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On the Compound Legal Nature of Teachers' Employment Contract in Public Universities of China

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Employment contract is the core element to regulate the legal relationship between public universities and teachers in China. There is still no consensus on the legal nature of such contracts in academic and practical aspects. Employment contracts of university teachers in China have experienced the evolution process of "weakening administrative attributes and strengthening labor attributes", and their legal nature should be a special labor contract with a "compound" nature. On the one hand, they essentially pertain to labor contract and have homogeneity with labor contracts in four aspects: subject identity, personal and property attributes, subordinative relationship, and establishment conditions. On the other hand, they have some special attributes, which are different from general labor contracts in terms of legal source, human resource market, the scope of autonomy in decision-making, contract termination mechanism, and dispute resolution approach. Given that the employment system has entered the deep end of its reform and employment disputes have increased, it is important to straighten out the connection between the *Labor Contract Law* and employment contracts of teachers, explore the differentiated applicable standards of employment contracts and labor contracts given the phasing out of Bianzhi, or budgeted posts, and strike a balance among educational public interests, teachers' private interests, and university performance management.

Keywords: China public university teachers, employment contracts, labor contracts, employment system reform, employment disputes

Introduction

In recent years, with the reform of the employment system in public universities penetrating deeper and deeper, the relationship between teachers and universities has changed from vertical administrative subordination to horizontal contract-based employment and undergone the evolution from administrative power regulation to contractual negotiation. The establishment of the concept of contract makes concluding and performing a contract become an integral step in the employment of teachers. As a core element in this process, employment contracts play an increasingly important role in the personnel management of teachers.

However, employment contract is not a statutory concept. No matter in laws and regulations, or the personnel management system, employment contracts have not been clearly defined. Policy-makers and

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enforcers seem to have reached a tacit agreement that the concept of employment contracts is not deliberately limited to a particular context in which it is used, to deal with various complex situations in the employment system reform. But it gives rise to some confusion in the application of the concept. In theory, there are various understandings of the nature of employment contracts, such as administrative contracts, labor contracts, hiring contracts, and mixed contracts. As employment contracts involve both public and private laws, they can be explained from both perspectives, making the scholars hold diversified views on it. In practice, universities are classified into the second category of public welfare institutions in the reform of public institutions. The more flexible national talent policies and higher proportion of external funds from alumni donations and other sources in the operational budget of universities are urging universities to continuously explore and expand the autonomy in employment. As a result, new types of posts, such as "tenure-track" teachers, "dual-employed" teachers, and distinguished scholars, are springing up. However, it has triggered legal disputes over the employment of teachers concerning performance appraisal, the penalty for breach of contract, and other matters, and exposed problems such as failure in the "employment contract". A female teacher in a university based in Shanxi Province being asked to pay RMB 510,000 by the university for resigning is an example in this regard (ScienceNet.cn, 2020). The *Guiding Opinions of the Ministry of Education of the CPC Committee on Accelerating High-Level Personnel Development in Universities Under Direct Administration of the Ministry* published in 2017 specifies that it is required to cement the contractual relationship between universities and personnel and enhance their legal awareness, carry out the management of employment contracts, and clarify rights, obligations, and liabilities for breach of contract of both parties. Accordingly, it is necessary to further sort out the characteristics of the evolution of employment contracts for university teachers and the compound legal nature of employment contracts, in a bid to promote contract-based development of the faculty and rationalization of teacher turnover.

Characteristic of the Evolution of Employment Contracts: Weakening Administrative Attributes and Strengthening Labor Attributes

Evolution of Employment Contracts

Employment contracts for university teachers emerged along with the reform of public institutions. As it evolves, it shows weaker administrative attributes and stronger labor attributes.

Under the traditional planned economy structure, the administrative appointment system prevailed in the employment of university teachers, where teachers were recruited and transferred according to administrative orders, with a single administrative attribute. This tradition was gradually phased out in the reform of the employment system. According to Article 17 of the *Teachers Law* 1995, the appointment of teachers shall follow the principle of equal status between the two parties, and an appointment contract shall be signed by the school and the teacher. It is not hard to see from the expression of "appointment" rather than "employment" that "appointment contracts" keep some administrative attributes. However, using "contract" to replace "order", it blazed a trail in the deeply-rooted traditional system of administrative appointment for some possibilities of "negotiation" and "discussion", marking some pro forma progress in the reform. Of course, it has to be admitted that at that time, as university teachers were just separated from the "national cadre" system, they had unclear legal status as staff of public institutions. In one aspect, from the perspective of the labor law system, the *Labor Law* and the *Opinions of the Ministry of Labor on Several Issues Concerning the Implementation of the Labor*

Law of the People's Republic of China only included staff that was not in the Bianzhi (or budgeted posts, government-guaranteed positions with lifetime employment) system, such as workers who signed labor contracts with the universities, into the range of justification, excluding teachers within the Bianzhi system who signed employment contracts with universities. In the other aspect, from the perspective of the civil servants management system, the *Provisional Regulations for State Civil Servants* and the later *Law on Civil Servants* clarify that the provisions shall apply to "staff who perform their official duties by law, are included in the national administrative Bianzhi system, and are entitled to salaries and welfare covered by the national budget". In particular, the expression of "national administrative Bianzhi system" cut off the possibility of including the university teachers into the civil servants system for management. Therefore, employment contracts of university teachers are excluded from the administrative management system, falling into a stalemate where no regulations govern. Hence, in the late 1990s, even though appointment (employment) contracts had been explicitly incorporated into the *Teachers Law*, there was no access to channels for judicial relief in case of disputes over teachers' appointment contracts in practice (Lao, 2020).

Since the 21st century, the construction of personnel administration system in public institutions has embarked on a faster track. The *Opinions on Accelerating Personnel System Reform in Public Institutions*, the *Opinions on Trial Implementation of Employment System in Public Institutions* (hereinafter referred to as the "*Trial Implementation Opinions*"), and relevant interpretations were issued one after another, further clarifying the legal relationship between teachers and universities. With tremendous reference to the institutional design of labor contracts in the *Labor Law*, the personnel administration system brought employment contracts into practice and promoted the implementation of university teachers' contract management. However, it produced some hidden perils due to the low legal status and lack of standards. In the *Labor Contract Law* enacted in 2007, Article 96 vaguely specifies that a connection is established between "employment-based staff" and "labor contracts" in public institutions. Even though it triggered some debates, it is not difficult to find that the lawmakers attempted to incorporate personnel relations in public institutions into the scope of labor laws and regulations amid the interests gaming among various stakeholders. As Jerome Frank mentioned, many uncertainties in the law are not unfortunate accidents, but have great social value (1963, p. 7). The vague provisions in the law left space for diversified interpretations and made it possible to handle employment disputes of teachers as civil labor disputes in judicial practices.

In 2014, the *Regulations on Personnel Management in Public Institutions* (hereinafter referred to as the "*Personnel Regulations*") was enacted and enforced, which enriched the framework of the functions of employment contracts, and improved the dispute resolution mechanism related to the employment of teachers (Xu & Gao, 2018). With the popularization of employment contracts in personnel administration of teachers, their application is more and more diversified. In particular, after the institutional reform on talent development was promoted thoroughly by the State, the labor value of teachers is more clearly shown in employment contracts. The *Guiding Opinions of the CPC Committee of the Ministry of Education on Accelerating High-Level Personnel Development in Universities Under the Direct Administration of the Ministry* issued in 2017 specifies that "universities shall adopt performance-based salary distribution methods, such as agreement-based salary system, project-based salary system, etc., for high-level personnel", and "rewards for the transformation of scientific and technological outcomes and incomes from off-campus part-time jobs obtained by teaching and scientific research

personnel in accordance with the law are not restricted by gross amount of performance-based salaries", which further expands the contents and methods of the application of employment contracts. The launch of "tenure-track" posts and the "Double First-Class University Plan" (World First-Class University and First-Class Academic Discipline Construction) increased the mobility of high-level talents in the system of universities. The trend of "mass entrepreneurship and innovation" further enabled teachers with scientific and technological strengths and expertise to obtain policy dividends by flowing outside the system of universities. Against this backdrop, employment contracts have been rid of the formatted contents in practice, thrown off the long-term shackles caused by salary distribution from the national budget, sped up the establishment of a teaching personnel market, and geared up labor-oriented development of the teaching work. Some problems in traditional modes of teachers' employment, such as the unequal status of the contracting parties, the non-standard contents of the contract, and the unclear liabilities for breach of contract, have been moderated at least for high-level teachers with strong competitiveness, and the gap between employment contracts and labor contracts is narrowing.

Functional Positioning of Employment Contracts

Employment contracts have developed the following two functions as they evolve:

First, reasonably allocating rights and obligations between universities and teachers. The State promotes the implementation of the employment system, aiming to direct universities to take the initiative to select and employ their personnel, ensure the orderly flow of teachers, and safeguard the legitimate rights and interests of both parties. In the reform of the employment system, the State intends to take the legal form of employment contracts as a tool to re-arrange the rights and obligations of universities and teachers and remove the institutional factors that have impeded the development of teachers' productivity. Before the implementation of the employment system, the right of universities to employ and that of teachers to be employed was only nominal and was restricted by the administrative power, and the subordinative relationship under the appointment system reflected an abnormal concept of obligation. By contrast, after the implementation of the employment system, taking advantage of the law-based framework for employment contracts, the State has filled the gap after the collapse of the administrative management system, reshaped the foundation for the game between the parties, clarified rights and obligations of both parties, and promoted equal negotiations for consensus, to finally reach win-win outcomes where development goals of universities are achieved and individual rights and interests of teachers are protected.

Second, serving and facilitating the realization of the goal of the employment system reform. The employment system reform aims to break the deadlock of overstaffing in universities, fully stimulate the vitality of both universities and teachers, and ensure the mission of public education can be better fulfilled. Employment contracts, which embody both "compulsory" and "negotiable" nature, are exactly consistent with that goal. It is compulsory because concluding and terminating an employment contract are not only contractual acts, but also acts subject to compulsory provisions in policies and laws. Its compulsory nature is determined by the public and official nature of higher education and public institutions. In one aspect, it is compulsory for universities. By being deprived of partial autonomy in dismissing employees, the universities can provide a secure working environment for teachers to maintain the stability of the faculty. On the other aspect, it is compulsory for teachers as well. By restricting teachers' right to casual resignation, it avoids the situation where employees quit their jobs

completely based on their free will regardless of their effective labor contracts, to make sure that universities can fulfill their mission of providing public education. It is negotiable on the other hand because employment contracts are reached based on consensus between the parties. When entering into the contract, the university can negotiate with the teacher on workload, duties, assessment criteria, and other matters. In this regard, it is better than the rigid personnel relationship of managing and being managed, and of instructing and being instructed under the appointment system.

Legal Nature of Employment Contracts: Special Labor Contract With a "Compound" Nature

The employment system reform decides the development tendency of employment contracts and endows them with a "compound" legal nature. University teachers contribute their labor through engaging in scientific research and teaching activities, not only to meet the needs of their personal life but also to fulfill their educational duties, which represent the unity of private and public interests. Employment contracts, which are used to allocate rights and obligations between universities and teachers, may not be summarized by the monistic criterion of being either "public" or "private" but should be deemed as being "both public and private" with multiple attributes. In this paper, the author suggests that employment contracts be a special type of labor contract with a "compound" nature, which is a labor contract in nature, but with special attributes that make it distinct from general labor contracts.

Homogeneity: Employment Contracts Are a Type of Labor Contract in Nature

The basic characteristics of labor relations reflected in labor contracts can be summarized as follows. It has fixed subjects, the worker on one hand, and the employer on the other hand. It has a mixed nature, as the labor relations embody the nature of both personal and property relations (Dong, 1999, p. 51). It shows subordination between the worker and the employer in three aspects, including personal, economic, and organizational relations (Hou & Wang, 2006). Likewise, teachers' employment relations reflected in employment contracts also manifest these characteristics.

First, it has fixed subjects with equal employment rights. In terms of the identity of subjects, employment contracts are made between a teacher and a university, meeting and going beyond the basic contracting condition of general labor contracts of "the employer shall be entities established by law, and the worker shall reach the minimum age of employment". Equality in employment rights implies that both parties have equal rights to reach and reject the contract, and equal rights to claim damages in case of disputes. According to Article 17 of the *Education Law*,

> schools and other educational institutions shall gradually implement the teacher appointment/employment system. The appointment/employment of teachers shall follow the principle of equal status between the two parties, and an appointment/employment contract shall be signed by the school and the teacher.

Article 48 of the *Higher Education Law* stipulates that

> the appointment/employment of teachers in higher educational institutions shall follow the principle of equality and free will between the two parties, and an appointment/employment contract shall be signed by the president of the higher educational institution and the teacher being appointed/employed.

Article 1 of the *Trial Implementation Opinions* also states that "employment system shall be established and promoted…under the principles of equality, free will and consensus". The principle of equality being emphasized therein is consistent with the relevant provisions and concepts of the labor legal system. For example, Article 17 of the *Labor Law* stipulates that "labor contracts shall be concluded or altered based on the principles of equality, free will and consensus". Article 3 of the *Labor Contract Law* provides that "labor contracts shall be concluded under the principles of legality, fairness, equality, free will, consensus and good faith". On the other hand, in administrative contracts, administrative organs are in a dominant position and unilaterally have the right to modify or rescind a contract according to the needs of official duties. They can alter both the contents of the contract, but also the way of performance (Sun & Zong, 2013), without being liable for breach of contract.

Second, it embodies both personal and property attributes. First of all, employment contracts are exclusive to the parties to the contract. "Labor behaviors of the employees have high personal attributes, which cannot be performed by others" (Lin, 2007, p. 13). Likewise, the teacher's employment contract is signed by the university based on the targeted duties of the position and trust in the expertise of the specific applicant in scientific research and teaching to fulfill its statutory educational duties. In this process, the requirements for employment shall exactly match the duties of the position, and the scientific research and teaching tasks shall be carried out by the teacher personally, not by any other person (Wang & Si, 2007), especially in the project-based system in scientific research. Second, employment contracts show property attributes. In one aspect, the property attributes are manifested in salary-related terms in employment contracts. With the advancement of the talent strategy, the traditional position-based salary system is being replaced by the performance-based salary system. Especially since the launch of the "tenure-track" posts, the annual salary package has become very common as a sort of performance-based or agreement-based salary scheme, which shall be determined by the teacher and the university through negotiation before the employment. In the other aspect, the property attributes are reflected in evaluation and incentives. Universities directly link the incomes of teachers with their performance evaluation, to reward the good and punish the bad. Terms concerning the organization, methods, contents, and outcomes of the performance evaluation have gradually become an integral part of employment contracts.

Third, subordination between the parties is shown in the process of enforcing the contract. Teachers are hired from the human resource market of teachers, which is a quasi-market-based act. When the supply exceeds the demand, there will not be equal status in absolute terms. In general, the university, as the employer, has the right to draft employment contracts and select the candidates and plays a dominant role in most cases with stronger contracting capability than the job applicants. Moreover, as a public institution for public services, the university's employing act not only involves the interests of the contracting parties but also touches upon educational public interests. Between educational public interests and the personal interests of teachers, the former is prioritized. Accordingly, the university occupies an advantageous position by nature. Certainly, as the individual values of teachers are being re-recognized and re-emphasized in the human resource market, teachers who are specialized in subjects that are strongly marketable and applicable, and hold advanced degrees and senior qualifications tend to be the main force in the talent competition among universities thanks to their distinct academic competence and development potential (Wu & Yang, 2019). Such teachers will have a stronger contracting capability and be superior in employment relations. Through observing the labor market, it is prevalent that in labor relations, a majority of ordinary job applicants cannot stand up against the dominant

employers, thus experiencing inequality in status. However, a few senior executives or professionals that are in need in specific sectors may obtain higher status in the competition due to their personal competence.

In fact, the teacher employment relations are similar to labor relations, showing some characteristics related to subordination. Subordination is the most remarkable feature in labor contracts (Guo, 2011). First, it is manifested as personality subordination. In labor relations, personality subordination is that the worker should obey the work rules, instructions, orders, supervision and inspection, sanctions, and punishment of the employer. The same applies to the employment of teachers. The university regulations and job responsibilities are included in the contract, and the teacher is obliged to abide by various rules and regulations, obey the instructions and arrangements of the university on working hours, place, and tasks, and accept performance evaluation and monitoring by the university. For a teacher with misconduct, the university may impose such sanctions as admonishment or dismissal according to rules and regulations. Second, it is manifested as economic subordination. In labor relations, economic subordination means that the employer shall provide raw materials and production tools, assume labor risks, pay for the labor, and own labor fruits, while the worker is attached to the employer in terms of production, income, and risks. Teachers are similarly attached to the universities economically, as the teachers' office and scientific research facilities are provided by the universities, which are owned by the State; the targets of teaching activities, students (just like the subjects of the work in labor relations), are uniformly selected and allocated by the State according to enrollment policies; the ownership of professional achievements of the teachers made by the scientific research facilities shall belong to the State unless otherwise agreed; the teachers' main source of incomes is the salary paid by the universities. Last, it is also manifested as organizational subordination. In labor relations, organizational subordination shows that individual labor is an organic part of the employer's production and organizational acts, and workers must cooperate closely with other members to complete the task of production and operation together. When it comes to the employment of teachers, it is reflected in the fact that after signing the contracts, the teachers become staff members of the university, and carry out work in the name of the university. Therefore, their conduct in scientific research and teaching activities is deemed as the conduct of the university, and it is the university that bears legal liabilities. Teachers are required to not only attend technical training organized by the university but also accept university knowledge education, such as the university history, campus culture, etc. The university also makes a code of conduct for teachers, to regulate teachers' wording and dressing in class, which is also a manifestation of the organization subordination.

Fourth, the conditions for the validity of the contract are basically identical. Just as labor contracts came out of the previous hiring contract in the industrialization era, employment contracts, as an outcome of the personnel system reform, are also inextricably linked with labor contracts. For example, Article 19 of the *Labor Law* listed seven necessary clauses in labor contracts: (1) term of labor contracts; (2) work contents; (3) labor protection and working conditions; (4) labor remuneration; (5) labor disciplines; (6) conditions for termination of labor contracts; and (7) liability for breach of the labor contract. Similarly, the *Trial Implementation Opinions* issued in 2002 also provided seven necessary clauses in employment contracts, including (1) term of employment contracts; (2) duties and requirements; (3) working conditions; (4) salaries and benefits; (5) post disciplines; (6) conditions for alteration and termination of employment contracts; (7) liabilities for beach of employment contracts. It is noticeable that the above two provisions are almost identical. By comparing the above provision with that in the

Labor Contract Law, it can be found that even though the *Labor Contract Law* has refined the necessary conditions, there are only minimal differences, with the main part remaining identical. It proves that the clauses in employment contracts have largely referred to the institutional design of labor-related laws. The same source of employment contracts and labor contracts decides the homogeneity between the two.

Differentiation: Unique Attributes of Employment Contracts Make Them Distinct From General Labor Contracts

The history has proved that the single market mechanism cannot meet the needs of public education, because the market mechanism only follows the principle of capital and efficiency, which will reduce investment in areas that cannot enlarge the capital, thus undermining fairness and justice. This is called as "market failure" in economics. Given this phenomenon, the State shall retain its exclusive power in the field of education, and introduce public law to regulate and direct its development to prevent education from completely being marketized, so as to defend educational fairness.

Universities are deemed as public organizations, which undertake the missions of engaging in public welfare services of higher education, providing the society with public educational products and satisfying the spiritual needs of the general public. In order to secure the non-profit nature and efficient operation of universities, it is inevitable that regulations based on the public law shall be introduced into the employment of teachers, which make employment contracts different from labor contracts. Details are as follows:

First, there are differences in legal sources and contracting purposes. Labor contracts are legally rooted in the *Labor Contract Law*, with the legislative purpose of protecting the legitimate rights and interests of the workers. As for employment contracts, in addition to the labor-related laws and institutions, personnel regulations, such as the *Trial Implementation Opinions* and the *Personnel Regulations*, are also taken as important legal sources, which not only assume the important task of "protecting the legitimate rights and interests of the staff of public institutions, but also "promote the development of public services". Just as shown in the title of the *Regulations on Personnel Management in Public Institutions*, the expression of "management" evidently demonstrates that the relations between teachers and universities are not "that between completely equal subjects, but more similar to that between administrative subjects and state organs on one hand and the managed on the other hand" (Zhang, 2015, p. 29). Equality of rights is limited to the conclusion and termination of contracts, while the performance of contract inevitably embodies some features of management. Therefore, it can be seen that labor contracts put emphasis on protection of rights and interests of individual workers and aim at achieving economic interests of the employer, while employment contracts give priority to the outcomes of public administration, and aim at fulfilling the statutory functions of public services.

Second, there are differences in job requirements and positioned labor markets. From the perspective of job requirements, university teachers, as public official staff, are engaged in public services entrusted by the general public. They are the agents of public interests. Unlike jobs in profit-making enterprises or ordinary living-earning occupations, the positions of university teachers are characterized by non-profit and voluntary nature. Therefore, the teachers' employment contracts include more public and political-related obligations, and their expected incomes and rewards are under some restrictions by uniform or specific government financial policies and salary systems (Ding, 2016, p. 15). From the perspective of the maturity of labor markets where they are respectively

positioned, labor contracts are positioned in a complete labor market, where the three elements, the supply side, the demand side, and the labor price, are shaped through the complete market competition mechanism, showing the characteristics of freedom, openness, and competitiveness as a whole (Liao, Li, & Sun, 2016). On the other hand, in terms of the teachers' human resource market where the teachers' employment contracts are positioned, it is an incomplete labor market with stronger government regulation and intervention, where barriers to mobility, such as the Bianzhi and Zhicheng (professional titles) systems, lead to incomplete competition. In this context, the teachers' labor price is more represented by institutional differences than individual differences. For example, against the backdrop of the "Double First-Class University Plan", the turnover rate and income gap among teachers have increased. One of the reasons is that universities spare no efforts to introduce teachers being included in various "talent programs" to seize development opportunities, in a bid to meet the administrative standards on personnel required for "double first-class universities". It is more like an "irrational" act directed by administrative resources, instead of an initiative to speed up talent mobility[1].

Third, there are differences in autonomy in decision-making when concluding the contract. To begin with, the employers have different contracting autonomy. According to the *Education Law*, public universities are non-profit organizations, in which, personnel budget mainly comes from the government fund, and the size of personnel is restricted by the quota of Bianzhi posts. Therefore, the employment of teachers is not completely up to the decisions of universities, but also regulated and directed by educational administrative authorities. By contrast, enterprises enjoy complete contracting autonomy and can arrange personnel employment independently according to their business development. Moreover, there are different rules for concluding the contract. According to the regulations, employment contracts shall be concluded based on the principle of openness and competition. In practice, it is mandatory to have competitive interviews, so as to avoid nepotism and underhand dealings which may undermine public interests. In fact, it places restrictions on how to enter into the contract, and narrows down university's autonomy in employment, making it different from labor contract in which both parties can freely choose the way of contract-making. Besides, there are different salary clauses. As universities are non-profit organizations, salary scale in employment contracts is determined largely according to national policies, based on the principle of "appropriateness", rather than entirely depending on "performance-based incentives". For example, the *Personnel Regulations* stipulates that "the normal increase of salary standard … shall be in parallel with the national economic development and adapted to social progress". Generally, employment contracts do not include an exact amount of the salary, but apply the uniform salary structure for public entities of "basic salary + performance-based salary + allowance and subsidy". However, for enterprises, it is completely up to their own decisions on adopting which salary system, in which performance of the employees matters most. The salary amount is already identified through negotiations between the two parties when reaching the contract, and is included in the contract with legal validity. The State has no authority to set the ceiling of the salaries. In addition, there are different regulations on evaluation. As per the *Personnel Regulations* and the *Trial Implementation Opinions*, under employment contracts, there will be regular evaluation, annual evaluation, and tenure evaluation. "Suggestions on the grades of the evaluation shall be provided based on public

[1] Here the judgment of being "irrational" is made based on whether it is beneficial to the overall development of national higher education. If the judgment is made only based on whether it is beneficial to a certain university or a certain teacher, it is not "irrational", but "extremely rational".

appraisal opinions and opinions of managers of the person being evaluated", which are used to determine whether to adjust the position and salary of the teacher. However, evaluation in labor contracts is independently decided by the two parties. The *Labor Contract Law* does not have any compulsory provisions on the form and contents of the evaluation. The two parties may negotiate and decide on annual evaluation or tenure evaluation based on performance or routine work of the worker. It is not mandatory to take public appraisal opinions like group appraisal into account. Therefore, it is noticeable that employment contracts have more clear legal characteristics in contents, and more stylized contracting process. The university makes an offer for open recruitment, and the candidate applies for the job according to the statutory employment rules. If the applicant succeeds in the recruitment, he/she will accept the "formatted" rights and obligations set by the policies and norms. The space for negotiations between the two parties in the contracting process is narrowed down to a certain extent.

Fourth, there are differences in the mechanism of contract termination. In view of the target of performing public functions of education and developing the role of universities in fostering talents, undoubtedly it is important to maintain the stability of teachers being employed. However, excessive stability may easily lead to institutional rigidity. In this regard, an adjusting mechanism should be launched, to reward the good while punishing the bad according to job requirements during the tenure, clarify the termination procedure, and activate the mechanism of choosing and employing personnel, so as to make sure open channels for entry and exit of personnel. For that purpose, the law has made special institutional arrangements for the termination of employment contracts. First, universities' right to terminate the contract is identified by close-ended legislation, which highlights the feature of management. For example, when designing the conditions for contract termination, the *Trial Implementation Opinions* did not directly refer to the open-ended legislative method shown in Article 25 of the *Labor Law* "seriously violating labor discipline or regulations and policies of the employer". Instead, it explicitly sets forth six preconditions for terminating the contract, including some chronic problems in permanent positions in public institutions, such as "absence from work" and "lingering overseas", indicating a clear warning for management. The *Personnel Regulations* further stipulates that teachers under the penalty of being dismissed shall be discharged from their employment contracts at the same time. In this way, "administrative penalty", a sanction measure which only exists in the administrative management system, is also incorporated into the regulating scope of the contract, which is not available in the labor law system that advocates for equal consultation. Second, teachers' right to terminate the contract is properly restricted. According to the *Trial Implementation Opinions*, teachers are entitled to freely terminating their contracts only in four circumstances, where the teachers are "in probation period, admitted to universities, recruited by national organs, or performing military service". Except that, only after applying for the termination twice at an interval of half a year may the teachers unconditionally terminate their contracts. Even though the *Personnel Regulations* has relaxed the requirement and designed a method of 30-day prior notice of termination, there is still an exception, which is "unless there is a mutual agreement". In contrast, the *Labor Contract Law* insists on preferential protection for workers and supports the full 30-day prior notice of termination of labor contracts, with less and weaker restrictions.

Fifth, there are different approaches to dispute resolution. The main approaches to settle the disputes arising from employment contracts are to resort to personnel dispute arbitration and civil lawsuit. In addition, according to the *Teachers Law* and the *Personnel Regulations*, teachers who do not agree with their evaluation results or

discipline decisions can also apply for review and appeal in accordance with relevant national regulations, that is, resort to administrative appeal. However, labor contract disputes can only be resolved through labor dispute arbitration and civil litigation, without recourse to administrative relief mechanisms such as review or appeal.

Table 1

Comparison Between Employment Contracts and Labor Contracts

Comparative item		Employment contracts	Labor contracts
Legal sources and contracting purposes	Legal sources	Education, personnel and labor law systems	Labor law system
	Contracting purposes	Protect the legitimate rights and interests of teachers Promote the development of public services	Give priority to the protection of legitimate rights and interests of workers
Job requirements and positioned labor market	Job requirements	Have public and political-related requirements	Have weaker public-related requirements
	Positioned labor market	Incomplete labor market	Complete labor market
Autonomy in decision-making	Employers' autonomy in contracting	Size of personnel restricted by the Bianzhi system	Independently decided by the enterprises
	Principles of contract-making	Openness, competitiveness, competitive interviews	Independently decided by the enterprises
	Salary standard and growth rate	Set the benchmark and ceiling	Decided by negotiation
	Evaluation requirements	Public appraisal + performance assessment	Decided by negotiation
Mechanism for contract termination	Employers' right to termination	Close-ended legislation with striking features of management	Open-ended legislation
	Workers' right to termination	Restrict teachers' right to termination	Terminate upon 30-day prior notice
Approaches to dispute resolution	Approaches to dispute resolution	Resort to administrative review and appeal	Have no access to administrative review or appeal

Suggestions on Improving the Application of the Law for Employment Contracts With "Compound" Nature

Today, whether to reform the appointment/employment system is not a question at all. Rather, the real question is what kind of appointment/employment system reform should take place (Lu, 2020). The knots of the problems facing the higher education remain to be the strong administrative atmosphere, rigid faculty management, obstructed construction of the competitive mechanism, and lack of vitality for innovation. Against this backdrop, blindly emphasizing the administrative attributes of employment contracts and insisting on the separation of employment contracts and labor contracts will not help to break the deadlock, and go against the tendency of the reform on the employment system among universities. In view of this, this paper defines the legal nature of employment contracts of university teachers as a special labor contract, recognizes its compound legal nature, and aims to further break the subordinated employment mechanism under the administrative employment system and optimize the incremental allocation of teachers' human resources while activating the reserve of the teachers. At present, the reform on the employment system among universities has entered a more difficult phase, with increasingly more employment disputes. It is worth further pondering how to further improve the application of the law for employment contracts with a "compound" nature for the next step. In this paper, the author would like to share two humble opinions.

Further Clarify the Connection Between the *Labor Contract Law* of P. R. China and Employment Contracts

The disputes over employment contracts of university teachers are personnel disputes, which may be regulated and adjusted by educational, personnel, and labor-related institutional norms. Educational institutional norms include the *Education Law*, the *Teachers Law*, the *Higher Education Law*, etc. Personnel institutional norms include the *Personnel Regulations* and the *Trial Implementation Opinions*. Labor institutional norms mainly refer to the *Labor Contract Law*. The sequence of applying the three categories of institutional norms is explicitly required in the *Regulations of the Supreme People's Court on Several Issues Concerning Trials by the People's Courts of Personnel Disputes in Public Institutions* and the *Reply of the Supreme People's Court on Issues Concerning the Application of the Law in Personnel Disputes in Public Institutions* that when hearing cases of personnel disputes in public entities, the people's court shall apply relevant provisions in the labor laws in the procedure, and apply personnel-related legal regulations when handling substantive matters. Where a matter involving the labor rights of the staff in public institutions is not covered by the personnel laws, relevant provisions in the labor laws shall prevail. In short, substantive matters in disputes over teachers' employment contracts shall be regulated by educational and personnel institutional norms and supplemented by labor institutional norms.

According to Article 96 of the *Labor Contract Law*, for disputes over employment contracts, special regulations shall prevail if any; otherwise, the *Labor Contract Law* shall prevail. At present, there is no obstacle in the connection of employment contracts with the education and personnel systems. However, there is some mismatching in the connection and application of the *Labor Contract Law*, with the controversies over "whether to apply" and "how to apply". It has much to do with the "compound" nature of employment contracts. It should be clarified that the "less-prioritized application" or "supplementary application" of the *Labor Contract Law* does not imply that the law is insignificant and dispensable, but provides more space to play. The connection between the *Labor Contract Law* and the teachers' employment contracts should be further refined. First, the *Labor Contract Law* should play a supplementary role and provide miscellaneous provisions for the defect of lack of materialization in the education and personnel systems. The education and personnel systems are not specifically designed for employment contracts. It has considerate non-profit and public welfare contents and covers both employment relations and management relations. Even though it has provisions related to employment contracts, these are very general and difficult to cover all aspects. In comparison, the *Labor Contract Law* is specially made to settle contract disputes, with detailed and all-encompassing provisions on concluding, performing, altering, rescinding, and terminating a contract. In practice, at least for disputes over liquidated damages for teachers' mobility (Wenshu Court, 2020), disputes over the detention of archives and identity documents (Wenshu Court, 2016), disputes over part-time jobs with partial salaries (Wenshu Court, 2019), and labor unions' opinions over dismissal (Wenshu Court, 2017) and some other matters, the court will give priority to the applying the rules in the *Labor Contract Law* as a supplement. Second, the *Labor Contract Law* should timely respond to new situations and new problems in the application of employment contracts. With the reform entering the "deep water zone", employment contracts may face more unpredicted and complicated situations. For example, the *Several Opinions on Implementing the Distribution Policy Guided by Increasing the Value of Knowledge* issued by the General Office of the CPC and the General Office of the State Council points out that "scientific research

personnel and teachers shall be allowed to take part-time jobs with partial salaries appropriately in accordance with laws and regulations". However, there are no regulations on part-time jobs of teachers in the education and personnel systems. In this case, how to measure "appropriately in accordance with laws and regulations" can refer to the two standards stipulated in Article 39 of the *Labor Contract Law* of "giving rise to serious impact on completing the work of the original employer" and "refusing to correct upon the request of the employer". The *Labor Contract Law* should play a larger role in addressing such emerging problems. Third, stereotypes should be removed to promote the uniform "supplementary application" of the *Labor Contract Law* across the country. It can be observed from judicial precedents that when handling disputes over the termination of employment contracts due to the outflow of teachers, courts in some developed cities, such as Beijing, Shanghai, Guangzhou, and Shenzhen, tend to recognize the liquidated damages system stipulated in *Labor Contract Law* and allow teachers to terminate employment after paying the liquidated damages to cover the losses of the universities. While courts in central China tend to advocate that teachers should pay punitive damages in addition to compensating for losses, they but also allow teachers to terminate employment after paying the damages. However, courts in western China do not recognize the liquidated damages system in the *Labor Contract Law* and do not allow teachers to resign or move even if they agree to pay high punitive liquidated damages. Even though it is not difficult to understand the considerations in making such decisions by courts in the western region, the geographical inconsistency in the application of the law should be minimized in the future.

Explore the Differentiated Application Standards of Employment Contracts and Labor Contracts in the Context of Shrinking Bianzhi Posts

Based on the routine that employment contracts are linked up with Bianzhi posts, universities often sign employment contracts with teachers within the Bianzhi system and sign labor contracts with those outside the Bianzhi system. However, as a matter of fact, both teachers within and without the Bianzhi system are engaged in the same teaching and scientific research work and are performing the national educational public duties. There is no substantial difference in their job duties. Hence, dividing teachers with the same duties into different identities goes against the principle of equal employment under the employment system. With the further deepening of the reform of the personnel system in public institutions, universities are positioned as second-class public institutions, and the Bianzhi management tends to be weakened. In 2015, Beijing proposed that "studying the feasibility of excluding existing higher educational institutions, public hospitals and other entities from the Bianzhi management, carrying out real-name statistics of existing personnel in the Bianzhi system and gradually withdrawing Bianzhi posts with natural decrease of the personnel". It indicates that the step of shrinking the Bianzhi posts has been dramatically accelerated. It can be predicted that if the Bianzhi system is abolished, there will be a situation where all faculty members will be employed through labor contracts with universities, which will impose negative impacts on maintaining the non-profit and public welfare nature of higher education.

In this paper, the author argues that it is no longer appropriate to distinguish the application of employment contracts and that of labor contracts based on the criterion of identity (Bianzhi post), but to introduce a new standard of "teacher's working mode". The teachers' working mode can be divided into working full-time and part-time. Working full-time means that the employee joins the employer, has working relations only with the employer, accepts the management of the employer, has fixed working hours and place, abides by all regulations

and policies, and has his/her attendance recorded. While working part-time means that the employee does not need to join the employer, keeps independence, has autonomy in the work, and aims to complete certain tasks with the attendance not being recorded. All full-time teachers who have established complete and valid employment relations with a university should be governed by employment contracts. Objectively, full-time teachers, who voluntarily join universities and become their official members, engage in important entrusted public services, make reasonable use of public power and public resources, accept the supervision and management of universities, have higher public welfare value compared with part-time teachers, and should be reasonably eligible for the application of employment contracts. Therefore, for full-time teachers engaged in teaching and scientific research, even if they are not on Bianzhi posts, they should be included into the scope of employment contracts. While for part-time teachers, either labor contracts or service contracts may apply, which will impose stricter constraints to raise their awareness of self-discipline. Eventually, the framework where full-time teachers are regulated by employment contracts while part-time teachers are regulated by labor contracts should take shape.

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