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Work on Demand: Contracting for Work in a Changing Economy

Before the Gig Economy: UK employment policy and the casual labour question.

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Introduction

In recent decades, jobs on offer in Britain have become increasingly precarious, a trend particularly noticeable in the aftermath of the Global Financial Crisis (GFC: 2008-9). This change has long been actively promoted by governments of all political stripes. Labour markets have been deregulated, flexibility of employment encouraged. Work is consistently identified as the sole route out of poverty, a category of 'working poor' has emerged. Such government strategies present as a *volte face* to the politics of the early twentieth century, when social investigation exposed irregular work as a cause of poverty, not its cure, and as the major factor explaining a rising incidence of social dependency. The UK's earliest labour market policies sought to eradicate casual work and to encourage permanent employment – policies promoted assiduously for most of the twentieth century. This paper reveals these historical dimensions, to explain why and how governments sought to structure labour market operations – and the legacies bequeathed to us as a result. The principal object of the paper is public policy – its rationale and its shortcomings – on which current employment law is founded. It thus focuses more on the political gaze that dominated in official circles and on the consequent legislation than on the labour market experiences of working people themselves

The following discussion throws into question how work should be organised and the role government and the law can and should play in shaping its organisation. This presents as a double helix: not only to analyse policy objectives, but also the socio-political factors constraining legal interventions. This paper exposes how our current understanding of 'traditional' or 'regular' job contracts came to be constructed – why 'work on demand' is understood as 'irregular', as a deviant form of established employment norms. As I have argued elsewhere, the categories under which work is analysed (and on which legal definitions are based) are political products, historically derived from settlements consolidated in the mid-twentieth century¹. The growth of 'work on demand' plays havoc with well-established ways of classifying labour market activity and has created an extensive debate over whether digital platforms registering such labour should be legally understood

¹ N. Whiteside 'Casual employment and its consequences: an historical appraisal of recent labour market trends' *Historical Studies in Industrial Relations*, 40, 2019: 1-26.

as employers and the legal obligations such recognition might entail. This paper is not going to enter that debate. Rather it explores the foundations on which conventions of employment rest, to argue that divisions between varied categories have always been fluid and over-reliance on the statistics they generate can create serious misassumptions about exactly what is going on.

Over and above deliberations about what employment arrangements exist or should be put in place, is the question of state intervention to promote specific systems. The strongly liberal nature of UK industrial politics stands in marked contrast to that found elsewhere in Europe, where specificities defining particular types of working arrangements and collective work agreements have long been underwritten in law. In Britain, marked by a history of voluntarism in industrial affairs, the space for state intervention has been more restricted². Industrial agreements and working practices have remained generally outside the realm of state action (except during war emergencies). The legal framework defining employment during the twentieth century evolved from the remit of social security law and its associated regulations³, on which this paper is largely focused. This voluntarist tradition has marked the evolution of employment in Britain and has left a distinct legacy.

This paper divides into four sections. The first reviews the nature of the labour market in the late nineteenth century, exposing forms of ‘work on demand’ in that era that stimulated official interventions. The second explains the nature of these interventions and evaluates their success. The third returns to the present day to appraise briefly the reappearance of similar employment problems that confronted early reformers. The fourth draws some conclusions.

Using historical evidence, the paper makes three salient points. First, job insecurity and irregular employment exacerbate social inequalities, thereby raising the cost of social support (in spite of official efforts to contain it). Second, such developments undermine public trust – employers evade legal obligations for task-based workers even as current social security regulations require job-seekers to take such work. Finally, multiple job-holding and unstable employment destroy labour market categories on which policy analysts and the law rely. Thanks to opposition from both sides of industry, the liberal British state has never been able to exert as much control over employment as governments in continental Europe. However, reverting to late nineteenth century labour markets is more likely to revive old problems than offer any solution to new ones.

Casual labour in pre-1914 Britain

² N. Whiteside and R. Salais (eds.) *Governance, Industry and Labour markets in Britain and France* (Routledge 1998) 2-4

³ S. Deakin and F. Wilkinson *The Law of the Labour Market* (Oxford University Press 2005) ch. 3

Late nineteenth-century social investigation focused on the job insecurity found in major commercial centres in Victorian Britain that resemble work practices sustained by platforms today⁴. Their main focus was on poverty and social dependency (or pauperism as it was then known) at a time when the six-day working week on a permanent contract was not particularly common outside domestic service and some branches of factory work. Gross irregularity of employment was endemic in many trades and could be found on the fringes of nearly all the rest. 'Casual employment is no local disease,' William Beveridge wrote in 1908 'it is found in all towns and to some extent in nearly all trades'⁵. In some branches of manufacturing (clothing, boots and shoes, potteries, textiles, confectionery, cutlery) formal or informal short-time shared work among existing employees when demand was slack. Similar patterns could also be found among the gangs working the docks, the railway sidings and in the construction industry. Such practices prevented the destitution that would follow redundancy while allowing employers to retain workers whose experience and/or skill was vital for future business. In isolated collieries and mill towns, short-time working discouraged potentially unemployed colliers and mill operatives from leaving the district in search of work and forestalled the expense of closing (and re-opening) the coal mine, the blast furnace, or the cotton mill. In textiles, where unions organised all grades of labour, short-time supported members surplus to requirements⁶. Industrial practice and trade agreements covered manning levels, job demarcation and working hours. Trade unions recruiting skilled labour negotiated the distribution of work, shaping the scope and nature of intermittent employment, to prevent irregular hours translating into precarity and poverty. However, when recession was deep and prolonged, organised short-time could not and did not prevent redundancy. The porosity of the casual labour market's boundaries allowed, then as now, those losing work in their normal trade to revert to task-based jobs (on the waterfront, the construction sites, the gasworks) to supplement lost earnings. Recession thus affected different groups of industrial workers in many different ways⁷.

Yet irregular work did not necessarily translate into precarity or poverty at that time any more than it does today. In ship-building and construction, deficient demand lengthened the gaps between jobs. In cotton and wool, some mills closed, others worked half-time with operatives dismissed or redeployed accordingly (on half-days or reduced hours). In coalmining, the number of shifts worked reflected production targets designed to guarantee prices by restricting output without shedding experienced men. In all cases, however, the elderly and discharged would still hang around the factory gate, the pithead, the construction site in the hope of an odd day's work. The casual fringe was all pervasive, its dimensions (and visibility) varying according to the state and location of the trade concerned. The first world war

⁴ J. Prassl, *Humans as a Service* (OUP 2018) ch. 4

⁵ W. H. Beveridge *Unemployment, a Problem of Industry* (George Allen and Unwin 1930 ed.) 208

⁶ Board of Trade Labour Department, *Analysis of the Rules of Trade Unions Relating to Unemployed, Sickness and Accident Benefits in 1908* (confidential print) Beveridge Papers: Coll. B, vol. XVII: British Library of Political and Economic Science: 97-156.

⁷ A L. Bowley, *Wages in the United Kingdom* (Cambridge 1900) 99-101

mopped up much of this labour surplus, yet after 1918 chronic casualism returned to its established haunts. During the worst years of the Slump and the exigencies of high unemployment in the 1930s, those cast off were still forced to seek any work going on the fringes of other industries.

To estimate the size of the casual labour market is not easy owing to its shifting boundaries and the manner in which casual labour affected otherwise stable occupations⁸. The census does not help. Workers in construction and waterfront industries aside, the category of 'general labourers' numbered nearly 600,000 in 1891, falling to just under 300,000 by 1911, after census officials were instructed to assign this group more specifically. The number of port workers in Liverpool according to the census (1911) stood at 20,809. The following year, the Board of Trade register of dockers in Liverpool totalled over 27,000⁹. For London, the best estimate for the 1890s, based on Charles Booth's in-depth investigation suggests that casual households comprised at least 10 percent of the total population, and considerably more in the East End. Then as now, London was a hotbed of irregular work. In construction, on the waterfront, transport industries, in the workshop trades (furniture, clothing, haberdashery), seasonality combined with very small production units in networks of subcontracting to blur distinctions between employer and employed, fostering task-based work and chronic under-employment¹⁰.

It would be wrong to assume, however, that all casual workers were permanently dirt poor. Behind evidence of underemployment, precarity and poverty unearthed by social enquiry, a hierarchy of intermittently employed workers emerges whose upper echelons preferred autonomy and a tolerable risk of irregularity to the soul-destroying routine of a six-day working week. 'It is evident that short and irregular contracts of engagement are common in varying degrees throughout all ranks of industry' the Charity Organisation Society observed in 1906, 'from the man who holds the horse's head to the journalist, the actor or the barrister.'¹¹ Horses heads aside, this observation could apply today. In London in particular, skilled tradesmen in construction (plumbers, carpenters, plasterers, high class painters and decorators) experienced more job irregularity than did general labourers in the industry¹² but could get help from their union when work was scarce. In effect, benefit systems operated by skilled trade organisations were designed to prevent members, cast off during a downturn,

⁸ F. Keeling, F., 'Towards the solution of the casual labour problem', *Economic Journal*, 33 (1913) 1.

⁹ G. A. Phillips and N. Whiteside, *Casual Labour* (OUP 1985) 41-2.

¹⁰ D. Loftus, 'Investigating work in nineteenth century London', *History Workshop Journal*, 71 (2011): 173-93.

The clothing trades in particular operated in a manner reminiscent of the 'putting out' system characteristic of pre-industrial manufacture

¹¹ Charity Organisation Society (COS) *Special Committee on Unskilled Labour: report and evidence* (COS 1908) 2

¹² Beveridge, (1930) Table VII A: 430

from taking work at less than the union rate, thereby reinforcing wage agreements reached through collective bargaining¹³.

Informal preference dominated in less skilled work. Experience with a specific gang on the docks, in construction, ship-repair, gas-works and so on was invaluable and such work was gained through family connections (or by treating the foreman). Recognised (if informal) status endowed a degree of job security that the unconnected man did not possess. '... there is a gulf between the highly skilled man and the man at the lower end' an official enquiry was informed in 1920 '... this is probably a greater gulf than that which exists at present between the Duke and the peasant.'¹⁴ 'Specialist' workers, through their local societies and clubs, could control access to specific areas of work, rotating jobs among members and working elsewhere during the slack season. A casual deal porter could work the timber yards on Surrey Commercial docks in the autumn, turn to the gasworks in the winter, to construction sites in early summer, later reverting to the hop-picking season in Kent¹⁵. On the waterfront, the specialist casual would work for one firm on one type of cargo: the 'teas' and 'wools' only worked the docks when their specific cargo was in port¹⁶. Freedom to choose when (and for whom) to work, the 'gambling element of the life', appealed to the young and strong¹⁷.

At the other end of the scale, casual labour markets were populated by the rejects and cast-offs from other occupations, whose age and/ or poor health disqualified them from full-time work. One-time factory workers, policemen, riveters, seamen, railwaymen, corporation workers, coppersmiths – even a ship's purser – were found competing for work with regular dockers on the Liverpool waterfront before 1914¹⁸. The seasonal drift from building sites, to gasworks, to docks for the unskilled and unconnected was supplemented by publicly-funded relief work both before and after the first world war. During the winter of 1920-1 Bethnal Green provided relief work for over 2,000 men for periods of between 8 and 13 weeks while neighbouring Shoreditch employed over 1,000 men for 4-week periods¹⁹. These projects dovetailed with seasonal downturns in construction and associated outdoor work, at the time exacerbated by national recession as well as the normal winter slump. In this way, official intervention confirmed and reinforced existing cycles characteristic of casual work.

¹³ For a detailed account of such systems, see N. Whiteside 'Transforming the unemployed: trade union benefits and the advent of state policy' in K. Laybourn and J. Shepherd (eds.), *Labour and Working Class Lives: essays to celebrate the life and work of Chris Wrigley* (Manchester University Press 2017): 68-86.

¹⁴ Chair of Gateshead LEC to Barnes Committee loc. cit. 29 June 1920: 9. On file LAB2/ 698 /ED3858/ 8 The National Archive (TNA)

¹⁵ J. Lovell *Stevedores and Dockers* (Macmillan 1969) 35-6. Also Charity Organisation Society (1908) for general job 'dovetailing'.

¹⁶ J. Lovell (1969) 51

¹⁷ Liverpool Economic and Statistical Society *How the Casual Labourer Lives* (Liverpool 1909) ix & xiii.

¹⁸ Ibid.

¹⁹ Metropolitan Borough of Bethnal Green, *Annual report, 1921*; Metropolitan Borough of Shoreditch, Minutes, 27 Oct. 1921, Hackney Local History Library.

Mobility between strata tended to be one way (downwards), yet attractive wage rates guaranteed a constant supply of applicants for even menial jobs. 'A man engaged by the hour or by the day is paid at a higher rate than if engaged by the week or given what is called permanent employment' Booth informed an official enquiry. 'This policy of short tenure and high wages tends to increase the number of those required to do a certain amount of work.'²⁰ Agricultural workers, attracted by high hourly rates, would compete at the call on Millwall docks with the more sickly and weaker casuals, who lost work as a result. In general, migratory drift, whether caused by the pull of better earnings or the push from declining economic sectors, exacerbated the problem at the lowest end of the market as competition reduced the chances of the weakest. In the late nineteenth century, the burden of the poor on the local poor rate was at its highest in central urban slum areas least able to bear it. The initial official response, then as recently, was to tighten access to relief, but this did nothing to mitigate the financial crisis of the poor law or help the desperate. A Royal Commission, set up in 1904, stimulated an in-depth analysis of the problem in order to determine how it should be addressed. This presaged national state intervention and to this we now turn.

Organising the labour market

Changing perspectives on poverty shaped the official response. Late nineteenth-century social investigation focused on labour markets in major commercial centres in Victorian Britain. The methodologies underpinning enquiry were initiated by statistical societies eager to categorise and measure the extent of social issues, to establish their causes as a necessary precursor to proposing a remedy. The decennial census aside, social statistics in western European countries had largely developed in response to the need to control disease, to contain physical incapacity, reduce mortality rates and analyse the implications of both for the future of national populations²¹. City centres illustrated poverty's relationship with this agenda, both as a cause of sickness and as a consequence. The emerging science of genetics, designed as a means to secure social improvement, reinforced this focus on areas where overcrowding, poor diet and low income combined to facilitate the reproduction of an 'underclass' that, incapable of self-support, appeared to be growing exponentially. This was less the product of low wages than of intermittent employment and job insecurity that damaged both mental and physical health, generating a downward spiral that undermined the capacity or desire for regular work. Sickness caused poverty and poverty sickness: an association of casual labour with disease, moral turpitude and criminality that could be mapped onto Britain's major cities²² in a manner that threatened economic performance, menacing Britain's commercial pre-eminence and the Empire. Social science thus offered a new diagnostic of the 'social question' and could propose an agenda for its amelioration. Employing statistical appraisals to place the poor in new categories, social science was able

²⁰ Charles Booth to the Select Committee on Distress from Want of Employment, *Third Report and Evidence*, P.P. IX. 1895: Q. 10518

²¹ A. Desrosieres *The Politics of Big Numbers* (Cambridge University Press 2006)

²² C. Topolov *Naissance du chomeur 1890-1910* (Albin Michel 1994) ch.9

to identify the problem and to measure its extent, creating the space for public action. Poverty ceased to be officially understood in terms of personal historical trajectories. Instead, analysis focused on its correlation with specific social phenomena, framed as categories, that appeared amenable to treatment or correction.

Evidence from extensive social enquiries, pioneered by the Royal Statistical Society, fostered this systematic analysis. By the late nineteenth century, categories of social dependency (such as sickness, unemployment, old age, infirmity) was emerging as poverty's principal causes. In the 1850s, Mayhew had chronicled individual accounts of London's poor, explaining their situations in terms of personal circumstance or misfortune by replicating their own words. By the 1880s, Charles Booth and his followers aimed not to chronicle individual experience but to develop an analysis of poverty's causes derived from those common features – poor health, lack of work, alcoholism and so on – found among its victims. These characteristics were still refined by moral judgements concerning the degree of responsibility the investigator assumed the poor bore for their plight. In the late 1880s, Booth classified East London's inhabitants into classes A-F. Three classes (A: the semi-criminal; B: the quasi-pauperised; C: irregular workers) formed the nexus of the poverty problem, but were distinguished by moral character. All were at risk of poverty as available work was spread over too many applicants²³. A rationalisation of employment would identify those capable of self-support from the remainder who could be punished or cured elsewhere. Booth endorsed a preference system for regular workers, adopted by the London dock companies. Casual dockers were hired from a numbered list that reflected previous attendance at work²⁴ in order to limit the use of irregular labour to the maximum degree possible. Booth also advocated old age pensions for those too old and infirm to work regularly, while arguing that the irredeemable casual must be placed in a labour colony and forced to mend his ways. His focus remained firmly on adult males: Booth's enquiry noted the prevalence of female casual work, but as a symptom of poverty, not a cause.

Official investigations reinforced philanthropic findings on the consequences of disorganised labour markets and their association with rising poverty, the costs of pauperism and failing industrial performance. As the poor law was locally funded, pauperism drained the resources of inner cities, forcing respectable ratepayers into poverty. Statistics showed that wages were rising in the late nineteenth century, but sporadic social unrest in major conurbations indicated the inability of the poor to save – one consequence of intermittent employment²⁵. Moral imperative allied to fears for Britain's economic future: workers had to be taught to manage their lives: to work regularly, to invest in skills and to save against the risk of job loss, illness and declining earning power in old age. Regular workers who lost their jobs should gain

²³ C. Booth (ed.), *Labour and Life of the People: Volume 1 East London* (Williams and Norgate 1889): 594-7.

²⁴ Phillips and Whiteside (1985) 47-51

²⁵ H. Barkai 'Travail, emploi et salaires dans l'économie néoclassique: les conceptions marshalliennes au tournant du siècle' in M. Mansfield, R. Salais and N. Whiteside (dirs) *Aux sources du chômage* (Belin 1994) 153-183.

access to another. Those disinclined to work regularly should continue to be subject to poor law discipline and compelled to improve.

This agenda and its associated political strategies normalised the standard working week and open-ended work contract as the basis on which workers' rights should rest and categories of social dependency should be determined. The supply and demand of labour had to be rationalised to provide regular work. As a result, casual labour became central to policy debate. According to the young William Beveridge

‘The line between independence and dependence, between the efficient and the unemployable, must be made clearer. Every place in ‘free’ industry, carrying with it the rights of citizenship – civil liberty, fatherhood, conduct of one’s own life and government of a family – should be a ‘whole’ place involving full employment and earnings up to a definite minimum.’²⁶

The costs of relief aside, the existence of casual employment made it impossible to achieve a precise classification of the pauper host, to distinguish those who avoided regular work from those who, for reasons of age or poor health, could only work intermittently. In 1905, legislation introduced by a Conservative government had required local authorities to create labour registries, or exchanges, to identify bona-fide job seekers and to separate the ‘genuine’ unemployed from the rest in order to offer them work on municipal projects. These schemes were swamped by casuals and public works became yet another source of temporary work in the casual’s perennial round. Municipal or charitable help sustained, even rewarded, irregular working habits, reformers argued²⁷: this countermanded the programme of decasualization on which the government should embark. Under-employment bred unemployability: if treated like a pauper, an unemployed man would, in time, behave like one and become reliant on public relief. To break this cycle, the regular worker must be protected and his treatment distinguished from that of the pauperised ‘residuum’. Inter-linked labour exchanges could rationalise the labour market, to concentrate work in the hands of the most efficient. Again in Beveridge’s words:

For the man who wants to get a casual job now and again, the exchange will make that wish impossible ... the result of the exchange is the direct opposite from that of assisting the lazy and incapable: it makes it harder for them and compels them to be regular.²⁸

Labour exchanges would remove the inefficient, the idle, vagrant and habitually irregular to concentrate work in the hands of the most productive, thereby containing pauperism while improving economic performance. This logic respected the principles of a free market economy but tightened labour discipline.

²⁶ W.H. Beveridge.. ‘The Problem of the Unemployed’, *Sociological Papers* 3, (1907): 327.

²⁷ B. Potter ‘The docks’ in Booth (1889) 184-209

²⁸ Royal Commission on the Poor Laws and Relief of Distress, *Appendix vol. VIII: Unemployment*, Beveridge’s evidence, (Cd. 5066, 1910) 35

The return of a Liberal government in 1906, following the electorate's support for free trade and a repudiation of the Conservative's tariff reform programme, allowed the reformers – now named New Liberals under the leadership of Lloyd George – to advance their cause. Reforms introduced between 1906 and 1914 – the introduction of labour exchanges (1908), national insurance (1911), trade boards and old age pensions (1908) – were collectively designed to remove inefficient, superfluous workers from the labour market (and to promote decent wages for outworkers). Unlike their municipal counterparts in continental Europe, labour exchanges in Britain offered a national network which would promote total labour mobility between as well as within different trades and towns²⁹. New information technology (the telephone) would exchange information about vacancies and applicants, state officials could send appropriate workers to notified jobs. Networks of official surveillance would allow the easy identification of good character and sound working habits, the candidates for available work, thereby facilitating the elimination of the less efficient while improving productivity and promoting industrial prosperity³⁰. Contributory national insurance reinforced this strategy. It would be in the employer's interest to avoid hiring casuals as all required the same weekly contribution³¹. An established record of regular contributions was required for any benefit claim to be admitted and this regulation deliberately disqualified casual workers³². In spite of the vagaries of interwar administration of unemployment benefits, this basic structure survived intact and underpinned the better known Beveridge Report of 1942³³. This promotion of permanent work contracts was an attempt to force employers to pay their share towards solving the poverty problem while introducing new categories of social dependency on a national scale for the first time.

Impressive as the reforming initiative seems, it was rooted in unpromising political soil. The programme represented a sharp break with established official attitudes about industrial employment – that this should be left to private agreement between employers and employed.³⁴ Opposition to new initiatives was visible from the start. Lloyd George, Winston Churchill, William Beveridge, Llewellyn Smith, the Webbs and other New Liberal supporters, influenced by European examples, might have been converted to various forms of state intervention – but many in the political establishment remained less enthusiastic. Other members of the Liberal Cabinet, convinced of the merits of free trade and minimal state intervention in industrial affairs, disliked the prospect of national insurance and labour

²⁹ J. Harris, *William Beveridge: a biography* (Oxford University Press 1977) 126-8

³⁰ M. Mansfield. 1983. 'Naissance d'une definition institutionnelle du chômage en Grande Bretagne' in Mansfield, Salais and Whiteside (1994) 281–295

³¹ Part II of the 1911 National Insurance Act (unemployment insurance) covered only five trades – those with skilled unions offering unemployment benefits in shipbuilding, engineering, construction and metal working. The legislation was extended to cover nearly all manual workers earning less than £250 p.a. in 1920.

³² N. Whiteside, 'Who were the 'unemployed'? Conventions, classifications and social security law in Britain, 1911-34' *Historical Social Research / Historische Sozialforschung* 40, 1, 2015: 154-6

³³ *Social Insurance and Allied Services*. Cmd. 6404/1942

³⁴ See, for example, Royal Commission on Labour, *Final Report* C.7421/1894; Parliamentary Papers (P.P.) XXXV.

exchanges. 'The new helotry of the servile state run by archivists of the London School of Economics' John Burns (ex-leader of the Gas and General Workers Union but now President of the Local Government Board) wrote to a friend in 1910, in reference to the new labour reforms, 'means a race of paupers in a grovelling community ruled by uniformed prigs'.³⁵ Burns' views were not unusual. His opinion (as an ex-trade unionist) illustrates the opposition encountered by social reformers who sought to take labour market organization away from industry, to vest authority with professional social scientists backed by the state.

The vision of a centrally organized labour market never materialized, largely because they contravened established systems of labour management. The interests of industrial employers, the mainstay of Liberal party support, were over-ridden by new legislation that sought to change labour management and raise its cost by imposing National Insurance contributions. Indeed, the precepts of social science implicitly denied the validity of taking outside opinion into account, as this undermined the objectivity of the labour market analysis on whose logic the legislation was founded. For the labour movement, central state surveillance of employment was equally unwelcome. From the start, skilled trade unions shunned labour exchanges as sources of blackleg labour that would undermine the control they exerted over local wages and employment³⁶. The Liberal government had sympathised with a Labour-sponsored private member's bill granting trade unions immunity from prosecution for damages consequent on strike action (Trade Disputes Act 1906). However, the introduction of labour exchanges and national insurance (the latter introducing the first state-backed deductions from workers' wages) hastened the transfer of union support from the Liberals and towards the newly formed Labour party.

The attitude of nascent general labour unions seeking to organise casuals was equivocal. On the one hand, restricted access to casual labour markets offered organisational advantages to unions battling to recruit (and retain) members. The exclusion of 'outsiders' in times of recession had a strong appeal. Such advantages encouraged union leaders in Bristol and Liverpool to open negotiations with local public officials in order to consolidate their hold over the local labour supply by securing registration of recognised workers in exchange for a closed shop. On the other, while union leaders might view the prospect of decasualisation as an opportunity, their members were more suspicious and attempts to introduce reform stimulated unrest in some quarters. Rationalisation of employment spelt greater discipline for some and the loss of any work for others. Following a disastrous strike in London in 1912, the dockers' leader voiced his dissent against any such regime which threatened to make

'.. the employers a greater tyrant than ever, and leave men for everlasting at the beck and call of foremen and managers who are too incapable or too indolent to organize

³⁵ Letter to H.G. Wells, 16 May 1910, cited in: J. Harris, *Unemployment and Politics* (OUP 1972) 267 (fn). Sidney and Beatrice (nee Potter) Webb founded the London School of Economics and Political Science to promote the social sciences and their application to public administration

³⁶ Trade Union Congress. *Annual Report* m(1910) 160–163

the labour in their charge to advantage ... The author of this scheme ... is of opinion that surplus labour should be poisoned or shot.'³⁷

Special registration schemes set up to decasualise local labour markets (for dock workers in Liverpool and in Goole, for ship-repair workers in South Wales, for cloth porters in Manchester, for corporation workers in Birmingham) never operated as originally intended. Union members generally repudiated the obligation to work regularly and employers, in the absence of official sanctions, continued to hire and fire much as they had always done. The exigencies of the first world war did more to 'decasualise' local labour markets. Military conscription and manpower shortages forced registration and more regular employment on previously disorganised labour markets. Official constraints imposed by the war, however, were not tolerated after the Armistice as both sides of industry repudiated any continuation of state controls. In 1920, the Treasury considered abandoning the network of labour exchanges: neither employers nor unions supported its retention.³⁸

Mass unemployment in the interwar years undermined decasualisation as a policy objective. Labour exchanges distributed unemployment benefits but did nothing to rationalise the distribution of work. The issue was revisited during the second world war and a national dock decasualisation scheme was introduced by statute in 1947, in collaboration with the main dock labourers' union. Wildcat strikes erupted in Britain's major ports. Hostility stimulated breakaway trade unions in Hull, Liverpool and London and port employers reverted to traditional methods of hiring and firing. As early as 1952 the scheme had become, in the words of one state official 'a pretence at organisation that is really no organisation at all.'³⁹ Official enquiries into the causes of unrest repeatedly revealed rank and file repudiation of regulated employment and a rejection of the authority of the National Dock Labour Board to intervene in such matters⁴⁰. Resistance was again provoked when decasualisation was revived following the adoption of the Devlin Report (1967) in the early 1970s. The situation was finally resolved in 1983 when Mrs Thatcher's government abandoned the whole idea in the name of labour market deregulation.

For anyone who thought that job security under permanent employment contracts was a major achievement of the post-war labour movement, such resistance might come as a surprise. While nearly all private employers opposed state intervention in industrial affairs, worker hostility requires explanation. Trade union leaders previously had sometimes made common cause with state officials. Recruiting the fluctuating numbers competing for casual jobs was uphill work, but sensitivity to member attitudes had imposed limits. The key to worker hostility stemmed in part from the nature of casual work and in part from the tighter

³⁷ Cited in Phillips and Whiteside (1985): 100-1

³⁸ In the event that the labour exchanges, renamed employment exchanges, were retained to administer the unemployment insurance scheme, universalized in 1920. *Committee of Enquiry into the Work of the Employment Exchanges: Evidence* (Barnes) Cmd. 1140 / 1921 PP.XI.

³⁹ Minute on file LAB 8/ 1707: TNA

⁴⁰ A fuller account can be found in Phillips & Whiteside (1985) ch. VIII. See also J. Dash, *Good Morning Brothers!* (Mayflower 1970)

managerial discipline decasualisation involved. In the first place, the heavy nature of work on building sites, in warehouses and on the waterfront made a regular six-day working week physically more or less impossible. Casual trades were followed by workers with physical defects whose rights to some work were strongly defended by those who recognized that, in future, they were liable to suffer impairments themselves. Second, decasualisation implied more regular work under stricter surveillance for some while threatening redundancy for others. Finally, support to prevent outsiders having access to casual work was strong in periods of recession (when more applicants competed for fewer jobs). In periods of prosperity specialist workers could pick and choose the jobs on offer and fought to protect their autonomy to do so. Such specialists formed the backbone of union membership. And in the immediate post-war years, full employment endowed this sector with the freedom to select the jobs they preferred.

This preference for independence and autonomy recurs throughout the twentieth century. It re-emerges in the evidence given to the Taylor Review⁴¹. Casual employment, like some gig work, freed workers who followed it from the discipline of a six-day working week while offering the (often remote) chance of high earnings for short periods of labour. This age-old, almost pre-industrial rhythm of work and leisure, retains a strong appeal. It offers some control over working life. Seen from this angle, we can understand why the objective of ‘workers’ control’ articulated by trade unionists in the immediate post-war decades proved popular with the rank and file.

The efforts of UK governments to regulate the labour market has proved an administrative no-man’s-land, sub-divided between industrial bargaining and state policy. British governments have only ever occupied this territory successfully during wartime and then on a temporary basis. Over the immediate post-war decades, official initiatives proved ineffectual. Advisory employment services, training agencies, transference schemes, regional development policies, temporary measures of job creation – all were tried periodically, but have exercised only a marginal impact over the distribution of work. The exclusion of the British state from manpower development (and much else) illustrates what might be termed the governmentality of the British economy. There is a robust boundary beyond which the remit of the state does not run.

Back to the future?

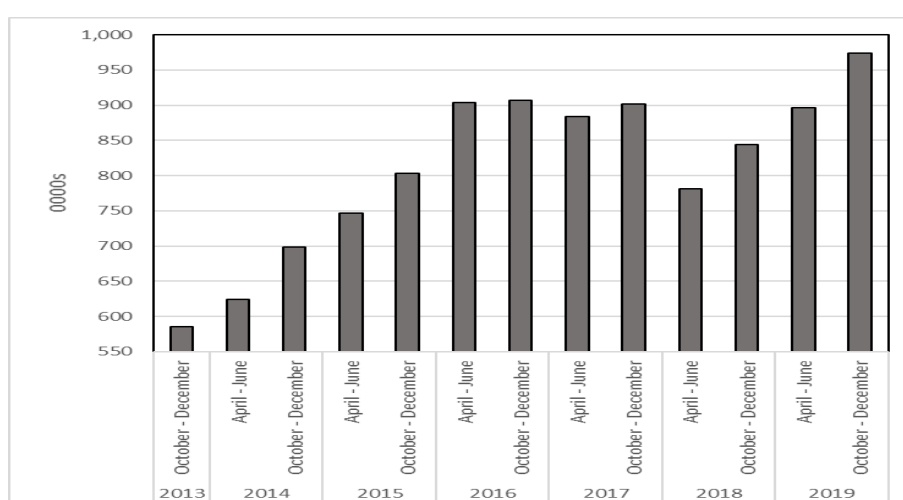
Since the mid-1980s, ‘non-standard’ work has grown, actively encouraged by all political parties. Labour market ‘deregulation’ initiated by the Thatcher governments (1979-1990), accompanied by curbs on trade union activities, was followed by the promotion of employment ‘flexibility’ by New Labour (1997-2010). Both were justified as improving labour market access for all. New state support for the partially employed (working tax credits) promoted work as the main route out of poverty, ostensibly to the advantage of more

⁴¹ DBEIS *Good Work: the Taylor review of modern working practices* (Taylor Report: July 2017)
<https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

marginal workers (women, people with disabilities and ethnic minorities). Following the GFC and the 2010 election, however, access to working-age benefits or credits was reduced with the (partial) introduction of Universal Credit. Regulation over any access to state support was tightened – requiring applicants to take any work at any wage or risk losing benefit. Definitions of disability were revised and single parents in part-time jobs pushed into working longer hours.

As state support for working age people was constrained, new jobs in Britain became increasingly situated in the penumbra of employment protection, not fully accommodated under statutory law nor, arguably, totally excluded. Between 2008 and 2016, around two million jobs were created, but only 25 percent were full-time with the rest divided between fixed-term, part-time, agency and zero-hours or freelance (consultancy) work. One million fell within the category of ‘self-employed’. The most precarious were in the “crowd” or ‘gig’ economy where the automated management of freelance labour registered on digital platforms facilitates employment by the task - one source of ostensible self-employment or zero-hour contracts (ZHC).

Chart 1: number of zero-hours contract workers⁴²



The figures displayed in Chart 1 have to be handled with care as workers so classified are not necessarily financially reliant on gig jobs alone. Closer inspection of the gig economy shows that it is undertaken by workers of all ages and in vastly different situations. Older workers may supplement an existing job or a pension. Those aged 24 or below (who make up 36 percent of the total) may be full-time students. All may have other jobs in addition to gig work. The figures above rely on self-classification and may not reveal the whole picture. Many irregular workers claim to be ‘self-employed’ for tax purposes. This classification today covers over five million people in the UK (15 percent of the workforce) and seems set to expand. The growth in self-employment has been driven largely by professionals working in (for example):

⁴² Resolution Foundation using ONS statistics

publishing, legal and financial advice, accountancy, management consultancy and graphic design⁴³. Such work contrasts with the more menial data-processing, cleaning services and courier work.⁴⁴ Self-employment in advertising and public administration increased by 100 percent and 90 percent respectively between 2010 and 2016, while numbers of self-employed taxi-drivers only rose by seven percent. This explains why average income of the self-employed was higher in all regions (bar the north-west) in 2017 than it was in 2001.⁴⁵

Self-employment offers qualified professionals with domestic obligations the chance to work from home and, theoretically, enables people with physical or mental disabilities to work as their health permits. Others value the autonomy and extra income that self-employment allows. Younger workers with few additional obligations may prefer a portfolio career that involves juggling multiple tasks, work widespread in London and the south-east where the cost of living is high and an independent small business or second job offers often vital additional income. This work may be temporary (to raise cash for immediate consumption or to pay off debt) or long term (to cover household costs or shore up an independent commercial activity⁴⁶). However, multiple job holding often simply reflects an ongoing battle against poverty, as widespread in Newcastle as in London. Multiple precarious jobs keep the household above the breadline while a lack of training or promotion opportunities means this group retain their marginal status and remain reliant on social benefits to survive. Lack of sick pay or any formal social protection forces the unfit and/or infectious to continue at work. In the context of the coronavirus pandemic (2020-21), this proved scandalously dangerous⁴⁷.

The exploitative nature of gig work has attracted extensive criticisms from politicians, press and academics⁴⁸. Many gig economy workers share what might appear to be reasonable wage rates fractured into very small amounts, supplementing ultra-low earnings with housing benefit (and other state benefits if they can⁴⁹). An inability to safeguard long-term financial security is a salient problem for gig workers who have long been highly reliant on tax-funded income supplements, raising a welfare bill already burdened by an ageing population. ‘Companies in the gig economy are free-riding on the welfare state’ the chair of the House of

⁴³ D. Tomlinson and A. Corlett *A Tough Gig? The nature of self-employment in 21st century Britain and policy implications* (Resolution Foundation 2017) <https://www.resolutionfoundation.org/publications/a-tough-gig-the-nature-of-self-employment-in-21st-century-britain-and-policy-implications>

⁴⁴ *RSA Good Gigs* (April 2017) – based on Ipsos Mori research.

⁴⁵ Office of National Statistics (ONS) *Trends for self-employment in the UK* Figures 4 & 5 (Feb. 2018)

⁴⁶ See, for example, M. Villares-Varela, M. Ram & T. James, ‘Bricolage as Survival, Growth and Transformation’ *Work, Employment and Society (WES)* 32 (2018) 942–962 on how migrant households in the West Midlands use part-time and irregular jobs to support the establishment of small enterprise

⁴⁷ Social care workers on ZHC stand accused of spreading the viral infection in care homes. Mortality rates among the elderly residents rose as a result. *The Observer*, 14 March 2021: Commentary, 17.

⁴⁸ A definitive list of published work on this subject is not possible here, but see contributions to *WES* 33 (1) (2019) for an overview of much recent sociological investigation. Also special issue on Matthew Taylor’s report on modern working practices, *Industrial Relations Journal* 49 (5-6) (2018)

⁴⁹ Until the pandemic transformed state support for working people, access to Jobseekers Allowance required proof that job search absorbed 36 hours per week of the applicant’s time – to prevent informal supplementation.

Commons Work and Pensions Committee claimed in 2017, ‘avoiding all their responsibilities to profit from this bogus “self- employed” designation while ordinary tax-payers pick up the tab.’⁵⁰ The quest for clearer legal classifications of gig (and self-employed) workers explains the flood of official publications addressing employment issues⁵¹. The best known of these, the Taylor Review⁵², advocated (among other measures) legislation to create an intermediate (arguably unnecessary) category of ‘dependent contractor’ to identify platform workers. Accepting the report, the government promised to clarify employment status of irregular workers, to equalise pay between permanent and agency workers, to raise the penalties on employers for non-compliance with their legal obligations and to guarantee the rights of the irregularly employed to request regular hours.⁵³ Legislation, however, has remained in abeyance, notably so as the coronavirus pandemic diverted official attention away from the precariously employed and towards the economic contraction and its labour market consequences. At the time of writing, an Employment Bill awaits Parliament’s attention, but its precise contents are not known.

In the absence of legislative action, platform workers wanting to claim basic employment rights (paid holidays, and the legal minimum wage) have resorted to the courts⁵⁴. However, the law is slow, expensive and cumbersome and progress towards establishing legal clarity to resolve the situation has been hard to achieve. A recent Supreme Court ruling has defined the obligations of one IT platform towards those registered to perform the service it offers⁵⁵. In insisting that these Uber drivers are ‘workers’ and not ‘self-employed’, the judgement extends the remit of the minimum wage and the right to paid holidays to all registered on Uber’s app. By implication, this judgement covers all courier, delivery and private hire platforms. It is also notable that, as transport providers, such companies will have to charge VAT on all customers, thereby replenishing HMRC revenues sadly depleted as a result of the pandemic while also potentially breaching the defences of some of the IT platforms that have successfully avoided paying much tax to date⁵⁶.

⁵⁰ Comment by Frank Field: Parliament website, “‘Gig Economy’ Companies Free-riding on the Welfare State’ (May 2017) <https://www.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/gig-economy-report-published-16-17/>

⁵¹ E.g. OTS *Employment Status Report* (March 2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/537432/OTS_Employment_Status_report_March_2016_u.pdf; HC WPC and HC BEISC *A Framework for Modern Employment* (Nov. 2017) <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/352/352.pdf>

⁵² See fn. (39) above

⁵³ DBEIS *Good Work Plan* (17 Dec. 2018) <https://www.gov.uk/government/publications/good-work-plan>

⁵⁴ J. Prassl (2018) ch. 6. The author is aware that publications by legal experts on recent court cases are extensive.

⁵⁵ *Uber BV and others (Appellants) v Aslam and others (Respondents)* [2021] UKSC 5. On appeal from: [2018] EWCA Civ 2748. Press summary - <https://www.supremecourt.uk/press-summary/uksc-2019-0029.html>

⁵⁶ As the ruling implies higher platform costs, reductions in numbers registered appears a likely response, possibly employing user feedback to determine who should be excluded – in a manner reminiscent of Booth’s preference lists adopted to control casual dock workers in the port of London before the first world war.

Legal judgement has recognised what Taylor, the government and media have ignored, namely the significance of historical precedent in addressing questions of social protection for the intermittently employed. First, when viewed historically, welfare rights were originally granted to employees alone as they, being totally subordinate to an employer, were least able to protect themselves against risk, while the self-employed exercised more autonomy over the terms and conditions for selling their labour. It therefore makes no legal sense to force the most vulnerable of all (gig workers) into a category originally reserved for the privileged, thereby depriving them of all protection. Second, as this paper has shown, the problems of casual workers long predate the creation of IT platforms. Legal precedent derived from case law dating back to the 1980s addresses the employment status of casual workers, who are in the same predicament as the gig worker in all but name. The IT platform makes casual employment more visible and may extend its reach, but new technology did not create ‘work on demand’. Taylor, mesmerized by platform apps and focusing on the London labour market, failed to notice how ‘modern working practices’ have deep roots. For finally, as shown above, the very legal categories underpinning employment rights are the creation of a specific understanding on how labour markets should operate – a convention long abandoned by governments. The damage this inflicts on labour market classifications and hence on employment rights is discussed below.

Concluding comments

Two salient points arise from the analysis presented here. The first reviews the relationship between precarious employment, poor health and social dependency. The second addresses our current understanding of the UK labour market and the classifications used in its analysis to argue that attempts to categorise, measure and mediate employment rights are fighting a losing battle in the face of current trends.

Self-evidently there are reasons to query the validity of comparisons between the labour markets of the Victorian era and those emerging today. The current UK economy is dedicated more to the provision of services than to the production of manufactured goods. Households are much smaller, female employment is acknowledged and technological advances have allowed unpaid domestic tasks to take up less time. While not denying this, this paper has exposed the age-old link between irregular, insecure employment and poverty, poor health and lost capacity to earn a living. All contribute to higher rates of social dependency. Initial official responses, past and present, have been to tighten access to public relief in order to promote a search for work. As ever, this fails to achieve very much. Derived from some very old assumptions about the advantages of free markets, policy has performed a *volte face* in recent decades, restoring social problems that characterised late nineteenth-century urban labour markets in the process. Thanks to the recent dominance of neo-liberal ideas, the current conception of a desirable labour market, capable of securing productive efficiency while reducing public costs, has reverted to very old (almost pre-industrial) prototypes. While criticisms of neo-liberal theories concerning market efficiencies are legion, ignorance among policy-makers about historical precedent has been marked. They could have been warned.

The consequences are serious. Over the last decade, austerity policies have reversed post-war objectives by pushing those in poor health back onto the labour market, where the stress of finding (and keeping) a job exacerbates a weak physical or mental condition. This allows the symbiotic relationship between sickness and poverty, endemic in casual work, to resume its late nineteenth-century profile. It does little to help the UK's appalling low productivity. The health status of those with physical or mental problems is not constant but fluctuates. In a tight labour market, taking sick leave invites redundancy (particularly in economic recession). The sick and infectious are forced to stay at work – leading to high rates of 'presenteeism'⁵⁷, which has exacerbated infection rates in the coronavirus pandemic. Tightening access to social security for both unemployed and disabled has increased competition for work on demand, reducing income for those reliant on it and forcing multiple job holding to make ends meet. Stress undermines health: reduced income translates into poor diet and overcrowded housing, again reminiscent of the Victorian era. The requirement for benefit claimants to take any work at any price has increased job 'churn' at the lower reaches of the labour market with little regard for the consequences. Such trends are visible in the high numbers of abandoned auto-enrolled personal pension accounts that illustrate how frequently people's employment situations change⁵⁸.

The heart of the problem of an economy promoting work on demand is that we know so little about it. Labour market research uses surveys (and administrative records) that offer a snapshot of employment at a specific point in time. This does not document the working trajectories found in a highly mobile labour market. The overwhelming majority of the UK's five million 'self-employed' are solo workers, but we do not know how many were 'self-employed' two years' ago – nor whether the self-employed then are self-employed today. We do know they are poorer than average, work fewer hours, are recruited from the economically inactive or unemployed and thus appear, collectively, to absorb fluctuations in labour demand. They are, perhaps surprisingly, generally happier than the average⁵⁹, possibly reflecting the preference for working autonomy found among some casual workers throughout the twentieth century. However, while numbers of self-employed have steadily increased, nothing is known about movements into or out of this category. A part-time employee adds some 'consultancy' (or similar work) on the side that develops into a full-time occupation that later collapses, forcing a return to part-time employment. An employee on flexible hours may change from full-time to part-time status seasonally and take on additional independent work during slack periods. There is no definitive point at which part-time work

⁵⁷ N. Whiteside, S. McGill, R. Fernandez-Urbano and P. Deng *Mapping Income Protection Gaps* (Zurich Insurance Group 2015)

⁵⁸ Data from master trusts charged with administering the personal pension pots, introduced under auto-enrolment since 2012, reveals that up to 50 percent of new accounts currently lie dormant as their owners' membership status has changed due to redundancy, moving job, leaving the labour market or working reduced hours. See Casey and Whiteside 'Problems of Persistence' (forthcoming)

⁵⁹ Giupponi, G. and Xu, X. *What does the rise of self-employment tell us about the UK labour market?* (IFS, 2020). This study used panel data to develop longer-term perspectives than those usually found in surveys.

changes to full-time⁶⁰. Equally the decision to register as self-employed is personal. The short-term tax advantages so gained are arguably outweighed by the loss of employment protection and long-term benefits, most notably pensions⁶¹. Current changes in registered labour market status are frequent but the working lives underpinning this are invisible.

The statistical categories developed in the pre-1914 era to labour markets are losing their grip. The classification of workers and working lives was originally derived from a prescriptive construction of the form employment should take and how labour markets should operate. Hence the Registrar General in 1911 instructed census officials to minimise the category 'general labourer' and social legislation that same year introduced official registration schemes to tie casual workers to specific employments⁶². Rationalised employment allowed new categories of social dependency (the unemployed, the sick, the disabled and – much later – the retired) to be created that identified particular claimants' rights to public support and employment protection. While there have always been anomalies that required constant statutory modifications of such rights, the construction of what we now term 'traditional' jobs offered the foundations for categorising forms of work and dependency that remain central to economic and social analysis. The promotion of permanent employment characterised British policy throughout the greater part of the twentieth century. Conformity conferred privileges (job protection, health and safety, social security, the promise of a retirement pension at the end of a working life). Thirty years of labour market deregulation, flexible hours and a politics of 'making work pay' have thrown these trends into reverse. Amusingly perhaps, both initiatives (to rationalise and deregulate labour markets) were justified as reducing the burden of social dependency on the public purse. Neither did anything of the sort. However, it is no coincidence that, outside the context of the pandemic, welfare benefits have largely abandoned any association with social insurance contributions and have become increasingly reminiscent of the poor law, with tighter terms of access and stricter means tests.

The explosion of irregular and insecure work makes the application of employment rights increasingly problematic. First, whether employment rights will be sustained now that the UK has left the EU is open to question. There is little evidence of any strategy from the current government, inaction being justified by the pandemic and its consequences for business. The three official employment protection agencies that have survived⁶³ currently operate in a vacuum, deprived of direction or co-ordination. Second, employment law offers rights to those deemed to have an employer: while the situation of gig workers is beginning to be addressed, the situation of agency workers is not obvious and the distinction of both from the ubiquitous self-employed is problematic. Judgements about gig workers (like casuals

⁶⁰ This refers to workers and self-employed, the ONS largely relies on respondents to choose how they are categorised. However, employment on flexible hours suffers similar problems

⁶¹ Casey and Whiteside op. cit.

⁶² National Insurance Act 1911 s 99

⁶³ The Gangmasters and Labour Abuse Authority; HMRC division on minimum wage compliance; Employment Agency Standards Inspectorate. The Industrial Strategy Council - charged with promoting secure employment – has been scrapped.

before them) tend to assume an equivalence of status among all on a given IT platform. This is unrealistic. The majority may be reliant on one form of employment. Others may use it to supplement sources of income⁶⁴. We do not know the extent of multiple job holding in the UK, then or now. We do know that labour market status changes rapidly, that the single career pathway characteristic of the twentieth century is now in decline and, with this, employment rights and social protection systems cannot function as originally intended. We also know that changing this situation will not be popular – and the present government is not known for tackling unpopular issues. History cannot offer ‘lessons’ about how current employment problems are best addressed, but it does point out some of the difficulties involved in trying to do so.

⁶⁴ Albeit undocumented, rumours of furloughed workers supplementing their state-funded income with other consultancy or casual work are rife.