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Book Review



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Abstract

The gig economy is “the collection of markets that match providers to consumers on a gig basis in support of on-demand commerce.” Some of the most recognizable examples in Canada are Lyft and Uber. In a September 2017 report by the Bank of Montreal on the gig economy, it was estimated that 2.18 million Canadians were categorized as temporary workers, which include people who take on term, contract, or temporary employment, such as freelancers. This report defines a gig as “any job, especially one of short or uncertain duration.” A recent Ontario Court of Appeal Case, *Heller v Uber Technologies Inc*, identifies the important step needed to determine whether a worker is an employee or not. In the United States, there has been lawsuit after lawsuit which leads to settlement after settlement in the gig economy. Most of the conflicts centre around how workers are classified and benefit (or fail to benefit) as a result.

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Book Review

Humans as a Service: The Promise and Perils of Work in the Gig Economy, by Jeremias Prassl¹

ARA DUNGCA²

THE GIG ECONOMY IS “the collection of markets that match providers to consumers on a gig basis in support of on-demand commerce.”³ Some of the most recognizable examples in Canada are Lyft and Uber. In a September 2017 report by the Bank of Montreal on the gig economy, it was estimated that 2.18 million Canadians were categorized as temporary workers, which include people who take on term, contract, or temporary employment, such as freelancers.⁴ This report defines a gig as “any job, especially one of short or uncertain duration.”⁵ A recent Ontario Court of Appeal Case, *Heller v Uber Technologies Inc*, identifies the important step needed to determine whether a worker is an employee or not.⁶ In the United States, there has been lawsuit after lawsuit which leads to settlement after settlement in the gig economy.⁷ Most of the conflicts centre around how workers are classified and benefit (or fail to benefit) as a result.

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1. (Oxford University Press, 2018) 199 [Prassl].
 2. JD (2020), Osgoode Hall Law School, Toronto, Canada.
 3. United States, Congressional Research Service, *What Does the Gig Economy Mean for Workers?* (CRS Report R44365) (Washington DC).
 4. BMO Wealth Management, “The Gig Economy” (July 2018) online: <www.bmo.com/assets/pdfs/wealth/bmo_gig_economy_report_en.pdf>.
 5. *Ibid.*
 6. 2019 ONCA 1 [*Heller*].
 7. See generally Orly Lobel, “The Gig Economy & the Future of Employment and Labor Law” (2017) 51 USF L Rev 51.

As *Heller* demonstrates, litigation is starting to emerge in Canada. Therefore, analyzing the origins and uncovering the truths on how the gig economy functions is rather timely.

Jeremias Prassl is a Fellow of Magdalen College at Oxford University.⁸ His particular interest in the future of work is demonstrated not only by this book, but also his previous book, *The Concept of the Employer*.⁹ In both this previous book and his publication in the *Comparative Labor Law and Policy Journal*, he discusses the reconceptualization of the functional concept of the employer.¹⁰ With respect to the gig economy, this means flexibility in determining who holds the employer obligations. As will be discussed below, he continues to explore this concept in his proposed solutions.

In *Humans as a Service: The Promise and Perils of Work in the Gig Economy*, Jeremias Prassl argues that employment law is the key to ensuring that all workers enjoy equal and equitable conditions in the gig economy.¹¹ He paints a picture of worker abuse and inability to sue for remedy against the large operator (the platform) while also arguing that the gig economy is not truly innovative. To the layperson whose closest experience in the gig economy is simply using the services, the details and insights Prassl shares serve as an eye-opener to the inner workings of the industry. Overall, the book is a comprehensive account of the gig economy and effectively justifies why employment law should apply.

With only six chapters in addition to an introduction and epilogue, Prassl effectively builds his case for the application of employment law to the gig economy. He begins by setting up the gig economy landscape including its growth, the reality that it appeals to those most vulnerable in society, and the negative externalities it creates—such as the effects on the environment of an oversupply of cars on the road.¹² He then moves on to discuss “Doublespeak,” which is also the title of chapter two. It is revealed that most platforms employ strategists to shape their public relations, who then take advantage of the information asymmetry that exists between the platform and regulators.¹³ For

8. University of Oxford, “Jeremias Adams-Prassl,” online: <www.law.ox.ac.uk/people/jeremias-prassl>.

9. Jeremias Prassl, *The Concept of the Employer* (Oxford University Press, 2016).

10. Jeremias Prassl & Martin Risak, “Uber, Taskrabbit, and Co.: Platforms as Employers—Rethinking the Legal Analysis of Crowdwork” (2016) 37 *Comp Lab L & Pol’y J* 619 at 648-49.

11. Prassl, *supra* note 1 at 7.

12. *Ibid* at 12, 21, 29.

13. *Ibid* at 32.

example, the word “disruption” is essentially used to justify breaking the law.¹⁴ Prassl also states in this chapter that “it is hard to regulate that which we don’t understand, or perceive to be novel and different.”¹⁵ This framing sets up the notion that the reason the gig economy is not firmly tackled within traditional law is because of the lack of understanding.

This is the gap Prassl tries to fill throughout the rest of the book. In chapter three, Prassl heightens the attack on how the gig economy currently works. For example, he explains the tight control algorithms put on employees that undermine the notion of entrepreneurship and argues that the on-demand economy threatens to dehumanize workers.¹⁶ In chapter four, Prassl continues to undermine the claim that the gig economy is innovative by sharing how outworkers in the nineteenth century essentially worked in the same way. Put another way, his point is that there is nothing terribly new about the gig economy.

The background knowledge is then followed by his proposed solutions. Ultimately, he believes the gig economy should fall within employment law. He also advocates for adjustments such as adapting a functional concept of the employer or allowing surge pricing for gig work when the wage falls below minimum wage.¹⁷ The functional concept of the employer theme follows a similar line of thinking from his past works. He proposes that the platform and participants within the platform who function like employers when they give instructions or control the worker share in the obligation towards the workers. This may mean the customer asking for the service may bear some of the burden since they are the one directing the gig worker like a traditional employer. This is a pivotal part of the structure of the book since it provides answers to the problems Prassl posed throughout the preceding chapters. He then moves on to discuss big-picture implications on society. A looming question throughout the book is with regards to who bears the cost of increasing the regulations and therefore, costs for the workers in the gig economy. As he notes, cost is already born by society in lost taxes and as a result of many workers relying on welfare due to inadequate wages.¹⁸

14. *Ibid* at 37.

15. *Ibid* at 32.

16. *Ibid* at 52-53.

17. *Ibid* at 104, 108.

18. *Ibid* at 127.

The discourse on how workers should be treated in the gig economy is far from novel.¹⁹ Therefore, Prassl should be commended for creating a piece of work that contributes a new perspective. The basic debate has been whether to treat workers as employees or independent contractors. Prassl presents more reliance on this binary choice in comparison to other scholars since he grounds his arguments on the belief that workers within the gig economy are employees. He states, “there is little need to reinvent the wheel” when asking whether they are employees or independent contractors.²⁰ His main explanation for this is the tight control exercised by the platform on the workers. He also discusses cases where judges ruled that workers are to be treated as employees such as *Aslam, Farrar v Uber*.²¹ Prassl’s added contributions include suggestions on how to operate the gig economy.²² He believes workers should be guaranteed a minimum set of hours and a minimum wage. If the number of hours is not met, the employer should be obliged to pay a “surge price.” He also suggests that workers should have the ability to transfer ratings to new platforms to increase employability. While Prassl clearly operates within the framework of recognizing the workers as employees, other scholars focus on the need for legislatures to create a third category of workers. Andrew Malik more generally calls for a category that balances the flexibility workers desire and the desire for the platforms to exert more control.²³ Michael Nadler names the third category as “independent employees” who are granted the same protections, but trade economic assurance for flexibility.²⁴ While providing no specifics on how it should be structured, Anirudh Mandagere also suggests the creation of a category called “intermediate workers.”²⁵ It is obvious that these three scholars lean towards the position that the gig economy is novel enough to warrant a new classification. Prassl’s new addition to the debate creates an increasing list of choices for scholars and perhaps, legislatures, to consider.

The notion that this type of work has always existed is central to Prassl’s argument. This is his most interesting insight when considering the gig economy.

19. See *e.g.* Andrew G Malik, “Worker Classification and the Gig-Economy” (2017) 69 Rutgers U L Rev 1729; Michael L Nadler, “Independent Employees: A New Category of Workers for the Gig Economy” (2018) 19 NCJ L & Tech 443; Anirudh Mandagere, “Examining Worker Status in the Gig Economy” (2017) 4 J Intl & Comp L 389.

20. Prassl, *supra* note 1 at 93.

21. *Ibid* at 98; *Aslam, Farrar v Uber* (28 October 2016), ET/2202550/2015, online: Employment Tribunal <<https://www.judiciary.uk/wp-content/uploads/2016/10/aslam-and-farrar-v-uber-reasons-20161028.pdf>>.

22. *Ibid* at 107-13.

23. Malik, *supra* note 19 at 1766.

24. Nadler, *supra* note 19 at 495.

25. Mandagere, *supra* note 19 at 395.

In the introduction, Prassl reveals that Amazon was the first player in the gig economy when they created “a new kind of microwork, whereby a crowd of individuals could complete discrete tasks in minutes and be paid pennies for it.”²⁶ Jeff Bezos called it “humans as a service”—where Prassl derived the title of this book.²⁷ Further into the book, Prassl concedes that the technology is innovative, but the “transformation of a workforce into a taskforce was one of the hallmarks of nineteenth-century labour markets.”²⁸ Outworkers completed discrete tasks with their own tools and materials, and did the work with their own resources (their homes).²⁹ Prassl’s juxtaposition of this long existing work type against the current environment serves as a convincing argument that gig work has always existed.

Despite the clarity of Prassl’s ideas, it is another question whether a reader will be fully convinced that they should prevail. At times, it felt as if Prassl was so convinced by his own views that his engagement with opposing views suffered. While he addresses them, he does so briefly so as to easily dismiss them. To a layperson, the most attractive part of the gig economy is the cost savings. He states that prices will rise—without attribution.³⁰ He centres his claim on the fact that the loss leader strategies are unsustainable, as mentioned because of lost taxes and welfare reliance. These do not necessarily answer the everyday lived experiences of consumers who take joy in the fact that taking an Uber is cheaper than a cab. Prassl tries to appeal to the reader’s emotions throughout the book by sharing stories that highlight the consequences of employees refusing to perform unfair work. For example, when a TaskRabbit employee demanded to be paid a higher price for performing a very unpleasant job (*e.g.* laundering clothes soiled with cat diarrhea), TaskRabbit refused and warned the employee they would be fired if they demanded a higher price again.³¹ He also shares that the reason workers never share their bad experiences with the platform they are working for is because “depressing workers don’t get high ratings.”³² Prassl’s explanation of how the algorithms work also paint a dire picture of the tight control these platforms exert over workers’ lives since workers have to maintain high ratings to be assigned jobs. This seems to contradict results from a recent study of the gig economy by the Bank of Montreal where it was found that forty-nine per cent of temporary workers have autonomy and control, and forty-nine per cent perform

26. Prassl, *supra* note 1 at 2.

27. *Ibid* at 3.

28. *Ibid* at 77.

29. *Ibid*.

30. *Ibid* at 121.

31. *Ibid* at 57.

32. *Ibid* at 58.

gigs to make extra money on the side.³³ These statistics show that the situation is not as desperate as Prassl seems to suggest throughout the book. This is only one report—but with the growth of the gig economy, it is reasonable to assume that many appreciate its existence. Acknowledgement of those who enjoy the gig economy as it is, could have balanced Prassl's argument and proven that he considered all sides.

While the chapter proposing solutions to the gig economy was interesting, another concern that was not clearly addressed was the practicality of implementation. For example, his proposal that ratings should be portable between platforms sounds ideal.³⁴ However, he neglects to consider that platforms vary. Implementing portable ratings would require coordination that may not be feasible especially between businesses that compete with one another. His solutions are grounded on the belief that workers within the gig economy should be treated as employees. Therefore, if a reader took issue with this characterization, then the lack of alternatives is worrisome.

Overall, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* serves as an interesting argumentative piece in support of treating workers within the gig economy as employees. It is a worthy read for any academic or practitioner interested in learning more about the origins of the gig economy and its inner workings. Jeremias Prassl is brave in his assertions that there is “nothing new under the sun” and employment law is vital for the gig economy to continue. Readers will either find satisfaction in the comprehensiveness of the “employee” argument or desire for a more balanced argument.

33. BMO Wealth Management, *supra* note 4.

34. Prassl, *supra* note 1 at 111.