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ABSTRACT

Even though the law of digital platforms has been a much-discussed topic in the past few years, academic studies have generally overlooked the gender approach to law and digital technologies. This is hardly surprising. Studies on gender, which have grown since the 60s, have remained a relatively separate field from law and the same can be said about many other disciplines. Legal scholars usually do not include gender in their studies, and the law of digital platforms and digital technologies makes no exception. Yet, a gender approach to the law of digital platforms is strongly needed, as it would help to unveil some of the most challenging aspects of the digital revolution.

Against this backdrop, this Special Issue has gone the extra mile to propose studies on gendering platform law. The result is both international and multidisciplinary. The Issue gathers lawyers and scholars from a wide range of disciplines. Also it collects papers from scholars from different countries and

organisation, such as the United Kingdom, Croatia, the European Union, Italy, Israel, the United States, Germany, India and China. Thanks to a very diverse background, each article touches upon different sectors of platform work and adopts a different perspective: from crowdwork to taxi rides and deliveries, from care work to reputational systems, from abortion to youtubers, among other subjects. By reading them together, it is remarkable to see that the issue of gendering platform work is significant and worth raising worldwide. The solutions proposed in the different articles are diverse and thought-provoking. They vary from suggesting amendments to specific laws to invoking policy or practical changes, emphasising the primary role of the state but also the importance of non-state actors.

Keywords: platform work; labour law; gender perspective; platform regulation.

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Gendering Platform Law. An introduction

Even though the law of digital platforms has been a much-discussed topic in the past few years, academic studies have generally overlooked the gender approach to law and digital technologies. This is hardly surprising. Studies on gender, which have grown since the 60s, have remained a relatively separate field from law and the same can be said about many other disciplines. Legal scholars usually do not include gender in their studies, and the law of digital platforms and digital technologies makes no exception. Given the absence of a real debate on the gender dimension of the platform economy, the lack of a gender approach to legal regulation of platform work is no surprise.

Yet, a gender approach to the law of digital platforms is strongly needed, as it would help to unveil some of the most challenging aspects of the digital revolution. In contrast to the widespread celebration of 'new' and 'emancipatory' algorithmically-mediated work opportunities for women in the platform economy, there is a potential digital re-inscription of stubborn 'analogue' gendered labour market inequalities, forcing us to question the extent to which digital platforms, and especially, digital labour platforms genuinely challenge long-standing gendered labour market inequalities and exclusions that disproportionately affect women, as many articles included in this Special Issue conclude.

According to most contributions integrated into the Special Issue, once the novelty of the artificial intelligence, platform architectures, and digital algorithms used to govern these women's work lives is acknowledged, the constraints of motherhood and care on women's patterns of platform job search, working hours, pay, and labour market advancement are far from new. Moreover, these hardships are even more problematic when we consider the difficulties women have commonly experienced before platform work in 'mainstream' employment. These include inappropriate questions at job interviews, bad bosses, lack of maternity provision by previous employers, redundancy during pregnancy, non-provision of family-friendly working conditions, demotion after maternity leave, and company cultures of long hours working and misogyny.

Against this backdrop, this Special Issue has gone the extra mile to propose studies on gendering platform law. The result is both international and multidisciplinary. The Issue gathers lawyers and scholars from a wide range of disciplines. Also, it collects papers from scholars from different countries and organisation, such as the United Kingdom, Croatia, the European Union, Italy, Belgium, Israel, the United States, Germany, India and China. Thanks to a very diverse background, each article touches upon different sectors of platform work and adopts a different perspective: from

crowdwork to taxi rides and deliveries, from care work to reputational systems, from abortion to youtubers, among other subjects.

By reading them together, it is remarkable to see that the issue of gendering platform work is deemed significant and worth raising worldwide. At the same time, the solutions proposed in the different articles are diverse and thought-provoking. They vary from suggesting amendments to specific laws to invoking policy changes, emphasising the primary role of the state but also the importance of non-state actors. Some authors identify very concrete solutions and minor changes in the law and business practices: among these proposals, the recommendation to use anonymous avatar profile images, a better platform policing of bad requesters, and exclusion of abusive male requesters with a track record of abuse directed towards female taskers. Special consideration is given to feedback and rating systems, which are often rooted in gendered assumptions about women. One suggestion is to limit the visibility of reviews on each worker's profile to the most recent or best five to minimise the negative algorithmic effect of negative feedback from unreasonable customers.

Other contributions propose more significant changes in existing laws that duly consider the need to affirm in the digital sphere those established rights that the feminist movements have won, such as work-life balance, including the right of paid maternal and parental leaves for all workers. Beyond these rights usually attached to the employee status it is crucial to promote the right to equal pay for equal work and to fight against unfair discrimination based on algorithmic transparency. In addition, many suggest better legal protection of self-employed women platform workers. They promote a broader focus beyond legal protections related to minimum wage, working time, sick pay, pensions, and collective rights – this to include paid time off for antenatal care, maternity leave and maternity pay, and protections against unfair treatment, discrimination or dismissal during pregnancy, maternity, and post-maternity return. More generally, the widespread call is to prevent an unreasonable narrowing of the scope of labour law in ways that unfairly exclude platform workers, alongside worker calls for an expanded focus of platform labour law to explicitly include worker protections during pregnancy, maternity and post-maternity return.

Some other articles provide data and interviews, showing stimulating findings. When asked, workers often point to the need for better and targeted training for new platform entrants and maternity returners, better task pricing guidelines, auto filtering of gigs based on workers' stated time availabilities (as well known, workers are frequently penalised for declining gigs offered), improved platform helpdesks, a maternity pause button to avoid any drop in platform ranking through inactivity during maternity leave, cross-platform transferability of online work histories, and a need for more female-founded and 'female-managed platforms who do it differently and more humanely'.

The recent legal interventions in platform labour law, above all, the European Union Proposal for a Directive on improving working conditions in platform work (COM/2021/762 final) is comprehensively discussed in this Issue. A special attention

is devoted to the diverging interpretations of the legal presumption the Proposal formulates to reclassify platform workers as employees, who thereby would become eligible for legally mandated worker welfare provision. While some believe this presumption will be a significant help for female workers, others conclude that it will give only limited support because a legal employee status would increase the reciprocal legal responsibilities of workers vis-à-vis their newly recognised 'employer' in ways that reduce the flexibility of work commitment, hours, and simultaneous enrolment across multiple platforms in ways that did not appeal to them.

New policies are also advocated, such as introducing a living wage that recognises the childcare costs of engaging in platform work and compensates workers for the childcare, enabling platform revenues to be generated. Along the same line, some articles insist on the role of collective bargaining and the opportunity to develop online tools to create associations and, more generally, connections to find ways to improve it in fields where isolation may affect female workers, also considering that many platforms workers often work in their homes or clients' homes, making collective bargaining particularly difficult to be implemented in these contexts.

The Issue puts together contributions from the whole world, from different disciplines and touches upon the diversity of platform work by studying several sectors. Their common point is always to try to raise the question of gender in platforms.

In Economic Geography, **Al James** focuses on supporting women crowdworkers through motherhood in the UK and how Gendering Labour Law in the Platform Economy might help. His article challenges the analytical invisibility of women within platform labour studies and platform labour law by trying to make the gendered reproductive dynamics of paid and unpaid labour on digital labour platforms visible. In doing this, he uses an analysis built from five years of research with women crowdworkers in the UK to make visible women's shifting experiences of crowdworking as 'independent' self-employed freelancers with young children at different moments of the life course and the origins and outcomes of these women's exclusion from labour law designed to protect women employees. This helps him identify a series of 'digital agency practices' and 'tactical workarounds' through which women crowdworkers can improve their everyday work conditions and self-employment during pregnancy, maternity and beyond without legal protection. In his work, James also conveys these women's suggestions for concrete changes that would improve their everyday work lives, including expanding the scope of platform labour law to include provisions for pregnancy, maternity, and post-maternity return.

Kosjenka Dumančić and Alka Obadić start from an economic background to present a Gendered analysis of macro working conditions and social protection law in digital labour platform work in fourteen countries of the European Union relying on

case studies led by the European Trade Union Institute. They explore the complex interplay between social protection law and gender differentiation in the context of digital labour platform work. Focusing on macro working conditions, they explore how social protection laws impact gender dynamics within the rapidly evolving field of the digital economy. Drawing upon empirical evidence and legal analyses, they examine how social protection frameworks intersect with gendered experiences and vulnerabilities in digital platform work. Through a gender-sensitive lens, they question the implications of social protection laws on issues such as income security, access to benefits, and workplace rights for women and gender minorities engaged in platform labour. Furthermore, they investigate the potential of social protection legislation to mitigate or exacerbate existing gender disparities in digital work environments.

Nelli Kambouri, a Political scientist and Social Anthropologist, proposes an intersectional gender critique of the European Union directive on platform work. She focuses on the Proposal for a Directive on improving working conditions in platform work to reconsider not only the employment status of workers in light of crowdwork but also the public/private binary in light of the platformisation of informal domestic and care work as well as algorithmic control and the management of women's self. Kambouri appreciates how the Proposal challenges deeply entrenched inequalities in platform work by providing a distinctive set of rules for some of the most critical features of digital labour that remain unregulated in some EU Member States. Tracing the origins of this legislation, she shows that the Proposal is the outcome of intense labour struggles and several national court cases during the past years for the misclassification of platform workers as independent self-employed contractors and for the lack of transparency in algorithmic management. However, she adds that the proposed directive missed the opportunity to tackle a crucial aspect of digital platform work, the gender dimension of platform work. The Proposal is gender-blind and obscures intersectional aspects of algorithmic management. The primary confirmation of this conclusion can be derived from a simple text analysis. It does not refer to "gender" or "women" or significant aspects of labour such as work-life balance, equal pay for equal work, sexual harassment, intersectional gender discrimination, or paid maternity and paternity leave. According to the author, this is a surprising contradiction, given that gender is a prominent trait of EU employment law and the digital transformation. Against this backdrop, she argues that this gender-neutral approach fails to address intersectional discrimination and gendered challenges, such as reproductive labour and algorithmic biases. She concludes that this blindness will further exacerbate intersectional gender inequalities and discrimination in platform work: "the Directive reproduces these silences of the emerging forms of online resistances that use digital means to express their demands for better payment and working rights. It also reproduces the silencing of the diverse spatial contexts in which different platform work is performed. The isolation of crowdworkers and the digital forms of struggle they

engage in makes it difficult for them to prove employment status and impact on political decision making and legal practice as much as workers in platforms where work is carried out in public spaces".

As sociologists, in an article titled "Deepening or buffering the crisis of social reproduction under capitalism? The case of digital care and domestic work platforms", **Ivana Pais and Patrizia Zanoni** focus on digital platforms offering care and domestic services, ranging from cleaning to babysitting, psychological services, and elderly care. By adopting the social reproduction theory, their investigation helps unveil capitalism's intrinsic dependence on socially reproductive work, which women in the home and communities carry out through the welfare state and the often informal market. Based on five cases of platforms based in Italy providing household cleaning, childcare, and social welfare services for children, elderly and disabled people, the analysis by Pais and Zanoni considers the growing digitalisation of care and domestic services as an indicator of the crisis of social reproduction. As for the consequences of the changes, the evidence they provide is mixed. While all platforms claim to be the key to tackling this crisis, their effect on social reproductive work may change significantly. The study shows how care and domestic services platforms might either deepen or contrast the crisis of social reproduction, and it also identifies the different business models adopted by digital platforms as the main factor that explains these other effects. In this regard, their analysis vary depending on the type of platforms, which entail distinct statuses and social protections of their predominantly female platform workforce. Platforms operating as mere digital intermediaries are deemed to deepen the crisis by expanding informal work on a large scale, as they expand informal care and domestic work beyond historical social networks. On the other hand, -they add-, platforms setting the terms of employment may play a crucial role in fostering protecting care and domestic work and recognising it as "real work". In the last part of the article, the analysis shifts to the potential role that the law may play in protecting care and domestic platform workers. In this regard, the authors believe that the new European Directive on platform work missed the opportunity to give adequate protection and recognition to reproductive work.

In the article "Child Labor in Digital Platform – General and Gender Aspects and the Need for New Legal Protections", **Shulamit Almog and Shlomit Feldman** propose a case study on Child work on Platforms and, more specifically, general and gendered aspects of YouTubers. They study how a young population on YouTube perceives their activity. Does it work? Does it generate gain? Are there distinct elements that characterise the play/labour of girls on YouTube, and if there are, are specific protections needed? They propose to recognise two principles. First, YouTube activity is leisure and work, even when the actors are children and youth under the employment age recognised by law. Second, children should not be excluded from participating in these platforms and should be provided with fair employment conditions and wages.

They claim that this two-staged recognition could be a solution not only to the economic exploitation of children and youth on platform work but may also untie the connections the platforms create between the economic aspirations of girls and traditional gender dictates. In doing this, the article takes a very original take on gender studies and equality from the point of view of platforms and YouTubers, also offering thought-provoking proposals about regulatory reforms.

Tamara Roma focuses on the platformization of abortion in the United States from a legal historical perspective. This original subject is an excellent opportunity to gain a critical perspective on gender. She proposes a chronological analysis of the right to abortion and its development online through digital platforms. This article is an opportunity to question what gendering platform law means: is it analysing digital platforms and their laws from a gendered perspective, or does it mean building digital platforms which recognise women's rights and, in this case, the right to abortion? This change in perspective is welcome as it provides a dive into US law and a deeper reflection on the challenges of digitalisation to recognise a relatively fragile fundamental right.

Joanna Bronowicka makes a sociological analysis to draw lessons from self-employed yoga teachers in Berlin (Germany) and study how such a feminised professional field resists the impact of platforms. She focuses on collective bargaining to investigate why and how self-employed platform workers establish new organisations to resist the power of digital labour platforms as market organisers. Relying on a case study of the Fair Yoga Initiative (FYI) established by self-employed teachers in Berlin and evidence collected through a mixed-methods approach, including an online survey of the teachers, multiple interviews, and desktop research, she explains the specificities of this field. She also assesses why the self-employed workers who were not directly affected by platforms mobilised to resist them.

In her article "Reputational ranking of platform workers: on the gender discriminatory implications of users' feedback", **Elisa Parodi's** article deals with the effects on workers and the legal treatment of users' ratings, feedback and other forms of reputational scores, which are frequently used by digital platforms, often combined with other indicators, to outsource the service's quality assessment to clients to set minimum quality standards of service. Since these systems impact job opportunities and working conditions, the article by Parodi investigates whether and under which conditions their use may amount to an exception to the prohibition of discrimination under the European Union Equality Law. As a first step, it argues that the employment of reputational ranking systems could not constitute a "genuine and determining occupational requirement." In this regard, the author ponders the analogy between such a requirement and rating systems, as discussed by the European Court of Justice in the

Bouignoui case, considering the parallel traced by the court unconvincing. Along the same line, the paper then focuses on whether the potential indirect discriminatory outcome stemming from a reputational ranking can be justified under the law. In this regard, Parodi acknowledges that measuring workers' performance may likely be considered a legitimate purpose. Yet, the measurement's appropriateness and proportionality should not be taken for granted; they should be assessed in each case. She concludes that customer ratings might not meet legal requirements often, and most of these systems would probably fail the proportionality test. In the last part, the chapter puts the question of rating systems within a broader framework to discuss whether and to what extent algorithms can be held accountable if they perpetuate existing societal biases, underscoring the risk that platforms may mediate existing patterns of oppression by discriminating both objectively and invisibly.

Neha Arya and Abhishek Nemuri each bring economic and legal backgrounds and share an interest in labour issues. They present an article "Women's engagement and the role of gender in Platform work and labour legislation in India" that proposes a case study of workers on two popular platforms in India in the beauty and personal services segment, leveraging reviews and feedback to gather insights into their work realities. Starting from this case, Arya and Nemuri unveil focal points such as algorithmic control, technical support intricacies, rating dynamics, safety protocols, and cost considerations to discuss the broader regulatory challenges of the gig economy in India.

In the article "Gender Segregation in the Labor Market: A Study Based on Female Food Delivery Workers", **Zhang Bingqian** brings to light an original study on Chinese women delivery riders. It starts with analysing the working conditions and portrays the workers' difficulties in turning to legal aspects and possible protections. It insists on one apparent advantage of the platform model: it escapes the traditional male-dominated work environment, offering an unprecedented sense of freedom and autonomy. It creates a shift from direct managerial oversight to algorithm-driven management, which reduces gender-specific scrutiny and provides women with the opportunity for fair competition based on performance. But it introduces its own set of challenges. This flexibility also often exacerbates familial responsibilities, particularly the caregiving roles traditionally assigned to women. Recent legislative efforts at national and local levels aim to support these new employment forms by ensuring social insurance participation, adjusting work conditions, and promoting fairness in job evaluations. Despite these provisions, there remains a gap in effectively addressing the practical challenges these workers face, highlighting the need for ongoing adjustments to policy and implementation to support female riders in the gig economy better.

In conclusion, this Special Issue brings a straightforward yet complex claim to the fore: gendering platform law is imperative. This simple claim unfolds in incredibly

diverse legal and sociological contexts, leading to policy recommendations, changes in platform architecture and proposals for legal change. These proposals might even differ from one region or country to another to adapt to the local peculiarities. Still, the complexity of the task ahead should not discourage the numerous actors from progressing onto the path of gendering platform law.