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## Work in the gig-economy: the role of the state and non-state actors ceding and seizing regulatory space

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### Synopsis

Drawing on the concept of 'regulatory space', the article examines how both State and non-State actors influence employment regulations in the gig-economy. A mixed method approach is used, including interviews with policy-makers at national and international levels, and a content analysis of legal cases and other parliamentary reports. The data advance two key contributions. First, it reports how distinct 'levers' are used which show how the State (government) both 'cedes and seizes' regulatory power. Second, it contends these levers of power ultimately serve the accumulation interests of capital over the rights of workers. The findings have implications for wider policy issues for equity and justice regarding employment regulations.

### Introduction and Background

The emergence of new forms of business models that use online digital platforms to provide services such as food delivery, cleaning, IT micro-tasks etc has sparked interest in policy debates about employment standards and regulations. The use of digital technologies to enact employment arrangements represents an extension to non-standard forms of employment (NSFE), with greater casualisation and fewer employment protections (Howcroft et al., 2019). While we know about the growth of gig-economy employment in different jurisdictions (Wood, et al., 2019; Tassinari and Maccarone, 2020), an understanding about how employment standards emerge, form and are enacted in the sector, and by whom, is relatively limited.

Of importance is how the roles of both State and other non-government organisations (NGOs) shape and interpret employment standards and labour market policy debates. How the State enacts laws and regulations is variable and complex. The State in this regard is defined as a 'heterogeneous and complex entity' with broad interests and levels of autonomy which govern relationships (Martínez Lucio and MacKenzie, 2017, p. 2984). Jessop (2013) illustrates the power dynamics of the State in regulating capitalism, including labour market relations. Erne (2008, p15) adds a further political nuance to regulatory decision-making, that of transnational governance, such as the European Union, affecting different government regimes.

### Issues and Questions Considered

The article asks, '*how the State and non-State actors influence the processes affecting employment standards within the gig-economy*'. There are several features concerning labour market regulation. First, different State agencies set employment standards, which reflect multiple levels of decision-making authority (Scott, 2017). One implication is the overlay of competing intra-State agencies, who can jostle to influence standards.

Second are different structural and technical State functions. For example, there are *restrictive* laws (such as forbidding child labour), *regulative* roles to set certain minima (e.g. minimum wages), and *auxiliary* legislation to support relationships (such as health and safety or collective bargaining).

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Third, the concept of 'regulatory space' offers analytical capacity to capture uneven power features (Hancher and Moran, 1989). Regulatory influence enacted across gig-economy contexts is a new area, with research contributing to issues of legal contract definition (De Stefano, 2016), working hours and job insecurity (Berg, et al, 2018), pay (Wood et al., 2019), and union mobilisation (Tassinari & Maccarone, 2020). However, less is known about how the State and other agencies seek to influence such employment standards.

By extending the concept of regulatory space to gig-economy contexts, four interrelated dimensions are outlined: *legal enactment*, *codetermination*, *voluntary negotiation*, and *unilateral employer power*, each operating across international, national, sectoral and workplace levels.

The changing roles of the nation State towards employment standards have been uneven, and sometimes contradictory. For example, the State has not entirely abandoned its regulatory functions as a protector of labour reproduction (Erne, 2008). The judiciary has occasionally had to intervene with new rights, standards or enforcement to protect workers from the 'fall-out' from the State's own neo-liberal political policies of labour market decommodification (Rubery, 2011). These interventions open-up spaces of agitation and adjustment for a wide range of actors. Such developments may be witnessed in the UK government's decision to commission a review of 'Modern Working Practices' in the gig-economy, known as the Taylor Review (2017), representing a form of expert or technocratic regulation, with actors reviewing and recommending on employment rights for the gig-economy.

## Methodology

The research uses a qualitative mixed-methods design. First, data draw on interviews with 18 key senior policy informants (3 at international level, 15 at national level), selected for their direct experience of the decision-making apparatus of the State across national (UK) and transnational (e.g. EU, ILO) levels. Interviewees include officers and representatives of the ILO, EU, trade unions, an employer association, and agencies and think tanks including the Advisory Conciliation and Arbitration Service (ACAS), the Royal Society for the Arts (RSA), the New Economics Foundation (NEF) and New Economics (NE). Second, some observation and interaction with Deliveroo riders while they were working was also utilised. Third, a content analysis of 245 legal and policy documents was employed (including press releases, minutes of meeting, government and other reports, and legal judgments).

Digital platform providers (e.g., employers, such as Deliveroo) refused to participate in the study; however, their perspectives were collected and analysed from Parliamentary inquiry and other (e.g. ILO) reports that received employer representations.

## Outcomes and Findings

Regarding the role of the State, it was found that the State actively 'ceded' a degree of regulatory influence across three stages, mostly to employer and business groups, with each stage representing a key 'lever' to shape employment regulations pertaining to gig-economy workers. The stages included: i) pre-regulatory considerations; ii) enactment of standards; and iii), enforcement.

For example, content analysis of documents and legal case materials showed that bodies such as the Taylor Review had very little interaction with trade unions representing gig-economy workers during its deliberations, while it did actively include corporate interests in the formation of the Report's main recommendations for enacted standards.

Regarding the role of non-State / NGO actors, the research found three additional levers to influence gig-economy employment conditions, whereby non-institutional actors actively 'seize' regulatory spaces opened-up by the State. These levers include: i) the exercise of power in negotiations; ii) lobbying activities; and iii), the framing of a discourse of persuasion.

Content analysis of ILO reports shows how employees utilised power resources and lobbying tactics regarding their positions on regulatory issues. In the main, employer groups advocated for 'voluntarist' modes of self-regulation and individual negotiation, while employee and trade unions representatives would suggest stronger legal frameworks with defined rights. The former tended to be the predominant conclusion with political narratives underpinning individual rather than any collective basis to new employment rights, including working time, contract status. There was considerably less support for collective bargaining as a form of institutional employment regulation.

Overall, the research outlines the 'contestation' of regulatory space affecting gig-economy employment standards. It demonstrates a polymorphic State role with diffused power, where non-State labour market actors jostle to 'seize' the spaces that sustain a self-regulated regime. The evidence adds to debates in both sociological and legal scholarship concerning gig-economy employment. The article concludes that key levers of power tend to sustain more dominant employer bodies, notwithstanding pockets of worker and union mobilisation to advance better work goals.

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