Regulating Gigs

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J. Prassl, ***Humans as a Service: The Promise and Perils of Work in the Gig Economy***, Oxford, Oxford University Press, 2018.

Overwhelmed with sheet lightnings of revelations of new things, of absolutely new things.[1]

At labour law conferences of the past two or three years, the emergence of the gig economy was the cause of a flurry of excitement. Having spent decades charting the apparent decline of our discipline – as protective employment laws were successively weakened or repealed in the name of greater labour market flexibility and 'more jobs' – scholars, myself included, were as if rejuvenated by a sense of the new. Here was a development that had caught the interest of the general public, and of political and social commentators, as well as academics in diverse fields, and on which scholars of labour law were in a unique position to offer expert comment. For what was at the heart of the gig economy but work and working relations? When an Uber or Lyft driver picked up a passenger and drove her to her desired destination, he was surely working. When a student agreed via Cloudcrowd or Clickworker to proofread so many pages of a manuscript for a specified rate, she quite obviously contracted to work in exchange for pay. The important questions here, it seemed to us, were precisely questions of employment law. Were these workers recognised as such in law: did they fall within the scope of the legal category 'employee' and, as such, did they enjoy the protection of employment laws – minimum wages, holiday and sick pay, and so on? Did the workers have the right to join or form trade unions in a bid to secure for themselves better wages and terms and conditions? Who, or which organisation, was the 'employer' in each case – the party, in other words, which ought to be obliged in law to treat the worker decently?

As myriad conference papers were presented and discussed, however, a difference of opinion quickly emerged on precisely the issue of the purported novelty of gig work. *Was* it

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[1] From 'No End to Them' by N. MacCaig: *The Many Days: Selected Poems of Norman MacCaig* (Edinburgh: Polygon, 2010)

fundamentally new, or rather a further – perhaps particularly egregious – example of pre-existing and wider trends towards precarious and low-paid work, and increased self-employment, including so-called 'bogus' self-employment? Were the aspects of gig work that appeared to be novel – for example, 'on demand' or 'on call' arrangements, and the use of piece rates – confined to new platforms such as Foodora, Airtasker etc, or were they increasingly to be found in other organisations, private and public sector?[2] Were platforms propagating the (questionable) claim to newness as a deliberate strategy of liability avoidance: attempting to characterise the activity as something other than work, and themselves as something other than employers, so as to avoid having to comply with employment laws, or to pay taxes and social security contributions?[3] Were they doing so in a bid to undercut existing service providers and to establish monopoly or near-monopoly status in particular service markets?[4]

In the UK, a series of judicial decisions on the employment status of gig workers might have been taken to confirm the view that these were indeed workers with employment rights; that the platforms' attempts to draft contracts so as to take the workers outside of the scope of the rights by characterising them as self-employed were bound to fail. In the *Pimlico Plumbers v Smith* decision of 2018, for example, the Supreme Court found that a gig worker who had been characterised in his contract for work as self-employed was, in fact, a so-called 'limb (b)' worker, or dependent contractor, with rights to holiday pay and equal treatment.[5] In line with the relevant statutory definition of this intermediary category of 'workers' – who are not employees, but to whom some employment rights are extended – Mr Smith had undertaken to perform work or services personally for a party (Pimlico Plumbers), which was neither his client nor customer.[6] In a second decision of the same year, the Court of Appeal found that Uber drivers were, similarly, 'limb (b)' workers and, as such, entitled to be paid the national

[2] U. Huws, N.H. Spencer, D.S. Syrdal, 'Online, on call: the spread of digitally organised just-in-time working and its implications for standard employment models' (2018) 33 *New Technology, Work and Employment* 113
[3] See eg E. Tucker, 'Uber and the Making and Unmaking of Taxi Capitalisms' in D. McKee, F. Makela and T. Scassa (eds.), *Law and the "Sharing Economy": Regulating Online Market Platforms* (Ottawa: University of Ottawa Press, 2019)
[4] ibid
[5] *Pimlico Plumbers v Smith* [2018] UKSC 29, [2018] 4 All ER 641. For discussion, see A. Cefaliello, '*Pimlico Plumbers Ltd v Smith*: The Definition of "Worker" in Employment Law and the Scope of the Obligation to Perform Work Personally' (2018) 4 *Juridical Review* 292.
[6] Employment Rights Act 1996, s 230

minimum wage.[7] Contracts describing drivers as the 'partners' or even 'customers' of Uber were shams: not reflective of the nature of the true agreement reached between the parties.[8]

Having broadly welcomed the courts' decisions in these cases, academic commentators continued nonetheless to find much to debate and discuss. Because, under UK law, the question of employment status depends on the terms agreed by the parties to the relevant contract, it remains possible, for example, for platforms to negotiate terms indicative of (independent) self-employment rather than employment, or (dependent) 'worker' status.[9] Without new legislation, in other words, the question of the legal status of gig workers cannot be decided once and for all, but rather falls to be judged on a case by case basis. Further litigation is therefore to be expected. Moreover, the possibility has at least to be considered that workers might prefer to be categorised as self-employed rather than as employees or dependent contractors – especially if their 'employer' is willing nonetheless to recognise their trade union and to bargain collectively with it.[10] The characterisation of workers in the relevant contracts as 'independent' self-employed might just possibly, in other words, be valid, both legally and ethically speaking. Looking beyond the question of employment status, finally, there are aspects of platform-mediated work that are – if not, or no longer, unique to such work – genuinely novel, and perhaps worthy of consideration by policy and law-makers. What are the implications, for example, of management by an algorithm when it comes to questions of the rightful limits of managerial control;[11] or to questions of the health and safety of the worker, including her mental health; or of her rights to privacy?[12] Is equality law breached if customers repeatedly rated female and black workers lower than their white, male counterparts, with significant consequences for the terms and conditions of the workers in question?[13]

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[7] *Uber v Aslam* [2018] EWCA Civ 2748; [2019] IRLR 257. See also *Addison Lee Ltd v Lange & Ors* UKEAT/0037/18/BA

[8] For discussion see A. Bogg and M. Ford (2019) 135 LQR 347.

[9] Courts are willing to look beyond the terms of any written agreement to establish what was truly agreed by the parties: *Autoclenz Ltd v Belcher* [2011] UKSC 41; [2011] 4 All ER 745. See eg *Independent Workers' Union of Great Britain v RooFoods Ltd t/a Deliveroo* [2018] IRLR 84.

[10] At: https://www.gmb.org.uk/news/hermes-gmb-groundbreaking-gig-economy-deal (last accessed 13 August 2019)

[11] A. Wood, M. Graham, V. Lehdonvirta, I. Hjorth, 'Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy' (2010) 33 *Work, Economy and Society* 56.

[12] U. Bajwa, D. Gastaldo, E. Di Ruggiero, L. Knorr, 'The Health of Workers in the Global Gig Economy' (2018) 14 *Global Health* 124.

[13] M. Kullmann, 'Platform Work, Algorithmic Decision-Making, and EU Gender Equality Law' (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations* 1.

In his 2018 book *Humans as a Service*, Jeremias Prassl puts the question of the novelty of gig work at the very centre of his enquiry. The title of his book is taken from a quotation from Jeff Bezos. Way back in 2006 – a lifetime ago in gig economy terms – the CEO of Amazon introduced the Mechanical Turk arm of his empire with the following pronouncement:

> You've heard of software as a service – Well, this is basically humans as a service.[14]

In its original usage, of course, *Mechanical Turk* had been the name given to an eighteenth century contraption with the appearance of a fully automated chess-player, which functioned in truth by way of nothing more sophisticated than a hidden compartment with a little man inside. In Amazon's new internal platform, workers would similarly be hidden from view, doing a new kind of online 'microwork' – for example, categorizing photos or transcribing audio clips – and being paid only pennies for it at a time. Contractual terms would be offered and accepted with the click of a mouse, with no need – no possibility – of any human-to-human interaction. In 2010, the novelty of this kind of arrangement was stated in even starker terms by the CEO of a competitor platform, CrowdFlower (now Figure Eight):

> Before the internet, it would be really difficult to find someone, sit them down for ten minutes and get them to work for you, and then fire them after those ten minutes. But with technology, you can actually find them, pay them a tiny amount of money, and then get rid of them when you don't need them anymore.[15]

Such candour on the part of a platform CEO is unusual; reserved, perhaps, for audiences of tech insiders. The dominant narrative in gig work, as Prassl well demonstrates, revolves around the notions of *innovation* and *entrepreneurship*. Platforms present themselves as doing something truly novel – not taxi provision but 'ride-sharing'; not cleaning and ironing but 'neighbours helping neighbours' – something, importantly, to which existing laws and regulations do not apply. Insofar as commercial transactions are admitted to occur at all in the course of the 'sharing' and 'helping', the primary function of the platforms themselves is said to lie with the provision of the space and the means for would-be entrepreneurs to connect with a customer or client base. Clever algorithms and sophisticated ratings and other technology keep transaction costs low to negligible. To insist upon the application of burdensome rules and regulations to these activities, so the narrative continues, would stifle

[14] Prassl references two sources for the quotation (p. 3, fn 9): L. Irani, 'The Cultural Work of Microwork' (2013) 17(5) *New Media & Society* 720; at http://techtv.mit.edu/videos/16180-opening-keynote-and-keynote-interview-with-jeff-bezos (last accessed 13 August 2019)

[15] At: https://www.thenation.com/article/how-crowdworkers-became-ghosts-digital-machine/ (last accessed 13 August 2019)

innovation in a way that was damaging not only to the platforms but also to customers and entrepreneurs alike.

Prassl devotes much of his book to unpicking and debunking what he refers to as such 'doublespeak'. His focus, as the subtitle indicates, lies with 'work in the gig economy', and his aim is to identify the potential benefits as well as the perils of such work – not only for workers but also for consumers and society at large. How could gig work be made to work for everyone, is the question that he poses: what would be the essentials of 'a sustainable business model in which we all get to enjoy the benefits of platform innovation – without reducing humans to a service'?[16] Prassl is Associate Professor in Law at the University of Oxford, and the principal argument of his book concerns the key role that employment law could be made to play in meeting that aim. Gig workers ought to be recognised in law for what they truly are – workers or employees, rather than independent, self-employed entrepreneurs. As such, they should be 'brought within the scope of employment law', so that statutory minima apply, from minimum wage entitlements to discrimination protection. Additionally, sector-specific norms should be tailored to the particularities of gig work, so that for example workers are accorded a legal right to bring their customer ratings with them from one platform to the next.[17] The benefits to society at large of recognising gig work as such in law would be manifold: platforms could more easily be held responsible for damage caused by a worker to a customer's, or third party's, property or person; tax and social security payments would be owed and deducted or charged in the routine manner; platforms would be incentivised to invest in research, development and genuine innovation instead of relying on a steady supply of cheap labour.

Humans as a Service has been written in an accessible style for a general readership and it serves as a very readable, very useful introduction to the topic of gig work and the policy considerations involved in its regulation. With accessibility in mind, Prassl tends to avoid technical legal terminology and does not confine his analysis to any particular jurisdiction. His examples, and the literature that he cites, are principally American and British, but are presented as having universal relevance. In line with the main argument, that according workers' rights to gig workers would benefit everyone, the tone is mostly well-reasoned and consensual; unprovocative. Trade unions are spoken of as 'social partners'; gig work is said to

[16] Prassl, 6
[17] Prassl, 9-10

be the source of 'great opportunities' as well as 'serious problems'.[18] When it comes to the examination of the realities of life and work in the gig economy, however, no punches are pulled: gig work is varied and may offer great opportunities for flexible work to some, Prassl concludes, but it is more often characterised by 'subordination, dependence, and economic precarity driven by intense, multidimensional control over all aspects of [the] work'.[19] The evidence cited is ample, including both first-hand accounts and quantitative data drawn from scholarly and journalistic publications. In a chapter devoted to identifying regulatory solutions to the problem, such evidence is supplemented with a careful examination of case law and statute, focused on the questions of the workers' status in law, and the identification of the employer. When making the case thereafter for the benefits of worker rights to consumers and society at large, a socio-economic as well as a socio-legal perspective is applied to gig work and to the business model of the platforms. Here the talk is of 'regulatory arbitrage' (structuring a business or business transactions so as to evade existing legal rules), 'negative externalities' (costs that are offloaded to third parties), and 'asset misallocation' (the failure to put products to their most efficient use). The economic case, as well as the 'social justice' case, for the application of employment law to platforms is thereby spelled out: in short, it would lead to the sharing of economic risk between platforms, workers, and third parties in a way that was not only fairer but more economically efficient.[20]

According to Prassl's analysis, it is precisely on the question of the nature of work and working relations in the gig economy that the platforms' claims to innovation may most resolutely be refuted. Gig work has been said to herald a 'revolution' in economic activity; an 'interesting hybrid of a market and a hierarchy', involving, in particular, a reversal of previous trends to ever greater specialization in work organization and a previously unknown immediacy of labour supply.[21] With reference to two examples from the nineteenth century – outwork (or 'homework') and dock work – Prassl demonstrates quite convincingly that these aspects of gig work are anything but new. Like gig workers, outworkers relied on middlemen to bring them orders from buyers. As such they could find their earnings squeezed by the middlemen taking their cut and, yet further, by the obligations imposed upon them to buy and maintain their own equipment and machinery. If orders dried up, they received no income at

[18] Prassl, 31
[19] Prassl, 69
[20] Prassl, chapter 6
[21] A. Sundararajan, *The Sharing Economy: the End of Employment and the Rise of Crowd-Based Capitalism* (Cambridge: MIT Press, 2016), 69, cited Prassl, 73

all. At the docks, where there was a perennial oversupply of labour, workers were made to stand – literally in 'crowds' – hoping to be one of the chosen few to be offered work that day. Even when work was offered, there was no guarantee of a full day's employment and pay. Both kinds of work were characterised, then, by extreme precarity, vulnerability and low pay.

If neoliberalism implies a desired return to the political economy of the nineteenth century – the stateless, globally integrated world economy of the gold standard – then there is indeed a logic to scrutinizing the labour and service markets of that era for precursors of gig work:[22] markets that were characterised by gross inequalities of wealth, by only minimal public services, and by the fragmented, non-universal, provision of social welfare, or charity in lieu of welfare. A prominent feature of those markets – frequently under-acknowledged, and not addressed by Prassl – was the magnitude of the percentage of the workforce that was employed in domestic service. At its height, at the end of the nineteenth century, 40% of women workers in the UK were domestic workers and in 1902, over 200,000 men were also employed in that sector, mostly in gardening, the care of horses, or as drivers.[23] Moreover, the employment of domestic servants was very widespread, and not at all confined to the upper classes: middle and even working class families also frequently employed 'help'.[24] If we define domestic service broadly to include stable hands, chauffeurs, and governesses as well as maids, cooks and manservants, then we might conclude that, in time, domestic workers were replaced by motor cars and kitchen appliances, and by the improved provision of public services: schools, nurseries, transport. Domestic work did not, however, disappear and, since the 1980s, has been on the increase again in the UK and other developed economies.[25] Today it might take a similar form to the domestic service of the nineteenth century, albeit with an updated nomenclature – 'personal assistants', 'housekeepers', 'cleaners', 'nannies' – or it might be arranged via online platforms: TaskRabbit, Uber, Deliveroo.

That domestic service is so often overlooked in discussions of gig work is regrettable since – as the title of Prassl's book, *Humans as a Service*, might be taken to suggest – there is much to learn from a comparison of the two. In addition to functional continuities between domestic service in the nineteenth and twentieth centuries and many kinds of platform work

[22] W. Streeck, 'Fighting the State' (2019) 50(3) *Development and Change* 1.
[23] L. Delap, *Knowing Their Place: Domestic Service in Twentieth Century Britain* (Oxford: Oxford University Press, 2011), 12, 14
[24] *ibid*, esp. 63-97.
[25] *ibid*, 3.

today, for example, the manner of their management and regulation is comparable by reason of the key role played, in each case, by employer or customer ratings. In the nineteenth and early twentieth centuries, the reference that a domestic worker might request of her employer was known as a 'character', emphasising that this would be testament, first and foremost, to the servant's moral qualities rather than her experience or qualifications.[26] Although the worker's ability to find new employment might rest to a very great extent on the possession of a good reference, the current or former employer was under no legal obligation to provide one. The ability to withhold or to threaten to withhold a reference was thus an extremely powerful tool of management or control of the servant, and went some way towards giving the working relationship the form of something more like vassalage than (arm's length contractual) employment.[27] In the gig economy today, customer ratings are amalgamated and displayed to future users as an aid to their decision whether or not to choose the worker in question.[28] They are also used by the platform itself as a tool of management; as data fed into the algorithms which determine such critical matters as the distribution of gigs: who will be offered which work. As a result, workers can feel pressured to undertake a good deal of additional, unpaid labour, including emotional labour, aimed at 'optimizing the customer experience', or, more simply, making the customer like them. Moreover, the higher the rating they achieve, the more tightly they become bound to a particular platform, since leaving that platform for another will mean leaving the rating behind too.[29]

Like gig work, domestic work poses particular challenges when it comes to the collective organisation of the workforce. In the late nineteenth and early twentieth centuries, several attempts were made to unionize domestic servants but faltered, in part, at least, because of the workers' isolation from one another, and their singularly long hours of work.[30] It was also the case that the major trade unions were reluctant to include domestic workers as members, Ernest Bevin declaring in 1931 that he would not seek to recruit (the mostly female) servants in private employment to the Transport and General Union, but only the (mostly male) gardeners, chauffeurs and other servants employed in public institutions.[31] Where efforts at

[26] F. Flanagan, 'Theorising the Gig Economy and Home-Based Service Work' (2019) 61 *Journal of Industrial Relations* 57.
[27] Delap n23 above, 51-2, 74-5
[28] Prassl, 53-5.
[29] Prassl, 111-3.
[30] Delap n23 above, 89-93; L Schwartz, ''What We Think is Needed is a Union of Domestics Such as the Miners Have': The Domestic Workers' Union of Great Britain and Ireland 1908–14' (2014) 25 *Twentieth Century British History* 173.
[31] Delap n23 above, 89-90.

organisation were partially or temporarily successful, it is interesting to note that – contra the purportedly 'voluntarist' tradition in British industrial relations – the demands made on behalf of the membership were formulated in terms of decidedly legal rights and obligations.[32] The primary desire was to transform domestic service from a status to a contractual relationship.[33] Given the imbalance of power in the anticipated relationship, however, not only the emancipatory but also the potentially exploitative elements of this move were recognised by the workers. Consequently, their desiderata included not only the contract but also a series of statutory rights that would function to limit the parties' contractual freedom (in practice, the employer's freedom to exploit): both those rights already accorded to other types of worker – maximum hours, holiday pay, health and safety inspections – and additional rights tailored to the particularities of domestic service, such as to decent accommodation and to a fair reference.[34]

Without either significant membership or the support of the stronger, better established trade unions, domestic workers' unions found their demands for decent work easily neglected by the British state. In contrast to other sectors in which unions remained weak and wages low, no trades board or wages council was every created in respect of domestic service, and no legislation ever passed to extend the statutory rights of industrial workers to that sector. At the end of the First World War, when women's enforced redundancy from wartime factory and agricultural jobs inflated the numbers of unemployed workers registering at Employment Exchanges, and as eligible for state unemployment benefits, a policy decision was taken to encourage women workers, very actively, into domestic service.[35] In 1922, for example, new regulations required the Exchanges to offer female claimants domestic work. This placed a woman in a double bind: if she rejected the job, she would be ineligible for unemployment benefit on the basis that she had refused work that she was capable of doing. If she accepted it, she left the unemployment scheme completely, since domestic service was not among the specified 'insured trades'.[36]

[32] Delap n23 above, 50, 87ff
[33] W. Streeck, 'Revisiting Status and Contract: Pluralism, Corporatism and Flexibility' in *Social Institutions and Economic Performance* (Thousand Oaks: Sage, 1992).
[34] Schwartz n30 above, 187-8 citing the objects of the Domestic Workers' Union in 1910.
[35] D. Aiken, *The Central Committee on Women's Training and Employment: Tackling the Servant Problem, 1914-1945* (Oxford: Oxford Brookes University, 2002).
[36] N. Whiteside, 'Who Were the Unemployed? Conventions, Classifications and Social Security Law in Britain (1911-1934)' (2015) 40 *Historical Social Research* 150, 163.

The experience of these workers in the 1920s raises important questions regarding the role of the state in the emergence and growing prevalence today of gig and other forms of precarious, low-paid work. As Noel Whiteside has carefully illustrated with detailed historical and comparative accounts, governments can construct different definitions of 'the unemployed' – meaning quite specifically those to whom unemployment benefits of one kind or another may be paid – in accordance with the policy aims of the day. [37]

> The category of "unemployed" can never be a given fact … but is largely a socio-political product derived from prevalent assumptions about how labour markets should work and the role (if any) public authorities are expected to play in this operation.[38]

If a government is so minded, legal definitions of unemployment, and the provision of welfare payments consequent upon them, may be fashioned so as to contribute to the creation of a 'floor' of minimum wages and other terms and conditions below which workers needn't accept work. If they refuse lower paid or more insecure work, they will not lose their entitlement to benefits.

At the beginning of the twentieth century in the UK, a system of government funded and administered social security was introduced with the primary aim of addressing poverty and pauperism consequent on a 'want of work'.[39] The terms of the new legislation were shaped by a rationale which sought to concentrate available work in the hands of the most productive workmen so as to promote industrial efficiency and, at the same time, decasualization.[40] As the then young William Beveridge put it in 1907:

> Irregular work and earnings make for irregular habits; conditions of employment in which a man stands to gain or lose so little by his good or bad behaviour make for irresponsibility, laziness, insubordination […] The line between independence and dependence, between the efficient and the unemployable, must be made clearer. Every place in 'free' industry, carrying with it the rights of citizenship – civil liberty, fatherhood, conduct of one's own life and government of a family – should be a 'whole' place involving full employment and earnings up to a definite minimum.[41]

In the National Insurance Act of 1911, an unemployed worker was defined as he who was capable of work but unable to find a 'suitable' position. Importantly, 'suitable' was here

[37] ibid.
[38] ibid. 152
[39] ibid. 154
[40] ibid.
[41] (Beveridge 1907, 326-7) cited Whiteside n36 above, 155.

interpreted to mean suitable for the particular worker in question – his particular trade, skills and experience – and this, in turn, was understood to mean that a worker should not be expected to work for less than the going (ie collectively agreed) rate.[42] In line with the aim of combatting casualization, in other words, the Act was used to support rather than to undermine the collective negotiation of decent wages by trade unions and employers' associations.

By reason of the exclusion of domestic service from this system of social welfare, as we have seen, a gap in the floor was created through which domestic workers were allowed to fall. And they were allowed to fall, moreover, quite deliberately, and not at all by accident, so as to ensure an adequate supply of domestic workers (solving the 'servant problem' that was so much discussed in the media of the day) and, at the same time, to limit the costs to the public purse of the new National Insurance.[43] Today, in this post financial crisis age of austerity, can we assume that cuts to welfare benefits are partly to blame for the emergence and growth of gig work? What of welfare systems that actively incentivise workers to accept low paid and 'low hour' work through the provision of tax credits;[44] or through the institution of a universal minimum income of the type advocated for – and this should come as no surprise – by Silicon Valley insiders?[45] To what extent are governments complicit, in other words, in the prevalence of 'indecent' work, perhaps actively encouraging people into insecure and poorly paid jobs with the aim of keeping unemployment figures low?

Further clues as to government complicity or hesitancy in respect of the regulation of gig work can be found in the growing literature on the political economy of 'platform capitalism'.[46] Here we learn the secrets of the platforms' ability to provide services at such very low prices; lower even than routine tax and social security avoidance would otherwise allow. A first point to note is the extent to which platforms' business models can rest on the capacity to extract ('harvest') immense amounts of data from all those who interact with the platform: workers, customers, producers, advertisers. That data is then either harnessed by the

[42] S. Deakin and F. Wilkinson, *The Law of the Labour Market* (Oxford: Oxford University Press, 2005), 166-7
[43] Aiken n35 above.
[44] Z. Adams and S. Deakin, *Reregulating Zero Hours Contracts* (Liverpool: Institute of Employment Rights, 2014).
[45] J. Sadowski, 'Why Silicon Valley is embracing universal basic income' *The Guardian*, 22 June, 2016.
[46] See eg K.S. Rahman and K. Thelen, 'The rise of the platform business model and the transformation of twenty-first century capitalism' (2019) 47(2) *Politics and Society* 177; N. Srnicek, *Platform Capitalism* (Cambridge: Polity, 2017); S. Zuboff, *The Age of Surveillance Capitalism* (London: Profile, 2019).

platforms themselves in their interactions with platform users, and/or sold on to third parties. As Nick Srnicek has shown, data can serve a number of 'key capitalist functions': educating and giving competitive advantage to algorithms; enabling the coordination of workers; allowing for the optimisation and flexibility of productive processes; making possible the transformation of low-margin goods into high-margin services.[47] That the 'visible' element of platforms' activities – taxi provision, food delivery, odd jobs – is often quite secondary to such data harvesting goes some way to explaining why platforms are able to undercut competitor service providers.[48] Amazon, for example, regularly makes losses on its sale and delivery of consumer goods, but cross-subsidizes these from other branches of its empire.[49]

A second explanation for the capacity of platforms to sustain losses lies with their easy access to 'patient capital'.[50] Since the financial crisis of 2008, a cash glut has arisen in the global economy by reason of the monetary policy interventions of national governments, combined with increases in corporate savings and the expansion of tax havens.[51] Tech start-ups have been among the main beneficiaries of investors who are in no great hurry to turn a profit. As Rahman and Thelen explain, however, this patient capital is quite different to the patient capital characteristic of coordinated market economies in the twentieth century: patience is no longer exercised in the interests of all stakeholders, including labour, but rather to facilitate the concentration of control in the interests of powerful managers and investors pursuing monopoly or near-monopoly status in service markets and – eventually – winner-takes-all-returns.[52]

In addition to user-friendly apps and clever marketing, platforms' ability to provide services at very low and even loss-making prices explains, in turn, their great popularity with consumers.[53] As wages fall or stagnate across the board, and public services are cut and cut again, consumers can become reliant on cheap services; platforms can come to form part of the infrastructure of their lives – as domestic servants did 100 years ago. Capitalizing on this, platforms portray themselves as the champions of consumer interests and enlist the – captive – consumers as political allies. Here then is a further explanation of the apparent reluctance of

[47] Srnicek n46 above, 41-2
[48] ibid, 60
[49] ibid, 60-1
[50] This is Rahman and Thelen's term, n46 above.
[51] Srnicek n46 above
[52] Rahman and Thelen n46 above
[53] Rahman and Thelen n46 above

government in some jurisdictions to enforce laws, including employment laws, against the platforms. Politicians face the risk that regulation might alienate their constituents, denying them access to the cheap goods and services upon which they have come to depend.[54]

Enough has been said, I think, to demonstrate that analysis of the employment law questions arising in respect of the gig economy – are the workers employees; who, or which organization, is the employer – while very useful, leaves several important avenues of enquiry unexplored. The various forms of gig work that have arisen in a very short space of time constitute complex, and – in some respects at least – novel configurations of 'contracting for work', that are shaped by a wide variety of both public institutions and social structures.[55] Gig work is shaped, in other words, not only by social policy widely understood (employment law and policy, workplace regulation and enforcement mechanisms, taxation), but also by the social integration and organization of sectoral and occupational workforces, as these both prefigure and respond to public intervention. To understand its development fully, the field of study would have, accordingly, to be widely drawn. Comparative methods would be required to take account of local, national and sectoral differences between systems of employment regulation broadly understood: the different ways of embedding capitalism in a social order.

For scholars of labour law, gig work serves as a timely reminder of the embeddedness of systems of labour law in broader political-institutional contexts; in geographically and sectorally or occupationally specific 'labour constitutions', if you will.[56] If there is a weakness in Prassl's otherwise excellent book, it lies I think with his decision to treat gig work as a singular phenomenon having essentially the same characteristics wherever it is found, and consequently not to include comparative analysis of employment laws, welfare systems and so on. Because the gig economy emerged first in the USA, because much of the literature and the bulk of the examples he draws upon are from that country, Prassl's tendency is to present US experience as universal. As a result, readers are not afforded a very good sense of the way in which platforms such as Uber have succeeded in winning market share in countries other than the US precisely by importing American practices and norms and thereby undercutting indigenous competitors.[57] They are left unaware, perhaps, of the wide range of

[54] P.D. Culpepper and K. Thelen, 'Are we all Amazon Primed? Consumers and the Politics of Platform Power' (2019) *Comparative Political Studies*, published online June 2019
[55] R. Dukes, 'The Economic Sociology of Labour Law' (2019) 46(3) *Journal of Law and Society*, forthcoming
[56] Ibid.
[57] Rahman and Thelen n46 above.

responses with which platforms seeking to establish themselves outside of the US have been met: from welcoming embrace and accommodating regulatory adjustments to outright rejection and legal prohibitions.[58] And they are not prompted to consider how these responses have been shaped by particular institutional and legal contexts and by the differing interests of stakeholders – consumers, competitor companies, trade unions – and their respective abilities to wield political influence.[59] It is one thing to know how best to regulate gigs, after all, and quite another to build the political will to do so.

[58] K. Thelen, 'Regulating Uber: The Politics of the Platform Economy in Europe and the United States' (2018) 16(4) *Perspectives on Politics* 938.
[59] Ibid.