

INTRODUCTION:
CROWDSOURCING, THE GIG-ECONOMY AND THE LAW

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This special issue of the *Comparative Labor Law & Policy Journal* deals with the labor aspects of an emerging phenomenon that currently goes under a varied array of more or less catchy labels, such as the “gig-economy”, the “on demand economy”, the “sharing economy”, or the “1099 economy”, to name but the most popular. It is certainly a very “hip” topic at the moment, with related news making headlines almost every day and prompting an ever-increasing social and policy debate. This special issue aims to provide a comprehensive analytical overview of work in the gig-economy, and to test the validity of several assumptions underlying the general debate.

The articles published herein were presented during a special seminar held at the Wharton School of the University of Pennsylvania in November 2015; some of them had already been discussed during two special sessions of the *IV Regulating for Decent Work Conference*, at the International Labour Office, in Geneva, in July 2015. The choice of participants has been driven by the conviction that a meaningful examination of the labor issues raised by the gig-economy has to cover the vastest range of legal questions possible but also needs to be accompanied by a strong interdisciplinary analysis.

The contributions collected in this issue thus cover some key legal, economic, business, computer-science and sociological aspects of platform work. Despite their variety, however, all contributions are linked by several common threads. First, they attempt to balance an in-depth and specialized analysis with a general presentation of the subject, to meet the interest of both those who are well-versed in the topic as well as the novice reader.

The other feature they share is what, in Italian, we would call a *laico* approach. In Italian, we use the term *laico* (literally: “laic, secular”) to indicate an unprejudiced attitude. It is probably safe to say that the contributions to this special issue share a *laico* approach as they neither commit themselves to a doom-laden vision of the risks associated to gig-economy nor “buy” an unapologetic and gilded view of the opportunities it brings. The issue is not whether the gig-economy should exist or be banned but how do we ensure that workers have access to decent labor and social protection whilst engaging in platform work.

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For this to happen, the first requirement is to recognize fully that activities channeled or executed via platforms are work. In the first contribution to this special issue, *Valerio De Stefano* stresses how too often work in the gig-economy is concealed behind convenient catchwords like “gigs”, “tasks”, or “favors” whilst workers are labeled as “turkers”, “taskers”, or even “rabbits”: any sort of possible term, thus, but “work”, “labor” and “worker”. He argues that this could first foster a belittled perception of this work, one that could nourish the idea that these working activities do not, by definition, deserve to be considered from a labor regulation standpoint.¹ Moreover, it could lead to a dehumanized view of these workers,² something that could also have negative effects on the rates and reviews customers give to their work performance; poor reviews, in turn, could lead to the expulsion of the worker from the platform or prevent her from acceding to better-paid jobs.

The pervasiveness of rating and reviewing mechanisms is a chief issue in the analysis of the gig-economy, one that spans practically all the forms of platform-work. De Stefano also makes the argument for analyzing jointly the two main types of work in this realm, “crowdwork” and “work-on-demand via app”. In crowdwork, workers complete job tasks through online platforms, such as Amazon Mechanical Turk, Crowdfunder and Clickworker, which connect an indefinite number of organizations and individuals through the internet. In “work-on-demand via app”, traditional working activities like transport, cleaning and running errands are channeled through apps managed by firms like Uber, Taskrabbit and Handy, that also variously intervene in setting quality standards of service and in the selection and management of the workforce.

These forms of work present important differences, the most obvious being that crowdwork platforms chiefly operate online and can connect clients and workers from all over the world whilst “work-on-demand via app” regards activities that are channeled online but are executed in the “real” world and locally. Nonetheless, outlining a rigid dichotomy between these two forms of work is not convincing. The first reason is that they are multifaceted phenomena in themselves, since many differences exist also within each of these forms. Observing how tasks are adjudicated and paid, the nature of the assignments, and the ways fees and compensations are charged vary from platform to platform, *Antonio Aloisi* convincingly writes:

¹ Valerio De Stefano, *The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»*, 37 COMP. LAB. L. & POL'Y J. (2016). An early draft of this article is available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2682602.

² Andrew Callaway, *Apploitation in a city of instaserfs. How the «sharing economy» has turned San Francisco into a dystopia for the working class*, Canadian Centre for Policy Alternatives, Jan. 1, 2016, available at <https://www.policyalternatives.ca/publications/monitor/apploitation-city-instaserfs> (Apr. 20, 2016).

“not all crowdsourcing platforms are alike”.³ Indeed, using the words of *Jeremias Prassl & Martin Risak*, work in the gig-economy “should not be understood as a single unified phenomenon, let alone a novel category of work relationships calling for *sui generis* regulatory responses”.⁴

Many similarities, however, exist to justify their joint analysis. Indeed, some of the contributions in this issue, whilst remaining heedful of the profound differences characterizing forms of work in the gig-economy, refer to them under the sole term “crowdwork”. And certainly, the idea of distributing work to an indistinct “crowd” of operators instead of individually contracting it out to other businesses or independent contractors or producing through an internal workforce is a common feature in the gig-economy. Moreover, access to these crowds is in principle extremely quick as it is mediated by IT-devices that match the demand and supply of jobs almost instantly, abating transaction costs. Labor costs are also minimized. On the one hand, competition among workers in platforms is extremely high and, when it comes to virtual work, it also is global. Workers from developed and developing countries can compete over the fulfillment of a same task; this can materially drive compensations down. On the other hand, workers in the gig-economy are almost invariably classified as independent contractor and do not have but very limited access to labor protection. The result is that businesses and costumers do not normally bear costs like social security contributions, sick and maternity pay, and statutory minimum wages whilst workers in many cases risk being excluded from freedom of association and collective bargaining as well as protection against discrimination, since many jurisdiction reserve these fundamental rights to employees.⁵

Forms of work in the gig-economy, thus, seem to challenge the boundaries of labor and social protection and of the employment relationship: again, always being mindful of the profound differences existing between the various types of platform work, this is an element that connects many a contribution in this special issue and is a key question in the litigation examined by *Miriam Cherry* in her article⁶ (see below).

³ Antonio Aloisi, *Commoditized Workers. Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand/Gig Economy' Platforms*, 37 COMP. LAB. L. & POL'Y J. (2016). An early draft of this article is available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2637485.

⁴ Jeremias Prassl & Martin Risak, *Uber, Taskrabbit, & Co: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork*, 37 COMP. LAB. L. & POL'Y J. (2016). An early draft of this article is available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733003.

⁵ An extended version of my study published in this special issue, which addresses these questions in depth, has been published as V. De Stefano, *The rise of the «just-in-time workforce»: On-demand work, crowdwork and labour protection in the «gig-economy»*, Working Paper No. 71 (Geneva, ILO, 2015).

⁶ Miriam Cherry, *Beyond Misclassification: The Digital Transformation of Work*, 37 COMP. LAB. L. & POL'Y J. (2016). An early draft of this article is available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2734288.

In analyzing the various features of work relationships in the gig-economy, a preeminent role should be given to the issue of control of work performance and results. In most cases, such control is exerted via automated rating and review mechanisms that collect the feedbacks clients and customers give to every worker each time they receive services through platforms or apps. These mechanisms allow to screen and review workers continuously and facilitate the management and constant selection and re-selection of the workforce, permitting platforms to exclude “poor performers” by simply deactivating the profile of – and, therefore, terminating the relationship with – workers that fall below a certain average ratings. Platforms may also rank their operators on the basis of these ratings making it possible for customers to reserve jobs, in particular better-paid ones, only to some cohorts of workers. In many instances, this may amount to the same level and pervasiveness of control that other employers exert through the employment relationship, as pointed out in the articles of De Stefano and Aloisi as well as by Prassl & Risak in their functional analysis of the role of “employers” in platform work (discussed further below). Rating mechanisms can again abate transaction costs and lower the management costs of platforms by outsourcing key HR functions to their own customers; they can also be very convenient for the latter as they allow selecting the best workers on a given platform, even if this may require paying a premium price for acceding to the best pool of workers.

They also, of course, imply several downsides. Platforms and other customers risk relying on feedback provided by occasional and non-professional reviewers, a factor that can jeopardize the overall quality and reliability of the rating mechanism. It is, however, workers that bear the brunt of most of these shortcomings.

Customers, in particular occasional ones, may rate their global experience with an app or platform instead of assessing the individual performance of workers. Reviews might also be influenced by implicit and explicit bias and potentially imply discrimination.⁷ Furthermore, review mechanisms risk operating asymmetrically. Even when workers are allowed to provide feedbacks on clients, the potential negative impact of bad customers’ review on the possibility of continuing working, or acceding to better-paid jobs, on a given platform cannot be compared to the consequences of bad reviews for customers, particularly when workers depend on the platform for a substantial portion of their income or when they incurred in sunk or idiosyncratic costs to start working (e.g. by buying

⁷ Brishen Rogers, *The Social Costs of Uber*, University of Chicago Law Review Dialogue Forthcoming (January 31, 2015); Noah Zatz, *Beyond Misclassification: Gig Economy Discrimination Outside Employment Law*, On Labor, Jan. 19, 2016, available at <http://onlabor.org/2016/01/19/beyond-misclassification-gig-economy-discrimination-outside-employment-law/> (Apr. 20, 2016).

or leasing a car with the features necessary to accede to a particular platform). In some cases, moreover, workers are not provided with any possibility of rating clients.

This is the case, for instance, with Amazon Mechanical Turk (AMT), one of the leading crowdwork platforms, where customers are allowed to reject tasks already completed, and thus decline payment, without offering any explanation, whilst still retaining the work already done. This may firstly pave the way to opportunistic behaviors that can in some cases amount to outright wage theft. What is more, rejected works count as bad reviews for workers that may see their overall rating and ranking on the platform dropping, something that would cut them out from the ability to accept the best-paid tasks. In response to the asymmetric character of this rating system and to other recurrent complaints of workers in the AMT, in 2008, *Six Silberman & Lili Irani* founded *Turkopticon*, a system allowing workers to review requesters, “mainly along criteria of pay, pay speed, fairness of evaluation, and communication”. In their contribution to this special issue, Silberman and Irani first describe in detail the functioning of the AMT.⁸ They then explain how *Turkopticon* works, discussing data on the number of users and reviews. Creating and managing a system like *Turkopticon* is not always a bed of roses, Silberman and Irani report, as its administrators need sometimes to cope not only with potential opportunistic or aggressive behaviors from both workers and clients but also with a high concentration of power in their own hands, while ultimately managing the operation of a system devised to improve workplace democracy and workers’ voice in a very singular context.

As one of the first fora created in response to workers’ concerns in the gig-economy, the analysis of *Turkopticon* is very telling also with regard to other initiatives in the same direction, which are now flourishing both for online crowdwork and for “work-on-demand via app” executed in the physical world, some of which are discussed in the article of Aloisi. On the basis of their experience, Silberman & Irani address some “lessons” to stakeholders involved in the efforts to support “the development of worker power” in the gig-economy, which also offer numerous insights for scientific observers of social movements at large, by discussing the impact and functioning of reputation systems, the different forms under which labor platforms can be shaped, the issue of power concentration in managing platforms and more general cultural and research questions to be further explored.

⁸ Six Silberman & Lili Irani, *Operating an employer reputation system: lessons from Turkopticon*, 2008–2015, 37 COMP. LAB. L. & POL’Y J. (2016). An early draft of this article is available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2729498.

The issues posed by Silberman and Irani prompt other fundamental questions: Who are the crowdworkers? Why do they engage in crowdwork? How much do they earn? And, most importantly, what do they think about crowdworking? In her article, *Janine Berg* offers some first-hand answers to these questions. She reports the main results of a survey undertaken in November and December 2015 by the International Labour Office (ILO) of crowdworkers on the AMT and on Crowdfunder, another leading crowdwork platform.⁹ The survey, devised and managed by Berg, involved over 1,100 crowdworkers and provides data on the demographics of crowdworkers, their pay, their geographic location, the reasons why they crowdwork and their preference for this or for other forms of work. Berg also reports qualitative information and answers provided by crowdworkers, highlighting and discussing their main concerns on issues like the scarcity of work on platforms, difficult relationships and communication with clients, particularly newcomer ones, as well as inadequate feedback or abusive rejection of work.

This information, and other data emerging from the survey such as the number of workers for whom crowdwork is the main source of income, are used by Berg to question some of the most frequently recurring assumptions underlying debates of the gig-economy. Drawing insights from the survey, she critically revises the proposal of providing social protection via portable individual social security accounts and argues that restructuring some forms of crowdwork along the lines of traditional employment relationships and functioning piece-rate systems could bring security to workers whilst boosting efficiency and ensuring better control for businesses over the workers' performance. Results from the survey are also useful for debunking one of the pillars of the mainstream story-telling of the gig-economy: the "convenient rhetoric of pin money". Often, workers in the gig-economy are assumed to work for leisure or their activities are conceived as means for obtaining some "extra money" for secondary earners, not constituting "real work". Most interestingly, Berg reports, this rhetoric also surrounded the spread of short-term, part-time or temporary agency work from the 1960s. They were presented as forms of leisure for women and as means to involve them in the labor market. The same often happens with the gig-economy, where the narrative of secondary earnings is often used to invoke or justify disapplication of employment and social protection.¹⁰ Almost 40% of respondents to the survey answered that they

⁹ Janine Berg, *Income security in the on-demand economy: Findings and policy lessons from a survey of crowdworkers*, 37 COMP. LAB. L. & POLY J. (2016). An early version of this article is available on SSRN at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2740940.

¹⁰ For a discussion of this issue, see Noah Zatz, *Is Uber Wagging the Dog With Its Moonlighting Drivers?*, On Labor, Feb. 1, 2016, <http://onlabor.org/2016/02/01/is-uber-wagging-the-dog-with-its-moonlighting-drivers/> (Apr. 20, 2016).

crowdwork as their main source of income, with an additional 35% relying on crowdwork to complement pay from other jobs.

Similarities with other forms of contingent and non-standard work allow introducing another recurrent theme among several articles in the special issue: the relationship between forms of work in the gig-economy and other main labor market trends. De Stefano explicitly discusses another finding that spans several contributions: a warning against considering the gig-economy in isolation, as a sort of separate dimension in modern economies. He argues that forms of work in the gig-economy share several features with other contingent and non-standard forms of employment such as temporary and casual work and marginal part-time, feeding into a more general trend towards the casualization of labor markets in industrialized countries. There are also similarities with temporary agency work and other multiple-party arrangements, as most often workers, clients, and platforms are involved in triangular relationships at the very least, when these are not further complicated by the presence of additional intermediaries. And finally, disguised employment relationship and dependent self-employment are also prominent, since, as also discussed by Aloisi, Cherry, Finkin and Prassl & Risak, many arrangements in the gig-economy challenge the current boundaries of the employment relationship and labor protection, prompting some commentators to advocate the introduction of a specific intermediate category of “dependent contractors” or “independent workers” to whom to extend limited sets of labor rights, and issue that is stirring a substantial debate in the United States.¹¹ De Stefano critically discusses these proposals, drawing lessons from a comparative analysis of similar initiatives adopted in different countries to deal with new forms of work organization in the past, highlighting the risk of excluding some workers from the full extent of labor protection whilst not reducing complexities and uncertainties for businesses and workers and possibly spurring further litigation.

Litigation is indeed at the core of the first part of Miriam Cherry’s article. She offers a comprehensive overview of relevant judicial cases, from the landmark proceeding *O’Connor v. Uber*, whose tentative settlement is also discussed by Cherry, to lesser-known disputes, in some cases involving other behemoths in the gig-economy and beyond, such as Handy, Google and the Huffington Post. Cherry discusses similarities in these cases, often involving claims against the misclassification of employment relationships or the failure to compensate work executed

¹¹ See the proposal from Sett Harris & Alan Krueger, *A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The “Independent Worker”*, The Hamilton Project, Discussion Paper 2015-10 | December 2015 about creating an “independent worker” category to deal with platform work. For an in-depth response to this proposal, see Ross Eisenbrey & Lawrence Mishel, *Uber business model does not justify a new ‘independent worker’ category*, Employment Policy Institute, March 17, 2016.

online. She then offers a broader legal analysis, arguing that a profound “digital transformation of work” is occurring. She draws from the work of Katherine Van Wezel Stone,¹² who a decade ago outlined the differences between industrial work, characterized by narrowly-defined jobs, life-long job security and hierarchical supervision, and the “digital workplace”, based on broadly-defined tasks and projects, security through employability and bounded discretion mainly enforced by peers. Cherry shows how crowdwork departs from the features of digital work identified by Stone to revert to micro-tasking and automatic management and supervision, with almost no expectation of job-security, something that resembles more the industrial age in terms of the possibility for employers to manage and organize work and the pre-industrial age when it comes to the instability and casualness of work arrangements.

This parallelism offers a perfect match with the contribution of *Matt Finkin*. He discusses pre- and proto-industrial forms of business and work organization such as the “putting-out system” in the UK and the US and the *Verlagssystem* in continental Europe.¹³ Building upon both classic and modern economic history studies, Finkin stresses how, under particular conditions, systems of outsourcing tasks to individual production outside the workplace have endured until modern times in certain industries in developed countries. Although labor regulation has reached these forms of work through dedicated legislation and explicit extensions of protection, some benefits of this business organization may have nonetheless survived, such as the possibility of fragmenting the workforce and isolating workers, obstructing the emergence of solidarity, and abating sunk costs connected to the operation of a concentrated workplace. Of course, the putting-out system also implies downsides for employers, who may face difficulties in supervising a dispersed workforce operating outside the employers’ premises and thus lose overall control over the work organization. When these downsides outweigh potential benefits, employers may prefer to centralize production in concentrated workplaces, a trade-off that lies at the origin of the modern factory.¹⁴

In crowdwork, platforms and their customers could enjoy the advantages connected to the putting-out system, benefitting from lack of employment law coverage, social arbitrage linked to the global competition of crowdworkers in terms of compensation, obstructing worker solidarity and avoiding sunk costs. In contrast to the traditional putting-out system,

¹² Katherine V.W. Stone, *From Widgets to Digits* (2004).

¹³ Matthew Finkin, *Beclouded Work, Beclouded Workers* In *Historical Perspective*, 37 *COMP. LAB. L. & POLY J.* (2016). An early version of this article is available on SSRN at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2712722.

¹⁴ David Landes, *The Unbound Prometheus* (2d ed. 2003); David Landes, *What Do Bosses Really Do?* 46 *J. Econ. Hist.* 585 (1986); Stephen Marglin, *What Do Bosses Do? The Origins and Functions of Hierarchy in Capitalist Production*, 6 *Rev. Radical Pol. Econ.* 60, 102 (1974).

however, Finkin argues, they would maintain an enhanced possibility for work supervision, by recurring to forms of automatic management based on the rating mechanism discussed above, which allow outsourcing to a dispersed crowd of workers without losing substantial control over work.

The enhanced possibility of outsourcing production through platforms and shedding responsibilities to workers calls for innovative approaches relative to the distribution of risks, liabilities and protection along the production value chain. Answering this call is the aim of the article contributed by Jeremias Prassl & Martin Risak. They join Risak's legal analysis of crowdwork, a pioneering effort among civil lawyers,¹⁵ to the theoretical framework developed by Prassl in his 2015 monograph on *The Concept of the Employer*. The result is a de-composition and re-composition of such a concept in platform work, on the basis of a functional analysis that moves beyond the received monolithic notion of the employer and distributes managerial prerogatives, labor protection, risks and liabilities on a typological basis,¹⁶ following five major employer functions. Prassl & Risak test this analysis on two leading platforms in the gig-economy: the outcome of this analysis in terms of the resulting proposed distribution of entitlements and responsibilities varies according to the different practical functioning of the platforms, consistently with the authors' initial warning against a single unified conceptualization of work in the gig-economy.

This, as already said, is also one of the main issues discussed by Antonio Aloisi. His article moves from analyzing the model of the two most prominent businesses in crowdwork and "work-on-demand via app", AMT and Uber respectively, and then extend his analysis to other, less known, platforms. He pictures the complex and multifaceted character of work in the gig-economy in the framework of a detailed analysis of the most recent developments, spanning from current litigation to new trends in workers' and employers' organizations.

In doing so, his article conveniently closes this special issue as it touches upon most of the issues analyzed in depth by the other contributions.

The purpose of this Introduction has been to present some of the main themes emerging from these contribution by highlighting the common thread that links them to form what is hopefully a coherent global analysis of the many interlinked questions raised by work in the gig-economy in

¹⁵ Martin Risak & Johannes Warter, *Legal strategies towards fair conditions in the virtual sweatshop*, paper presented at the *IV Regulating for Decent Work Conference*, ILO, Geneva, July 8-10, 2015, available at <http://www.rdw2015.org/download> (Apr. 20, 2016).

¹⁶ Drawing on the work of Luca Nogler, *Die Typologisch-Funktionale Methode am Beispiel des Arbeitnehmerbegriffs* (2009) 10 ZESAR 459; see also L. Nogler, *Metodo tipologico e qualificazione dei rapporti di lavoro subordinato* (1990) *Giornale di Diritto del Lavoro e di Relazioni Industriali* 182.

terms of labor protection and organization. The gig-economy is here to stay, and many of the pages of its logbook are yet to be written. We hope this special issue may serve as a compass as we go forward, towards the direction of decent working conditions in, and a just development of, what will be seen as more than just a topical area for the future of work.

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