



Edited by

Tindara Addabbo · Edoardo Ales · Ylenia Curzi
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Iacopo Senatori

Defining and Protecting Autonomous Work

A Multidisciplinary Approach

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1

Introduction

Tindara Addabbo and Olga Rymkevich

Autonomous work and the process of employment autonomization are at the core of this volume offering the reader an interdisciplinary view of the two concepts and empirical evidence in different countries and sectors and on the factors leading to an intensification of the process of autonomization.

The very perception of autonomous work status can be unclear and that is why in the last European Working Conditions Survey (EWCS 2015) a set of questions have been asked for detecting the respondent's self-employed or employee status (Eurofound 2017).

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Table 1.1 Respondents' employment status

Q7—Are you working as an employee or are you self-employed?	<i>M</i>	<i>F</i>	Total
Employee	79.26	86.49	82.63
Self-employed	20.74	13.51	17.37
Total	100	100	100
	21,867	21,400	43,267

Source: Our elaborations on EWCS 2015 data

Table 1.2 Self-employed workers by their declared status

	<i>M</i>	<i>F</i>
Sole director of their own business	34.3	22.35
A partner in a business or professional practice	8.83	8.43
Working for yourself	41.92	51.81
Working as a sub-contractor	2.49	0.97
Doing freelance work	9.8	10.23
Paid a salary or a wage by an agency	0.68	0.68
Other	1.98	5.53
	4823	3042

Source: Our elaborations on EWCS 2015 data

Actually, considering the whole respondents to EWCS survey, those who state to be self-employed are 17% (21% amongst male and 14% amongst female) in the 27 EU Member States plus the United Kingdom, Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Turkey as well as Norway and Switzerland (Table 1.1).

When we disaggregate by declared self-employment status, we can observe the difference in the gender distribution of those who state to be the sole director of their own business (34% male and 22% female self-employed). On the other hand, the percentage of self-employed women who work for themselves is 10 percentage points higher for women (52% of those women who state to be self-employed are working for themselves against 42% of male self-employed). More men than women work as a sub-contractor (2% of male self-employed and 1% of female self-employed workers). The percentage of professional or agency worker and freelance is similar for men and women who state to be self-employed (Table 1.2).

Table 1.3 Choice of self-employment status

Q10—Self-employed, was it mainly your own personal preference or you had no other alternatives?	<i>M</i>	<i>F</i>	Total
Mainly through own personal preferences	57.3	48.1	53.8
No other alternatives for work	24.1	32.3	27.2
A combination of both	15.2	14.8	15.0
Neither of these reasons	3.4	4.8	3.9
Total	100	100	100

Source: Our elaborations on EWCS 2015 data

EWCS data allows to distinguish whether self-employment has been a choice or the self-employed workers did not have any alternative. As shown in Table 1.3, men in a higher percentage with respect to women have chosen self-employment for personal preferences (57% of male self-employed against 48% of women self-employed) and women are working as self-employed not having other alternative more than men (32% women self-employed stated to have no choice, against 24% of men). As expected, having no alternatives than being self-employed significantly reduces workers' job satisfaction that on average is 10 points lower for those self-employed who have not chosen to be self-employed for personal preferences. This heterogeneity with regards to the type of self-employment status and the extent it has been a choice related to one's preferences rather than an absence of alternatives will be considered in this volume to take into account how working conditions can differ by different types of self-employment work.

Turning to other dimensions of working conditions, by considering the earnings distribution for employees and self-employed, according to Pantea's (2022) analysis on EU-28 countries based on quantile regressions estimated on European Union Statistics on Income and Living Conditions data, the earnings gap at the disadvantage of the latter occurs for workers at or below the median income distribution with higher, with regards to employees, earnings only for workers at the top quantiles of earnings distribution. The lower coverage of self-employed with employees in Pantea (2022) makes the results representative mainly for self-employed without employees. The latter have also been found by other analyses, with a lower level of earnings on average for solo self-employed

(a group of self-employed workers whose share on total self-employed is increasing) than employees and entrepreneurs (Schneck 2020).

Distinguishing amongst self-employed types, the dependent self-employment from other types of self-employed workers allows to see that they do not differ in terms of physical and social environment and intensity of work, but they do differ in terms of poorer job prospects, less ability to use their skills and discretion than “true self-employed” but higher quality of time quality (Horodnic and Williams 2020). Actually, own-account workers who rely for a large share of their income on a single client/employer (dependent self-employed) have been estimated to be about 16% of self-employed and their share is increasing (OECD 2019).

The importance of distinguishing amongst different types of self-employed workers is recognized in Boeri et al. (2020) who, by using survey data from the United Kingdom, Italy and United States, allow to distinguish between solo self-employment and self-employment with dependent employees and in so doing to detect worse working conditions for the former, especially for the higher occurrence of liquidity and hourly constrained and of lower earnings.

Another important finding is about the impact of a higher share of self-employed on income polarization. The increase in the share of self-employed is found to lead to higher income polarization in the labour market as Schneck's (2020) analysis based on German Socio-Economic Panel data shows.

The blurring of the boundaries between employee and self-employment status further developed with the increasing flexibility, outsourcing and subcontracting activities and the use of new technologies leading to a fragmentation of new forms of employment (Eurofound 2020).

The heterogeneity in employment status is also connected to a different access to social protections, benefits and rights (De Micheli et al. 2018; OECD 2018, 2019).

Inequalities that became even more visible during the COVID-19 pandemic with lower access to income support or delays in receiving them but also recognized with new policies that introduced in a set of countries new cash transfers for self-employed workers (OECD 2020). The adverse impact of COVID-19 on employment and hours of work, taking into account the work status and individual characteristics, has

been shown to be higher for unincorporated self-employed workers by Kalenkoski and Pabilonia (2021) who estimated random effects and difference-in-difference-in-differences models on monthly panel data from the US Current Population Survey. Among unincorporated self-employed workers the negative impact on employment and hours of work has been higher for mothers. This result suggests disaggregating data on different types of self-employment also when analysing the impact of the crisis on employment and working conditions.

Reuschke et al.'s (2021) analysis on the impact of COVID-19 on working conditions of self-employed workers in the United Kingdom find a worse effect on women in particular on the reductions in hours worked and earnings.

From this introduction showing the heterogeneity of self-employment as well as the blurring boundaries from self-employed and employees and the inequalities arising in terms of working conditions, impact of the business cycle and social protection pave the way to introduce the readers to the book's content.

The book is divided into two thematic sections. **Part I** aims to provide a general contextualization of the book by offering a critical interdisciplinary assessment of the evolving notion and theoretical concepts of autonomous work as well as the processes accompanying the increasing “autonomisation” of employment which seriously challenge the traditional dichotomy of autonomy and subordination and put in doubt the adequacy of the existing legal categories and regulatory mechanisms at national and international levels. The chapters offer a contribution to the ongoing scientific debate regarding the complex dilemma between the possible revision of the traditional interpretative and normative toolkit regulating the relationship between employers/platforms and workers and an application of selective and tailored set of protections adapted to the specific categories of workers.

Within this framework, Chap. 2 by **Ylenia Curzi** and **Tommaso Fabbri** focuses on the interpretative challenges that digitalization and its possible work-related implications represent for the organizational and labour law scholars. Against this background, the chapter draws attention to the concepts and analytic distinctions drawn from non-mainstream organizational theories which reflect a processual conception of

organization, highlights how they may inform the empirical analysis of the organizational regulation of work and summarizes the insights they offer on the issue of autonomy in and beyond the employment relationship.

Manos Matsaganis in Chap. 3 discusses the main reasons why policy-makers should be wary of self-employment. In particular, he analyses job creation potential and perverse tax compliance incentives. The author further illustrates how the relative weight of self-employment and gig work varies across countries and over time. In addition, he examines two problems regarding the extension of social rights to the self-employed, that is, the appropriate social contribution rate and the range of social risks covered. Finally, taking into consideration the provisions of the European Pillar of Social Rights, the chapter provides a critical assessment of the diverging national approaches to the integration of self-employed workers into social protection in the Netherlands and Greece.

Adalberto Perulli in Chap. 4 provides a critical insight on the binary structure of labour law with the categories of subordinate work and self-employment. The distinction between these two categories is discussed on the basis of four arguments of a historical, sociological, economic and comparative nature. These arguments show that the binary distinction is being overcome, if not completely overcome, and that labour law must cover work in all its forms (subordinate and autonomous) with a modulation of universalism and selectivity in the allocation of labour rights and social protections.

Chapter 5 by **Daria Sarti** and **Teresina Torre** aims deepen two different types of employment status such as “salaried employees” and “self-employed workers”. By investigating some crucial dimensions, the authors try to deal with the question if and where they are conditioning working practices and if it is possible to confirm or not the existence of a gap between the two—apparently?—different “worlds”. In their analysis the authors use the sixth European Working Conditions Survey (EWCS) conducted in 2015 on a large sample of workers which offer the opportunity to compare the situation in many European countries in order to understand if the employment status continues to be useful or not to capture the evolution of work.

Chapter 6 by **Edoardo Ales** aims at providing a conceptual framework to the social protection of genuine autonomous work, with a reference to solopreneurs, analysing socio-economic risks and needs they are facing and that may differ from the traditional ones profiled on subordinate work. The author criticized the “package approach” of some legislators that just extends Labour Law and Social Security protection typical of subordination to autonomous work. He reflects on the potential of reflexive labour law to set up a regulatory system based on a “self-organized diversity” where the interests of individuals, groups and society can find an adequate balance. The author draws three conclusions in the perspective of: singling out the very notion of genuine autonomous workers, outside the shadow of the “false self-employed” doctrine; removing any existing ungrounded legal obstacles to self-organization of autonomous workers; and promoting self-organization of autonomous workers on platforms.

Part II is aimed at providing a critical overview of the legal status and working conditions of self-employed workers including new categories of gig workers and traditional categories of liberal professionals. Particular attention is paid to the existing mismatch between the scope of protective regulations and the established criteria for the classification of workers which are apparently unable to guarantee the respect of fundamental rights to working individuals and combat the abusive and exploitative practices. In this regard a crucial role may be played by social partners as collective representation constitutes one of the most important tools to ensure basic labour rights for autonomous workers. Considering particular characteristics of this category of workers, the chapters address innovative strategies adopted by trade unions to better meet the needs of these workers trying to get better advantage from technological achievements. Finally, the attention is reserved to the barriers that competition and anti-trust law create with respect to the exercise by autonomous workers of the fundamental rights for collective bargaining and collective representation.

In the first chapter (Chap. 7) of this section, **Stefano Bini** proposes a critical reflection on the fact that labour law is called to rethink, in the light of autonomization in employment and automatization in decisions, some of its landmarks and, probably, the same perimeter of its borders, which become increasingly porous. Taking the cue from the analysis of

the existing regulatory sources at the Italian and European levels—also through a contamination with other spheres of knowledge—the chapter offers a theoretical analysis and a critical reflection on the impact that blockchain produces on employment relationship and labour regulation. The author explores this new disruptive technology as a sort of fertile ground for experimentation of a new relationship between humanism and technique.

Joanna Unterschütz in Chap. 8 focuses attention on the most innovative trade union strategies towards the organization of platform workers, for example, worker-centred API (application programming interface), arguing technical progress opens a number of opportunities to deal with workers' representation and new technology can be a strong ally not only to employers but also to workers and trade unions. A rapid increase in the number of platform workers reveals numerous problems in relation to their labour rights, including the collective ones challenging the traditional institutions of collective labour law such as the freedom of association, the right to collective bargaining and the right to strike that, in the author's view, should be adapted to the new realities and needs of the changing world of work.

Chapter 9 by **Silvia Rainone** is dedicated to the recent regulatory developments concerning atypical and non-subordinate workers in terms of extending the protection to self-employed. By reflecting upon the inadequacy of the current legal framework with regard to the scope of application of labour law, the author argues the artificial nature of binary division between workers and self-employed which brings to the violation of the instruments of international law, including the fundamental right to collective bargaining. Thus, the chapter illustrates the different coexistence of the EU competition law and collective bargaining in the attempt to explore the potential conflict between the two disciplines in order to reconsider them in the light of their normative function. On the basis of this “return to the origins” a paradigm shift regarding the scope of the right of collective bargaining is proposed along with some concrete examples of how this paradigm shift could be applied considering current EU competition law reform proposal.

Leonardo Battista in Chap. 10 draws attention to the available legal options in the framework of EU law for the creation of a minimum-level

playing field in social security system for self-employed workers. Due the impact of digitalization and technological development, new forms of work are emerging in various sectors, bringing a marked shift away from traditional employment relationships to non-standard forms of employment and self-employment, traditionally less covered by social security as well. European institutions, aware of this issue, are dealing with possible measures capable to cope with this phenomenon. The chapter thus deals with two different proposals: one based on the art. 153, comma 2, TFEU and one on exploiting the so-called flexibility clause (art. 352 TFEU). Two different legal options with a similar political obstacle, namely the unanimous approval by the Council.

Chapter 11 by **Matteo Avogaro** provides a comparative analysis of the income support measures applied to liberal professionals. During the last decade, the increasing income inequality made income support policies one of the main topic in the labour law debate encompassing both traditional income support instruments—like an update of unemployment benefits and more straightforward ones like the introduction of minimum compensation schemes to prevent worker exploitation. By analysing statistical data, the chapter challenges a deeply rooted bias that liberal professionals do not need income protection as they are able to ensure a decent life income. In support of this argument the chapter provides a comparative benchmark exploring the situation in France, Italy and Spain sustaining the idea of the need of a coordinated European strategy aimed to strengthen income and working conditions of weaker liberal professionals across the EU-27 and arguing its compatibility with the existing EU legal framework and anti-trust law.

Finally, Chap. 12 by **Iacopo Senatori** provides a summary of the main findings of the book with an aim to cast light on the ongoing global trends in the field of self-employment affected by technological transformation and digitalization, determine open questions and topics for further research and possible fields for intervention by social partners and policymakers, and suggest useful policy proposals. In a broader perspective a reflection upon the adequacy of the existing traditional forms of workers representation and their interrelation with the emerging alternative forms of representation as well as with the legislative provisions in different countries is proposed.

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Part I

Introduction



2

Autonomy in and Outside the Employment Relationship: An Organizational Perspective

Ylenia Curzi and Tommaso Fabbri

Introduction

Autonomy at work has always been a central theme in organizational studies since at least the 1950s with the development of the socio-technical system approach (Emery and Trist 1960; Trist and Bamforth 1951).

Today, the new opportunities for organizational change opened up by the digital transformation of work and organizations are revitalizing the organizational scholarship interest in the issue, stimulating a debate which, with only a few exceptions, appears dominated by two opposite theses.

On the one hand, the thesis that digital technologies-enabled opportunities for organizational change translate into increased autonomy at work, both within and outside the employment relationship, leading to

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empowered entrepreneurs, enjoying flexibility and choice (Marini 2018; Sundararajan 2016).

On the other hand, the thesis that digitalization paves the way for an ever-increasing tendency toward a comprehensive, strict work structuration, with progressively narrower space for human input and contribution to automated work processes (Cattero and D'Onofrio 2018; Rosenblat and Stark 2016; Schörpf et al. 2017; Staab and Nachtwey 2016). Referred to as digital Taylorism, this phenomenon would affect both the workers formally employed by an organization and (formally) self-employed workers selling goods and services in the market through online platforms.

Some attempts have also been made to attend to the issue empirically. Since these studies are descriptive and exploratory, they do not provide large and adequate enough evidence to support definitive conclusions about the issue of work autonomy in highly digitalized work settings (Albano 2020). However, they indicate that human experience-based knowledge and judgment continue to play a key role in formalized, standardized and automated digital work processes (e.g. Albano et al. 2018). The available empirical studies also suggest that this occurs both within the employment relationship and in platform work, where judgment and experience are key job requirements that remote crowd-workers in the creative industry as well as platform-mediated in-person service providers (e.g. Uber's taxi drivers) are expected to meet.

If these findings help to exclude a clear, generalized trend toward a comprehensive and rigid predetermination of digital work, they, however, leave unanswered the question of how such a distance from digital Taylorism should be interpreted. In this regard, some scholars maintain that autonomy in digital work has so far been more hypothesized by organizational scholarship than deeply explored empirically, precisely because an empirically grounded account requires more specific research on the issue, stronger research design, as well as analytic conceptual schemes (Albano 2020). Most existing empirical studies, instead, adopt an overly fuzzy definition of autonomy (i.e. the latter is not clearly distinguished from other concepts such as discretion) and do not address the levels of analysis and the aspects of work possibly concerned by autonomy.

The use of nonanalytical concepts to empirically investigate autonomy at work seriously impedes a better understanding of whether and in what

ways the organizational regulation of work is changing in digital work settings. As addressed below, this, in turn, has relevant implications for the juridical regulation of the newer forms of work and the capability of legal rules to ensure adequate protections to the involved individuals.

The Labor Law Debate

Like the mainstream organizational theory, labor law scholars and interpreters have always employed an overly fuzzy definition of autonomy. The latter is conceived as a residual, catch-all category that encompasses all cases in which the concrete modes of carrying out work by the worker do not correspond to subordination meant as hetero-direction (Digennaro 2020), that is, the subjection to the employer's three managerial powers of (1) giving instructions to the worker on how, where and when work is to be carried out; (2) controlling and monitoring the worker while he/she is working; (3) sanctioning possible defaults (breaches of contract) (Pietrogiovanni 2019).

The above concepts of autonomy and subordination are the building blocks of a binary approach to contract/relationship classification which leads to a clear-cut legal division/opposition between subordinate work/employment, where the involved worker is seen as being the weaker party in the contract and the relationship is governed by labor law, and self-employment, where the self-employed worker and the client are considered as equal contractual partners and the relationship is governed by commercial law and general contract law (Perulli 2002).

Although such a division can be found in all European member states' legal systems and in international law, labor law scholars have increasingly been questioning its capability to produce materially rational effects in light of the evolving nature of work carried out within the employment relationship, the spread of outsourcing and contracting out practices and the upward trend in both phenomena fostered by digitalization. On the one hand, the forms of organizing work within the employment relationship are increasingly characterized by new scope for workers to decide how, where and when to perform their work. On the other hand, the newer opportunities for companies to outsource economic activities over the Internet are boosting the growth of forms of work (also referred

to as “economically dependent self-employment”) in which workers have no subordinate status in a legal sense and nonetheless experience vulnerability and express relevant social protection needs due to such characteristics as the personal or mainly personal nature of work; its continuity in time; the coordination of the work performance with the client’s activity; the reliance on a few clients (Perulli 2020a). By apparently blurring the boundaries between subordinate and self-employed work, those phenomena seem to support the idea of a generalized escape from subordination, leading to an impasse which is clearly exemplified by such key questions as “Which work does deserve protection?” and “Which protection does work deserve?” which are currently dominating the labor law debate (Pietrogiovanni 2019, p. 55).

Among the solutions advanced to addresses these issues, two positions are particularly notable of consideration. Both aim to adjust the labor law’s scope to the complexity of the socio-economic reality while preserving its main function of regulating inherently potentially conflicting socio-economic relationships consistently with the principles of equality and protection of fundamental human rights.

The first position consists in re-thinking the concept of subordination as “double alienness” (Pietrogiovanni 2019, 2020). Applied for the first time by the Italian Constitutional Court in 1996 (Judge Prof. Luigi Mengoni), “double alienness” defines subordination as the “incorporation of someone’s work in a productive organization on which the worker has no power of control, being formed for a purpose in respect of which [they] ha[ve] no (individual) interest *legally* protected.”¹ According to its proponent, the main advantage of this concept is its usefulness in detecting subordination where it would otherwise appear to be absent (i.e. wherever the interpreter uses the notion of subordination as hetero-direction to analyze the concrete ways workers carry out their work in current production processes) (cf. Pietrogiovanni 2019, p. 62).

This innovative concept of subordination is the only concept of subordination that groups together the unskilled worker, the driver of a CEO, the high-skilled engineer, and the manager of a department, because they all enjoy different levels of hetero-direction, but do not own the outcome of their activities, nor do they own the organisation in which their collabora-