

Episode #255: Are Uber and Lyft drivers being exploited?

Julia: Welcome to Rationally Speaking, the podcast where we explore the borderlands between reason and nonsense. I'm your host, Julia Galef. And before we get into today's episode I just wanted to remind you all that my book is coming out very soon, on April 13, and you can pre-order it now. It's called 'THE SCOUT MINDSET' and it's about the motivation to see things as they are, and not as you wish they were. Basically, how and why to be intellectually honest and curious about what's actually true. It's an easy read and full of lots of stories and examples that I haven't shared before, and if you enjoy this podcast I think you'll enjoy the book.

Okay, let's dive into today's episode! This is one that features three different interviews, all of which are investigating one question, kind of like my episode a few months ago on the question of whether Baby Boomers are to blame for millennials' woes. And the question I'm investigating in this episode is: Are drivers for Uber and Lyft being exploited?

Your answer to that question depends, as I learned from my interviews, on how you think about a few key questions such as: How much are rideshare drivers really earning, after expenses like the upkeep of their car, and do they have an accurate picture of how much they're earning? Would drivers be better off if Uber and Lyft made them official employees, instead of independent contractors? And what should we make of the fact that in surveys, most drivers say they don't want to be employees? All of those questions are contentious, and you'll hear them reoccur throughout my conversations in this episode.

The three guests I speak to are, in order, Louis Hyman, a professor of work and business at Cornell who studies the gig economy; Veena Dubal, a professor at UC Hastings law school and a prominent advocate of giving rideshare drivers employee status; and Harry Campbell, who is a rideshare driver himself, and the founder of The Rideshare Guy, a blog that gives advice to other rideshare drivers.

I started recording these interviews a few months ago when California was deciding on the future of a law called AB5, which was designed to make it harder for companies like Uber and Lyft to rely on the labor of independent contractors. Ultimately the voters opted to carve out an

exception to AB5, for Uber and Lyft, to let them keep classifying their drivers as independent contractors, and it also gives the drivers some benefits they didn't have before.

But of course the debate over whether Uber and Lyft are exploiting their workers has not ended and there are going to be similar battles over this in other cities – for example, a few weeks ago Uber was forced to stop classifying its drivers in England as independent contractors. So you'll hear us refer in some of the interviews to the California law, AB5, but this is really a much more general issue that's going to continue being debated in cities all over the world in the next few years.

So as I said, my first interview is with Louis Hyman, a historian at Cornell University, specializing in the history of work and business. He's the author of several books including, most recently, 'Temp: The Real Story of What Happened to Your Salary, Benefits, and Job Security.' I was eager to interview Louis because, first, he was the lead author on one of the main studies estimating the earnings of rideshare drivers. And second, I find his perspective interesting because as you'll hear from our conversation, he doesn't support making rideshare drivers employees, but he's not what you might imagine as a stereotypical pro-free market, pro-capitalism ideologue.

So here is historian Louis Hyman.

[musical interlude]

Louis: So the story about Uber is that it's the cause of all this inequality. Whereas really it's just what made this inequality -- of both income, but also stability... So wage inequality, but also wage volatility -- so visible to normal Americans. And this experience predated the "gig economy."

The reason why Uber is possible is the failure of traditional employment. So you would have to believe that people who work at Walmart and at Starbucks and at the Gap are doing great because they have access to all those traditional laws as W2 employees. And yet we all know that they're not. And so in a lot of ways, the gig economy is the symptom, not the cause of this.

So [this is] one of the things I push back on. Which is not to say that the gig economy is great for workers. But it's to say most people don't work

in the gig economy, especially digital gigs like the platforms. It's about 1% of the workforce. So to think that that is the main driver of what we're experiencing now is just categorically inaccurate.

Yet, you see regulators saying, "Oh, if we just fix this, if we held these monopolies accountable, if we held these big tech firms accountable, then everything would go back to normal." But going back to normal means going back to 2007 when things weren't great either. So I think that for me, that's one of the challenges in these conversations, that the good job has been eroding for 50 years.

Julia: So, is it your opinion that regulations like AB5 in California, which essentially banned companies from relying on gig workers, would those regulations make things better or worse?

Louis: I think they would make them worse.

Julia: How so?

Louis: Let me tell you why. I think that what happens when you suddenly abruptly change the business model for these -- not just Uber and Lyft, but for journalists and all kinds of workers -- is those jobs will instantly disappear. Right? This is regulatory, just regulatory chaos for the companies that are involved. Even if Uber and Lyft want to retool to this new model, it'll take them many months to do so, because they have to hire thousands of people. They have to think it through.

That's assuming that they would even do that. What I think would actually happen, because their model is based on a variable kind of worker, would be they would just exit those states and all the workers who are reliant on those jobs would suddenly have no access to that kind of work anymore. I don't think that they would suddenly create regular full-time "good jobs". I think they would just disappear.

Julia: Do you think that the advocates of laws like AB5 understand that, and they just figure that, well, in the long run, this will lead to better jobs for workers? Or why do you think you have a different picture of the effects of this law than its supporters do?

Louis: That's a good question, right? I think there's different kinds of supporters. There's supporters who are like, "No, no, no, that's just corporate propaganda and they will actually adapt to it."

There's people who are cynical, who I think see all the money being made by Uber and think, "Well, a share of that should go to the workers. The way to do that is through these laws." ... Sorry, those people are not cynical. That's a very reasonable position.

Then, there's cynical people who are like, "Yeah, we can denounce Uber, and then we don't have to talk about the real problems in the economy. The fact that most people work as cashiers and shelf stockers, and things like that. Then, we can make it seem, by putting out these particular kinds of companies as evil, it makes the rest of capitalism seem okay."

For me, it's a dodge on some level, for those people. That the service economy, where everybody works, is actually a huge problem and the laws for the employees there don't work for them. Yet, by focusing on Uber, and not pizza delivery people or Walmart cashiers, then suddenly we have moved things, we've moved the conversation away from the things that are actually wrong in capitalism.

If there's going to be change, we need to have worker, driver organizations that are actually speaking for the drivers and trying to demand... I mean, personally, I support things like a wage floor. So, an earnings per hour measure for drivers. That is different than hiring someone as an employee. You can have an independent contractor, or a new kind of independent worker classification under the law that says, "Look, people have to make \$20 an hour minimum after costs." There's ways to do that kind of math and do those calculations.

That's not what these systems are talking about. They're trying to shoehorn people, many of whom don't want full-time work... if you look at the survey data, you look at the actual data of people doing these jobs, they might work 10 hours a week. They might work 20 hours a week one week, and then zero the next. Or 45 hours one week and zero the next. Some people want to be full-time, right? But that's not what these jobs are. These jobs are shoring up the failures in the rest of the service economy.

We know this from data. JP Morgan-Chase has access to all kinds of consumer checking accounts. I'm remembering here, but I believe that it was about... the average household, the median household, about half of them had month to month fluctuations in income of 30%.

Just get your head around that. We talk a lot in this country about income inequality. We don't talk at all about income volatility. How would you pay your rent if your income was going up and down? This is mostly explained by people who are in the same job. I think it's like 80% or 85% of them had the same job from month to month.

Why is that? The answer is shift work... I have these conversations a lot with people who are in their own bubble, the people in the top 20%, who are salaried workers, who get the same paycheck every month. They say, "Well, why can't people just budget? Why do they need these kinds of jobs?" The answer is, well, a lot of people... and it's even worse the further down you go. That's for the average household I was just saying. So how do people make up that gap? Well, they make it up either in debt, or they make it up with additional hours of work. What a lot of these companies offer is the opportunity to shore up their finances when they can't get a shift that week.

This is sort of the hidden side of our economy, that there is so much variation for income for working people. That's the real problem with these gig jobs as well, is the variation. I did a study looking at the data with a team of people at Cornell, looking at the data for just one week in Seattle. And it's very limited results, but we had a pretty high average. A much higher average hourly earnings than we would have thought.

Julia: I saw that study. I wrote it down -- the median driver in your study in Seattle earned \$23.25 per hour after expenses, which surprised me given that I've seen all these headlines trumpeting that Uber and Lyft drivers make less than minimum wage.

Did your results surprise you? Do you understand why you got a different result than some articles have claimed?

Louis: Yeah, no, the results were absolutely shocking to us.

So, in the study, we outline different ways to calculate costs. The costs for that headline number -- which the PR people wanted us to have one

number that was the answer -- that was the median for part-time drivers, right? So we included only marginal costs. If you're driving 10 hours a week, you should be incorporating marginal costs in your expenses, like gas, insurance, things like that. The depreciation on your car, things like that.

As opposed to the cost of whether or not you own a car. Right? If you're driving for 10 hours a week, you have already made the choice to own a car.

Julia: Right. It's not like you purchased a car to be an Uber driver. Which is, I guess, an assumption that some other studies made, that all Uber drivers bought a car in order to be a driver? Which seems unrealistic.

Louis: It makes total sense for New York City, and it makes no sense for anywhere else in the country where Americans have cars. A lot of those studies are based on New York City. Then, for drivers who are full-time, our study says, "Yeah, yeah, yeah, it's totally reasonable to include the cost of owning a car full time."

And so that number drops to about \$18 an hour after costs -- which is lower, but still as one would expect, higher than minimum wage. I mean, why would anyone do this if it was so terrible? If someone were actually earning \$3 an hour, why would anyone do it?

Julia: That's what I always wondered. But the rejoinder is always, "Well, they don't realize. They're not taking into account the cost of depreciation of their car, and gasoline, and everything."

And so they're just kind of deceived, or self deceived or something.

Louis: Oh yeah. Yeah. Tens of thousands of people are stupid. They're total dummies. I mean, it's incredibly condescending, right?

But what we did find -- and here's where it reconciles with those narratives... So the average was 23 for part-time drivers and 18 for full-time drivers, but the variation was insane.

So if you're a cashier at a coffee shop, you make a wage and the person next to you probably makes within 50 cents an hour of you, right? We've all had these jobs. Well, if you're an Uber driver or a Lyft driver in

Seattle, the person to your left might be making \$9 an hour, and the person to your right might be making \$40 an hour.

Julia: And what does that depend on?

Louis: Well, no one knows. So we were the first study to have access to both companies' data simultaneously so that we could de-duplicate the time where people had both apps on. So our future studies hope to figure out what is the cause of it? Is it time of day? Is it various strategies?

But we do know that this variation is just simply obscene. You can find many, many, many people who are making less than minimum wage. So in our study, we found that about 25% of drivers who were full-time made less than the minimum wage in Seattle.

Julia: And how would you explain that? Are those people... is it just, like, a minority of drivers who are confused and not acting in their self-interest? Or, what's going on there?

Louis: So this is again a question for data, right? It was a particular week. So we don't know what it averages out over many, many weeks to. Or what the strategies are. Or whether these people who drove for 40 hours for one week were like, "Oh, I made 10 bucks an hour this week. I'm never doing it again." So what we want to do going forward is have a more longitudinal study to see whether what the effects are. Are people actually doing this?

Also, the study that we did on Seattle was particularly weird because the airport is outside of the Seattle City limits and we were looking just at the data for Seattle. And so we would like to look at a place where we can include the airport, which [could really change things]. So these are very provisional findings. I think that median will change.

But I also think that the story of the variation is the real story here. Because it's the variation that drives the experiences of drivers, but it's also the variation in their shift work, that's the alternative. People who are doing this are living in a world where employment, the promise of employment security has already been elusive and has failed them.

And that's, for me, that's the real story of the gig economy. How do we make it so that people have access to jobs that can pay them, can pay

them what they need when they need it, but also have security and benefits? And it may not be from one particular job. It could be from a combination of jobs. And it could be through important regulations like portable benefits and earnings floors. But we need to acknowledge the reality of how people are actually living right now, rather than pine for a nostalgic past and think that the regulations that worked, and the institutions that worked, in the 1950s and '60s will work today.

Julia: Yeah. I've been really confused about why this kind of solution that you just described -- where we help the average worker live a life that's sustainable and secure *without* tying those benefits to a particular job -- I've been confused about why that suggestion isn't more prominent in all of these debates.

Like, all the people who are campaigning for something like AB5 because they care about workers, why aren't they supporting this law that just seems strictly better to me? Where the government provides workers with, I don't know, healthcare, or more generous unemployment benefits, or things that will give them stability that don't require them to be tied to a particular job.

Why doesn't everyone just prefer a solution like that?

Louis: They feel like it would be a dodge. They think that these large corporations, that have all this money, are under an obligation to pay for their workers to do it.

Julia: But we could still tax the corporations to help pay for the healthcare and to pay into some government fund to give healthcare and unemployment insurance...

Louis: And in New York, there's something called the Black Car Fund that does exactly that. So every time you take a ride, it goes into a fund. And I'm not sure exactly how much of that ends up in the pockets of actual drivers, but this is a very easy thing to do now in the age of technology.

So the technology that on the one hand... Technology creates lots of possibilities. One possibility is the sort of immiseration of the masses, but also just empowering people to be more flexible in their work. And a lot of people need that flexibility, especially caregivers, students... There's lots of people that need that. So it could be that this kind of job

doesn't work well for a 40 hour week full-time job. That doesn't mean it shouldn't exist. It just means that it should exist in a way that provides what the workers who are doing it need.

I think the larger question is how do we create other alternatives for people who want full-time jobs? And that's where that larger conversation about science and technology and industry comes in.

For some of these people, I think it's... I understand emotionally where they come from. And I agree with those sentiments. That it's frustrating on the one hand to see these IPO billionaires, on the one hand, and the immiseration of average workers on the other. But I don't think this is the particular solution to that. I think taxing those billionaires... Having an IPO tax, so that when they issue these stocks and make all this money, that the money goes back to the people in general.

So there's ways to think about this, without resorting to old models that may no longer apply.

[musical interlude]

Julia: That was Louis Hyman, labor historian at Cornell and the author of *Temp: The Real Story of What Happened to Your Salary, Benefits, and Job Security*.

My next interview is with someone who Louis and several other people recommended I speak to for an opposing perspective on the situation of rideshare drivers. Her name is Veena Dubal, an employment law professor at University of California Hastings, and she's spent the last 10 years studying the taxi industry in San Francisco. She was one of the most prominent advocates of AB5, the law in California that was aimed at forcing Uber and Lyft to reclassify their drivers as employees instead of contractors. Here is my conversation with Veena Dubal.

[musical interlude]

Julia: One of the big sells of driving for Uber and Lyft is the flexibility. That you can drive as much as you want in a given week, you can drive when you want.

And the standard narrative at least is that, that is something that would be sacrificed if companies like Uber and Lyft were forced to reclassify their drivers as employees. Is that true?

Veena: Well, yeah, that's the question, I think. So I have a couple of thoughts about it.

The first and the most important thing to understand I think is that the companies have made this conversation about flexibility. There's nothing about employment status that mandates flexibility or a shift schedule. That is a business decision that has nothing to do with the benefits that are provided or that companies have to provide by law.

That said, what's going on right now is you have a system that is working really inefficiently. You have an over-supply of drivers and limited demand. And so, a lot of the time that drivers are spent something like... Even before the pandemic, when there was high demand, you had drivers in California saying that they spent 50% of their time waiting for a fare. That meant that for 50% of the time that they were out and about they weren't getting paid, which is why so many drivers were making less than the minimum wage.

Julia: I'm confused because I've seen so many different studies trying to estimate how much drivers actually earn. And of course, it's going to vary a lot depending on what city you're in, and what year we're talking about and everything. But there seemed to be at least several reputable studies I found that concluded that the median driver made significantly *more* than minimum wage. Even when taking into account expenses, like the cost of your gasoline, and so on. And so I was wondering where that figure came from that you were quoting.

Veena: Yeah. The study that you're referencing is out of Cornell, and that was a Uber and Lyft commissioned study conducted by Lou Hyman, who's a historian. And based on --

Julia: I actually interviewed him for this episode. Yeah.

Veena: Oh, interesting. So based on the data that he used, there was a redo of his study that showed that actually even based on his data, the vast majority of drivers in Seattle are making less than the California minimum wage.

Julia: Oh. And do you know what the redo did differently?

Veena: Yes. He did a number of things that he was directed by Uber to do which made the number look much higher than it actually was.

And something that I think is important to note in his study is that actually he found that a number of drivers did make less than the minimum wage. So even though the mean seemed higher, the point is that a wage floor is necessary because workers are making less than the minimum wage and wages are not predictable.

But one of the things that he did was he included tips in his numbers which is illegal under Washington State law. You cannot include tips in calculating wages because it is so unpredictable. He also didn't include all the things that one would include when you're calculating expenses. So he didn't include hybrid car insurance which is something like 600 to \$800 a year. He just didn't calculate that into his expenses. Because he said that the vast majority of drivers are part-time drivers, he just didn't include most car expenses, the vast expenses that people use for their cars.

Julia: Like the cost of buying a car?

Veena: Yes, cost of wear and tear on a car, all of that stuff. He used a much lower mileage amount rate than the IRS uses and the state of Washington uses.

And so, there was another study. That study was actually done... And maybe you've read about this so you can stop me from...

Julia: No, no, go ahead.

Veena: That study was done because the city of Seattle had commissioned a wage study, by two independent economists, James Parrott and Michael Reich at UC Berkeley. Michael Reich also found that in California -- and this really comports with what I find anecdotally in my research -- drivers are making less than the minimum wage, even before they calculate out all of their expenses, which is really something.

In San Francisco and LA, I'm talking mostly to full-time drivers, they are often, even before they calculate out their expenses, especially right now

in the pandemic, making less than the minimum wage. And what's sort of awful is that if economists can't agree on how much drivers are making, then drivers are certainly not in a position to have any predictability of income, right?

I think that's the point about employment status, is rather than having Uber or Lyft be able to lower driver wages from day to day -- which they have done since day one -- no driver who was driving in 2014, 2013, no one has ever gotten a raise. Even the ones that have been doing this for five or six years, seven years. Their wages have only dropped since the beginning.

And so, instead of leaving these wages at the whim and whimsy of these companies, making it very hard for drivers to be able to understand how much they can or will make after driving a certain number of hours, employment status would create some wage floor so they can say, "Okay, if I drive 40 hours, I'm going to make at least... If the minimum wage in the city is \$10, I'm going to make at least \$400 that week", that they have that kind of predictability.

Julia: Great. So a couple of questions about that. First, does it seem suspicious at all that so many people would be choosing to keep driving for Uber and Lyft if they really are making less than the minimum wage?

Veena: Yes, that's also a good question. And what I hear a lot when I'm debating this issue is people say, "Well, if that's so bad, people should just leave" or, "People would just leave."

And I think there are two problems with that. The first thing is that a lot of drivers have purchased their vehicles based on this promise that they're going to make a certain amount of money per week.

In many cases, Uber and Lyft have actually even facilitated predatory loans for them. They were fined at the FTC level for doing this a few years ago, but they continue to sort of promise that you can make a certain amount of money per week. And it is true that you make that amount of money for maybe the first few weeks, but what they do to sort of lock people in is they'll give... Because this is all so opaque, there's such an information asymmetry between drivers and the companies, but what the drivers say is that when they start working, they'll get a bunch of good shifts and a bunch of good fares and they'll make lots of money

-- and so they think, "Oh, this is great. I made a good decision in purchasing this vehicle or locking myself into this lease."

And then over a period of time, they'll get fewer and fewer and fewer good fares. And so they end up making less money in a few months than they did at the very beginning. And it's just the system and it's how it works. They lure people in with these promises then lock them in after they've purchased a vehicle such that they have to continue to work even though maybe they don't want to.

The other thing that I think happens is what I call the rationality of poverty. People, especially people in the margins of the economy, need cash right now. And so, they are not necessarily thinking the way middle-class people think about money. They're not thinking about how much money they're losing on their car, or they're not thinking about the fact that they might not even be able to afford the kind of hybrid insurance that they need in order to comply with the law and protect themselves in the case of an accident. All they're thinking about is, "I need to be able to get this cash right now to do what I need to do to pay my rent or to put food on the table."

Julia: So let's talk now about the data that we have around the driver preferences about staying gig workers versus becoming full employees. So, as I know that you know, there have been a number of polls surveying, asking drivers whether they would want to become full employees.

And pretty consistently, a substantial majority of drivers say they prefer to stay contractors. I think it's typically around 70%. I mean, it varies, but well above 50%.

So how do you square that with the claim that AB5 is good for drivers?

Veena: Yeah, it's a great question. So two things again. I have a paper coming out in a Cambridge University edited volume that addresses this question exactly because when I first looked at these surveys, I noticed that they were double-barreled, which is just like a no-no in survey research. They were asking, "Would you prefer flexibility and independent contractor status, or a shift schedule and employment protections?"

And again, as we said at the top, there's no connection between flexibility and employment status, that is purely a business decision. So they were making these associations themselves. They were doing the cultural work themselves.

And so then I decided to do my own survey and I found something similar. I just asked without the flexibility question, I said, "Would you prefer to be employees or independent contractors? And something like 60... 2/3 of drivers said that they wanted to stay independent contractors.

But then I went and I did follow-up interviews with those drivers, and everyone had a much more ambivalent perspective on the issue than the survey could capture. So drivers would say --

Julia: What were you asking in the follow-up interviews or follow-up survey?

Veena: I was asking why do you want to be an independent contractor, or conversely, why do you want to be an employee?

Julia: Okay, great.

Veena: And so drivers gave all kinds of really interesting answers. Gosh, I wish I had the data in front of me, but I'll just tell you anecdotally from that research, I found that many, many drivers -- and this comports with other research that says that most Americans don't know the difference between a W-2 and a 1099. They just don't understand the difference.

But also, beyond just sort of not understanding the difference, drivers were really afraid of what the company would do if they were an employee. So across the board, drivers said, "Well, yes, we want a wage floor. Yes, we want access to unemployment insurance. Yes, we want access to workers compensation. But what if Uber were our employer? Would they make us wear a uniform? Look how terrible they are to their engineers. Are they going to behave like that to us? What rules are we going to have to follow if we become an employee?"

They were really worried about the coercive aspect of employment, and not about benefits. Across the board, drivers need and want benefits. So they say things like... If another study were done and you ask drivers, "Do you want a wage floor?" Drivers will say yes. If you ask, "Do you

want unemployment insurance?" Drivers will say yes. And so, I think in large part --

Julia: But that seems unsurprising --

Veena: I'm sorry. Go ahead.

Julia: It seems almost self-evident that if you asked drivers, like, "Would you like all these good things for free with absolutely no strings attached?" they would say, "Well, yes, of course."

But the reason this is even a question, of whether drivers want to become full employees, is that there are constraints that come with being a full employee. It gives companies more power to --

Veena: That's right. Yeah. In the US, employment is coercive. You are at the whim and whimsy of your employer.

Julia: Yeah. But that's --

Veena: But when you start talking to drivers about what they experience right now, I think what many start to realize is that they are already treated like an employee. Like, they have no control over prices. Even when they're driving too fast, they get alerts. They are told where they can drive. They're told at the beginning of the week like, "These are the hours that you should drive because this is when we expect demand."

Julia: Oh, I believe all that, but wouldn't drivers be factoring that into their decision about whether they would, on balance, prefer being independent contractors -- versus, on balance, prefer being full employees?

They already know that they're subject to certain rules or coercions from the company even as independent contractors. And presumably, if they say that they prefer to be independent contractors, they're saying that the costs and benefits are better as an independent contractor, right?

Veena: Yeah. I mean, I think that it goes back to this earlier question, of do they really understand what employment status is versus what independent contractor status is? And people are so afraid that things will get worse than they already are. I think that's where the conversation about, "Well,

if you're an employee, then you can actually organize a union and then you can actually have control over some of these things via collective bargaining" comes in.

I think that some drivers are sort of getting there in terms of thinking about how to exert power in the industry, so that they aren't in a situation where they're completely coerced. And then, if you have these conversations where you're like, "Okay, you're afraid of having to wear a uniform, but don't you have to keep your car clean? Don't you have to wear a mask right now? Don't you have to put a little Lyft thing in your window? Don't you have to already do all of these things that maybe are similar to what you're afraid of?"

... I think these conversations really change what their instinct is. I think it is a human instinct to be afraid of a boss and to be afraid of what that boss is going to do. I think that that's kind of what their response to that question is, rooted in fear. And not rooted in what is their current reality, or what their reality could be in a post-employment context.

Julia: So here's one of my biggest questions. I think I did read the paper that you were referring to earlier where you asked to drivers follow up questions about, "If you say you prefer to be an independent contractor, why is that?" And I looked at some of the main classifications of the types of responses they gave.

And indeed, one of the biggest responses was, "Because I want to retain my flexibility." But the one that I didn't see on there that I would have expected would be the biggest response people would give is, "Well, if Uber is only allowed to have full-time employees, then they're going to have to cut a large portion, maybe a majority of their workforce. And so, if this law passes, there's a significant chance I will lose my job."

And maybe the reason no one gave that answer is that the way the question is phrased -- not just in your surveys, but in all of these surveys -- is, "Would you rather be an independent contractor or a full-time employee?" And it's just presupposing that the person responding to the survey would be a full-time employee, and so, they're comparing those two things.

But really the right comparison to make is: your current position, the status quo where you are an independent contractor versus the

probability, the possibility of becoming a full-time employee. And so you have to weigh both, how good it would be to be a full-time employee with the probability that you would actually be one of the people who would get one of those positions.

Does that make sense?

Veena: Yeah... In the reconstruction era after the Civil War, there was a lot of debate about -- particularly as we sunk into the Great Depression -- whether or not there were going to be minimum wage codes.

And then the discussion -- when it was decided that we were going to have minimum wage codes, particularly for low-income industries, the discussion was, "Should we have different minimum wage codes for black people than we have for white people?"

And even from more conservative black leaders, there was a strong commitment to the idea that black workers should make less than white workers. The idea was that if they didn't make less, then they would just get replaced by white workers because the only incentives that companies had to keep the black workers was that they were cheaper.

The debate from even Booker T Washington type, Tuskegee leaders was, "Well, we should just kind of take what we can get." And at the time, NAACP and W.E.B Du Bois really fought hard against this idea that that is ever okay to have black communities who are doing service work make less money than white people who are doing similar work, or who are also doing service work.

And I feel like this is the question that Uber and Lyft are pushing us towards again: Is it worth people having something even if it's a pittance? And we're talking about a majority of people of color, immigrant, really vulnerable marginal workers... Is it okay for them to just sometimes end up in debt, sometimes make something, sometimes make less than a minimum wage when workers across the service economy are earning the minimum wage and overtime compensation?

And I think that if you think of it about historically in those terms, the debate just looks really different. Yes, drivers are going to say, "We don't want to lose our jobs. This is all we have."

And the reality is, is that we don't know that they are going to lose their jobs. These threats come from Uber and Lyft. Uber and Lyft say that the vast majority of their workers are part-time. We don't even know if that's true. We don't know whether they are... They won't release any of their data. They won't show us whether those part-time workers are... that they're including workers who have not logged on to the app for eight months. We have no idea. It's just part of their narrative.

Julia: Yeah, that sounds right. But presumably, if Uber and Lyft have to pay benefits for all of their drivers, that's going to increase their costs by a lot. It's hard to imagine how you can increase your costs by that much --

Veena: It's going to increase their costs by 30%. And it's going to mean that drivers are no longer bearing the burden of all of the risks and liabilities of business. It's going to mean that no driver is going to go out into the road and lose money.

And if that means that there's going to be less people on the app because the companies have to act efficiently, then that's acceptable. We don't want Walmart to hire more people than they can pay for. We don't want Burger King to hire more people than they can pay for.

And so, I feel like they've pushed this conversation into a place where we wouldn't have this conversation for any other service economy. And yet, for some reason, they've naturalized... They've done this cultural work where it just seems natural that it's okay for workers in this sector to not know how much they're going to make, to sometimes make nothing, to sometimes lose money.

From my perspective, that is not acceptable. That is not an acceptable way to do work in America particularly for a marginalized low wage sector. Again, employment laws are not written to prevent people like me from being exploited. They were written to keep the most powerless workers from being exploited by their employer.

[musical interlude]

Julia: That was Veena Dubal, law professor at UC Hastings. My next and final interview is with Harry Campbell, who started driving for Uber and Lyft part time in 2014, while he was working as an aerospace engineer. And then he quit his job to work full time on the blog The Rideshare Guy

which gives advice to other drivers. Here is my conversation with Harry Campbell.

[musical interlude]

Julia: One argument that comes up quite a lot, usually raised by critics of laws like AB5, is that polls suggest that most Rideshare drivers prefer to remain independent contractors.

The counter-argument then, that gets raised in response, is that drivers don't fully understand the trade-offs, and so we have to take those poll results with a grain of salt, or a salt shaker of salt.

What is your take? Do you think that these poll results can be taken as a solid representation of drivers' opinions, or have they been tainted by misinformation?

Harry: I'm super biased here because a lot of times when people are talking about these poll results, they're referring to polls that we've done on my site that have been pretty well cited by... Like, Uber's CEO has tweeted about our poll results, and the companies use them sometimes in their marketing materials, not necessarily without our permission, but it's publicly available data. I think when the companies have a case to make, they use it, and it's an interesting feeling for me because I don't always agree with the way they're using it. I don't agree with the fact that these poll results are inaccurate. A poll is a poll.

We've done these polls annually for the past five years, and the results have been very consistent, actually. When we ask the question whether drivers want to be independent contractors, employees, or if they're unsure, "I don't know." There are a lot of caveats though I'm sure we can get into, but the results have been very consistent over the years. And not only in polls and surveys that I've done, of hundreds, if not thousands of drivers, but also polls that the companies have done, that third parties have done... Usually I've seen around 60% to 70% of drivers want to remain independent contractors, when you ask them a very simple polling question about the subject.

That result shouldn't really be that shocking to people, because a majority of drivers are part-time. A majority of drivers, 60%, 70%, 80%,

depending on who you ask and when you ask it and where you ask it, are actually doing 10 to 20 hours a week or less.

Where Parrott and Reich would probably push back -- and it's an area that I agree with them on -- is the fact that... most drivers are part-time, but most of the rides are actually given by that small number of full-time drivers, right? So drivers who are doing 30 to 40 hours a week or more might only be 10% to 20% of the total workforce, but they make up around 50% to 60% of the total rides given on the platform.

Julia: Meaning that if we have to weigh these competing interests, the argument goes, we should be giving more weight to the interests of the full-time drivers because they make up the bulk of total driving time for Uber?

Harry: Yeah. I'm not necessarily a proponent of AB5 and drivers becoming employees, but that's sort of been my recommendation to the proponents of AB5. I don't think it makes a lot of sense to argue with the fact that most drivers are part-time employees. I think that's set in stone, in my view.

But I do think that they have a legitimate argument that, you know, do you want to do the best for the least number of drivers -- or an okay job for the most number of drivers? I think that's the argument that they should be focusing on. Because I think that is a bit of a philosophical argument and you can make good arguments on both sides there, for sure.

Julia: I had been wondering whether the poll results where most drivers want to remain independent contractors, whether it could be fair to argue that those are tainted by the fact that drivers have been falsely led to believe that their flexibility is at stake.

So maybe we could talk more directly about, what is the connection between having flexibility as a driver for Uber and Lyft, and being an employee versus an independent contractor?

Harry: I think this is one area where probably both sides are guilty of a bit of hyperbole. I think on the Uber and Lyft side, of course they're saying ... I think they're overemphasizing the fact that drivers, if they become

employees, it would all of a sudden basically turn into the worst job in the world. And I don't think that's true.

But I also disagree with the proponents of AB5 and drivers who want to become employees, because I think it's actually almost a given that drivers will lose some flexibility. The reason why I say that is because right now, as an Uber or Lyft driver, you can log in whenever and wherever you want. If I wanted to leave this interview right now, I could turn my app on and go drive.

It's Friday at 2:00 or 3:00 PM. If I'm out in the middle of nowhere, I'm probably not going to get any rides. Right? But I have the flexibility to do that. And you can imagine, depending on my crazy schedule, that that might be very convenient for me, even if I only get one or two trips over the course of two hours, if I have no other job or no other option during that time.

Now that's an extreme example of taking advantage of the flexibility of driving for Uber and Lyft. But as an employee, when you're guaranteed at least a minimum wage... Uber and Lyft, I mean, there's just sort of no economical way that they would allow you to drive whenever and wherever you want for 20 to 30 minutes, for example, right? There will be some restrictions put on your driving. So kind of by definition, that will be less flexible.

Now, I think where there's a very good argument is how much flexibility will drivers lose, and is the loss in flexibility... so, you first have to agree on how much flexibility drivers will lose, and then you have to discuss that loss in flexibility -- is it worth it for the trade-offs? There's actually a couple of real life examples of this that we can point to. But to me, that's more what should be discussed, and that's what I set the conversation to start from.

Julia: Okay, excellent. I had wanted to ask you about New York City because I'm not super well-informed about it, but it seems to me like this is --

Harry: That's one of my case studies.

Julia: Okay, great. Well, could you just describe what change was made in New York and summarize what the effects have been?

Harry: Yeah, sure. Basically, what New York City passed was a cap on the number of vehicles that are allowed to drive in the city. And kind of at the same time, they also enacted a quasi-minimum wage. It's not a minimum wage that guarantees you a per-hour rate, but it does guarantee you a per mile and per minute rate based off of the utilization of drivers. That's a fancy way of saying that drivers are guaranteed a minimum wage, right? That's why I call it a quasi minimum wage.

And actually the guys who came up with it were the same ones who you referenced earlier, who did the Seattle study, Parrott and Reich. I actually think that the system they came up with in New York City is really brilliant. One of the things I like about it is that it aligns the incentives of the companies with drivers, right? The nice thing about a minimum wage is that if drivers are now not being busy, and if they're not driving in the best times and the best places, the companies sort of need to force their hand, and force those drivers into the times and places where they're going to make enough money -- otherwise they have to subsidize the difference, right?

And so that's sort of what I like about that model. I'm sure we can talk about how it's gone -- there's some positives and negatives -- but at a high level, that's kind of how that system works.

Julia: And what has the effect been?

Harry: So actually, New York City is a really interesting market. Uber in general, in New York City, they're actually highly regulated. Every single Uber driver in New York city has to have a TLC license and they also have to have commercial insurance. It's the only market in the US where basically anyone off the street can't go and drive for Uber. Like in Los Angeles, anyone can go sign up, use their own car, use their regular insurance. In New York city, it's quite different. There's a bigger barrier to entry.

And one of the things that's beneficial to people studying the market is that the companies, both Uber and Lyft, have to release all of their data and earnings data for drivers to the city. So we have actually seen that drivers are earning more money from this new minimum wage set up, a quasi minimum wage set up, in New York City.

But it has come at the cost of less flexibility. What the company did in response to the minimum wage set up is that... In the past, in New York City, and basically anywhere, you could log on whenever and wherever you wanted, and drive for as long as you want or as little as you want -- within reason, I think there's a 12 hour limit in most cities per platform. But now in New York City, it's more of a scheduled shift system, right? There are blocks of four hours, and you have to select when and where you want to start your day and how long you're going to drive for. It's a sort of scheduling system that anyone who's worked a frontline-type shift job in the past is familiar with, and that's the essence of it.

As you might imagine, the companies want to dole out the best shifts based on the drivers who are doing the most number of trips the week before, or who have the highest ratings, or who have the most seniority, all of the more typical characteristics that workers are assigned shifts.

Frankly, drivers don't like it. The overwhelming feedback that I've heard from drivers, and fleet owners that I've talked to who have thousands of drivers on their platform that they rent cars too, is that the drivers don't like it. Because they have lost some flexibility.

There are times where maybe they want to take a week off, and then now they don't qualify for the shifts that they normally like to drive. So there is a loss in flexibility.

But for me, even though drivers don't like the system, I see it as a fair trade-off. I think there are obviously things that can be improved with the system. And it was the first iteration, so of course, it's not going to be perfect. But I think that trade-off of having a minimum wage in exchange for losing some of that flexibility -- and having to schedule some shifts here and there, but you can still obviously have a lot of say over the shifts that you're booking or not booking -- I think that's a fair trade-off.

Julia: When you say that drivers don't like it, you mean drivers have complained about this aspect of the new system?

Harry: Yeah.

Julia: But do we have any evidence about whether, on balance, they prefer the new system or the old system?

Harry: I'm not sure, to be honest.

Julia: I wish we did. That'd be so helpful.

Harry: Yeah. Actually, it's funny. I just chatted with a researcher from the University of Michigan who's studying this very issue. And I mean that's exactly why they're looking into it, is because drivers ... We know for a fact that drivers are earning more money with this system, but anecdotally it seems like they don't like it.

This is kind of where I think it's important to have more rigid academic research and things like that, which is in the works right now, but basically look at it and determine if those trade-offs are worth it or not for drivers.

Julia: One theme that has emerged in my investigations is the question of how we calculate drivers' earnings, and there's a lot of... a surprising-to-me amount of disagreement over that fact, among academics.

As you probably know, it comes down to questions like, should we count time that drivers spend logged into the app, but not driving a passenger? Should we count that as work? Because if we do, then the denominator is much bigger and they're earning a much lower rate per hour that they're working.

So that's one of the things that I wanted to ask you about. Is it your opinion, as a rideshare driver yourself, that that counts as work or not?

Harry: Yeah, 100%, it counts as work. I think the companies, especially in the early days, were a bit, I think, generous in their calculations when they would say, "Oh drivers are earning this," and they wouldn't include that waiting time. I think for the most part though, most people agree that that waiting time should be counted as work time.

I think Uber and Lyft in the past would say, "Oh, you've got a mom, they're waiting to pick up their kids, and so they'll go and do this in between" and they would use that. But that's really not the way that drivers actually drive in real life. Usually, you're not going to go drive for one or two hours. You're going to drive for three, four hours, get some momentum, drive in one area, and then maybe you take a lunch break or

a coffee break. I think when anytime that you have the app on, you are driving.

The one area where there's a good argument against, I would say, is what we call the deadheading miles. Most drivers can't afford to live in the city centers that they drive, right? Los Angeles, San Francisco, very high cost of living cities. Most drivers live at least 30 to 60 minutes or 30 to 60 miles outside the city centers, where it's frankly cheaper to live. Those miles that they have to drive in and out of the city -- I think that sometimes drivers may have the app on. There's a feature called Destination Filter on both apps where you can get rides only headed in a certain direction. So drivers may have the app on in those types of situations.

But those are... To me, I would include them, but separate them out and call it *commuting hours*. Right? Because if those drivers weren't working for Uber and Lyft, they would likely still live in the same place, and the work opportunities for them would probably still be somewhere in the city center.

But at a high level, that's how I look at some of that waiting time.

Julia: Is there anything else that you would bring up as something that should count as work, or should count as a driver expense, that critics of AB5 don't normally count as an expense?

Harry: Sure. So I think the big issue that I have on the expense debate, as we can call it, is that if you're a full time driver, you should be attributing a majority -- if not 90 to 100% -- of all your vehicle expenses to your rideshare driving job. Right? If you are driving full time and you have a car for the job, you have payments for that job, you have insurance for that job, and you're using your car 90 to 100% of the time, just for business, just for driving for Uber and Lyft... That makes sense. And in those cases, the expenses are often pretty high because of that.

But you also have this other group of drivers, the part time drivers, right? Someone doing 10 to 20 hours a week or maybe 10 hours a week or less. And in that case, if you're in that situation, most likely you already had a car and you decided to drive for Uber and Lyft. So I don't think it's reasonable to now start counting [that].

You know, you had insurance before, you still have insurance after. It's literally a zero marginal cost, right? To now drive for Uber, your insurance doesn't go up -- even though you probably should get rideshare insurance, which a lot of people don't get. So, that's an example, right? Or your cell phone. You're probably not going to be using any more data. But if you're a full time driver, you should count some of that for your driving, because that's kind of really why you need it.

And so I think that's really, when you get down to the numbers, that's usually where there's arguments. People say that the full time drivers, you should count all that, or part time drivers, you shouldn't count that. And so that's sort of where I stand, is I think that for part time drivers, you should really only count the kind of per mile cost. So you should count the per mile depreciation that you're putting on the car -- but the marginal expenses like cell phone and insurance, you're paying for that regardless.

Julia: I can't help but think that this whole thing could be resolved if... I mean, I'm sure this is naive of me, but it feels like this whole thing could be resolved if Uber and Lyft just prevented people from being de facto full time employees.

Especially if they're going to hold up part time employees as their, you know...

Harry: Their crux?

Julia: ... Yeah, exactly. And given that the people who want a law like AB5, their whole thing is that, "Well, look at these people who are driving full time. You know, that amounts to a full time job, but they don't have benefits. And they're buying cars just for this job, so their expenses are high."

I mean, why not just eliminate the possibility of working as a full time employee?

Harry: Yeah. And so this is where I think, externally, you would probably look at Uber and Lyft -- and they're never advertising, "Hey, come work for us and drive 50 hours a week," right? They're saying, "Hey, come work for us. You know, pay some bills off."

They've got this funny commercial where, it's like a guy driving, and then he makes some money, cashes it out and takes someone on a date. Okay, no one actually does that. But that's more of the marketing that they've done in the past,

But because that 10 to 20% of drivers who are full-time make up 50 to 60% of the rides, they really can't get rid of those. They're extremely reliant on those drivers, even though they don't necessarily admit it publicly.

And this is actually a pretty common phenomenon across a lot of sharing economy, marketplace type businesses. Airbnb was really kind of skewed in a lot of cities, because it turns out that it wasn't just people renting, you know, their spare room. Most of the time, it was these people buying up apartment buildings and converting them to Airbnbs that were driving a lot of the growth and a lot of the total gross bookings.

And so I think that's where... I think that would make sense, but I don't see Uber and Lyft ever doing it, because it would hurt their business too much.

Julia: I mean, even if you prevented people from driving full time, wouldn't that then create a big imbalance between demand and supply? And so there would be a lot more incentive for more people to drive part time for Lyft or Uber. Or for people who are currently driving 10 hours a week to drive 15 hours a week, or something. So why wouldn't that, you know, expand to meet the demand after we cut full time workers?

Harry: Yeah. Maybe... I mean, I think you're right. I've never thought about it, to be honest, but I think that probably could work. I mean, there's a reason why Uber is famous for launching surge pricing. It's really the only feature of Uber that consumers hate, but it works really well to balance supply and demand. So I think that something like that could work. But I guess, if I put myself in Uber and Lyft's shoes, why would I do that if I don't have to?

The system right now... And this is something where I don't necessarily agree with drivers. I guess my personal opinion is I don't think drivers should become employees, but I totally understand where they're coming from. Because if you're working 40 to 50 hours a week for Uber

and Lyft, you're basically getting paid kind of like an independent contractor, but you don't get to take advantage of the flexibility. So you sort of have the worst of both worlds, versus the 10 hour a week driver who can drive whenever they want, wherever they want. They can cherry pick the best hours are the best hours that work for their own schedule.

You know, the more you drive, really kind of the worse the gig becomes.

Julia: Right. Well, I guess my last question for you is... you said that, on net, you don't think it would be good for drivers to become employees. I haven't asked you yet why you have that take overall.

Harry: Sure. I think in general, I am more in the camp that I want the most good for the most number of drivers.

And I think employee status would benefit a very small number of drivers. It would benefit them a lot. I mean, someone who doesn't have health care insurance right now, if they were to get health care insurance through becoming employees, that would obviously be amazing for them. But I think that it would hurt large number of drivers. That's just my personal opinion why I don't want drivers to be employees.

I also think that there are a number of areas that can be addressed through regulation legislation. Or if one day the companies decide to do a 180, Uber and Lyft, and just start treating drivers way better. A lot of the top complaints that I hear from drivers are that, "Okay, I don't make enough money. I'm really fearful that I'm going to get unfairly deactivated because then I have no recourse. Uber and Lyft can email me one day, 'You're deactivated.' I have no one to talk to, nothing I can do." You're screwed in that situation, right?

"The commission that the companies take is too high. I do an hour trip and they take 30% to 40%." That doesn't feel good for anyone working, right? Sometimes the commission can be higher.

I think a lot, probably the top three to five complaints that drivers have, can actually be... employee status is one way to address them, but I think that they can be addressed in other ways. New York City with a minimum wage, for example -- I think that's a good thing. That's one area where even though a lot of the drivers there don't like it, I disagree. In that now drivers have this earnings floor, right? Some of those issues

that we talked about with expenses, and drivers not knowing what to do and where to go -- a lot of that is because of the lack of training that the companies do. Now both parties are aligned. Drivers come on and they're going to at least make this amount, right? I think that's a good thing. Basically, that's something that benefits every single driver, especially every single new driver.

I just think there are a lot of those examples. The City of Seattle, I mentioned them a couple of times, they're doing a lot of pretty cool and innovative stuff around ride-hail drivers. They enacted a tax on Uber and Lyft rides last year; one of the things that they actually are developing is a third-party deactivation center. They're going to be the only city in the country where if you get deactivated on Uber and Lyft, you can basically go to a mini arbitration hearing and hear your case out.

Julia: That's cool.

Harry: Yeah. It sounds a little strange, I will admit. But I get so many emails from drivers who are ... Even if they're only making a few 100 bucks a week, it's literally putting food on their table or helping them cover rent.

If they're deactivated from the platform because of a false complaint from a passenger, and they literally have dash cam footage -- because they read my book, and it says to buy a dash cam as one of the first things that you do -- and they're like, "No one at Uber and Lyft will watch this footage," it's like... this could be so easily ... I could so easily prove my case. And now in a place like Seattle, they'll be able to do that.

I just think there's a lot of opportunity to address the issues that drivers are having, without hurting any driver, really.

[musical interlude]

Julia: That was Harry Campbell, The Rideshare Guy, and you can read more of his thoughts on Uber, Lyft, and the ins and outs of being a rideshare driver, on his blog, TheRideshareGuy.com.

Before I wrap up I wanted to share a few scattered takeaways that occurred to me as I did these interviews.

One thing is that I appreciated Harry being explicit about the tradeoff between giving a great deal to a smaller number of drivers versus an okay deal for a larger number of drivers. I agree with him that that's more of a philosophical preference, which side you come down on, and I wish that people on each side of the debate would more often acknowledge that explicitly. Rather than arguing that their preferred solution – flexibility, or stability – is better for all drivers.

I also appreciated a point he made kind of briefly that deserves more emphasis which was the thing he said about “deadheading” time, when you're drive from home to the city where you're looking for rides – and how we shouldn't actually count that as working time because if you weren't working for Uber or Lyft, you would still probably have to commute to work in the city, and that doesn't get counted as working time. So we have to compare apples to apples, basically.

That is an important general principle I think, when you're comparing are Uber and Lyft drivers worse off than they would be in a traditional job, that you have to make sure you're comparing apples to apples. One way I noticed this being neglected is actually in the paper that both Veena and Harry talked about by Parrot & Reich, which found that the average driver is making less than minimum wage. That study is definitely worth reading and I'll link to it, but one issue I had with it is that it counts as a driver expense the cost of purchasing health care out of pocket. On the logic that you need health care and the company doesn't provide it, so that should count as one of your expenses. But my issue is that we don't count that as an expense when we're calculating the salary of minimum wage workers in other industries even if they don't get health care at their jobs, which many of them don't. So I think it's important to hold these comparisons constant.

Another thing I wanted to talk about is that... As you maybe could tell from my interview with Louis Hyman, I tend to agree with him about trusting drivers – or people in general – when they say what they want or what they think is best for them. And not assuming you know better. But after my conversation with Veena Dubal, I thought about it some more and I'm somewhat more sympathetic to her case now that drivers can be wrong about what's best for them. And here's why.

I remembered what I've read about people who sign up for Multi-level Marketing companies, where you buy products from a company like

Amway or Herbalife, and then you try to resell them, and also to recruit other people under you to do the same, and then you get a cut of their sales, and so on. Kind of by design very few people who do this can make a profit, and in fact a study by the FTC found that something like 99% of people who sign up for this end up losing money from it.

And yet, a lot of these people do it for months or even years, because they either aren't tracking how much they're losing, or because they keep thinking things will turn around. So I think that's actually a proof of concept that people can take jobs that are net bad for them, and that they can just be wrong about how much they're really making or can expect to make. So I don't actually think it's crazy or condescending to posit that this might be the case for Uber and Lyft drivers. Whether they are wrong or not, is a separate question. But I wanted to make that point.

All right, I'll close there and just let you know that I'll put links on the podcast site to Louis Hyman's study and his book, *Temp*; to Veena Dubal's research page; and to Harry Campbell's site, *The Rideshare Guy*. And will also remind you that you can order my book *The Scout Mindset* on Amazon or the Penguin RandomHouse site. That's all for this episode – join me next time for more explorations on the borderlands between reason and nonsense.