

BEYOND THE ALGORITHM

In *Beyond the Algorithm: Qualitative Insights for Gig Work Regulation*, Deepa Das Acevedo and a collection of scholars and experts show why government actors must go beyond mass surveys and data-scrubbing in order to truly understand the realities of gig work. The contributors draw on qualitative empirical research to reveal the narratives and real-life experiences that define gig work, and they connect these insights to policy debates being fought out in courts, town halls, and even in Congress itself. The book also bridges academic and nonacademic worlds by drawing on the experiences of drivers, journalists, and workers' advocates who were among the first people to study gig work from the bottom up. This book is a must-read for anyone interested in gig work, the legal infrastructure surrounding it, and how that infrastructure can and must be improved.

Deepa Das Acevedo is a legal anthropologist and an assistant professor of law at the University of Alabama. Her scholarship draws on original fieldwork among gig workers, policymakers, and workers' advocates, and has been published in several law reviews. She cochairs the Collaborative Research Network on Labor Rights of the Law and Society Association and chairs the Section on Law and Anthropology of the American Association of Law Schools.

Cambridge University Press
978-1-108-48776-4 — Beyond the Algorithm
Edited by Deepa Das Acevedo
Frontmatter
[More Information](#)

Beyond the Algorithm

QUALITATIVE INSIGHTS FOR GIG WORK REGULATION

Edited by

DEEPA DAS ACEVEDO

University of Alabama School of Law



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-1-108-48776-4 — Beyond the Algorithm
 Edited by Deepa Das Acevedo
 Frontmatter
[More Information](#)

CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,
 New Delhi – 110025, India

79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108487764

DOI: 10.1017/9781108767910

© Cambridge University Press 2021

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2021

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Acevedo, Deepa das, 1984– editor.

TITLE: Beyond the algorithm : qualitative insights for gig work regulation/
 edited by Deepa das Acevedo, University of Alabama School of Law.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge
 University Press, 2020. | Includes index.

IDENTIFIERS: LCCN 2020021128 (print) | LCCN 2020021129 (ebook) | ISBN 9781108487764
 (hardback) | ISBN 9781108767910 (ebook)

SUBJECTS: LCSH: Labor laws and legislation. | Precarious employment – Law
 and legislation. | Temporary employment – Law and legislation. |
 Independent contractors – Legal status, laws, etc. | Self-employed – Legal
 status, laws, etc. | Sharing – Economic aspects.

CLASSIFICATION: LCCCK1816 .B49 2020 (print) | LCC K1816 (ebook) | DDC
 344.01/25729–dc23

LC record available at <https://lcn.loc.gov/2020021128>

LC ebook record available at <https://lcn.loc.gov/2020021129>

ISBN 978-1-108-48776-4 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of
 URLs for external or third-party internet websites referred to in this publication
 and does not guarantee that any content on such websites is, or will remain,
 accurate or appropriate.

Contents

<i>List of Figures</i>	<i>page</i> vii
<i>List of Tables</i>	viii
<i>Foreword</i>	
<i>Catherine L. Fisk</i>	ix
<i>Acknowledgments</i>	xii
Introduction	1
<i>Deepa Das Acevedo</i>	
1 The Rise and Scope of Gig Work Regulation	15
<i>Deepa Das Acevedo</i>	
2 An Uber Ambivalence	
Employee Status, Worker Perspectives, and Regulation	
in the Gig Economy	33
<i>V. B. Dubal</i>	
3 Invisible Work, Visible Workers	
Visibility Regimes in Online Platforms for Domestic Work	57
<i>Alexandra Mateescu and Julia Ticona</i>	
4 The Importance of Qualitative Research Approaches to Gig Economy	
Taxation	82
<i>Shu-Yi Oei and Diane M. Ring</i>	
5 Just a Gig?	
Sharing Economy Work and the Implications for Career Trajectory	103
<i>Alexandrea J. Ravenelle</i>	
6 Algorithmic Management, Employment, and the Self in Gig Work	123
<i>Julia Tomassetti</i>	

vi	<i>Contents</i>	
7	Regulating Transportation Systems without Authority (or Data) Plugging an Uber- and Lyft-Sized Hole in City Transportation Planning and Policy	146
	<i>Zak Accuardi</i>	
8	Words Matter	
	How Tech Media Helped Write Gig Companies into Existence	169
	<i>Sam Harnett</i>	
9	Rewriting the Rules	
	Gig Companies’ Drive for Labor Deregulation	189
	<i>Rebecca Smith and Maya Pinto</i>	
10	What Regulators Could Gain by Listening to Rideshare Drivers	208
	<i>Harry Campbell</i>	
	<i>Index</i>	220

Figures

2.1	SF Uber driver stated preference for worker status, by identity variable (2016 survey data)	<i>page 46</i>
2.2	Explanation for independent contractor preference (2016 survey data)	47

Tables

9.1	Labor standards for employees versus independent contractors	<i>page</i> 196
9.2	Three phases of carveout policies	196

Foreword

Catherine L. Fisk

“Gig work” and the “gig economy” are among the most overused terms and the least understood phenomena in the contemporary policy landscape. And, as one chapter in this book astutely observes, they are among the most hyped, in ways that have influenced the development of the industry and policymaking about it. Beyond the well-known app-based or web-based markets for services like Uber, Lyft, Taskrabbit, and so forth, there lies a huge, ill-defined, and (to some) confusing welter of companies that provide services to consumers through the labor of people who contract with the company on terms that have become quite controversial. And even as to the most familiar of the companies – the ride-hailing and delivery service companies like Uber, Lyft, and Postmates – there is an interesting combination of familiarity (many love the convenience of summoning a ride or food delivery with a few taps on a smartphone) and mystery (do the drivers earn a fair or adequate income? If not, what can be done?). This timely, creative, and ambitious book aims to shed light on the work of the gig economy, on what we know and don’t know about the work, and about how law does and should regulate working conditions in this segment of the economy.

The question of whether or which minimum labor standards laws should govern gig economy work has been controversial for years, and especially since California adopted the so-called ABC test for distinguishing employees, who are entitled to the protections of minimum labor standards laws, from independent contractors, who are not.¹ California companies must comply with all minimum labor standards laws unless their workers are (1) free from the company’s control in performing the work; (2) the work is outside the usual course of the company’s business; and (3) the worker is customarily engaged in an independent occupation of the same nature as that involved in the work performed.² Litigation and the media frenzy surrounding the new law portray sharp differences of opinion – and no agreement on the facts –

¹ California first adopted the ABC test in a 2018 court decision *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal. 5th 903 (2018), and then codified and extended it through legislation effective January 1, 2020, Cal. Lab. Code § 2750.3.

² Cal. Lab. Code § 2750.3.

regarding whether workers and companies benefit from treating workers as employees. Will the new law eliminate the schedule flexibility that workers desire? Will it destroy the app-based business model? Into this fog of partisan rancor and disagreement about the facts, the chapters of this book shine clear light.

As the California legislature debated the legislation adopting the ABC test, unions, worker advocates, and some large app-based service companies negotiated behind the scenes to carve out a partial exemption from the new law for companies that recognized a union for their workers.³ Among the questions in those negotiations were fundamental issues of worker preference and policy design. Do app-based drivers want a union? What should a union bargain over, and how would it get leverage to improve wages, benefits, and other working conditions through negotiation? What legal protections should or can a state grant to a union for independent contractors, given that business groups have staunchly insisted in litigation elsewhere that collective bargaining by independent contractors violates antitrust law? This book provides creative, rigorous, valuable empirical research to address these questions.

The issues discussed in this book are both new and old. They are new in the sense that technology has enabled companies to coordinate (or, as critics might say, control) a vast workforce with great ease, and to ensure good customer service while paying the lowest wages necessary to induce workers to work. Thus the “gig economy” has the veneer of innovation and disruption (as Silicon Valley boosters love to say). But short-term or episodic work is as old as modern capitalism. In the early twentieth century, when labor had pushed states to adopt laws providing for minimum wages and social welfare protections funded by payroll taxes, companies figured out that they could lower wages and avoid payroll taxes by treating their workers as independent contractors (or, as they were called in those days, peddlers). So bakeries, dairies, and other companies fired all the drivers they had employed to deliver their goods to stores and sold their fleets of trucks to the drivers who then set themselves up as peddlers.⁴ Something similar happened in the entertainment industry in the late 1940s, when movie studios, faced with declining movie attendance, revamped their business model to transform their stables of writers, directors, actors, and tech people into short-term contractors.⁵

Whether in trucking, entertainment, construction, or many other sectors, the workers who fared best in gig work were those who figured out how to negotiate

³ Kate Conger & Noam Scheiber, *California Labor Bill, Near Passage, Is Blow to Uber and Lyft*, N.Y. TIMES (Sept. 9, 2019).

⁴ See *Bakery Drivers Local 802 v. Wohl*, 315 U.S. 769, 770 (1942) (accepting trial court finding that after the Social Security Act and New York unemployment compensation act imposed payroll taxes, the number of independent contractors among bakery delivery drivers in New York City increased from less than 50 to over 500 as bakeries fired drivers and sold their trucks to them for nominal amounts and continued to contract with them to deliver goods).

⁵ Catherine L. Fisk, *Hollywood Writers and the Gig Economy*, 2017 U. CHI. LEG. F. 177.

collectively for pay and benefits. Hollywood, for example, has been a gig economy for half a century, and the guilds and unions that represent workers negotiate on a sectoral basis for pay and portable benefits to enable workers to survive (and, in some cases, to thrive) in an industry characterized by unpredictable short-term employment punctuated by periods of unemployment.⁶ The employee-independent contractor distinction for truckers did not matter (much) when the Teamsters Union was strong.⁷ Unionized construction work has enabled workers to control the job-matching process (through hiring halls), to train new workers (though apprenticeship programs), to monitor safety (through union trainings and contractual protections), and to have portable benefits. Scholars and journalists have documented the strengths and weaknesses of these regimes and, especially, the extent of, the reasons for, and the impact of their decline.⁸ What policymakers, scholars, students, and activists need to know, however, is how to build something new in gig work as it exists today. The need for a new approach has become even more acute as the coronavirus pandemic and unemployment levels reaching levels not seen since the Great Depression have revealed the devastating economic and health consequences of the gig economy's massive shift of risk from enterprises to workers.

This book provides important insights into that question through its thought-provoking combination of empirical and legal analyses by academics and observers or participants in the gig economy. It provides a window into what Uber drivers think about their working conditions, what they want from law and from a union, and how Uber's End User License Agreement (the contract between drivers and the company) in combination with Uber's algorithmic management undermines driver independence. It fills a huge gap in the literature about how care workers find jobs on technology platforms. It provides data and analysis to inform tax policy for gig work, transportation planning for local governments, and to explain why workers get (and feel) "stuck" in app-based gig work even though they started it only as a stopgap. As Harry Campbell (an Uber driver, former aerospace engineer, and author) observes in his chapter, it is extremely "important for regulators to listen to, and understand the lives of the rideshare drivers they are trying to regulate." Indeed it is. This book does a huge service by helping all of us who read it to understand a bit about the work lives of the people who comprise the gig economy.

⁶ *See id.*

⁷ STEVE VISCELLI, *THE BIG RIG: TRUCKING AND THE DECLINE OF THE AMERICAN DREAM* (2016).

⁸ *See, e.g.,* JAKE ROSENFELD, *WHAT UNIONS NO LONGER DO* (2014).

Acknowledgments

This book, like the genre of labor exchange it explores, came into being in remarkably little time. The original invitations were sent out around October 2018, the publication agreement was signed in January 2019, draft chapters were circulated in July, and the final manuscript was assembled in November of that year. While that pace certainly indicates the pent up need for this type of interdisciplinary conversation about gig work regulation, it also reflects the combined efforts and enthusiasm of many individuals.

The project would not have gotten off the ground without the encouragement of my colleague at Alabama Law, Ron Krotoszynski. Ron was willing to entertain my spur-of-the-moment thinking about how to bridge disciplinary divides in the study of gig work, he was a fantastic resource throughout the publication process, and – perhaps most importantly – he introduced me to Matt Gallaway at Cambridge University Press. Matt, in turn, was willing to engage with a nontraditional book proposal from a junior scholar, and to move the project through the review process in an admirably timely way. He, along with a fantastic editing and production team, made it possible for this project to continue on schedule despite the complications of the COVID-19 pandemic. At Alabama Law, I also benefited from Dan Joyner’s careful advice, Gabriell Jeffrey’s superb research assistance, library help from Penny Gibson, and all-round administrative and technical support from Erica Nicholson, who made it possible for me to finish this project while on maternity leave.

Most of all, of course, I am grateful to the contributors themselves. I am thrilled to be able to include each one of them in this volume because, collectively, they represent almost the entire corpus of qualitative research on gig work. Moreover, participating in this project was an intellectually demanding exercise: it required the social scientists to address themselves to a normatively inclined audience, asked the legal scholars to think creatively about the nature and value of qualitative research, and pushed nonacademics to view their everyday activities as a kind of “research” and to translate them accordingly. Each of the contributors also read and commented on someone else’s chapter in order to facilitate the volume’s goal of being

Acknowledgments

xiii

intelligible across disciplinary and professional boundaries, and they had to do all this – write, read, comment, and revise – in less than ten months. As if all of this were not enough, three of the contributors gave birth in that ten-month period. I am not sure I can adequately thank all of them for including this project in their already busy schedules.

Lastly, as always, I owe thanks to my family for their support: to my husband, John, who did not flinch at the onset of yet another project; to my mother, Mallika, who kept me fed and happy as I wrote parts of it; and to my son, Ananth, who made his appearance while this volume was being assembled and who consequently spent his first few weeks competing with it for my attention.

Cambridge University Press
978-1-108-48776-4 — Beyond the Algorithm
Edited by Deepa Das Acevedo
Frontmatter
[More Information](#)
