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# Gig Work as a Manifestation of Short-Termism: Crafting a Sustainable Regulatory Agenda

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## ABSTRACT

Commercial platforms were once lauded as a facet of the sustainable ‘sharing economy’. Today, the short-termism associated with ‘gig work’ is widely condemned as an obstacle to sustainable development. This article begins by examining what is meant by ‘sustainability’, including how we might interpret and apply the Sustainable Development Goals adopted by the United Nations and endorsed by the International Labour Organization. The second substantive part of the article analyses contemporary practices associated with intermittent and insecure platform work which have been identified globally, with reference to longer term and inter-related economic, environmental and social effects. The third part reflects on how appreciation of these effects could shape a future reform agenda oriented towards sustainable development. It is argued that recognition of the desirability of sustainability could enhance the case for holistic legal reform, promoting collective solidarity and action across geographical and temporal borders, while traversing doctrinal boundaries, to make gig work (as we now know it) a thing of the past.

## 1. INTRODUCTION

Contemporary digital ‘gig work’, spurred on by the financial crisis and more recently the coronavirus pandemic, has become a transnational

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business model,<sup>1</sup> which utilises technological advances to enable the flexible hire of ‘on demand’ task-based labour through digital means. ‘Crowdwork’ occurs when those seeking to supply services bid for a task on a web platform and then perform this job online in the time allotted for a set fee.<sup>2</sup> In the alternative, when logged on to an ‘app’, the suppliers of services can agree to perform a ‘location-based’ task which is then performed in person for a third-party.<sup>3</sup> The latter can involve driving passengers to and from a particular place (via the Uber app), delivering food (as with the Deliveroo or Foodora app) or offering other services such as cleaning, gardening or even care work. Each platform, when hiring labour, utilises slightly different contractual terms and deploys a variety of associated arrangements. Platforms tend to engage in monitoring and algorithmic computation of standards of service, whereby they exercise forms of control over the delivery of and access to work, but do not usually provide commensurate protections for the worker.<sup>4</sup>

Much of the early academic literature endorsed the emergence of ‘temporary, project-based and flexible’ platforms operating in ‘the sharing economy’, which were linked to ‘sustainability’ objectives.<sup>5</sup> The digital allocation of services was said to increase the use of ‘under-utilised resources’, having the economic and environmental benefits of reducing consumption, for example when ‘sharing for mobility’ by reduction of car ownership,<sup>6</sup> enabling more efficient use of existing ‘vehicle stock’ as well as ‘time and skills’.<sup>7</sup>

<sup>1</sup>J. Moyer-Lee and N. Kountouris, ‘The “Gig Economy”’: Litigating the Cause of Labour’ in International Lawyers Assisting Workers (ILAW) Issue Brief *Taken for a Ride* (2021), 6 <https://www.ilawnetwork.com/wp-content/uploads/2021/03/Issue-Brief-TAKEN-FOR-A-RIDE-English.pdf> (last date accessed 24 September 2021). Cf. T. Novitz, ‘The Potential for International Regulation of Gig Economy Issues’ (2020) 31(2) *King’s Law Journal* 275, 277–80.

<sup>2</sup>J. Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford: Oxford University Press, 2018), 1–12 cites the example of ‘Amazon Turk’.

<sup>3</sup>As explained by V. De Stefano, *The Rise of the ‘Just-in-time Workforce’: On-Demand Work, Crowdwork and Labour Protection in the ‘Gig-Economy’*, ILO Conditions of Work and Employment Series Working Paper No. 71 (Geneva, ILO, 2016).

<sup>4</sup>For itemisation of such forms of control, see *Uber BV and others v Aslam and others* [2021] UKSC 5, 19 February 2021, per Lord Leggatt, at [94] et seq.

<sup>5</sup>A. Boar, R. Bastida and F. Mariomon, ‘A Systematic Literature Review: Relationships between the Sharing Economy, Sustainability and Sustainable Development Goals’ (2020) 12(6744) *Sustainability* 1–2.

<sup>6</sup>*Ibid.*, 8, 9 and 11.

<sup>7</sup>C. J. Martin, ‘The Sharing Economy: A pathway to sustainability or a nightmarish form of neoliberal capitalism’ (2016) 121 *Ecological Economics* 149, at 149 and 153.

Over time, there has emerged appreciation that ‘over-saturation’ of digital platform services can have negative impacts, including casualisation and commodification of labour, such that gig work is just another manifestation of the more general increase in precarious work.<sup>8</sup> Furthermore, ride services can increase ‘traffic congestion, which in turn affects... environmental sustainability’, also having negative effects on take up of more environmentally friendly measures such as public transport, cycling or scooter options.<sup>9</sup> The broad consensus is now that the gig economy constitutes ‘corporate co-option’, which should be cast out of the definitional compass of the ‘sharing economy’.<sup>10</sup> The gig work model is more commonly described now as merely ‘sharing the scraps’,<sup>11</sup> or even ‘share-washing’.<sup>12</sup>

Concerns relating to what was described as the ‘platform’ (rather than ‘gig’) economy were notably investigated by the International Labour Organization (ILO) Global Commission on the future of work.<sup>13</sup> The Commission’s 2019 Report treated ‘sustainability’ as relevant once again, but more as a basis for criticism of current modes of platform work, with reference to the United Nations (UN) Sustainable Development Goals (SDGs) as set out in the 2030 Agenda.<sup>14</sup> Recommendations from the Global Commission’s Report centred on ‘the universality of the ILO mandate’ to ensure inclusive protection of those engaged in precarious work, including ‘the emerging phenomenon of digitally mediated work in the platform economy’, through a Universal Labour Guarantee.<sup>15</sup> Similarly, the 2019 ILO Centenary Declaration that followed<sup>16</sup> began by stressing

<sup>8</sup>Ibid., 155. See J. Kenner, I. Florczak and M. Otto (eds), *Precarious Work: The Challenge for Labour Law in Europe* (Cheltenham: Edward Elgar, 2019).

<sup>9</sup>M. Pouri and L. M. Hilty, ‘The Relevance of Digital Sharing Business Models for Sustainability’ ICT4S2020, 21–6 June 2020, Bristol, para 4.1. [https://www.ifi.uzh.ch/dam/jcr:4abc7924-4c3f-4bf3-9302-ba6abaae01f0/2020\\_Pouri\\_Hilty\\_Relevance\\_of\\_Digital\\_Sharing\\_Business\\_Models\\_for\\_Sustainability.pdf](https://www.ifi.uzh.ch/dam/jcr:4abc7924-4c3f-4bf3-9302-ba6abaae01f0/2020_Pouri_Hilty_Relevance_of_Digital_Sharing_Business_Models_for_Sustainability.pdf) (last date accessed 24 September 2021).

<sup>10</sup>Martin, n.7, p. 157.

<sup>11</sup>Pouri and Hilty, n.9, para 4.2.

<sup>12</sup>S. K. Curtis and M. Lehner, ‘Defining the Sharing Economy for Sustainability’ (2019) 11 *Sustainability* 567/2 who say the application of the term ‘sharing economy’ must be limited to ‘non-pecuniary’ motivations.

<sup>13</sup>ILO Global Commission on the Future of Work, *Work for a Brighter Future* (Geneva: ILO, 2019), especially at pp. 14, 18 and 44. [https://www.ilo.org/global/publications/books/WCMS\\_662410/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_662410/lang-en/index.htm) (last date accessed 24 September 2021).

<sup>14</sup>Ibid., at pp. 13 and 23.

<sup>15</sup>Ibid., at pp. 14 and 56.

<sup>16</sup>See for text of the 2019 Centenary Declaration: [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_711674.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf) (last date accessed 24 September 2021). Endorsed by a UN General Assembly Resolution A/RES/73/342 in 2019: <https://undocs.org/en/A/RES/73/342> (last date accessed 24 September 2021).

the significance of ‘a fair, inclusive and secure future of work’ for ‘sustainable development’,<sup>17</sup> ‘harnessing the fullest potential of technological progress...’<sup>18</sup> The precise wording of SDG 8 (to ‘promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’) was replicated later in the Declaration as an ambition for, *inter alia*, ‘the digital transformation of work, including platform work’.<sup>19</sup>

So, in various ways, advocates of the platform economy and opponents of unregulated platform work view the concept of sustainability as relevant. The appeal to this normative framework therefore merits more attention than it has received to date. The next part of this article considers what ‘sustainability’ could mean in this context, prompting attention to economic, social and environmental objectives and how these interact. In this context, issues associated with capabilities, systemic inequalities and collective bargaining for just transitions emerge, and are relevant to the climate change objectives pursued under the mantle of the Paris Agreement.<sup>20</sup> The potential contribution and limitations of the SDGs are further considered in this regard. I then proceed to examine harms associated with the short (and long) term economic gains sought by platforms through utilising gig work, with reference to various longer term effects in economic, social and environmental spheres, as well as associated SDGs. It becomes evident that there are manifold reasons to regulate work in the platform economy, which could provide the foundation for the political will to do so.<sup>21</sup> I conclude by proposing a multi-faceted regulatory strategy, operating at global, national and local levels. The foundation for such a strategy would be effective collective worker voice that enabled geographical and temporal solidarities, while its multi-faceted nature would entail traversing conventional legal disciplinary boundaries.

<sup>17</sup>2019 ILO Centenary Declaration, Article I(C) and (D).

<sup>18</sup>*Ibid.*, Art II(A).

<sup>19</sup>*Ibid.*, Art III(C).

<sup>20</sup>The Paris Agreement under the United Nations Framework Convention on Climate Change 12 December 2015.

<sup>21</sup>*Cf.* R. Dukes, ‘Regulating Gigs’ (2020) 83(1) *Modern Law Review* 217, 228.

## 2. THE PHILOSOPHICAL AND LEGAL FOUNDATIONS OF 'SUSTAINABLE WORK'

Use of the terms 'sustainability' and 'sustainable development' are often contested.<sup>22</sup> Nevertheless, it is possible to detect a core of meaning or understandings that enable criticism of the ways in which many digital platforms currently treat those who work for them. In this part of the article, the philosophical and legal foundations of a sustainability discourse are interrogated. This requires attention to longer term economic, environmental and social concerns, as well as the synergies between them. My aim is to explain how sustainability has come to be associated with protecting present and future human capabilities, across geographical and temporal borders. Further, sustainability can be linked to solidarity manifested in promotion of equality. There is also a call for representative collective voice as a means by which to pursue 'just transitions' towards sustainable development objectives. The SDGs (and associated targets and indicators) adopted in the UN 2030 Agenda<sup>23</sup> do not necessarily reflect the bolder aspects of the sustainability discourse from which they originate. Nevertheless, they may offer a helpful reference point for what is most problematic in the gig economy and provide the basis for a shared reform agenda.

### A. The Idea of Sustainability

'Sustainability' can be understood in its simplest incarnation as analogous to 'durability'. It is a term deployed frequently as an adjective to indicate that a practice is workable in the longer term.<sup>24</sup> Sustainability, then, entails durable policies for what have been termed the three 'pillars' of economic, social and environmental development.<sup>25</sup> The 1987 Brundtland Report

<sup>22</sup>M. Pieraccini and T. Novitz, 'Sustainability and Law: A Historical and Theoretical Overview' in Margherita Pieraccini and Tonia Novitz (eds), *Legal Perspectives on Sustainability* (Bristol: Bristol University Press, 2020).

<sup>23</sup>UN General Assembly Resolution, *Transforming Our World: The 2030 Agenda for Sustainable Development*, 25 September 2015 A/Res/70/1. <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication> (last date accessed 24 September 2021).

<sup>24</sup>See, eg, its use in the ILO World Employment and Social Outlook (WESO) Report, *The Role of Digital Labour Platforms in Transforming the World of Work* (Geneva: ILO, 2021), 113, 174 and 222. [https://www.ilo.org/global/research/global-reports/weso/2021/WCMS\\_771749/lang--en/index.htm](https://www.ilo.org/global/research/global-reports/weso/2021/WCMS_771749/lang--en/index.htm) (last date accessed 24 September 2021).

<sup>25</sup>B. Purvis, Y. Mao and D. Robinson, 'Three Pillars of Sustainability: In Search of Conceptual Origins' (2019) 14(3) *Sustainability Science* 681.

further claimed that development is ‘sustainable’ which ‘meets the needs of the present without compromising the ability of future generations to meet their own needs’, entailing consideration ‘of the long term as well as the short-term advantages and disadvantages of alternative actions’.<sup>26</sup> This definition engages both geographical and temporal distributive justice, entailing *intra-generational* fair distribution of resources between countries and people within them, but also *inter-generational* justice for present and future generations. Over time, a series of issues have emerged in relation to these ambitions which include: the relationship between the economic, environmental and social pillars of sustainability; the significance of capabilities and inequalities; and the role of collective worker voice for just transitions.

(i) The Relationship Between Economic, Environmental and Social Objectives

For some academic commentators, environmental protection and ecological action lie at the core of any account of sustainability.<sup>27</sup> Others consider that social sustainability is a compelling objective both together with and independently from other environmental and economic concerns.<sup>28</sup> I have previously given the example of prevention of child labour, which can be said to have consequences for inter- and intra-generational social justice, without any concomitant environmental concern arising.<sup>29</sup> However, when operationalising a given social (or even economic or environmental) objective, it becomes more difficult to maintain such distinctions and it is doubtful whether we should even seek to do so. For example, measures taken to address child labour require economic opportunities to be given

<sup>26</sup>World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), 51.

<sup>27</sup>V. Barral, ‘Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm’ (2012) 23(2) *European Journal of International Law* 377, 380; P. Tomassetti, ‘Labor Law and Environmental Sustainability’ (2018) 40 *Comparative Labour Law and Policy Journal* 61, 66.

<sup>28</sup>K. A. Polomarkakis, ‘The European Pillar of Social Rights and the Quest for EU Social Sustainability’ (2019) 29(2) *Social and Legal Studies* 183 and V. Cagnin, *Labour Law and Sustainable Development* (Alphen aan den Rijn: Kluwer, 2020), ch 4.

<sup>29</sup>T. Novitz, ‘Engagement with Sustainability at the International Labour Organization and Wider Implications for Collective Worker Voice’ (2020) 159(4) *International Labour Review* 463, at pp. 465 and 478.

to adults sufficient to support their children, funding sufficient for schooling and a context where environmental harms are prevented.<sup>30</sup>

Sara Seck has explained, in relational terms, how workers are not only attached to those who hire their labour but are ‘embedded’ in relationships linked to their ‘family, community and environment’, which are connected.<sup>31</sup> Moreover, pollutants do not only emerge in the workplace in an industrial setting and spread to external communities; such a picture has rightly been described as ‘anachronistic’.<sup>32</sup> This is especially true for gig workers who work from home online, or on the roads, or in someone else’s home delivering care or other services.

Early analysis from Griebler and Littig in 2005 of social sustainability reflects this fusion of ambition. They saw the ‘needs’ identified in the Brundtland Report as being capable of being delivered through work, meaning that we should (re)design the regulation of work to achieve inter- and intra-generational justice.<sup>33</sup> In so doing, they expressly linked these objectives to a capabilities framework.<sup>34</sup> Of course, capabilities theory, as observed by Judy Fudge, ‘needs to be supplemented by a theory of social choice, deliberative mechanisms, and a social theory about power to provide a full account of social justice and human rights’.<sup>35</sup> In this sense, its content is comparable to sustainability discourse that it infuses, which also relies on external normative claims to inform understandings of inter- and intra-generational justice. The conceptual framework offered by Griebler and Littig is interesting for our purposes, when applied to the gig economy, since these authors sought to explain how measures addressing discrimination,

<sup>30</sup>See the Tamar project at Praia do Forte, Bahia, Brazil, which used the creation of a turtle sanctuary to enable greater employment in the town and boost children’s education locally. <https://www.tamar.org.br/> (last date accessed 24 September 2021).

<sup>31</sup>S. Seck, ‘Relational Law and the Reimagining of Tools for Environmental and Climate Justice’ (2019) 31(1) *Canadian Journal of Women and Law* 151, 158. While A. Zbyszewska, ‘Regulating Work with People and “Nature” in Mind: Feminist reflections’ (2018) 40(1) *Comparative Labor Law and Policy Journal* 9 at 22–4 connects women’s reproductive labour with the ecological context in which they work.

<sup>32</sup>Tomassetti, n.27 at p. 63.

<sup>33</sup>E. Griebler and B. Littig, ‘Social Sustainability: A Catchword between Political Pragmatism and Social Theory’ (2005) 8(1–2) *International Journal of Sustainable Development* 65. Also see discussion in M. Loganathan, *Assessing Social Sustainability in the Gig Economy* (2021), 6, available at: <https://ideas.repec.org/p/osf/socarx/5gych.html> (last date accessed 24 September 2021).

<sup>34</sup>Griebler and Littig, n.33, 75; citing M. Nussbaum and A. Sen (eds), *The Quality of Life*, 2nd edn (Oxford: Clarendon Press, 2002).

<sup>35</sup>J. Fudge, ‘The New Discourse of Labour Rights: From Social to Fundamental Rights?’ (2007) 29 *Comparative Labor Law and Policy Journal* 29, 65.



the incentivisation of environmental protections, and state support for workers when not in employment or retired can all be viewed as desirable from a sustainability perspective.

(ii) Issues of Equality, Capabilities and Capitalism

Emphasis on sustainability can be seen as a corrective to the dominance of economic logic severed from its environmental and social consequences. However, this is not an inevitable outcome. What Ruth Dukes has described as the ‘colonization’ of the social by the economic<sup>36</sup> can continue in a sustainability paradigm unless contested and remodelled. There are ‘varieties of capitalism’,<sup>37</sup> and there are ongoing debates as to which variety can and should be accommodated by sustainable development. For example, using a capabilities and sustainability framework, Valentina Cagnin has argued in favour of ‘smart work’, which she sees as ‘environmentally friendly’.<sup>38</sup> She considers that this kind of digital work is ‘more suited not only to the productive needs of companies but also to a new figure of worker: more aware, enterprising and independent’.<sup>39</sup>

Arguably, what cannot be tolerated within the frame of sustainability are forms of systemic inequality of the kinds identified by Martha Nussbaum, who has argued that government and public policy must urgently address ‘entrenched social injustice’ which hinders the realisation of capabilities.<sup>40</sup> Social sustainability cannot withstand the increasing disparity of income levels between capital, managers and those dependent on working for a living.<sup>41</sup> In this respect, improving access to effective trade union

<sup>36</sup>See R. Dukes, ‘The Economic Sociology of Labour Law’ (2019) 46(3) *Journal of Law and Society* 396 at 400 and 421; citing K. Rittich, ‘Making Natural Markets: Flexibility as Labour Market Truth’ (2014) 65 *Northern Ireland Legal Quarterly* 323.

<sup>37</sup>P. A. Hall and D. Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford: Oxford University Press, 2001), and F. Adaman, P. Devine and B. Ozkaynak, ‘Reinstituting the Economic Process: (Re)embedding the Economy in Society and Nature’ (2003) 13(2) *International Review of Sociology/Revue Internationale de Sociologie* 357.

<sup>38</sup>Cagnin, n.28, 89; cf. B. Eberhard et al. ‘Smart Work: The Transformation of the Labour Market due to the Fourth Industrial Revolution (I4. 0)’ (2017) 10(3) *International Journal of Business & Economic Sciences Applied Research* 47.

<sup>39</sup>Cagnin, n.28, 96.

<sup>40</sup>M. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge: Harvard UP, 2011), 18–9.

<sup>41</sup>See T. Piketty, *Capital in the Twenty-First Century* (Cambridge, MA: Harvard University Press, 2014).

representation and collective bargaining has been advocated, for example by researchers at the International Monetary Fund.<sup>42</sup>

Anna Grear has identified the interconnection between capitalist patterned hierarchies and climate change.<sup>43</sup> Paolo Tomassetti, drawing on her analysis, likewise offers a critique of discrimination and dominance,<sup>44</sup> such that the current ‘environmental crisis’ can be seen also as ‘a crisis of inequalities’.<sup>45</sup> In this context, the desirability of economic growth under contemporary capitalism has been called into question, such that a desirable objective could be ‘managed degrowth’, which offers a ‘twin economic and ecological solution’.<sup>46</sup>

### (ii) The Role of Collective Worker Voice

The future orientation of sustainability is suggestive not of a static, but a dynamic participatory process, through which appropriate policies can be adopted.<sup>47</sup> Principle 10 of the Rio Declaration 1992 stressed the importance of participation ‘of all concerned citizens’ in decision making on environmental issues.<sup>48</sup> This was reflected in the Aarhus Convention 1998,<sup>49</sup> which emphasised also the importance of access to information and to justice.

In a comparable way, the case has been made for engagement with collective worker voice in sustainable policy-making, which had become

<sup>42</sup>F. Jaumotte and C. Buitron, *Inequality and Labor Market Institutions* (IMF Staff Discussion Note 15/14, 1 July 2015).

<sup>43</sup>A. Grear, ‘Towards “Climate Justice?” A Critical Reflection on Legal Subjectivity and Climate Injustice: Warning Signals, Patterned Hierarchies, Directions for Future Law and Policy’ (2014) 5 *Journal of Human Rights and the Environment* 103, 111 and 127.

<sup>44</sup>P. Tomassetti, ‘From Treadmill of Production to Just Transition and Beyond’ (2020) 26(4) *European Journal of Industrial Relations* 439, at 441 and 452.

<sup>45</sup>Tomassetti, n.44, 441 and 452; see also Tomassetti, n.27, 69.

<sup>46</sup>See P. Wells, W. Abouarghoub, S. Pettit and A. Beresford, ‘A Socio-technical Transitions Perspective for Assessing Future Sustainability Following the COVID-19 Pandemic’ (2020) 16(1) *Sustainability: Science, Practice and Policy* 29, 33–4 citing G. Kallis, ‘In Defence of Degrowth’ (2011) 70(5) *Ecological Economics* 873.

<sup>47</sup>T. Novitz, ‘The Paradigm of Sustainability in a European Social Context: Collective Participation in Protection of Future Interests?’ (2015) 31 *International Journal of Comparative Labour Law and Industrial Relations* 243, 245.

<sup>48</sup>UN Rio Declaration on Environment and Development 1992, Report of the UN Conference on Environment and Development, GA A/CONF.151/26 (Vol. I).

<sup>49</sup>UN Convention on Access to Information, Public Participation and Decision-Making and Access to Justice in Environmental Matters (1998) 38 ILM 517.

associated with the language of ‘just transitions’.<sup>50</sup> This is a strategy which has a long history, derived from the concerns of Canadian and United States unions in the 1970s,<sup>51</sup> now reflected in the ILO Guidelines on Just Transitions 2015.<sup>52</sup> Once again, conceptions of just transitions in the literature vary according to the scale of trade union activism anticipated and the scope for redistributive collaboration between representatives of labour in different countries. Also relevant is the extent to which the ambitions of unions entail transformational economic, social and environmental change.<sup>53</sup>

## B. The Political Compromise Manifested in the SDGs

The seventeen UN SDGs have become a key reference point for both academic literature<sup>54</sup> and emerging ILO policy prescriptions regarding the gig economy.<sup>55</sup> The SDGs (and 169 targets) have been framed around purposive alliteration: people, planet, prosperity, peace and partnership. They arguably reflect global shared values, but also the political dynamics of an extensive drafting process in which business had a powerful voice.<sup>56</sup> As a result, the particular wording of each SDG and target has the potential to promote but also dilute established legal norms and academic consensus.<sup>57</sup>

<sup>50</sup>D. Doorey, ‘Just Transitions Law: Putting Labour Law to Work on Climate Change’ (2017) 30(2) *Journal of Environmental Law and Practice* 201.

<sup>51</sup>D. Stevis, E. Morena and D. Krause, ‘Introduction: The Genealogy and Contemporary Politics of Just Transitions’ in E. Morena, D. Krause and D. Stevis (eds), *Just Transitions: Social Justice in the Shift towards a Low-Carbon World* (London: Pluto Press, 2020), 9.

<sup>52</sup>ILO Guidelines for a just transition towards environmentally sustainable economies and societies for all (Geneva: ILO, 2015).

<sup>53</sup>D. Stevis and R. Felli, ‘Global Labour Unions and Just Transition to a Green Economy’ (2015) 15(1) *International Environmental Agreements* 29 and P. Hampton, *Workers and Trade Unions for Climate Solidarity* (Abingdon: Routledge, 2015).

<sup>54</sup>Boar et al., n.5.

<sup>55</sup>See the ILO Global Commission Report 2019, n.13 and the ILO Centenary Declaration 2019, n.16.

<sup>56</sup>R. Scheyvens, G. Banks and E. Hughes, ‘The Private Sector and the SDGs: The Need to Move beyond ‘Business as Usual’ (2016) 24(5) *Sustainable Development* 371; T. Pogge and M. Sengupta, ‘The Sustainable Development Goals (SDGs) as Drafted: Nice Idea, Poor Execution’ (2015) 24(3) *Washington International Law Journal* 571, 574–5; and L. Pingeot, *Corporate Influence in the Post- 2015 Process* (2014) working paper. [https://www.cidse.org/wp-content/uploads/2014/02/Misereor\\_Corporate\\_influence\\_in\\_the\\_Post-2015\\_process\\_Jan\\_2014.pdf](https://www.cidse.org/wp-content/uploads/2014/02/Misereor_Corporate_influence_in_the_Post-2015_process_Jan_2014.pdf) (last date accessed 24 September 2021).

<sup>57</sup>T. Novitz and M. Pieraccini, ‘Agenda 2030 and the Sustainable Development Goals: “Responsive, Inclusive, Participatory and Representative Decision-Making?”’ in Pieraccini and Novitz, n.22, 40 and 45–6.

As one would expect, numerous environmental objectives are highlighted for protection of the planet, concerning agriculture (SDG 2), water (SDG 6), energy (SDG 7), climate change (SDG 13), oceans and seas (SDG 14), as well as ecosystems and biodiversity on land (SDG 15). These connect to social and economic aims relating to ‘people’ and ‘prosperity’, which include goals devoted to: preventing poverty (SDG 1); ending hunger (SDG 2); promoting health (SDG 3), education (SDG 4), gender equality (SDG 5), economic growth, employment and decent work ‘for all’ (SDG 8), industry, innovation and infrastructure (SDG 9); reducing inequalities (SDG 10); as well as working towards sustainable cities and communities (SDG 11) and responsible consumption and production (SDG 12). Three out of the four ILO ‘fundamental principles and rights at work’ (or core labour standards)<sup>58</sup> are expressly set out in SDG 8 targets, namely elimination of forced labour, child labour and discrimination. Additionally, target 8.7 addresses trafficking and modern slavery, while target 8.8 makes provision for protection of migrant workers. Since 2017, SDG indicator 8.8.2 requires attention to any ‘increase in national compliance of labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation’, with reference to ‘sex and migrant status’.<sup>59</sup>

The value of participatory engagement in achievement of the goals is emphasised in SDG 16, concerned with peace, justice and strong institutions. The importance of global partnerships for their realisation is stressed in SDG 17. The detail of the goals, targets and indicators can be found on the ‘Sustainable Development’ platform provided by the UN, as originally intended by the 2030 Agenda.<sup>60</sup> There is no mention specifically of platform (or gig) work, but the following observations can be made.

The first is that the SDGs are described as ‘integrated and indivisible’ in the preamble to the 2030 Agenda, recognising links between economic, social and environmental dimensions of sustainability.<sup>61</sup> In the International Labour Office Report of 2019, *Time to Act for SDG 8*, the synergies between

<sup>58</sup>ILO Declaration on Fundamental Principles and Rights at Work 1998, Art 2: (1) freedom of association and the effective recognition of the right to collective bargaining; (2) the elimination of all forms of forced or compulsory labour; (3) the effective abolition of child labour and (4) the elimination of discrimination in respect of employment and occupation.

<sup>59</sup>IISD, *Policy Brief: Getting to 2030: Tracking SDG Indicators for Evidence of Implementation Progress* (2018). <http://sdg.iisd.org/commentary/policy-briefs/getting-to-2030-tracking-sdg-indicators-for-evidence-of-implementation-progress/> (last date accessed 24 September 2021).

<sup>60</sup>See the UN 2030 Agenda, n.23, para 70; and the website at <https://sdgs.un.org/goals> (last date accessed 24 September 2021).

<sup>61</sup>S. Seck, ‘Transnational Labour Law and the Environment: Beyond the Bounded Autonomous Worker’ (2018) 33(2) *Canadian Journal of Law and Society* 137, 155.

social sustainability goals were identified,<sup>62</sup> but a bolder approach engaging more with environmental objectives could also follow from the 2030 Agenda.

Secondly, repeated reference is made in the 2030 Agenda to the commitment of all states to ‘respect, protect and promote human rights’ recognised under international law.<sup>63</sup> This is reiterated specifically in relation to gender equality and treatment of migrants.<sup>64</sup> There is reference to ‘the right to development’<sup>65</sup> and capabilities including those of developing countries.<sup>66</sup> Stress is placed on reducing gender inequalities (in SDG 5) and inequalities of income within and between states (under SDG 10). However, there is still deference to aspirations for ‘economic growth’, as indicated in the title of SDG 8.

SDG target 8.1 sets a concrete figure of ‘at least 7% gross domestic product growth per annum in the least developed countries’.<sup>67</sup> Furthermore, target 8.2 aims for ‘higher levels of economic productivity through diversification, technological upgrading and innovation, including through a focus on high-value added and labour-intensive sectors’. The accompanying indicator 8.2.1 requires measurement of the ‘[a]nnual growth rate of real GDP per employed person’. This is akin to instrumentalising each worker for economic growth, arguably challenging the ILO constitutional principle that ‘labour is not a commodity’.<sup>68</sup> These SDG targets might seem an indirect endorsement of investment in gig work, linked to ‘technological upgrading and innovation’. However, the UN is now warning that economic growth does not necessarily lead to development.<sup>69</sup>

There is no mention of ‘just transitions’ in the 2030 Agenda, or of collective bargaining in the goals or targets, but they seem implicit in SDG 16. As the UN Special Rapporteur has argued, target 16.10 which sets out the need to respect ‘fundamental rights’ must be understood to include freedom

<sup>62</sup>International Labour Office, *Time to Act for SDG 8: Integrating Decent Work, Sustained Growth and Environmental Integrity* (Geneva, ILO:2019), 2, available at: [https://www.ilo.org/global/publications/books/WCMS\\_712685/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_712685/lang--en/index.htm) (last date accessed 24 September 2021).

<sup>63</sup>UN 2030 Agenda, n.23, for example, paras 8 and 19.

<sup>64</sup>Ibid., paras 20 and 29.

<sup>65</sup>Ibid., paras 10 and 35.

<sup>66</sup>Ibid., para 28 (and repeated in SDG target 12.1).

<sup>67</sup>Cf. SDG target 9.2 which also envisages growth in ‘industry’s share of employment and gross domestic product’.

<sup>68</sup>See Part XIII of the Treaty of Versailles 1919, Art 427 and ILO Declaration on Philadelphia 1944, Art I(a).

<sup>69</sup>UN Department of Economic and Social Affairs, *Sustainable Development Outlook 2019: Gathering Storms and Silver Linings* (UN, 2019) 2, 11 and 16.

of association.<sup>70</sup> That would be consistent with indicator 16.10.1 regarding ‘killing, kidnapping, enforced disappearance, arbitrary detention and torture of [inter alia] trade unionists’. The importance of collective worker representation can also be linked to target 16.7 which aims to ‘[e]nsure responsive, inclusive, participatory and representative decision-making at all levels’.<sup>71</sup> Moreover, the explicit reference to ‘the imperatives of a just transition of the workforce and the creation of decent work’ in the preamble to the Paris Agreement on Climate Change later in 2015<sup>72</sup> indicates their ongoing importance.

### 3. SHORT-TERM ‘GIG’ WORK AND ITS EFFECTS ON SUSTAINABILITY

Here we turn to the nature of ‘gig’ work, considering its tendency to ‘short-termism’, but also more broadly economic, environmental and social effects and how these inter-relate. This analysis builds on the philosophy and legal dimensions of sustainability identified in the previous part. Bearing in mind current difficulties acquiring data to ascertain SDG compliance in the platform economy,<sup>73</sup> I draw on evidence from the ILO World Employment and Social Outlook (WESO) Report 2021, *The Role of Digital Labour Platforms in Transforming the World of Work*.<sup>74</sup> That Report briefly mentioned the SDGs,<sup>75</sup> but is most useful for our purposes due to its identification of common patterns in platform work across the world.

The WESO Report highlighted the ways in which platform work has entailed short-term flexibility in the hire of labour, exacerbated in the pandemic situation where home deliveries and working from home became ubiquitous.<sup>76</sup> While contractual terms vary, the norm is that those providing their labour are designated (in a whole host of ways) independent contractors hired temporarily to perform short-term tasks without the protections

<sup>70</sup>Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, 7 August 2018, A/73/279, paras 6 and 58, also paras 87–9.

<sup>71</sup>As argued in Novitz, n.29, 472–8.

<sup>72</sup>Discussed in N. S. Ghaleigh, *Just Transitions for Workers: When Climate Change Met Labour Justice*. Edinburgh School of Law Research Paper No. 2019/30 (Edinburgh: University of Edinburgh, 2019).

<sup>73</sup>Loganathan, n.33.

<sup>74</sup>ILO WESO Report 2021, n.24.

<sup>75</sup>Ibid., Preface by G. Ryder and see also 241 and 248.

<sup>76</sup>Ibid., see especially ch 5. See also Loganathan, n.33, 2–3.

of employment and labour laws, doing what has come to be known as gig work.<sup>77</sup>

Of course, on-call labour, piecework and casual work are not so very new,<sup>78</sup> being ‘as old as capitalism, perhaps even older.’<sup>79</sup> Ruth Dukes has compared the *ad hoc* hire, poverty pay and constant performance assessment through ratings that are prevalent in gig work with 19th century domestic service which entailed ‘insecurity, low wages and dependence on assessment of character.’<sup>80</sup> However, Frances Flanagan has expressed concern at the ways in which today’s care work has been cast by platforms into ‘a mould of transactionality and short-termism’, sitting ‘at stark odds with the long-term character of quality caring relationships.’<sup>81</sup> Certainly, while domestic service delivered for the employer a dedicated around the clock servant to provide care for a family member, a location-based app cannot provide that consistency. This has costs for customers too, which will be felt more acutely in certain settings more than others.

There is another interesting contemporary facet of gig hire to which Dukes points, which distinguishes it from previous manifestations of casualised labour, namely the longer term capitalist gain which platforms offer to investors. As she has observed, platforms deliberately undercut other suppliers of services in the marketplace (such as other taxi drivers or restaurants seeking to deliver their own food) providing ‘services at very low and even loss-making prices’. As they gain popularity with consumers on this basis, they can cancel out their competitors and ‘come to form part of the infrastructure’ of consumers’ lives.<sup>82</sup> This can be achieved by platforms’ reliance on ‘patient capital’ seeking market dominance.<sup>83</sup> The lure of short-term cheaper services then is used to achieve longer term economic gain for capital.<sup>84</sup> Whether deemed truly short term or not, the gig model generates

<sup>77</sup>ILO *WESO Report 2021*, n.24, 198–9.

<sup>78</sup>Cf. regarding controls on those supposedly providing casual work *O’Kelly v Trusthouse Forte* [1983] ICR 728 (CA), per Ackner LJ at 741.

<sup>79</sup>J. Stanford, ‘The Resurgence of Gig Work: Historical and Theoretical Perspectives’ (2011) 28(3) *Economic and Labour Relations Review* 382, 383.

<sup>80</sup>Dukes, n.21, at 223–7.

<sup>81</sup>F. Flanagan, ‘Theorising the Gig Economy and Home-Based Service Work’ (2019) 61(1) *Journal of Industrial Relations* 57 at 67.

<sup>82</sup>Dukes, n.21, at 227.

<sup>83</sup>Ibid., at 226 citing K. Sabeel Rahman and K. Thelen, ‘The Rise of the Platform Business Model and the Transformation of Twenty-First Century Capitalism’ (2019) 47 *Politics and Society* 177.

<sup>84</sup>W. Streeck, ‘How Will Capitalism End?’ (2014) May/June *New Left Review*, 49.



tangible harms for others, which utilising a sustainability analysis can be shown to have inter-related economic, social and environmental dimensions.

## A. Economic Effects

The WESO Report opened with the claim that the platform economy can be economically beneficial, ‘offering new markets for businesses and more income-generating opportunities for workers...’<sup>85</sup> Such objectives chime with SDG 8 regarding promotion of economic growth and employment and even SDG 9 relating to industry, innovation and infrastructure. However, there are various harmful long-term economic impacts associated with gig work. It is argued here that these relate to poverty, social security, the tax base and failure to invest in human capital, which can be linked to further social and environmental harms.

### (i) Poverty and Social Security

The first most obvious harm relates to poverty, which SDG 1 seeks to avoid. Registration of a worker to a platform seldom results in payment for that retention or even for being ‘on call’ while waiting for a task (such as a delivery or a ride). Indeed, in food delivery there has been a decisive shift from hourly rates of pay when on call to ‘piecework rates.’<sup>86</sup> In the UK Deliveroo ‘riders’ are earning as little as £2.00 per hour, significantly less than the minimum statutory living wage.<sup>87</sup> Outsourced online crowdwork to African countries, such as Kenya, Nigeria and Uganda, can be compensated at less than \$US1 per hour.<sup>88</sup> Whether the threshold of ‘extreme poverty’ is met (defined by SDG target 1.1 as US\$1.25 per day), pay for gig work seems inconsistent with target 1.2 which aims to ‘reduce at least by half the

<sup>85</sup>ILO *WESO Report 2021*, n.24, Preface by G. Ryder.

<sup>86</sup>A. Tassinari and V. Maccarrone, ‘Riders on the Storm: Workplace Solidarity among Gig Economy Couriers in Italy and the UK’ (2020) 34(1) *Work, Employment and Society* 35, 37–9 and 42–3.

<sup>87</sup>See <https://www.thebureauinvestigates.com/stories/2021-03-25/deliveroo-riders-earning-as-little-as-2-pounds> (last date accessed 24 September 2021) and <https://www.theguardian.com/business/2021/mar/25/some-uk-deliveroo-riders-earning-just-2-an-hour-survey-finds> (last date accessed 24 September 2021).

<sup>88</sup>M. Graham and M. Anwar, ‘The Global Gig Economy: Towards a Planetary Labour Market?’ (2019) 24(4) *First Monday*, at 21–2. See also ILO, *WESO Report 2021* n.24, at pp. 44 and 51.



proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions?

Moreover, it is not only the level of income but its unpredictability that can create poverty. Insecurity of income is exacerbated by the tendency of platforms to register an over-supply of workers to respond promptly to consumer demands, which reduces the quantum of work available.<sup>89</sup> There is usually no remedy for a failure by the platform to offer work, a situation which the WESO Report noted was exacerbated post Covid-19.<sup>90</sup> That report also observed that less than 20% of those hired by online platforms were ‘covered for employment injury, unemployment and disability insurance, or for old-age pensions or retirement benefits (both public and private pension plans), and the coverage is low across different types of platforms...’<sup>91</sup>

Denial of social security to those at work is contrary to the ‘decent work agenda’ set out in the ILO Declaration on Social Justice for a Fair Globalization 2008,<sup>92</sup> linked to SDG target 8.5. This practice also deviates from SDG target 1.5 which aims to ‘implement nationally appropriate social protection systems and measures for all...’ and to ‘build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to ... extreme events’.

#### (ii) Redistribution of Wealth and the Tax Base

Standard form contracts in the platform economy tend also ‘to explicitly evade ... tax’,<sup>93</sup> which poses problems for intra-generational justice in terms of the distribution of social goods and has longer term inter-generational effects on family incomes and future state investment in communities. The WESO Report recognised that ‘lack of adequate public funds available for social expenditure allocation’ can have ‘a detrimental effect’ on

<sup>89</sup>ILO, *WESO Report 2021*, n.24, 244; Tassinari and Maccarrone n.86, 43.

<sup>90</sup>ILO *WESO Report 2021*, n.24, 153; consistent with the findings of A. Adams-Prassl, T. Boneva, M. Golin and C. Rauh, ‘Inequality in the Impact of the Coronavirus Shock: Evidence from real time surveys’ (2020) 189 *Journal of Public Economics* 104245.

<sup>91</sup>ILO *WESO Report 2021*, n.24, 24 and 174.

<sup>92</sup>ILO Declaration on Social Justice for a Fair Globalization, International Labour Conference, 97th Session, Geneva, 2008.

<sup>93</sup>ILO *WESO Report 2021*, n.24, 199. See also for similar concerns raised in *Good Work; The Taylor Review of Modern Working Practices*, 67 and 78. <https://www.thersa.org/globalassets/pdfs/reports/good-work-taylor-review-into-modern-working-practices.pdf> (last date accessed 24 September 2021).

economic recovery after Covid-19 but more particularly on development in low-income (so-called ‘developing’) countries.<sup>94</sup>

Here the overarching aim of SDG 10 has relevance, namely to ‘reduce equality within and among countries’. Within any given state, a low wage/low tax economy based on ‘gig work’ will not meet the target of income growth for the bottom 40% of the population envisaged in target 10.1, nor will it ‘empower and promote the social, economic and political inclusion of all’ under target 10.2. Failure to tax platforms also thwarts target 10.4, which prompts adoption of ‘policies, especially fiscal, wage and social protection policies’ to ‘progressively achieve greater equality’.

(iii) Failure to Invest in ‘Human Capital’ or Capabilities

Gig work is notorious for hiring ‘without regard for past employment and experience’ and relying on ‘fast turnover and interchangeable workers.’<sup>95</sup> This mode of hire also leads to under-utilisation of existing skills and a lack of investment in skills and training.<sup>96</sup> While some governments in developing countries ‘are investing in digital infrastructure and supporting training programmes developed by the private sector to equip the workforce with digital skills,’<sup>97</sup> there is less evidence of input from platform providers.<sup>98</sup> Furthermore, the WESO report observed that, while there had been some health and safety training of those providing ‘location-based’ app work during the Covid pandemic,<sup>99</sup> a reported lack of available and suitable personal protective equipment (PPE) suggested this was not as extensive or well-informed as it should have been.<sup>100</sup>

This is some way off the emphasis placed on acquisition of vocational skills in SDG targets 4.3, 4.4 and 4.5. It also challenges the aspiration for ‘decent work’ as articulated in the 2008 ILO Declaration, Article I(A)(i) which states that there is to be ‘a sustainable institutional and economic environment’ in which ‘individuals can develop and update the necessary capacities

<sup>94</sup>ILO *WESO Report 2021*, n.24, 254.

<sup>95</sup>Flanagan, n.81, 72.

<sup>96</sup>ILO *WESO Report 2021*, n.24, 141.

<sup>97</sup>*Ibid.*, 31. Citing M. Graham, I. Hjorth and V. Lehdonvirta, ‘Digital Labour and Development: Impacts of Global Digital Labour Platforms and the Gig Economy on Worker Livelihoods’ (2017) 23(2) *Transfer: European Review of Labour and Research* 135.

<sup>98</sup>ILO *WESO Report 2021*, n.24, 185–8.

<sup>99</sup>*Ibid.*, 26 and 173.

<sup>100</sup>*Ibid.*, 188 stressing criticism from those ‘trained’ regarding the quality of the ‘training’.

and skills they need to enable them to be productively occupied for their personal fulfilment and the common well-being’.

## B. Social Effects

The economic harms identified above clearly also have social dimensions. Additionally, social sustainability may have relevance to gig workers in at least three further ways. The first relates to terms and conditions of hire inconsistent with ILO ‘decent work’ and SDGs 8 and 16. The second pertains to inequalities created or at least perpetuated through gig work, connected to SDGs 5, 8 and 10. The third connects to collective bargaining and the notion of just transition, which can be linked to environmental harms.

### (i) ‘Decent’ Terms and Conditions of Work

The WESO Report stressed that the standard terms of gig work are not inevitable, pointing to alternative examples of good practice.<sup>101</sup> However, it also recorded that low pay and long hours are currently endemic in platform hire across the globe, alongside a failure to adequately protect health and safety.<sup>102</sup> This poses obvious problems for realisation of ‘decent work’ under SDG target 8.5. Moreover, the vulnerability of those engaged in gig work to long hours working can have palpable effects on the ability to provide reproductive care, impacting on the elderly and the young, having implications for inter-generational justice.<sup>103</sup>

Furthermore, there is a tendency in platform contractual documentation to seek to avert access to national courts by establishing private arbitration mechanisms specific to the contract.<sup>104</sup> This raises issues regarding access to justice under SDG targets 16.3 and in relation to 16.10 regarding ‘public access to information’. Both have palpable effects regarding the enforceability of those labour standards vital to decent work.<sup>105</sup>

<sup>101</sup> ILO WESO Report 2021, n.24, 92.

<sup>102</sup> Ibid., 220.

<sup>103</sup> For further elaboration of these arguments, see T. Novitz, ‘Social Sustainability, Labour and Trade: Forging Connections’ in Pieraccini and Novitz, n.22, 161–3.

<sup>104</sup> ILO WESO Report 2021, n.24, 200–2; see also M. A. Cherry, *Regulatory Options for Conflicts of Law and Jurisdictional Issues in the On-Demand Economy*, ILO Conditions of Work and Employment Series No. 106 (Geneva: ILO, 2019).

<sup>105</sup> And, arguably, the rule of law. See in a UK context *R (UNISON) v Lord Chancellor* [2017] UKSC 51 per Lord Reed, [71]–[72], discussed by M. Ford, ‘Employment Tribunal Fees and the Rule of Law: *R (on the Application of UNISON) v Lord Chancellor*’ (2018) 47(1) *ILJ* 1.

## (ii) Inequalities

What is problematic from a core labour standards perspective is the treatment of women and migrant workers highlighted as significant in SDG 5, as well as SDG targets 8.5 and 8.8. These issues relating to equality were raised by the ILO Global Commission in 2019,<sup>106</sup> and reiterated in the WESO Report, which observed the frequency of gender segregation of tasks in the gig economy, in addition to exploitation of the preference or need of women to work from home.<sup>107</sup> The WESO Report also found in certain countries a significant gender pay gap,<sup>108</sup> which deviates from the equal pay aspirations in SDG target 8.5. There is additionally an identifiable gap in the earnings of gig workers in developed versus developing countries,<sup>109</sup> which again departs from aims stated in SDG 10.

There is no straightforward demographic tied to gig work, which is by no means exclusively performed by migrant labour.<sup>110</sup> However, the WESO Report found that migrant workers were likely to take up platform work because they were otherwise excluded from the labour market.<sup>111</sup> While this might seem to enable access to work (reflecting the concerns of SDG target 8.3), this finding speaks of a failure to address discrimination in the mainstream labour market (under target 8.8). The WESO Report also recorded that some platforms enable discrimination by a client, which ‘can specify further criteria for including or excluding workers, such as nationality, gender or age’.<sup>112</sup>

## (iii) Collective Bargaining

Collective bargaining receives little explicit recognition in the SDG targets, but its importance was highlighted in the WESO Report. The Report observed that gig workers ‘are often unable to engage in collective bargaining’,<sup>113</sup> which may be due in part to geographical dispersal but is more likely attributable to denial of their employment status. The Report also

<sup>106</sup> ILO *Global Commission Report 2019*, n.13, 18.

<sup>107</sup> ILO *WESO Report 2021*, n.24, 22, 55 and 187.

<sup>108</sup> *Ibid.*, 23, 157 and 165.

<sup>109</sup> *Ibid.*, 191.

<sup>110</sup> Tassinari and Maccarrone, n.86, 42–3.

<sup>111</sup> ILO *WESO Report 2021*, n.24, 139.

<sup>112</sup> *Ibid.*, 94 and 189.

<sup>113</sup> *Ibid.*, 24.

noted the consequences of competition law, which constrains collective action by gig workers as ‘undertakings’.<sup>114</sup> However, despite such legal obstructions, initiatives aimed at collective representation have been taken by larger trade unions and platform cooperatives.<sup>115</sup> Less prominent in the Report, but arguably of equal significance, are the emergence of ‘independent’ smaller unions,<sup>116</sup> such as the Self-Employed Women’s Association (SEWA) in India,<sup>117</sup> and in the UK, the Independent Workers Union of Great Britain (IWGB)<sup>118</sup> and the App Drivers and Couriers’ Union (ADCU).<sup>119</sup>

This is important because, despite the sparse treatment of collective worker voice in Agenda 2030, there is a case for its protection under both SDGs 8 and 16. Also, as the ILO Guidelines on Just Transitions observe, collective bargaining and social dialogue will be vital to navigating just transitions in terms of technological and environmental changes within the workplace.<sup>120</sup> Indeed, the first recommendation of the WESO Report was that universal access for collective bargaining be extended to gig workers, since this could ‘address, through negotiation, many of the issues identified in this report, such as terms of engagement on platforms, rules about commission fees, ratings and deactivation, pricing, use of data and evaluation systems.’<sup>121</sup> The flexibility and specificity of collective bargaining can thereby result in more efficacious regulation.

### C. Environmental Effects

The evidence regarding environmental effects of gig work for platforms is sparse.<sup>122</sup> The WESO Report admitted that more data is needed,<sup>123</sup> focussing instead on worker health and safety concerns,<sup>124</sup> especially in the context of

<sup>114</sup>Ibid., 210; Loganathan, n.33, 11.

<sup>115</sup>ILO *WESO Report 2021*, n.24, 246–8.

<sup>116</sup>M. Dias-Abey, ‘Bridging the Spaces In-Between? The IWGB and Strategic Litigation’ (2021) University of Bristol Law Research Paper Series No. 1/2021.

<sup>117</sup>Loganathan, n.33, 11; and M. Nussbaum, ‘Labour Law and the Capabilities Approach’ in B. Langille (ed), *The Capability Approach to Labour Law* (Oxford: OUP, 2019), 80.

<sup>118</sup>See <https://iwgb.org.uk/> (last date accessed 24 September 2021) and on the IWGB role in the Deliveroo strikes in Tassinari and Maccarrone n.86, 42–3 and 48.

<sup>119</sup>See <https://www.adcu.org.uk/> (last date accessed 24 September 2021).

<sup>120</sup>ILO Guidelines, n.52, paras 16–18.

<sup>121</sup>Ibid., 249.

<sup>122</sup>Boar et al., n.5, 10–1.

<sup>123</sup>ILO *WESO Report 2021*, n.24, 59.

<sup>124</sup>Ibid., 244, 248, 250 and 256.

COVID-19 which has demonstrated that it is in the interests of everyone that sick leave be available to platform workers.<sup>125</sup> The Report did not link these few observations to larger environmental concerns, but rather tacitly endorsed a ‘duality’ between the external and internal workplace environment,<sup>126</sup> which does not fit with the working experience of those in the gig economy. Their home or the streets may be their workplace.<sup>127</sup>

Moreover, there is a danger that the ways in which platform work remains unregulated fails to incentivise environmental precautions, since responsibility is outsourced to those delivering services. They may, by contract, be deemed entrepreneurs, but are under considerable algorithmic controls and pressure to meet the platform’s targets. It is difficult for gig workers to claim employment status that could offer legal protection for whistleblowers, which is problematic since ‘workers are the most immediate knowers of possible non-compliance by the company with its environmental obligations.’<sup>128</sup> When they do become aware of ecological harms, gig workers may find that as ‘independent contractors’ (as stated in their contractual documentation), they and not the platform can be held accountable and liable. Further, their ability to raise concerns through litigation may be hampered by private arbitration clauses.<sup>129</sup> So, from an environmental perspective the structural inequalities highlighted by the WESO Report are problematic,<sup>130</sup> as are obstructions to collective bargaining which could facilitate just transitions to promote ecological objectives.<sup>131</sup> Finally, the observations of the WESO Report regarding the scale of outsourcing of platform work to developing countries<sup>132</sup> also indicates that negative environmental effects may be exacerbated there.

#### 4. REGULATORY PRESCRIPTIONS FROM A SUSTAINABILITY PERSPECTIVE

One endemic problem identified by the WESO Report<sup>133</sup> is that of uncertainty. It is not clear in the gig economy who is a worker or not. It is not self-evident on

<sup>125</sup> *Ibid.*, see 24 and 153.

<sup>126</sup> Juan E. Gutierrez, ‘Labour and Environmental Sustainability: Summary of Literature Reviews’ (2020), 1. [http://agreement.adapt.it/wp-content/uploads/2020/11/comparative\\_report\\_agreement\\_final.pdf](http://agreement.adapt.it/wp-content/uploads/2020/11/comparative_report_agreement_final.pdf) (last date accessed 24 September 2021).

<sup>127</sup> Tomassetti, n.27 at 63.

<sup>128</sup> Gutierrez, n.126, 2.

<sup>129</sup> See n.103.

<sup>130</sup> See text accompanying nn 43–46.

<sup>131</sup> See text accompanying n.47 et seq.

<sup>132</sup> See ILO *WESO Report 2021*, n.24, 118.

<sup>133</sup> *Ibid.*, 4 and 245.

what basis gig work should be paid or taxed. We are reliant still on *ad hoc* court judgments and limited legislative initiatives, which tend to decide in the interest of the vulnerable worker, but not inevitably so.<sup>134</sup> Without regulatory clarity, we are likely to see the ongoing profound economic, social and potential environmental effects identified above connected to a gig work transnational business model. The suggestion made here is that a sustainability paradigm can assist in the crafting of a much-needed regulatory agenda.

### A. The Level of Regulatory Intervention—Geographical and Temporal Solidarity

Firstly, in terms of the locus of any regulation, the ILO Global Commission rightly concluded that this should not merely be left to the national level, but that there should be ‘an international governance system for digital platforms’.<sup>135</sup> The gig economy operates transnationally.<sup>136</sup> A sustainability paradigm, which recognises how labour, social, economic and environmental factors inter-relate across national borders, indicates that global partnerships (as envisaged under SDG 17) are required.

There will be important issues to be settled, including the ways in which regulatory coordination between states and private actors will be managed. It has been suggested that the ILO may have an important role as a ‘correlating device’,<sup>137</sup> while others will be concerned by the power dynamics currently at play in that Organization,<sup>138</sup> possibly preferring global framework agreements or other loci for deliberation. This article cannot feasibly answer these various (inevitable) questions with precision at this stage. Once again, as Fudge encouraged us to think about normative frameworks which inform capabilities theory,<sup>139</sup> the answers may draw on a wider set of human rights concerns and values beyond those entailed in an appeal to sustainability.

<sup>134</sup> Moyer-Lee and Kountouris, n.1, 15 who refer to the current legal uncertainty ‘created by design’.

<sup>135</sup> ILO Global Commission Report 2019, n.13, 13 and 44.

<sup>136</sup> As was evident in the *Uber* litigation, n.4.

<sup>137</sup> M. Menashe, ‘The Race to the Bottom Revisited: International Labour Law, Global Trade and Evolutionary Game Theory’ (2020) 40(1) *Oxford Journal of Legal Studies* 53, 63–4 and 72–8.

<sup>138</sup> V. Silva, ‘The ILO and the Future of Work: The Politics of Global Labour Policy’ (2021) *Global Social Policy* 1; H. Thomas and P. Turnbull, ‘From a “Moral Commentator” to a “Determined Actor?” How the International Labour Organization Orchestrates the Field of International Industrial Relations’ (2021) 59(3) *British Journal of Industrial Relations* 874.

<sup>139</sup> Fudge, n.35.

Nevertheless, local, national and transnational collective bargaining could offer an effective way of ensuring efficacy of regulation, sensitive to the sector in which gig work is occurring.<sup>140</sup> There is a flexibility and specificity which can be offered by collective agreements,<sup>141</sup> such that it is disappointing that these opportunities are currently underutilised and obstructed.<sup>142</sup>

A sustainability discourse can also open up an alternative vision of the legitimate purposes of collective bargaining and other regulatory action.<sup>143</sup> The ILO Global Commission<sup>144</sup> and other commentators<sup>145</sup> have argued that the union movement should be able to act for a wide range of workers, while being effective allies for NGOs and other groups seeking resistance to environmental harms. Trade unions should therefore be able to bring diverse interests to the table when negotiating over platform work.

That acknowledgement could provide an agenda for international and national legal reforms. Given the lack of ‘spaces’ in which gig workers can meet, connect and seek to act in tandem,<sup>146</sup> more legal provision needs to be made for access to the workplace which is both physical and digital.<sup>147</sup> There has to be legal scope for trade unions to act to protect, not only health and safety at work, but environmental issues in the wider community.<sup>148</sup> Current recognition by the ILO Committee on Freedom of Association<sup>149</sup> of workers’ ‘occupational’ or even ‘economic and social interests’ as a basis for legitimate trade union activities may not be sufficient. Moreover, the transnational nature of the gig platforms means that restrictions on secondary or

<sup>140</sup>For example, in the sphere of care work, as discussed by Flanagan, n.81, at 60.

<sup>141</sup>ILO, *WESO Report 2021*, n.24, 249. See also for stress placed on collective bargaining’s adaptable qualities, Menashe, n.137, 78.

<sup>142</sup>Gutierrez, n.126, at 3 notes that, in the regulation of environmental concerns, ‘the collective agreement continues to be an underused instrument despite its enormous potential’.

<sup>143</sup>N. Countouris, V. De Stefano and I. Lianos, *The EU Competition and Workers’ Rights*, Centre for Law, Economics and Society Research Paper Series: 2/2021 (London: UCL, 2021), 14.

<sup>144</sup>ILO, *Global Commission Report*, n.13, 12 and 42.

<sup>145</sup>A. Zbyszewska, *Labour and Environmental Sustainability: Literature Review—UK and International Texts* (2020), 2—available at: [http://agreement.adapt.it/wp-content/uploads/2019/04/UK\\_literature\\_review\\_def.pdf](http://agreement.adapt.it/wp-content/uploads/2019/04/UK_literature_review_def.pdf) (last date accessed 24 September 2021).

<sup>146</sup>Tassinari and Maccarrone, n.86, 43–8.

<sup>147</sup>K. D. Ewing, J. Hendy and C. Jones (eds), *Rolling out the Manifesto for Labour Law* (Liverpool: Institute of Employment Rights, 2018), 28.

<sup>148</sup>See, eg, the limitations of the UK Trade Union and Labour Relations Act 1992, s. 178 which is limited to ‘the physical conditions in which any workers are required to work’ and would only with difficulty be capable of being linked to broader environmental issues, such as potential pollution by the cars they drive.

<sup>149</sup>*Compilation of Decisions of the Committee on Freedom of Association (CFA)*, 6th edn (Geneva: ILO, 2018), paras 716 and 722.



sympathetic action may not be appropriate,<sup>150</sup> especially if that action is designed to promote collective bargaining across national borders.<sup>151</sup> Further, there is a need for trade unions (large or small, new or established) to consider the welfare of future workers and bargain for preservation and improvement of their well-being, broadly conceived in sustainability terms.<sup>152</sup> Just as environmental protections look forward to longer term effects, so too should present and future conditions of hire in the gig economy. Beyond this, the ILO needs to be bolder, returning to active promotion of the right to strike as a precondition for effective collective bargaining.<sup>153</sup> Recognition of the right to strike is entirely absent from the ILO Report *Time to Act for SDG 8* and the WESO Report, despite their advocacy of trade union representation of precarious and gig workers in negotiation of collective agreements.<sup>154</sup>

## B. Traversing Disciplinary Boundaries—A Holistic Transformational Approach

In 2018, Jeremias Prassl made the bold statement that ‘employment regulation is key to a sustainable future for on-demand services’.<sup>155</sup> Having investigated what might be regarded as ‘unsustainable’ in the gig economy, it emerges that employment regulation may not be all that is required, for labour cannot be considered ‘in isolation’ from other legal issues.<sup>156</sup>

Of course, scope for collective voice at work has always been determined by the intersection of various ostensibly discrete legal disciplines,<sup>157</sup> so this finding is not necessarily revelatory. Nor am I suggesting that we reject the

<sup>150</sup> See A. Bogg and K. D. Ewing, ‘The Implications of the *RMT* Case’ (2014) 43(3) *ILJ* 221, 235–44.

<sup>151</sup> This is at least envisaged by the CFA in respect of multi-enterprise and multi-employer agreements. See Compilation, n.148, at 770–1.

<sup>152</sup> Cf. *UNISON v UK* Application No. 53574/99, Decision of 10 Feb. 2002 [2002] IRLR 497; *University College London Hospital NHS Trust v UNISON* [1999] IRLR 31 discussed in Novitz, n.47, 254–5.

<sup>153</sup> On the context for this reluctance, see C. La Hovary, ‘Employers’ Group 2012 Challenge to the Right to Strike’ (2013) 42(4) *ILJ* 338; J. Bellace, ‘The ILO and the Right to Strike’ (2014) *International Labour Review* 29 and J. Vogt et al., *The Right to Strike in International Law* (Oxford: Hart, 2020).

<sup>154</sup> ILO *Time to Act* Report, n.62, 33–4; and 70–5; ILO *WESO Report 2021*, n.24, 249.

<sup>155</sup> Prassl, n.2, 140.

<sup>156</sup> Nussbaum, n.117, 80.

<sup>157</sup> A. Bogg and T. Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (Oxford: OUP, 2014), 30–1.

relevance of the *labour* of those engaged in gig work.<sup>158</sup> Nevertheless, a sustainability approach helps to explain why a more holistic approach to regulation of gig work is vital.

The ILO Global Commission on the Future of Work recommended a ‘Universal Labour Guarantee’ (ULG) applying regardless of employment status,<sup>159</sup> specifically targeted at digital transformations of the modes of work, which would apply to acknowledged core labour standards,<sup>160</sup> but also wages, hours and health and safety.<sup>161</sup> This could promote equality, addressing the systemic discrimination experienced for example by women and migrant workers highlighted in SDGs 5 and 8, and how these feed into extensive social, economic and environmental harms. Here, equality law and labour rights connect, illustrating synergies between SDGs.<sup>162</sup> However, employment status, although important as a threshold concern,<sup>163</sup> is unlikely to be the cure-all.

Labour standards could be recrafted with the gig economy in mind or platform work could be subjected to thorough *sui generis* regulation.<sup>164</sup> A tripartite meeting of experts on the issue of ‘decent work in the platform economy’ will be held at the ILO in 2022.<sup>165</sup> Any resultant ILO instrument could not only instantiate the ULG, but also explore other regulatory options. For example, measures could be taken to protect gig workers from coverage by competition law when engaging in collective bargaining or taking industrial action.<sup>166</sup> It is also evident that social security law, pension entitlements and even more broadly taxation will be relevant, and we may need to consider the ways in which they interconnect.

<sup>158</sup>Cf. H. Arthurs, ‘Labour Law as the Law of Economic Subordination and Resistance: A Thought Experiment’ (2013) 34 *Comparative Labor Law and Policy Journal* 585.

<sup>159</sup>See n.15.

<sup>160</sup>See n.58.

<sup>161</sup>See the ILO Global Commission Report, n.13 at 14.

<sup>162</sup>Although for an earlier important breakdown of this distinction, see L. Hayes, ‘Women’s Voice and Equal Pay’ in Bogg and Novitz, n.157.

<sup>163</sup>See V. De Stefano, I. Durri, C. Stylogiannis and M. Wouters, *Platform Work and the Employment Relationship* (2021) ILO Working Paper 7, March 2021 and S. Deakin, ‘Decoding Employment Status’ (2020) 31(2) *King’s Law Journal* 180.

<sup>164</sup>See, eg, the 10-point manifesto proposed by A. Aloisi, V. De Stefano and S. Silberman, ‘A Manifesto to Reform the Gig Economy’, in Pagina99 (29 May), available at: <http://regulatingforglobalization.com/2019/05/01/a-manifesto-to-reform-the-gig-economy/> (last date accessed 24 September 2021).

<sup>165</sup>See [https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS\\_776838/lang--en/index.htm](https://www.ilo.org/gb/GBSessions/GB341/ins/WCMS_776838/lang--en/index.htm) (last date accessed 24 September 2021).

<sup>166</sup>Countouris et al., n.143; see also S. McCrystal, E. McGaughey and S. Paul (eds), *The Cambridge Handbook of Labour in Competition Law* (Cambridge: CUP, 2021), forthcoming.

Further issues include data (or digital) rights for gig workers and their clients, as suggested by the ACDU following its coalition with the NGO, Worker Information Exchange.<sup>167</sup> It has also been suggested that the antics of Cambridge Analytica should prompt attention to the rights of those who invest their ‘labour’ by participating in social media, so that they are able to resist its commodification.<sup>168</sup> Re-examining entitlements to training and other forms of education connected to digital skills and curricula may be timely, to enhance the capabilities of those engaged in gig work.<sup>169</sup> Other significant proposals include the redesign of corporate forms,<sup>170</sup> including worker cooperatives and collectives,<sup>171</sup> that enable worker voice. Seeking a wider range of reforms on the international stage, which enable greater trade union engagement with environmental aspects of just transitions, has never been timelier, as the 26th UN Climate Change Conference of the Parties approaches.<sup>172</sup>

To conclude, it remains possible that, if all these regulatory options are vigorously pursued, and sustainable options delivered at all levels (global, national and local), ‘gig work’ will become a short-lived thing of the past. It may then be itself a historical artefact—a one time ‘gold rush’ on technology, which while unregulated delivered a bonanza to platforms (and their investors), and caused harms to economy, society and the environment.

The danger is that in our current Wild West of international and domestic governance, and amidst the uncertainties of the recent pandemic, the well-documented perils associated with work in the platform economy will be addressed tentatively, slowly and without an eye to the bigger picture. Their manifestations could continue for years to come. This article presents a plea that this need not be the case, offering sustainability as a perhaps imperfect but nevertheless helpful tool when crafting the regulatory transformation of platform work.

<sup>167</sup> <https://www.workerinfoexchange.org/> (last date accessed 24 September 2021).

<sup>168</sup> A. Fumagalli, S. Lucarelli, E. Musolino and G. Rocchi, ‘Digital Labour in the Platform Economy: The Case of Facebook’ (2018) 10 *Sustainability* 1757.

<sup>169</sup> For a bold vision, see B. Johnston, S. MacNeill and K. Smith, *Conceptualising the Digital University: The Intersection of Policy, Pedagogy and Practice* (Cham: Palgrave Macmillan, 2018).

<sup>170</sup> See A. Johnston and P. Morrow, ‘Towards Long-Termism in Corporate Governance: The Shareholder Rights Directive and beyond’ in S. Vitols (ed), *Long-term Investment and the Sustainable Company: A Shareholder Perspective* (Brussels: ETUI, 2014), 41–2 and E. McGaughey, ‘A Human Is Not a Resource’ (2020) 31(2) *King’s Law Journal* 215.

<sup>171</sup> ILO, *WESO Report 2021*, n.24, 248; see also C. Chacartegui, ‘Workers’ Participation and Green Governance’ (2018) 40(1) *Comparative Labor Law and Policy Journal* 89.

<sup>172</sup> See <https://ukcop26.org/> (last date accessed 24 September 2021).