

# *Law and Order: The Political Power and Constraints of Labor Governance in China's Platform Economy\**

Hong Yu Liu

## *Abstract*

While the platform economy in China has received increasing scholarly attention, most studies focus on platform work in the context of algorithmic control, overlooking the legal and political context in which digital labor operates. To address this knowledge gap, this article analyzes the labor regulatory framework that governs China's platform economy. It argues that there is a deficiency in China's labor laws, which can explain the lack of protection for platform workers. However, this legal loophole is essential to the survival of platform businesses as it makes platform labor profitable for both the platform and workers. In response, the state has developed a strategy to pressure platform companies to improve working conditions, consistent with the increasing control and discipline exerted by state actors in China's economy today.

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**Dr. Hong Yu Liu** is Lecturer at the Department of Management, University of Sussex Business School. Correspondence should be sent to hl606@sussex.ac.uk.

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## 1. Introduction

The platform economy relies on algorithms controlled by internet enterprises to match, in real-time, the demand and supply of goods, services and information. In China, since 2008, platform businesses have sprung up in sectors such as car hire, food delivery, accommodation and bicycle-sharing, and leading digital labor platforms include *Didi Chuxing* (滴滴出行) for ride-hailing and *Meituan* (美團) and *Ele.me* (餓了嗎) for food delivery. In recent years, the platform economy has gradually become the powerhouse of economic development in China. By one estimate, the platform economy was the most important contributor to the growth of China's gross national product (GDP) and total factor productivity (TFP) in the 21st century: Between 2001 and 2018, the broadly defined "digital economy" contributed three-quarters (74.4 percent) of GDP growth.<sup>1</sup> Statistics from the China Academy of Information and Communication Technology (中國信息通信研究院 *Zhongguo xinxi tongxin yanjiuyuan*) suggest that China's platform economy is now the second largest in the world, next only to the United States.<sup>2</sup> Currently, more than 84 million people in the Chinese labor market, approximately 10.7 percent of total employment in the country, work in the platform economy.<sup>3</sup>

In August 2018, China's State Council released a policy document promoting the "stable and healthy development of the platform economy."<sup>4</sup> This document describes the platform economy as a new growth engine and a new way of organizing work that has contributed to the optimization of resources, upgrading of industries, expansion of consumption, and creation of jobs. Alongside the attention the platform economy has received in political discourses, there is a growing scholarly interest in work and employment issues associated with China's platform sector. Platform work promises low entry barriers, profitable entrepreneurship, and worker autonomy and flexibility, and platform operations reflect a perceived "new spirit" within the economy.<sup>5</sup>

However, several studies have revealed that these promises remain unfulfilled.<sup>6</sup> Fueled by an army of rural migrant workers who could not or would not find jobs in the manufacturing sector, Sun suggests that the rise of the platform economy has in fact generated a new form of labor precariousness and commodification and,<sup>7</sup> thus, has led to a rise in new concerns about employment regulations and workers' rights protection in academia.<sup>8</sup> Following the Western scholarship on work, academic approaches to workers in China's platform economy mainly look at the

power asymmetry between the digital platforms and workers through algorithmic control;<sup>9</sup> scant attention is paid to the legal and political context that the platform work is performed in, specifically, the role of China's government in regulating platform work.

One notable exception is Lin's explanation of the current legal situation of platform workers and the barriers to law reform in China's context.<sup>10</sup> However, her discussion focuses entirely on the realm of labor laws, which ignores the wider legal and political interaction between the state and platform enterprises in China. These interactions deserve further academic enquiry for two reasons: first, the amendment to labor laws does not fully reflect the state's effort to improve the work conditions of platform workers, as this article will demonstrate. Thus, the examination of platform work merely through the lens of labor laws is insufficient to paint the full picture of the strategy and constraints of labor governance in China's platform economy. One should be mindful that markets in capitalist economies, including labor markets, are politically constructed as a result of the deployment of state power;<sup>11</sup> second, over the last two decades, commenters have argued that Chinese labor laws are set to a high standard but with a low level of enforcement.<sup>12</sup> Administrative regulations discussed in this article, on the other hand, can have more direct and immediate impacts on everyday work conditions of platform workers as "the existing labor law security mechanism in China is limited and is evidently incapable of addressing problems arising from platform work."<sup>13</sup>

As the digital workforce continues to grow, the examination of platform economies is gaining more importance in understanding the political economy of China today, because labor issues have always been the primary concern of China's government and they are considered to be a key factor to maintaining social stability and economic growth.<sup>14</sup> During the current economic slowdown, platform workers in China have become more militant with their dissatisfaction with working conditions, which in many ways share some similar characteristics to the global platform work activism.<sup>15</sup> One of the most notable examples is the *Mengzhu* (盟主) case: The leader of this activism, *Mengzhu* (literally translated as "leader" in English) established a social media group called the "Knights Alliance" (騎士聯盟 *qishi lianmeng*) with 14,000 platform workers in China and they were organizing for a strike. Despite *Mengzhu* was arrested before the strike, his action has aroused public concerns about the work conditions of platform workers in China.<sup>16</sup> In another

extreme case, a food delivery worker set himself on fire outside a shop to protest against the unfair pay system.<sup>17</sup> This emerging labor activism poses some important questions to understand the industrial relations of China's platform economy that inspire this article, for instance: Why do China's labor laws fail to provide protections to workers? Also, what other measures does the state implement to govern platform work, and what the limitations are?

This article seeks to initiate discussions that contribute to a better understanding of the platform economy in contemporary China. In what follows, this article presents the scholarly debates surrounding the employment relations in the platform economy; and then it argues that current labor laws in China show a structural deficiency in regulating platform work: both platform companies and workers rely on the "service relationship" to maximize their own financial gain. Because the platform economy is so economically significant, the state has been extremely cautious in interpreting and enforcing labor laws in the sector, in order to maintain the vividness of its economic powerhouse. Also, as Estlund observed, rather than dissolving their dissatisfaction, the introduction of labor laws have made Chinese workers become more conscious of their labor rights, consequently fueling workers' collective actions in China over the decades and causing a higher risk of social unrest.<sup>18</sup> Therefore, instead of depending on labor law amendment or enforcement, the state uses administrative regulation (and penalties) to put pressure on platform companies to improve workers' conditions that has both advantages and disadvantages: on one hand, platform workers in China could enjoy more benefits and become better protected, but on the other hand, these administrative measures could dismiss the militance of workers to fight for labor rights improvement that should be guaranteed by the law.

## **2. Scholarly Debates on the Employment Relations in the Platform Economy**

In China, as in the West, the nature of the employment relationship between platforms and workers is the subject of ongoing debate. Drawing on numerous case studies, including Uber and Deliveroo, Dieuaide and Azaïs argue that the boundaries of the employment relationship become uncertain as "the bond of subordination disappears" within "intermediate spaces of regulations."<sup>19</sup> Researchers also point out that, unlike conventional employment, platform workers such as Uber drivers can enjoy much

higher flexibility at work by not having to commit to a minimum number of working hours.<sup>20</sup> They find that this high level of flexibility is one of the main reasons that drivers take part in ride-hailing instead of, or in addition to, less flexible jobs such as working for a traditional taxi company.

Others, however, believe that platform work should be understood as a formal labor relationship, just as jobs in other economic sectors, because many workers in the platform economy, indeed, work full-time for the platforms. A powerful example is given by Chan, who conducted ethnographic fieldwork in Beijing in 2017–2018: Every food delivery worker her research team came across worked full-time, or more, for at least one delivery platform.<sup>21</sup> Researchers argue that although platform workers have a certain degree of autonomy in terms of working hours and where and how to work, these workers are still controlled by the platform and must bend to the platform's instructions and its algorithmic management. For example, Sun reveals that delivery people in Beijing are bound by stringent algorithmic control and exploitative working conditions, and they constantly experience asymmetrical power relations and exploitation on their respective platforms.<sup>22</sup> Workers have no control over working time and delivery time, emotional regulation, or "customer supremacy" in relation to delivery work.

While these themes appear to be similar to algorithmic labor control problems in the West, Yu details the punishment mechanisms that are built into China's platforms.<sup>23</sup> For example, Didi sends checkers as secret passengers to inspect the service of drivers. If a driver's performance falls short of the company's expectations, Didi will decrease the number of orders assigned to the driver or even deactivate his account. Such punishment mechanisms also exist in food delivery platforms: a late delivery is fined 100 yuan (14.8 US Dollars), a traffic rules violation is 200 yuan (29.6 US Dollars), and a customer complaint is 500 yuan (74.1 Dollars).<sup>24</sup>

Furthermore, some commentators suggest that work in the platform economy could be regarded as a new type of employment relationship.<sup>25</sup> Arguing from a Marxist labor process perspective, Gandini points out that the operation model of platforms has changed the traditional employment model by breaking down the dependence of traditional production on production factors and introducing new practices of "management by customers" and management through "gamification."<sup>26</sup> From these debates, it is easy to see that the nature of the platform work has blurred the boundaries between flexible work and formal employment relations. As Wang and Cooke point out, particularly in (but

definitely not limited to) the Chinese context, the lack of precise political direction and guidance on how to determine the existence of labor relations has made it difficult for courts to render decisions over labor disputes.<sup>27</sup> As a result, it is not surprising to find that workers in the global platform economy are ill-protected in general, and their jobs are characterized by high but unstable income, long but fragmented working hours, high risk of work injuries without adequate social protection, and inability to voice their concerns to the platforms, to name a few.<sup>28</sup>

In China, most digital platforms regard their workers as self-employed service providers rather than formal employees. These platforms strategically avoid the establishment of labor contracts, and by doing so, platform enterprises can extract surplus value by unilaterally deducting part of the workers' income, avoiding overtime pay, and neglecting to provide social insurance and other benefits that are required in formal employer-employee relationships. This contractual element, which brings the political and legal environment in which the technology is situated, is largely ignored by the existing literature. In other words, current scholarship fails to explain why China's complex labor law system has failed to provide much protection to platform workers. This topic will be explored in detail in the next section, and understanding this deficiency and its constraints are absolutely essential for understanding why the Chinese government will use administrative regulations to fill in the policy gap.

### 3. Understanding China's Labor Laws

The People's Republic of China was founded in 1949 as a socialist country. That means, back in the days before 1979, the Chinese government guaranteed full employment in urban China under the planned economy, and workers were assigned to one or another of a city's work units (工作單位 *gongzuo danwei*). All able-bodied citizens were assigned a lifetime relationship with a work unit that, in exchange for work, provided them welfare and social security in the form of housing, education, health care, retirement, and other work-related benefits.<sup>29</sup> This relationship is much broader than an employment relationship, and employment contracts did not exist; hence, it is no surprise that labor law to govern employment contracts also were absent.

This began to change in the 1980s, as China gradually marketed its economy through the privatization of state-owned enterprises and

transforming into a so-called “system of socialism with Chinese characteristics.” New employment and welfare systems began to emerge, along with new laws to regulate employment and work-related social issues. Today, after four decades of development, China’s labor-regulatory framework has become highly sophisticated and can be understood through at least three categories of political instruments: Labor laws, administrative regulations and departmental rules, and judicial interpretations. By definition, labor laws in China must go through the legislative procedure of the Standing Committee of the National People’s Congress and be signed by the Chairperson;<sup>30</sup> whereas law provisions, rules and regulations can be issued by an administrative authority, such as a ministry or a local government.<sup>31</sup> Meanwhile, judicial interpretation is a power given to the Supreme People’s Court to make judicial interpretations on a specific issue concerning the application of law in the trial work of the people’s court that goes through a judicial committee.<sup>32</sup>

Collectively, these political instruments have shaped the labor market in China, including work in the platform economy. To be sure, other categories of political instruments such as local government regulations also influence labor conditions particularly on the provincial level, but analyzing all of the political instruments is beyond the scope of this article, and it will focus on the labor laws. Table 1 below lists each group, its issuing authority, and examples.

**Table 1: The Labor Governance Framework in the People’s Republic of China**

Governance instrument	Issuing authority	Example
Labor Laws	The Standing Committee of the National People’s Congress	<i>China Labor Law, Labor Contract Law, Trade Union Law</i>
Administrative regulations and department rules	The State Council, The Ministry of Human Resources and Social Security, or local governments	<i>Provisions on the Prohibition of Using Child Labor, Special Rules on the Labor Protection of Female Employees, Provisions on Minimum Wages, Regulation of Shanghai Municipality on Labor Contract</i>
Judicial interpretations	The Supreme People’s Court (SPC)	<i>Interpretation (I) of the SPC on the Application of Law to the Hearing of Labor Dispute Cases 2020</i>

To begin with, discussions on labor protection in China must consider two sets of economic laws that comprise the backbone of labor regulation: The *Labor Law* (1995) and the *Labor Contract Law* (2008).

The *Labor Law* defines the legal basis of labor rights and regulates labor relationships in mainland China. For instance, Article 19 states that labor contracts shall be concluded in written form and contain the following clauses: (1) Time limit of the labor contract; (2) Content of work; (3) Labor protection and labor conditions; (4) Labor remuneration; (5) Labor discipline; (6) Conditions for termination of the labor contract; and (7) Liabilities for violations of the labor contract.<sup>33</sup> Meanwhile, the *Labor Contract Law* clarifies the labor rights and obligations of both parties (employers and workers) to a labor contract. This includes specifying “one month after a worker has begun to work” as the legal timeframe for establishing a written labor contract (Article 10); and “if an employer fails to sign a written labor contract with a worker after the lapse of one full year from the date when the worker begins to work, it shall be deemed that the employer and the employee have concluded a labor contract without a fixed term” (Article 14.3).<sup>34</sup> As will be explained, the labor contract plays a special role in the governmental regulation of an employment relationship. This is because, in China, participation in paid work does not necessarily guarantee protection under the Laws. To qualify for protection, a worker must establish a “labor relationship” with their employers. This approach is arguably different from most of the European countries; these countries apply the principle of the so-called “primacy of facts,” “the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties [employers and workers],” as suggested by the International Labor Organization.<sup>35</sup>

Also, the laws are important because they provide a legal basis for determining the jurisdiction in which a labor dispute shall be heard. As argued by Taylor, the legal system is political in China, and the Chinese rule of law “means laws according to political convenience or political practice”; therefore, jurisdictions can send powerful signals for employers to regulate their working conditions.<sup>36</sup> Although Chinese labor laws have for decades assigned jurisdictions, which in turn have settled labor disputes arising in conventional employment settings, no clear definition of what a “labor relationship” is has been established.<sup>37</sup> In practice, judges in China use whether a contract is signed between a worker and employer to determine if a “labor relationship” exists, as long as both parties meet the legal requirements. An employer, also translated as a “work unit” (用人單位 *yongren danwei*) in some writings, refers to all “enterprises,



individual economic organizations, private non-enterprise entities, or other organizations” (*Labor Contract Law*, Article 2),<sup>38</sup> and workers are people who “earn their living primarily from wages” (*Trade Union Law*, Article 3).<sup>39</sup> As written in the *Labor Contract Law*, “the principle of lawfulness, fairness, equality, free will, negotiation for agreement and good faith shall be observed in the formation of a labor contract” (Article 3) and, in theory, this principle covers both standard (i.e., full-time) and non-standard (i.e., part-time and casual work) forms of labor relationships. Once a contract is signed, an employer must abide by the Laws in terms of providing minimum wage, not exceeding maximum working hours, and offering employee benefits such as paid leave, work injury insurance, and social security contributions, to name a few. Employers that violate the Laws could risk facing serious legal consequences, including having their business licenses revoked and being subjected to criminal liability (*Labor Contract Law*, Chapter 7).

#### 4. The Constraints of Labor Laws in the Platform Economy

Commentators have been arguing that a long-lasting problem with China’s labor laws is its high standard but poor enforcement. This has happened in the manufacturing settings, service work, and perhaps not surprisingly, platform work.<sup>40</sup> Despite the fact that labor laws provide much protection to Chinese workers in theory, in reality, in labor-intensive models of business operation like platform businesses, providing legally required employee benefits can be highly costly to employers. To avoid this cost, Chinese platform companies have sought to bypass the laws by establishing what they call a “service relationship.” A service relationship is an economic relationship between two or more entities, and it can cover any paid labor that is performed in a relationship that does not and sometimes cannot meet the legal requirements for a “formal labor relationship.” Nonetheless, it involves the provision of and compensation for a service. A service relationship could involve a contract, but such a “contract of service” does not contain as much legal power as a contract of labor can provide.

The entire platform economy in China is built upon this “service provider” model, and it should be noted that some platform workers in China prefer to sign a service contract, because it will save them from their own obligation to contribute to their social security accounts and thus enable them to pocket more income. A service contract also means

that they are not committed to a particular employer (i.e., platform) which enables them to maximize their income by working for more than one platform at the same time, a common practice.<sup>41</sup> This financial incentive explains why millions of migrant workers in China choose to leave the manufacturing sector, despite its formal labor protections, and seek jobs in the platform economy. Alongside this is an increasing number of highly educated workers who devote themselves to platform work, as company data reveal. Today, there are at least 60,000 food delivery workers in China with postgraduate qualifications, and more than 170,000 university graduates.<sup>42</sup>

Tables 2 give a breakdown of the social security contribution for a typical first- and second-tier city worker.

**Table 2: A Breakdown of the Social Security Contribution in Two Cities**

Social security contribution (in RMB)	Beijing (1 <sup>st</sup> tier city)	Foshan (2 <sup>nd</sup> tier city)
Employer	1567.03	887.53
Worker	619.25	404.83
Total	2186.28	1900

Sources: Beijing City releases the social security contribution standard for 2022, Chinese text available via [http://bj.news.cn/2022-07/20/c\\_1128846550.htm](http://bj.news.cn/2022-07/20/c_1128846550.htm); Notice on the Foshan City Human Resources and Social Security Bureau adjustment, Chinese text available via [http://fssi.foshan.gov.cn/bmfw/jfbz/content/post\\_5111516.html](http://fssi.foshan.gov.cn/bmfw/jfbz/content/post_5111516.html).

Zhou gives two examples that illustrate the difference between a formal labor relationship and a contract of service.<sup>43</sup> First, the legal retirement age in China today is 60 for men and 50 for women. A person who is beyond the legal retirement age and wishes to continue to work may not sign a formal labor contract, but they may sign a contract of service with an employer. However, under contract-of-service terms, the employer is no longer responsible for providing social security contributions and other employee benefits. This can make a huge difference in the protection of workers. A second example relates to work injury. Under the Labor Laws, work injury insurance is applied under the principle of “liability without fault,” which means an injured worker can enjoy all the benefits of the insurance, regardless of details related to how the injury occurred, including if an injury is caused by a third party. In addition, an injured worker may continue the labor relationship with the employer if

they meet certain standards of injury or disability (Article 33, *Regulations on Work Injury Insurance*). In contrast, occupational injury compensation under a service contract is judged under the *Civil Law*, which can merely provide a lump-sum compensation, and the amount of compensation is determined by the extent of an injury and an assessment of fault. Other protections provided by the Labor Laws, such as minimum wage, working time, paid leave, etc. are also not covered by a service contract, nor are they required by the *Civil Law*. In reality, workers who engage in subordinate work without meeting the legal requirements for establishing a formal labor relationship are usually considered to have a service relationship with their employers. This includes retirees, student workers, casual domestic helpers, and workers in the platform economy.

This “service relationship” puts the state in a difficult position to initiate labor laws amendment and enforcement: there is certainly a need to increase the level of protection to platform workers and neutralize their dissatisfaction before it turns into a larger power of social unrest; but to subject platform work into the formal labor relationship could risk platform companies losing their financial incentives and hamper their development, especially during the current economic downturn in China as platform companies started a new round of layoffs recently.<sup>44</sup> In addition, from a historical perspective, the promulgation of labor laws has increased Chinese workers’ consciousness of their rights. This caused social unrest and ignited waves of collective activism in China over the decades, as Estlund observed.<sup>45</sup> In this sense, the state must deploy alternative political measures to improve the work conditions in the platform economy, which is through the regulation of market order.

## **5. Ineffective Union Presentation and Ambiguous Court Decisions in the Platform Economy**

The scholarship of industrial relations has provided extensive evidence that labor organizing and collectivism are effective ways to improve work conditions. In theory, the rights of Chinese workers to organize and participate in trade unions, including collective consultation, is protected in the *Trade Union Law*. In reality, contract-of-service workers generally have been excluded from these protections. The *Trade Union Law* stipulates the procedures for participating in and organizing trade unions, the organization structure of trade unions, the rights and obligations of union members and the scope and procedures of collective consultation.

Importantly, the laws only allow workers to organize and join unions within the All-China Federation of Trade Unions (ACFTU; 中華全國總工會 *Zhonghua quanguo zonggonghui*) system, which is the only authorized federation of trade unions. Prior to 2018, there had been no official reports of platform workers organizing and participating in trade unions or being engaged in collective consultations. In March 2018 of that year, the ACFTU put forward the “Plan to Promote Union Membership to Delivery Drivers and Other Groups.” The Plan specifies that the ACFTU should encourage eight types of workers to join a union: Truck drivers, couriers, nursing or care workers, domestic workers, salespersons in shopping malls, online food-delivery couriers, real estate agents and security guards.<sup>46</sup> According to the ACFTU, the unionization of couriers has been increasing steadily. In some cities such as Shanghai and Guangzhou, unions for online food-delivery riders have also been set up.<sup>47</sup>

As Lei learnt from her interviewee, despite the efforts of the ACFTU to unionize platform workers, difficulties remain in carrying out collective consultations:<sup>48</sup> Because the Laws are ambiguous, the ACFTU is not certain that platform workers qualify; also, the current focus on enterprise-level collective consultation may not work well for platform workers, because they move frequently from one platform to another, or work with two or more platforms at the same time. Despite the goodwill gesture demonstrated by the ACFTU, researchers have long been arguing that it has very little influence in improving the work conditions of Chinese workers in reality.<sup>49</sup>

In addition, the existence (or not) of a labor relationship determines which legal avenues are available if a labor dispute arises. Only labor-relationship disputes go through the procedure of mediation and arbitration before filing a case in court,<sup>50</sup> and researchers find that mediation and arbitration have become two key methods to settle labor disputes in China today.<sup>51</sup> Due to the ambiguity of the labor laws, court judgments have been confusing and inconsistent, even within the same jurisdiction. The confusion can be summarized for three reasons: First, the labor relationship defined by the labor laws provides that an employer must directly manage workers, including disciplinary management, through workplace rules and procedures. However, workers on platforms could arguably enjoy a higher degree of autonomy and flexibility over working time, work schedule, and where and how to work.

Second, in accordance with the provisions of China’s *Labor Law*, an employer must provide the necessary material and technical means,

including tools, equipment and facilities, for a worker to perform the contracted work. In reality, however, most workers in the platform economy provide their own equipment, including mobile phones for receiving orders, motorcycles for delivery services, etc. Also, the *Labor Law* requires employers in a labor relationship to assess the performance of their workers and pay them in full and on a fixed and mutually agreed pay schedule (i.e., weekly or monthly). However, platforms usually pay their workers on a piece-rate basis, as opposed to an hourly wage. Workers get their pay instantly after they complete each order or task, after the platform has deducted any service or information access fees and/or commissions. The role of a “platform employer,” therefore, becomes inexplicit and debatable in the Chinese legal context.

Last but not least, the “triangular” relationship between platform, worker and clients further complicates the traditional labor relationship between employers and workers—for example, workers who provide the work or service, clients who request and receive the service, and platforms that facilitate, organize and manage the process.<sup>52</sup> Clients are involved in task dispatch, result assessment and payment of remuneration. For example, passengers’ ratings of a DiDi driver’s performance will affect the driver’s evaluation by DiDi and, consequently, the driver’s priority ranking for the next order dispatch. Critics argue that the rating system is just an outsourcing of platform supervision to clients.<sup>53</sup> However, customer experiences are subjective and the platform has no way to assess the criteria a customer uses. At present, biased and unfair ratings undermine workers’ reputations, yet they have nowhere to seek redress.

Therefore, judges struggle (and disagree) as they seek balance management practices that are illegal in formal employment relationships with worker benefits that do not exist in those relationships. This complication is reflected in legal documents, for example, the *White Paper on the Trial of Labor and Employment Disputes on the Internet Platforms* (互聯網平台用工勞動爭議審判白皮書 *Hulianwang pingtai yonggong laodong-zhengyi shenpan baipishu*) published by the People’s Court of Chaoyang District in Beijing. The White paper documented 105 dispute cases that required the determination of the existence of a labor relationship, of which in 39 cases the judge ruled that the two parties had a labor relationship, and 8 cases were ruled that the two parties had a service relationship, but in 58 cases no relationship existed.<sup>54</sup>

## 6. Establishing Order in the Platform Economy

The overarching argument of this article is that China's platform economy is a politically constructed project. As past studies highlight, the digital economy is seen by Chinese leaders as both a symbol of national strength and a huge practical economic driver.<sup>55</sup> Policy documents in China have been surrounding this particular segment of the economy: In June 2017, Premier Li Keqiang stated at the Summer Davos Forum that "The Chinese government has adopted an accommodating and prudent regulatory approach toward new industries, new business forms and models, such as e-commerce, mobile payment and bike-sharing, which have enabled their fast and healthy development."<sup>56</sup> One month later, the National Development and Reform Commission, together with seven other ministries, issued the "Guiding Opinions on Promoting the Development of the Sharing Economy" (關於促進分享經濟發展的指導性意見 *Guanyu cujin fenxiang jingji fazhan de zhidaoxing yijian*), which includes comprehensive measures for market access, sector supervision and fostering an enabling environment. This landmark document is set to "strengthen the guidance of expectations, optimize the development environment and promote the development of the sharing economy."<sup>57</sup> Over the past few years, several administrative documents concerning the platform economy were issued at both the central and local government levels, most notably the promulgation of the *E-Commerce Law* by the 13th National People's Congress in 2018.

It is noteworthy that the policy documents not only guide the promotion of platform economy development but also have a direct impact on the working conditions in the sector. In this vein, and despite recognition by China's central government that platform workers need to be protected, by the time this article is written, no sign is yet shown regarding formalizing the employment status (i.e., the labor relationship) of platform workers, or innovating new ways in which their current status can be understood and heard by the courts. The "Guiding Opinions of the General Office of the State Council on Promoting the Well-regulated and Sound Development of the Platform Economy" (關於促進平台經濟規範健康發展的指導意見 *Guanyu cujin pingtaijingji guifan jiankang fazhan de zhidao yijian*), issued by the State Council in August 2019, states that the legitimate rights and interests of platform workers should be protected, mainly in terms of social security, vocational and skills training and occupational injury protection.<sup>58</sup> However, the Guiding

Opinion again avoided pointing out the nature of the employment relationship between the workers and the platforms: For instance, it uses the term “occupational injury” (職業傷害 *zhiye shanghai*) as opposed to “work injury” (工傷 *gongshang*), which is used in the labor laws.

The ambiguity in clarifying the employment relationship in the platform economy is replicated in other policy documents, such as the “Interim Measures for the Administration of Online Taxi-Hailing Services.” The 2015 draft stated that “online taxi-hailing service operators *shall* sign labor contracts with the drivers registered on the platform” (the author’s emphasis); but the final version issued in 2016 notes only that “online taxi-hailing service operators *should* sign labor contracts or agreements with drivers in multiple forms in accordance with relevant laws and regulations and based on the working time, service frequency and other characteristics while clarifying the rights and obligations of both parties” (Article 18, my emphasis). In a court, the difference between “should” and “shall” can be decisive. Critics believe that this change fails to respond to the question regarding the legal relationship between the car-hailing platforms and their drivers, and thus does not help to clarify the employment status. Commentators argue that this provision in particular allows various contract forms to be selected, and might encourage platforms to circumvent labor contracts by signing contracts for service, regardless of the criteria set in the labor laws.<sup>59</sup>

Without amending the labor laws, the Chinese government uses other strategies to regulate the work conditions in the platform economy. One powerful weapon is the administrative penalty. Commentators argue that China’s economic strategy today is characterized by the encroaching influence of the state in the national economy, as well as the increasing expectation of serving the public interest of private firms.<sup>60</sup> Platform companies are no exception. Up until 2019, researchers commented that the state had made little effort to restrain the monopoly power of initiating antitrust investigations.<sup>61</sup> This favors the rapid expansion of the platform enterprises by unleashing them from political bundles. This, however, is no longer the case. In February 2021, a new regulatory body called the Antitrust Committee of the State Council (ACSC; 國務院反壟斷委員 *Guowuyuan fan longduan weiyuanhui*) was established, and it quickly issued “Antitrust Guidelines on Platform Economy” (關於平台經濟領域的反壟斷指南 *Guanyu pingtai jingji de fan longduan zhinan*). Later on, the State Administration of Market Regulation (SAMR; 國家市場監督管理總局 *Guojia shichang jiandu guanli zongju*) concluded that Alibaba had abused its

dominant position by imposing the so-called “either-or” requirement on merchants, which undermined the order of fair competition and harmed the rights and interests of workers and consumers. It claimed that Alibaba had prohibited merchants from opening stores or participating in promotional activities on competing platforms and adopted a variety of incentives and penalties to enforce the policy, which helped to maintain and enhance its market power and gain an unfair competitive advantage. The SAMR consequently issued an administrative decision, imposing a penalty of 18.228 billion yuan (about 2.85 billion US Dollars).<sup>62</sup>

In a similarly strategic way, in April 2021, the SAMR initiated an investigation into Meituan, the country’s largest food-delivery platform. It claimed that since 2018, Meituan had abused its dominant position by inducing merchants to sign exclusive agreements with it. When the investigation was concluded in October 2021, the SAMR ordered Meituan to fully refund 1.289 billion yuan (about 190.9 million US Dollars) of exclusive cooperation deposits and imposed an administrative penalty of 3.442 billion yuan (about 534 million US Dollars).<sup>63</sup> It was in the same year that the SAMR, together with other Chinese authorities, released a policy document for improving the rights and interests of platform workers in these “new forms of employment.”<sup>64</sup> To all players in China’s platform economy, the message is crystal clear: platform enterprises must improve the work conditions or they could receive an administrative penalty. In both cases, platform enterprises made no attempt to appeal to the state’s decision and defend their business in court, as this could further damage the relationship between the state and the company. To retrieve Taylor’s idea,<sup>65</sup> as the legal system is political in China, and the Chinese rule of law “means laws according to political convenience or political practice,” and court cases from 2013–2019 confirm that there is little reason to believe that citizens or enterprise could possibly win a court over the state at the Chinese court.<sup>66</sup>

As a result, under financial and political pressure from the central government, Chinese platforms are beginning to re-invest in the welfare of their workers as a way to rebuild their corporate image and demonstrate their willingness to comply with the authorities. In particular, they collectively donate enormous sums of money to pledge support for the government’s “common prosperity” (共同富裕 *gongtong fuyu*) initiatives.<sup>67</sup> This includes the 100 billion yuan input from the Alibaba group and the extra 50 billion yuan from Tencent (騰訊). A common theme between these funds is the improvement of the welfare of platform workers.<sup>68</sup> For instance, some platforms in China now provide commercial insurance



coverage that protects workers in case of accidental injury, serious illness or hospitalization. Food delivery platform Meituan designed an in-house insurance scheme for its couriers that covers death by accident, as well as injury and disability, medical care, work delay, third-party personal injury and property loss. Ride-hiring platform DiDi also launched a medical insurance scheme that covers accidents, serious illness and medical insurance. DiDi's drivers are free to opt in, and the platform initially pays for the insurance before gradually changing to a deduction from drivers' income. DiDi also provides another program called Care Protection that covers accidental injuries, and the cost is borne entirely by the platform. All of these could improve the work conditions of platform workers, without the legal backup by the labor laws.

## **7. Discussion and Conclusion: Implications for the Industrial Relations in China**

This article has pointed out that a deficiency exists in China's labor laws which explains the lack of protection for platform workers. The fact that a service relationship is not recognized in the Chinese labor laws leaves workers in this employment relationship unable to access the protection offered by the laws and consequently dependent on the much weaker protections embedded in China's Civil Law framework. This legal loophole, however, is essential to the survival of platform businesses as they make platform labor profitable to both the platform and workers. Understanding this ambiguity in the legal status is essential for scholars, labor activists and policymakers, because it provides the foundation for nuanced understandings of the political economy of platform labor in China, and for credible explanations of why China's platform workers are subjected to the exploitative labor control revealed in previous studies.

The state's effort in pressuring platform enterprises to improve the work conditions deserves to be recognized. However, to what extent these measures provided by the enterprises can improve the actual work conditions in the platform economy is a question to be answered. The author also concerns that these temporary measures provided by the platform could dissolve workers' militancy and lower their interest in collective activism. Without a solid legal basis, workers remain in a highly vulnerable position to challenge their employers and defend their rights if these promises are not fulfilled. Therefore, a legal basis is essential to solidify the protection of workers' rights.

As a response, some commentators argue that it is fundamental to clarify the scope of the labor relationship in the Chinese legal context, ensuring that the criteria used in the determination are sufficiently clear, comprehensive and up to date to keep pace with China's changing labor market and business models.<sup>69</sup> However, the author suggests that such a binary divide between the two types of employment relationships could impede the development of China's platform economy. If the court rules against considering platform work as a formal relationship, platform workers will remain in a precarious position until a new set of laws dedicated to platform work is established. This could mean years or even decades of precariousness. On the other hand, if the court finds that platform work is performed within a formal relationship, platform workers in China will risk losing their flexibility at work and their ability to work for multiple platforms, which their livelihoods depend on. Also, both platforms and workers must contribute to society's security schemes, which could increase the labor cost dramatically and pose significant challenges to the existing business model especially during the current economic hardship.

In today's China, without a healthy civil society and a democratic consultation process, any legal amendment could be highly risky. Therefore, a more achievable strategy is through the power of the market mechanism. Arguing from this perspective, the author suggests the Chinese government should raise the labor standards in traditional economic sectors, including the manufacturing and service industry. This could draw the Chinese labor workforce back into these businesses and consequently reduce the supply of workers in the platform economy. Past studies suggest that the labor shortage of migrant workers and their high turnover in the manufacturing industry have given workers more power in negotiating work conditions.<sup>70</sup> In a similar vein, a larger recruitment pressure on platform enterprises could incentivize them to improve workers' working conditions for the sustainability of business operations.

The rapidly evolving business environment in China's platform economy and its impact on working conditions certainly deserve ongoing research and analysis. Empirical findings are needed to provide a solid foundation to develop a labor regulatory advocacy that is prudent, practical, and beneficial to the sustainable development of the platform economy and to the millions of workers, mostly important.

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