The Function and Realization of Labor Rights in the Labor Code System

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Abstract: T*he fundamental right-based and human right-based nature of labor rights forms the subjective and objective theory of labor rights. The derived objective protection function and subjective realization function constitute the theoretical basis of the labor code system. The objective function of labor rights requires the labor code to provide corresponding institutional guarantees, while the subjective function demands that the code ensure the full realization of labor rights. The dual functions of labor rights are reflected in the structural framework and content logic of the labor code separately: on the one hand, labor rights can serve as the structural thread for narrating and systematically organizing the labor code, with the specific types of labor rights protection and functional systems jointly forming the framework of the code; on the other hand, the content arrangement of the labor code is guided by the value of realizing labor rights, exploring the pathways for the code's realization of labor rights in different situations.*

Keywords: labor rights ♦ labor code ♦ labor rights protection ♦ labor rights realization ♦ systematization

The "*Plan to Build the Rule of Law in China (2020-2025)*" (hereinafter referred to as the "*Plan*") issued by the Central Committee of the Communist Party of China in 2021 proposes that "for certain fields where there are multiple laws, codification shall be implemented when the conditions are ripe." The *Plan* also clarifies the importance of institutional construction in social governance, and people's livelihood and well-being, while putting forth new requirements for the construction of the rule of law in the social field. In this context, the compilation of the labor code has also attracted active attention and discussion in academic circles, which hold that it will promote the development of the labor law system with Chinese characteristics, achieve internal harmony in labor legislation, and make up for the deficiencies of labor laws and norms.[1]

"Systematic" is a typical feature of codification, and completeness is the biggest difference between a code and a single law.[2] The compilation of the labor code also requires the completeness of values and the coherence of the system, and the existing labor law system can be the basis for its systematization. The notice on the *Opinions on Implementing the Labor Law* issued by the former Ministry of Labor clarifies the status of the *Labor Law* as the basic law in the labor law system. Article 1 of the "General Provisions" of the *Labor Law* summarizes the legislative purpose of "protecting the legitimate rights and interests of workers." As the legislative clue of the *Labor Law*, labor rights mean that the use of rights thinking to measure sub-sectors has also opened up a pattern of labor legislation in the context of specific rights types. Currently in academic circles, there are few studies that directly take labor rights as the center of the labor code; in most cases, academic discussions are focused

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[1] Lin Jia, "On China's Codification of Labor Law," *Zhejiang Social Sciences* 12 (2021): 37.

[2] Chen Jinghui, "Codification and the Construction of Legal System," *Peking University Law Journal* 5 (2022): 1189.

on selecting a model for the system and its structural arrangement.[3] The reasons for this are twofold. First, the formation and development of the labor rights theory in China assumes an exogenous law in construction, and the holistic thinking of labor rights precedes the constituent elements of labor rights.[4] Therefore, domestic scholars tend to adopt a pragmatic typological approach in research and outline the significance of workers' rights in the systematization of the labor legal system with the thinking of legal typology.[5] However, these typological attempts are mostly descriptive and advocative rather than binding and normative. Second, in China, "labor rights" is a category with multiple meanings and different normative orientations, and it is difficult to unify the context in which it is used. So obstacles are generated to the research of labor rights theory.

The concept of labor rights has been formed in the human rights stage, and turned into institutionalized legal rights through the constitution and labor law. So the labor rights in the constitution, labor laws, and human rights laws are connected. The labor rights in the *Labor Law* are a static elaboration of the norms of labor rights in Article 42 of the *Constitution*, and are therefore, normative rights that can exist independent of specific legal facts.[6] Meanwhile, human rights protection and economic and social development have continued to enrich the meanings of labor rights. In this context, this paper will begin with the theory of labor rights to explore the composition and characteristics of the systematization of the labor code and expound on the function and realization path of labor rights in the process.

I. Systematization of the Labor Code Based on the Subjective and Objective Theories of Labor Rights

The systematization of the labor code requires not only building a framework system through the classification and arrangement of concepts, but also turning the code itself coherent into a unified whole through the substantive judgment of value purpose. The objective protection of labor rights is the normative path for the systematization of the labor code, and the subjective realization of labor rights is the content logic of the labor code.

A. A system of codes and norms based on the objective functions of labor rights

Articles 3, 4, 5 and 6 of the *Labor Law* stipulate the rights and obligations of workers, employers and the state respectively, linking the labor rights in the constitution to the labor rights under the labor law. It is precisely because of the close connection that the normative structure of labor laws in China has potential consistency. The *Labor Law* has constructed a system of labor legislation based on the constitutional right to work. It confirms the main purpose of the protection of labor rights, and details various labor rights, for example, the right to labor remuneration, the right to rest and vacation, the right to occupational safety, the right to vocational training, the right to social insurance, the right to the settlement of labor disputes, and the right to trade unions. Except for some aspects of the right to rest and vacation and the right to social welfare, all regulations are echoed by separate laws, administrative regulations, and departmental rules.[7] Because of the "Basic Law — Separate

[3] Lou Yu, "On the Basic Value Orientation and Model Selection of the Codification of Labor Law in China," in *SUFE Law and Business Review*, vol. 3 (Shanghai: Shanghai University of Finance and Economics Press, 2023), 108; Xie Zengyi, "Significance and Structure of the Compilation of Labor Code," *China Legal Science* 3 (2023): 5.

[4] Li Jianhua and Wang Linlin, "Establishing Type System of Private Rights," *Contemporary Law Review* 2 (2012): 86-87.

[5] Cao Yan, "Reflection and Reconstruction: Research on the Types of Laborers' Rights Concept," *Journal of Henan University of Economics and Law* 1 (2013): 65.

[6] Clauses 1 and 2 of Article 42 of the *Constitution*: Citizens of the People's Republic of China shall have the right and the obligation to work. The state shall, in various ways, create employment opportunities, strengthen worker protections, improve working conditions and, based on the development of production, increase remuneration for work and work-related benefits.

[7] Zhao Hongmei and Du Keyu, "On the Codification of Labor Law in a Broad Sense in China and Its Challenges," in S*UFE Law and Business Review*, vol. 3 (Shanghai: Shanghai University of Finance and Economics Press, 2023), 84.

Law" feature, China's *Labor Law* has a structure dependent on the norms of constitutional labor rights; gradually a labor law discipline system dominated by various sub-departments takes shape. It stipulates the basic principles in the general provisions one by one, while the provisions on labor in the constitution are transformed into the basic principles of the labor law. Then, labor law is integrated into the national legal system dominated by the constitution, creating conditions for the basic principles to play their role. The basic principles taken from the constitution serve to fill in the gaps and clarify the rules of the labor law.[8] Therefore, in compiling the labor code we should seek the basis of the conceptual system and normative system from the constitutional order, and implement the inherent requirements of the constitution through the concept of labor rights and the basic principles of labor law.

Generally speaking, the subject of public power should always take the protection of basic rights as its basic consideration, while the objective value order confirmed by basic rights should be the "objective norm" for restricting and being followed by public power. The doctrine of fundamental rights as objective law derived from the decisions of the Federal Constitutional Court of Germany, while the Federal Labor Court of Germany confirmed the third-party validity of fundamental rights and recognized that fundamental rights constitute the principle of order in social life, and that agreements and legal acts in private law must not contradict the public order of the state system or the legal system. As a form of state and social control, labor law is placed under a pyramid of legal norms and the order of legal sources, which are most accustomed to legal people, and the labor law norms at the top offer normative guidance to the labor law at the lower level.[9] Here, objective law refers to "the entirety of the legal principles and the legal order of life applied by the state," namely, the organic whole of legal norms.

With regard to the relationship between the constitution and labor law, we should begin with the departmental laws to explore the connotations of constitutional norms for their legislation, and inject the values of the constitution into the departmental laws through constitutional interpretation to keep them aligned with the constitution. The logic of the legislative interaction between the constitution and the labor law contains normative requirements for the codification of the labor law. The overall bearing of the labor protection and governance function of the labor code determines the systematic positioning of the labor code as an implementation law of the constitution. The theory of the function system of basic rights furnishes an excellent angle for the "interactive influence" between the constitution and the labor law, and provides a new idea for systematically analyzing the function of labor rights and systematically protecting them.[10] Carl Schmidt, a constitutional scholar during the Weimar Republic in Germany, once put forward the concept of "institutional protection," which is an important connotation of the objective order function of basic rights, that is, the concretization and systematic protection of labor rights from the functional system of basic rights. Institutional protection requires legislators to fulfill their legislative obligations, so as to form a constitutional guarantee of fundamental rights in the overall legal system.[11] The institutional protection of labor rights is an important approach to improve labor legislation and realize the systematization and even codification of labor laws. In terms of effectiveness, the *Labor Law*, which serves as the basic labor law, is of the same rank as the supporting laws. The substantive codification of the labor law is conducive to improving the institutional protection of labor rights, by integrating the pluralistic and scattered labor law norms into a

[8] Yan Tian, "The Understanding of the Constitution by China's Labor Law Academia: Formation, Evolution and the Future," *Academic Monthly* 2 (2022): 106.

[9] Su Yongqin et al., *Departmental Constitutions* (Taipei: Angle Publishing Co., Ltd., 2006), 390.

[10] Shen Suping, "Education Legislation and the Systematic Guarantee for the Right to Education," *Educational Research* 8 (2021): 38.

[11] Li Jianliang, "Exploring the Source of the Theory of 'Institutional Guarantee': Searching for the Meaning and Subtlety of Carl Schmidt's Theory," in *Public Law and Political Theory* (Taipei: Angle Publishing Co., Ltd., 2004), 222.

structural system that runs through the top and bottom and that unifies the internal and external. The obligation to protect the constitutional labor right is determined by the connotation of the constitutional labor right. On the one hand, the state has the obligation to respect the protection of labor rights and shall not infringe on the mode and content of behavior within its normative field. The restrictions on the normative field of labor rights must be strictly in line with the requirements of the constitution, and citizens have the freedom to choose their labor mode and to choose to work or not. The state must establish a socio-economic system that ensures citizens have independent access to labor opportunities. On the other hand, the state has the obligation to pay certain material and procedural benefits and services to workers. The right to work implies social rights such as the right to subsistence, which requires the realization of the basic purpose of the right to subsistence in the field of labor. For example, the minimum subsistence guarantee for workers is intended not only to maintain basic subsistence, but also to ensure a "healthy and cultural minimum subsistence."[12]

B. The internal logic of the code based on the subjective function of labor rights

The theory of disadvantaged status born in traditional society emphasizes that in the power game between labor and capital, workers are limited by conditions and ill-positioned to compete with capital, and are consequently disadvantaged in labor-management relations. That is when the public power intervenes to adjust the right-obligation relationship and promote the labor market, and its intervention incurs the social protection function of labor laws.[13] However, the limitations of this theory are readily seen in its application in modern society. The reason is that the identity of the worker has undergone a change from a "labor animal" to a natural person with an independent personality and then to an equal citizen, and the subjectivity and individuality of the worker have been constantly highlighted. The theory of disadvantaged status is not detached from the structural framework of civil society, while labor still faces the risk of being commoditized, and the protection of workers as subjects is ignored.[14] After World War II, the field of human rights law gradually took shape with the solution of labor and welfare by the Fordist system of production. Labor and human rights are areas of law that have developed in parallel for different types of issues, the former being deeply rooted in domestic traditions, and the latter being developed at the international level. The labor movement gained allies in the human rights movement during World War II, and the labor law achieved development by drawing on the concepts of dignity, freedom, autonomy and equality from human rights theory. Freedland, a British scholar, regards "dignity" as the embodiment of the normativity and morality of labor law in the 21st century; by and by, "dignity" has gradually become the core concept of EU labor laws and current labor laws.

Subjective rights are opposed to objective law, and both terms originated from the polysemic German word "Recht." The French scholar Leon Duguit pointed out that objective law and subjective rights are referred to by the same word; they are by no means the same, but they may penetrate into and be closely related to each other.[15] The Pandekten system proposed by Savigny is founded on subjective private rights based on the idea of individual freedom. Subjective rights arise and change through human behavior, so the law needs to protect the free will of individuals. In such scenarios, subjective rights refer to the specific authority, freedom, ability and power granted by the legal order. They mean that the parties can do or refrain from doing certain acts according to their will.[16] Subjective rights are

[12] Akira Osuka, *On the Right to Live*, translated by Lin Hao (Beijing: Law Press • China, 2001), 215-217.
[13] Liu Qiang, "On the Theoretical Foundation of Labor Legislation," *Northern Legal Science* 6 (2018): 91.
[14] Cao Yan, "Reinterpretation of the Concept of Laborer: Circumstances, Status and Rights," *The Jurist* 2 (2013): 33.
[15] Zhang Xiang, "The Dual Nature of Basic Rights," *Chinese Journal of Law* 3 (2005): 21-22.
[16] Helmut Coing, "On History of the Concept of 'Subjektives Recht'," translated by Ji Hailong, *Tsinghua Forum of Rule of Law* 15 (2012): 404.

premised on the existence of the subject of rights, without which there can be no "power of will" and "enjoyment of interests," or a relationship of "subordination and control." Therefore, if objective laws are the purpose and goal determined by natural reasons, then subjective rights are technical tools or means of realization. If objective laws are a legal norm that binds anyone, then subjective rights refer to the rights and obligations held by specific subjects involved in legal norms in real life.[17]

Based on the nature of the legal norms that give rise to subjective rights and the different subjects of obligations, subjective rights can be divided into subjective public rights and subjective private rights. The latter includes "the public law rights of private individuals over the state," while the former refers to "the volitional power recognized and protected by the legal system for personal interests primarily intended for the purpose of public interest."[18] The development of labor law in China features the combination of the development path of privatization of public law and publicization of private law, and the transformation of labor rights from the field of public law and private law to the mixed field of public and private law in the functional legal domain. Accordingly, the subjectivity of labor rights thus has the attributes of both subjective public rights and subjective private rights. On the one hand, it requires the state to eliminate the infringement and interference of public power on labor rights and to build a dynamic power operation mechanism so that it can actively assume the responsibility of promoting the realization of labor rights.[19] On the other hand, workers obtain labor rights through the specific legal relations formed in legal practice, in which their substantive freedom of will is the premise for promoting such realization. This is conducive to the projection of the subjective value of workers and can help to make them an active objective existence.[20] In such cases, the intervention of the will of the state in labor relations is to achieve a balanced pattern of interests of both parties to labor relations by governmental coordination of the interests so that the autonomy of the will of both parties can be harmoniously aligned with social and public order. The subjective realization of labor rights is based on the combination of power initiative and individual initiative, and it guarantees "interests that can be protected by the will alone" and "interests that must be guaranteed by the will."[21] Admittedly, in the specific context that China's labor rights have been obscured by public power for a long time, the private nature of labor rights should be given more attention and protection. The purpose of China's labor legislation is no longer limited to the construction of labor production order; the working conditions are partially parallel to the labor contract part; the protection of the overall interests or public interests has been changed to the protection of the subjective rights of workers, and the goal of relief has also shifted from punishment of violations to active protection of rights.[22]

The subjective realization of labor rights demonstrates the unique value pursuit of labor law; the protection of individual private rights and that of public interests can go hand in hand, and labor autonomy and public power protection are both value concepts of labor law. The subjective function of labor rights emphasizes their realization value, and their realization reflects the results of their dynamic operation. The realization of labor rights is consistent with the self-realization of workers, and self-development is guaranteed with the subjective

[17]Ma Junju, "On the Construction of a National Public Property Rights System in China," *Social Sciences Digest* 1 (2023): 23.

[18] Geog. Jelinek, *The System of Subjective Public Law Rights*, translated by Zeng Tao and Zhao Tianshu (Beijing: China University of Political Science and Law Press, 2012), 50.

[19] Zhou Yi and Liu Guoqing, "Basic Path of Realization and Protection of Labor Rights," *Taxation and Economy* 1 (2011): 28.

[20] Liu Qiang, "On the Theoretical Foundation of Labor Legislation," *Northern Legal Science* 6 (2018): 102.

[21] Geog. Jelinek, *The System of Subjective Public Law Rights*, translated by Zeng Tao and Zhao Tianshu (Beijing: China University of Political Science and Law Press, 2012), 41.

[22] Xu Jianyu, "Labor Rights from the Perspective of Social Law: An Analysis of the Basic Category of Labor Rights as Social Rights," in *Labor Law Review*, vol. 1 (Beijing: China Renmin University Press, 2005), 100.

rights attribute of labor rights. The autonomy of workers' behavior is the driving force and source of workers' enthusiasm.[23] The subjective function of labor rights is sufficient to explain the essential attributes and operation laws of the labor code as a departmental code. Meanwhile, the realization of labor rights provides the screening criteria for including labor rights in the code, flexibly expanding the scope of codification of labor law and helping to respond to the needs of the socialist market economy. The practical basis for realizing labor rights consists of the interactive relationship between labor rights and social mechanisms and processes, and the realization of labor rights will concretize the function of labor rights protection.[24] The realization of labor rights and labor law relations are interoperable in approach. The realization of labor rights hinges on whether their subject actually has the right to exercise freely, and it can be linked to the elements of workers, labor behaviors, labor relations, etc. Accordingly, the content adjustment of the labor code is connected with the path for the realization of labor rights.[25]

To sum up, the labor code system should guarantee the establishment of labor rights with the objective function of labor rights and promote their realization with their subjective function.

II. The Functional Unfolding of Labor Rights Under the Framework of the Labor Code

The organizational structure of the labor code as a normative system is reflected in its external framework, which features the hierarchical level of sections, titles, chapters, articles, paragraphs and items.[26] The labor code takes labor rights as a consistent logical thread to coordinate the various sections and serves to protect labor rights by confirming the core types of labor rights to be protected, integrating the organizational and procedural guarantees of labor rights, and other rules.

A. The framework system of the labor code centered on labor rights

The classification criteria of the labor code are related to the logic for shaping its style and establishing the chapters and articles. In academic circles, there are various theories, including the theory of labor relations, the theory of labor behavior, and the theory of labor rights. The difference of views bespeaks the different understandings of scholars on the degree of systematization of labor law. Among them, the theory of labor relations originated from the inherent status of the objects of adjustment. The advantages of using labor relations as the main thread for codification include: on the one hand, the research system of labor relations can be implemented from the individual labor relations to the collective labor relations section and shall be sufficient to cover the substantive content of the three parts of the individual labor law, the collective labor law, and the labor standards law, as well as the labor procedure law. On the other hand, unfolding the codification around the legal elements of the labor relation conceptually helps the standardization of the concept and consequently is conducive to reshaping the labor law system and completing the de facto systematic construction. For example, the labor section of the *Italian Civil Code* begins with the definition of the subject of legal relations to regulate labor relations and stipulates the establishment of labor relations, the rights and obligations of the parties, social security and assistance, and the termination of labor relations, while defining subordinate labor payers.[27] The *Labor Code of the Russian Federation*, on the other hand, focuses on the creation,

[23] Yuan Li, "Fundamental Values of Labor Rights as the Basic Rights: Human Self – realization," *Legal Forum* 6 (2011): 69.

[24] Chen Yongfu, "The Internal Logic and Composition of China's Labor Rights System in the New Era," in *Renmin University Law Review*, vol. 2 (Beijing: Law Press • China, 2018), 122.

[25] Shen Jianfeng, "Labor Relationship as Legal Relationship: Study on Paradigm Transform of Science of Labor Law's Methodology," *Human Resources Development of China* 4 (2021): 87.

[26] Chen Jinzhao and Wu Dongxing, "Hermeneutic of the Civil Code: Its Systematic Base and Restriction," *Journal of Shanghai Normal University (Philosophy and Social Science Edition)* 2 (2021): 93.

[27] Su Yu, "Book Labor in the *Italian Civil Code* and Its Inspirations," *Law Science* 10 (2015): 121-122.

coordination, and content of labor relations and dispute resolution. It consists of five sections, namely, the general provisions, social cooperation in the field of labor, the content of individual labor law, special labor regulations for specific categories of employees, and protection of labor rights and freedom. However, the spectrum of labor relations is pragmatically broad and confusing, making it difficult to serve as both the object and result of adjustment. The dependence on the factual feature of subordination makes it difficult for the code to play the corresponding system functions.[28] Although China's labor legislation adopts the criterion of subjectivity, the legislator finally gave up the attempt to define the concept of labor relations, in view of the natural ambiguity of the terms "worker" and "employer." The poor operability of defining the criterion of subjectivity based on the workers leads to excessive dependence on the content criterion based on subordinate judgment theoretically and practically. As a result, the scope of judgment of labor relations is often unduly restricted or expanded.[29]

The theory of labor behavior defines different types of workers through "labor behavior," and includes all kinds of social life that meet the characteristics of "labor payment and consideration" into the scope of adjustment, before defining the legitimate rights and interests of workers. It advocates the reshaping of the concept of "labor behavior" and restates the subjective status and scope of "worker."[30] However, the construction of the concept of "labor behavior" also needs to address the problem of considering both normative and factual aspects. Besides, labor behavior is a legal element under the jurisdiction of labor relations, and the study of labor behavior cannot bypass the normative context of labor relations. Even though labor behavior has the flexibility to adapt to the developing times, it can hardly shoulder the important duty of being the core concept of the labor code. Drawing on the theory of legal acts, which is the core of the Pandekten system, we can argue that: first, the concept of legal acts in civil law is not an abstract generalization of specific types of acts, but a deductive derivation from the conceptual system of private law. If labor behavior is not a legal act in the normative sense, then the change of labor form will lead to an increase in the targeted provisions on labor behavior. Although the definition featuring a general summary plus enumeration and exclusion ensures the flexibility of the code, it ignores the stability and systematization of the code. Second, how should we move from labor activities with payment effects to labor behaviors? Scholars of conceptual law, for example, Heise, Savigny, Puchta, and Windscheid, closely linked "expression of intent" with "legal acts," making the theory of legal acts a basic tool for implementing the principle of autonomy in private law. Article 7 of the *Labor Contract Law* clarifies the criterion of "employment establishes labor relations." However, the creation and modification of labor rights may not be completed by relying solely on the personal will of the worker, since the subordinate standards, protection needs and other elements are links between labor behavior and labor rights. In addition, the definition of labor behavior will once again fall into the dilemma of having to define labor relations.

The theory of labor rights advocates that the structure of the labor code should use the type of workers' rights and the adjustment mechanism of the labor law as the theoretical logic. The legal connotations of labor relations should be defined in the general provisions based on the principle of comprehensive legalization, and in the sub-provisions of the labor code, labor rights should be arranged in a typological manner according to the principle of the actual ownership of labor rights.[31] There are only too many special provisions for the protection of

[28] Wang Tianyu, "Labor Behavior: The Logical Starting Point of the Labor Code," *Northern Legal Science* 6 (2022): 41.
[29] Feng Yanjun and Zhang Yinghui, "Criteria of 'Labor-Relationship': Reflections and Reconstruction," *Contemporary Law Review* 6 (2011): 92.
[30] Wang Tianyu, "Normative Composition and Chapter Structure of Labor Code in the Digital Age," *Jilin University Journal Social Sciences Edition* 5 (2023): 59.
[31] Qian Yefang, "Labor Code Formulation and Labor Rights Realization," *Oriental Law* 6 (2021): 176.

labor rights in overseas legislation of the labor code. Take for example the *Labor Code of the Russian Federation*. There are relevant provisions on labor rights in the General Provisions. Section 13 of the law stipulates "protection of labor rights and freedom, the hearing and settlement of labor disputes, the responsibility for violations of labor laws and other documents containing labor law norms," emphasizing strengthening the protection of workers' rights from the aspects of trade unions, state supervision, and self-protection of workers' rights.[32] In terms of positioning, the general provisions of the *Labor Law* have a layout more similar to general principles, and the labor law technically arranges general-specific stipulations using rights in a loose-leaf manner, providing a legal basis or a preliminary blueprint for the labor law as a separate law.[33] The labor code of China may as well follow the loose-leaf arrangement with the type of labor rights as the main thread. Different from the traditional conceptual technique of defining categories through closed elements in the way of genus plus species differentiation, typology accommodates the two-way thinking of both inductive and deductive processes. Typological thinking will communicate between values and concepts, and contribute to the protection and realization of labor rights. With its obvious characteristics of bidirectionality, openness and structure, it can make up for the shortcomings of conceptual thinking faced in the compilation of labor code in terms of methodology.[34]

B. The type of labor rights established by the labor code for protection

Based on the theory of the objective function of labor rights, the labor code should be responsible for implementing and protecting labor rights. In fact, the labor right is a specific right that arises from the premise that citizens enjoy constitutional labor rights, and it is the concretization and institutionalization of the constitutional rights enjoyed by citizens in the labor law.[35] In the study of the basic categories of labor rights, the academic circles have formed the theory of labor rights, the theory of labor in the broad sense and the theory of labor rights in the narrow sense. The theory of labor rights in the narrow sense is based on the constitutional right to work, which means the right to demand "the state or society to provide labor opportunities," including equal employment opportunities and freedom to choose an occupation. Since then, the right to work has gradually become a complex set of norms, not only including the existing connotations of the right to employment, but also relating to the basic rights of survival such as food, clothing, housing, and transportation, as well as the development rights such as education, culture, and health.[36] Therefore, labor rights in a broad sense refer to the rights of workers arising from or closely related to labor, including the right to rest and vacation, labor protection, vocational training, collective bargaining, material assistance, etc., in addition to the right to employment and the right to obtain labor remuneration.[37] Labor rights in a broad sense belong to the system of labor rights at the level of positive law, which originates from the explicit provisions of Article 3 of the *Labor Law* of China. "The Explanation on Several Provisions of the *Labor Law* (Ministry of Labor [1994] No. 289)" further enumerates "other rights prescribed by law," including "the right of workers to join and organize trade unions in accordance with the law, the right to participate in the democratic management of employees, the right to participate in social compulsory labor, the right to participate in labor competitions, the right to put forward reasonable suggestions, and the right to engage in scientific research, technological innovation, invention and creation, etc."

[32] Wang Jiahui, "The Labor Rights Protection System in the Labor Code of the Russian Federation," *Hubei Social Sciences* 12 (2008): 150.
[33] Xiong Hui, "The Historical Contribution and the Future Development on Labor Law," *China Labor* 5 (2015): 46.
[34] Lyu Zhongmei, "Construction of the Normative System of Environmental Code under Typological Thinking," *Modern Law Science* 4 (2022): 93.
[35] Qin Guorong, "The Nature and Meaning of the Right to Work," *Global Law Review* 1 (2010): 62.
[36] Sarkin, J. and Koenig, M., "Developing the right to work: intersecting and dialoguing human rights and economic policy," 33 *Human Rights Quarterly* 1 (2011): 3.
[37] Yuan Li, "Fundamental Values of Labor Rights as the Basic Rights: Human Self — realization," *Legal Forum* 6 (2011): 72-73.

It can be seen that the labor rights system in China's positive law features a staggered combination of various standards, including both abstract and concrete labor rights.[38] The typology of labor rights in China adopts a descriptive and empirical approach and seeks to streamline their summarization and classification from the interests of workers. Such a system based on the classification of labor rights lacks a clear logical starting point, leading to a loose structure of the labor rights system.[39]

In the normative texts related to labor rights, there are two types of practices, one taking labor rights as the principle and the other taking them as the standard. First, the *European Charter of Fundamental Rights* (hereinafter referred to as the *Charter*) is based on the principle of labor rights. The *Charter* makes a distinction between rights and principles. It stipulates in Article 51 that rights must be "respected" and principles must be merely "observed."[40] The principles require the EU legislatures, executives or member states to take further action in implementing EU law. However, these principles are legally enforceable only when they are used to interpret such actions and adjudicate their legality. On the contrary, in the *Charter* and in the constitutional traditions of member states, substantive elements relating to social policy are usually regarded as "rights" or "social rights." Because it cannot create a legal situation that can be directly enforced by an individual, it can only come into play after the public authorities have acted or implemented it. The *Charter* establishes the right to social welfare and the right to social employment as fundamental principles.[41] Second, the 1998 *ILO Declaration on Fundamental Principles and Rights at Work* (hereinafter referred to as the *Declaration*) uses labor rights as the standard. Due to the complexity and comprehensiveness of the scope of labor rights, the International Labor Organization (ILO) has adopted a core distinction model for labor rights through the *Declaration*, which lists several aspects to provide basic job security. The *Declaration* identifies four principles or rights, namely, (1) the effective recognition of the rights to freedom of association and collective bargaining, (2) the elimination of all forms of forced labor, (3) the effective abolition of child labor, and (4) the abolishment of discrimination in occupation and employment. The basis for the consistency of these core labor standards consists in the fact that these rights do not interfere with the substantive outcome of the labor relationship, but rather constitute a set of restrictions on the collective bargaining process. It restricts the bargaining power of employers in four specific ways and eliminates imposition in the workplace,[42] and thus does not include substantive rights such as workplace safety and health. The application of this core standard approach distinguishes substantive rights from procedural rights, and by emphasizing procedural rights, it allows employers to make and enforce substantive rules. Of course, states need to ensure the presence of certain subsistence safeguards.

The typology of labor rights should have both standards and principles and should consider the implementability of the system and the universality of the theoretical value

[38] Article 3 of the *Explanation on Several Provisions of the Labor Law*: Other rights provided by law refer to workers' right to join and organize trade unions in accordance with the law, to participate in the democratic management of employees, to participate in social compulsory labor, to participate in labor competitions, to put forward reasonable proposals, and to engage in scientific research, technological innovation, invention and creation, etc.

[39] Cao Yan, "Reflection and Reconstruction: Research on the Types of Laborers' Rights Concept," *Journal of Henan University of Economics and Law* 1 (2013): 68.

[40] Article 51 of the *European Charter of Fundamental Rights*: The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

[41] Catherine Barnard, "Are social 'Rights' rights," 13 *European Labour Law Journal* 1 (2020): 1-3.

[42] Brian A Langille, "Core Labor Rights — The True story (Reply to Alston)," 16 *European Labour Law Journal* 3 (2005): 431.

underlying the rights. This intermediary approach is represented in the category of "decent work" in the *International Covenant on Economic, Social and Cultural Rights*. The proposal of "decent work" helped to ensure the basic right of workers to obtain decent work and demonstrated the goal of upholding labor rights protection during economic globalization. In this case, the system of compulsory guarantees of decent work acts as a tool for measuring "decent work," namely, whether such work promotes fundamental principles and rights at work, whether it promotes employment, whether it promotes social protection, and whether it promotes social dialogue.[43] In addition, labor rights and mandates as a framework should be differentiated from those that support specific national systems of collective bargaining, for example, ones that protect trade union activists from reprisals by employers. It should also be different from rights and mandates that can be obtained through individual or collective bargaining, for example, the right to dismissal protection.[44]

Therefore, the core labor rights in the external framework of the labor code should highlight the essential needs of workers in terms of interests, and their protection should be given the top priority in labor supervision and regulation. The external framework of the labor code should include the following four basic and interrelated types of rights. The first is the right to self-employment, by which workers can choose their own employment units according to their own wishes, without interference or manipulation by others. This is the embodiment of workers' personality independence and freedom of will. The second is the right to fair remuneration, by which the workers have the right to enjoy fair and appropriate remuneration, to ensure that workers and their family have a living condition sufficient to maintain human dignity. The third is the right to labor protection, by which workers must be given safe and healthy working conditions, and their right to rest must be protected. Based on this right, special protection to specific employees, and necessary public service measures must be adopted for the realization of labor rights, including special groups such as female employees and minors. Minimum labor standards that apply to all employees (may vary by industry or occupation) must be formulated, including minimum wage, maximum working hours, health and safety standards, minimum standard vacation time, and prevention of unjust dismissal.[45] Fourth, the right to freedom from discrimination, including equal employment status, equal employment rights, equal employment opportunities and equal employment rules. Workers have the right to request the state to regulate the differential treatment of employers, and to provide corresponding institutional safeguards.[46]

Admittedly, the enumeration of labor rights is inevitably lagging and passive, and can hardly fully adapt to the ever-changing and developing areas of employment demand. The recognition of labor rights in the evaluation framework is not limited to established labor legislation and may involve other types of social, political and economic activities.[47] In the digital age, new types of rights, such as the right to remote work, the right not to respond, the right to inaccessibility, and the right to workers' personal data, have expanded the possible scope of labor rights protection. However, whether these rights can be transformed from structural rights to framework rights needs to be proved through the two-way certification of labor rights typology.[48]

C. The functional unfolding of the labor code to protect labor rights

[43] Alan Bogg, *The Autonomy of Labor Law* (Oxford: Oxford and Portland, 2015), 281.
[44] Carola Frege, *Comparative Employment Relations in the Global Economy*, 2nd edition (London: Routledge, 2020), 192.
[45] Hu Yuhong, "On the Right to Work," *Seeking Truth* 4 (2021): 103.
[46] Li Xiong, "Equal Employment Rights Content System Structure," *Journal of Henan University of Economics and Law* 1 (2016): 142-149.
[47] Amartya Sen, "Work and Rights," 139 *International Labour Review* 2 (2000): 122-123.
[48] Zhu Xiaofeng, "Labor Rights Protection in the Digital Age," *Journal of Zhejiang University (Humanities and Social Sciences)* 1 (2020): 37.

Institutional protection requires legislators to construct relevant legal systems to interpret the connotations of labor rights and provide institutional support for their protection. Organizational and procedural safeguards are also another manifestation of the obligation to obtain state protection for labor rights. The labor code can actively promote the state protection system for labor rights from the aspects of supervision and management mechanisms, dispute resolution mechanisms and social dialogue mechanisms, and strengthen the state's obligation to protect them.

First, the protection of labor rights by the labor supervision and management mechanism. Labor administration legislation began at the stage of factory law, and the content of supervision was gradually expanded from labor standards, such as working hours, occupational safety and health, and labor protection of children and female workers, to comprehensive labor supervision. Article 74 of the *Labor Contract Law* and Article 11 of the *Regulations on the Supervision of Labor Security* of China enumerate the scope of matters to be supervised. The subject of labor rights has the right to demand the action or inaction of the administrative department (e.g., request for labor supervision) and to resort to administrative litigation or reconsideration when the other party neglects or fails to perform its obligations. Therefore, the separate codification of the labor supervision mechanism will help the competent institutions to better exercise the power of labor supervision.

Second, the protection of labor rights by the mechanism of labor dispute settlement. The direct purpose of labor dispute settlement is to "safeguard the legitimate rights and interests of the parties to the labor dispute in accordance with the law" through legal procedures. Seen from the construction of labor law, the settlement of labor disputes is the last line of defense for the protection of labor rights. The labor dispute settlement law is a mechanism for adjudicating violations of mandatory rules of the labor law. The types of labor disputes include rights disputes and interest disputes, individual disputes and collective disputes. At present, the procedure for handling labor disputes in China is the system of "one mediation, one adjudication and two hearings," which unifies the three different types of mediation, arbitration and litigation. The adjudication of labor disputes shall be subject to the principle of "respective finality," and independent labor courts or labor tribunals shall be established.[49] Therefore, the labor code should specify the section on the settlement of labor disputes in the external framework.

Third, the protection of labor rights by the social dialogue mechanism. Social dialogue between different social and economic groups, as well as between them and public authorities, is an essential attribute of a democratic society and a means of resolving the inevitable chaos. It can promote equity, efficiency, and adjustment, thereby sustaining economic progress.[50] The real significance of this mechanism is to involve employees in the process of workplace governance and to guarantee the right to participate in workplace governance.[51] The European Union's "European Employment Strategy" provides an open and coordinated approach to labor market management, featuring a process-oriented approach to achieving dynamically evolving goals.[52] For most countries, this dialogue relies primarily on the norms of collective autonomy, which take the form of collective bargaining by trade unions and employers' organizations, and the norms of individual autonomy, which are adjusted, amended and reformulated in traditional forms of private law (contracts), with the law as a medium for balancing social conflicts. Social dialogue also includes the democratic participation of

[49] Chang Kai, *Theory of Workers' Rights: Research on the Legal Regulation of Labor Relations in Contemporary China* (Beijing: China Labor and Social Security Press, 2004), 378.
[50] Dharam Ghai, "Decent Work: Concept and Indicators," 42 *International Labour Review* 2 (2003): 113 146.
[51] Sunstein, C. R., "Rights, Minimal terms, and Solidarity," 51 *University of Chicago Law Review* 4 (1984): 1054.
[52] Kenji Arita, "Labor Discussion: Based on U.S. and British Research," RIETI Discussion paper series, 13-J-029, page 9.

workers in the management and regulation of employment in enterprises. It involves the participation of trade unions, employers' organizations, associations of other economic agents and civil society groups in the formulation and implementation of social and economic policies related to work and livelihoods.[53] Employee democracy means that in decisive matters relating to the conditions of employment and responsibilities of work, employees should be allowed to participate and cast votes. Through interaction with employees, employers have the opportunity to develop various forms of self-monitoring to cope with the internal and external work environment. Therefore, we should clarify the labor contract, collective contract and democratic management of enterprises in the labor code, and make them separate sections.

To sum up, the framework of the labor code should take labor rights as a clue, to identify and standardize the core types of labor rights — the right to self-employment, the right to fair remuneration, the right to labor protection and the right to non-discrimination. Then, it should build a supervision and management mechanism, a dispute resolution mechanism, and a social dialogue mechanism to construct a functional system for the protection of labor rights, so as to form a system structure with labor and employment, labor protection, collective labor relations, labor contracts, labor regulations, labor supervision, and labor dispute resolution as the framework.

III. The Approach to Realizing Labor Rights in the Content Structure of the Labor Code

In view of the core value status of the realization of labor rights, the labor code should define the scope of adjustment on the basis of realizing labor rights, take the realization of labor rights as the adjustment method in its content, and distinguish the realization of labor rights in the context of labor relations from that in the context of incomplete labor relations.

A. The scope of the labor code in line with the subjective function of labor rights

The promulgation of the *Labor Contract Law* has introduced the standardized form of labor contracts. The applicable subjects of statutory labor rights are limited to "employees" under the "labor contract," and together with the civil subjects under the labor contract, they systematically integrated the legal regulation of all employment and labor relations.[54] In implementing the labor law, the contradiction between the increasing demand for the protection of workers' rights and interests and the insufficient supply of the system is becoming increasingly prominent. The purpose of the legislation changes with the changing protection needs, and multi-level and multi-faceted worker protection rules should be formulated for various types of employees.[55] Likewise, the scope of labor rights protection has been constantly expanded. For example, Paragraph 2 of Article 10 and Paragraph 2 of Article 23 of the *Social Insurance Law* include some self-employed persons and other "flexibly employed persons" in basic pension insurance and medical insurance respectively.[56] The 2004 *Regulations on Work-related Injury Insurance*, which protects employees of enterprises and individual industrial and commercial households, was revised in 2010, expanding the scope of protection to public institutions and social organizations in Paragraph 1 of Article 2 (the revised law was promulgated according to Order No. 375 of the State Council).[57]

The *Guiding Opinions on Protecting the Labor Security Rights and Interests of Workers in New Employment Forms* (Ministry of Human Resources and Social Security [2021] No. 56) (hereinafter referred to as the *Guiding Opinions*) for the first time stipulate the applicability

[53] Dharam Ghai, "Decent Work: Concept and Indicators," 42 *International Labour Review* 2 (2003): 135.
[54] Bob Hepple, "Restructuring Employment Rights," 69 *Industrial Law Journal* 2 (1989): 68-69.
[55] Tian Silu, "Subordinate Labor Theory in Age of Industrial 4.0," *Law Review* 1 (2019): 85.
[56] Wang Qian, "A Study on Self-employed Platform Practitioners' Identification and Protection," *Journal of Graduate School of Chinese Academy of Social Sciences* 3 (2022): 96.
[57] Erin, "Protection of the Rights of Online Platform Employees in Case of Occupational Injuries," Journal of Shenzhen University *(Humanities and Social Sciences)* 4 (2021): 102.

for the type of employment that "does not fully comply with the circumstances of the established employment relationship." An incomplete employment relationship means that a platform enterprise and its employees are in a relationship that does not fully satisfy the conditions for employment. In such a relationship, the enterprise conducts certain management of employees, while employees enjoy certain freedoms to a certain extent, for example, deciding whether, when and where to provide services. It reflects typical typological thinking. The portfolio of platform-based flexible employment policies has opened up the institutional space of the "third form of labor," expanded the scope of the labor law, shattered the legal framework of labor protection of the "civil law and labor law," and realized the hierarchical protection of labor rights.

The construction of the labor rights system in the case of incomplete labor relations can help to optimize the existing legal adjustment pattern and implement incremental reforms while maintaining the stock of labor laws.[58] The core feature of the reconstruction of the protection system is the layering of protection measures, considered sufficient to cope with the diverse forms of autonomous labor and protection needs.[59] The labor rights protection in the context of incomplete labor relations implements the concept of labor relations adjustment based on classified governance and specific treatment in China, which involves several specific issues, for example, the criteria for identifying labor relations and the boundaries of labor relations, the allocation of rights and obligations behind labor relations, the construction of labor standards behind rights and obligations, and bottom-line protection and its "degree". Specifically, the changes in the labor rights protection system in the context of incomplete labor relations are reflected in two aspects. First, the change in the number of labor rights. China's *Guiding Opinions* have greater policy significance than normative significance, and the arrangements for protecting the minimum wage system, occupational safety system and social insurance system may not exhaust the protection of the rights of workers in all forms of employment. In addition, the *Guiding Opinions* also specifically stipulate the protection of the right to know about the algorithm rules for workers in new employment forms. In much the same vein, its local versions give workers in new employment forms additional rights, for example the right to collective bargaining, in a bid to gradually expand the coverage of workers in new employment forms through a decentralized labor law system. From the perspective of relevant experience overseas, the lists of rights for workers in new employment forms tend to have different emphases. Spain's *Self-employed Workers' Statute* defines three fundamental labor rights for "self-employed workers," namely, non-special fundamental rights (e.g., equality, non-discrimination, health insurance, physical and mental health, freedom of religion and belief, and effective legal protection), public occupational rights (the right to work, freedom of personal choice of occupation, the right to pursue economic interests and free competition, intellectual property rights over work results, and protected services) and professional rights involved in the provision of services (security of contract, equivalent returns, balance between work and personal life, vocational training and retraining).[60] The *California Assembly Bill 5* of the United States reclassifies freelancers and independent contractors as employees, optimizes their working conditions, and establishes minimum compensation standards, making it possible for them to receive work benefits such as overtime pay subsidies, family leave, unemployment and disability insurance, and

[58] Su Yu and Wang Quanxing, "The Effectiveness of Declaration of Intention for Intentionally Lacking Intendment," *Southeast Academic Research* 3 (2016): 109.
[59] Shen Jianfeng, "Labor Law's Crisis and Method Innovation of Employment Relationship Legal Adjustment in Digital Era," *Law and Social Development* 2 (2022): 134.
[60] Xiao Zhu, "The Third Category of Workers: Theoretical Reflection and Alternative Paths," *Global Law Review* 6 (2018): 85-86.

compensation, thus better protecting workers' rights.[61] Second, the qualitative change in labor rights. In addition to the qualitative determination of the type of rights protected, we should also assess the extent to which workers in new employment forms enjoy their rights. The "Implementation Measures of Henan Province on Safeguarding the Labor Rights and Interests of Workers in New Employment Forms" (Department of Human Resources and Social Security of Henan Province [2021] No. 8) reflects the relationship between the degree of subordination and the rights and obligations of workers. According to its stipulations, the court can reasonably determine the rights and obligations of enterprises and workers based on the degree of labor management of workers by platform enterprises.[62] In such cases, the enumeration of labor rights fully demonstrates the functionalist approach. In view of practical needs, for workers who need special regulation and protection, and have specific identities and occupations, we can comprehensively consider their work process, the subjects of both employers and employees and their characteristics, establish an open type of relationship that can evolve and change, and give them corresponding labor rights and social security.[63]

The *French Labor Code*, the *Brazil Labor Code*, and the *Labor Code of the Russian Federation* have all responded to the protection of platform employment to a certain extent and formulated special provisions for specific groups.[64] The adjustment objects of China's labor code should be in line with the subjective function of labor rights, and consider the needs of the current and long-term development of labor law. The diversification of the interests of the subjects of China's labor market has become a reality, and the expansion of the scope of the labor code can help to better meet the needs of labor rights and interests protection in new employment forms.[65] The realization of labor rights is inadequate, that is, the labor rights recognized and protected by law only provide a possibility for workers in reality. The inclusion of incomplete labor relations in the labor code is conducive to the recognition of and respect for the dynamic labor rights, so that the labor rights of multiple types of workers are equal in nature and effectively protected. The ultimate purpose of labor rights is to realize certain interests and values inherent in the rights. Labor rights are the free will of workers to realize labor rights and interests entitled to and obtained by them according to the provisions of the law, and their realization connects the subjective will of workers and the interests underlying labor rights. By clarifying the essential demands of workers on labor rights, the labor code provides space for individual self-realization and plays the subjective function of labor rights. To sum up, in order to keep the labor code up to date, we should respond to the new situation in society during its compilation and appropriately expand the original adjustment objects to cover the new type of labor relations.

B. The legal approach to the realization of labor rights in the context of labor relations

In labor relations, the realization of labor rights features both "self-regulation" and "compulsory intervention." The labor relations are fundamentally contractual. It originates

[61] Tu Yongqian and Wang Qianyun, "The Rise of Gig Economy and Protection of Gig Workers' Rights and Interests — An Enlightenment of the U.S. California Gig Economy Act," *Journal of China University of Labor Relations* 5 (2020): 92.

[62] Article 1 of the "Implementation Measures of Henan Province on Safeguarding the Labor Rights and Interests of Workers in New Employment Forms" stipulates that: "for cases where the conditions do not fully satisfy conditions for establishing labor relations, if the platform enterprise exercises different degrees of labor management over the employees, the enterprise shall enter into a written agreement with the employees, clarify the working hours, labor tasks, labor remuneration, labor protection, social insurance and other matters in accordance with the requirements for safeguarding the labor rights and interests of the employees, and reasonably determine the rights and obligations of the enterprise and the employees."

[63] Xiao Zhu, "The Third Category of Workers: Theoretical Reflection and Alternative Paths," *Global Law Review* 6 (2018): 84-85.

[64] Xie Zengyi, "The Stylistic Structure of the Labor Code: International Experience and Its Implications," *Northern Legal Science* 6 (2022): 28.

[65] Dawn Oliver, *Common Values and the Division between Public and Private*, translated by Shi Lei (Beijing: China Renmin University Press, 2017), 135.

from the individual's agreement to work for the employer, and most of its clauses, including those on remuneration, benefits, working hours, duties, security, and termination, are determined by the express or implied contract between the parties. Originally, the principle of freedom of contract played a fundamental role in regulating labor relations, assuming free trade and choice among labor market players.[66] Statutory rights often take effect as clauses of employment contracts, and the judiciary tends to hold that the realization of statutory labor rights depends on the existence of labor contracts. However, labor relations are also limited by labor rights stipulated in external law, which reflect public values and interests not to be changed or waived.[67] The non-waivable nature means that labor rights in positive law cannot be waived or changed, and they play the function of the bottom line of rights. Unless the status asserted by the parties is not incompatible with the rights and obligations under the contract, even if the employee voluntarily renounces his or her rights under the labor law, the court may not recognize the renunciation on the grounds of public policy, holding that actual labor rights cannot be stipulated regardless of the actual situation. That is commonly called the "social protection function of the labor law". The non-waivable principle is a legislative protection based on the principle of respect for the individual, and labor rights shoulder the important responsibility of protecting workers by addressing inequalities in ability.[68] As a typical right in the category of social rights, labor rights' minimum core content and minimalist theory are the unique construction of social rights. Here, we should supplement the market mechanism with minimal terms, while protecting the interests of the underlying bottom line. The effectiveness of labor rights norms is reflected in the specific obligations and interrelationships of state organs in determining the standard of "subsistence needs." Bottom-line guarantee reflects the intervention of the will of the state in the space for freedom of contract. The de minimis clause helps to address the problems raised by the market order in the labor sector. The government intervention in the market does not completely replace the market, but complements it instead. Labor rights are "independent" or completely independent of the terms of the employment contract. They can only be replaced by more favorable clauses in individual contracts or collective agreements.[69] Therefore, an important task of labor law theory is to take into account modern understandings of the various grounds for intervention in order to help determine what minimum terms are likely to produce results that outweigh the disadvantages.[70] The rationale for the non-waiver of labor rights is threefold. First, legislation needs to intervene to protect the individual's autonomous choice when the individual makes a commitment that limits his/her freedom, and labor legislation cannot be waived by empowering individuals to participate in the labor market. Second, paternalistic intervention can help to avoid involuntary situations with incomplete information, for example, the difficulty of foreseeing all the consequences of an employee's inducement to renounce his or her status as an employee. Third, psychological and behavioral economics research has shown that cognitive limitations or biases can cause people to make suboptimal choices.[71] Therefore, non-waiver is a legislative protection based on the principle of respect

[66] Sunstein, C. R., "Rights, Minimal terms, and Solidarity," 51 *University of Chicago Law Review* 4 (1984): 1050.
[67] Cynthia L. Estlund, "Between Rights and Contract," 155 *University of Pennsylvania Law Review* 2 (2006): 380.
[68] Dieter Medicus, *General Theory of German Civil Law*, translated by Shao Jiandong (Beijing: Law Press • China, 2000), 64-65.
[69] Bob Hepple, "Restructuring Employment Rights," 69 *Industrial Law Journal* 2 (1989): 78.
[70] Sunstein, C. R., "Rights, Minimal terms, and Solidarity," 51 *University of Chicago Law Review* 4 (1984): 1057.
[71] Guy Davidov, "Nonwaivablity in Labour Law," 40 *Oxford Journal of Legal Studies* 3 (2020): 490-494.

for the individual, and labor rights serve the important function of protecting workers by correcting inequalities in ability.[72]

Here, the two originally competitive paradigms of labor rights and labor contracts gradually mixed, and the contract paradigm of labor relations and their realization paradigm jointly constituted the adjustment form of the labor code. The realization of labor rights in labor relations should be based on "policy balance," and the institutional model of "combining the independent exercise by workers with the guarantee of the state" should be adopted.[73]

C. The legal approach to the realization of labor rights in the context of incomplete labor relations

Since labor rights are closely related to the identification of labor relations, the controversy between the theory and practice of incomplete labor relations is inseparable from the identification of labor relations. However, the significance of identifying labor relations is to help identify the needs for protecting labor rights and interests. It should emphasize the return of the purpose of truly satisfying the actual needs and make the realization of labor rights in incomplete labor relations the top priority.

The protection interests contained in the types of labor rights are often rooted in social life and various interest relationships in society, and labor rights in incomplete labor relations have assumed a dynamic trend of change. The protection of the interests of incomplete labor relations in the labor code features complex hierarchies, and the legal system should make a differentiated allocation. Among them, the non-waivable labor rights reflect the basic human rights protection for workers and generally provide bottom-line protection for all workers with mandatory provisions.[74] In contrast to non-waivable labor rights, waivable labor rights protect interests beyond the bottom-line interests of workers and can be carried by specific individuals or selected and replaced by individuals in view of personal needs and preferences.[75] In the context of incomplete labor relations, the "autonomy" of workers is enhanced, leaving a certain room for choice in some areas, for example, vacation time, health care, savings plans, pensions, etc.[76] Thus, the employee's waiver of rights becomes a bargaining chip between the two parties in labor relations, allowing a mutually beneficial rights transaction between the employee and the employer.[77] The rational return of normative purpose makes the practical path of incomplete labor relations hope for autonomous mechanism design, and it is necessary for the labor code to reshape the logical relationship between incomplete labor relations and labor rights.

The realization of labor rights in incomplete labor relations relies on communication mechanisms using procedural rights as tools. Procedural rules can promote horizontal communication between different value systems, that is, form universal principles and achieve a state of dynamic equilibrium by continuously coordinating structural contradictions. China's *Opinions of the Supreme People's Court on Providing Judicial Services and Safeguards for Stabilizing Employment*" (Supreme People's Court [2022] No. 36) stipulates that "platform enterprises and workers should be guided to establish an institutionalized and normalized communication and coordination mechanism on labor compensation, working hours, labor protection, etc., to protect the legitimate labor rights and interests of workers in

[72] Dieter Medicus, *General Theory of German Civil Law*, translated by Shao Jiandong (Beijing: Law Press • China, 2000), 64-65.
[73] Xu Jianyu, "The Right Viewpoint of Labor Contract Law," *Academic Journal of Zhongzhou* 6 (2005): 82.
[74] Li Mankui and Li Fucheng, "The Rights Basis and System Building of Occupational Injury Protection for Employees in New Employment Forms," *Human Rights* 6 (2021): 83.
[75] Shi Chao, "Protection of Atypical Workers in Platform Economy from the Perspective of Autonomy," *Hebei Law Science* 6 (2020): 147-148.
[76] Zhao Hongmei, "Legislative Regulation on Working Hours and Labor Intensity of Online Car-hailing Platform Practitioners," *Human Rights* 6 (2021): 67.
[77] Sunstein C. R., "Human Behavior and the Law of Work," 87 *Virginia Law Review* 2 (2001): 267.

new employment forms." The protection of labor rights in incomplete labor relations has shifted from a compulsory guarantee path to an implementation mechanism featuring "promoting," "supervising" and "guiding." In other words, efforts are required to guide all types of employees in the platform economy to establish collective organizations, protect themselves from lawsuits involving legal liabilities that may lead to the termination of labor contract relationships or reduction of income, and "promote and encourage new forms of industry organizations to strengthen industry self-discipline," so as to protect the labor rights and interests of workers in new employment forms.[78] The collective bargaining system helps workers to participate in workplace management and consequently contributes to self-regulation of the labor process. It can be deemed a remedy for the market. In addition to optimizing the "three rights" of collective labor dominated by the right to collective bargaining, we should leverage the power of the state and society to improve the ability of workers to control their rights in incomplete labor relations. The theory of the "capability approach" proposed by Amartya Sen can be used as a reference standard for the authenticity of the willingness to exercise labor rights. It uses freedom as the criterion to evaluate a person's advantage in doing something and essentially involves all the information about the combination of functions that an individual can choose. The theory emphasizes the analysis of the exercise of rights by rights subjects from a dynamic perspective and tends to highlight the process and results of rights exercise.[79] Therefore, the institutional design of incomplete labor relations should focus on improving the autonomy rights related to bargaining power: reduce the information asymmetry between labor and management by improving the notification obligations and government information disclosure obligations in the operation of labor relations, and give full play to the reputation mechanism to promote the establishment of harmonious labor relations; optimize labor dispute mediation procedures to improve the rules for changing labor relations.

Incomplete labor relations can draw on the dynamic system theory to link the general terms of labor relations, realize the integration of different labor rights realization paths, and optimize and coordinate the internal structure of the labor code. Dynamic clauses fall between abstract generalization and principle-oriented normative expressions and can make up for the shortcomings of general clauses and fixed element clauses. The abstract nature of the general clauses is sufficient to extend the law to all areas of social life and realize rational social planning, but they leave behind the hidden concerns of legal stability. Overly specific clauses with fixed constituent elements can ensure the stability of the law. However, the lack of flexibility will make it impossible for similar cases to rely on them. Or there can be different judgments for similar cases. Those are against the principle of equality. The legal norms that adjust legal relations in specific fields contain many constituent factors, but in specific legal relationships, adjusting the norms of each specific relationship and the factors required is a dynamic process, due to the different number and intensity of factors required for the corresponding norms.[80] The labor code can be based on the normative construction of the dynamic system theory of the "element-effect" model to confirm labor rights in incomplete labor relations, and factors such as functional needs, social protection needs, and procedural provisions can be comprehensively considered and leveraged to ensure the realization of labor rights.[81]

[78] Wang Min, "Labor and Social Security Policy in New Business Models: The Reality and Future Choices," *China Social Security Review* 3 (2021): 29.
[79] Chen Yongfu and Li Xiaoping, "The Logical Basis of Labor Relations Governance," *Theory Monthly* 11 (2015): 86.
[80] Ban Tianke, "Leaving Space for Further Discussion: Formulation of Rules in Civil Code," *Journal of Beijing University of Aeronautics and Astronautics (Social Science Edition)* 1 (2017): 70.
[81] Chen Haisong, "Environmental Rights in the Codification of China's Environmental Law: Analysis from the Perspective of Research Methodology," *Journal of Beijing University of Aeronautics and Astronautics (Social Science Edition)* 3 (2022): 57.

Conclusion

The objective function of labor rights originates from their basic rights attribute, and the logic of the legislative interaction between the constitution and the labor law contains the normative requirements for the codification of the labor law, determining the systematic positioning of the labor code as the implementation law of the constitution. The substantive codification of the labor code is conducive to improving the institutional protection of labor rights. The subjective function of labor rights stems from their human rights attribute, and the subjectivity and individuality of workers are increasingly highlighted. The subjective realization of labor rights shows that the protection of individual private rights be achieved alongside that of public interests, indicating the essential attributes and operation laws of the labor code as a departmental code. Labor rights have the order function of objective protection and the value function of subjective realization and thus boast the basic character of integrating the framework system and value context of the labor code. On the one hand, the framework of the labor code should take labor rights as a clue, identify and standardize their core types — the right to self-employment, the right to fair remuneration, the right to labor protection and the right to non-discrimination, and then build a supervision and management mechanism, a dispute resolution mechanism and a social dialogue mechanism to develop a functional system for protecting labor rights. On the other hand, the labor code should be based on the realization of labor rights as a logical approach to its content structure. According to the logic for realizing labor rights, the content of the labor code can be divided into the realization of labor rights in labor relations and the realization of labor rights in incomplete labor relations. In the realization of labor rights in labor relations, we should adopt the model of "combining the independent exercise of workers with state guarantees," while in the realization of labor rights in incomplete labor relations, we should focus on improving the autonomy rights related to bargaining power, promoting communication between subjects, and enhancing the construction of procedural rules.

(Translated by *QIAN Chuijun*)