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Labour between Law and Economy: From the Digital Economy Era Back to Roman Law

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ABSTRACT

The digital economy has driven the rapid development of platform employment, and the traditional regulatory framework of labour law has gradually shown deficiencies in coverage and interpretive power. Algorithmic governance and institutional arrangements of de-labour relationship have left a large number of workers in a gray area between labour law and civil law, with their rights protection presenting a fragmented state. The norms related to labour in Roman law did not start from the identity of workers, but centered on the social fact of “service provision”. It distinguished the labour process from labour results through different contract types and allocated rights and obligations accordingly. This institutional logic provides a new perspective for rethinking China's labour legislation under the background of the digital economy. labour norms do not have to take identity confirmation as the sole premise; instead, they should shift from an identity-based approach to a service-based one, and respond to the diversified evolution of labour forms through multi-factor judgment and categorized regulation.

Keywords: digital labour; platform employment; identity-based; service-based.

<https://doi.org/10.60923/issn.2421-2695/25753>

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Labour between Law and Economy: From the Digital Economy Era Back to Roman Law

SUMMARY: 1. The Digital Transformation of Labour Forms. – 2. Legal Evasion in Platform Employment. – 3. Current Response and Institutional Limitations of Chinese Law. – 4. Experience of the Roman Law Labour System. – 5. Enlightenments of Roman Law to Labour Law in the Digital Economy Era. – 6. Conclusion.

1. The Digital Transformation of Labour Forms

For a long time, the typical labour scenario envisioned by labour law has been a stable labour relationship centered on employers, where workers enter the employer's entity, provide labour at fixed places and in accordance with unified time arrangements, and employers assume obligations such as paying wages, contributing social insurance, and ensuring labour safety.⁽¹⁾ This institutional model emerged in the industrial age, with its inherent premise that the labour process can be centrally organized and directly managed.⁽²⁾ However, the widespread application of digital technology is breaking this institutional premise. New forms of labour relying on internet platforms have expanded rapidly, and industries such as food delivery, online car-hailing, instant logistics, and online housekeeping have absorbed a huge number of workers in a short time. These workers no longer enter employers in the traditional sense, but obtain tasks through mobile applications and complete labour while moving in urban spaces.⁽³⁾ Working hours are no longer presented as whole work periods, but are divided into fragments based on individual orders; workplaces are no longer limited to factories and offices, but scattered across streets, communities and families.

At the same time, fundamental changes have taken place in labour management methods. Platform enterprises do not directly direct workers through managers, but schedule and evaluate the labour process with the help of algorithm systems.⁽⁴⁾ The planning of delivery routes, allocation of orders, setting of service time limits, and settlement of income are all continuously updated and adjusted by technical systems.⁽⁵⁾ Although riders or drivers formally have the option to accept or reject orders, their income

⁽¹⁾ Q. Wang, *Labour Law*, Law Press China, 2017, 33.

⁽²⁾ S. Tian, *Subordinate labour Theory in Age of Industrial 4.0*, *Law Review*, 2019, 37, 1, 77-78.

⁽³⁾ A. Blackham, "We are All Entrepreneurs Now": Options and New Approaches for Adapting Equality Law for the "Gig Economy", *IJCLLR*, 2018, 34, 4, 413.

⁽⁴⁾ P. Sun, *Digital labour within the Logic of Algorithms: A Study of Food Delivery Workers in Platform Economy*, *Thinking*, 2019, 45, 6, 53.

⁽⁵⁾ L. Chen, *Labour Order under Digital Control: A Study on the labour Control of Take-out Platform Riders*, *Sociological Studies*, 2020, 35, 6, 123.

levels, work intensity and even risk-bearing methods are in fact deeply shaped by platform rules.⁽⁶⁾ Different from the subordination centered on personal domination in traditional labour relations,⁽⁷⁾ this new type of subordination is realized through data and technology, which is more concealed in expression but equally binding.⁽⁸⁾

The organizational structure of platform employment also shows a highly complicated trend. Platform companies often do not establish contractual relations with workers directly, but conduct multi-level subcontracting through delivery companies, crowdsourcing firms or flexible employment platforms. The contracts signed between workers and delivery companies, crowdsourcing firms or flexible employment platforms are mostly Service Cooperation Agreements or Contracting Agreements, rather than labour contracts.⁽⁹⁾ From a legal form perspective, the arrangements that should have constituted labour relations are disassembled into several independent civil relations. This structural design makes labour relations no longer present as a clear binary model of "employer-worker", but evolve into a relational network with the participation of multiple subjects.

This change is not accidental, but the joint result of the operational logic of the platform economy and the structure of the labour market. On the one hand, through de-labour relationship arrangements, platforms can significantly reduce institutional costs such as social insurance, work-related injury compensation and dismissal compensation; on the other hand, the low-threshold and highly flexible employment form also provides opportunities for some groups to enter the labour market. It is in this seemingly mutually beneficial structure that new labour forms have expanded rapidly. However, the stability of this structure is based on the redistribution of rights and responsibilities.⁽¹⁰⁾ Platforms hold the power of rule-making and data control, while workers are highly dependent on platforms but lack matching institutional protection.

2. Legal Evasion in Platform Employment

If the changes in labour forms themselves are a natural result of technological progress, the real institutional problem with platform employment lies in its continuous and systematic evasion of the existing labour law norms. This evasion is not an occasional act, but embedded in the commercial operation mode of platforms through contract design

⁽⁶⁾ Q. Wu - Z. Li, *Labour Process Control and Job Autonomy in SharingEconomy: A CaseStudy of Online Car-hailing Drivers Work*, *Sociological Studies*, 2018, 33, 4, 144-145; L. Chen, *Labour Order under Digital Control: A Study on the labour Control of Take-out Platform Riders*, *op. cit.*, 120-123.

⁽⁷⁾ Z. Xiao, *Theoretical Explanation and System Construction of Subordination Criteria for labour Relationship Identification*, *Law Science*, 2021, 44, 2, 163.

⁽⁸⁾ A. Blackham, "We are All Entrepreneurs Now": Options and New Approaches for Adapting Equality Law for the "Gig Economy", *op. cit.*, 418.

⁽⁹⁾ Z. Xie, *Normative Expression of the Concept and Recognition of Employment Relationships in the Digital Era in China*, *Social Sciences in China*, 2024, 45, 10, 169.

⁽¹⁰⁾ U. Rani - P. J.Singh, *Digital Platforms, Data, and Development: Implications for Workers in Developing Economies*, *CLLPJ*, 2019, 41, 1, 266.

and organizational structure arrangements. The most intuitive manifestation is the emasculation of labour relations: platforms repeatedly emphasize the independence and autonomy of workers through contract texts,⁽¹¹⁾ packaging labour activities that originally have the characteristics of organizational management and economic dependence as cooperative relations between equal subjects.⁽¹²⁾ In legal form, workers are mostly defined as service providers in civil relations, thus breaking away from the scope of application of mandatory norms such as minimum wage, working hour restrictions and social insurance. The rights and obligations in the contract seem to be equal, but in actual operation, the labour process is highly dependent on the unified scheduling of the platform system.

This institutional arrangement directly leads to the absence of rights protection. In terms of labour remuneration, platforms generally adopt a piece-rate payment method, where workers' income is directly linked to the number of orders, but there is no minimum wage guarantee.⁽¹³⁾ In the off-season or when orders decrease, the actual income of some workers may be lower than the statutory minimum wage standard.⁽¹⁴⁾ Since the labour relationship itself is not confirmed, the overtime pay system is also difficult to apply. The average daily working hours of practitioners such as food delivery riders and online car-hailing drivers generally exceed 10 hours, and some even exceed 14 hours. The extension of working hours is naturalized as the result of "voluntarily accepting more orders".

In terms of social security, the social insurance participation rate of platform practitioners is extremely low. Most platforms only purchase commercial accident insurance for practitioners, but do not pay statutory social insurance such as endowment insurance, medical insurance and work-related injury insurance. Due to the lack of work-related injury insurance protection, practitioners find it difficult to obtain sufficient compensation when suffering personal injuries at work. In the case of Shao Xinyin v. Diaz (Chongqing) Logistics Co., Ltd., a rider suffered a grade nine disability from a fall while working. After multiple procedures including labour arbitration, first-instance and second-instance court trials, he still found it difficult to obtain work-related injury insurance benefits because the employer could not be determined.⁽¹⁵⁾

At the level of labour safety, the efficiency orientation of algorithmic governance has further exacerbated risks. To avoid overtime and negative reviews, riders are often forced to shorten travel time, leading to frequent traffic violations and fatigued driving.

⁽¹¹⁾ M. A. Cherry, *Beyond Misclassification: The Digital Transformation of Work*, *CLLPJ*, 2016, 37, 3, 582.

⁽¹²⁾ W. Zheng, *The Obscured Subordination: the Key Core of "Internet labour Relationships" and Its Coordination Strategy--Taking Fast Delivery Persons as the Object of Observation*, *Political Science and Law*, 2024, 43, 8, 24-25.

⁽¹³⁾ Y. Lou - S. Peng, *Legal Regulation of Algorithms in Platform Employment and Protection of Workers' Rights in New Forms of Employment: A Study Based on the Theory of "Incomplete labour Relations"*, *Journal of China University of Labour Relations*, 2025, 39, 5, 50-51.

⁽¹⁴⁾ J. Berg, *Income Security in the On-Demand Economy: Findings and Policy Lessons from a Survey of Crowdworkers*, *CLLPJ*, 2024, 37, 3, 557-559.

⁽¹⁵⁾ Civil Judgment of the People's Court of Changshou District, Chongqing Municipality, (2020) Yu 0115 Min Chu No. 4857; Civil Judgment of the First Intermediate People's Court of Chongqing Municipality, (2021) Yu 01 Min Zhong No. 780.

Although platforms have formulated safety norms, they rarely invest corresponding training and protection resources. In performance appraisal, speed and completion rate are always prioritized, while safety factors are marginalized. More noteworthy is the imbalance in the liability-bearing structure: when workers infringe on the rights and interests of third parties in the performance of their tasks, platforms usually refuse to bear liability on the ground of "no labour relationship", and individual workers are unable to bear high compensation independently.⁽¹⁶⁾ Platforms actually exercise control over the labour process, but legally transfer risks to individual workers, forming an asymmetric pattern between power and responsibility.

It can be seen that platform employment is not simply outside the scope of labour law, but consciously evades the protection mechanisms set by labour law through institutional design. This evasion is not an accidental use of legal loopholes, but a form of capital's reorganization of labour methods under the condition of the digital economy.

3. Current Response and Institutional Limitations of Chinese Law

Faced with this new labour phenomenon, Chinese law has gradually developed a diversified response path, trying to find room for adjustment within the existing institutional framework. At the policy level, multiple government departments including the Ministry of Human Resources and Social Security of China, together with the Supreme People's Court and the All-China Federation of Trade Unions, jointly issued the Guiding Opinions on Protecting the labour Security Rights and Interests of Workers in New Employment Forms in July 2021, aiming to categorize platform employment. The Guiding Opinions divide platform employment into labour relations, civil relations and incomplete labour relations, and propose to provide basic protection such as minimum wage, rest and vacation, and occupational safety for workers in the intermediate form. This practice to a certain extent recognizes the diversity of digital labour and also reflects the institutional intention to respond to realistic changes.⁽¹⁷⁾

At the judicial level, Chinese courts have gradually explored a judgment approach centered on substantive judgment through specific case trials. This means that courts no longer stick to the name of the contract when determining employment relations, but focus on examining whether the employment relationship has the characteristics of subordination and the specific facts of employment. In the case of *Li Xiangguo v. Beijing Tongcheng Biying Technology Co., Ltd.*, the court determined the existence of a labour

⁽¹⁶⁾ Civil Judgment of the People's Court of Zhonglou District, Changzhou City, Jiangsu Province, (2020) Su 0404 Min Chu No. 5145.

⁽¹⁷⁾ J. Shen, *Qualitative Analyses and Legal Application of Incomplete labour Relations in New Forms of Employment, Study & Exploration*, 2024, 45, 12, 56; S. Tian, *The Contractual Nature of "Incomplete labour Relationship" and the Relative Protection of Workers--From the Analytical Perspective of the "Dichotomy" and "Trichotomy" of Law Application*, *Global Law Review*, 2024, 46, 5, 124.

relationship between the two parties based on the personality and economic subordination, combined with the facts that Li provided full-time and stable services for the platform, was subject to the management of the platform's rules and regulations, and the flash delivery service was the core business of the platform.⁽¹⁸⁾ The same is true of the case of Xu Lu v. Shanghai Wumei Tongcheng Network Technology Co., Ltd. The court did not adhere to the superficial phenomena such as the crowdsourcing form of food delivery and salary payment by a third party, and determined that the two parties conformed to the essential characteristics of a labour relationship with the core that the company exercised dominant labour management over the rider and the rider had a high degree of economic dependence on it.⁽¹⁹⁾ These judicial practices show that China's judicial system is trying to make up for legislative gaps through interpretive methods and determine that riders who provide full-time and long-term services for platforms have labour relations with the platforms.

However, these explorations are still limited by the current institutional structure. China's labour law system is still constructed around the standard labour relationship of the industrial age, emphasizing the simultaneous possession of personality subordination, organizational subordination and economic subordination.⁽²⁰⁾ This all-or-nothing identification model excludes a large number of platform workers from the protection scope of labour law due to insufficient degree of subordination, thus placing them in a gray area between civil law and labour law.⁽²¹⁾ A more fundamental problem is that the current system still understands labour protection based on the prototype of stable labour relations, while labour forms in the digital economy show high mobility, short-term nature and multiple dependency.⁽²²⁾ When labour no longer centers on employers but operates around platforms and algorithms, traditional concepts are difficult to fully explain the new power structure and risk allocation methods.

It can be seen that the dilemma of labour law in the digital economy era is not only a special problem in a certain industry, but a concentrated embodiment of the dislocation between the overall paradigm of labour law and the socio-economic structure.⁽²³⁾ The key to the problem is not whether more rules are needed, but that the concept of labour relationship on which the existing rules rely can no longer cover the constantly changing labour practices.⁽²⁴⁾ When labour forms undergo structural transformation while the

⁽¹⁸⁾ Civil Judgment of the People's Court of Haidian District, Beijing Municipality, (2017) Jing 0108 Min Chu No. 53634.

⁽¹⁹⁾ Civil Judgment of the Suzhou Intermediate People's Court of Jiangsu Province, (2024) Su 05 Min Zhong No. 14032.

⁽²⁰⁾ J. Lin - J. Zhu, *The Impact of the Diversity of labour on labour Law and the Paradigm Reformation of Labour Law*, *Law and Economy*, 2024,10, 6, 47-48.

⁽²¹⁾ K. Li - Y. Wang, *A Reflection on Legislations concerning Gray Area Employment in China and Possibilities for Future*, *Journal of Anhui University (Philosophy and Social Science Edition)*, 2020, 44, 2, 93.

⁽²²⁾ Y. Lou, *Rules for the Identification of Legal Relationship of New Employment Forms*, *China Legal Science*, 2024,41, 5, 291-292.

⁽²³⁾ J. Lin - J. Zhu, *The Impact of the Diversity of labour on labour Law and the Paradigm Reformation of Labour Law*, *op. cit.*, 48.

⁽²⁴⁾ G. Davidov - B. Langille, *The Idea of Labour Law*, Oxford University Press, 2011, 1.

system remains in the understanding framework of the industrial age, new instability will inevitably emerge.

4. Experience of the Roman Law Labour System

Countless cases have proved that when we encounter difficult legal problems in reality, we may as well turn our attention back to Roman law and seek the wisdom of the Romans in dealing with similar problems. In the long-term development of Roman law, the labour system formed a highly inclusive conceptual system and a flexible adjustment model. Different from the closedness of the current concept of labour relationship in China, the labour system in Roman law was not limited to specific subjects or a single form, but centered on service provision. Through the expansion of the *locatio conductio* system, it incorporated various labour-related social relations such as land cultivation, housing use, physical labour, technical services and result delivery into the adjustment scope, forming a legal adjustment framework with wide coverage and strong adaptability. This institutional orientation is not the result of abstract theoretical design, but deeply rooted in the economic structure of Roman society.

In Roman society, labour did not present a single form dominated by stable employment. Although slave labour occupied an important position for a long time,⁽²⁵⁾ free wage labourers also constituted an unignorable part of the urban economy. A large number of free people made a living by daily or short-term labour, engaging in various jobs in construction, transportation, handicrafts and market transactions. Max Kaser specifically mentioned in his book *Römisches Privatrecht* that in addition to slave labour, the activities of free wage labourers were extremely important in Roman society. In the late Republic, in thousands of small workshops and market shops, free-born people and freedmen supported their family members, free helpers and slaves. Kaser also cited the records of Suetonius (Iul. Caesar 41.3) that in the mid-1st century AD, the number of residents settled in Rome by Caesar was 700,000 to 1,000,000, including 100,000 to 200,000 slaves, and about 100,000 free people made a living by daily or temporary work.⁽²⁶⁾ Obviously, this is a huge number, and the number of free wage labourers is comparable to that of slaves. The traditional legal system obviously needs to adjust in response to the development of social economy. At the same time, this social reality means that labour is not always attached to a fixed employer or organization, but often exists in temporary, project-based and diversified forms.

Against this background, if the law only constructs rules around long-term and stable employment relations, it is bound to fail to respond to the large group of free wage

⁽²⁵⁾ G. Mousourakis, *Fundamentals of Roman Private Law*, Springer-Verlag Berlin Heidelberg, 2012, 232.

⁽²⁶⁾ M. Kaser - R. Knutel - S. Lohsse, *Derecho Privado Romano*, Agencia Estatal Boletín Oficial del Estado, 2022, 465.

labourers. Roman law did not attempt to create a separate law specifically for adjusting labour relations, but incorporated labour-related social relations into the existing private law structure and regulated them through contract law. The most important tool among them is the *locatio conductio* (lease contract). In Roman law, lease was not limited to the use of houses or land, but a type of contract centered on consideration exchange.⁽²⁷⁾ As long as one party provides something of economic value and the other party pays remuneration, a lease relationship can in principle be formed. It is under this broad institutional framework that labour-related social relations are systematically absorbed into the private law order. Roman jurists divided lease contracts into three basic types: *locatio conductio rei* (lease of things), *locatio conductio operarum* (lease of services) and *locatio conductio operis faciendi* (lease of work to be done).⁽²⁸⁾ This classification is not a pure conceptual division, but a response to the differences in realistic labour practices.

Locatio conductio operarum, also known as the employment contract, takes the labour process itself as the object of the contract.⁽²⁹⁾ The employee provides labour power and the employer pays remuneration, and almost all commercially oriented services can be included,⁽³⁰⁾ covering various service provision relations from physical labour to technical services. The focus of the law is on whether the services are provided in accordance with the contract and whether the remuneration is paid on time. In this relationship, there is often a certain degree of attachment and command relationship between the worker and the employer,⁽³¹⁾ although this attachment is not necessarily equivalent to the subordination in the sense of modern labour law.

Locatio conductio operis faciendi is a further development of *locatio conductio operarum*, reflecting the logic of the continuous expansion of the Roman law concept of labour with economic development. The core characteristic of *locatio conductio operis faciendi* is that the object of the contract is not the labour process itself, but the final result of the labour.⁽³²⁾ That is, the contractor (employee) completes a certain work result in accordance with the agreement, and the commissioning party (employer) pays remuneration. In activities such as construction, winemaking, oil pressing or handcrafting, the employer does not care about how the labour process unfolds, but only about whether the final result meets the agreed quality and standards. The employee has a large degree of autonomy, and his liability is concentrated on the completion and delivery of the results.⁽³³⁾ This institutional arrangement is precisely to adapt to the needs brought about by the

⁽²⁷⁾ R.W. Lee, *The Elements of Roman Law*, Sweet & Maxwell Limited, 1944, 314.

⁽²⁸⁾ G. Mousourakis, *Roman Law and the Origins of the Civil Law Tradition*, Springer International Publishing, 2015, 138-139.

⁽²⁹⁾ R. W. Leage, *Roman Private Law: Founded On The Institutes Of Gaius And Justinian*, Macmillan and Co. Limited, 1924, 299; R. Sohm, *The Institutes of Roman Law*, James Crawford Ledlie translated, Gorgias Press, 2002, 311.

⁽³⁰⁾ W. W. Buckland, *A Manual of Roman Private Law*, Cambridge University Press, 1939, 292.

⁽³¹⁾ M. Talamanca, *Istituzioni di diritto romano*, Giuffrè, 1990, 596.

⁽³²⁾ E. Albertario, *Istituzioni Di Diritto Romano*, Giuffrè, 1931, 492.

⁽³³⁾ M. Talamanca, *Istituzioni di diritto romano*, *op. cit.*, 597.

continuous refinement of social division of labour. When labour gradually manifests as independently completing a certain task or product, the law no longer takes controlling the labour process as the core, but adjusts around the liability for results.

It is worth noting that Roman jurists also constantly discussed the boundary issues of *locatio conductio operis faciendi* in practice. For example, when one party provides raw materials and the other party provides labour and completes the product, there has been a long-standing debate on whether this relationship belongs to sale or *locatio conductio operis faciendi*. In the legal maxim of Justinian's Institutes (I.3,24,4), we can see the debate among Roman jurists.⁽³⁴⁾

I.3.24.4: Again, the question arises: if a man agrees with the goldsmith Titus that he shall make him a ring of a certain weight and shape from his own gold, and he is to receive, for instance, ten gold coins, is this deemed to be a contract of sale or of lease and hire? Cassius says that there is a contract of sale as to the material, and of lease and hire as to the work. But it has been decided that there is only a contract of sale. If Titus provides his own gold and the price for the work is agreed upon, there is no doubt that it is a lease and hire.⁽³⁵⁾

This debate itself reflects the high sensitivity of Roman law to the boundary between labour and property relations. The law does not presuppose that labour must be attached to a certain fixed identity, but makes specific judgments based on the transaction structure, risk bearing and ownership of results.⁽³⁶⁾ It is in these seemingly subtle discussions that Roman law gradually formed a functional-centered understanding of labour. Different types of labour relations are not excluded from legal adjustment due to differences in the identity of workers, but apply different rules according to their position in social exchange. This approach enables the law to respond to diversified labour practices without enacting special labour legislation.

From a more macro perspective, the most important feature of the Roman law labour system lies in its conceptual openness and institutional flexibility. It did not limit labour to a fixed mode, but incorporated the emerging new labour relations into the adjustment scope through the broad framework of *locatio conductio*. As shown in I.3.24.4, Roman law did not adhere to a rigid classification, but constantly revised the existing concepts in practice to adapt to changes in the socio-economic structure. This institutional experience forms a sharp contrast with contemporary labour law. Modern labour law was formed under the background of industrialization, and its core assumption is that labour relations have the characteristics of long-term, stability and organization. Under this premise, constructing a protection system centered on the identity of workers has a sufficient realistic basis. However, when labour gradually presents the characteristics of

⁽³⁴⁾ R. W. Leage, *Roman Private Law: Founded On The Institutes Of Gaius And Justinian*, Macmillan and Co. Limited, 1924, 299 s.; W. W. Buckland, *A Text-Book of Roman Law: From Augustus to Justinian*, Cambridge University Press, 1971, 498-499.

⁽³⁵⁾ P. Birks - G. Mcleod - P. Krueger, *Justinian's Institutes*, Cornell University Press, 1987, 114.

⁽³⁶⁾ W. W. Buckland, *A Manual of Roman Private Law, op. cit.*, 292-294.

short-termization, projectization and multiple dependency, this conceptual framework begins to show the problem of insufficient interpretive power.

In this sense, the value of Roman law does not lie in providing rules that can be directly transplanted, but in providing a different institutional thinking: the law does not have to first answer who is a worker, but should start from the social fact of the existence of a social relationship of exchanging labour for remuneration, and then design the corresponding arrangement of rights and obligations according to the power structure and risk allocation method therein. This construction method centered on the fact of service provision, rather than starting from identity labels, enabled Roman law to maintain relative stability in social changes.

Returning to the dilemma of labour law in the digital economy era mentioned earlier, we can find a similar structural contradiction. When labour no longer centers on fixed entities but is organized through platforms and algorithms, if the law still insists on taking a single identity concept as the premise of protection, it will inevitably exclude a large number of actual workers. The historical experience presented by Roman law exactly shows that the law is not only limited to making an either-or choice between labour relations and civil relations, but can distinguish and regulate different labour forms through categorized and hierarchical methods. Therefore, the value of returning to Roman law is to re-understand the relationship between labour and law. labour has never been a fixed social form, and the task of the law is not to adhere to a historically formed model, but to constantly adjust its own interpretive framework with the changes of the socio-economic structure. This experience has important methodological significance for understanding and responding to the contemporary digital labour problems.

5. Enlightenments of Roman Law to Labour Law in the Digital Economy Era

As labour gradually breaks away from factories and offices and is embedded in platforms, algorithms and mobile terminals, the institutional premise on which traditional labour law relies is becoming loose. labour no longer centers on fixed positions, but constantly flows and reorganizes in urban space; management no longer mainly relies on specific managers, but conducts scheduling through data and programs.⁽³⁷⁾ Against this background, labour relations have not disappeared, but no longer present as a familiar subordinate form, but exist in a more loose but equally dependent way.⁽³⁸⁾ This makes a

⁽³⁷⁾ A. Blackham, *'We are All Entrepreneurs Now': Options and New Approaches for Adapting Equality Law for the 'Gig Economy'*, *op. cit.*, 413 s.

⁽³⁸⁾ M. A. Cherry - A. Aloisi, *Dependent Contractors in the Gig Economy: A Comparative Approach*, *American University Law Review*, 2017, 66, 3, 637.

long-neglected problem re-emerge: should the law understand labour by taking identity as the boundary, or regulate it by taking the fact of service provision as the center?⁽³⁹⁾

From a longer perspective of legal history, this is not a new challenge. Before industrialization, there were also a large number of non-fixed and non-lifelong labour forms in society. The law did not unify them through a unified worker identity, but adjusted around different types of service relations.⁽⁴⁰⁾ It is against this background that Roman law formed an institutional structure centered on service provision and mediated by contract types. Different from modern labour law which emphasizes the identity of employees, Roman law pays more attention to service exchange, risk allocation and liability bearing, an orientation that enables it to maintain institutional flexibility in a society with diverse labour forms. Placing this experience in the present, we can find that the dilemma of labour law in the digital economy is not an accidental impact, but more like a structural challenge to the existing labour law paradigm.

The first enlightenment of Roman law is the shift from "identity-based" to "service-based". A fundamental feature presented by Roman law is that it does not take the identity of workers as the institutional starting point, but takes the social fact of service provision as the adjustment basis. Regardless of the legal status of workers, as long as there is a relationship of exchanging labour for remuneration, it may enter the normative perspective of the law. The focus of the law is not who the person is, but what kind of service exchange has occurred. This "service-based" thinking enables Roman law to transcend the simple dichotomy between employees and non-employees. In an era without the concept of modern labour law, the law did not close labour relations through a unified identity, but allowed the coexistence of multiple forms, and distinguished and regulated different situations through contract types. Precisely because of this, it can maintain institutional flexibility among free wage labourers, handicraft labour and result-oriented work.

In contrast, contemporary labour law obviously presents a structural characteristic of "identity-based". The confirmation of worker identity has become the premise of labour law protection. Only those identified as workers in labour relations can access the institutional system such as minimum wage, working hour restrictions, social insurance and work-related injury protection. Once the identity cannot be established, workers are pushed to the field of civil law, and the normative logic of civil law is difficult to respond to the inherent unequal risks of labour.

Platform workers in the digital economy are precisely in this identity fracture zone. They often appear as contractors, partners or freelancers in form, but in real life, they have a high degree of dependence on platforms: their income mainly comes from platforms, their work rhythm is shaped by algorithm rules, and the evaluation system directly affects

⁽³⁹⁾ T. Wang, *From Identity to Act: The Transformation of Normative Structure in labour Law, Social Sciences in China*, 2025, 46, 5, 45-47.

⁽⁴⁰⁾ P. Voci, *Istituzioni di diritto romano*, Edizioni Simone, 2004, 452-453.

their possibility of receiving more orders.⁽⁴¹⁾ Although they lack the traditional organizational affiliation, this dependence does not disappear because of this, but exists in a more concealed way. If we still insist on taking the standard labour relationship as the only entry point, the coverage of labour law is bound to shrink continuously, and more and more people who actually engage in labour are excluded from the system.⁽⁴²⁾ The experience of Roman law shows that the law does not necessarily have to take identity as the boundary, but can judge whether there is a relationship in need of social protection starting from the fact of service provision. The key is not whether the worker conforms to a certain legal label, but whether he is economically dependent on a certain subject and whether he is subject to continuous arrangements in the labour process. This shift does not negate the existing concept of labour relationship, but extends its extension. By shifting from "identity-based" to "service-based", labour law can re-establish contact with realistic labour forms without being bound by a single model.

The second enlightenment of Roman law is the comprehensive judgment of labour relations based on multiple factors. When dealing with labour relations, Roman law did not rely on a single standard, but conducted a comprehensive investigation around factors such as the object of labour, the degree of control, the method of remuneration and risk bearing. The reason why *locatio conductio operarum* and *locatio conductio operis faciendi* can be distinguished is not the difference in the identity of workers, but the functional differences of the labour process and labour results in the transaction structure. This multi-factor judgment method enables the law to conduct flexible classification in complex social relations without resorting to rigid standards.⁽⁴³⁾

This methodology has important enlightenment for the identification of contemporary labour relations. In the current practice of labour law, the identification of labour relations often revolves around personality subordination, organizational subordination and economic subordination, and requires the simultaneous possession of the three. This standard is reasonable under the industrial background, but it is too rigid under the condition of the digital economy. The subordination in platform labour has not disappeared, but has transformed into new forms such as algorithm scheduling, data evaluation and order acceptance rules.⁽⁴⁴⁾ If we still insist on taking the existence of a fixed workplace and the acceptance of direct command as the main judgment basis, it will be difficult to identify these new control mechanisms. Platforms do not need to issue orders through managers, but can shape workers' behavior through order distribution rules,

⁽⁴¹⁾ Y. Lou - S. Peng, *Legal Regulation of Algorithms in Platform Employment and Protection of Workers' Rights in New Forms of Employment: A Study Based on the Theory of "Incomplete labour Relations"*, *op. cit.*, 50-51.

⁽⁴²⁾ N. Busby - R. Zahn, *Less than Zero? The Fragmentation of Worker Protection in UK Employment Law and the Promise of an Alternative Economy*, *CLLPJ*, 2024, 44, 1, 1-2.

⁽⁴³⁾ J. Zhu, *Theoretical Clarification and Normative Construction of the Determination of Employment Relationship*, *Chinese Journal of Law*, 2023, 45, 6, 145.

⁽⁴⁴⁾ S. Tian - C. Zheng, *Identity Testing for Platform Practitioners under Algorithmic Affiliation*, *Journal of Huazhong University of Science and Technology(Social Science Edition)*, 2024, 38, 5, 65-66.

algorithm mechanisms and credit evaluation. Although this control is indirect, it also profoundly affects the labour process and income structure.

The experience of Roman law shows that the judgment of labour relations should not be limited to a single indicator, but should be observed from the overall structure, namely: whether the worker mainly relies on a certain subject to obtain remuneration, whether the work rhythm is subject to continuous rule constraints, whether the labour risk is borne unilaterally by the individual, and whether the labour results are controlled by others. Through the comprehensive analysis of these factors, the essence of new labour relations can be grasped more accurately. This method does not mean the unlimited expansion of the scope of application of labour law, but seeks a reasonable balance between different factors. Just as Roman law allocated rights and obligations by distinguishing different types of service contracts, contemporary labour law can also conduct categorized processing on different forms of platform labour through multi-factor judgment, rather than simply classifying them into the binary structure of "having" or "not having" labour relations.

The third enlightenment of Roman law is the establishment of a hierarchical protection mechanism. When adjusting labour relations, Roman law did not adopt an integrated protection model, but constructed differentiated rules of rights and obligations according to different labour forms. In *locatio conductio operarum*, the law pays more attention to personal protection and remuneration payment in the labour process; in *locatio conductio operis faciendi*, it focuses on the quality of results and risk allocation. This categorized design enables the law to respond to the characteristics of different labour relations and avoid excessive institutional rigidity. In contrast, contemporary labour law presents an obvious all-or-nothing structure. Once identified as a worker, the complete labour law protection shall apply; once excluded from labour relations, only civil law remedies can be relied on.⁽⁴⁵⁾ This binary model can be maintained in a period with relatively single labour forms, but it can no longer carry the realistic needs in today's era with highly diversified labour forms.⁽⁴⁶⁾

In the digital economy era, labour relations show obvious hierarchical differences. Some platform workers are highly attached to platforms, with a single source of income and their working hours strictly controlled by platforms; others only provide services in their spare time and have strong autonomy. If the same rules are applied to these two types of workers, it may not only excessively restrict flexible employment, but also fail to provide sufficient protection for vulnerable groups.⁽⁴⁷⁾ The hierarchical protection logic embodied in Roman law provides a direction for the design of contemporary institutions. Under the

⁽⁴⁵⁾ T. Wang, *Beyond the "labour Dichotomy": A Study of the Basic Stand of the Platform's Employment Law Adjustment*, *Journal of China University of Labour Relations*, 2020, 34, 4, 71-72.

⁽⁴⁶⁾ T.Wang, *The Governance Model of "labour Trichotomy" for Platform Employment*, *China Legal Science*, 2023, 40, 2, 279-280.

⁽⁴⁷⁾ W. Shen - G. Sun, *The Legislative Structure and Application of Incomplete Labour Relations*, *Journal of Soochow University(Law Edition)*, 2025, 12, 1, 146-147.

background of the digital economy, it is necessary to construct a hierarchical labour security system: apply the complete labour law protection, including minimum wage, working hour restrictions and social insurance, to highly subordinate workers; provide the minimum basic protection, such as remuneration bottom line, work-related injury insurance and basic safety norms, to workers with weak subordination or mixed forms. This hierarchical mechanism not only avoids the institutional rigidity of "one size fits all", but also helps to strike a balance between protection and flexibility. More importantly, hierarchical protection does not mean lowering the labour protection standards, but making protection more targeted through categorized distinction. By distinguishing the labour process from labour results, Roman law reasonably allocated risks and responsibilities; contemporary labour law can also construct a multi-level protection structure by distinguishing labour forms with different degrees of subordination.

6. Conclusion

The problem faced by labour law in the digital economy era is essentially a paradigm dislocation. labour practice has undergone structural changes, while the system still remains in the conceptual framework of the industrial age. The historical experience of Roman law shows that the law is not only limited to adhering to the existing model, but can re-establish contact with new labour forms through conceptual reconstruction and type adjustment. In this sense, looking back at Roman law from the digital economy era, we must especially absorb the open concept of flexible adjustment that Roman law maintained in the face of socio-economic changes. Grasping the core of this concept does not lie in transplanting specific rules, but in re-understanding the relationship between labour, risk and legal protection. This will be the theoretical turn that contemporary labour law urgently needs to complete when facing the problems of platform economy and digital labour.

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