

The precedent has been set: de-dualising social protection in the United States and Europe

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Anne Marie Brady¹



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¹ Anne Marie Brady is the Research Director of Workers Rights and Equity at the ILR Worker Institute, Cornell University.



Abstract

This paper discusses how automation and digitalisation has the potential to reinforce dualism in the United States and in Europe. While automation and digitalisation have always been key components of the labour market, the last 20 years have witnessed an unprecedented increase in automation and digitalisation, bringing back into focus the relevance of the notion of dualism – or dual labour markets – and specifically, the degree to which the digital transition affects the ability of workers to access appropriate social protections through work. This paper explores whether the construction of decent work need be the determining factor in deciding who gets what social protections – rewarding one group of workers with a suite of benefits distinct and different from another group of workers, merely because of their status in the labour market. As the government response to COVID-19 in the United States and in Europe has shown, we need not rely solely on decent work as entry point to full social protection. Political solutions can be found to the question of de-dualising social protection for all workers, irrespective of labor market status.

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1. Introduction

Work has always been at the centre of the configuration of the welfare state in the United States and in Europe – now more commonly referred to as social protection. It is through their employment relationships that individuals have access to social insurance. With the advent of activation in the 1990s and 2000s, social assistance for the long-term unemployed leveraged ‘work’ – especially one’s ability to work – as the means through which rights to benefits were acquired. Indeed, one’s ability to work became an eligibility requirement for receipt of other benefits in the United States, including Temporary Assistance for Needy Families (TANF), Food Stamps and Medicaid, and for unemployment assistance in Europe. While ‘decent work’ is not a principle of social protection, it is an important issue as it is commonly understood that having a ‘decent’ job is a mechanism through which individuals can access social insurance programmes – programmes that manage important risks throughout the life course. This as opposed to flat-rate, often means-tested, social assistance for those individuals ineligible for social insurance.

As has been much discussed, increased automation and digitalisation present new challenges for the economy and for employment in the United States and in Europe (Ford, 2015). Automation and digitalisation have impacted job dynamics and job creation with far-reaching consequences for income and employment stability, especially for those most vulnerable in the labour market (Pasi and Misuraca, 2020). But these changes also have significant consequences for the established social protection framework in Europe and the United States that continues to define the type, amount and quality of social protection based on job status – and here ‘decent’ work becomes the yardstick against which to determine access to social insurance, as opposed to assistant-based benefit – or no benefit at all.

While automation and digitalisation have always been key components of the labour market, the last 20 years has witnessed an unprecedented increase in automation and digitalisation that has brought back into focus the relevance of the notion of dualism – or dual labour markets – as it pertains to the degree to which this digital transition affects



workers ability to access appropriate social protections through work, and therefore contributes to increased labour-market polarisation (Eichhorst and Peressoni, 2021). Moreover, Eichhorst, Hemerijck and Scalise (2020) note that the concern is that automation and digitalisation will put pressure on societal segmentation, potentially resulting in acute labour market polarisation through the erosion of middle-classes workers.

This paper will therefore discuss how automation and digitalisation have the potential to reinforce dualism in the United States and in Europe. This paper will then explore whether the construction of decent work (and ergo who gets what benefits) needs be the determining factor in deciding who gets what social protections. Should one group of workers be rewarded with a suite of benefits distinct and different from another group of workers, merely because of their status in the labour market? Or – as the pandemic has shown – are there political solutions that have been applied during the pandemic that could be expanded and made universal? Ultimately, this paper will argue that US and European governments’ responses to the COVID-19 pandemic, and the bolstering of subsequent social protections to manage the massive public health risk, suggests that social protection systems can be de-dualised, if we want to.

2. Dualism in Europe and in the United States

Since its inception in the late nineteenth and early to mid-twentieth centuries, social insurance programmes – a core component of social protection – have always been both solidaristic in that they are about sharing risk, but premised on individual contributions which identified, separated and rewarded the ‘worker’ from the non-worker. Social insurance has thus from the start been a mixture of Bismarck and Beveridge, rewarding those who ‘worked’ ie the core worker, while preventing the low-wage, periodically workless worker from falling into abject poverty with a flat-rate, often means-tested benefit provided through social assistance. This system worked, by and large, so long as the robust economy of the post-Second World War years fostered near-full employment where this

separate system of unemployment benefits – and principles – functioned well in that the majority of jobseekers received social insurance. But this system started to falter after the oil crisis of the 1970s that caused a global recession that resulted in persistent mass unemployment and declining levels of overall employment in the 1980s and 1990s². It was no longer those on the margins of the labour market who needed social assistance; rather mass unemployment impacted those from typical risk categories who were turning to social assistance for help.

To stem this high unemployment (conversely, low employment), it was argued that European countries needed to liberalise and deregulate their overly rigid labour markets. Liberalisation and deregulation came to be seen as the only way out of an impossible situation³. However, as Eichhorst and Peressoni (2021) argued, from a political perspective, deregulating permanent employment relationships would have been politically impossible and too costly in terms of political capital expended for a fight that would not have been won. Therefore, policymakers liberalised only those contract types that deviated from open-ended full-time employment. Temporary employment therefore emerged as a second-best solution to provide employers with the flexibility they demanded, but was also perceived as the best way to reduce mass unemployment. Dualism – or dual labour markets – can therefore be understood *“as a political strategy to create labor markets with institutionally distinct segments, thereby avoiding to dismantle protections for core workers, the most powerful constituency, and ultimately creating a segment (or multiple sub-segments) that is governed by different rules”* (Eichhorst and Peressoni, 2021: 10). Thus, while there has always been a core, protected worker with recourse to status-preserving social insurance, it has been argued that the post-1970s strategy of institutional reform created a secondary institutional arrangement that came about because of changes in the rules and interaction

²In addition to the economic crisis of the 1970s, other structural changes took place during this time, including deindustrialisation and increased global market competition, that, it was argued, coupled with highly regulated labour markets, contributed to, if not outright caused, barriers to employment.

³ It should be noted that the argument for liberalisation and deregulation coincided with an ideological turn – from Keynesian to neo-liberal – that argued for such changes as the only way to address high unemployment.

between employees and employers in specific parts of the labour market (Emmenegger *et al*, 2012). This exacerbated the division between the ‘insider’ and the ‘outsider’, ie the low-wage, periodically workless worker whose recourse to any benefit was through social assistance, as opposed to workers with recourse to social insurance.

In the United States, dual labour market theory first emerged in the late 1960s from Doeringer and Piore’s (1971) work on firm internal labour markets. They argued that that the American labour market was sharply divided between good jobs and bad jobs. Their thesis received support from critics of human capital and marginal productivity theory who argued that the War on Poverty manpower workforce development programmes had failed to produce a substantial reduction in poverty and underemployment, especially among African Americans and migrant groups (Hudson, 2007). The critics argued these programmes failed to address the structural deficiencies in the creation and allocation of jobs (Reich *et al*, 1973). Over the last three decades, academics have argued that three events have increased the level of segmentation in the American labour market. First, deindustrialisation and the decline in union membership (Freeman, 1999): historically the guarantor of good wages and benefits for workers, this decline has contributed to the wage and benefit bifurcation between protected and non-protected sectors, like the service sector (Harrison and Bluestone 1988). Second, substantial increase in the relative size of the immigrant workforce since the 1980s has caused the labour market to become increasingly stratified on the basis of national citizenship (Phillips and Massey, 1999). And third, the growing prevalence of non-standard work arrangements that are more likely than traditional work arrangements to pay low wages and less likely to provide health insurance and pensions (Kalleberg *et al*, 2000). Labour market dualism in the United States, like in Europe, has re-emerged with the rise in the new economy that has been explicitly linked to corporate restructuring and the use of contingent and non-standard work arrangements (Kalleberg *et al*, 2000). Annette Bernhardt and colleagues (1995) argued that these forces have combined to dramatically increase the level of income inequality in the United States, and that this

increase in income inequality has been accompanied by an increase in the level of dualism in the labour market.

3. A spectrum of dualism

Labour markets can be understood as dualised if one group of workers is systematically excluded from long-term employment while other groups are protected from the consequences of market fluctuation. At the heart of this duality is the desire to allow firms to be more ‘flexible’ so that they can respond to market fluctuation by hiring and firing as demand ebbs and flows. Since labour law in Europe (less so in America) typically makes it more difficult to lay off full-time permanent workers, hiring people on contracts was seen as a workaround. Thus, the distinction between groups of workers manifests itself through labour market reforms and corresponding regulatory gaps that created a better protected standard employment relationship and a less protected, less formal contract that deviates from standard employment in terms of duration, schedule and working time, direct employment, temporary or fixed-terms contracts, temporary agency work, self-employment and marginal part-time or on-call work (Eichhorst and Peressoni, 2021)⁴.

But it is important to acknowledge a spectrum within this duality. While it is easy to fall back on a definition of dual labour markets as a worker is either ‘in’ (ie in standard employment and ergo, has a ‘decent’ job with the relevant social protections) or ‘out’ (ie in non-standard employment or unemployment and ergo does not have a ‘decent’ job and thus has little to no access to social protections), the reality is that there is a broad spectrum on which workers fall. Indeed, where one falls on the spectrum depends on different, sometimes competing, factors. For example, in the United States, one can be in a standard employment relationship, ie full-time, permanent position, that does not provide healthcare or dental coverage, is low-wage and does not provide extra benefits, such as a 401K retirement plan.

⁴ Furthermore, Eichhorst and Peressoni pointed out that differences in coverage by collective agreements can create dualisms even within the category of permanent full-time employment, creating a dividing line between sectors (or regions) with high and low coverage and related differences, eg in pay and working-time standards.

Nevertheless, because the worker receives a ‘W-2’ tax form, that worker contributes to social insurance (and therefore has recourse to disability, unemployment and retirement benefits when needed). It would therefore be misleading to automatically identify ‘good’ jobs with standard (open-ended full-time) contracts, and to consider all non-standard contracts as ‘bad’ or inferior in terms of job quality. Job quality, as an empirical question, can be measured by considering multiple aspects: pay levels, perceived or actual job stability and the probability of promotion to a standard contract (Eichhorst and Peressoni, 2021). And yet, the type of employment contract nevertheless remains an important metric against which to distinguish labour market segments⁵.

4. De-dualising social protection: lessons from COVID-19

How can dualism compounded by digitalisation and automation be countered? It is nevertheless important not to neglect the role of good jobs or decent work in the labour market as a pillar of social protection. While decent work is not a principle of social protection, decent work is the basis of social protection because social insurance systems are a function of employment. It is therefore important to both improve job quality through the labour market, and to also provide the pathways to quality jobs through education and skills training.

The rapid increase in technology-facilitated forms of work, such as crowd work and on-demand work through apps and platforms has led to more flexibility, on the one hand, but higher inequalities in education and learning opportunities on the other. Evidence suggests that workers with lower educational attainment have, on average, a lower probability of participating in training and developing their professional skills, thus struggling to adapt to new job transformation and labour market dynamics (Eichhorst and Peressoni, 2021). The second group affected by employment polarisation is jobs with mid-level pay and

⁵ For Eichhorst and Peressoni, the important division lies between open-ended full-time contracts, identified as “*standard employment*”, as the primary part of the labour market, and all other types of contracts such as fixed-term contracts, (marginal) part-time, temporary agency work or self-employment.

educational attainment. Studies exploring employment effects of digitalisation and automation show a negative effect for workers with mid-level educational attainment, followed by subsequent downward pressure on their wages (Özkiziltan and Hassel, 2020). While a lot has already been written in the United States and in Europe on the need to bolster life-long learnings systems, while ensuring pathways to education and training for all levels of educational attainment, this nevertheless remains an important component to closing the gap between workers with mid-and high-level educational and training attainment, while also ensuring that there are pathways to education and training for those with low educational attainment. Evidence repeatedly shows a relationship between education/training and earnings – the higher the education and training, the higher the wages. Which comes back to the first point: pathways to education and training create an essential pathway to quality of work, with the accompanying quality wages and social protection (Özkiziltan and Hassel, 2020).

Considering the longstanding but accelerating trend towards digitalisation and automation, while developing human capital through education and adult learning is a critical component, the discussion cannot nevertheless be restricted in terms of what is needed to de-dualise the labour market and social protection to education and training alone – even though these are very important elements. What is also needed is proper income protection through social policies as well as less-dualistic models of employment protection (Eichhorst and Peressoni, 2021). And this requires rethinking of how to frame social risks and the subsequent management of risk through social insurance. In addition to the classic risks – unemployment, disability/poor health, and old age – there are new risks that are managed to varying degrees and to varying levels of success through social protection. For example, age can be a risk; in some countries, young people have higher risk of poverty and are disproportionately unemployed, underemployed or in low-wage work. The risk of poverty and social exclusion is high among migrant communities. And women still bear the brunt of childcare with too little support – especially in the United States – which affects their employment and earnings. But here we could also view non-standard work as a new social

risk. To manage this risk, we have to better regulate or fill gaps in regulation where needed. For example, individuals in temporary work or fix-term contracts are, in principle, protected. But their jobs are short-term, which makes their position precarious because of the high potential for uncertainty after the temporary position or fix-term contract ends. The degree of protection for self-employment, platform work and part-time work varies by category and sector. Some jobs are partly covered – like some part-time work – whereas platform work in most countries is not. Marginal part-time work is usually low-paid work that affects entitlements to pension and healthcare (Spasova *et al*, 2019).

How do we respond to these new risks associated with non-standard employment? First, countries can institute change through labour legislation to address the risk of non-standard employment. European labour markets use temporary contracts far more frequently than American. The primary causes of these differences are Europe's less flexible dismissal policies and more generous health and benefit regimes compared to US labour market and benefit policies. In Europe, the policy response in some countries to fixed-term contracts and temporary agency work has focused on regulating labour laws more tightly, including legislating for better working conditions, increased pay and limiting the use and duration of temporary contracts.

Second, expanding social protection coverage for self-employment, online platform work and part-time work through our social policies is possible, as the European and American government responses to the COVID-19 pandemic have shown. De-dualisation of European labour markets would be facilitated by the removal of gaps in social protection between different contractual arrangements and related rules on social contributions. In most European countries and in the United States, the self-employed, and workers who are independent contractors (ie online platform workers) are not (fully) covered by social insurance, especially unemployment insurance and old-age or disability pensions (Spasova *et al*, 2019). Universal coverage by social insurance, and income protection that is based on contributions, needs to cover the different types of income generated from work,

irrespective of the contractual nature of the work – including online platform workers and the self-employed, as well as marginal part-time workers. Importantly, Eichhorst and Peressoni (2021) argued that mandating all workers must be covered, irrespective of their labour market status, would remove the incentive for employers to use labour cost arbitrage that appeals when there is a cost difference between social insurance dependent employment and independent self-employment or independent contractor status. Second, inclusive social insurance would greatly reduce the increasing reliance on social assistance to provide income protection to the self-employed, independent contractors and marginal part-time workers. Finally, the mobility between, and the combination of, different contracts would become easier. Allowing contributions to be raised on all type of income would allow for easier mobility between, and the combination of, different contracts, while providing income-related cash transfers in case of unemployment or retirement. These important steps would go a long way in de-dualising social insurance.

One could dismiss out of hand these recommendations to de-dualise social protections in the United States and in Europe. One could even argue that, given the multiple and competing interests of the many stakeholders involved, not to mention that the political power of some of the largest and wealthiest corporations would be affected by such reforms, that there is in fact no chance of such ideas being made universal and put into law. But government responses to the COVID-19 pandemic showed a way – and in doing so set an important precedent.

The United States is a good case study. The CARES Act, signed into law on 27 March 2020, included several unemployment benefit programmes that were widely hailed as a success (Isaacs and Whittaker, 2020). Pandemic Unemployment Assistance (PUA) expanded eligibility for individuals who have traditionally been ineligible for unemployment compensation benefits (eg self-employed workers, independent contractors and gig workers) and provided half of the usual unemployment funds available to employees. The Federal Pandemic Unemployment Compensation (FPUC) expanded coverage to workers not

typically included and provided unemployed workers with an additional \$600 a week supplement, and increased the duration of benefits.

Moreover, there have been efforts to challenge the misclassification of workers as independent contractors rather than as employees. Seattle and New York City have created municipal-level minimum wages, paid sick days and other protections that apply broadly for gig workers. California has enacted a law (Assembly Bill 5) that, for purposes of the State's labour code, deems people providing labour or services for remuneration, such as self-directed gig workers, to be employees rather than independent contractors. In terms of enforcing laws, Seattle's Office of Labor Standards has brought several actions enforcing the city's gig worker paid sick and safe time law, passed in June 2020. While these initiatives are at city and state level, these city and state legislative initiatives set a precedent for other cities and states, while putting pressure on the federal government to act.

5. Conclusion

Dualism in the United States and in Europe took shape in the wake of profound structural changes to corporate regulations and labour market reforms after the 1970s. The effect has been the construction of rules that, through deregulation and liberalisation, have exacerbated which workers have access to social protections based in part on status in the labour market. This social protection dualism undermines social cohesion, impacts individual and family wellbeing generally, but especially in times of crisis, and contributes to widening economic inequality. And yet, from a policy perspective, the most recent experiences with the COVID-19 crisis – designing policies to make labour markets and social protection less dual – provide a path forward.

To be sure, in an effort to make labour markets and social protection less dual, there are a number of employment-based social protection policies and principles to address. As discussed in this paper, decent work or good jobs are the basis through which we access social-insurance-based social protection, which manage important risks throughout the life

course. It is therefore important to improve the number of ‘good jobs’ available in the labour market. In the context of the digital transition, the pathway to ‘good jobs’, as the evidence suggests, is through life-long learning, education and training, because jobs requiring advanced educational attainment are linked to high-paying jobs with good social protection. People who have the necessary educational and training attainment have better access to ‘decent work’, and are therefore better protected than people with low educational and training attainment. Moreover, creating the appropriate pathways and pipelines will go a long way to improving access to labour markets for those typically excluded, especially young people, lone parents and migrant communities.

But the focus on ‘decent work’ as the route to important social protections cannot be the definitive factor. The gap between the artificial construction of standard and non-standard employment must be reduced, if not eliminated. In theory, this is not difficult to do as it requires making changes to employment regulation. This includes extending social protection coverage to the self-employed, part-time worker and independent contractor. Important here is improving access to social insurance for this group of workers. A precedent has been set by some European countries and some American states that have extended access to all workers, irrespective of employment status. But barriers remain to making social protection coverage universal to all workers. There are issues of cost – and here the question of who pays is especially relevant with the gig economy – as well as the administrative and regulatory changes needed. But these are not insurmountable changes, as the US response to COVID-19 has shown. Indeed, CARES Act legislation expanded nationwide the amount, duration and, importantly in this context, coverage to groups typically excluded from social insurance, for example. While these measures have since expired, the opportunity to make these changes universal and permanent – while not without its challenges – nevertheless is at hand.

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