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Exploitation in a disruptive and unjust gig-economy

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Abstract. The purpose of this report is an appraisal of the gig economy; educating and informing an academic audience of the faults that exist and how these faults lead to exploitation and unjustness in the gig economy. During the writing process, I researched the academic articles and books related to the gig economy and exploitation, enabling myself to form a solid foundation from which to conduct further research. In addition, work was conducted to synthesize the journal articles, online resources and books. The scope of this report examines the corpus of the text relating to the gig economy and exploitation and I emphasize some of the ways the writers manage to display the exploitation and the unjustness in the gig economy.

Keywords. Gig-economy, Disruptive technologies, Externalities, Pigouvian taxes, Labor standards.

JEL. A13, J01, K31, O30.

1. Introduction

The term gig economy was coined in the year 2009 by the journalist Tina Brown when she noticed that the younger generation were working multiple jobs. In the recent year the development of the online job market has been an explosive trend with an unchecked momentum. According to Dokko, Mumford & Schazenbach (2015), technological developments occurring in the workplace have come to blur the legal definitions of the term's "employee" and "employer" in ways that were unimaginable when employment regulations like the Wagner Act of 1935 and the Fair Labor Standards Act of 1938 were written. I will argue that the gig economy with its unchecked momentum and unfair labor standards is unjust and the worker is exploited.

In our case of the gig economy my argument states that since 2009 the momentum of the gig economy has been unchecked and therefore in present day circumstances, the unchecked momentum has led to an exploitative working environment for the employee. The reason why an unchecked momentum creates a problem is that since the company finds itself creating a new disruptive market, the regulators are unsure of which laws are applicable to this new market and if any laws or rights are under infringement. It is only with due time that effects of the disruptive new market come to sight. The momentum of the new market is allowed to continue until complaints and lawsuits crop up regarding the company,

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this is also known as the “first mover” effect. This is when regulators start taking a look at the new market in order to determine what action is to be taken. This unchecked momentum is a concern because according to Berlin (1957), “when ideas are neglected by those who ought to attend to them – that is to say, those who have been trained critically about ideas – they sometimes acquire an unchecked momentum and irresistible power over multitudes of men that may grow too violent to be affected by rational criticism”.

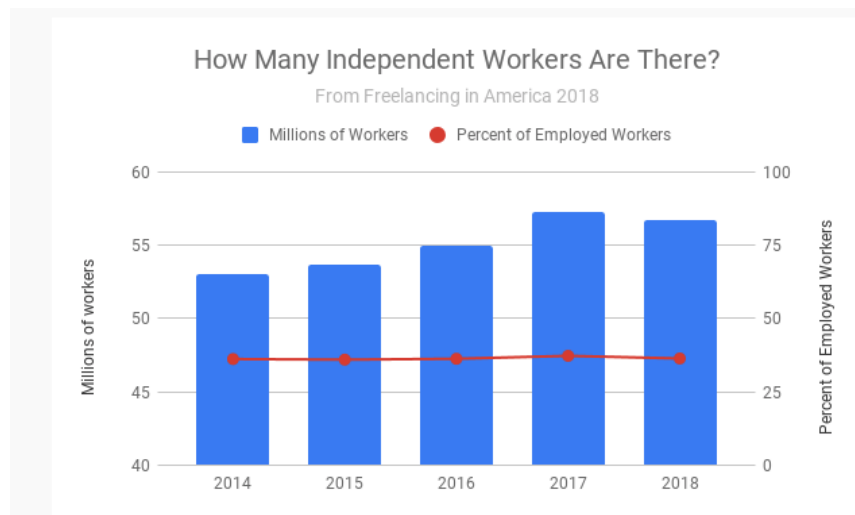


Figure 1. *Exploitation in a Disruptive and Unjust Gig-Economy*
Source: Shelly Steward, 2018 [Retrieved from].

The fact that the worker condition in the gig economy have not been paid attention to is further addressed in a recent article in the journal of industrial psychology; Kuhn (2016) states that, “Bergman & Jean (2016) include freelancers as one of the categories of workers who are understudied in the industrial and organizational (I-O) psychology literature. This neglect is particularly striking given the attention paid by the popular media and by politicians to the rise of the “gig economy,” comprising primarily short-term independent freelance work”. Some solutions to this problem of unchecked momentum would be to carefully scrutinize the legal implication before funding the business and not grant funding to the business which may have a negative social impact, reducing the negative social impact to the bare minimum or taxing the disruptive market. Furthermore, the regulators should be made aware of emerging disruptive markets so that they may be able to keep these businesses in check. A deep study of the existing workers in gig economy should be undertaken in order to avoid an emergence of negative externalities¹ and the exploitation of the worker.

¹ See Balalavea (2012), for an insightful analysis of innovation, public goods, negative externalities and Pigouvian taxes.

2. Labor standards

The agreement of the employer and the independent contractor in a gig economy is a legal agreement. The classification of the employee into an independent contractor or an employee has recently fallen into precarious territory and many workers are misclassified. This misclassification has led to unfair labor standards and many a company in the gig economy have had to face lawsuits. Cherry's (2016) study found that, "To date, the dominant economic narrative for the gig economy has been one in which platform owners extract a share of income generated from the workers who use their platforms. This is troubling as many forms of crowd-work are situated at the crossroads of precarious work, automatic engagement, deskilling and low wages".

In the gig economy, the majority of the workers are independent contractors. The evolution of the gig economy has brought to light the reasons why the Fair Labor Standards Act² was established. The declaration of The Fair Labor Standards Act was based on the findings of the congress, that the industries engaged in commerce were not thoughtful regarding the well-being of its workers. The fourth proposition of the act explicitly states, "leads to labor disputes burdening and obstructing commerce and the free flow of commerce" (FLSA, 1935). The gig-economy has begun to show the conditions that are stated in the proposition. It has had to face misclassification law suites and has created a disruptive market, doing much damage to traditional employment. Since the gig-economy has grown in dollar value and employs a sizable amount of the work force, the complaints of the workers carry with them a substantial amount of force. Research by Horowitz & Rosati (2014) shows that, "A 2014 survey conducted by The Freelancers Union identifies more than 53 million Americans, or roughly 34 percent of the labor force employed as freelancers".

3. Theories of justice

Dr Reiff in his book "Exploitation and Economic Justice in the Liberal Capitalist State" tells us that there are two ways in which justice can be understood. The first is, "the distributive sense which states how the burdens and benefits of social corporation should be allocated across the various segments of the society" (Reiff, 2013). The second is, "the commutative sense which states that how individuals, corporations and certain entities may or may not interact with each other" (Reiff, 2013). According to Reiff (2013), exploitation is defined as "the unjust extraction of value from another as part of a voluntary exchange transaction not otherwise prohibited by law". Exploitation is one of those theories which does not limit itself to either distributive or commutative justice and is the expression of both the theories. The distributive sense of justice is concerned with the distributional effects on society as a whole. The

²See Fair Labor Standards Act of 1938. The Department of Labor.

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commutative sense is concerned with how individuals and corporation may or may not act with each other.

Although the gig economy has indeed given rise to innovation and the creation of jobs in an era of recession; there has definitely been a misallocation of resources across various segments of the society and this has created a case of distributive injustice. This problem of distributive justice stems from the issue that the benefits of social corporation between the employer and the employee are uneven. The employer gains a lot more than the employee in the case of the gig economy. These jobs usually confer few to no employee benefits and workplace protections. This is in contrast to the tradition employment which employer-employee relationship which comes with many assurances and protections. These assurances include over-time protection, minimum wage, health protection, disability, unemployment benefits, sick leave and the ability to engage in collective action. In the gig economy, the employer gains the most as the only thing the employer is responsible for is paying the independent contractor. A massive saving in cost is incurred on the employer's behalf and the employee does not gain as much as the employer. The employee on the other hand invests his own capital, the cost of the depreciation of the capital is rarely if ever considered. The risk to society of having a worker with no health insurance and worker protection is ignored. This creates a case where an unjust allocation occurs in the society, the employer does not adhere to a sense of corporate social responsibility (CSR) (McWilliams, 2015) and thus we have distributive injustice.

When a worker starts to work in the gig-economy he is either classified as an employee or an independent contractor. This classification is important because U.S law imposes a requirement on the employer with respect to their employees that are not imposed on the independent contractors. These requirements established by the Fair Labor Standard Act as stated earlier include, minimum wage, overtime rules, the right to organize, civil rights protection and maternity leave. Therefore, in a case where cost-cutting is the objective the employer can and does classify the employee as an independent contractor. This leads to a sense of commutative injustice as the employer can on the grounds of saving costs completely relieve the employee of any benefits he is entitled to. This is also known as misclassification and is one of the main reasons why the gig economy has seen a rise in lawsuits. From what we see in the examples of the gig economy nowadays, companies like Uber which are at a net worth of \$41 billion employ mostly independent contractors. The reason that Uber has been able to amass this amount of wealth is because it only hires independent contractors and provides no benefits to them. Therefore, it is able to operate at a minimum cost while exacting as much from the contractors as possible. This leads to companies like Uber making excessive profits and mostly at the expense of the independent contractors through misclassification.

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As stated earlier our exploitation definition is “the unjust extraction of value from another as part of a voluntary exchange transaction not otherwise prohibited by law”. In the case of the gig economy we currently see that exploitation seems to occur both as prohibited by law and not prohibited by law. The contractors sign up for work with the gig economy voluntarily, although many of them also sign up because they have no other choice. This fact is exploited by the employers as they are able to use this sense of urgency. According to Reiff (2013) this exploitation is termed as economic masochism “they seduce into engaging people in activity that they rationally expect will actually hurt their economic interest simply because they irrationally covet the privileges that obtaining such excessive profits would allow”. Furthermore, the employers gain the full array of the employee’s skill sets, their education, their capital but on the other hand only compensate them on a bare minimum. The benefits that these contractors would otherwise receive are completely disregarded.

The argument here is that the monetary value of these benefits is far greater, and this is one of the reasons why businesses prefer independent contractors and therefore the employers stand to gain far more in this case than the independent contractors. The employers know this for a fact and that their accommodation of the need for flexibility of many of these employees is merely because it is advantageous to their business. The amount of flexibility and working different jobs does not compensate for the benefits and growth the employee gets in a traditional career. A study conducted by Cherry (2016) states, “With low skilled work, the opportunity for entrepreneurship, and with-it risk-and-reward, is barely, if at all, present. The terminology is EULA is far from dispositive, as such online contracts are known to be extremely one-sided and are constructed against the drafter. The possibility of exploitation is high and low-skilled workers are those that are most in need of FLSA protection”.

4. Conclusion and further study

As there has been a rise in the number of lawsuits and complaints in the gig economy, much research has been undertaken to provide for solutions, stem the flow of exploitation and to correct the state of the current job market. The courts have recently developed a test to determine whether a worker is an employee or an independent contractor. According to a study done by to Dokko, Mumford & Schazenbach (2015), “The “common law test” evaluates a worker’s status based on which party has the right to control the work-process”; “economic realities test used by the Department of Labor to enforce labor standards such as the Fair Labor Standards Act that governs minimum-wage and overtime rules, focuses on the economic relationship between worker and employer. These tests help reduce exploitation due to misclassification.

Since technological innovations have brought to light the fact that the legal dichotomy is not fully exhaustive regarding employer and employee relationship, much thought is being given to revising these laws and

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adding new category of workers. This is definitely a step in the right direction as the labor laws need to keep up with the changes in the labor market. According to a study done by Stefano (2015), there has been a renewed focus towards policy development, “some policy proposals are critically analyzed such as the possibility of creating an intermediate category of worker between “employee” and “independent contractors” to classify work in the gig-economy, and other tentative proposals are put forward such extensions of fundamental labor rights to all workers irrespective of employment status, and recognition of the role of the social partners in this respect, whilst avoiding temptations of hastened deregulations”.

The creation of unions and cooperatives has also been a suggestion that has been put to work. As stated earlier there does exist a freelancer’s union that advocates for the rights of the independent contractors. Associations exist to provide benefits for independent contractors, providing some comfort in light of the exploitative working conditions. A study done by King (2014) finds that, “Sara Horowitz founded the Freelancer’s Union 1995; as of 2013 it has grown to include 223,203 members nationwide with the majority of the workers residing in New York State”. The organizations mission is to promote the interests of independent workers through advocacy, education and service”. We see that independent contractors have existed since before the term gig-economy was coined although these independent contractors existed as highly skilled laborers. Since 2009 the disruptive markets have been created that exploit low skilled labor. There does not exist protection for the low skilled labor besides the standards of the Fair Labor Act and since any changes in the government policies potentially affect millions in the work force the changes are slow to come through if ever. In recent years the growth of the gig economy has been tremendous both in terms of dollar value and the number of people employed. The gig economy is now a part of the overall working economy and therefore much more attention is being paid to the issues relevant to labor concerns, exploitation and the prevalent unjust working environment.

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