

Digital economy and the law: introduction to this Special Issue

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ABSTRACT

This article introduces the special issue of *Work Organisation, Labour & Globalisation* on the digital economy and the law. After summarising the literature and setting out some of the key issues raised by digitalisation in general and online platforms in particular for labour rights, it introduces the contents of the issue in detail, positioning them in relation to these larger debates.

KEY WORDS

gig economy, crowdwork, digitalisation, platforms, crowdworkers' collective representation

The growth of information and communication technologies over recent decades is giving rise to a new business model. A variety of terms have been used to refer to this phenomenon, including 'gig economy', 'sharing', 'collaborative', 'platform', or 'on-demand' economy, 'crowdsourcing', 'cloud sourcing' and 'digital economy'. What is new about this business model is the fact that people offer certain assets or services – a particular activity, a vehicle or accommodation – to other individuals or companies through digital platforms that instantaneously connect demand and supply.

Platforms relying on this business model, such as Uber, Lyft, TaskRabbit and many more, have been growing rapidly, taking over an important share of the markets they operate in as well as opening up new markets for low-cost services.

From a labour law and industrial relations perspective, the unprecedented spread of digital platforms and the provision of work through these platforms raise many

problems. The radical fragmentation, or reduction to the minimum, of the productive organisation is accompanied by the fragmentation of the work activity itself. The work is done by an anonymous multitude of people – the ‘crowd’, a term referring to the many workers active on platforms. The choice of word is intentional; it is there to stress the impersonality of the work offered – *who* performs the activity becomes utterly irrelevant.

One crucial issue concerns the personal scope of employee protection laws. Should those providing work through digital platforms be considered employees and thus fall under the scope of provisions designed to protect employees? Or should they be classified as independent contractors and be excluded from labour law protections? The debate on determining the coverage of labour law is nothing new to labour scholars. Yet the digital economy challenges the traditional techniques used to distinguish between employees and independent contractors and the discussion remains essential as it is still open to solutions. In particular, the freedom of the service providers (*alias* the workers) to choose if and when to work combined with the considerable interference of platforms in the organisation and monitoring of their activity deeply challenges the traditional parameters used to detect the existence of an employment relationship (De Stefano, 2016; Prassl, 2018; Prassl & Risak, 2016).

The new business model is also changing the way work is organised, giving rise to new working arrangements, management practices, and surveillance patterns that depart from the standard model of full-time, permanent employment with one employer paid by the hour, day or week (see De Stefano, 2018, who advocates for a human rights-based approach to labour regulation to protect workers’ privacy against invasive electronic monitoring). New forms of work organisation and the diversity of those providing work on digital platforms imply further challenges for collective organisation; other important issues relate to the role of trade unions in the organisation and representation of ‘gig’ workers.

The debate on these questions is already wide and rich, and many approaches have been suggested to provide concrete answers to them. Some advocate a purposive approach, focused on the aims of labour law, for assessing the legal status of crowdworkers instead of being stuck with formalistic tests that might be anachronistic (Davidov, 2017). In a similar vein, other scholars highlight the need to go beyond appearances when assessing the legal status of crowdworkers and pay particular attention to the level of control exercised by platforms in the workers’ activities (Cherry, 2016; Liebman, 2017). In the search for protective regulatory frameworks, scholars draw attention to the analogy between platforms’ business models and the triangular structure of temporary work agencies for which EU legislation already exists, suggesting that this legislation should apply to platforms (Ratti, 2017).

Yet we believe there is still space for innovative insights that might be able to move the discussion beyond the tracked lines of scientific research, making it possible to be original and thoughtful when contributing to the debate on gig economy and labour law. That is why this Special Issue of *Work Organisation, Labour & Globalisation* includes contributions that address the impacts of the digital economy on labour and industrial relations law from EU, national and comparative law perspectives.

The reader will notice that the authors come from different perspectives, might have different views on the same issue and therefore propose different potential solutions. As guest editors we welcome this diversity. We wanted the Special Issue to capture the richness of the debate and encourage the reader to reflect on the complementarity of the different approaches and voices presented here.

More specifically, some articles, like Ichino's *A New Labour Law for Platform Workers and Umbrella Companies* (this volume) and *Digital Work in the Transport Sector: In Search of the Employer*, by Loffredo and Tufo (this volume) deal with the scope of the application of labour laws, by focusing on the new forms of work, in the first case, and in the fundamental question *who is the employer*, in the second, with a particular focus on tri and quadrilateral relationships in the transport sector. Hiessl's *Labour Law for Terms of Service and Human Intelligence Tasks* (this volume) and *Traditional and New Forms of Organisation and Representation in the Platform Economy* by Lenaerts et al. (this volume) as well as Roque's *Call Centre Workers Unite!* (this volume) focus the analysis on collective organisation issues including considering the effects of digitalisation on 'traditional' workers, such as the call centre operators studied by Roque.

Ichino's starting point is that the rapid growth of online labour platforms has several benefits for consumers. By eliminating intermediaries in the demand and supply of labour, Ichino argues, platforms make available to the consumer a wide range of high- and low-skill services that are delivered on time and at very competitive rates. Consumers can thus have the service they need – be it transportation, delivery of goods, IT services, care, household maintenance or something else – exactly when they need it and without having to pay too much. There are also considerable benefits for companies, which can easily access a pool of flexible labour, made up of people offering services in direct competition with each other and thus willing to work as efficiently and cheaply as possible. Companies are therefore able to obtain the service they need, exactly when they need it but without having to commit to an employment contract.

For those providing work through online platforms, though, the picture is much more complex. While engaging in platform work arguably has certain benefits for them too, given the flexibility such work allows, the disadvantages might outweigh the benefits. Ichino notes that the most significant impact is that of turning 'the final provider, who until recently was an employee of the service provider, into a self-employed person'. This classification of crowdworkers mainly as independent contractors has negative impacts for the person providing work: not only does she lose rights and entitlements reserved for employees; she now must comply with bureaucratic formalities, which are normally the employer's burden. People working through platforms are under continuous evaluation by clients for their services and must compete to get offers for work; when the services offered are considered low-skilled, platform workers have less bargaining power and fewer possibilities for safeguarding their rights.

Against this background, Ichino proposes a series of initiatives to remedy platform workers' disadvantage: creating umbrella companies which would offer permanent open-ended employment contracts; contracting short-term work through a voucher system which would allow monitoring compliance with minimum wage regulations where applicable; establishing rules to ensure that platforms function in a fair and

non-discriminatory way and – something the author considers to be key – implementing training and skill development programmes to increase workers’ productivity and bargaining power. For Ichino, the answer to the legal and societal problems posed by labour-mediating platforms is not to restrict this type of work. For him, the pressing challenge for labour law today is not how to redesign labour law to include new forms of work, but how to create rights for workers in their ‘transition from old to new work’.

A large part of labour law scholarship on platform-mediated work has examined the issue of the legal characterisation of the relation between platform and worker in a triangular setting – platform, worker and client – posing the question, fundamental from a labour law point of view, of who the employer is. Loffredo and Tufo’s contribution uses a case study of two transportation companies, Uber and FlixBus, to explore the theme of legal characterisation in a quadrilateral setting, that is, in the four-way relationship between the platform company, partner company, worker and client. After a detailed examination of how work is organised in Uber and FlixBus, the authors show how court findings in different jurisdictions concerning Uber’s nature as a transportation company – and not the platform merely connecting demand and supply that the company argues itself to be – could be applied to FlixBus as well. According to these authors’ analysis, despite its complex structure, with multiple partner companies, FlixBus still qualifies as a transportation company bound by competition law as well as labour law. Turning to the legal implications of this finding, particularly for labour law, Loffredo and Tufo carefully scrutinise FlixBus’ functions to reach the conclusion that the company can be considered to be *one* of the drivers’ employers, sharing these employers’ functions with its partner companies.

Christina Hiessl’s contribution moves away from the scholarly focus on the employee status of those engaging in work through platforms. Her starting point is that the contractual relationship between platform and crowdworkers is ‘fundamentally different from the employment relationship’. Therefore, trying to fit it into the scope of existing labour laws, designed with the employment relationship in mind, seems of little practical value in achieving better protection for crowdworkers, especially micro workers. Instead, Hiessl turns her attention to exploring ways that crowdworkers’ collective organising might be promoted. She starts by identifying the obstacles for collective organisation: the difficulties of building solidarity among workers due to their diversity and, by default, competition; their geographical dispersion; the lack of face-to-face interaction; and the fact that there are no real prospects for going on strike. Hiessl then describes some online tools developed by crowdworkers to share information about job requests and rate the providers but also to propose campaigns to improve their conditions. While these tools do not qualify as genuine trade union activity, Hiessl notes that they are a first step towards building a community. She finally explores the usefulness and potential of certain collective labour law mechanisms for workers’ involvement that exist in the non-digital work and the adaptations that such models would need to encompass crowdwork realities.

The article by Lenaerts, Kilhoffer and Akgüç touches on three important questions concerning collective organisation in the platform economy: how Social Partners have engaged in the debates on platform workers’ employment status and working

conditions; to what extent there is already collective organisation of platform workers and of platforms and what kind of activities that entails. The authors draw examples from a variety of European countries and the USA and provide evidence of intensified industrial relations activity in the platform economy and numerous attempts to organise collectively. While such attempts are noted primarily among workers, especially low-skilled and location-dependent workers, there are also examples of platforms organising to promote their joint interests. Their contribution documents significant variety in both types of collective organisation – from grassroots organisation to trade unions – and of actions undertaken – from information exchange to collective negotiations and strikes. Such variety, the authors conclude, signals that ‘the platform economy is broadening the scope of industrial relations activity’.

Finally, Roque’s piece focuses on a specific sector, which, while not involving online platforms, nevertheless exemplifies the relationship between technological innovation and labour flexibility: the call centre sector. The investigation is based on a number of interviews conducted by Roque with both call centre workers and trade unions, together with activists and academics, from the UK and from Portugal. The interviews aimed at collecting information on workers employed in call centres (their education level, working history, length of service at the call centre, health conditions, etc.) but mainly sought to understand the engagement of workers in social movements or trade unions, to react to management. By comparing the Portuguese and the British cases, the author reaches some conclusions on the level of unionisation of the workers but also on their engagement in new forms of communities outside the more traditional means of collective organisation channelled by established unions. Some experiences of ‘digital unionisation’ are also considered, especially in Portugal, as a ‘model of bottom-up organisation that could be of relevance to other digital workers’.

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