Locating Unity in the Fragmented Platform Economy: Labour law and the Platform Economy in the United Kingdom

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Platform Capitalism in the United Kingdom

The emergence of work under what can broadly be termed 'platform capitalism' has coincided with a series of parallel developments in industrial practice and technologies in the United Kingdom. Over the past three decades or so there has been a dramatic flexibilization of the labour market through a combination of deregulation, the normalization of atypical working patterns and an explosion in self-employment.[2] The recent genesis of the so-called 'gig economy' can be seen as the apotheosis of these processes, in which workers are, ostensibly, recruited to complete discrete tasks, whether for the same or different end-users, rather than engaged in a single overarching relational contractual nexus.[3] The United Kingdom has seen an explosion in these forms of working practice,[4] in particular within certain industries and among certain demographic groups, notably younger workers.[5]

The emergence of platforms, that is digital applications or systems which take advantage of data and technologies such as geo-location to connect disparate groups, is a separate phenomenon to the emergence of the gig economy. For instance, social media networks such as Facebook are platform-based services which connect users with each other and with advertisers, with no necessary link to changing working models. Equally, such platforms can be used within enterprises to distribute work and liaise with customers with no discernible impact on the relationship with the employee in terms of employment status or protections. However, many new iterations of gig working in the United Kingdom have emerged primarily through the use of platforms to the extent that the two are often thought of as being inherently linked phenomena. In particular, these processes have led to a great number of business models which have been able to externalise work functions, disrupting the Coasean vision of the firm and the place of the worker within it.[6] Caution should be exercised in this regard, however. Not only are the emerging forms of work extremely heterogenous in nature, they also interact in different ways with various aspects of the digital economy and information technology.

Notwithstanding these complexities, there is a growing attention paid to these emerging forms of work, whether from a management, economic, legal or sociological perspective. In the UK, there is a hyperactive amount of popular and scholarly literature dedicated to questions of artificial intelligence, the digital economy, algorithms and the future of work more generally.[7] However, there is no clear agreed taxonomy of ideas or concepts, and these are often borrowed from international

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[2] Paul Davies and Mark Robert Freedland, *Towards a Flexible Labour Market: Labour Legislation and Regulation since the 1990s* (Oxford University Press 2007).

[3] Valerio De Stefano, 'The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork, and Labor Protection in the Gig-Economy' (2015–16) 37 Comp Lab L & Pol'y J 471.

[4] Geraint Johnes, 'The Gig Economy in the UK: A Regional Perspective' [2019] Journal of Global Responsibility world.

[5] Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford University Press 2018).

[6] RH Coase, 'The Nature of the Firm' (1937) 4 Economica 386.

[7] Richard Susskind and Daniel Susskind, *The Future of the Professions: How Technology Will Transform the Work of Human Experts* (1st EDITION edition, OUP Oxford 2015); Nigel M de S Cameron, *Will Robots Take Your Job?: A Plea for Consensus* (Polity Press 2017).

literature or developed on an *ad hoc* basis within the local literature. Policy responses have been rather slow, with a characteristically 'pragmatic' approach having been taken in general by the British government and legislature.

In reality, policy discussions on issues connected to the platform economy of labour law have emerged tangentially at best. In recent years, there has been a great deal of discussion about such practices as 'zero hours contracts',[8] a nebulous term with no precise legal meaning which captures contractual arrangements in which there is no (or next to no) formal obligation on either side to provide or accept work. A growing number of such arrangements take place through platform-like interfaces, meaning that much work done through platforms is captured within discussions of new forms of 'casual' or 'informal' labour and the 'flexible' labour market. However, there has, surprisingly perhaps, been no specific government or legislative response to the apparently radical changes which the use of platforms and information technology are bringing to the labour market and the employment relationship.

In 2017, the Conservative government published the so-called 'Taylor Review',[9] a report and series of recommendations on the future of work and its regulation. This was not explicitly concerned with platform capitalism as such, and did not deal with the technological questions which emerge from the use of such platforms. However, the Report uses 'platform'-based work as its central case of modern working practices and structures much of its commentary and many of its recommendations around the centrality of platforms. It particular, as will be considered in this article, it highlights the difficulties regarding the legal classification of those who work under such technological arrangements in the context of the current lack of clarity in this regard. The report makes some strident recommendations in this regard, in particular the removal of the need for work to be provided personally to have access to employment protections, as well as the replacement of the current 'worker' category with a new 'dependant contractor' one based on the central concept of 'control'. However, in general, the report advocates continuity in terms of the existing 'pragmatism' of the British reaction to the emergence of these new industrial practices and forms of work. The Review is broadly approving of the new practices and the 'flexibility' which they can offer to both businesses and workers, and encourages the use of such models, including entirely outside of the scope of employment law, where this reflects the genuine 'choices' of the parties. Thus far, there has been little legislative reform which can be understood as either implementing these recommendations or which deals explicitly, or even indirectly, with platform-based models of work. As a consequence, the relationship between labour law, industrial practice and these new technologies is governed by the interpretation and application of the existing legal framework.

Existing 'Gateways' to Labour Law in the British System and their Inevitable Deployment in the Platform Economy

As in almost all systems of labour law, the 'gateway' question of the scope of employment law is fundamental. Historically, this divide was essentially the classical binary one between those relationships which were covered by labour law and those which lay outside its scope.[10] In recent decades, this binary divide has been disrupted by a series of 'concentric circles' of protection, which

[8] Abi Adams and others, '«Zero-Hours Contracts» in the United Kingdom: Regulating Casualwork, or Legitimating Precarity?' [2015] Giornale di diritto del lavoro e di relazioni industriali 529.
[9] Matthew Taylor, Good Work: The Taylor Report on Modern Working Practices (July 2017), available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf (accessed 15 July 2019)
[10] Mark Freedland, *The Personal Employment Contract* (Oxford University Press 2003).

extent various parts of employment law to larger categories of workers.[11] The emergence of the platform economy and the crowdsourcing of work through such platforms must therefore be understood through this complex variable geometry of the modern system of labour law.

As the legislator has not intervened to create *ad hoc* categories or coverage for platform-based working, the categories of labour law must be understood in this new context. This is in line with the general approach of English labour law, in which the Common Law has been the traditional 'gatekeeper' of the meaning, and indeed the content, of the contract of employment upon which statutory protections have been built. The following section considers how the courts have responded to the emerging realities of platform capitalism in the labour market in the context of the legal framework presented here.

The central regulatory unity of the UK labour law system stems from the common law contract of service or contract of employment. This is the common law keystone upon which the edifice of labour law is generally built upon. Indeed, s230(1) of the Employment Rights Act (ERA) 1996, a consolidated catalogue of individual employment protections defines 'employee' for the purposes of that Act as 'an individual who has entered into or works under […] a contract of employment', that is, according to s230(2) 'a contract of service', a common law concept. It is the general expectation that the common law should continue to develop the appropriate criteria for establishing the existence of an employment relationship.[12] In line with most other post-industrial systems of labour law, there is a multifactorial approach in which the characteristics of the working relationship are weighed up. However, in the English common law, this process is characterised by two significant elements. Firstly, there is a close attention paid to the contractual obligations between the parties rather than simply the social or economic realities of the relationships. Secondly, there are certain necessary criteria which generally must be present in order for there to be a contract of service, regardless of the presence of all other factors, meaning that these are not simply to be weighed against the overall nature of the circumstances.

The contract of service stems from the principle of vicarious liability within the common law of tort. Employers are liable for the actions of their employees where such actions are carried out 'in the course of employment'. For this reason, the basic starting point for such matters is that of 'control', that is whether the employer exercises sufficient control over the other person's work.[13] However, over the past half-century or so, the Courts have developed a more complex set of factors to determine employment status. In *Ready Mixed Concrete*,[14] McKenna J famously reduced this to a three part test: remuneration in exchange for work, control and the absence of contractual provisions which are inconsistent with an employment contract. Other case law has identified additional important factors, such as the level of business risk taken on by the worker and the level of integration into the enterprise, with no factor being absolutely crucial in isolation.[15]

Subsequent developments in the common law have identified two core additional requirements for there to be a contract of service, the absence of either of which is fatal is any such possibility. The first is that there must be 'mutuality of obligation', that is there must be an obligation on the

[11] Douglas Brodie, 'Employees, Workers and the Self-Employed' (2005) 34 Ind Law J 253.
[12] Katie Bales and others, '"Voice" and "Choice" in Modern Working Practices: Problems With the Taylor Review' (2018) 47 Ind Law J 46.
[13] Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd [1924] 1 KB 762; Mersey Docks and Harbour Board v Coggins and Griffiths (Liverpool) Ltd [1947] AC 1, [1946] 2 All ER 345, HL.
[14] Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance [1969] 2 QB 173, [1968] 3 All ER 732
[15] Hall (Inspector of Taxes) v Lorimer [1994] ICR 218, [1994] IRLR 171, CA.

employer to provide work and a correlative obligation on the employee to accept that work.[16] Secondly, there must be a personal obligation to work, meaning that a valid 'substitution clause' which allows the worker to send a someone else to do the work in his place, is incompatible with employee status.[17] What these aspects in particular demonstrate is that English law is traditionally primarily concerned with the context of the contact and its formal obligations. As will be discussed below, this approach has undergone subtle changes in recent years.

Many of these factors make platform working problematic in terms of establishing employment status: the externalising tendencies and the progressive fragmentation of the Coasean firm in such working arrangements, alongside the 'casual' nature of the gig work, mean that the contractual arrangements which typify platform work generally possess several characteristics which do not cohere with the contract of employment. However, in recent years, the English Courts have been more willing to look beyond the textual contractual wording within written contracts, and to seek to consider the genuine contractual expectations of the parties where these might differ from those formally recorded, in recognition of the imbalance of bargaining power in such circumstances. This is not a departure from the 'contractual' approach of English law as such, but is certainly a contextualised 'softening' to reflect the social realities of contractual obligations.[18] As will be discussed below, this is potentially significant in the judicial treatment of platform models of work.

Traditionally, those whose working relationships did not fall within the scope of the contract of employment were automatically deemed to be independent contractors under a 'contract for services', and therefore entirely outside the protection of labour law. This binary dichotomy has since been significantly disrupted by the appearance of numerous intermediate categories of status. These categories do not, it would appear, function in the same way as the contract of employment in terms of providing a unitary relational framework for employment regulation, but rather seek to capture those individuals or relationships who are deemed worthy of specific aspects of employment law but who would otherwise be excluded from it.

The most important intermediate category of this type is that of 'worker', which is defined in s230(3) of the ERA 1996 as an individual who works under either a contract of employment or 'any other contract […] whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual'. This category is in fact rather longstanding, having been used in more or less the same way within Trade Union legislation for many decades. However, it came to have its current function as a broader concentric circle of coverage of employment law in the late 1990s, when it was used as the basis of the personal scope of rights such as the National Minimum Wage 1998 and protections connected to working time and holiday rights. Similarly, discrimination law[19] uses a broader definition to determine its coverage, that is either a contract of employment or 'a contract personally to do work'. Although these definitions are ostensibly different, they are broadly understood to have the same meaning.

[16] O'Kelly v Trusthouse Forte plc [1983] ICR 728, [1983] IRLR 369, CA; Wickens v Champion Employment [1984] ICR 365, EAT.
[17] Express & Echo Publications Ltd v Tanton [1999] ICR 693, [1999] IRLR 367, CA.
[18] Autoclenz Ltd v Belcher [2011] UKSC 41
[19] Equality Act 2010, s 83(2)

However, there is a relative paucity of enlightening case law on this matter. The leading authority stems from the case of *Mirror Group v Gunning*,[20] in which it was held that 'personal service' must be the primary or dominant purpose of the contract, although the importance of this as a sole criterion has been questioned in subsequent case law.[21] In the discrimination law case of *Jivraj*,[22] the Supreme Court held that the 'primary purpose' approach was not sufficient as the definition should fall in line with European Union law on the matter (which, of course, has its own 'autonomous' definition of worker developed in the jurisprudence of the Court of Justice), and therefore personal; service is not sufficient; there must also be an element of subordination in the relationship and not an entirely independent provision of services. This decision sparked great controversy among labour law scholars,[23] as it appears to reinstate a form of 'control' requirement for intermediate categories as well as employees.

The question of the scope of labour law is the subject of intense debate in the UK, as in most jurisdictions at present. In many respects, this discussion is more pressing due to the emergence of the challenges of the platform economy. Certain influential scholars have forcefully made the claim that many forms of platform work can and should be captured by existing categories within employment law, or could be if these were slightly reimagined. One of the most influential approaches is to take a 'functional' approach to the figure of the employer and ask who carries out various aspects of the employer's function, attributing legal duties which correlate to these functions.[24] Such a radical idea, however, does not cohere with the courts' current understanding of their own function in determining the application of the existing criteria to new situations. In addition, such a fragmenting of questions of the identity of the employer would put at risk the regulatory and normative unity of labour law, that is the employment relationship and similar constructs, which holds together this field of law.[25] The following section considers how the courts in the UK have responded to recent cases concerning gig working and the platform economy.

The Judicial Treatment of the Platform Economy in the Absence of Legislative Regulation

As there has been no legislative intervention in relation to these working practices, and indeed no legislative changes to matters of the scope labour law, as discussed in the previous section, in recent years, it has been left to the courts to respond to the emergence of the platform economy through the application of existing categories and concepts. This has the advantage of being flexible and contextualised, but there exists the clear danger that current taxonomies and legal understandings are not suitable for emerging working practices. However, most important is the crucial point that while the case law which has emerged is important in various respects, it must be understood as, in each case, limited to the contractual and economic arrangement in the case at hand. As this jurisprudence does not produce, or even suggest, new categorisations of working relationships, for the platform economy or more generally, the case law should be apprehended as merely a guide to the potential general application of existing categories. If the contractual or working arrangements

[20] [1986] ICR 145, [1986] IRLR 27, CA.
[21] James v Redcats (Brands) Ltd [2007] ICR 1006, [2007] IRLR 296, EAT.
[22] Jivraj v Hashwani [2011] ICR 1004, [2011] IRLR 827, SC.
[23] Mark Freedland and Nicola Kountouris, 'Employment Equality and Personal Work Relations—A Critique of Jivraj v Hashwani' (2012) 41 Ind Law J 56; Christopher MCCrudden, 'Two Views of Subordination: The Personal Scope of Employment Discrimination Law in Jivraj v Hashwani' (2012) 41 Industrial Law Journal 30.
[24] Jeremias Prassl, *The Concept of the Employer* (Oxford monographs on labour law, Oxford University Press 2015); Jeremias Prassl and Martin Risak, 'Uber, Taskrabbit, and Co.: Platforms as Employers-Rethinking the Legal Analysis of Crowdwork' (2015) 37 Comp Lab L & Pol'y J 619.
[25] Luke Mason, 'Le salarié-actionnaire en droit anglais : l'histoire d'un échec législatif' in Emmanuelle Mazuyer (ed), *La place des salariés dans l'entreprise* (Editions Mare et Martin 2019).

of other platforms differ in significant respects to those considered in the cases which emerge, there is no guarantee that they would be decided in the same way. In the platform economy, contractual arrangements are frequently changed, so there is also the possibility that the case law which does emerge is obsolete by the time it is decided, even for the companies concerned. This is doubly true in the UK due to the attention paid to the contractual obligations of the parties in such matters. Most platform work arrangements in which there is some degree of 'externalisation' of the work from the firm is characterised by a contractual attempt to characterise the work either as done by an 'independent contractor' or as an agency arrangement in which the platform arranges a for a contractual relationship between the worker and the end-user. The case law which has emerged asks whether these self-labelling exercises are successful.

The three major cases in recent years which appear to be relevant to work in the the platform economy have all concerned 'worker' status, that is the intermediate category of people who are granted a limited range of employment protections by virtue of their provision of personal work. The first such case is *Pimlico Plumbers*,[26] which is only tangentially linked to the platform economy, but which is extremely influential due to the fact that it reached the Supreme Court. This case concerned the question of whether a plumber who was able to choose to accept or reject jobs for a plumbing company benefitted from the protections of the Working Time Regulations among other things. The company insisted that its contractual terms, in particular the ability of the worker to send someone else to carry out the work in limited circumstances, meant that this could not be considered a contract for personal provision of work. The Court disagreed, holding that in such cases the court should ask itself whether, notwithstanding any limited substitution clause, the dominant purpose of the contact is nonetheless personal performance. In this case, the Supreme Court held that there was such a dominant purpose. This case is significant because it opens up the possibility that platform work can be considered to form part of the traditional categories of employment law, if the contractual arrangements can be made to fit into those categories. In this specific case, there was no consideration of whether the worker might also have been an employee, primarily due to the fact that there was no obligation on the parties to provide or accept work. Future cases might consider the 'realities' of contractual clauses which purport to govern such matters in the context of the platform economy, in which there is often an algorithmic sanction for the refusal or work. No such case has emerged at appellate level thus far however.

The second relevant piece of case law falls more squarely within the platform economy paradigm, and concerned the status of drivers who work through the well-known Uber platform.[27] In this case, two Uber drivers claimed that they should be classified as 'workers' and thereby be guaranteed the national minimum wage and paid holidays. By majority decision, the Court of Appeal found that, under the contractual terms applicable at the relevant time, the drivers were indeed workers. Significantly, the Court found that the precise wording of the contract, in particular regarding the self-categorisation of the drivers as 'self-employed' was not relevant if the realities of the contractual dealings did not reflect this. The Court approved the first instance decision which found that the contractual sophistry employed by Uber did not reflect the realities of the working relationships between the company and the drivers. Crucially, it was found that the claimants had no say in the terms on which they performed work, and that this work should be personally performed. The Court did not specifically consider some of the more specific aspects of the platform's operation, and limited itself to approving the first instance finding. That first instance decision was noteworthy for a particular observation which has been widely cited. Uber had sought to rely on a contractual

[26] Pimlico Plumbers Ltd and another v Smith) [2018] UKSC 29.
[27] Uber BV v Aslam [2018] EWCA Civ 2748.

document which suggested that all drivers were in fact independent entrepreneurs to whom Uber provided the service of locating passengers. Instead the employment tribunal found that Uber's

general case and the written terms on which they rely do not correspond with the practical reality. The notion that Uber in London is a mosaic of 30,000 small businesses linked by a common 'platform' is to our minds faintly ridiculous.[28]

In this piece of *obiter* reasoning, we can see the beginnings of a reckoning with the platform economy and its interaction with labour law in the English system. The very fact that a platform is able to coordinate a large number of drivers according to broadly the same terms and conditions, and distribute work between them, while providing end-users with what is ostensibly a transport service appears to be very strong evidence in itself for the existence of a relationship covered by the 'worker' category. Whether such arrangements might also, in future cases, be considered to involve fully blown contracts of employment remains to be seen, however the coordinating function of the platform might be understood as generating the requisite level of control. In many such cases, however, employee status would appear to be ruled out due to lack of mutuality of obligation. Where the decision not to accept discrete work tasks is penalised by the platform in the future distribution of work, however, the realities of such an absence become more questionable. This will be a matter for future cases to decide. Equally noteworthy in the Uber decision was the dissenting judgment of Underhill LJ in the Court of Appeal. He considered the case to be about the appropriate level of protection for workers in the gig economy and through platforms which should be a matter for government and the legislator. He therefore refused to look behind the contractual terms in the manner done by the majority in the case, and thereby refused to consider the application of the principles of the Common Law to such problems.

The third relevant case concerns the food delivery platform Deliveroo.[29] In this case the Central Arbitration Committee (CAC) was responding to a request for statutory recognition of the delivery riders' trade union. In order to benefit from this right, the riders had to show that they were workers. The CAC held that union members were not workers but were in fact self-employed on the basis that Deliveroo riders did not have to perform their services personally, instead having an unfettered right to use a substitute in the performance of the delivery. The CAC specifically pointed to the fact that several of the riders made use of this contractual right to subcontract their delivery function to other riders and take a share of the fee. As a decision of the CAC rather than a court, this decision does not create a binding precedent. However, it does show how the application of the general principles of employment law in one instance of platform-based work might apply in a completely different manner to a different platform or its methods of organising or distributing work.

While this case law has received a great deal of attention and is surely significant in various respects, this is still a very limited sample of judicial reasoning in this context, in particular given the heterogenous nature of work within the platform economy. To some extent, the perceptions of the judicial treatment of work have been coloured by the serendipity of the cases which have been brought. There are various matters which have not yet been explicitly dealt with, in particular the question of whether platform work can ever be considered to fall under a contract of employment, and, in which case, what the significance of the platform and its operation are from an employment

[28] Ibid para 90.

[29] Independent Workers' Union of Great Britain (IGWB) and RooFoods Limited TA/Deliveroo, Central Arbitration Committee 14 November 2017 (TUR1/985(2016)).

law perspective. Equally, no cases have yet been brought regarding the application of discrimination law to the operation of algorithms in platforms' distribution of and remuneration for work.

Industrial action and collective bargaining

Traditionally, the UK labour law system has been said to depend on an ideology of 'collective laissez-faire', that is a form of collective regulation of the terms of employment without the intervention of the law.[30] On such a view, the collective regulation of platform work would depend simply on the social pressure which people working in the platform economy were able to place on companies. In reality, however, matters are far more complex, as the law plays a crucial structuring role in enabling and framing collective action and collective bargaining. When it comes to those who work in the platform economy, it is far from clear that all such workers are even permitted, legally, to seek to organise and collectively bargain. Again, such matters turn on how those who work through platforms are classified from a labour law perspective. There is growing evidence of organisation amongst workers in the gig economy, both within existing trade union organisations and within new groupings. Most notably, the Independent Workers' Union of Great Britain (IWGB) has been organising gig economy workers and has organised numerous forms of industrial action and helped bring cases before courts and the CAC.

However, the ability of such groups to engage in effective collective action and/or bargaining is in doubt. The Taylor Review, discussed above, was largely dismissive of the need for collective representation of workers in the platform economy, pointing to the low levels of trade union membership among young workers. It is not clear, however, that the current law would allow platform workers to partake in such processes in any case. The aforementioned case involving Deliveroo riders before the CAC concerned the ability of those riders to force the company into recognising the IWGB for the purposes of collective bargaining.[31] The finding that the riders were not in fact workers meant that the Union could not rely on that procedure. The place of collective bargaining will therefore depend on the rather capricious question of legal classification of workers at that point. Given that worker or employee status is, at least to some extent, a negotiated outcome this approach is problematic as it denies such workers the possibility of collectively bargaining an improved set of working arrangements which would grant them this status in the first place. Furthermore, however, there is the question of the legality of any collective action which is taken. Where platform workers are independent contractors, that is self-employed, it is not clear that they benefit from the right to strike, such as it exists in UK and European law. Famously, there exists no freestanding right to strike in the British labour law tradition. Instead there is a complex system of immunities for trade unions where individual action is in furtherance of a trade dispute, that is a dispute between workers and their employer which is about employment related matters.[32] Given the status of many platform economy workers as independent contractors, trade unions might be liable for the economic torts for which they would be liable ordinarily if there were no immunities. Equally, given that platform workers might often fall outside the scope of employment law, they would not seem to automatically fall within the 'exclusion zone' created by the *Albany*[33] case before the CJEU regarding the application of competition law to collective action and collective agreements. The recent case of *FNV Kunsten*[34] seemed to suggest that self-employed workers are

[30] Otto Kahn-Freund, 'Legal Framework' in A Flanders and H Clegg (eds), *The System of Industrial Relations in Great Britain: its History, Law and Institutions* (Blackwell 1954).
[31] Schedule A1, Trade Union and Labour Relations (Consolidation) Act (TULR(C)A) 1992.
[32] s244(1) TULR(C)A 1992.
[33] C-67/96 Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie [1999] ECR I-5751.
[34] C-413/13FNV Kunsten Informatie en Media ECLI:EU:C:2014:2215.

not covered by the protection afforded by the Albany approach. These matters, concerning the legality of industrial action and collective bargaining for platform workers have yet to come before a court in the UK. Interestingly, the Taylor Review does make one specific recommendation in this respect, that is the expansion of the right to trigger Information and Consultation procedures in companies, which currently only applies in the case of 'employees' and requires a large level of initial support and only applies to relatively large companies. This would not address the more general issues discussed in this section regarding industrial action and collective bargaining, but might provide an indirect impetus for greater collective regulation of the platform economy, something which is currently almost entirely absent.

Conclusions and Lessons from the British Experience

As is the case in most jurisdictions, the emergence of the platform economy provides very specific challenges, both practical and intellectual, for labour law in the UK. However, these challenges have emerged alongside a series of parallel overlapping developments, some of which are connected to the digital economy and technology, while others are related to labour market trends of flexibilization and re-casualisation. The platform economy poses acute problems because it encapsulates many of these separate issues at the same time. The response of labour law in the United Kingdom has, in some ways, been characteristic of the employment policy trends in the country over the past four decades: a general acceptance of the industrial changes and their potential to selectively deregulate sections of the labour market. The anaemic response of the legislator has seen the courts take up their traditional and perhaps underestimated role within employment law: the continued development of the core unifying categories which define the scope and unitary core(s) of labour law. Given the heterogenous nature of the platform economy, this more broad-brush approach might be more appropriate than a naïve attempt to capture these new forms of work within a single definition which would quickly be transcended by evolving industrial practice. Whether the current categories are capable of application to the emerging models of capitalism remains to be seen: if current trends continue, this will depend on the dexterity of judges. The ability of platform workers themselves to impact upon this process will depend to some extent on these questions as well. While social mobilisation and industrial action depend on social power and organisation, the legal ability to negotiate and taken collective action would greatly improve the prospects of workers and their unions in this regard. The United Kingdom remains hostile to collective regulation of work in general, and *a fortiori* in the platform economy.

Platform Capitalism and the organisation of working practices through the use of platforms are inherently neutral towards employment status. However certain features of such platforms and their successful marketing and use make the externalisation of work more easily achievable within certain industries. While current categories are capable, through the use of a certain level of judicial creativity, of understanding many of these relationships as sufficiently similar to existing labour law categories to merit their inclusion under the auspices of labour law, the rather haphazard way in which this is currently being done in the British context brings home to futility of attempted to legislation or adjudicate in the context of shifting technologies which cut across working and business models in myriad ways. The platform economy is not, it would seem, something that can simply be 'regulated', whether through legislation or the judicial application of principle. In the case of the former, there is an attempt to regulate a 'moving target', leading to a capricious application of regulation, and a game of 'cat and mouse' between legislator and employers. In the case of the latter, the diversity of the platform economy itself means that judgments are relevant to their immediate facts only, at least in the short-term. For those labour law scholars who believe in the unity of labour law as a motor for doctrinal integrity and social justice, such realities are troubling.

This forces one to reflect on how unity can be imposed on an inherently fragmented set of technological and economic developments. The answer, it would appear to this author, is through a return to the social activism of the first great emergence of a unified labour law. Trade Unions, or similar organisations, must impose a contractual and economic unity upon the use of the platform economy to regulate work, not to stymie its use, but rather to harness its potentials within the context of the nurturing and structuring relationship of a stable contractual nexus between worker and employer, a basis upon which innovative and productive uses of platform technology can be used to provide innovative services which do not simply operate to compete through the undercutting of competitors through lower wage costs. Organised labour should not be thought of as solely functioning as a counterweight to capital within imbalanced relationships which are a nexus of risk and exploitation if left unchecked. Instead it should be understood as ensuring the coherence of its own role as organised *labour* by insisting upon the existence of stable relationships which are best characterised as contracts of employment or similar constructs. The search for elements such as 'control' within employment contracts has often reflected a deep need in the legal mind to find a parallel between the contract of employment's existence and its core term: the ability of the employer to direct the employee. In reality, labour law emerges as a unitary field also due to the counterveiling concern to insist upon such stable relationships, seeing the employment nexus as an institution upon which other social, economic and cultural goals can be achieved, both within the firm and within society more generally. In practical terms, this means that workers in the gig economy must be immune from anti-trust or competition law provisions, allowing them to engage in industrial action and, in turn, collective bargaining. This would allow for the emergence of a unity of working arrangements in the gig economy to emerge in an autopoietic and organic manner.