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Flexicurity outside the employment relationship?

Re-engineering Social Security for the New Economy

M Wynn/A Paz-Fuchs

Many persons working on their own account are poorer and more in need of state insurance than employees

Beveridge (1942)

Insuring a population means classifying it with a scale of degrees of risk and an analysis of behaviours, thresholds and marginal categories which are excluded...

Defert (2013)

The general welfare state will only survive if it imposes a limit on itself and does so generally; the discriminatory welfare state will not survive

Buchanan (1998)

What types of normative or regulatory frameworks of social protection are needed for labour markets to function effectively in countries with developed systems of labour law and social insurance? This issue will be addressed here, in four stages. The first section provides an overview of the theoretical structure that underpinned social security in the second half of the 20th century. The second section will discuss the effects of these changes in the labour market on the inclusiveness of the social security structure. The third section will develop proposals for policy and practice for re-engineering social security in a new labour market. The fourth and final section will suggest some proposals, whilst reflecting on some recent policy initiatives.

1. From Beveridge to a Flexible Labour Market

Articulating the aims, institutions, policies and practice of social security institutions will provide the backdrop towards understanding what has changed, how that change took place, and what needs to be done to recalibrate the original theoretical and institutional structure to the new types of employment relationship.

Setting the scene for the 'new' economy requires familiarising with the post-Beveridge era. The starting point for debate is that new risks in the labour market demand a different approach to the management of risk. The existing social insurance model, as conceptualised during the Beveridge era, was premised on 'male breadwinners' and full-time employment. Social insurance covered risks associated with the labour market, including unemployment, retirement, sickness and disability, and the premature death of the breadwinner. Correspondingly, eligibility conditions were also associated with employment, through contributions, work history, and the assertion that able-bodied persons should actively seek work before relying on benefits.

This structure suited the labour market that was in place from the industrial revolution to the second half of the 20th century. The first shift occurred with the transformation of focus from the production of goods to the service sector. In Britain, the share of the workforce employed by manufacturing industry dropped from 40 per cent in 1952, to 8 per cent in 2012;¹ indeed, that share dropped from 4.5 million workers in 1997 to 2.5 million workers in 2010. The manufacturing beasts of yesteryear – in shipbuilding, railway, motor vehicle, and aircraft, for example – are gone, and replaced by the service sector: in 1961, 49 per cent were employed in the service sector, climbing to 81 per cent in 2011.² This shift is not without consequences: the service sector tends to be more exposed to booms and busts – thus producing uncertainty; more likely to move workers from full- to part-time (in the UK, a rise of 7.9% since 2008³); from employment to self-employment (in the UK, from 3.3 million in 2000, or 12 per cent of the workforce, to 4.6 million in 2016, constituting 15% of the workforce⁴; in the EU, 32 million self-employed constituted 14.9% in 2009⁵); and particularly in part-time self-employment (in the UK, a rise of 46.6% since 2008, and of 88% from 2000)⁶; and less likely to offer employment benefits (see chapter 6, this volume). In the US, the share of workers who receive benefits dropped from 80% to 40% between 1947 and 1995. Moreover, the nature of ‘self-employment’ is no longer easily identifiable. Thus, the ILO has recently estimated that 47 per cent of the self employed, amounting to 4.3 per cent of total employment, are ‘dependent self-employed’, defined as those who do not meet three criteria (more than one client; power to hire and fire employees; autonomy in decision making).⁷

But it is not only the type of employers that has changed. Perhaps more significantly, the type of workers involved in producing the work has changed as well i.e. the redistribution arrangement necessitated by transitions in the labour market from dependent to self-employment and by a change in the *ideological* mind-set and the focus on ‘personal responsibility’. US Senator Newt Gingrich, for example, quipped that ‘social responsibility is a euphemism for individual *irresponsibility*’, thus implying that the we should be looking for a new logic, which takes into

¹ Nicholas Comfort, *The Slow Death of British Industry: a 60-year Suicide, 1952-2012* (Biteback, 2013)

² Chartered Institute of Personnel and Development, *Megatrends: the trends shaping work and working lives* (2013)

³ Philip Wales and Andrew Amankwah, *Trends in Self-Employment in the UK: 2001 to 2015* (Office of National Statistics, 2016)

⁴ Ibid; Social Security Advisory Committee, *Social Security Provision and the Self-Employed* (Occasional Paper 13, 2014) 8

⁵ Wales and Amankwah (n 3), 15; Matthew Taylor et al, *Good Work: The Taylor Review of Modern Working Practices* (2017), 24

⁶ Ibid.

⁷ Colin Williams and Frederic Lapeyre, *Dependent self-employment: Trends, challenges and policy responses in the EU* (ILO, Working Paper No 228, 2017).

account the productive capacities of individuals who may transfer from one employment status to another many times in a life cycle.

Arguably, the UK has undergone a transformation that is akin to the one experienced across the Atlantic. Jacob Hacker refers to the Great Risk Shift, a regressive conversion of welfare state institutions, epitomised in the transferring the burden of economic and social risks back onto workers and their families, in a manner that chimes with pre-war society and economy.⁸ This chapter does not, however, focus on welfare state *institutions*, but rather on changes in the labour market that have created, for many, a fragile employment status and far less access to those institutions that still exist. There are notable new social risks outside the world of work. Perhaps most prominent amongst them is the need to cater for long-term care arrangements, particularly for older family members, but also for children with disabilities. This chapter, however, refers to such risks only tangentially. Instead, it focuses on new social risks that derive from the changing nature of the institutions of work and the economy. In other words, our aim is to re-examine social security aspects of the work/security formula to re-calibrate the scope of social protection in developed economies to benefit all labour market participants.

2. From Intentional Labour Reform to Unintentional Social Security Reform

The move towards a flexible labour market justified the need for significant reform and, according to some authors, was driven with a clear intention to erode the standard employment relationship and to support a rise in self-employment and other entrepreneurial forms of work.⁹ But the same cannot be said about the consequent changes to the social security regime and, in particular, the extent of its inclusivity. As eligibility criteria for social security benefits are attached to, or parasitic on, employment status, the rise in self-employment and in 'atypical' employment relationship resulted in unintended, and perhaps unwanted, consequences for the ability of millions of workers to access social security benefits. Unlike labour market reforms, here the change was not from a putative 'rigidity' to 'flexibility', but rather from increased to decreased coverage of individuals. This transformation, however, took place without serious discussion as to its consequences. For example, do the rationales that justify access to unemployment benefits or sick leave cease to apply if a worker is employed on a 'zero hour' contract, through an employment agency or is even formally self-employed?

⁸ Jacob Hacker, *The Great Risk Shift* (Yale University Press, 2006)

⁹ Mark Freedland and Paul Davies, *Towards a Flexible Labour Market: Labour Regulation and Legislation Since the 1990s* (OUP, 2007)

To the extent that one views these changes as intentional, and even justified, they would signify a shift in the balance of social security rationales, from one that is supposedly grounded in ‘solidarity’ to one that is based on ‘freedom’.¹⁰ This approach would assume that the multitude of workers who have moved from traditional to ‘atypical’ forms of employment, and to self-employment, prefer the ‘freedom’ to choose whether or not to take part in the social insurance pool and, consequently, gain some protection from risks such as unemployment, sickness and long-term disability, and lack of earning due to maternity/paternity and old age. This approach raises two concerns, the first, ideological and the second, pragmatic. The ideological reservation relates to the fact that social security schemes are avowedly paternalistic, and are designed to protect individuals from short-sighted and irrational choices and behaviour.¹¹ Pragmatically, this solution cannot be viewed as an honest and a real one for the vast majority of ‘atypical workers’, who are offered no such choice. The recent, local example of Uber offering its drivers access to sickness coverage for those who are willing to pay £2 a week¹² is the exception that proves the rule: very few companies offer access to benefits *outside* of employment status.¹³ Interestingly, responding to the criticism levelled against Uber for the denial of rights to their drivers, Uber UK regional manager responded that most Uber drivers ‘love the freedom of being their own boss and choosing if, when and where they drive’.¹⁴ Perhaps this is so. But it would be far more difficult to argue that drivers prefer the freedom not to enjoy maternity coverage or unemployment benefits. Moreover, while these private initiatives cover some traditional social risks (in this case, sickness) they are far removed from a comprehensive coverage for all workers, against all social risks. Arguably, the private sector cannot be expected to fill this gap entirely, and it is for the public sector to address these concerns.

Even prior to the trendy gig economy, “atypical” work, including zero hour contracts and agency work, fragmented the labour contract and denied workers employment status. The social insurance system, however, has adapted to these changes in a manner that is only piecemeal, and not comprehensive. Thus, different countries have elected to award some, but not other, benefits to workers outside the standard employment countries.¹⁵

¹⁰ Gunther Schmid and Bernard Gazier (eds), *The Dynamics of Full Employment: Social Integration Through Transitional Labour Markets* (Edward Elgar, 2002).

¹¹ Dan Ariely, *Predictably Irrational: the Hidden Forces that Shape our Decisions* (HarperCollins, 2008); Cass Sunstein and Richard Thaler, *Nudge* (Yale University Press, 2008).

¹² Robert Booth, ‘Uber to offer UK drivers sickness cover in return for £2-a-week fee’ *The Guardian* (27th April 2017) <https://www.theguardian.com/technology/2017/apr/27/uber-to-offer-uk-drivers-sickness-cover-in-return-for-2-a-week-fee>

¹³ Important caveat: the workers are ‘outside of workers status’ only in the way the company views it, and contrary to the ET decision which confirmed their worker status – ET 2202550/15 *Aslam and Farrar v Uber* <https://www.judiciary.gov.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>

¹⁴ Booth (n 7).

¹⁵ See Table 1 – Entitlement of self employed to social benefits, July 2015 in Williams and Lapeyre (n 7) 12.

In particular, we focus on four central social insurance schemes that are closely related to the world of work: pensions, unemployment benefits, sickness and long-term disability pay and maternity/paternity leave and pay. This choice necessarily excludes other, highly important schemes, which cannot be addressed within the confines of this chapter. And yet, we find that the four schemes cover the rationales underpinning ‘social risks’ with which the original Beveridge model was intended to cope. It is thus important to assess them against the new employment reality and the risks it poses.

- *Pensions*: Pensions are, in effect, annuities that ‘insure against biometric risks – in particular, longevity – and thus protect retired individuals from outliving their savings’.¹⁶ And yet, there is a significant gap between employees and the self-employed in this respect, as only 27% of the self-employed have pension savings (down from 33% in 2006-7), compared to 50% of employees.¹⁷

Prior to the introduction of the first pension schemes in the late 19th century, labourers “worked until death or disability”.¹⁸ In most countries, the term ‘pensions’ refers to a dual-layered structure of the income support for old age. These ‘layers’ were developed separately in the latter part of the 19th century in different countries, and were later merged in many countries.¹⁹ The first, universal, layer, was developed in Britain²⁰ and Denmark as the extension of the poor laws, emphasising poverty relief and the maintenance of minimal living standards. Somewhat confusingly, this residual layer is sometimes (e.g. in the UK) referred to as ‘state pensions’ or ‘old age pensions’ and sometimes (e.g. in the US) as ‘social security’.

The second layer, developed in Bismarck’s Germany, was based on a social insurance paradigm that sought to ensure that workers maintain a proportion of their income and, correspondingly, living standards to which they were accustomed, following retirement.²¹

For present purposes, it is important to note two crucial aspects of the pension system, each bearing a different evaluative force. First, the pension system already includes a non-contributory (i.e. tax funded) layer. Thus, there is no need, in this case, to wage an ideological and political campaign to establish the *principle* that support for individuals in their old age

¹⁶ Karl Hinrichs and Julia Lynch, “Old Age Pensions” in *The Oxford Handbook of the Welfare State* (Castles et al, eds, OUP 2010) 353, 355

¹⁷ Conor D’Arcy *Pensions and the Self-Employed* (Resolution Foundation, 2015)

¹⁸ Peter Stearns, *Lives of Labor: Work in a Maturing Industrial Society* (London: Croom Helm, 1975)

¹⁹ Hinrichs and Lynch (n 16) 363.

²⁰ Old Age Pensions Act 1908 (UK).

²¹ Mitchell Orenstein, *Privatising Pensions: The Transnational Campaign for Social Security Reform* (Princeton University Press, 2008) 22; Giuliano Bonoli, *The Politics of Pension Reform* (Cambridge University Press, 2000) 10-1.

can be disconnected from their employment status. Second, and on the other hand, this basic and universal layer is minimal, and guarantees a standard of 'living' that is well below the poverty line.²² Age UK estimates that 14% of UK pensioners (1.6 million) live in poverty, and a further 10% (1.2 million) have incomes just above the poverty line.²³ And the ONS estimates that 40 per cent of pensioners experienced poverty between 2010 and 2013.²⁴

- *Unemployment*: "Given its impact on the labour market, unemployment insurance was the last of the four classic social risks to be introduced in most European welfare states".²⁵ And yet, the concept of unemployment has changed with the changed understanding of job, and employment, security. Workers are more likely to move in and out of employment, as corporations are no longer willing to serve as a buffer against economic ebbs and flows. In addition, the rise of self-employment, and within this group – of bogus self-employment and enforced self-employment (as is common in the gig economy, for example), have changed the nature of the risk.

In a manner that is analogous, but not identical, to the pension structure, many countries offer two layers of benefits for those temporarily out of work: a means-tested (income based), non-contributory benefit, at a very low level; and a contribution-based, non-means-tested benefit, that is at a level proportionate to prior earnings, but is time limited (in the UK, for example: 182 days). Only a few countries (Czech Republic, Denmark, Estonia and Hungary) offer social insurance cover for self-employed workers in the event of unemployment.²⁶ Again, as in the case of pensions (albeit with different eligibility criteria, crucially – concerning means-testing) we find a 'social insurance' paradigm which is layered on a residual, or 'poverty relief' paradigm. Correspondingly, here too we find a structure that could be expanded and reformed to accommodate individuals in a less traditional work status.

- *Sick Pay*: In the UK, only 'employees' are entitled to Statutory Sick Pay at a rate of ~£90 per week, from the 4th day of absence to the 28th week. And over half of employers pay more than this sum through Occupational Sick Pay.

This is not to say that the self-employed do not have access to illness and disability benefits. In fact, 25 of the 27 European member states award some form of this type of benefits for the self-employed. In the UK, for example, self-employed workers are eligible for both types of

²² The poverty line in the UK, for example, is 60 per cent of the median income. As the median income in 2016 was £26,300, the poverty line stood at £15780, or £303 per week for two adults (Claudia Wells, *Household disposable income and inequality in the UK: financial year ending 2016*, ONS, 2017). Meanwhile, state pension was £122.30 per person.

²³ Age UK, Money Matters

<http://www.ageuk.org.uk/professional-resources-home/policy/money-matters/poverty-and-inequality/>

²⁴ Office of National Statistics (2015)

²⁵ Bernhard Ebbinghaus, "Unions and Employers" in *The Oxford Handbook of the Welfare State* (n 16) 196, 206.

²⁶ OECD, *In it Together: Why Less Inequality Benefits All* (OECD Publishing, 2015) 181.

the Employment and Support Allowance (ESA) – contribution- based and means -tested. A self-employed worker is eligible for the former if she has paid national insurance contributions for the past 2 years, and may receive ESA for 12 months. If one is not entitled to contribution based ESA, or if that benefit has expired, it is possible to apply for means tested ESA.

- *Maternity/Paternity Pay and Leave:* Analogous to sick pay, the right to maternity pay is based on strong social and medical rationales. There is a consensus amongst medical professionals that the first months of a child’s life are crucial for his or her development; that a relaxed environment, conducive to breastfeeding, is beneficial both for the mother and for the child and that a mother should be subject to minimal stress and physical demands during the first three to six months following child birth. These aims cannot be fulfilled, of course, if a mother who has just given birth is forced to return to work immediately because she cannot afford not to do so. And indeed, the vast majority of developed nations (the US being a notable outlier) entrench a statutory right to maternity pay (and not only to protected leave) ranging from 14 weeks in Japan to 16 weeks in France, the Netherlands and Spain and on to a full year in Canada and Denmark, and 420 days in Sweden.

We find, then, that while these categories cover a range of social security rationales, are correspondingly different in their precise implementation, and developed in different fashions, they have a common structure. Notwithstanding their differences - the structure for these benefits already includes the ability to bolster a universal layer which is contingent on links to the labour market but indifferent to employment *status*. This structure may be conducive to address changes to labour markets and employment relations and, in particular, the new social risk of workers remaining with insufficient funds in retirement, for unemployment, or for time off work due to illness or the welcoming of a new child.²⁷ Moreover, whereas pensions and unemployment have always offered a two-tiered approach, sick pay and maternity leave included a universal, residual layer only recently. This is an interesting development, reflecting the awareness that social security rights should be guaranteed to all, and that the traditional employment/self-employment divide should no longer be as determinant in this respect. But now that the principle is determined, its effectiveness will be determined by its degree. The political reality may make this difficult.

3. Re-Calibrating Social Security

Having outlined the changes in labour markets post-Beveridge, we can now develop proposals for policy and practice for re-engineering social security in a new labour market. The

²⁷ Karl Hinrich, “Elephants on the Move: Patterns of public pension reform in OECD countries”, in *Welfare State Futures* (Stephen Leibfried - ed, Cambridge UP, 2001) 77-101.

transformation of social and employment policy to manage the risks in the new economy will require a re-configuration of the institutions of social protection to re-align techniques of intervention with the nature of the risks they are intended to cover.

The proposed solutions cannot be solely 'technical', or institutional, just as the shift from *social* security to the cult of personal responsibility was not solely technical or institutional. Rather, it was a shift from 'we're all in this together' to 'you get what you deserve'. Indeed, while this chapter does not aim to explain *why and how* these changes to the social security fabric came about, when considering the way to address their consequences, it is worth noting that 'historical and sociological neo-institutionalists have come to view ideas and discourses as factors that can drive or prevent institutional change'.²⁸ Revisiting the new 'frontiers of insecurity' requires reminding the public, legislators and policy makers that workers are currently excluded and convincing them that it is unfair to demand that individuals face the new risks alone.

But *what* changes and reforms are necessary to bring about these changes? An overview of European paradigms reveals approaches across different axes. Thus, one can identify three types of institutional approaches: first, provision through occupational and sectoral schemes, as in Austria, France, Greece, Italy, Luxembourg, and Spain. Second, a separate, dedicated and comprehensive social insurance scheme, as in Belgium. And third, provision for the self-employed through the expansion of the social security schemes.²⁹ In addition, and as observed above, one may address the *types* of schemes provided. Here we find two main groups: countries that provide basic allowances that may be supplemented through voluntary contributions (e.g. Denmark, Finland, Germany the Netherlands, the UK); and countries that provide income based benefits (e.g. Austria, Greece, Italy, Luxembourg, Portugal and Spain).³⁰

Setting the Framework: Ideology and the Welfare State

The process of re-classification will begin with a consideration of the underlying values or ideology for the re-distribution of rights and then proceed to outline the new risks to be covered. One of the central assumptions of the chapter is that social security law is not separate from labour law – rather the two are indissolubly intertwined as they both concern the protections afforded to working people in work and out of work. Social security and labour law perform a redistributive role in that they act as a counterbalance to the power of capital. Developed and

²⁸ Mark Blyth, "Powering, Puzzling, or Persuading? The Mechanisms of Building Institutional Orders" (2007) 51 *International Studies Q* 761; John Campbell, "Institutional Reproduction and Change" in G. Morgan et al (eds) *Oxford Handbook of Comparative Institutional Change* (OUP, 2010) 87.

²⁹ Social Security Advisory Committee (n 4) 28.

³⁰ Mutual Information System on Social Protection (MISSOC) (2013), *Social protection of the self-employed*

developing nations have off-loaded social risks onto the individual, the former through welfare reform and the latter through market liberalisation and structural adjustment programmes.³¹ Williams notes that in a socially constructed labour market which has often alienated and subordinated waged work, the worker/non-worker distinction is itself highly ideological as the state defines the identity of the worker and then leaves social welfare to construct deserving and undeserving claimants.³²

Hugo Sinzheimer recognised the re-distributive nature of social insurance as collective law based on universal human rights that guarantee participation in the production and distribution of society's welfare.³³ According to Sinzheimer, social insurance created a new type of law 'no longer based on legal capacity to be a subject of legal rights and duties but rather also on people's capacity to make a living'. The new model would then involve the state re-distributing property rights according to the new risks created in the flexible labour market.

Social insurance was built up as an economic mechanism enabling contributions to fund redistribution on an intergenerational scale through social pooling of risk. Ideologically, and perhaps even philosophically, social insurance may be seen to rest on the idea of fairness, or more concretely in welfare state terminology – the idea of reciprocity.³⁴ Now, whilst the idea that 'something for nothing' rings hollow for many, understanding where reciprocity is relevant, and moreover, what are its concrete implications, are far more problematic issues. Increasingly, reciprocity is seen as related to a 'social', and then – to a concrete, 'contract'. At times, this 'formalised contract' has been seen (e.g. by the British House of Commons Employment Committee) as signed between a claimant and 'the taxpayer'.³⁵ Here we find the financial aspect of reciprocity, which perhaps is the closest to the idea of social insurance. For, as a matter of strict practicality, if individuals do not contribute to the general pot, there will be no source from which to redistribute. But the idea of reciprocity becomes even more relevant when we consider that by far the most common civic obligation that is posited as a precondition for social entitlements is

³¹ Karl Klare, The Horizons of Transformative Labour and Employment Law, in Conaghan, Fischl and Klare (eds), *Labour Law in an Era of Globalisation: Transformative Practices and Possibilities*, (2004) OUP.

³² Lucy Williams, Beyond Labour Law's Parochialism: A Re-envisioning of the Discourse of Redistribution in Conaghan, Fischl and Klare, *ibid*.

³³ Hugo Sinzheimer, (1976 [1928]) *Arbeitsrecht und Rechtssoziologie, Gesammelte Aufsätze und Reden*, Vol 2., quoted by Schmid, Sharing Risks, On Social Risk Management and the Governance of Labour Market Transitions in Ralf Rogowski (ed) *The European Social Model and Transitional Labour Markets*, (Ashgate Publishing, Farnham, 2008)

³⁴ Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* (OUP 2003); Stuart White, "Ethics" in *The Oxford Handbook of the Welfare State* (n 16) 19, 22.

³⁵ House of Commons Sessions 1995–6, Employment Committee Second Report *Right to Work/Workfare* (HMSO: London, 13 Feb 1996) xxiv cited in D King, *In the Name of Liberalism* (OUP: Oxford, 1998) 248

work.³⁶ In part, this phenomenon can be grounded in institutional history as, since the late 19th and early 20th century, only workers were eligible for benefits that addressed risks and needs:

The welfare state's key contribution was the mobilization of solidarity in those 'legitimate' circumstances in the life of a worker in which the successful commodification of his labour power could no longer be expected. It thereby helped to institutionalize a 'Fordist' life course consisting of three main stages – education, employment, retirement – providing financial support for its first and especially last phase and protecting its middle phase against unforeseen or short-term vulnerabilities (sickness, accidents, disability, and short-term unemployment).³⁷

Developments in employment relations have led to a decrease in the percentage of those who are employed in traditional settings, and the blurring of lines between employed and self-employed individuals. And yet, regardless of their inherent soundness, the moral underpinnings of reciprocity support the eligibility of some self-employed individuals, who are forced to take part in the labour force outside the traditional employment relationship. The financial and institutional institutions should thus adapt accordingly.

Re-formulating the Criteria for Social Protection

What criteria should inform the development of new social security protections for a flexible economy? These criteria need to address the central issue of how workers should be supported in making transitions in a flexible labour market, for example, from full time to part-time and from employee to self-employed status.

Gunther Schmid identifies four criteria by which new structures may promote 'good' transitions.³⁸ *Freedom* involves providing choice to workers to adopt risks in the labour market; *solidarity* involves collective risk-sharing; *effectiveness* and *efficiency* require appropriate coordinative instruments in allocation of resources, including possible public/private mixes. Central to Schmid's schema is the notion that the traditional Beveridgean solidarity should be combined with freedom as a basis for a redistributed security of workers in transition (see above). We would add a word of caution: freedom in the labour market should serve not just economic purposes such as mobility and flexibility but should support workers in their decisions to refuse low paying or dangerous jobs, to seek financially secure work or not be penalised for accepting financially insecure employment, to take entrepreneurial risks or set up potentially

³⁶ Amir Paz-Fuchs, *Welfare to Work: Conditional Rights in Social Policy* (OUP 2008)

³⁷ Jan Zutavern and Martin Kohli, "Needs and Risks" in *The Oxford Handbook of the Welfare State* (n 16) 169, 175.

³⁸ Schmid, *Transitional Labour Markets and the European Social Model: Towards a New Employment Compact*, in Schmid and Gazier (n 10), 398.

risky business projects, to work for one or many employers and to learn new skills and competences or to leave or combine work with reproductive facility. We would also note that the social elements of the equity/efficiency trade-off that Schmid envisages can be bolstered by adding further solidarity factors.

Thus, *security* should be promoted by identifying the economic risks associated with new flexibilities in the labour market. The new flexible workers face economic uncertainty, in relation to irregular income streams with the loss of secure jobs. In the words of the 2017 Taylor Report, commissioned by the British government, flexibility in the labour market is actually ‘one sided’, and consists of employers transferring risks to workers.³⁹ Where employment policy encourages workers to take low paid and insecure jobs and to take on self-employed economic activity, protection is needed in the form of transparent and non-conditional benefits. *Equality* is a prerequisite and aim of all universal systems of security.⁴⁰ The drawbacks of traditional Beveridgean models of welfare are that they often include a gender and even a race bias.

Coverage: New Risks, New Needs

What would be the scope of any new scheme? The scope of coverage will be determined by identifying the contingencies or risks to be covered and, secondly, by identifying basic needs of the population and then determining the level and type of benefits to cover these risks.

How might this extension be achieved? The first step is to outline the new types of risk associated with flexible labour markets. The following typology is suggested by the logic of transitional labour market theory (TLM) outlined by Schmid.⁴¹ The key aspect of TLM theory is to identify more precisely the types of life cycle risk that occur endogenously in a flexible labour market, where stable employment is no longer the norm. The assumption is that the borders between the labour market and other social systems must become more open to accommodate transitory states between employment and other productive non-market activities, for example, private households, education, retirement and unemployment.

To facilitate this, Schmid suggests that risks should be classified with reference to the critical transitions that occur during the life course and identifies five main types of risks (see figure 1). The first and most important is to guarantee *income security* during critical transitions between employment relationships between, for example, part time and full time work and between dependent employment and self-employment; second, *income maintenance* during transitions

³⁹ Taylor Report (n 5) 42

⁴⁰ White (n 34) 23-27.

⁴¹ Schmid (n 10) 395 and see ch 5.

between employment and unemployment; third, *income replacement* where capacity is reduced through sickness or retirement; fourth, *income capacity* during transitions between education/training and employment, and finally, *income support* during life course phases when income capacity is reduced through child care and other social obligations.⁴²

[Figure 1 here]

Figure 1. Identifying new risks in key transitions in labour markets

Source: adapted from Schmid (2002)

Risks one, two and four are key areas of reduced income in future labour markets. The life cycle concept⁴³ is prominent in many European systems and indeed the ‘flexicurity’ method⁴⁴ has been instrumental in promoting appropriate insurance interventions to support transitions in the new labour market. The fine tuning of social security to supplement uneven income streams in a labour market where there are more jobs but fewer permanent or well-paid jobs is a key challenge for the future. One result of the new digital economy is that jobs generally pay less as more work is digitised, outsourced or re-cast into new evolving employment relationships. The Beveridge model never contemplated the fact that people can remain poor even when in paid employment. Fluctuating incomes can arise as a direct result of many of the new types of atypical work promoted in the flexible economy.

How might labour market policy be adapted to enable the new risks to be addressed? The broad aim of this chapter is to set out a forward-looking agenda for social security in a new flexible labour market. The idea of a dynamic social security whereby social security can encourage individuals to find and remain in work and help people to reduce the severity of risk events that may impede capacity to work will appeal to individual self-interest and promote long term collective financial sustainability.⁴⁵

Both TLM and flexicurity theory envisage flexibility so that institutions can adapt to new risks. One way of achieving this would involve tailoring social security with flexible life time employment rather than linking it to particular jobs.⁴⁶ For example, simple unemployment insurance (UI) can be extended so that instead of covering external risks, it will cover internal

⁴² Schmid, *ibid.*

⁴³ For an extended discussion of life cycles and welfare, see John Hills, *Good Times Bad Times, The Welfare Myth of Them and Us* (Policy Press, 2015).

⁴⁴ See, for example, Ton Wilthagen (1988), *Flexicurity: A new paradigm for labour market policy reform?* WZB Discussion Paper, No. FS 1 98-202.

⁴⁵ Roddy McKinnon, *Dynamic social security: A framework for directing change and extending coverage* (2007) *International Social Security Review*, 60, 149.

⁴⁶ Schmid (n 9) 396.

risks in the labour market such as employability, mobility and flexibility. Advocates of extended employment insurance (EI) argue that it encourages individuals to assume responsibility for risky transitions thus enhancing employability, whereas others claim that extension may reduce unemployed workers job search efforts.⁴⁷

New types of extended insurance will require both new hybrid work/security arrangements which facilitate transitions across the spectrum of employment and self-employment. Working time may need re-calibrating; insurance schemes will evolve to cover the risk of volatile income streams; mobility between employment and self-employment can be encouraged by insurance against business failure.

Activating insurance schemes for the self-employed will involve adaptation of social security at multiple levels. In many countries the self-employed have favourable treatment for tax and social security, involving lower tax rates, reduced social security contributions and off-setting of expenses. The support of entrepreneurial sections of the economy may, however, lead to disguised self-employment, so methods need to be found to protect vulnerable the solo-self-employed without increasing tax avoidance. There are different approaches to the extension of social security to the self-employed: inclusion in general schemes e.g. UK, Brazil, Mexico; separate schemes for self-employed e.g. Belgium, Algeria; separate schemes for different categories of self-employed such as the liberal professions e.g. France, Germany and Spain, or simple exclusion.⁴⁸ However, there are significant challenges as a result of the heterogeneity of self-employed persons as a group and their variability of income and activity, thus different bases for benefits and contributions may be required.

Activating transitions between education, training and work is crucial in the new global economy. Concrete measures to link training with work might include converting unemployment benefit into vouchers for training, legal rights to request training and educational leave and progressive tax treatment.⁴⁹

Transitions between domestic work in the household and paid work in the labour market involve measures to adapt work organisation to family organisation and the re-conceptualisation of parental leave as an income maintenance issue.⁵⁰

⁴⁷ Ibid 397.

⁴⁸ Issa (International Social Security Association), *Handbook on the extension of social security coverage to the self-employed*, (Geneva: 2012).

⁴⁹ Schmid (n 9) 399.

⁵⁰ Ibid, 408. See also the Taylor Review (2017) which recommended measures to extend shared parental leave to the self-employed.

Finally, transitions into retirement will require a variety of measures to promote income replacement for the self-employed, for example, the introduction of compulsory questions for enrolment onto pensions or government backed ISAs.⁵¹

Issues in Extending Coverage

One method of extension would simply introduce a non-contributory basic income to all. The attraction of this method is that it would avoid the problems associated with differentiating the gradations of employment status, for example the problematic employee/self-employed distinction which has proved so elusive. In addition, as Guy Standing argues, it would be the most effective way to reduce poverty as it would be direct and transparent with low administration costs.⁵² While this may come up against arguments of affordability, moral objections concerning giving people something for nothing (see the discussion of reciprocity above), and that it would reduce work and support the 'bad', Standing argues convincingly that a basic income system, by benefiting those on low incomes most, would 'twist the structure of aggregate demand towards more basic goods and services ... increasing demand and boosting growth and jobs'.⁵³

In contrast, a number of theorists⁵⁴ recognise that a complete break in the connection between social security and work on the basis of universal social benefits may be problematic. Replacing social insurance with a basic income may be politically unacceptable to governments and polities that view participation in the labour market as axiomatic and a precondition for entitlements.

A second issue is geographic. While this chapter deals primarily with social security in developed economies, it is arguable that the developed/developing economy dichotomy is a false one. Global competition results in a possible race to the bottom in all economies as all fight for survival. Developed economies may import cheap labour *and* disband social safety nets to regain advantage. The UK and US economies are good examples of this radical 'right' phenomenon. Globalisation therefore necessitates both developed and developing nations to adopt minimum standards to maintain social justice and counter precariousness. The World Commission argues that "A global commitment to deal with insecurity is critical to provide legitimacy to globalisation".⁵⁵

⁵¹ Benedict Dellot and Howard Reed, *Boosting the living standards of the self-employed*, (RSA Action and Research Centre, 2015).

⁵² Guy Standing, *Basic Income: And How We Can Make it Happen* (Pelican Books: St Ives, 2017).

⁵³ Standing, *ibid.*

⁵⁴ See for example, Jos Bergman, Steven D'Haeseleer et al, *Social Protection, Globalised* (Leuven University Press, 2005).

⁵⁵ Report of the World Commission (2004) *A Fair Globalisation: Creating Opportunities for All*, February 2004.

If the idea of a basic globalised floor⁵⁶ is not accepted, the problem remains of identifying a basis for extended coverage that can be directly related to work. If the very concept of ‘work’ and the ‘worker’ has become problematic in the globalised digital economy, the contributory principle is also in jeopardy. This perhaps is the nub of the problem we face in re-engineering social security for the new economy. For many workers, employability itself is the issue. If the worker cannot find a standard job and the only jobs available are atypical jobs where employment status is denied, a significant share of workers become disenfranchised and are unable to find an employment link to access contributory schemes.⁵⁷ This means that the Bismarckian principle of contribution will need to be fine-tuned so that the genuine self-employed, the casual workers, the digital platform workers and the many false self-employed can gain protection against the new transitional risks.

There is a financial issue related to contributory schemes. For contributory social insurance schemes, the coverage rate is the number of contributing members (persons protected) as a percentage of the labour force.⁵⁸ Particularly in the case of pensions, benefit levels are based on previous earnings. The irregularity of earnings of many atypical workers including the self-employed means that contribution records are patchy at best. Such workers may not qualify for eligibility on a number of grounds. For example, they may not build up continuity of employment because they lose their job or abandon economic activities or simply because they stop making contributions and join the informal economy without actually declaring this.

4. Policy Choices

Now that we have considered the basis for the extension of the coverage of social insurance, we can start to formulate some proposals. The final section will provide a general framework for discussion and then make some brief detailed recommendations.

Schematising a new formula for security and freedom: labour and welfare perspectives

The formulation of policy for the future might be schematised along two dimensions which we will term labour and welfare options. The *labour* option involves a re-formulation of the definitional elements of the employment relationship to provide a more inclusive relationship which would accommodate new types of employment status. The *welfare* option involves a

⁵⁶ See M. Cichon and K. Hagemeyer, (2007) Changing the development Policy Paradigm, Investing in a social security floor for all, *International Social Security Review* Vol 60, 2-3/2007, 169.

⁵⁷ K.P. Kannan, (2007) ‘Social Security in a Globalising World’, *International Social Security Review* Vol 60, 2-3/2007, 30.

⁵⁸ W. van Ginneken, (2007) ‘Extending Social Security Coverage: Concepts, Global Trends and Policy Issues’, *International Social Security Review* Vol 60, 2-3/2007, 41.

reconfiguration of the coverage of social security to make it less dependent on particular types of employment status or type of activity in the labour market.

From a *labour perspective*, it is logical and practical to think about a more inclusive definition of work which will accommodate both dependent self-employment and other hybrid categories⁵⁹ of entrepreneurial worker. The issue of false self-employment also needs addressing, particularly in view of the increasing numbers of self-employed workers in the gig economy.⁶⁰

One way of breaking down the binary division of employment and self-employment is through Freedland and Countouris' concept of the 'personal work relation' or 'nexus'.⁶¹ If traditional notions of subordinate employees associated with the contract of employment are revisited when considering eligibility for employment rights, it is surely appropriate to construct a much wider family of interconnecting work relationships which might include freelancers and other entrepreneurial workers who may still be dependent on single employers for the purposes of social security legislation. A 'purposive' approach would buttress this approach.⁶² Similarly, the 2017 Taylor Report suggests revisiting and revising judicial tests for worker status, placing more emphasis on the ability of a company to control its workers, and less on exculpatory clauses (e.g. the substitution clause) that allow employers to avoid categorising workers as such.⁶³ Such a change could have an immediate effect on workers in the gig economy, agency workers and workers on zero-hour contracts. We should also acknowledge the dynamic and transitional nature of work relations which may evolve towards more commercial relationships in the network economy where security is reduced and risk is transferred to the worker.

Freedland's work nexus idea is taken further in Alain Supiot's idea of 'social drawing rights'.⁶⁴ While Freedland is explicitly concerned with the relational scope of labour law, Supiot's project is more related to the interrelationship between labour law and social security. His concept of 'labour force membership' encompasses all types of work including both paid and unpaid work, periods of unemployment and training, employment and self-employment.⁶⁵ If workers can draw

⁵⁹ See Wynn, M. (2016) 'Chameleons at large: Entrepreneurs, employees and Firms- the Changing Context of Employment relationships', *Journal of Management and Organisation*, 22, 6, 826 and the concept of "entployee".

⁶⁰ Taylor Review (n 5), 25

⁶¹ Defined as 'A connection or set of connections, between a worker and another person or persons or an organisation or organisations, arising from an engagement or arrangement or set of arrangements for the carrying out of work or the rendering of service or services by the worker personally.' Mark Freedland and Nicola Countouris, *The Legal Construction of Personal Work Relations*, (OUP, Oxford, 2011) 31.

⁶² Guy Davidov, *A Purposive Approach to Employment Law* (OUP 2016)

⁶³ Taylor Report (n 5)

⁶⁴ Alain Supiot, *Beyond employment, Changes in work and the Future of labour law in Europe.*(OUP: 2001,Oxford).

⁶⁵ *Ibid*, 55.

on a reserve of social rights to protect their livelihood in key transitional phases of work activity, they can actively manage their participation in a flexible labour market.

With Supiot, we gain a more expansive view of social security as an active rather than a passive mechanism whereby the notion of risk is modified by the exercise of choice. If workers can choose which risks/contingencies they need to insure against and when they want to exercise their rights, social security becomes a process of active risk management tailored to individual need. Flexible transitions are also managed by reformulating working time for the purposes of social security.⁶⁶ The continuity of labour force membership can be maintained both inside and outside the labour contract to allow access to social security in periods of non-work between short engagements or training or spells of self-employment. Alongside more active participation in labour markets, stakeholders in the labour relationship - employers, workers and the state - can develop new ways of paying for social benefits through public/private mixes.

What lessons can we learn from these expanding definitions of work and social security? First, we can distil new motifs to guide our search for a recalibration. According to Supiot, the new worker combines freedom with security,⁶⁷ whereas Freedland envisages a tripolar scheme converging around the poles of security, autonomy and precarity.⁶⁸ Perhaps, a new framework can be drawn from these baselines with two major axes. The first axis consists of a *freedom/security* polarity whereas the second axis consists of a *flexibility/mobility* axis. On the first axis, social protection can be modified according to the degree of freedom that a worker chooses. More entrepreneurial workers may trade more freedom for less security or vice versa. On the second axis, the type and level of benefits may be conditioned on the type of transition or work mode required by the market. In this way, social rights are adapted to the degree of discontinuity or displacement caused in the worker lifecycle by new forms of work.

However, a note of caution is warranted here, following the call from Deliveroo, a gig economy platform/employer, to change the law that currently “prevents it from offering enhanced rights” such as sick leave, to its riders.⁶⁹ The company argued that, while it would like to provide such benefits, it cannot do so as it wishes to retain the ability to define its riders as self-employed. In other words, the company is advocating a move away from the all-or-nothing, status-driven approach. Instead, it would prefer an approach that would allow companies to view individuals as entitled to some benefits, but not entitled to others. This approach is embraced by the courts

⁶⁶ Ibid, 56.

⁶⁷ Ibid, 57.

⁶⁸ Freedland and Countouris, p 346.

⁶⁹ Kamal Ahmed, ‘Deliveroo opens the door to benefit win for gig economy workers’ *BBC* (7 July 2017) <http://www.bbc.co.uk/news/business-40524377>

in some countries (e.g. Israel), but has been criticized as breaking down employee status and creating a strong sense of uncertainty.

The *welfare perspective* assumes a modification of tax and insurance structures to extend social security coverage to wider categories of labour market participation and narrow the gap in non-wage labour costs between employees, dependent self-employed and self-employed. The Beveridge Report recognised the need to support the self-employed, as they are likely to be poorer and more in need of state insurance than employees.⁷⁰ The real question for today is whether the self-employed should gain parity of social rights with employees. If employees gained security in return for subordination, should the self-employed who gain independence from control by employers and benefit from lower contributions and tax advantages, gain similar security?⁷¹ Complicating the picture is the fact that the current financial gain by employing workers on a self-employed basis due to lower national insurance contributions has led to a significant rise in ‘false’ or ‘bogus’ self-employment for, according to one estimate, 460,000 workers in the UK.⁷² This term refers to the situation in which workers are told, and at times – their contract states explicitly, that they are self-employed, but the legal tests would characterise them as workers. These workers are thus denied employment rights either because they are not aware of their true legal status or because they are afraid to challenge their employers.

If we return to the four schemes identified in Section 2 of this chapter, we find that there are noticeable developments, in tune with the welfare perspective.

Thus, insofar as *pensions* are concerned, the introduction of the Single Tier Pension in the UK, in 2016, includes the self-employed as one of its main beneficiaries, as it will treat their National Insurance contributions in the same way as those of employees when calculating pension entitlement. However, while it is welcomed in principle, as this move affects only the basic (state) pension (raising it by about £30 per week), “it will not provide enough for many people to have a standard of living similar to that of their working life, meaning additional income sources will be required”.⁷³ Noting that only 4.2% of self-employed people between the ages of 25-34 are enrolled in pension schemes, the Taylor Review calls on the government to improve pension

⁷⁰ William Beveridge (1942) Social insurance and allied services. Para 4. In Social security Provision and the self-employed, Social Security Advisory Committee, September 2014.

⁷¹ Simon Deakin in Labour Law and social Insurance in Marsden and Stephenson, eds. (2001) *The New Economy: A Debate on the Supiot Report*

⁷² Citizens’ Advice, [Neither one thing nor the other: how reducing bogus self-employment could benefit workers, business and the Exchequer](#) (2015); Social Security Committee (n 3) 31-33.

⁷³ D’Arcy (n 17) 6

provision amongst the self-employed, inter alia by auto-enrolling them into pension schemes, and to incentivise savings through the tax system.⁷⁴

Unemployment Benefits: as self-employment is typically prone to ebbs and flows, it is notoriously difficult to determine when a period off work should qualify as ‘unemployment’ for the purposes of benefit entitlement. Traditionally, periods of unemployment are far easier to ascertain in the traditional employment relationship. While this is still true, to a large extent, this assertion is not as obvious as it was in the past. Many ‘gig economy’ workers, for example, supplement their income with various ‘gigs’.⁷⁵ And workers in the current economic climate tend to work in more than one job. In other words, a degree of flexibility and realism is necessary when addressing the needs of unemployed workers as well. So what can be done? While far from an ideal solution, the approach adopted by the UK in the form of Universal Credit is one possible route. It works on an *assumption* that the income from self-employment reaches, at least, a ‘minimum income floor’, based on a set number of hours per week, and the minimum wage. Exemptions to the minimum income floor are given to single parents, people with disabilities and individuals who have been self-employed for less than 12 months. The interesting aspect about this approach is the conflation of concepts associated with the employment relationship – primarily, here, the minimum wage and working time – within the boundaries of self-employment. This requires, as noted, some assumptions, which may be controversial and contested. But, perhaps, while the details may be negotiated, creating entitlements for the self-employed for benefits that were solely granted to those in traditional employment relationships, requires some imagination, and a price to pay.

Sick pay: the Uber and Deliveroo examples, noted above, highlight the importance of ensuring that workers are able to take time off due to ill health, in a manner that will not impact on their income in a serious manner. The fact that a special arrangement was needed also indicates, however, that, in its absence, only employees with an acknowledged status are entitled to this benefit. In this respect, sick pay diverges from pensions and unemployment benefits. The rationale behind delivering sick pay is straightforward: apart from their own severe discomfort, individuals who come to work sick are likely to prolong their illness and, in the interim, pose a risk to the health of others – colleagues, clients and consumers, as the case may be. There is, thus, a clear and strong reason to allow individuals to recuperate fully before returning to work. And yet, the fact that this benefit is reserved to those who enjoy formal, employee status effectively bars a growing number of self-employed, agency and gig economy workers, for example, from accessing the benefit.

⁷⁴ The Taylor Report (n 5) 78

⁷⁵ The Taylor Report (n 5)

Therefore, we would support expanding the scope of the right to workers (including agency workers and workers in the gig economy) and expanding its breadth, to start from day one.⁷⁶

Maternity/Paternity Benefits and Leave: Until recently, no parallel rights were awarded to self-employed mothers. In 2010, an EU Directive was adopted to provide (non-compulsory) maternity leave for self-employed mothers for 14 weeks, along with a maternity allowance.⁷⁷ The Directive has been implemented, inter alia, in the UK, so women will be entitled to a full maternity allowance if they have been self-employed and paid Class 2 National Insurance contributions within the 66 weeks before the baby is due. As of June 2017, the full rate of maternity allowance is set at a flat rate of £140.98 (as of June 2017) or 90 per cent of average earnings, whichever is less. Women who have not paid enough National Insurance will not be entitled to the full maternity allowance, but will still receive £27 for 39 weeks. Parental rights for fathers have been established and expanded only recently, by comparison, in most countries. Initially awarding only protected, but unpaid, leave for a birth of a child, many countries have now moved towards allowing parents to decide whether to, essentially, transfer the mother's right to paid leave to the father. Unsurprisingly, take-up for this right has been minimal, indicating that there is little pressure to expand this right to self-employed fathers.

Finally, and most ambitiously, the World Employment Confederation suggested implementing an 'individual social account' that accrues benefits for a worker throughout her life, applying to all forms of employment or work, pro rata (related to income earned, time worked or jobs completed).⁷⁸ This account would comprise all social rights - including unemployment benefits, pension, training, sick pay, maternity and paternity - and would be available for the individual to use when needed.

The Tax Question

While a detailed discussion of tax is outside the scope of this paper, the importance of tax arrangements in the overall economy of the welfare state, necessitates a brief *discursus*.⁷⁹

So far, we have argued for some extension of social security rights to the self-employed. However, the earlier discussion regarding reciprocity has highlighted issues of fairness concerning relative contributions to the pot. It would seem axiomatic from both fiscal and ethical perspectives, that the self-employed should not gain financial advantages from their different legal status. On the

⁷⁶ The Taylor Report (n 5) 99.

⁷⁷ *Directive on self-employed workers and assisting spouses* (2010/41/EU)

⁷⁸ Williams and Lapeyre (n 7) 40.

⁷⁹ For an extensive treatment of tax and workers in the UK, see Judith Freedman, *Employed or Self-employed, Tax Classification of Workers and the Changing Labour Market* (Tax Law Review Committee, IFS, February 2001). <https://www.ifs.org.uk/comms/dp1.pdf>.

other hand, it is also recognised that some social security benefits are delivered through the tax system. Prominent amongst them is the Negative Income Tax (known as Earned Income Tax Credit in the US; and Working Tax Credit in the UK), which is supported by progressives and libertarians alike. And, indeed, we find that the UK has expanded Working Tax Credit (incrementally replaced by Universal Credit) to include self-employed individuals who (if aged between 25 and 59) work at least 30 hours a week and have an hourly income that is below the minimum wage. Indeed, in 2012-13, about 770,000 families with at least one member who identified as self-employed benefited from WTC.⁸⁰

If a new welfare settlement is to be constructed, a starting point might be the alignment of taxation of income across different legal forms. A recent failed attempt in the UK to increase national insurance contributions (NICs) for the self-employed in the 2017 Budget indicates how politically contentious this issue is likely to be.⁸¹ In the UK, the self-employed pay income tax and NICs on their earnings but are charged a lower rate of NICs and face no equivalent to employer NICs.⁸² The result of this differential is that whereas employees face a tax rate of 30%, the self-employed pay 22% and company owner managers pay just 18%. The size of the differential is not justified by the small differences in access to benefits, particularly in the UK where the self-employed have gained rights to the same single tier pension since April 2016. Apart from the feelings of unfairness (whether justified or not) and the loss of income to the Treasury (estimated between £3.5 and £5.1bn annually in the UK, and at \$149bn in the US⁸³) there is a real danger that these differences create strong incentives for employers to categorise workers as self-employed, rather than employees.⁸⁴

In terms of reform, the proposal that the tax treatment of employed and self-employed might be aligned would deal with the fairness issue and would also mean that definitional problems regarding the classification of worker status would be reduced. However, classification for purposes of tax law and employment law is not straightforward and problematic distinctions will always remain.⁸⁵ Another proposal suggested is a complete merger of tax and NICs.⁸⁶ This would

⁸⁰ Hansard, *Parliamentary debates: written answers* (2014, question from Guto Bebb MP) (202509)

⁸¹ Philip Hammond was forced to withdraw the measure after serious opposition. See [Budget 2017: Philip Hammond faces row over tax rises for self employed...](https://www.theguardian.com/business/budget-2017)
[https://www.theguardian.com › Business › Budget 2017](https://www.theguardian.com/business/budget-2017).

⁸² H. Miller, Tax in a Changing World, *Tax Journal* (April 2017).
<https://www.taxjournal.com/articles/tax-changing-world-work-20042017>

⁸³ Caroline Bruckner, *Shortchanged: The Tax Compliance Challenges of Small Business Operators Driving the On-Demand Platform Economy* (Kogod Tax Policy Centre, Washington DC, 2016)

⁸⁴ Social Security Advisory Committee (n 4); Taylor Report (n 5) 66-70.

⁸⁵ See Leighton, P. & Wynn, M. (2011) 'Classifying Employment Relationships – More Sliding Doors or a Better Regulatory Framework?' 40 *Industrial Law Journal* 5-44.

⁸⁶ Freedman (n 79) 4.

not necessarily align the treatment of employed and self-employed as they could still pay different rates, but it has long been the case that NICs have been treated as a form of indirect taxation, so that some consolidation would reduce the possibility of governments using the national insurance fund to subsidise cuts in income tax and remove distortion in the fiscal system.

5. Concluding, and the Way Forward

We have identified some key themes in mapping out the contours of a future welfare state and how it might adapt to a flexible labour market of the future. Many of the policy choices are ultimately dependent on political and ideological choices and each type of welfare state will adapt accordingly. However, it is imperative that changes are made if the welfare state is to survive. As Ewald has correctly identified: “In guaranteeing security, the state is equally guaranteeing its own existence, maintenance, permanence. Social insurance is also an insurance against revolutions”.⁸⁷

The final shape of any social model will ultimately depend on finding the right balance between freedom and security, between efficiency and equity and between reciprocity and solidarity. Apart from a wholesale reconstruction of labour law and social security to make a more inclusive framework, or in the absence of a non-contributory universal basic income, it may be possible to make some less radical changes to adapt existing contributory frameworks to the new forms of non- standard employment.

One approach suggested in the paper is to analyse the key transitions in a worker’s life course to determine what new risks may lead to precarity or exclusion. The higher risks in terms of income volatility and unemployment and income security in old age demand a new technology of insurance which is flexible, fair and efficient. One necessary adjustment might be to decouple social insurance from specific jobs and link it with lifetime employment. In this way, the contributory principle is still linked to work but more in terms of labour force membership. Another possibility is to implement a form of employment insurance which, unlike unemployment insurance, is designed to cover internal rather than external risks in the labour market and thus encourage the more entrepreneurial workers to make transitions between different employment statuses.⁸⁸ A further reform which would address the problem of uneven contributions in atypical employment might be to subsidise social security contributions where income remains low or volatile and then build up progressive contributions in times of high

⁸⁷ François Ewald (1991) ‘Insurance and Risk’ in Graham Burchell, Colin Gordon and Peter Miller (eds) *The Foucault Effect: Studies in Governmentality* (University of Chicago Press) 197.

⁸⁸ Schmid (n10) 397.

earnings.⁸⁹ Another aspect which needs consideration is the gendered division of work and home which often impacts unfavourably on women. How far one goes in the marketization of care work is another difficult political question but it remains true today that “at the end of the day the welfare state and the family are the foundations of the labour market”.⁹⁰

In sum, the overview of recent trends suggests that, against the background of increased precarity and insecurity in the labour market, there is a growing understanding, in the public and in the private sector, that social security schemes need to respond. This suggests at the very least, that it is unlikely that the welfare state itself will be replaced at any time in the near future by the market principle.⁹¹

⁸⁹ Gunther Schmid, *Non-standard Employment and Labour Force Participation: A Comparative View of the Recent Development in Europe* (Discussion Paper Series, IZA DP No 5087, 2010).

⁹⁰ Simon Deakin, quoting Alain Supiot in *Labour Law and Social Insurance in the New Economy*, eds., Marsden and Stephenson (2001).

⁹¹ *ibid.*