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# PLATFORM WORKERS AND COLLECTIVE LABOUR ACTION IN THE MODERN ECONOMY

Bethany Hastie\*

## Introduction

Work in the digital platform economy, such as for Uber, Lyft, Foodora, Door Dash, and other similar services, has given rise to substantial legal and scholarly attention in recent years. Like many other forms of work and employment, platform workers are often characterized as precarious. These workers face significant obstacles, both formal and practical, in accessing legal rights and protections related to their work. Scholars in general, and legal scholars in particular, have largely been preoccupied with the question of status or taxonomy for platform workers to date, unpacking and debating the question of whether platform workers are properly characterized as employees or independent contractors. While the question of taxonomy is important, as will be discussed in this article, it has largely deflected attention away from the multitude of strategies and avenues that platform workers can, and do, use to advance their labour interests regardless of their employment status. The current focus on taxonomy reveals a deeper concern for the challenges facing gig workers as workers, regardless of the status ascribed to them, and of the possibilities for innovative solutions to improve advance their interests beyond or outside of existing legislative regimes. While a variety of legislative and policy responses to regulating the platform economy have been explored,<sup>1</sup> this article examines how platform workers are

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<sup>1</sup> For a broader discussion of various regulatory responses that fall both within and outside of the debate on classification, see e.g. Maria Mexi, "Social Dialogue and the Governance of the Digital Platform Economy: Understanding Challenges, Shaping Opportunities", (Background paper for the ILO-AICESIS-CES Romania International Conference, 10-11 October 2019) at 7, online (pdf): *International Labour Organization* <[www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/meetingdocument/wcms\\_723431.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_723431.pdf)>, citing also: Molly Cohen & Arun Sundararajan, "Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy" (2015) 82 U Chicago L Rev Online 116; MaryAnne M Gobble, "Regulating Innovation in the New Economy" (2015) 58:2 *Research-Technology Management* 62; Seth D Harris & Alan B Krueger, "A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The 'Independent Worker'" (December 2015), online (pdf): *The Hamilton Project* <[www.hamiltonproject.org/assets/files/modernizing\\_labor\\_laws\\_for\\_twenty\\_first\\_century\\_work\\_krueger\\_harris.pdf](http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf)>; Kristin Jesnes, "Employment Models of Platform Companies in Norway: A Distinctive Approach?" (2019) 9:S6 *Nordic J Working Life Studies* 53; Christopher Koopman, Matthew Mitchell & Adam Thierer, "The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change" (2015) 8:2 *J Bus Entrepreneurship & L* 529; Stephen R Miller, "First Principles for Regulating the Sharing Economy" (2016) 53:1 *Harv J on Legis* 147; Sofia Ranchordas, "Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy" (2015) 16:1 *Minn J L Sci & Tech* 413; Andrew Stewart & Jim Stanford,

engaging in various forms of collective labour action to directly advance their needs and interests outside of, or in furtherance of, formal regulation and response by government and business actors.

This article surveys existing efforts by platform workers to collectively organize and advance their labour interests, with a view to improving their working rights and conditions. After reviewing the status of platform workers, the challenges and contours of their work, and the needs and interests that may be served through collective labour action in Section I, this article describes and comments on identified forms of collective labour action undertaken by platform workers across a number of jurisdictions in Section II. As this article discusses, collective labour action, in its many modalities, both formal and informal, creates a context in which the traditional legal debates regarding the status of the worker become less important, focusing instead on the actual needs, interests, rights and conditions of work at issue. Collective labour action, as a tool for improving workplace rights and conditions, as well as a political strategy, also creates greater space for the participation and voice of workers. The rich and diverse forms of collective labour action undertaken by platform workers provide both illustrations and lessons that can be drawn for workers in other precarious industries and jobs, and more broadly in considering the future of labour law in a modern economy increasingly characterized by work outside of traditional direct employment, a discussion taken up in Section III. This article thus sets a descriptive foundation for further dialogue on the future of labour law in the modern economy, both for platform workers and the many other, and growing, populations of workers falling outside of traditional labour and employment protections.

## **I. Mapping the Landscape of Platform Work**

Platform work has given rise to a substantial body of literature, litigation, and legislation, concerned with classifying platform workers for the purposes of labour and employment law. This debate has largely focused on determining whether workers are ‘employees’, and thus entitled to existing rights and protections afforded in domestic labour and employment law, or ‘independent contractors’ who fall outside the purview of legal regulation of employment.<sup>2</sup> The implications of this question of status are clear; workers who are employees have the benefit of access to rights, such as minimum wage, and protections, such as in relation to health and safety, and against unjust dismissal. Workers who are not employees, but independent contractors,

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“Regulating Work in the Gig Economy: What Are the Options?” (2017) 28:3 *Economic & Labour Relations Rev* 420.

<sup>2</sup> See e.g. Jeremias Prassl & Martin Risak, “Uber, Taskrabbit, & Co.: Platforms as Employers? Rethinking the Legal Analysis of Crowdwork” (2016) 37:3 *Comp Lab L & Pol’y J* 619; Guy Davidov, “The Status of Uber Drivers: A Purposive Approach” (2017) 6:1/2 *Spanish Labour L & Employment Relations J* 6; Robert Sprague, “Worker (Mis)Classification in the Sharing Economy: Trying to Fit Square Pegs into Round Holes” (2015) 31:1 *ABA J Labor & Employment L* 53; Abi Adams, Judith Freedman & Jeremias Prassl, “Rethinking Legal Taxonomies for the Gig Economy” (2018) 34:3 *Oxford Rev Economic Policy* 475; Emily C Atmore, “Killing the Goose That Laid the Golden Egg: Outdated Employment Laws Are Destroying the Gig Economy” (2017) 102:2 *Minn L Rev* 887.

receive no rights or protections under employment law and are thus required to negotiate their working conditions directly with their ‘clients’. The status question also relates directly to efforts to unionize amongst platform workers.

Most jurisdictions, including Canada, historically developed legal tests to determine whether a worker is an employee or independent contractor. These tests often look to a variety of factors with a view to ascertaining the extent of control exerted over the worker and their working conditions. Factors typically include: who owns the tools of the trade; whether the worker has a uniform; whether the worker can set their own schedule or hours of work; and, others.<sup>3</sup> Platform work poses obvious challenges in attempting to use such factors as a basis for categorization. While platform workers typically “own the tools of the trade” (their vehicles or bicycles),<sup>4</sup> the extent of control that the companies may exert over working conditions, hours, future work prospects, and wages, is significant.<sup>5</sup> As such, a nuanced application of historical employment tests under law produces a less-than-clear, and contestable, result for platform workers.

Recent recognition of the growing number of workers in various industries who are neither clearly employees nor independent contractors has given way to new categories of workers, such as “dependent contractor”, in some jurisdictions. For example, Ontario recognizes the category of “dependent contractor”, which it defines as: “non-employment work relationships that exhibit a certain minimum economic

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<sup>3</sup> In Canada, the leading authority is *671122 Ontario Ltd v Sagaz Industries Canada Inc*, 2001 SCC 59, which summarizes the various tests and criteria historically adopted in Canada at paras 35–47. In California, the recent decision in *Dynamex Operations West, Inc v Superior Court of Los Angeles*, 4 Cal (5th) 903 (2018) rejected the historical *Borello* test used to determine whether workers were employees or independent contractors, which had, similar to the Canadian approach, emphasized the extent of control over working conditions, as well as other factors such as ownership of equipment, opportunity for profit and loss, and the belief of the parties. The California Supreme Court in *Dynamex* adopted a new “ABC test” that begins from a rebuttable presumption that the worker is an employee.

<sup>4</sup> But see *Canadian Union of Postal Workers v Foodora Inc dba Foodora* (2020), CanLII 16750 at paras 92–99, 2020 CLLC 220-032 (OLRB) [*Foodora*], which characterizes the app (technology) as the essential tool of the trade, and which is owned and maintained by the enterprise.

<sup>5</sup> A number of jurisdictions are currently considering, or have already made judicial pronouncements, on this question. See Jeremias Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (London, UK: Oxford University Press, 2018) at 11; “Employment status of platform workers (national courts decisions overview—Argentina, Australia, Belgium, Brazil, Canada, Chile, France, Germany, Italy, Nederland, Panama, Spain, Switzerland, United Kingdom, United States & Uruguay)” (8 December 2018), online (blog): *Una Mirada Crítica a Las Relaciones Laborales* <[ignasibeltran.com/2018/12/09/employment-status-of-platform-workers-national-courts-decisions-overview-australia-brazil-chile-france-italy-united-kingdom-united-states-spain/](http://ignasibeltran.com/2018/12/09/employment-status-of-platform-workers-national-courts-decisions-overview-australia-brazil-chile-france-italy-united-kingdom-united-states-spain/)> cited in Mexi, *supra* note 1 at 6, n 4; Hilary Osborne, “Uber Loses Right to Classify UK Drivers as Self-Employed”, *The Guardian* (28 October 2016), online: <[www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status](http://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status)>. Conversely, relevant bodies in both US and Australia have declared Uber drivers to be independent contractors; see Daniel Wiessner, “Uber drivers are contractors, not employees, U.S. labor agency says”, *Reuters* (14 May 2019), online: <[www.reuters.com/article/us-uber-contractors/uber-drivers-are-contractors-not-employees-us-labor-agency-says-idUSKCN1SK2FY](http://www.reuters.com/article/us-uber-contractors/uber-drivers-are-contractors-not-employees-us-labor-agency-says-idUSKCN1SK2FY)>; Paul Karp, “Uber drivers are not employees, Fair Work Ombudsman rules”, *The Guardian* (7 June 2019), online: <[www.theguardian.com/technology/2019/jun/07/uber-drivers-are-not-employees-fair-work-ombudsman-rules](http://www.theguardian.com/technology/2019/jun/07/uber-drivers-are-not-employees-fair-work-ombudsman-rules)>.

dependency, which may be demonstrated by complete or near-complete exclusivity.”<sup>6</sup> Recently, the Ontario Labour Board ruled that Foodora workers are dependent contractors, a category which, under the Ontario *Labour Relations Act*, extends with it a right to form a union and collectively bargain with the enterprise.<sup>7</sup> These intermediary categories aim to reflect new forms of working relationships that are characterized by degrees of dependence and control, and yet over which workers also exercise control and autonomy. Despite these new categories, where they exist, issues remain in classifying platform workers. Overall, the question of employment status does not resolve the issues facing platform workers in relation to their labour rights and interests.

As with many other forms of precarious work, workers in the platform economy are said to face varying levels of exploitation associated with their work. Concerns regarding wages, health and safety, and access to legal remedies are commonly documented.<sup>8</sup> Scholars engaged in the classification debate largely see the solution to exploitation as expanding current legal definitions of employment to encompass platform workers. Some scholars have focused attention on the underlying normative criteria that employment tests might focus more substantially on, such as subordination,<sup>9</sup> while other approaches have argued for the creation of intermediary categories between employee and independent contractor.<sup>10</sup> Yet others have argued for a radical shift away from classification under employment law, advocating for the extension of a set of core rights and protections for all forms and modes of work.<sup>11</sup>

The debate about status has likely been a focal point in existing scholarship precisely because of its assumed consequences in extending labour rights, as mentioned above. If platform workers are employees, they are subsumed under

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<sup>6</sup> *McKee v Reid's Heritage Homes Ltd*, 2009 ONCA 916 at para 30.

<sup>7</sup> *Foodora*, *supra* note 4 at paras 77–79.

<sup>8</sup> See e.g. Global Commission on the Future of Work, *Work for a Brighter Future*, ILO, (2019) at 44, cited in Mexi, *supra* note 1 at 1. See also Miriam A Cherry, “Beyond Misclassification: The Digital Transformation of Work” (2016) 37:3 *Comp Lab L & Pol’y J* 577 [Cherry, “Digital Transformation”]; Miriam A Cherry, “People Analytics and Invisible Labor” (2016) 61:1 *Saint Louis ULJ* 1, cited in Mexi, *supra* note 1 at 9.

<sup>9</sup> See e.g. Emmanuel Dockès, “New trade union strategies for new forms of employment” (2019) 10:3 *European Labour LJ* 219 at 221.

<sup>10</sup> See e.g. Seth Harris & Alan Krueger, “A Proposal for Modernizing Labor Laws for Twenty-First Century Work: The ‘Independent Worker’” (December 2015), online (pdf): *The Hamilton Project* <[www.hamiltonproject.org/assets/files/modernizing\\_labor\\_laws\\_for\\_twenty\\_first\\_century\\_work\\_krueger\\_harris.pdf](http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf)>; George A Green, “Employment Law and the Emerging Notion of The Dependent Contractor”, *Mondaq* (14 November 2018), online: <[www.mondaq.com/canada/employee-rights-labour-relations/754750/employment-law-and-the-emerging-notion-of-the-dependent-contractor](http://www.mondaq.com/canada/employee-rights-labour-relations/754750/employment-law-and-the-emerging-notion-of-the-dependent-contractor)>.

<sup>11</sup> Hugh Collins, “A Missed Opportunity of a Unified Test for Employment Status” (31 July 2018), online (blog): *UK Labour Law* <[uklabourlawblog.com/2018/07/31/a-missed-opportunity-of-a-unified-test-for-employment-status-hugh-collins/](http://uklabourlawblog.com/2018/07/31/a-missed-opportunity-of-a-unified-test-for-employment-status-hugh-collins/)>; Cherry, “Digital Transformation”, *supra* note 8; Eva Grosheide & Mark Barenberg, “Minimum Fees for the Self-Employed: A European Response to the ‘Uber-ized’ Economy?” (2016) 22:2 *Colum J Eur L* 193.

existing labour and employment legislation; if not, they fall wholly outside of it.<sup>12</sup> Yet, regardless of their legal status, platform workers suffer from a lack of clear access to legal rights and protections, as well as from isolation, which may work independently and in concert to facilitate circumstances in which workers' labour is exploited. The focus on status or taxonomy neglects to account for the difficulties in accessing rights in practice, even where they are extended on paper.

This evidences an underlying core concern about the material working conditions of platform workers, regardless of their legally defined status.<sup>13</sup> Indeed, the precariousness of working conditions for platform workers is increasingly documented, as are some of the negative consequences that can be associated with such work. While the debate concerning status has obvious merit and urgency, it has, in some way, deflected attention from a deeper discussion of the labour needs and interests of workers that might be served through alternative forms of collective labour action.

Many of the features of platform work are simply a new instantiation of enduring labour precariousness: the casual or on-call nature of the working hours, minimal wages, lack of clear safety protections, and others.<sup>14</sup> These reflect a general trend associated with neoliberalism away from standard employment, characterized by full-time permanent work, towards labour fragmentation and piece-work, facilitated through short-term contracts.<sup>15</sup> This shift in the construction of labour markets is evidenced by the shedding of legal liability for labour and employment laws by enterprises, the transfer of risk from employer to worker, and often, consequential

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<sup>12</sup> Though workers may still be covered by, for example, occupational health and safety regulations, anti-discrimination law, and other related areas of law that regulate work and workplaces.

<sup>13</sup> Although status may be significant in determining, for example, formal access to unionization under domestic laws. See e.g. Mexi, *supra* note 1 at 6: "The right to collective bargaining for self-employed workers is the object of legal discussion, as it is often considered in breach of competition law by national antitrust authorities, given that this is considered "price fixing" harming consumer welfare", citing also Antonio Aloisi, "Negotiating the Digital Transformation of Work: Non-Standard Workers' Voice, Collective Rights and Mobilisation Practices in the Platform Economy" (2019) European University Institute MWP Working Paper No 2019/03; Hannah Johnston & Christopher Land-Kazlauskas, "Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy" (2019) International Labour Organization Working Paper Conditions of Work and Employment Series No 94.

<sup>14</sup> See Stewart & Stanford, *supra* note 1 at 428–30; Mexi, *supra* note 1 at 1. Similar issues are noted for a growing number of workers falling outside of traditional direct-employment relationships; See Judy Fudge, Eric Tucker & Leah Vosko, "Employee or Independent Contractor? Charting the Legal Significance of the Distinction in Canada" (2003) 10 CLEJ 193; Guy Davidov, "The Three Axes of Employment Relationships: A Characterization of Workers in Need of Protection" (2002) 52:4 UTLJ 357 [Davidov, "Characterization of Workers"]; Bethany Hastie, "Human Rights and Precarious Workplaces: A Comment on *British Columbia Human Rights Tribunal v Schrenk*" (2019) 52:1 UBC L Rev 169 [Hastie, "Precarious Workplaces"].

<sup>15</sup> Austin Zwick, "Welcome to the Gig Economy: Neoliberal Industrial Relations in the Case of Uber" (2018) 83:4 GeoJournal 679. See also Jim Stanford, "The Resurgence of Gig Work: Historical and Theoretical Perspectives" (2017) 28:3 Economic & Labour Relations Rev 382.

economic benefits passed onto the consumer.<sup>16</sup> These are each hallmarks of platform work, though they are not unique to this kind of work.

Yet, there are features of platform work—or, at least, its representation—that are distinct in understanding the labour issues surrounding platform work, and which, in turn, produce distinct consequences for platform workers. The emphasis placed on technology—both in affirming and disruptive discourses about platform work—is of particular significance. Specifically, the role of the intermediary platform (or ‘employer’) has been especially obfuscated. This obfuscation is an essential component to the financial success of the platform economy and, relatedly, to the illusion of its operation outside of the bounds of labour law.<sup>17</sup> The technological core of platform work is presented as merely a passive instrument through which workers can connect directly with their clients, or purchasers of goods.<sup>18</sup> As a result, the technological core of platform work operates in a distinct way to obscure the very existence of the work as regulated labour, to the benefit of the enterprise (or ‘employer’) and, arguably, consumer.

As existing scholarship has demonstrated, technology in this arena further functions to solidify aspects of precariousness of platform work.<sup>19</sup> In particular, technology both enables greater surveillance of workers, while also isolating them, each of which entrenches precariousness in specific ways. The level of flexibility and freedom offered for work available through digital platforms is often cited as a draw for platform workers. However, “technology, in fact, acts more as an enabler of management than an emancipator” in these contexts.<sup>20</sup> For example, the extent to which platform-based work enables surveillance and tracking activities, such as in relation to acceptance rates, has been noted as a cause of distinct stress for platform workers as compared with more traditional forms of employment or work.<sup>21</sup> This entrenches the precariousness of the work both through the minute tracking of worker activities and through the consequential stress and negative impact on well-being to workers.

Technology further functions in the context of platform work to create an acutely isolated and autonomous labour pool. The nature of platform work is such that

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<sup>16</sup> Zwick, *supra* note 15 at 681–82.

<sup>17</sup> Mark Freedland, “New Trade Union Strategies for New Forms of Employment - A Brief Analytical and Normative Foreword” (2019) 10:3 *European Labour LJ* 179 at 181–82. See also Ian Fitzgerald, Jane Hardy & Miguel Martinez Lucio, “The Internet, Employment and Polish Migrant Workers: Communication, Activism and Competition in the New Organisational Spaces” (2012) 27:2 *New Technology, Work & Employment* 93, cited in Mexi, *supra* note 1 at 9.

<sup>18</sup> Stanford, *supra* note 15.

<sup>19</sup> See e.g. Prassl, *supra* note 5.

<sup>20</sup> Nicola Countouris, Valerio De Stefano & Mark Freedland, “Preface to the ELLJ Special Issue: ‘Testing the “Person Work” Relation: New Trade Union Strategies for New Forms of Employment’” (2019) 10:3 *European Labour LJ* 175 at 176.

<sup>21</sup> Uttam Bajwa et al, “The Health of Workers in the Global Gig Economy” (2018) 14:124 *Globalization & Health* 1.

the work takes place in unfixed locations, during inconsistent times, with little or no physical workspace or opportunity to interact with other workers or with the company they work for.<sup>22</sup> While the independence and flexibility associated with these characteristics of platform work is often cited as a benefit or advantage of this form of work,<sup>23</sup> the resulting social isolation can negatively impact a worker's sense of well-being. Moreover, the extent of isolation and fragmentation of this workforce affects access to important avenues through which they might mediate their working relationship, interests and concerns. Without the opportunity for interaction with similarly situated individuals (other workers), platform workers do not benefit from clear or direct access points to seek advice on problems associated with their tasks or working conditions, or to gather information about their legal rights and protections.<sup>24</sup> Further, without clear communication channels to other workers, platform workers are inhibited from collectivization and collaboration.<sup>25</sup> This poses a unique challenge for platform workers, as collective labour action has historically been seen as an important tool through which workers can advance their interests.

Collective action, in particular, can provide platform workers, as it does with other workers, an avenue through which they can work towards materially improving their working conditions and interests. This may include items such as working hours, wages, surveillance and tracking systems, expectations concerning acceptance rates, health and safety conditions, and others. Importantly, collective action provides a means through which to raise awareness of and directly bargain about such conditions, potentially regardless of employment status, allowing platform workers to move past the status debate in order to advance their labour interests directly. The next section takes up a direct examination of forms of collective labour action that platform workers have engaged in, with a view to understanding the promise and potential of collective labour action in furthering the interests and needs of platform workers outside of the confines of existing labour and employment law regimes.

## II. Collective Action and Labour Organizing Among Platform Workers

Despite the noted difficulties and barriers that platform workers face, as discussed in the previous section, a growing number of case studies illustrate the innovative approaches workers are using to collectively organize and advance their labour

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<sup>22</sup> See e.g. Mexi, *supra* note 1 at 9.

<sup>23</sup> See e.g. Elise Taylor, *Isolated with Friends: Online Communities in the Gig Economy* (Masters Dissertation, Northeastern Illinois University, 2017) [unpublished] at 15.

<sup>24</sup> Juliet Webster, "Microworkers of the Gig Economy: Separate and Precarious" (2016) 25:3 New Labor Forum 56.

<sup>25</sup> See e.g. Alex Wood, Vili Lehdonvirta & Mark Graham, "Workers of the Internet Unite? Online Freelancer Organization Among Remote Gig Economy Workers in Six Asian and African Countries" (2018) 33:2 New Technology, Work & Employment 95 at 97–98.

interests outside of formal unionization,<sup>26</sup> and the promise that such approaches may hold in that regard. This section outlines and describes various approaches to collective labour action that platform workers have used, and how these may provide effective avenues through which to respond to the issues, needs and challenges they face. These include informal collectivization through the creation and proliferation of communication channels, union affiliation, union creation, cooperative ownership, and localized legislative responses.

In its most informal instantiation, collective labour action by platform workers has included the creation and use of communication channels as a means to connect with other workers, as well as public protests as a vehicle through which to convey a shared message to a broader audience. Public protests and demonstrations can function as a platform for workers to advance their labour interests, and increase the visibility of the workforce and the ongoing issues it faces. For example, numerous large-scale protests by Indonesian app-based drivers during 2016-2017 resulted in widespread media attention and invitation to talks with both legislators and companies.<sup>27</sup> Similarly, app-based couriers in Italy engaged in large-scale protests against Foodora in an effort to improve the wage structure associated with their work.<sup>28</sup> Workers have further organized strikes and boycotts in the delivery sector, such as through “logging out en masse from apps that allocate work shifts”.<sup>29</sup>

Platform workers have also created and utilized communication channels as a vehicle for internal discussion, dialogue and collaboration. These channels, also called “mass self-communication networks”,<sup>30</sup> provide workers with an important avenue through which to connect with other workers, discuss dissatisfaction with their employer and working conditions, and brainstorm solutions for the future.<sup>31</sup> Communication channels can also be used to externally advocate for better conditions directly with consumers. In the United States, “Turkopticon, an online community of

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<sup>26</sup> Access to which will be shaped directly by whether such workers are understood as employees or independent contractors, and by the statutory language defining application of the relevant legislation, as discussed in section I.

<sup>27</sup> Michele Ford & Vivian Honan, “The Limits of Mutual Aid: Emerging Forms of Collectivity Among App-based Transport Workers in Indonesia” (2019) 61:4 J Industrial Relations 528 at 541.

<sup>28</sup> Arianna Tassinari & Vincenzo Maccarrone, “The Mobilization of Gig Economy Couriers in Italy: Some Lessons for the Trade Union Movement” (2017) 23:3 Transfer 353.

<sup>29</sup> Mexi, *supra* note 1 at 11, citing Anthony Forsyth, “Prova di Solidarietà: How Effectively are Unions and Emerging Collective Worker Representatives Responding to New Business Models in Australia and Italy?” (Paper for the 17th International Conference in Commemoration of Prof Marco Biagi, Modena, 18-20 March 2019).

<sup>30</sup> Alex Wood, “Networks of Injustice and Worker Mobilisation at Walmart” (2015) 46:4 Industrial Relations J 259.

<sup>31</sup> *Ibid.* See also Kurt Vandaele, “Will trade unions survive in the platform economy? Emerging patterns of platform workers’ collective voice and representation in Europe” (2018) European Trade Union Institute Working Paper No 2018/05; Mexi, *supra* note 1 at 11, citing Michele Forlivesi, “Alla ricerca di tutele collettive per i lavoratori digitali: per i lavoratori digitali: organizzazione, rappresentanza, contrattazione [Looking for Collective Protection for Digital Workers: Organization, Representation, Bargaining]” (2018) 4:1 Labour & L Issues 35.

Mechanical Turk platform digiworkers, created a web platform called “Dynamo” that focuses specifically on building collective action”.<sup>32</sup> Dynamo has engaged in a sustained campaign involving the publication of guidelines on fair pay, for example.<sup>33</sup>

These forms of collective labour action can do some work to break down the barriers associated with isolation and fragmentation of this workforce, as discussed in the previous section. In particular, public protests and demonstrations function to connect workers with a broader audience or set of stakeholders, making visible a workforce that is largely rendered invisible through the discourse of consumerism that dominates the public sphere. The increased visibility, itself, is said to be a benefit regardless of whether such demonstrations effect material change in the short-term.<sup>34</sup> Relatedly, the creation and use of communication channels amongst workers provides the opportunity for interaction, problem-solving and advice-seeking in relation to their working conditions. Of particular importance with regards to the “self-communication networks”, these provide a means through which workers can “[boost] their associational power” and undertake further or more formal labour organizing with a view to advancing their labour interests.<sup>35</sup>

Building on the foundation that may be created through communication networks and public demonstrations, platform workers in some cases have also directly engaged with trade unions in order to advance their labour interests. In some cases, workers are engaged with unions directly with the end-goal of formal unionization in mind. Unions are providing legal support for platform workers challenging their working conditions, employment status, and ability to formally organize a union, through litigation. For example, in Canada, ongoing legal disputes with Foodora and Uber are being supported by the Ontario Federation of Labour, as well as Canadian Union of Postal Workers.<sup>36</sup> However, beyond this core role, unions are engaging with platform workers in a variety of informal ways. For example, in some cases, workers are engaged in “union-affiliated” relationships where established

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<sup>32</sup> Mexi, *supra* note 1 at 11, citing Birgitta Bergvall-Kåreborn & Debra Howcroft, “Amazon Mechanical Turk and the Commodification of Labour” (2014) 29:3 *New Technology, Work & Employment* 213.

<sup>33</sup> Mexi, *supra* note 1 at 11, citing Niloufar Salehi et al, “We Are Dynamo: Overcoming Stalling and Friction in Collective Action for Crowd Workers” (Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems, Seoul, Republic of Korea, 18-23 April 2015), online (pdf): *Stanford University* <[hci.stanford.edu/publications/2015/dynamo/DynamoCHI2015.pdf](http://hci.stanford.edu/publications/2015/dynamo/DynamoCHI2015.pdf)>.

<sup>34</sup> Riccardo Emilio Chesta, Lorenzo Zamponi & Carlotta Caciagli, “Labour Activism and Social Movement Unionism in the Gig Economy. Food Delivery Workers Struggles in Italy” (2019) 12:3 *Partecipazione e Conflitto* 819.

<sup>35</sup> Vandaele, *supra* note 31 at 16.

<sup>36</sup> See “Union Presidents Support Gig Workers’ Fight for Employee Rights”, *Canadian HR Reporter* (8 November 2019), online: <[www.hrreporter.com/labour/news/union-presidents-support-gig-workers-fight-for-employee-rights/322363](http://www.hrreporter.com/labour/news/union-presidents-support-gig-workers-fight-for-employee-rights/322363)> [“Gig Workers’ Fight for Employee Rights”]; “Unionizing The Gig Economy: Contractor Or Employee?” (7 November 2019), online: *Fasken, The HR Space* <[www.fasken.com/en/knowledge/2019/11/hr-space-unionizing-the-gig-economy-independent-contractor-or-employee/](http://www.fasken.com/en/knowledge/2019/11/hr-space-unionizing-the-gig-economy-independent-contractor-or-employee/)> [“Unionizing the Gig Economy”]. As mentioned in the previous section, Foodora workers have now been recognized as dependent contractors, enabling them to form a union under Ontario’s *Labour Relations Act: Foodora*, *supra* note 4.

unions are able to offer counselling and resources, as well as support for grassroots organization among platform workers.<sup>37</sup>

In Europe, existing unions in several countries have made effort to adapt and extend their member-base to include platform workers.<sup>38</sup> These have included inclusion of platform workers within existing collective agreements,<sup>39</sup> partnerships with platform workers,<sup>40</sup> as well as supporting the creation of websites for workers to “rate the working conditions of different platforms”, advocate for working conditions and wages, and connect workers with existing unions.<sup>41</sup> For example, in Denmark, a first collective agreement on platform work was signed in 2018 between a platform for cleaning services, Hilfr, and Danish trade union 3F.<sup>42</sup> That agreement introduces a new category of worker, “Super Hilfrs”, which attracts increased minimum hourly wages and allows workers to accrue rights to pensions, holiday, and sick pay.<sup>43</sup> Workers are eligible to become a “Super Hilfr” after 100 hours of work, and the regime is opt-out, meaning that workers will automatically be included unless they specifically object.<sup>44</sup>

Established unions, with existing expertise and resources, offer an important support and avenue through which platform workers can collectively organize to advance their labour interests through both formal and informal channels. Such strategies are not new for unions, who have been increasingly present in similar ways in a number of precarious industries and with various populations of precarious workers. For example, a number of unions in Canada and internationally have been engaged, both formally and informally, with migrant workers in agriculture and other industries, supporting unionization as well as broader advocacy and support efforts for these workers.<sup>45</sup> As formal unionization has declined across a number of labour sectors

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<sup>37</sup> “Gig Workers’ Fight for Employee Rights”, *supra* note 36; “Unionizing the Gig Economy”, *supra* note 36.

<sup>38</sup> See Mexi, *supra* note 1 at 13, citing Maarten Keune, “Trade Unions, Precarious Work and Dualisation in Europe” in Werner Eichhorst & Paul Marx, eds, *Non-Standard Employment in Post-Industrial Labour Markets: An Occupational Perspective* (Cheltenham: Edward Elgar, 2015) 378; Organisation for Economic Co-operation and Development, *In It Together: Why Less Inequality Benefits All* (Paris: OECD, 2015).

<sup>39</sup> In the Italian logistics sector, for example. See Mexi, *supra* note 1 at 15.

<sup>40</sup> See e.g. Osborne, *supra* note 5.

<sup>41</sup> Mexi, *supra* note 1 at 13.

<sup>42</sup> *Ibid* at 15.

<sup>43</sup> *Ibid*.

<sup>44</sup> *Ibid*.

<sup>45</sup> Regarding agricultural workers, see Bethany Hastie, “Renewing Labour’s Engagement with Old Forms of Precarity: A Case Study of Unionization of Migrant Agricultural Workers in British Columbia” (2019) 49:1 *Labour, Capital & Society* 28; Tanya Basok & Ana Lopez-Sala, “Rights and Restrictions: Temporary Agricultural Migrants and Trade Unions’ Activism in Canada and Spain” (2016) 17:4 *J Intl Migration & Integration* 1271. For broader discussions concerning migrant workers and union revitalization, see e.g. Maite Tapia & Gabriella Alberti, “Social Movement Unionism: A Toolkit of Tactics or a Strategic Orientation? A Critical Assessment in the Field of Migrant Workers Campaigns” in Jurgen Grote & Claudius Wagemann, eds, *Social Movements and Organized Labour: Passions and Interests* (London, UK:

in past decades, these kinds of activities by trade union organizations are being documented and analyzed as a form of “union revitalisation” across a number of jurisdictions.<sup>46</sup>

New unions and worker organizations are also being created across a variety of jurisdictions specifically for platform workers. For example, in Austria, Foodora workers created Betriebsrat with the support of an existing union, while in the United States, both Seattle and California have App-Based Drivers Associations.<sup>47</sup> New guilds are further emerging in Europe, including “the Collectif Livreurs Autonomes de Paris, the German Deliverunion, the Italian Deliverance Milano, and the Dutch Riders Union with the aim to mobilize food couriers and Uber drivers, while also seeking to establish collective bargaining and social dialogue in the platform economy”.<sup>48</sup> The creation of targeted associations and worker organizations can allow platform workers to connect with other workers, and provide a basis for targeted and concerted labour action, such as public awareness and advocacy campaigns, and direct bargaining for working conditions, applicability of legislation, and other significant topics.

Some platform worker collectives are taking steps to compete directly with existing companies like Uber and Foodora through the creation of co-operative ownership models. Worker-owned enterprises allow platform workers to “share risks and benefits and negotiate better contracts, while being in a position to impact decision-making on how the platform is organized and managed”.<sup>49</sup> The extent of control and direction that worker-owners may have under this model provides a clear avenue for improving labour conditions and interests. ‘Worker-owned’ platforms have surfaced in a variety of jurisdictions and contexts, including: Up & Go, a New York City-based home cleaning app designed and owned by immigrant Latin American workers;<sup>50</sup> Mensakas, a Barcelona-based delivery app started by two former Deliveroo drivers;<sup>51</sup> Eva, a Montreal-based Uber-like app that provides drivers with voting rights and shares in corporate profits;<sup>52</sup> Fairmondo, a competition with Amazon and Ebay,

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Routledge, 2018); Richard Hyman & Rebecca Gumbrell-McCormick, “Resisting Labour Market Insecurity: Old and New Actors, Rivals or Allies?” (2017) 59:4 J Industrial Relations 538.

<sup>46</sup> Christian Lyhne Ibsen & Maite Tapia, “Trade Union Revitalisation: Where Are We Now? Where to Next?” (2017) 59:2 J Industrial Relations 170.

<sup>47</sup> Mexi, *supra* note 1 at 11–12.

<sup>48</sup> *Ibid* at 12.

<sup>49</sup> *Ibid* at 14 citing Trebor Scholz, “Platform Cooperativism vs. the Sharing Economy” (5 December 2014) online: *Medium* <[medium.com/@trebors/platform-cooperativism-vs-the-sharing-economy-2ea737f1b5ad](https://medium.com/@trebors/platform-cooperativism-vs-the-sharing-economy-2ea737f1b5ad)>; Simel Esim & Walteri Katajamaki, “Rediscovering Worker Cooperatives in a Changing World of Work” (2017) 1 IUSLabor 1.

<sup>50</sup> Ryan Hayes, “Worker-Owned Apps Are Trying to Fix the Gig Economy’s Exploitation” (19 November 2019), online: *Vice* <[www.vice.com/en\\_ca/article/pa75a8/worker-owned-apps-are-trying-to-fix-the-gig-economys-exploitation](https://www.vice.com/en_ca/article/pa75a8/worker-owned-apps-are-trying-to-fix-the-gig-economys-exploitation)>.

<sup>51</sup> *Ibid*.

<sup>52</sup> *Ibid*.

which operates in Germany and the UK;<sup>53</sup> Fairbnb, an Airbnb alternative;<sup>54</sup> Green Taxi Cooperative, a competitor with Uber in Denver;<sup>55</sup> and, Loconomics, an Amazon Turk competitor in the US.<sup>56</sup>

These models, termed “platform cooperativism”,<sup>57</sup> provide an approach where workers’ rights may be better recognized and realized given the direct control workers have over the enterprise, and which may work towards fostering more sustainable and responsible commercialism.<sup>58</sup> The worker-owned nature of such enterprises may provide a promising response to the rise of the gig economy monoliths,<sup>59</sup> and importantly does so in a way that refocuses attention on the needs of workers. This may, in turn, do some work to mitigate the tendency to pit consumer interests against the needs of workers, a tactic commonly used to justify the suppressed working conditions of platform workers. It may further mitigate the obfuscation issue and its resulting consequences for workers, discussed in the previous section. Finally, the cooperative model may facilitate a greater sense of solidarity among platform workers.<sup>60</sup>

Finally, localized legislative responses that address the root issues at play may provide concrete and material improvements for workers within that jurisdiction. The municipality of Bologna, Italy, recently passed a “Charter of fundamental digital workers’ rights within an urban setting”.<sup>61</sup> This Charter was the product of efforts by Riders Union Bologna, a group of platform delivery workers who formed this union. The Charter was signed by the city’s mayor, the Riders Union Bologna, two prominent Italian labour unions, and two food delivery platforms that, combined, employ approximately one third of food delivery riders in the city.<sup>62</sup> The Charter prescribes a fixed rate for services meeting or exceeding the applicable minimum wage, as well as compensation for overtime, public holidays, bad weather, and insurance for accidents and illness.<sup>63</sup> At a broader level, both California and the European Union have engaged in similar legislative responses, prescribing particular work conditions for platform

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<sup>53</sup> Mexi, *supra* note 1 at 14.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Trebor Scholz, “Platform Cooperativism: Challenging the Corporate Sharing Economy” (2016), online (pdf): *Rosa Luxemburg Stiftung* <[www.rosalux-nyc.org/wp-content/files\\_mf/scholz\\_platformcoop\\_5.9.2016.pdf](http://www.rosalux-nyc.org/wp-content/files_mf/scholz_platformcoop_5.9.2016.pdf)> [Scholz, “Challenging the Corporate Sharing Economy”]; Massimiliano Nicoli & Luca Paltrinieri, “Platform Cooperativism: Some Notes on the Becoming “Common” of the Firm” (2019) 118:4 *South Atlantic Q* 801 at 815–17.

<sup>58</sup> Scholz, “Challenging the Corporate Sharing Economy”, *supra* note 57.

<sup>59</sup> *Ibid.*

<sup>60</sup> Mexi, *supra* note 1 at 14.

<sup>61</sup> *Ibid.* at 16. See also Chesta, Zamponi & Caciagli, *supra* note 34; Vandaele, *supra* note 31.

<sup>62</sup> Mexi, *supra* note 1 at 16.

<sup>63</sup> *Ibid.*

workers regardless of their status.<sup>64</sup> Formal regulatory responses, as the Bologna example illustrates, are precipitated by collective action and advocacy that often includes multiple stakeholder groups, and is integrally related to other forms of mobilization and collective action discussed earlier in this section. In fact, the development of new local or national regulation of such work may be seen as a distinct output of the forms of collective action mentioned above, while also shaping further forms of collective action through its resulting content.

Creative legislative approaches to addressing the labour needs, interests and challenges of platform workers outside of the confines of existing labour and employment law demonstrate the continued relevance and significance that extension of legal rights and protections on paper may have, and how these can be effected in a way that circumvents the lingering debate over employment status. Further, these legislative responses appear to include similar conditions and terms to those of negotiated collective agreements, such as the Danish example provided earlier in this section. The Bologna Charter is particularly interesting given the highly localized nature of the intervention, and potential for replication across municipalities in various jurisdictions.

### **III. Platform Workers and Collective Labour Action: Lessons for the Modern Economy**

The previous section documented numerous examples of collective labour action by platform workers grouped into the following general categories: communication channels; union affiliation; union creation; platform cooperatives; and, legislative responses. These forms of collective labour action contain important implications for both platform workers and for workers in the modern economy more generally, which is increasingly characterized by a shift away from traditional employment relationships, and towards stratification and fissuring of the labour market.<sup>65</sup> Most directly, each of the forms outlined in the previous section illustrates ways in which worker representation and voice can be advanced, and is being advanced, in a modern economy where formal employers and formal unionization are both in apparent decline. These forms demonstrate how collective labour action can advance core interests and needs of and for workers regardless of enduring issues surrounding status, which is posited to be of increasing concern for workers in a multitude of labour sectors.<sup>66</sup>

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<sup>64</sup> EC, *Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union*, [2019] OJ, L186/105; US, AB 5, *An act to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor*, 2019-20, Reg Sess, Cal, 2019.

<sup>65</sup> See e.g. David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Cambridge, MA: Harvard University Press, 2014); Hastie, "Precarious Workplaces", *supra* note 14.

<sup>66</sup> See e.g. Weil, *supra* note 65; Davidov, "Characterization of Workers", *supra* note 14; Fudge, Tucker & Vosko, *supra* note 14; Hastie, "Precarious Workplaces", *supra* note 14.

This section takes up an evaluation of the forms of collective labour action discussed in the previous section, with a view to understanding how they may function and be effective for both platform workers and other precarious workers in the modern economy. As discussed earlier in this article, these forms of collective labour action evidence innovative approaches to enduring labour law problems, both in overcoming obstacles associated with employment status, and in overcoming obstacles associated with practical access to rights regardless of status, as discussed in section I. As such, the forms of collective labour action being undertaken in relation to platform work have broader potential benefits for labour and the legal regulation of work in the modern economy. This section first contextualizes the broader contemporary labour landscape to which the benefits of the identified forms of collective labour action may attach. It then goes on to evaluate and discuss the identified forms of collective labour action from the previous section in relation to three key factors: representation of members and power vis-à-vis external actors; channels of participation; and, service alignment with member needs.<sup>67</sup>

The modern economy is informed by many shifting paradigms, including globalization, automation, and the “fissured workplace”,<sup>68</sup> which describes the abandonment of historical “direct employment” relationships and trend towards contracting-out discreet aspects of a business to external entities.<sup>69</sup> This enables enterprises to maximize profits by shedding legal responsibility for workers, who are constructed as independent contractors, and also by transferring risk to those workers. Just as the rise of the standard employment relationship in the mid-20<sup>th</sup> century was motivated by the interests of capital-intensive enterprises, so too is the current shift away from standard employment motivated by the interests of enterprise, though in the opposite direction.<sup>70</sup>

The current labour landscape is increasingly characterized by “non-standard” work.<sup>71</sup> This label captures myriad forms of work that fall outside of the historical full-time, permanent, direct-employment model. As such, “non-standard work” can include part-time and seasonal workers, casual and contract workers, employees and contractors. Alongside the growth in non-standard work is an increasing trend in the precariousness of such work.<sup>72</sup> Precarious work is variably defined in existing scholarship, and often includes characteristics such as: instability and insecurity of employment; low wages; lack of benefits and entitlements; and, lack of control or

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<sup>67</sup> Maite Tapia et al, “Responding to the Incongruences: Shifting Forms of Worker Representation” (Paper delivered at the CRIMT Conference “What Kind of Work for the Future”, Montreal, 25 October 2018) [unpublished].

<sup>68</sup> Weil, *supra* note 65.

<sup>69</sup> *Ibid* at 4.

<sup>70</sup> Stanford, *supra* note 15 at 390-91.

<sup>71</sup> See e.g. Davidov, “Characterization of Workers”, *supra* note 14.

<sup>72</sup> Hastie, “Precarious Workplaces”, *supra* note 14.

autonomy in the labour process.<sup>73</sup> The consequences of precarious work often include an erosion of effective rights and protections under law, and in practice in the workplace.<sup>74</sup> For a growing number of precarious workers, access to formal unionization, which could assist in ameliorating these issues, is also increasingly out of reach, either formally under law or in practice. This has, in turn, contributed to a general decline in unionization in the modern economy.<sup>75</sup>

The increasing challenges of accessing formal and traditional models of unionization has resulted in a shift towards “embrac[ing] alternative forms of voice as a way to reach a broader set of worker identities and interests”<sup>76</sup> pursued through informal agreements and extra-legal mechanisms with employers and related actors.<sup>77</sup> As existing scholarship has noted, access to formal unionization is increasingly out of reach for a growing number of workers, including platform workers.<sup>78</sup> Thus, alternative forms of collective labour action, like those discussed in the previous section, “typically focus on service, advocacy, or organizing to improve the working and living conditions for employees rather than winning bargaining rights through bargaining unit elections”.<sup>79</sup>

The previous section briefly commented on how each identified form of collective labour action works towards advancing platform workers’ labour interests. This section builds on those comments to examine in greater depth the function and effectiveness of each form of collective labour action, not only for platform workers, but more generally, given the noted shifts in the labour market within the modern economy. Specifically, this section develops and discusses the potential benefits of the identified forms of collective labour action in relation to three key criteria: representation of members and power vis-à-vis external actors; channels for participation; and, service alignment with member needs, drawing on the framework developed by Tapia et al.<sup>80</sup>

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<sup>73</sup> Leah Vosko, ed, *Precarious Employment: Understanding Labour Market Insecurity in Canada* (Montreal: McGill-Queens University Press, 2006). See also Stephanie Procyk, Wayne Lewchuk & John Shields, eds, *Precarious Employment: Causes, Consequences and Remedies* (Halifax: Fernwood, 2017); Arne L Kalleberg & Steven P Vallas, “Probing Precarious Work: Theory, Research and Politics” in Arne L Kalleberg & Steven P Vallas, eds, *Precarious Work* (Bingley: Emerald, 2018) 1.

<sup>74</sup> Hastie, “Precarious Workplaces”, *supra* note 14; Weil, *supra* note 65 at 4; Davidov, “Characterization of Workers”, *supra* note 14.

<sup>75</sup> Tapia et al, *supra* note 67; Tapia & Ibsen, *supra* note 46; Hyman & Gumbrell-McCormick, *supra* note 45.

<sup>76</sup> Tapia et al, *supra* note 67 at 1.

<sup>77</sup> *Ibid.*

<sup>78</sup> Tapia & Ibsen, *supra* note 46; Hyman & Gumbrell-McCormick, *supra* note 45.

<sup>79</sup> Tapia et al, *supra* note 67 at 2, citing Annette Bernhardt & Paul Osterman, “Organizing for Good Jobs: Recent Developments and New Challenges” (2017) 44:1 *Work & Occupations* 89.

<sup>80</sup> Tapia et al, *supra* note 67.

Tapia et al describe how scholarly inquiry has focused disparately on union revitalization or alternative worker representation forms, without sufficient attention to the overarching logics and considerations that explain why certain forms of worker representation exist and how they are situated within the economic and labour market landscape. The framework they develop moves forward from the siloed treatment of alternative representation forms to provide a “common framework with testable propositions about how incongruences are likely to lead to union restructuring or alternative forms of worker representation via the logic of membership and influence.”<sup>81</sup> These logics, explained below, provide key indicators that can be used to assess the function and effectiveness of forms of collective labour action for workers in the modern economy.

The logic of influence focuses attention on how powerful an intermediary organization or representation model is in its relationship with relevant external actors, such as an employer. In other words, it suggests that effective representation requires an intermediary, such as a union, that is “able to both represent and control workers credibly and effectively vis-à-vis external actors, such as employers and the government.”<sup>82</sup> This logic examines the channels of representation, and mode and extent of control over workers, in order to determine the level of influence the intermediary has in relation to relevant external actors. This logic further examines these two factors in relation to the external environment in which the intermediary is operating. The “environment” is “a broad contextual factor that consists of the main elements outside the direct control” of the intermediary, such as “labor laws, political pressure, industry/organizational structures, and employer behavior”.<sup>83</sup> Increasing congruency between representation and the environment, and control and the environment, work to increase the influence of the intermediary.<sup>84</sup>

The logic of membership focuses attention on the internal dynamic between the intermediary organization or model and the workers or “membership base”. Under this logic, congruence between member identities and the factors of services and participation are key. The factor of services examines what “goods” the intermediary is able to provide to the membership base, such as collective agreements, legal advice or insurance, and how provided goods serve the interests of the constituency, having regard to their identities. “Greater congruence is achieved when services maximize the interest of the constituency”.<sup>85</sup> Relatedly, channels of participation examines how the internal structure of the intermediary reflects the constituency’s identities and

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<sup>81</sup> *Ibid* at 4.

<sup>82</sup> *Ibid* at 5.

<sup>83</sup> *Ibid* at 8.

<sup>84</sup> *Ibid*. See also Claus Offe & Helmut Wiesenthal, “Two Logics of Collective Action: Theoretical Notes on Social Class and Organizational Form” (1980) 1 *Political Power & Social Theory* 67; Virginia Doellgast, Nathan Lillie & Valeria Pulignano, “From Dualization to Solidarity: Halting the Cycle of Precarity” in Virginia Doellgast, Nathan Lillie & Valeria Pulignano, eds, *Reconstructing Solidarity: Labour Unions, Precarious Work, and the Politics of Institutional Change in Europe* (Oxford: Oxford University Press, 2018) 1.

<sup>85</sup> Tapia et al, *supra* note 67 at 6.

interests. Greater congruence here is achieved when “channels of participation maximize members’ feeling of empowerment”.<sup>86</sup>

As with a growing number of works across disparate industries and occupations, platform workers face significant difficulty accessing traditional models of collective labour action unionization. The previous section discussed many other, and novel, strategies that are being employed in the context of platform work in order to facilitate collective labour action, including: the creation and proliferation of communication channels; union affiliation; union creation; cooperative ownership; and, localized legislative responses. Each of these forms of collective labour action are differently situated along the axes of the two logics described above: influence, and membership. The remainder of this section examines how these forms of collective labour action map onto these axes, having regard to the key factors of: representation and control (for the logic of influence), and services and participation (for the logic of membership).

Representation as a criterion for evaluating new forms of collective labour action has particular import in the digital platform work context, and perhaps more broadly in articulating and explaining why an increasing number of workers find formal unionization inaccessible and inapplicable. The formal and narrow requirements attending legal regimes for formal unionization often operate to the practical (if not formal) exclusion of non-standard workers, geographically dispersed workers, and autonomous workers. Platform workers can be described as encompassing all of these characteristics (non-standard, geographically dispersed, autonomous/isolated work). Moreover, the increasing population of precarious workers may be variably characterized by one or more of these factors, particularly as concerns non-standard work. This makes representation of particular importance in considering and evaluating forms of collective labour action. The forms of collective labour action discussed in section II create channels of representation that do not depend on classification or status under employment law, a noted inhibitor to accessing formal unionization under existing labour law, and thus work towards greater congruency between representation and the environment in the context of platform work, and potentially for other precarious work contexts.

The creation of new unions specifically for platform workers, particularly in jurisdictions that allow for more flexible models of unionization, such as in Europe, may be seen as promising avenues for increasing channels of representation and increasing the congruence between representation and the environment. This form of collective labour action, closely aligned to the dominant historical model of formal unionization, shows the potential for adapting existing labour law regimes in ways that ameliorate the limitations and constraints noted in respect of these channels of representation for platform workers and an increasing number of precarious workers more generally.<sup>87</sup> Further, the bargaining power that this form of collective labour action may hold, as evidenced by the instrumental role of the Riders Union in creating

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<sup>86</sup> *Ibid* at 6.

<sup>87</sup> See e.g. Tapia et al, *supra* note 67.

the Bologna Charter, for example, illustrates well the significance that congruence between representation and the environment can have in enabling influence vis-à-vis external actors and in effecting substantive change for worker-members.

Beyond the adaptation or expansion of unions, co-operative ownership may best illustrate an alternative form of collective labour action that creates strong congruence between representation and the environment. Co-operative ownership models that enable broad-based participation by platform workers within the defined geographic area and labour market sector provide an interesting pathway forward in considering innovative solutions to an increasingly acute and potentially widespread problem. In addition, the relatively low cost of entry for these enterprises, facilitated in many ways by the technology that in other circumstances may function coercively, makes co-operative ownership models a viable option for platform workers uniquely as compared to other populations of workers. Further, given the direct-ownership model of co-ops, congruence between control and the environment may be more readily achieved, at least where this is mediated by a small number of worker-owners in a geographically defined space. More broadly, as a model for collective labour action, co-operative ownership may function vis-à-vis external governmental actors, and can work towards advancing labour interests for platform workers in the arena of law and policy. The extent to which co-operative ownership holds promise for broader populations of precarious workers, however, may remain uncertain. The low cost of entry to the market associated with online platforms is a significant advantage of this model in the context of platform work. However, as noted earlier, some enduring forms of precarious work, such as cleaning and domestic services, may transition to online platform models, creating options for worker-owned co-operative enterprises to transform such labour sectors.

Public-facing communication channels, such as protests, boycotts and public awareness campaigns, may operate in weak ways to support channels of representation and create influence vis-à-vis external actors, particularly those outside of the historical employment relationship. These forms of collective labour action do some work to make visible the hidden and often obscured centrality of the worker and their labour in the platform economy. As such, these forms of collective labour action may assist workers in advancing their interests and effecting change through direct communication with external stakeholders, such as the consumer, enterprise, and regulatory actors. These channels can, in addition to identifying and communicating the interests to be advanced, further open channels for representation, as there are few, if any, barriers to inclusion and participation for workers. These communication channels are, however, informal and as such, the contributions provide a foundation to support representation and influence, and should largely be seen as supportive or secondary measures. This form of collective labour action is not unique to platform workers, and the previous section discussed ways in which union-affiliated activities, particularly, have engaged in similar public-facing communication channels and campaigns for agricultural workers, as an example, which is another population of precarious workers often rendered invisible and hidden. Such communication channels, again, can be important supportive measures for advocacy around workers' rights, particularly where workers' interests require 'buy-in' from external

stakeholders outside of the direct-employment relationship, such as from consumers and regulatory actors.

Several forms of collective labour action discussed in the previous section illustrate well the ways in which service alignment and member participation positively influence internal dynamics, providing significant benefit or meaning for worker-members, separately from a consideration of influence vis-à-vis external actors. Services—what a form of collective labour action offers for its constituency or member base—is expanded in important ways for platform workers in the forms of collective labour action discussed in section II. Further, several of the identified forms of collective labour action discussed in the previous section provide meaningful channels for member participation. These attributes align with recent labour studies literature that examines how collective labour action, both including and beyond unionization, can hold benefits for workers beyond formal bargaining power and the negotiation of working conditions under a collective agreement.<sup>88</sup>

Services in the form of resources and information can be an important tool for platform and other precarious workers who may lack clarity on their existing legal rights and status. Further, as discussed in section II, resources and information-sharing amongst workers, as facilitated through some forms of collective labour action, can assist workers in identifying common challenges and trends in their working relationships. This can both create a sense of community and belonging in its own right, combatting effects of social and geographic isolation inherent in platform work, and can also be used to form a foundation for further collective labour action that looks to influence external actors, such as the enterprise ‘employer’, government, or the general public, as discussed above. Various forms of collective action described earlier provide information and resource-sharing services, which may align with basic informational needs of workers, as well as providing a secondary benefit of networking and connection amongst workers, thus combating isolation and mitigating against the noted barriers to collective organizing amongst geographically dispersed and autonomous workforces. These benefits are readily extendable beyond platform workers. Similar channels for workers in various precarious and non-standard labour contexts may work to both enhance a sense of well-being and community, while also providing important information and resources on topics of interest, such as legal rights and entitlements.

The union affiliation form of collective labour action discussed in section II, while not unique to engagement with platform workers, illustrates well how the trade union—as the historically dominant labour relations form—is further adapting its function and purpose to create better congruence between its membership and services. Beyond formally representing union members, engagement in broader advocacy and resource provision to non-union sectors and workers such as platform workers, and agricultural workers, can both assist a union in building a potential membership base for formal representation, and also reimagines the purpose of the trade union as advancing worker voice and interests more broadly. Like with the creation of unions

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<sup>88</sup> See e.g. Tapia & Ibsen, *supra* note 46; Hyman & Gumbrell-McCormick, *supra* note 45.

for platform workers, this is a modest shift in form of collective labour action from the historical dominant model of formal unionization. Yet, it similarly evidences the potential of this existing core to adapt to a modern economy, including re-envisioning its function and purpose to advocate for decent work on behalf of all workers, and perhaps especially the growing number of precarious workers for whom formal representation under a trade union is inaccessible, as discussed earlier.

In addition to service provision, evaluating forms of collective labour action asks about the internal dynamic fostered through participation of members. This criterion is clearly exemplified in many of the identified forms of collective labour action taken up by platform workers, as discussed in section II. Channels of participation should aim to “maximize members’ feeling of empowerment” and, possibly, sense of belonging within the collective.<sup>89</sup> Given the fragmentation, geographical dispersion, and autonomous nature of platform work, as with many other forms of precarious labour, channels for member participation may be a particularly significant benefit of alternative forms of collective labour action. As discussed above, some of the identified forms, while focused on service provision, provide additional opportunity for member participation through networking as well as grassroots information sharing. This may foster a sense of empowerment and belonging, as well as a sense of community, amongst workers who are otherwise largely isolated.

New union creation and co-operative ownership models, while creating more open channels of representation, are also grounded by worker participation at their core, enhancing the sense of empowerment and ownership workers will perceive, and hold, over their labour, as well as in relation to collective advocacy or bargaining efforts. Indeed, these forms of collective labour action may hold particular promise for addressing noted gaps for precarious workers in the modern economy given the extent to which they increase congruence between representation and environment, on the one hand, and between membership and participation on the other hand. However, as mentioned earlier, new union creation will be a viable option particularly in jurisdictions that enable flexible unionization models under law, notably in Europe. This makes this form of collective labour action weaker in jurisdictions like Canada, where difficulties in opening up the channels for representation under current law would remain. However, as discussed earlier, associational models outside of formal unionization may still hold relative influence in advocating and advancing the labour interests of workers to a broader set of stakeholders, such as consumers and regulatory actors. Relatedly, the promise of co-operative ownership models is constrained by the higher cost of entry to the market outside of online platform-based work, as discussed earlier. Nonetheless, where a sector of precarious labour may find ways to transition to platform-based work, such as with respect to a few examples concerning cleaning and domestic services set out earlier in this article, such a model may prove a viable form of collective labour action for workers.

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<sup>89</sup> Tapia et al, *supra* note 67 at 6.

## Conclusion

Digital platform work has captured much attention from legal and other scholars, policy makers, and others, in recent years. While this form of labour presents distinct challenges for regulation in the modern economy, it also reveals enduring challenges of and for labour law. Particularly, while distinct in some ways, platform work in many other ways mirrors and aligns with noted historical trends in relation to broader conceptions of precarious work that exist across a range of labour sectors and occupations. Much of the dialogue surrounding platform work to date has focused on resolving the question of employment status. However, as this article demonstrated, this focus has distracted attention from the deeper underlying questions about the function and effectiveness of labour and employment law more broadly and, again, for both platform workers and a wider population of precarious workers.

The technology associated with platform work, coupled with the heightened attention on this form of precarious labour, has in some ways produced novel approaches to advancing labour interests for workers outside of the confines of existing labour and employment law regimes and taxonomies. These forms of collective labour action, as identified in this article, present interesting case studies from which to consider how alternative forms of collective labour action may hold some promise for labour, and its legal regulation, in a modern economy that is increasingly characterized by non-standard work and workers that fall outside of historical regulatory regimes. This article canvassed various forms of collective labour action identified in relation to platform workers, and commented on the various benefits and limitations associated with each form, having regard to the ways in which these forms open channels of representation, hold influence vis-à-vis external actors, create service alignment with member needs, and open channels for participation by members. As stated at the outset, the aim of this article is to provide a rich descriptive foundation of the identified forms of collective labour action, their benefits and limitations, in order to set the stage for further dialogue and examination of the future of labour (law) in the modern economy.