Committee on the review of the "Labour Law of the People's Republic of China (Draft)" (1994)

Dong B, Further Strengthen the Country's Legal System and Guarantee the Cause of Socialist Construction （Speech on the CCP 8th National Presentative Conference on 19 September 1956 ） (1956)

Li B, Explanation of the "Labor Law of the People's Republic of China (Draft)" - At the 6th meeting of the Standing Committee of the Eighth National People's Congress on March 2, 1994 (1994)

Laws, Regulations and Rules

All-China Federation of Trade Union, 1949, Interim Measures of the All-China Federation of Trade Unions on Labor-Management Relations 中华全国总工会关于劳资关系暂行处理办法

Chinese People's Political Consultative Conference, 1949, Common Program of the Chinese People's Political Consultative Conference 中国人民政治协商会议共同纲领

Ministry of Labour, 1950, Ministry of Labour's Regulations on Labour Dispute Resolution Procedures 劳动部关于劳动争议解决程序的规定

Government Administrative Council of the Central People's Government, 1950, Direction of the Government Administrative Council of the Central People's Government on Relieving Unemployed Workers 中央人民政府政务院关于救济失业工人的指示

Ministry of Labour, 1950, Interim Measures of the Ministry of Labor to Relieve Unemployed Workers 劳动部颁发救济失业工人暂行办法

Ministry of Labour, 1950, Measures for the Registration and Introduction of Unemployed Technical Employees issued by the Ministry of Labor 劳动部颁发失业技术员工登记介绍办法

Ministry of Labour, 1951, Provisional Regulations on Recruiting Employees Residing in a Different Location 劳动部关于各地招聘职工的暂行规定

Government Council, 1951, People's Republic of China Labor Insurance Regulations 中华人民共和国劳动保险条例

Government Administration Council, 1952, Government Administration Council's Decision on Labor and Employment Issues 政务院关于劳动就业问题的决定

Government Administrative Council, 1952, Administrative Council's approach to dealing with unemployed workers 政务院关于处理失业工人办法

Government Council, 1953, Draft Amendment to the Regulations on the Labor Insurance Regulations of the People's Republic 中华人民共和国劳动保险条例实施细则修正草案

State Council, 1956, Provisions for the Implementation of the Eight-hour, Short Week Work System in the Construction Industry 关于建筑业实行 8 小时，小礼拜工作制度的规定

Ministry of Labour, 1956, Letter from the Ministry of Industry and Light Industry on the replacement of work between the elderly and the debilitated workers 关于年老体衰职工以其子女代替工作问题复轻工业部的函

State Council, 1958, Interim Provisions of the State Council on Holidays Treatment and Wages of Workers and Employees Family Reunion Leave 国务院关于工人、职工回家探亲的假期和工资待遇的暂行规定

State Council, 1958, Instructions on Further Improving the Streamlining of State Organs 关于进一步做好国家机关精简工作的指示

National People’s Congress, 1958, Regulation on Household Registration 中华人民共和国户口登记条例

Ministry of Labour, 1960, Notice of the Ministry of Labour on the Trial Implementation of "Several Provisions on Strengthening the Establishment and Appointment of Enterprises (Draft)" 劳动部关于试行“关于加强企业编制定员工作的几项规定（草案）”的通知

State Planning Commission and Ministry of Labour, 1960, Report of the State Planning Commission and the Ministry of Labour on Current Labour Arrangements

and Staff Wages 国家计委党组、劳动部党组关于当前劳动力安排和职工工资问题的报告

The Central Committee of the Communist Party of China, 1960, Instructions of the Central Committee of the Communist Party of China on the Report on the Current Labor Arrangement and Staff Wages Issued by the Party Group of the State Planning Commission and the Party Group of the Ministry of Labour 中共中央转发国家计委党组、劳动部党组《关于当前劳动力安排和职工工资问题的报告》的指示

The Central Committee of the Communist Party of China, Decision of the Central Committee of the Communist Party of China on Several Issues Concerning Accelerating Agricultural Development (Draft) 中共中央关于加快农业发展若干问题的决定(草案) (20 April 1978) < http://www.cnki.com.cn/Article/CJFDTotal-XJLY1979S1000.htm > access 01 February 2019

State Council, 1962, Interim Provisions of the State Council on the Use of Temporary Staff and Workers by State-Owned Enterprises 国务院关于国营企业使用临时职工的暂行规定

State Council, Notice of the State Council on Approving and Forwarding the Opinions of the Ministry of Labor, the Ministry of Finance, and the State Planning Commission on Further Improving and Perfecting the Link between the Total Wages of Enterprises and Economic Benefits 国务院批转《劳动部、财政部、国家计委关于进一步改进和完善企业工资总额同经济效益挂钩的意见》(6 March 1989) < http://www.molss.gov.cn:8080/trsweb_gov/detail?record=840&channelid=40543> accessed 9 December 2019

Ministry of Labour, 1962, Notice of the Ministry of Labour on Dividing the Scope of Direct Production Workers and Indirect Production Workers of Industrial Enterprises 劳动部关于划分工业企业直接生产人员与非直接生产人员范围的通知

Ministry of Labour, 1964, Circular on Whether Workers and Staff Whose Spouse Were Officers Could Enjoy Family Reunion Leave 关于配偶担任职工的职工能否享受家庭团圆休假的通知

Ministry of Labour, the Ministry of Finance, the State Planning Commission, and the State Commission for Economics and Trade, 1993, Measures on the Implementation of Total Wages of State-owned Enterprises Linked to Economic Benefits 国营企业工资总额同经济效益挂钩实施办法

State Council, 1965, Interim Provisions of the State Council on Improving the Use and Management of Temporary Workers 国务院关于改进对临时工的使用和管理的暂行规定

State Council, 1971, Notice of the State Council on Reforming the System of Temporary Workers and Rotating Workers 国务院关于改革临时工、轮换工制度的通知

State Council, 1977, Notice on Adjusting the Salary of Some Employees 关于调整部分职工工资的通知

State Council, 1978, Interim Measures for the Resettlement of Old, Weak and Sick Cadres 国务院关于安置老弱病残干部的暂行办法

State Council, 1978, Interim Measures for the Retirement of Workers 国务院关于工人退休、退职的暂行办法

State Council, 1994, Regulations of the State Council on Working Hours of Employees 国务院关于职工工作时间的规定

State Council, 1995, Decision of the State Council on Amending the 'Provisions of the State Council on Working Hours of Employees 国务院关于修改《国务院关于职工工作时间的规定》的决定

State General Administration of Labour, 1979, Opinions on Comprehensive Examination for Recruitment of Work 关于招工实行全面考核的意见

State Economic and Trade Commission and State Planning Commission, 1979, Notice of the State Economic and Trade Commission and the State Planning Commission on the Establishment of Enterprise Headcount and Labour Quota 国家经委国家计委关于做好企业编制定员和劳动定额工作的通知

State Economic and Trade Commission and State Planning Commission, 1980, Notice of the Central Committee of the Communist Party of China on Forwarding the National Labour and Employment Conference Document 中共中央关于转发全国劳动就业会议文件的通知

Ministry of Chemical Industry and Ministry of Labour, 1981, Opinions of the Ministry of Chemical Industry and Ministry of Labour on the reform of the working hours system for workers with toxic and hazardous operations in chemical industry 化工部原国家劳动总局关于在化工有毒有害作业工人中改革工时制度的意见

State Council, 1981, Provisions of the State Council on the Treatment of Employees' Family Reunion Leave 国务院关于职工探亲待遇的规定

Central Committee of the CPC, 1981, Resolution of the 11th Central Committee of the Communist Party of China on Several Historical Issues of the Party since the Founding of the People's Republic 中国共产党第十一届中央委员会关于建国以来党的若干历史问题的决议

Central Committee of the CPC and State Council, 1981, Several Decisions on Widening the Way, Enlivening the Economy, and Solving the Problem of Urban Employment 关于广开门路、搞活经济、解决城镇就业问题的若干规定

State Council, 1983, Notice of the State Council on Seriously Rectifying the Work of Recruiting Retired and Retired Staff and Children 国务院关于认真整顿招收退休、退职 职工子女工作的通知

Ministry of Labour and Personnel, 1983, Notice of the Ministry of Labour and Personnel on Actively Trial the Labour Contract System 劳动人事部关于积极试行劳动合同制的通知

General Office of the State Council, 1984, Notice of the General Office of the State Council on Forwarding Several Opinions of the Ministry of Labour and Personnel on the Rational Use of Award Funds by Enterprises 国务院办公厅转发劳动人事部关于企业合理使用奖励基金的若干意见的通知

State Council, 1986, Notice on the Serious Implementation of Several Regulations for Reforming the Labor System 关于认真执行改革劳动制度几个规定的通知

State Council, 1986, Notice of the State Council on Issuing Four Provisions for Reforming the Labor System 国务院关于发布改革劳动制度四个规定的通知

State Council, 1986, Interim Provisions on the Recruitment of State-Owned Enterprises 国营企业招用工人暂行规定

State Council, 1986, Interim Provisional Regulations on Labour Contracts for State-Owned Enterprises 国营企业实行劳动合同制暂行规定

Chinese Center for Disease Control and Prevention, 1987, Provisions on the Scope of Occupational Diseases and the Treatment of Occupational Diseases 职业病范围和职业病患者处理办法的规定

State Council, 1987, Interim Provisions on the Handling of Labor Disputes in State-owned Enterprises 国营企业劳动争议处理暂行规定

State Council, 1989, Notice on Further Strengthening the Management of Wages Funds 关于进一步加强工资基金管理的通知

State Council, 1989, Notice of the State Council on the Opinions of the Ministry of Labour, the State Planning Commission and the Ministry of Finance on the Arrangement of Wages and the Treatment of Retired Persons in State-owned Enterprises in 1989 国务院批转劳动部、国家计委、财政部关于一九八九年国营企业工资工作和离退休人员待遇问题安排意见的通知

State Council, 1992, The Regulations on the Transformation of Operating Mechanisms for Industrial Enterprises under the Ownership of the Whole People 全民所有制工业企业转换经营机制条例

Ministry of Labour Ministry of Finance State Planning Commission State Commission of Economic Reform State Economic and Trade Commission, 1993, Provisions on the Total Wages of State-owned Enterprises Linked to Economic Benefits 国有企业工资总额同经济效益挂钩规定

State Council, 1993, People's Republic of China Enterprise Labour Dispute Resolution Regulations 中华人民共和国企业劳动争议处理条例

the Central Committee of the CPC, 1993, Decision of the Central Committee of the Communist Party of China on Several Issues Concerning the Establishment of a Socialist Market Economic System 中共中央关于建立社会主义市场经济体制若干问题的决定

State Administration of Taxation National Commission for Economic Reform Economic and Trade Office of the State Council and Ministry of Finance, 1993, The State Administration of Taxation, National Commission for Economic Reform, the Economic and Trade Office of the State Council, and the Ministry of Finance' s Regulation on the Exemption of Income Tax for the Tertiary Industry Established by the Industrial Enterprises under the Ownership of Whole People for the Resettlement of Surplus Employees 国家税务局、国家体改委、国务院经贸办、财政部关于全民所有制工业企业为安置富余职工兴办的第三产业免征减所得税的规定

, Explanation of the Ministry of Labor on Several Provisions of the Labor Law of the People's Republic of China (1994)

State Council, 1994, State Council Regulations on Working Hours of Employees 国务院关于职工工作时间的规定

Ministry of Labour, 1994, Examination and Approval Methods for Enterprises to Implement Irregular Work Schedules and Comprehensive Calculation of Working Hours 关于企业实行不定时工作制和综合计算工时制的审批办法

Standing Committee of the National People' s Congress, 2007, Labor Dispute Mediation and Arbitration Law of the People's Republic of China 中华人民共和国劳动争议调解仲裁法

Ministry of Human Resources and Social Security, 2012, Interpretation of the People's Republic of China Social Insurance Law (Fourteen) 中华人民共和国社会保险法释义（十四）

Government Document

C Cai, *Report of the National People's Congress Law Committee on the Review of the 'Labour Law of the People's Republic of China (Draft)'* (June 1994) <

http://www.npc.gov.cn/wxzl/gongbao/2001-01/02/content_5003186.htm> accessed 28 November 2020

Digital Sources and Newspaper Articles

Bao X, 'The Pros of a Management Responsibility System' 经济责任制度好处大 *Shougang Daily* (Beijing, 26 June 1981) 3

Cai X, 'What are the legal protections for "temporary workers"? ' "临时工"受哪些法律保护(*Beijing Daily*, 18 September 2019)

National Bureau of Statistics, 'Report on the 30 Years of Reform and Opening-up: Comprehensive Improvement of Population Quality ' 改革开放 30 年报告之六：人口素质全面提高就业人员成倍增加 (2008) <http://www.stats.gov.cn/ztjc/ztfx/jnggkf30n/200811/t20081103_65692.html> accessed 27.11.2019

Nie J,' The Similarities and Differences between the Government Council of New China and the State Council' 新中国之政务院与国务院的异同 (*China.com.cn*, 3 September 2009) <http://www.china.com.cn/news/txt/2009-09/03/content_18456266.htm> accessed 10 December 2019

CCTV News, 'Haven't Heard of the "Three-Front"? This Mysterious Strategic Project in the History of China is Now Everywhere. ' 没听过"三线"？这项中国史上空前的神秘战略工程，如今随处可见 (2018) <https://www.jfdaily.com/news/detail?id=80356> accessed 9 November 2019

China.com.cn, '55 Years of Reform, Development and Brilliant Achievements in China's Employment' 中国就业 55 年的改革、发展和辉煌成就 (*China.com.cn*, 2004) <http://www.china.com.cn/zhuanti2005/txt/2004-09/24/content_5667091.htm> accessed 17 November 2019

Editorial, 'Learning to Manage Enterprises' 学会管理企业 *People's Daily* (Beijing, 6 February 1950) 1 < http://www.laoziliao.net/rmrb/1950-02-06-1#45927> accessed 23 October 2019

Guo Z, 'Employment Situation' 就业形势 (*www.gov.cn*, 2008) <http://www.gov.cn/test/2008-11/12/content_1146645.htm> accessed 17 November 2019

Jiang J, 'Why is the Labour Law Drafting Difficult?' 劳动法起草难在哪里？ *Labour Daily* (Beijing 29 July 1993)

Kuai Y, 'Statistics on the Total Population of the Working Age Group (15 to 64 Years Old) in China' (<https://www.kuaiyilicai.com/stats/global/yearly_per_country/g_population_15to64/chn.html> accessed 08 August

Standing G, Pan Y and Lee CK, 'Guy Standing, Pan Yi, and Li Jingjun talk about The Precariat: The New Dangerous Class in Contemprory China' <https://new.qq.com/omn/20180317/20180317A0V8UO.html>

National Bureau of Statistics, 'Sixth Report of the 30-year Reform and Opening Up: the Overall Improvement of the Quality of the Population has Doubled the Number of Employed People' 改革开放 30 年报告之六：人口素质全面提高就业人员成倍增加 (2008) <http://www.stats.gov.cn/ztjc/ztfx/jnggkf30n/200811/t20081103_65692.html> accessed 17 November 2019

Shou Gang Newspaper, 'The Person in Charge of the Labour Organization Office Answered Questions on the Retirement Replacement' 劳动组织处负责人就退休顶替问题答记者问 *Shou Gang Newspaper* (21 November 1980)

Xi R, 'State-owned Enterprise Reform in 1995' (*China.com.cn* 17 December 2008) <http://www.china.com.cn/news/zhuanti/zgztk/2008-12/17/content_16961083_2.htm> accessed 07 December 2019

Xu Y, 'Improving legislation is a permanent solution' 完善立法是治本之策 <http://www.npc.gov.cn/npc/c221/200404/2e620c57227c4621bf50904bc09162f8.shtml> accessed 20 December 2019

Yan Q, 'How Did Foucault Talk About Neoliberalism In 1979? ' 1979 年的福柯如何谈论新自由主义？ *Tootopiame* <https://mp.weixin.qq.com/s/-lQQLg6xpaq8PnDZ4c-ohA> accessed 12 March 2019

Zhang Y, 'Zhuyuan Hotel: She is the same age as Shenzhen Special Economic Zone ' 竹园宾馆：她与深圳特区同龄 (2005) <http://finance.sina.com.cn/roll/20050725/0558226436.shtml> accessed 27 September 2019

Zhao G, 'Brief Introduction to the Sixth Meeting of the Standing Committee of the Eighth National People's Congress ' 第八届全国人民代表大会常务委员会第六次会议简况 (2004) <http://npc.people.com.cn/GB/28320/35607/35628/2669272.html> accessed 13 October 2019

Zhou M and Ou Y, 'The Ups and Downs of the First “Foreign Director” Gerich and Wuchai' 首位“洋厂长”格里希与武柴沉浮 shǒu wèi “yáng chǎng zhǎng ”gé lǐ xī yǔ wǔ chái chén fú Da He Bao (<http://news.sina.com.cn/o/2008-04-11/073613720145s.shtml> accessed 03 July 2020

Appendix

1. Interview Questions

Remarks: This questionnaire is mainly focused on 1994 Chinese Labour Law legislation process.

1. When do you start to involve into the legislation process of Chinese labour law (1994)?

2. What is your occupation and position when you involved?

3. What is your position and mainly responsibilities during the legislation?

4. Which organ do you think is the starting organ of the process? Which organ leads the process?

5. Which organ or office do you think dominants the drafting process?

6. What is the dispute focuses between different organs or department?

7. Who have participated in the process in those legislatures and/or departments you mentioned above? If possible, could you please recommend some key participators so that I can get further contact?

8. Could you please give some documental materials that provided the information you gave? What and where is the document? Which library or archives files those documents?

9. During the legislation process, do you think there is any obstructions or compromises? Where is the obstruction comes from? Where or which part of the draft did you promised?

10. During the discussion, where do you think the disputes mainly discussed? Which questions have been repeated several times?

11. Does the conferences have minutes? Were they still able to be tracked? Where can we find those minutes?

12. Among each draft and the final legislation, which version or part you like the most? Which version or part you do not satisfied with?

13. Do you think the Labour Law is a relatively principled and programmatic legal document that without practical operability?

14. After the labour legislative process, what do you think needs to be amendment or complemented?

15. What do you think is the goal of this legislation? Do you think the implementing of the law has achieved this goal?

16. During the legislation, is there any form of definition has been given to explain the key terminologies such as labour, labourer /worker, employer, labour relations?

17. To what extend the economic situation has been considered during the legislative drafting process? Which key elements of economy or policy have been considered? Is there a clear notice of the different regions' situations shall or will apply different rules? Are these differences between regions are measured by the economic aspect?

18. What are the main influences of state-owned enterprises reform on the labour legislation?

19. In the Chapter 1 General Provisions, article 2 term 1, "This Law applies to enterprises, individually-owned economic organizations (hereinafter referred to as the employing unit) and labourers who form a labour relationship with them within the boundary of the Peoples Republic of China." Why the term "employing unit" has been used here instead of the "employer"? Whether the specific using here is for the purpose of restrict the scope the law?

20. In this article, term 2, it states that people who work in state organs, public institutions and social organization have signed the employment contract also applies to this law. But why the other people in the same institutions are not applying to the same law? What it the purpose of this article? When is the time that all people shall apply to the labour law?

21. During the legislation process, is there any consideration of how to allocate the relationship and responsibility of the employees, the employers and the state?

22. Whether there is any consideration of adjust the rules according to the

economic circumstances?

23. What are the rules that can regulate the strike?

24. Why the form of employment contract should be written?

25. What is the source of open-ended employment contract? Whether this rule is come from foreign laws?

26. What is the context of making the rule of economic redundancy?

27. What is the scope of the Trade Union's function and power? For instance, the article 30 gives rights to the Trade Union can support the arbitrations and lawsuit when they think the termination of one's employment contract is unlawful.

28. Why use 44 working hours?

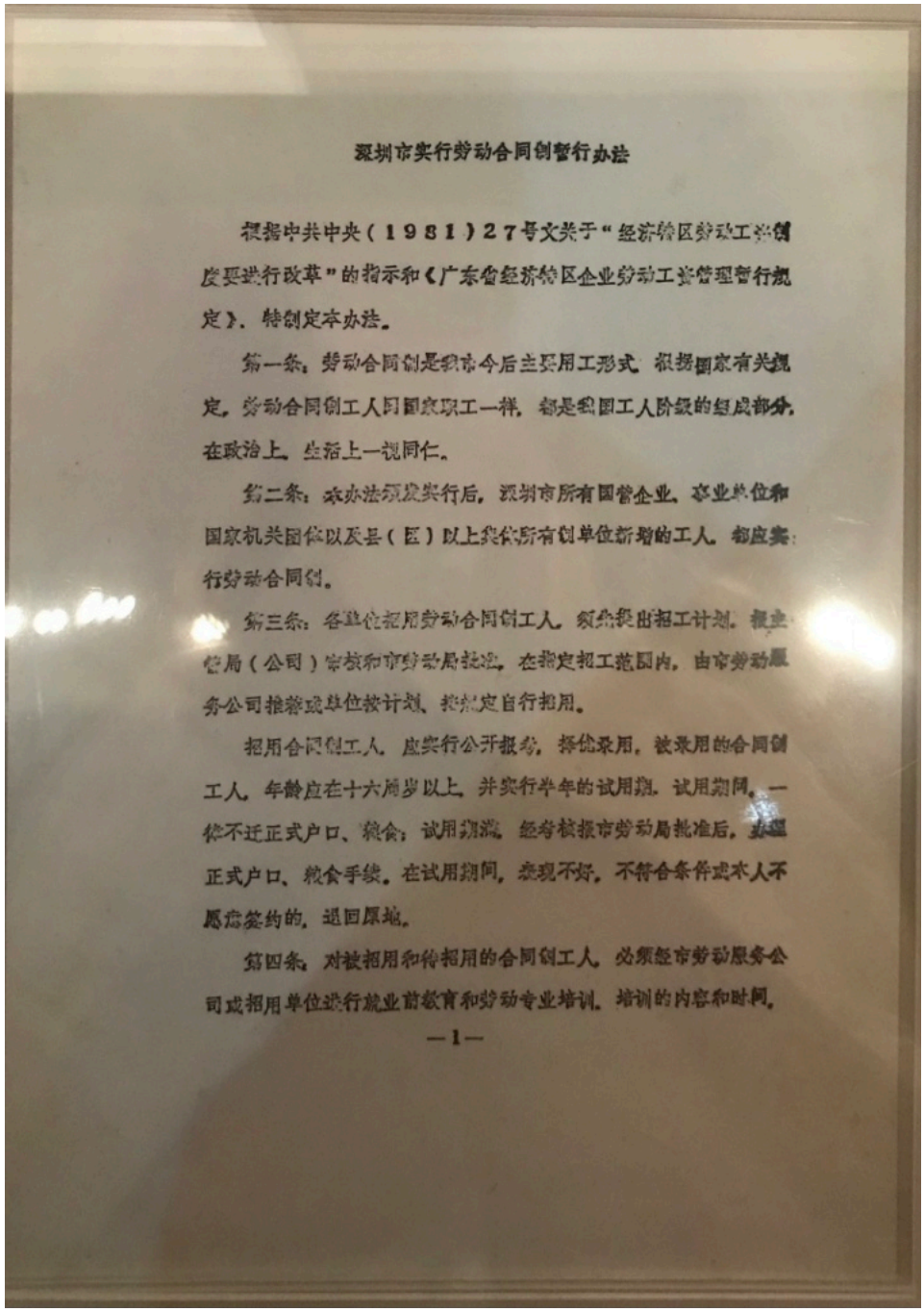
29. Why there is no practical rule on annul leave payments?

30. Why in the article 50 there is no certain punishments or practical rules on unlawful deduct or arrears wages?

31. Why the labour dispute must go through a arbitrational process before file a lawsuit?

2. Pictures

2.1 Exhibition on the “Implementing the Labour Contract System” in Shenzhen



深圳市实行劳动合同制暂行办法

根据中共中央（1981）27号文关于"经济特区劳动工资制度要进行改革"的指示和《广东省经济特区企业劳动工资管理暂行规定》，特制定本办法。

第一条：劳动合同制是我市今后主要用工形式。根据国家有关规定，劳动合同制工人同国家职工一样，都是我国工人阶级的组成部分，在政治上、生活上一视同仁。

第二条：本办法颁发实行后，深圳市所有国营企业、事业单位和国家机关团体以及县（区）以上我们所有制单位新增的工人，都应实行劳动合同制。

第三条：各单位招用劳动合同制工人，须先提出招工计划，报主管局（公司）审核和市劳动局批准。在指定招工范围内，由市劳动服务公司推荐或单位按计划、按规定自行招用。

招用合同制工人，应实行公开报考，择优录用。被录用的合同制工人，年龄应在十六周岁以上，并实行半年的试用期。试用期间，一律不迁正式户口、粮食；试用期满，经考核报市劳动局批准后，方迁正式户口、粮食手续。在试用期间，表现不好，不符合条件或本人不愿意签约的，退回原地。

第四条：对被招用和待招用的合同制工人，必须经市劳动服务公司或招用单位进行就业前教育和劳动专业培训。培训的内容和时间，

—1—

2.2 The year-end general evaluation and reward assessment standards for employees in Capital Iron and Steel Company, *Shougang Daily*, the 3rd Edition, 11 January 1980

首都报 1980年1月11日 第三版

首都钢铁公司关于职工年终总评、奖励的考核标准

编者按 这次进行年终总评奖励，对全公司每一个职工都要进行一次全面的考核评比，给予论定。为此，公司对干部和工人分别制订了统一的考核标准。现将这两个考核标准原文刊登于下，作为广大职工进行总评时之依据。

工人考核标准

工人年终奖的发放，强有效劳动态度、技术（业务）水平、贡献大小，并以贡献大小作为主要考核依据。

考核结果取计分办法，按得分多少计发奖金，并作为评优评级的重要基础。

考核三个方面的基本分为100分，其中，劳动态度占20分，技术业务水平占30分，贡献大小占50分。综合填行分时先按100分考核，然后按上述比例折算。

一、劳动态度

1. 服从分配，听从指挥，记10分。
2. 当年出勤好，遵守劳动纪律，不迟到、不早退、无旷工，病假、事假缺勤累计不超过15天，记20分。
3. 严格执行岗位责任制，按规程操作，记30分。
4. 工时利用率高，出工出力的，记25分。
5. 按时参加政治、业务会的，记10分。
6. 工作积极主动，团结协作并有具体事实的，记5分。

有下列情况之一者酌情加分或扣分。

1. 全年出满勤，并出工出力者加20分（属定的四条假查期除外）。
2. 工作干劲大，勤勤恳恳，吃苦耐劳有具体事例者加10分。
3. 每迟到或早退一次扣2分，旷工一次扣20分。
4. 病、事假缺勤全年累计超过15天的，每多缺勤满10天者扣5分，依此类推。
5. 不认真填写原始记录、台账、报表，数据失真一次扣5分，弄虚作假一次扣30分。
6. 工作时间睡觉，看出一次扣10分，干私活、办私事一次扣10分，打架斗殴一次扣20分。
7. 不爱心本岗位工作，闹调动，对生产有影响者扣20分。
8. 违章操作，一次扣20分。

二、技术（业务）水平

技术（业务）水平考核以考试成绩为主。

1. 应知（本工种基本理论）40分。
2. 应会（实际操作）60分。

对于管理工、普通工、门卫等无技术要求的工人，考核岗位责任制规定的内容。

有下列情况之一者酌情加分或扣分。

1. 平时理论和实际操作考试（包括岗位练兵）的平均成绩以80分为基础，每超满10分加5分，成绩不足80分的，每少满10分扣5分。
2. 岗位责任制和操作规程考试成绩，以80分为基础，每超满10分加10分，每少满10分扣10分。
3. 由于设备有缺陷，但能排除故障或隐患，避免事故或废品者，一次加20分。
4. 经常坚持参加企业技术、业务、文化学习者，加10分。
5. 由于技术操作水平低，造成操作事故，每次扣30分。

三、贡献大小

1. 均衡完成本岗位（工种）产量、工作任务或工时定额者记30分。
2. 全年平均达到规定质量指标者记20分。

干部考核标准

干部的考核奖酬，要体现“各尽所能，按劳分配”的原则，优者多奖，差者少奖或不奖，反对平均主义。对干部的考核，要以干部的办事加酬为基础，考核工作态度、技术业务水平、贡献大小三个方面，并以贡献大小作为重要的考核内容。凡没建立分事加酬的不得参加年终评奖。

考核结果计分的办法，按分数多少计奖，并作为对干部全面考核的内容之一。今年的年终计奖考核应作为评优评级的依据之一。

工作态度、技术业务水平、贡献大小基本分为100分，其中，工作态度占20分，技术业务水平占30分，贡献大小占50分。分项都先按100分考核，然后按比例折算。

一、工作态度

1. 工作负责，对办事加酬执行严格认真（未建立办事加酬前，按基本职责进行考核）50分。
2. 工作中敢抓敢管，敢于向不良倾向作斗争20分。
3. 有全局观点，主动搞好协作10分。
4. 遵纪守法，不利用职权谋私利10分。
5. 服从工作分配，工作积极主动，解决问题及时10分。

有下列情况之一的酌情加分或扣分

1. 违按办事加酬规定办事的一项扣10分；
2. 全年出满勤，并且出工出力的加20分；
3. 完成本职任务后在业余时间经常参加社会工作的加10分；
4. 每迟到早退一次扣2分，旷工一次扣30分；
5. 病、事假缺勤每10天扣3分；
6. 不认真填写台账，报表数据失真一次扣10—30分；
7. 工作时间办私事一次扣10分，打架斗殴一次扣30分；
8. 工作不服从分配，一次扣20分；
9. 随意处理问题造成损失或有影响者一次扣20分；
10. 弄虚作假影响不大者一次扣50分。

二、技术业务水平

1. 熟悉办事细则规定的各项内容，并能按
3. 完成规定的原、材料或物料消耗定额者记20分。
4. 认真维护分管设备、仪器、仪表，能正常运转，并达到规定标准的记10分。
5. 严格按规程操作，全年无事故者，记10分。
6. 工作场地经常保持清洁卫生记10分。

有下列情况之一者酌情加分或扣分。

1. 技术革新和创造发明有显著成绩者，按价值大小加10—40分。
2. 在本单位同工种之间，凡产量、质量、消耗、操作、效率或服务态度等所考核的小指标全年有一项达到前三名者，按名次及难易程度加10—40分。
3. 以车间或工段为单位，在打水平、夺冠军中，凡产量、质量、消耗等指标，累计夺得了国内冠军或达到世界先进水平，根据个人的作用大小酌情加5—20分。

程序进行工作，全部达到考核标准记40分。

2. 熟悉完成本职工作必备的专业知识和政策、制度、规定，记30分。
3. 有独立做好本职工作的能力记30分。

有下列情况之一的酌情加分或扣分。

1. 不断总结经验，对办事细则提出改进意见，对工作有促进者加20分；
2. 对办事细则规定的各项办事程序不熟悉，工作混乱，一项扣10分；
3. 平时刻苦钻研技术，业务，善于发现问题，敢于创新，不断改进工作加20分；
4. 在本单位同类专业人员中实际业务能力突出，工作效率高于一般的加20分；
5. 业务系统考试成绩以80分为基础，每超过10分加5分，成绩不足60分，每少10分扣5分。

三、贡献大小

1. 按办事细则规定按时、按质、按量全部完成基本职责任务记50分。
2. 所负责本专业管理的基础工作完整健全者记20分。
3. 认真完成领导布置的工作任务记20分。

有下列情况之一的酌情加分或扣分

1. 对办事细则规定的四种任务没完成的，一项扣5—30分；
2. 对相互协作的任务没有按规定完成扣10分；
3. 在增加生产，提高质量，降低消耗等方面有突出成绩，并有具体事例的加30—50分；
4. 本人所管理的工作，当年比去年有显著起色的加20—40分；
5. 主动向领导提出建议，改进管理工作有成效者加30分；
6. 完成领导交给的本职工作外的任务加10—20分，未完成的扣10—20分；
7. 工作中出差错，造成不良影响者扣20分；
8. 主动提出多承担工作任务，一人干二人工作并保质保量的加50分；
9. 当年内本人受上级或本单位嘉奖、记功、表扬的加10—30分；
10. 当年内受过行政处分的扣50分；
11. 认真贯彻党的各项方针、政策和管理制度，成绩突出者加20—30分。

4. 主动承担工作任务，一人干二人工作，减少了定员，并保质保量完成任务的，加50分；
5. 当年内本人受上级或本单位嘉奖、记功、表扬的，按荣誉级别酌情加10—30分；
6. 发生一般人身、质量、设备事故扣责任者10—20分，严重者扣50分至全部分；
7. 丢失或损坏设备、工具，按损坏价值每十元扣2分，以此类推；
8. 凡完不成产量指标，工作任务或劳动定额，每有一个月扣10分（以小组集体考核的也同样对待）；
9. 因工作不负责任，造成返工、废品，每出现一次扣10分；
10. 产品（工程）质量达不到规定标准，以月考核，每降低0.1%，对有关人员扣5分（基建每降低1%扣10分）；
11. 完不成消耗定额，根据浪费价值大小，每有一个月酌情扣10—20分。

2.3 Manual of the Shougang Group on the record of contract management responsibility system in 1993 and 1994