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LABOR RIGHTS IN THE GIG ECONOMY

The so-called ‘gig economy’ is becoming a larger portion of the economies around the world. Many industries, such as transportation, food and online shopping, became reliant on this mode of work in the past decade. As a result, a lot of people saw the income opportunity and started to participate in these types of labor; the number of people working in the gig economy growing %15 in the United States (Iacurci 2020). But, parallel to the rise of the gig economy, the discussion about the labor rights of the workers participating in this workforce has been inching towards the center of social attention. In this essay, I try to analyze the battle for the labor rights of the gig economy workers. I will outline the history of legal action surrounding the topic, and analyze the discussion employing the tools we have learned throughout the class, trying to understand the situation from class, race and gender perspectives.

The gig economy can be described in three parts working together: the workers who are paid by the ‘gigs’ they undertake, the customers who are in need of a person who will fulfill that task and the companies who connect these workers and customers using their specially designed platform (Istrate and Harris 2017). For example, at a given time, a number of people in Boston are looking for a ride. Moreover, some people in Boston might be willing to give those people the rides they want if the price is right. Hence, Uber connects those people through its app and sets the price (and takes a cut of the price for its services).

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The remainder of the analysis mostly focuses on Uber (even though it is very generalizable) because Uber has been at the forefront of the legal battles, and also it is arguably the biggest gig economy company in the world. Hence, it is important to give a brief history of the company. Uber is a ride sharing company founded by Garrett Camp and Travis Kalanick in March 2009. The system is very simple: There is a pool of drivers and passengers using the app at a given time, and when a customer requests a ride, the algorithm that is developed by the company finds the driver who would take on the task the most cost-efficiently. The price that Uber charges to the customer depends on the distance, time, and special occasions. For example, a rush hour fare can be four times more expensive than a regular time fare. Joining Uber is fairly simple if you are a customer, you just download the application, register, put in your payment method and you are good to go. But, if you are signing up as a driver, it gets a little bit more complicated. To register as a driver, you must have a vehicle that can take 4 or more passengers, and also the vehicle must be 15 years old or newer. For the driver, a driver's license must be obtained and the driver should be driving for at least 3 years. Moreover, the driver must provide a background check. After they get approved, the drivers can begin "working for themselves" (as Uber claims) as independent contractors and give Uber a %25 commission. If you decide to drive for Uber, you have to consider some advantages and disadvantages at the same time. You can have a flexible schedule and work as much as you want. But on the other hand, as the rest of this paper details, there is a complete lack of labor rights for Uber drivers. This is due to the fact that they are not classified as employees, but as independent contractors. This is how Uber circumvents labor rights around the world. Some of the labor rights that employees have, but independent contractors do not, are the right to organize and bargain collectively, minimum wage and overtime protections, access to unemployment insurance, access to workers'

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compensation, employer contributions to Social Security and retirement, anti-harassment, discrimination protections, and many more (Pinto, Smit and Tung 2019). Obviously, Uber is not the only company doing this. There are many others; in the ride sharing business like Uber (Lyft, Curb), food delivery business (Doordash, Uber Eats, Postmates), and many more. Even Amazon is in the business under Amazon Flex, hiring delivery drivers as independent contractors (Del Valle, 2018).

In order to understand the struggle of the gig workers, we first need to understand the legal history of the matter, which spans only the last few years. It is also important to remember who the actors are in these legal battles. One of them, the federal government, led by the Trump administration, was mostly in favor of Uber and the other similar gig economy companies. The most important involvement of the federal government was through the National Labor Relations Board agency. In 2019, the NLRB ruled that Uber drivers are independent contractors (like Uber claims) and not employees (Scheiber 2019), although the decision does not set a precedent and can be reversed by the current administration or the future administrations. The decision was in response to a day of strike that the Uber drivers organized around the world, strategically held just before the initial public offering of Uber in 2019 (Conger, Xu and Wichter, 2019). The federal administration, in order to preserve the economic interests of the growing ride-hailing companies, decided to classify the drivers as independent contractors and deprive them of some essential benefits that come with being an employee. The federal government looking out for the interests of the economic elite is nothing new; something very similar happened back in 1914, as we have seen in the class, when Woodrow Wilson, in order to protect the interests of John D. Rockefeller Jr., ordered the federal troops to open fire on the miners on strike in Colorado (Zinn 2015).

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Another important actor in the disputes is the courts. They have been giving a mixed bag of decrees and opinions on the issue. Arguably the most important one is *Dynamex Operations West, Inc. v. the Superior Court*, where the decision was handed down by the California Supreme Court in 2018, after years of legal procedure. Dynamex is a delivery company whose drivers claimed that they were unlawfully classified as independent contractors and not as employees starting in 2005, and a former driver of the company filed a class action lawsuit against the legality of this. The Supreme Court of California ruled that all workers are presumptively employees and it is the employers' burden to prove that they should be legally classified as independent contractors (The Supreme Court of California 2018). More importantly, the decision established the so-called "ABC" rule, which outlines three requirements for the worker to be considered as an independent contractor. All three of the following requirements must be met for a worker to be classified as an independent contractor: (a) The worker must be independent from the company's control, (b) the worker must be also working outside the company and (c) the worker is engaged in an independently established occupation (Yader and McCoy, 2021). Building on this decision, the California State Legislature passed Assembly Bill 5 in 2019 (Bergman, 2020). The bill put the ABC test in the laws and expanded its applicability (especially to the ride sharing companies), hence became one of the first (and the most important) pieces of legislation that tried to fix the labor rights problem created by the newly emerging gig economy, in favor of the workers. This case, and the test it established, created a precedent for a lot of other cases that relate to the issue of independent contractor classification (later codified by Assembly Bill 5), but also it set off a big campaign, funded by companies like Uber, Lyft, Doordash and Amazon, to reverse this ruling and nullify the precedent. Later, this

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turned into ballot initiative Proposition 22 in California. But before that, they continued to struggle in the courts.

The labor practices of Uber specifically were targeted via lawsuits by the state governments multiple times. The most famous one was probably *The People v. Uber Technologies Inc. et al* in 2020. In that lawsuit, the California Attorney General alleged that the labor practices of Uber, mainly the classification of the drivers as independent contractors and not as employees, deprived them from various benefits of being in the employee status, such as minimum wage, reimbursement for work expenses, health benefits and unemployment insurance, and that was an improper classification (The Court of Appeal of the State of California 2020). The last two of these benefits proved to be especially important given the state of the world is in right now, during the coronavirus pandemic. The decision was in favor of the California Attorney General, meaning the court held that Uber and other similar companies had to legally classify the drivers as employees rather than independent contractors. But in the same opinion, the court noted that the work environment in Uber is much different than a regular work arrangement. This is very important to understand, since the listed differences are essentially the stream of reasons that Uber presents, even to this day, as the logic of its classification of its workers, partially in line with the ABC test.

Arguably the most important difference between the traditional work arrangements and the gig economy work arrangements is the use of time. Specifically, under traditional work arrangements, the employees are usually contracted to work a specific amount of time, such as from 9 a.m. to 5 p.m. Monday through Friday. But in the gig economy labor market, you work whenever you want. If you want to work at a given point in time, you just open the app and list yourself as available. Also importantly, you have the right to accept or reject any task that is

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offered to you. Notice that these are in line with the “A” part of the ABC test previously established under *Dynamex v. Superior Court* in 2018. Moreover, there is no exclusivity, meaning that a driver can use, for example, both Uber and Lyft at the same time and accept whichever ride pays higher. Of course, in the traditional job market, one can work for multiple companies as well, but one cannot simultaneously work for two companies at the same time. This is also argued to be in line with the “B” part of the ABC test. But nevertheless, the Court decided that the Uber drivers met the standards of being classified as an employee, hence they should be rewarded the benefits that come with it.

After losing this lawsuit, Uber, along with the other big names in the gig economy space, moved its attention to Proposition 22 in the November 2020 elections in California. It became the most expensive ballot initiative, with more than two hundred million dollars spent for the campaign on the supporters' side, the biggest contributions coming from Uber, Doordash, Lyft and Instacart, under the misleading committee name “Yes on 22 - Save App-Based Jobs & Services” (Menzenes, Moore and Do, 2020). Before the vote, Uber’s CEO Dara Khosrowshahi wrote an op-ed piece in the *New York Times*, and declared that the current ‘traditional’ mode of work is outdated, and people demand more flexibility, especially given the current circumstances due to Covid-19 pandemic (Khosrowshahi, 2020). The main aim of the ballot was to essentially reverse the effects of Assembly Bill 5. After all the campaigning, the Californians voted yes on Proposition 22 by a sizable margin, allowing the app-based gig work companies to legally classify their drivers as independent contractors (O’Brien 2020). This became the first ballot that passed on the issue in the United States, and effectively ended the legal debate over gig work in California. This was also the most recent legal or legislative development in the United States on this issue.

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It is important to analyze the issue of the labor rights of the gig economy workers from a race lens. There are no up-to-date official data from Uber about the demographics of their drivers, but, for example, in 2015, a majority of the drivers were non-white (Clifford, 2015). Hence, any type of public voting on the matter essentially turns into the majority deciding on the labor rights of the minority, which is never a good idea. Democratic decisions are obviously important, but some rights must be unalienable, especially considering the racial context of the situation. The labor rights of the minorities have been hampered by the white economic elite for far too long, especially in the United States. It can actually be said that the whole economic system that the United States of America was founded upon and that led her to prosperity is slavery (Lockhart, 2019). This transformed into a centuries-long suffering of not just the Black people, the subjects of the horrid harms caused by the institution of slavery, but all the minorities in the United States. Hence, it can be argued that this dispute is just a new addition to the same old problem. We also have seen the examples of the white economic elite undermining the labor rights of specific minorities in the class as well, such as the cases of Asian Americans (Chan 2016), incarcerated Black Americans (Rafieyan, Garcia 2020), Ojibwe people (Norrgard, 2014) and many more.

There is also a class dimension to the problem. The biggest portion of the population constitute the customer base of Uber or other similar ride sharing companies, not the worker base. Hence, if we take people as economic agents, given the chance, they will choose the option that will maximize their profit, regardless of whoever is getting affected by that decision. Hence, again given the chance, Uber patrons will vote on minimizing the labor rights of the Uber workers, since labor rights usually diminish the profit margin. But, as explained above, this is what happened during the vote on Proposition 22. The state of California decided that it was a

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good idea to give the authority to determine the extent of the labor rights of Uber workers to their patrons. And obviously they decided that the labor rights of Uber drivers should be curtailed, since that was the profit maximizing option for them.

From the same perspective, there is also the issue of the economic interests flooding the scene with money to get the bill passed. As mentioned above, Proposition 22 became the ‘most expensive’ bill in California history (Hawkins 2020), which means that Uber and the other gig economy companies spent millions upon millions of dollars in lobbying and marketing. This is obviously legal and ‘fair’ under the FEC regulations, but we have to keep in mind that this is not like any other ballot measure, since it determined the labor rights of thousands of people. For example, the supporters of Proposition 22 (Uber and the other ride sharing companies) spent \$204 million, whereas the opponents, led by the Service Employees International Union (SEIU), United Food & Commercial Workers and California Labor Federation, managed to spend \$20 million, a miniscule amount compared to what Uber and the others spent (Menzenes, Moore and Do 2020). Some experts described the supporters’ conduct as ‘highly untraditional and notably aggressive’ (Hussain 2020).

It is clear that this new law had to be challenged in the courts, and thankfully that is what is happening right now. The SEIU filed a lawsuit with the California Supreme Court, on the grounds that the wording of the ballot measure was misleading (Hussain 2021a). In its text, Proposition 22 says that the drivers will be guaranteed certain benefits, such as “assistance with healthcare premiums”, without legally defining what they are. It says that the drivers will be entitled to 120% of the minimum wage, but that includes the time period where the drivers are waiting in between rides as well, hence the minimum wage promise is very thin (Sammon 2020). So, this is a legitimate concern, since the wording on the ballot implies the labor rights of the

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drivers will be protected, but actually it is the opposite. Nevertheless, the Court rejected the suit, and the SEIU re-filed the lawsuit with a lower court, since the Supreme Court rejected to hear the case ‘without prejudice’ (Hussain 2021b). Even though the issue does not seem clear to the Courts, it is crystal clear to the workers who earn their living working for Uber. One driver in Alameda County, Saori Okawa said to the L.A. Times that “in a democratic society, corporations should not get the final say in determining the rights of the workers” (Hussain 2021b). With this much money involved, the corporations are getting a big chunk of the final say. Furthermore, even if there was no money involved explicitly, the ballot was asking the patrons of the app-based ride sharing drivers to determine whether they should have labor rights or not. This cannot be justified by saying “this is how democracies work”.

There is also a gender lens through which we can analyze the gig economy and how it rewards tasks that are more easily accomplished by men, hence perpetuating the gender pay gap. For example, take the ride sharing business. The act of driving itself is a gendered act. It is seen as a ‘men’s job’. But, apart from the societal perceptions, which are very important, there are also intricate mechanisms at play that favor men working in the gig economy. For example, take the surge pricing policy adopted by Uber and Lyft. It pays more to the drivers if they pick up riders in more populated areas such as urban centers, the closing times of bars or something similar, which are on average more dangerous to drive in. Since, in our male-dominated societies, it is easier for men to do that task, they tend to earn more than women. As a result, in Uber’s case, men earn %7 more than women driving for the ride sharing company (Cook, Diamond, Hall, List and Oyer 2020), which is less than the economy-wide gap of %18 (Bleiweis 2020), but still sizable.

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In other countries where labor rights are more robust compared to the United States, such as the United Kingdom and the continental Europe, the situation is very different. For example, recently, the British Supreme Court granted the 70,000 Uber drivers in the country an employee status, which entitles them to basic labor rights such as minimum wage, pension and holiday pay (Siddiqui 2021). It was ruled that the drivers are employees of Uber from the time they open the app until they log off. Also, in continental Europe, Spain's socialist-led government signed a decree in March 2021, deciding that some of the gig economy workers are entitled to employee rights, following a similar ruling by the Spanish Courts in 2020 (Dombey and Espinoza 2021). Spain became the first country in the European Union to grant labor rights to gig economy workers, and this might set an example for the others in the Union. Previously, in February 2021, The European Commission launched a consultation to investigate whether the gig economy workers should be entitled to the same type of labor rights as the 'traditional' workers, which is still underway (Espinoza 2021). It seems like in Europe, where the campaign finance and lobbying laws are much more strict and the Courts tend to be more decisive on issues regarding labor rights (rather than leaving them at the hands of the general public), the tendency is to grant gig economy workers at least some basic labor rights.

As elaborated above, the labor rights of the gig economy workers has been contentious in the last half decade, both in the United States and around the world. As the gig economy grows larger and larger, this issue is becoming more and more urgent. It is clear that millions of people around the world are being adversely affected by their classification as independent contractors instead of employees. It seems like the United States will see more court cases and ballot measures on the topic in various states other than California as well, whereas in Europe, one by one, countries are taking legal measures to prevent gig economy companies from misclassifying

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their workers. It is certain that the history of labor rights can shed an illuminating light on the issues we are facing today within the gig economy. Moreover, on the path to coming up with solutions to this problem, we have to consider the issues from various perspectives in terms of the societal groups it effects, and especially from the perspectives of race, class and gender.

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