



## **Towards a new web of rules**

### **An international review of institutional experimentation to strengthen employment protections**

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## **Abstract**

This article surveys institutional experimentation that has emerged internationally in response to the contraction of the traditional model of employment protection. Various initiatives are analysed according to the particular challenges they are designed to address: the emergence of non-standard employment contracts; increasing sources of labour supply engaging in non-standard work; intensification of exogenous pressures on the employment relationship; the growth of intermediaries that separate the management from the control of labour; and the emergence of entities that subvert the employment relationship entirely. Whereas post-war industrial relations scholars characterised the traditional regulatory model as a ‘web of rules’, we argue that nascent institutional experimentation is indicative of an emergent ‘patchwork of rules’. The identification of such experimentation is instructive for scholars, policymakers, workers’ representatives and employers seeking solutions to the contraction of the traditional regulatory model.

## Introduction

The post-war emergence of the standard employment relationship in the form of full-time ongoing employment contracts represented progressive innovations that provided workers in advanced economies with income, job and social security (Fudge, 2017). In Britain, the proportion of workers covered by the standard employment relationship has declined in recent decades (Brown and Wright, 2018). This development is also evident in many other advanced economies especially, though not exclusively, the ‘Anglo-American’ or liberal market economies (Kochan and Riordan, 2016).

At the same time, ‘non-standard’ forms of paid work, in particular, have increased. These include temporary and fixed-term arrangements where employment protections are typically contingent and ‘market-mediated’ contracts where such protections are absent (Kalleberg, 2011). These trends have been further enabled and enhanced by online platforms and the rise of the so called ‘sharing’ or ‘gig’ economy (World Economic Forum, 2018). The purpose of this article is to survey the various disparate forms of institutional experimentation for protecting employment conditions. It aims to provide insights into how policymakers, workers’ representatives and responsible employers have responded to the decline of the standard employment relationship. It addresses calls to move beyond traditional modes of understanding and analysis focusing on a “gloomy landscape” (Las Heras, 2018) to analyse “a more dynamic and diverse array of regulatory systems” (Wright *et al.*, 2017b: 246).

The growth of non-standard employment has been underpinned by a fracturing of the mechanisms that traditionally sustained the standard employment relationship, particularly union representation and sectoral collective bargaining. Several factors have driven these changes. First, the internationalisation and fragmentation of business activity and ownership has greatly increased product and financial market competition, while weakening the bargaining power of traditionally organised labour. This has driven changes in how business contractually engages its workforce (Brown, 2008; Rubery, 2015). Second, information, communication, manufacturing and transportation technologies have transformed supply chains (Trevor, 2016). This has facilitated flexible forms of accumulation, with production, distribution and finance increasingly enmeshed within global networks (Castells, 1996; Harvey, 2011; Silver, 2003). Third, the period of ‘austerity’ following the global financial crisis led to downward pressure on wages and a marked increase in contingent forms of work (Schömann and Clauwaert, 2012). Bailout agreements for crisis-stricken economies,

including Greece, Ireland and Portugal, were conditional on labour market reforms that promoted non-standard employment (Colfer, 2018). Finally, changes in the contractual forms and regulation of work are often presented as inevitable outcomes of global competition. However, they reflect the dominant ideology of employers (Dundon *et al.*, 2010) and the conscious legislative enhancement of employer power (Baccaro and Howell, 2017; McLaughlin and Wright, 2018).

A distinguishing feature of non-standard forms of work, and indeed the essential reason why they are considered non-standard, is their tenuous relationship to the institutions that traditionally regulate labour standards (Fudge, 2017). These forms of work essentially fall outside the traditional ‘web of rules’ that post-war industrial relations scholars defined as the terms and conditions governing relationships between businesses and workers. These rules were negotiated jointly by the parties at the workplace or by their industry representatives within the parameters of regulations set down by the state. In countries with a collective laissez-faire tradition such as the UK, the involvement of unions and industry associations was of great importance.

The concept of a ‘web of rules’ was first introduced by Kerr and Siegal (1955) and developed further by John Dunlop (1958) who defined it as the substantive norms and procedural institutions, both formal and informal, that govern work relations (see also Adams, 1977; Clegg and Bain, 1974). These scholars conceived their ideas in a pluralist context in which, across virtually all Western economies, the workforce was strongly unionised and collective bargaining (or similar joint or tripartite arrangements) was the standard process through which the web of rules was determined. Because collective bargaining generally operated on an inclusive basis covering most workers and workplaces, it produced a web of rules that was dominant or ‘systematic’. With the decline of both collective bargaining and an increase in non-standard employment, this ‘traditional’ web of rules has contracted to cover a decreasing share of the workforce.

Several commentators note that the increasing trend in non-standard employment has been misinterpreted to represent a permanent breakdown in the standard employment relationship, when in fact it remains the dominant form of employment in most advanced economies (Adams and Deakin, 2014; Fudge, 2017). Despite its traditional association with declining industries such as manufacturing, many of the foundational characteristics of the standard employment relationship remain evident in service industry jobs. This includes jobs in front-

line services where firms typically exhibit strong preferences for flexible work arrangements that cater to the needs of customers and service recipients (Belanger and Edwards, 2013). Nonetheless, the standard employment relationship has undergone a degree of adjustment, as have the methods of regulation. As work relations have become more market mediated, new institutional arrangements have developed to govern them. This has resulted in an emergent patchwork of rules encompassing joint union-employer regulation, non-union regulation and statutory regulation.

The focus of this article is to survey ‘institutional experimentation’ (CRIMT, 2017; Kristensen and Morgan, 2012) occurring internationally to enhance employment protections in response to the rise of non-standard forms of work. Our analysis draws on the existing research and knowledge base of the authors as well as a thorough review of the extant literature relating to key themes identified through this review. These themes are: non-standard employment contracts; sources of labour supply engaging in non-standard work; intensification of exogenous pressures on the employment relationship; the growth of intermediaries that separate the management from the control of labour; and the emergence of entities that subvert the employment relationship entirely.

The next section of this article briefly outlines the emergent patchwork of rules we have identified. The remainder of the article focuses on five manifestations of the contraction of the traditional web of rules and the institutional experimentation with innovative forms of employment protection emerging internationally in the context of this contraction. The conclusion considers the implications of our findings for scholarship and practice.

### **From a systematic web of rules towards an emergent patchwork of rules**

The traditional systematic web of rules, namely standard employment contracts and the joint regulation mechanisms such as collective bargaining that traditionally sustained them, remain prominent in many countries. Thus, one solution to the contraction of the traditional systemic web of rules is to seek its restoration through policy change. In China, recent studies have shown that unions still retain capacity to improve the terms and conditions of the workers they represent (Chang and Cooke, 2018). Belgium and the Scandinavian countries provide models for extending collective bargaining in a Western context. However, extensive collective bargaining coverage and union membership in these countries are partly

consequences of, firstly, the Ghent model of unemployment insurance that encourages workers to join unions and, secondly, a longstanding commitment by employers to social partnership (Ebbinghaus *et al.*, 2011). Like the Chinese example, the institutional features of the Belgian and Scandinavian systems are absent from liberal market economies such as the UK and would be difficult to replicate (McLaughlin, 2013). This difficulty of replication arises from the unwillingness of the state to provide workers with procedural power. In China unions are effective because they are closely associated with the Communist Party and the state and used by them to redistribute profits to workers with government backing (Lee *et al.*, 2014). In Western European countries with effective sectoral bargaining unions are still embedded in government processes at the highest level. This enables enforcement of sectoral agreements (Ebbinghaus *et al.*, 2011).

During the 1980s and 1990s, governments in liberal market economies did not see fit to preserve sectoral bargaining structures first instituted at times of depression or war. Nevertheless, this has not prevented recent attempts to strengthen more traditional regulatory mechanisms in some of these countries. For instance, the Labour-led coalition government in New Zealand is considering introducing sectoral bargaining mechanisms to set minimum standards across low-paid occupations and industries. Ireland has recently strengthened collective bargaining rights. Australia has maintained the award system that provides occupationally-specific protections to around 60 per cent of the workforce despite union and collective bargaining decline (McLaughlin and Wright, 2018).

However, the conditions enabling extensive coverage by the traditional web of rules have receded in most countries. With some exceptions particularly in labour markets with minimal exposure to product market competition (Brown *et al.*, 2009), collective bargaining is in decline everywhere and unlikely to be reversed anytime soon (Baccaro and Howell, 2017). Consequently, we identify three contemporary webs of rules, which together constitute an emergent 'patchwork of rules'. These webs are most easily identified in liberal market economies where the contraction of the traditional web of rules has been most pronounced. The *first* is the traditional web of rules of joint regulation through collective bargaining, as discussed above.

The *second* is a non-unionised web of rules among occupations and industries that have experienced considerable growth over the past quarter century. These include white-collar

private sector services industries, such as professional services and fast-moving consumer goods firms. These sectors are associated with the emergence of human resource management and specifically talent management and an associated unitarist ideological undercurrent (Geare *et al.*, 2014; Dundon and Rafferty, 2018). The relatively high individual bargaining power of professionals that characterise these industries on account of their scarce skills and mobility reduces the necessity for union-negotiated and statutory minimum standards (Rousseau, 2015; Trevor and Brown, 2014).

The *third* web of rules relates to non-unionised lower-skilled occupations, the non-professional private services sector and industries susceptible to automation and offshoring, which shift power equilibrium away from workers towards employers. In many liberal market economies (Colvin and Darbshire, 2013) and coordinated market economies such as Germany (Sack and Sarter, 2018), the introduction by governments of statutory minimum wages and conditions has been aimed primarily at workers in this web, who can no longer rely upon unions to protect them. In the European context, EU directives have played an important role in strengthening minimum labour standards. Unions have also been able to use litigation around individual employment rights to complement rather than substitute for collective bargaining (Deakin *et al.*, 2015). While statutory regulation has generally played some role in governing the labour market, the past 30 years has seen a significant increase in individual employment rights, with governments forced by public pressure to improve minimum standards (Colvin and Darbshire, 2013). However, these statutory minimum standards have not prevented wage stagnation and the emergence of non-standard contracts, which workers in this latter group have struggled to resist owing to their limited bargaining power.

Transcending these three webs of rules is different types of institutional experimentation that have emerged in response to the growth of insecure forms of work. In some cases, these are initiatives designed specifically to protect workers on non-standard employment contracts, rather than generalised standards that would be encompassed by the third web. In other cases, institutional experimentation comes in the form of localised or specific initiatives developed by workers' representatives or advocates and/or by socially responsible businesses, typically in response to a lack of state regulation. The remainder of this paper focuses on these various forms of institutional experimentation.

## Manifestations of contraction of the traditional web of rules and institutional experimentation developed in response

To analyse the institutional experimentation that has emerged in response to the contraction of the traditional systematic web of rules, it is necessary to categorise the manifestations of this contraction. We classify these into the five types (summarised in Table 1) and then review the institutional innovations aimed at addressing each manifestation of breakdown.

**Table 1** Manifestations of contraction of the traditional web of rules and institutional experimentation developed in response

Type of contraction	Manifestations of contraction	Institutional experimentation
1. The emergence of non-standard forms of employment contracts	<ul style="list-style-type: none"> <li>• Temporary/casual contracts</li> <li>• Fixed-term contacts</li> <li>• Zero-hour contracts</li> <li>• ‘Market-mediated’ variable contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Pay loadings</li> <li>• Differential employer taxation to encourage secure employment</li> <li>• Portable entitlements</li> <li>• Flexicurity</li> <li>• Labour cooperatives to provide greater certainty of regular employment</li> </ul>
2. The expansion of sources of labour supply engaging in contingent work, e.g. workers whose rights/agency are institutionally constrained	<ul style="list-style-type: none"> <li>• Temporary migrant workers with restricted employment rights/mobility</li> <li>• Younger workers</li> <li>• Workers with care responsibilities with restricted working hours capacity</li> </ul>	<ul style="list-style-type: none"> <li>• Community unions</li> <li>• Worker centres</li> <li>• Living wage campaigns</li> <li>• Social media facilitated networks and other forms of digital technology to represent younger workers, migrant workers, gig workers</li> </ul>
3. The intensification of exogenous pressures on the employment relationship arising from fragmentation of production and service provision processes	<ul style="list-style-type: none"> <li>• Supply chains</li> <li>• Franchising</li> <li>• Other forms of ‘fissured’ work arrangements</li> <li>• Financialisation</li> <li>• Public sector outsourcing</li> </ul>	<ul style="list-style-type: none"> <li>• Codes of conduct</li> <li>• International framework agreements</li> <li>• Multi-stakeholder initiatives</li> </ul>



		<ul style="list-style-type: none"> <li>• Supply chain joint responsibility initiatives</li> <li>• Public procurement labour clauses</li> </ul>
4. The growth of intermediaries that separate the management of labour from the control of labour	<ul style="list-style-type: none"> <li>• Labour hire contractors</li> <li>• Agencies</li> </ul>	<ul style="list-style-type: none"> <li>• Licensing and registration laws</li> <li>• Joint industry/union agreements to govern terms of labour hire engagement</li> </ul>
5. The emergence of entities that replace the employment relationship entirely	<ul style="list-style-type: none"> <li>• Online platforms associated with gig work</li> <li>• Contracting arrangements that produce ‘dependent self-employment’</li> </ul>	<ul style="list-style-type: none"> <li>• Joint industry/union agreements to establish standards</li> <li>• Legal reforms to extend employment-type protections</li> </ul>

### ***1. Non-standard forms of employment contracts***

The growth of *non-standard forms of employment contracts* is the first manifestation of the breakdown of the traditional web of rules. This includes temporary employment as well as other forms of contingent contracts, such as ‘zero hours’, ‘if and when’, ‘on-call’ or ‘seasonal’ contracts, whereby the employer is not obliged to offer an employee guaranteed hours (ILO, 2016; O’Sullivan et al., 2017). Employees engaged on temporary contracts are generally under-protected vis-à-vis employees on standard employment contracts. European Union directives on part-time, fixed-term and temporary work require equality of treatment. However, various exemptions and exclusions mean the directives do not offer the same protections to those on non-standard contracts (Deakin, 2014). While employees engaged on a fixed-term basis typically receive the same rights and entitlements as permanent employees, the defined period of work can provide challenges relating to job and income security (Kalleberg, 2009). Engagement through online platforms is a related type of non-standard work, but because it does not involve conventional contractual employment as such, we discuss this separately below.

Public pressure in response to the growth of non-standard employment contracts has led some governments to introduce legislative restrictions. Restrictions on ‘zero hours’ contracts occurred in New Zealand in 2016. Legislation setting ‘banded hours’ of work is set to be

introduced in Ireland at the end of 2018, which will guarantee hours of work in line with an employee's recent work patterns. Similar proposals are under consultation in the UK. There is other institutional experimentation designed to protect workers engaged on non-standard employment contracts, rather than prohibiting or restricting the use of these contracts. This approach focusing on protection rather than prohibition accepts there are circumstances where flexible work arrangements may be legitimate, particularly when they suit the needs of both parties (IPPR, 2018).

One such example is pay 'loadings' or higher rates of hourly pay for workers on temporary or fixed-term contracts. Employers are required to pay loadings of 15-25% to 'casual' workers in Australia. Pay loadings in Australia were introduced to compensate casual workers for their lack of access to protections afforded to workers on permanent contracts such as stable hours, entitlements and job security. In the UK, the Institute for Public Policy Research (IPPR) (2018) has recommended a 20% loading for employees engaged on zero-hours contracts. A higher National Insurance tax contribution could also be introduced for employers who engage workers on non-standard contracts (Brown and Wright, 2018). Such measures, if designed carefully, can potentially help to ensure that non-standard contracts are used only for genuine fixed-term or intermittent assignments. However, some studies have cast doubt as to whether policies mandating pay loadings fully meet their objective of compensating casual employees for their exclusion from benefits (e.g. Pocock *et al.*, 2004).

Portable entitlements enabling workers to access benefits accrued from previous engagements are another protection mechanism for non-standard workers. Portability schemes exist in Germany for paid parental leave and in Australia for long service leave, where they are seen as beneficial for attracting workers to industries characterised by short-term work engagements, such as construction, business services and community services (ILO, 2016; Markey *et al.*, 2016). Similarly, in France, unemployed workers that accept new employment are allowed to keep their accumulated unemployment benefits. The introduction of this policy in 2014 was seen as enabling greater labour mobility by encouraging workers to accept positions they might otherwise be deterred from lest they lose their benefits. In Denmark and the Netherlands, flexicurity systems providing training and income protection are another innovation designed to encourage flexible labour markets in a manner mutually beneficial to businesses and workers (McLaughlin, 2009). Flexicurity has been lauded as model for other countries seeking to protect workers while allowing their labour markets to adapt to structural change. However, its reliance upon high levels of public spending and the resilience of

unique institutional arrangements are likely difficult to replicate elsewhere (Bredgaard and Madsen, 2018). Additionally, while flexicurity may be beneficial for the unemployed, its ability to reduce the harmful effects of job insecurity has been seriously questioned (Burchell, 2009).

Industries characterised by seasonal labour needs such as agriculture also have a genuine reliance upon non-standard work arrangements. One solution to this has emerged in Italy, France and the Netherlands, where the creation of territorial pacts and labour cooperatives allow for the pooling of workers between multiple businesses. This allows employers to address intermittent labour requirements while providing workers with job security and regularity of work schedules (Regalia, 2013). However, these initiatives may be difficult to establish in countries and industries where there is limited coordination between employers and where the established presence of profit-seeking intermediaries, such as labour hire contractors, limits the scope for such cooperation (Reilly et al., 2018).

## ***2. Expansion of sources of labour supply***

The growth in non-standard forms of employment requires workers who are willing or obliged by circumstances to engage in it. This relates to the second manifestation of contraction in the traditional web of rules: the expansion of *sources of labour supply* performing temporary and fixed-term employment. This includes workers who seek flexibility in their work arrangements. Such flexibility is often not afforded under standard employment contracts that might require workers to work a minimum number of hours or to be at the workplace during certain times. Workers on non-standard employment contracts therefore may actively seek to achieve balance in their work and non-work commitments, not necessarily because they lack the agency or bargaining power to obtain a standard employment contract. However, there are workers who enter into temporary or fixed term contracts precisely because of the difficulties encountered as a result of their labour market characteristics (Eichhorst and Marx, 2015). For instance, in around two-thirds of OECD countries there is a greater concentration of female workers than male workers in temporary employment (OECD, 2016). While there are several possible explanations for this, in many countries the burden for family care responsibilities continues to lie with women who may seek non-standard employment contracts to fulfil these responsibilities (Vosko, 2010). New

technology can enable the scheduling of work to meet variations in demand thereby diminishing the possibility for more family-friendly solutions (Rubery, 2015).

Younger workers may accept non-standard employment contracts either because they do not possess the qualifications and experience to obtain a standard contract or, in the case of students, to schedule work around their education (ILO, 2016). Migrant workers often have difficulty finding secure and high quality employment due to a lack of social and professional networks or difficulties getting their qualifications recognised (Anderson, 2010). They may also be under pressure to find work in order to subsist, repay migration costs or remit money to their families. Temporary migrants may also have their rights and agency institutionally constrained by virtue of immigration rules that tie their residency to a single employer or mandate certain work arrangements as part of visa conditions (Wright *et al.*, 2017a).

There has been institutional experimentation to protect these groups of workers engaged in non-standard work due to structural constraints or limited opportunities. The organisations that have created these innovations vary across national contexts. For instance, unions in the UK have developed community alliances to reach difficult to organise migrant workers concentrated in occupations defined by intermittent work schedules (Holgate, 2015). In Australia and Ireland, unions have created new organisations and online networks to assist younger workers who often work in segments of the labour market characterised by weak standards enforcement (Colfer, 2018; Nicholson *et al.*, 2017). In the US, worker centres often functioning without union support perform a similar protective function particularly among migrant workers (Fine and Bartley, 2018).

Developing relationships with community organisations can thus improve the capacity of representative organisations to reach workers in non-standard employment. However, these alliances have potential limitations particularly for providing ongoing workplace representation (Williams *et al.*, 2011). They should therefore be seen as a complement to rather than a substitute for traditional strategies focused on organising and bargaining. Nevertheless, community alliances have been central to campaigns designed to improve labour standards in industries where the traditional web of rules of standard employment and collective bargaining has eroded. For instance, community organisations and worker centres, respectively, have been central to the Living Wage campaign in the UK and the Fight for \$15 campaign in the US aimed at convincing employers and local governments to increase pay beyond legal minimum rates (Prowse *et al.*, 2017; Fine and Bartley, 2018).

In addition, social media networks and other forms of digital technology have allowed unions to retain and extend their power by transcending the spatial and temporal boundaries that often separate people in temporary non-standard employment, and thereby represent, organise and mobilise hard-to-reach young workers, migrant workers and gig workers (Geelan 2015; Dencik and Wilkin 2015; Wood *et al.*, 2018b). For instance, as part of the Fight for \$15 movement, unions have used social media to mobilise low-paid workers in the retail and fast food sectors, which employ high proportions of young, female, minority ethnic and migrant workers (Pasquier and Wood, 2018). In campaigns at Walmart, the use of Facebook, YouTube, Twitter and Instagram provided a digital discursive space in which worker activists, who were spatially and temporally fragmented across stores and shifts, could connect with each other and with union organisers and other activists. Importantly this space existed beyond the workplace, which unions were barred from entering, and where workers feared punishment if they discussed worker organisation (Wood, 2015).

At this point, it is useful to emphasise the distinction between mobilising and organising activities (McAlevey 2016). *Mobilising* refers to motivating supporters to take action while *organising* refers to expanding the supporter base by building relationships with non-supporters. Although social media can benefit both mobilising and organising activities there is danger of union officials focusing exclusively on the more immediate potential benefits which social media presents for mobilising. Consequently social media could have the contradictory effect of further reducing union membership, by pulling attention and resources away from organising, even as spectacles of worker collective action seemingly increase. Dencik and Wilkin (2015) argue that the Service Employees International Union (SEIU) deployed social media to give the illusion of Fight for \$15 being a spontaneous mass grassroots worker movement when in reality the campaign was centrally orchestrated with only limited worker engagement.

Therefore, while union experimentation with digital technologies holds great promise, it also poses considerable challenges and risks. Over the last two decades the Internet has transformed from a fairly open and decentralised patchwork of independent websites towards an organisational form increasingly centralised around a handful of closed platforms. Today, the digital age is dominated by corporate power with the world's largest social media platforms all privately owned companies which prioritise profit generated through advertising, entertainment and data commercialisation (McChesney, 2013). Employers have used social media to engage in counter-communication against worker organising and

mobilising (Pasquier and Wood, 2018). There is also evidence of employers using social media to monitor, suppress and counter union activities and campaigns (Upchurch and Grassman, 2015). Thus, digital technologies are by no means a panacea for protecting workers engaged in non-standard work.

### ***3. Intensification of exogenous pressures***

Greater market competition and the expansion of financial capital flows have compelled organisations to reduce production and overhead costs. This has resulted in a focus by organisations on their core competencies and to shift the peripheral aspects of their production to contractors and external providers. At the same time, business models such as franchising that allow large firms to increase their profitability and financial value through external investment have also become more common. These developments reflect a ‘fissuring’ of work (Weil, 2014), or an *intensification of exogenous pressures* on the employment relationship. This is a third manifestation of contraction of the traditional web of rules. Fissured work is where the business activities of an external organisation substantially influence the terms of the employment relationship (Marchington *et al.*, 2005; Wright and Kaine, 2015).

These external pressures can create challenges for workers seeking to negotiate better terms and conditions. They can undermine compliance with existing labour standards. This is particularly the case in liberal market economies, such as the UK, where the nature of competition and employment laws make it difficult for unions and small businesses to resist the commercial pressures of retailers, franchise owners and other large firms at the apex of supply chains (Deakin and Koukiadaki, 2009). Similar pressures operate in the UK public sector where the introduction of market conforming principles has opened the public services provision to private businesses. This has led to a significant reduction in labour standards and union protection (Rubery, 2015) and deprived many low paid women the right to access equal pay claims as outsourcing has eliminated potential male comparators (McLaughlin, 2014).

Innovations in response to exogenous pressures come in the form of mechanisms that extend responsibility for upholding employment protections to ‘lead firms’ that purchase an organisation’s products or services such as retailers and franchise owners. While these mechanisms are commonly associated with global supply chains and production networks

(Anner, 2018), studies have shown how they can be used to reinforce employment protections in a domestic context (e.g. Fine and Bartley, 2018; Weil, 2014; Wright and Brown, 2013). These mechanisms include:

- International conventions that businesses voluntarily sign up to. For instance, the Global Compact includes the ILO principles on freedom of association and collective bargaining. The United Nations Sustainable Development Goals contains targets around decent work, equal pay and other core international labour standards (Ruggie, 2013);
- Business-driven voluntary initiatives, such as codes of conduct implemented unilaterally by multinational enterprises affirming commitment to international labour standards in their supply chains (Locke, 2013);
- Framework agreements negotiated with global union federations that provide a generally stronger baseline of labour standards for a multinationals' suppliers and subsidiaries (Niforou, 2012);
- Legal instruments including modern slavery legislation and multilateral agreements to regulate standards in global supply chains (Reinecke and Donaghey, 2018); and
- Labour clauses in government procurement policy to enable public bodies to use their purchasing power to raise standards among private contractors (Jaehrling *et al.*, 2018).

Various trade-offs between these mechanisms aimed at extending responsibility for employment protections in fissured work contexts have been identified. For instance, codes of conduct have been criticised for being weakly enforced and adopted opportunistically by businesses seeking to portray themselves as socially responsible. From this account, workers are treated as passive subjects and union rights are largely ignored (Egels-Zanden and Merk, 2014). However, others have argued codes of conduct potentially enhance supplier compliance with traditional regulation and provide protections that did not exist previously (Locke, 2013; Ruggie, 2013). Even if codes of conduct do not directly strengthen employment protections they can, nevertheless, provide a potential leverage point for labour activists to bargain for improvements in pay and working conditions (Alford *et al.*, 2017).

Union-negotiated framework agreements usually contain stronger protections for regulating labour standards than codes of conduct. However, the uptake of framework agreements is very limited which indicates structural barriers to convincing multinationals to sign them (Papadakis, 2011). Nevertheless, the growing literature on unions and corporate social

responsibility indicates that union and worker involvement can potentially help to address some of the identified deficiencies of these mechanisms. For instance, unions can provide an avenue for collective worker voice that can improve the internal legitimacy of business-driven mechanisms. Their embedded role can assist in monitoring compliance and in holding businesses accountable (Harvey *et al.*, 2017; see also Anner, 2018).

All of these mechanisms are most often found among brand-sensitive organisations with an aversion to reputational damage (Wright and Brown, 2013). This means their application is potentially limited in certain contexts, such as in China, where state suppression of traditional and social media means businesses are more protected from reputational damage.

Nevertheless, these mechanisms can be a significant supplement to weakly enforced domestic labour protections in China, particularly if they are accompanied by independent audits from local labour nongovernmental organisations (NGOs) (Huang *et al.*, 2016). In relation to public procurement, similar trade-offs emerge with public bodies seeking to balance socially responsible outcomes for precarious and low-paid workers against budgetary constraints, the interests of other stakeholders and legal obstacles (Jaehrling *et al.*, 2018).

#### ***4. Separation of the management of labour from the control of labour***

The growth of intermediaries that *separate the management of labour from the control of labour*, such as labour hire contractors and employment agencies, is the fourth manifestation of contraction of the traditional web of rules. This is closely related to the third factor mentioned above. The key difference relates to indirect versus direct control over the employment relationship. Firms at the apex of supply chains and franchise owners may influence employment relations among their suppliers and franchisees indirectly by virtue of their commercial power. By contrast, the engagement of a contractor or agency often involves an organisation directly engaging another organisation to manage part of its workforce, while still maintaining at least a degree of direct control (Johnstone *et al.*, 2012). This means that the intermediary rather than the owner of the workplace legally employs temporary agency workers. Their employer thus differs from that of their directly employed colleagues who they work alongside (Gumbrell-McCormick, 2011; Heery, 2009). This fissuring may make it difficult to forge collective identities and workers may struggle to identify targets for collective action (Kalleberg, 2000; Heery, 2009). This creates a complex scenario for workers who may be unsure as to the nature of their employment and ultimately



who their direct employer even is. As Rubery argues, the ramifications are significant: “employers, instead of being held accountable, have become increasingly invisible” (2015: 639).

Institutional experimentation in this category can be categorised in terms of firstly, the creation of new statutory authorities or licencing schemes by government and, secondly, regulatory initiatives created jointly between industry and labour. Examples of new schemes created by government include the Gangmasters Licencing and Labour Abuse Authority created in the UK and similar schemes operating at sub-national jurisdictions in Canada, Australia and elsewhere. These initiatives may require labour hire contractors to be licensed to operate lawfully, a process that takes account of their track records of legal compliance and their likelihood of meeting certain standards. They may also require employers to be registered before they can engage contractors (Davies, 2014). Another example comes from Ireland, where the taxi industry and all other service providers involved in ‘hire and reward services’ operate under an effective single-tier system of regulation that requires anyone carrying passengers for money to have a taxi licence. Due to this, ride-sharing platform owners such as Uber do not enjoy the same comparative advantage as they do with traditional taxi and private hire vehicle operations in other countries. This simple regulatory measure has prevented a decline in working conditions in the industry (Maguire and Murphy, 2013).

Examples of joint regulatory initiatives include agreements between unions and industry associations representing employers and intermediaries. For instance, the North Carolina Grower’s Association and the Farm Labor Organizing Committee in the US has helped to protect the legitimate role that agencies can play in matching the supply of workers efficiently to business demand without compromising employment protections (Gordon, 2016). In the UK’s oil distribution industry, unions and large oil and transportation businesses established a scheme aimed at creating greater accountability for the labour and safety standards in an industry characterised by organisational fragmentation. The scheme provides greater accountability among intermediaries by requiring tanker drivers to obtain a ‘passport’ certifying their safety competence before they can transport fuel between refineries and distribution centres whose commercial demands can influence work practices (Heery *et al.*, 2017).

## ***5. Replacement of the employment relationship***

The fifth manifestation is the emergence of entities that *replace the employment relationship entirely*. These entities include online platforms associated with the gig economy that synthesise localised market-clearing mechanisms (Huang and Geelan, 2018; Wood *et al.*, 2018a) and contracting arrangements that produce ‘dependent self-employment’ (Taylor *et al.*, 2017). At the heart of the ‘gig economy’ lies online platforms which automate some core management functions and thus enable an on-demand utilisation of labour. These platforms provide algorithmic management of labour in terms of both monitoring and disciplining workers through rating and reputation systems and workforce task allocation (Rosenblat and Stark, 2016; Shapiro, 2018; Wood *et al.* 2018a). This greatly reduces the control, contracting and coordinating costs of using spot markets as an alternative to employment relationships (Wood *et al.*, 2016).

Related to the gig economy is the practice of ‘bogus’, ‘fake’ or ‘dependent’ self-employment, which has long been a feature of sectors such as construction and postal delivery but is on the rise (Behling and Harvey, 2015; Moore and Newsome, 2018). This practise is utilised by employers to “reduce tax liabilities, or employers’ responsibilities” (OECD, 2000: 156). ‘Fake self-employment’ differs from genuine self-employment in that workers in the first category have limited ability to tender contracts, negotiate prices with clients or substitute themselves with other workers. Behling and Harvey (2015: 970) point out that such workers also often face “substantial continuity of engagement with a single employer over many contracts, lack of control over working times, not supplying plant or materials, or obeying instructions in everyday routines”. Here there is much discussion and debate as to the boundaries between ‘worker’ status and self-employment. As the Taylor report in the UK notes, “this is where there is greatest risk of vulnerability and exploitation” (Taylor *et al.*, 2017: 32). Exploitation is likely to be more evidenced and more dramatic where online platforms provide access to low-skilled labour on demand (Wright *et al.*, 2017b: 254).

When it comes to institutional experimentation in this category, social media has the potential to reduce collective organisation costs significantly by enabling the formation of networks and reducing the need for bureaucratic organisations (Heckscher and McCarthy, 2014). Notwithstanding the limitations acknowledged above, the ease by which workers can organise via social media networks has resulted in the existence of extensive self-organised worker communities in the gig economy. This collective organisation has been prevalent among gig workers despite them working in physical isolation from each other and on a

fragmented range of tasks (Johnston and Land-Kazlauskas, 2018; Lehdonvirta, 2016; Wood *et al.*, 2018b).

Similar to worker centred platforms such as Glassdoor, a website where current and former employees anonymously review businesses and their management, online forms of collective organisation can create greater transparency. They can achieve this by enabling the sharing of labour market information such as warnings about clients and scams. In some cases they engage in deliberate attempts to influence pay through maintaining informal price norms. While the ability of such organisation to improve the security of workers engaged by these platforms remains limited, these online communities demonstrate the potential for unions to link up with pre-existing gig worker networks so as to improve working conditions (Wood *et al.*, 2018b). This in turn might foster agreements between unions and platform businesses to establish standards for engagements through online platforms (Minter, 2017), and potentially spur legal reforms to extend protections associated with the employment relationship to these workers (Stewart and Stanford, 2017).

## **Conclusion**

This article has surveyed the nascent institutional experimentation that is developing in advanced economies internationally as part of an emergent ‘patchwork of rules’. This experimentation is a reaction to the contraction of the traditional ‘systematic web of rules’ in the form of standard employment contracts and supportive mechanisms such as collective bargaining. While the traditional web of rules remains strong in some parts of the workforce in many countries, other webs of rules such as statutory regulation and determinations between individual workers and employers have been created and extended. The institutional experimentation emerging in response to the rise of non-standard forms of work provide protection, in different ways and in different contexts, for those who engage in this work. Our review highlights the requirement of examining ‘institutional intersections’ across international, national, sectoral and local units of analysis. It also accounts for supply chains, fissured organisational dynamics, intermediaries and online platforms that serve to shape and inform the way work is conducted and regulated (Wright *et al.*, 2017b: 252). Equally important is an appreciation of the broad range of stakeholders including businesses, community groups, NGOs and online communities that can exert influence over how work is governed.

An advantage of a review of the institutional experimentation that has emerged in response to the contraction of the traditional web of rules is that these are potentially instructive for policymakers and other stakeholders seeking solutions to regulatory gaps in employment protection. It is noteworthy that institutional experimentation transcends the other webs of rules we have identified. That is, while workers' representatives and/or responsible employers have initiated some forms of experimentation, other forms have been created or supported by the state. This indicates, firstly, that there is interplay between the different webs of rules. Secondly, campaigns or initiatives by workers' representatives or business might lead to regulation by the state. As such, while some forms of institutional experimentation may serve as substitutes for a lack of state regulation, other forms may complement or drive state regulation. At the same time, we have acknowledged the limitations of some of these initiatives. Despite their promise, soft law regulation that relies on socially responsible behaviour by employers and activist behaviour aimed at embarrassing employers to improve standards do not address fundamental power imbalances in the employment relationship.

While a review of institutional experimentation can potentially provide ideas for replication to address similar challenges in other settings, the limits to the realisation of policy transfer also need to be acknowledged. Innovations developed in Northern Europe or East Asia, for example, may have some appeal to audiences in the Anglo-American liberal market economies, but may also be institutionally incompatible. Moreover, innovative approaches frequently require a shift of social norms and can be subject to the constraints of institutional path dependency (Las Heras, 2018). Some of the initiatives discussed in the article may be more effective than others for protecting workers on non-standard contracts, and further research is necessary to test their effectiveness including in different contexts. Furthermore, while our analysis has included examples of the new strategies developed by businesses, unions, governments and NGOs that have influenced institutional experimentation, we have not specifically focused on such 'organisational experimentation'. There is scope for future research to examine this organisational experimentation in response to the changing regulatory environment more specifically and comprehensively.

Various scholars have observed that the New Deal, a classic example of institutional experimentation designed in response to an earlier crisis of labour regulation, "drew heavily on important ideas that had long been waiting in the wings", but which were not deemed necessary prior to the Great Depression (Arthurs, 2013; see also Kochan, 2018). The task

ahead for the representatives of government, labour and business is to determine how to adapt the emergent patchwork of rules to protect workers from the new vulnerabilities created by, for example, employer extraction and exploitation of their individual bio data, social media data and, not far off, their personal genome sequence. It is also worth recalling that post-war industrial relations scholars defined the web of rules in terms of both the substantive norms and procedural institutions that govern work. While our review has focused largely on responses to the contraction of substantive rules, equally important for future research is to consider experimentation with new institutional procedures that repair, build and allow substantive rules to evolve with changing circumstances.

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