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Legal and Governance Structures Built to Share
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To date, the dominant economic narrative for the gig economy has been one in which platform owners extract a share of the income generated from the workers who use their platforms. This is troubling as many forms of crowdwork are situated at the crossroads of precarious work, automatic management, deskilling, and low wages. Recent lawsuits by workers in the gig economy claiming employee status contain the demand for better pay, hours, benefits and working conditions. However, these misclassification lawsuits do not seek to change the ways that the underlying business relationship between workers and platforms are structured.

Platform cooperatives, however, subvert the dominant economic narrative. If workers themselves owned the platforms, then workers would have control over important matters such as wages and benefits. Cooperatives could clear a path toward efficient and convenient use of technology for consumers that simultaneously incorporated fair labor standards. For example, taxi drivers in several cities are working on setting up their own driver-owned platform to compete with the popular Uber app. I want to put this new move toward platform cooperativism into context with the underlying legal structures and also to discuss briefly the challenges to governance that platform cooperatives will face.

Worker owned businesses have long existed in the United States, although they have been relatively rare and an exception to the default of the traditional for-profit shareholder primacy model. Many advocates who seek to better the status of so-called shadow (“under the table”) workers have long advocated for worker-owned businesses through groups such as worker centers. Why would becoming owners make sense as opposed to unionizing and acting collectively to bargain with an employer? With certain endeavors such as home cleaning, day labor, and home health, there are individual contracts but no one common employer who the workers can bargain with collectively. Likewise, in the gig economy there are many individual customers using the platforms. As workers continue to struggle in the gig economy, platform cooperatives have emerged as an appealing possible alternative.

On a practical level, what legal tools are available to help those who are trying to set up platform cooperatives? Some states have enabling statutes that set out tailor-made rules for worker cooperatives. However, there is no uniform law across the states, and some states have passed enabling legislation only for consumer cooperatives. California faced this issue and in 2015 amended its legislation to make it clear that both consumers and workers could form cooperative businesses. That said, even in the absence of a worker cooperative statute, there are other business entities that could provide the appropriate organizational structure for worker-owned businesses. One good choice of business entity for a platform cooperative might be the Limited Liability Company, which combines limited liability with favorable partnership taxation. LLCs may be centralized and run by a group of managers (similar to a board of directors in a traditional corporation) or in a decentralized way with equal voting, much like our traditional notion of a general partnership. If the operating agreement is properly structured so that the workers are made the members of the LLCs and given management rights, then that should accommodate a worker-owned business model.

Over ten years ago, in a paper appearing in the *UC Davis Law Review*, I noted that business planning techniques (which those who have access to financial and accounting resources routinely employ) could be used to improve the situation of low-wage immigrant women workers. Due to language barriers, immigrant workers often are at the mercy of the managers who arrange the work. In this scenario, immigrant workers often work for depressed wages, are paid under the table, and do not receive benefits. In contrast, LLC structures allowed these same shadow workers to organize and own their own businesses, hiring an English speaker -- at a set wage -- to work for them, scheduling and arranging jobs. Within an LLC structure, the workers are able to decide what benefits would best serve their members. In addition, as worker-owners who are actively engaged in managing the business and paying taxes, LLC members may have an easier time regularizing the workers' immigration status, or at the very least, not creating a tax liability issue for the workers with the Internal Revenue Service. Finally, the experience of receiving training, and becoming knowledgeable in running a business, can assist workers in taking what otherwise could be seen as a "dead end" low-skilled job and transforming it into a much better opportunity for advancement. Many of the advantages for low-wage immigrant workers inherent in a worker-owned business form could also improve the lot of gig-economy workers.

Another intriguing and potentially fruitful possibility for organizing platform cooperatives would be for the platform to incorporate and obtain certification as a B Corporation. B Corporations are a class of for-profit entities that simultaneously strive to create benefits to the environment, workers, or communities. As such, they operate as a hybrid, straddling the category of for- and non-profit. B Corporations strive for transparency, and investors in such firms understand that there may be tradeoffs; opportunities for profit that may in fact be passed by in pursuit of social-benefit goals. The B Corporation incentives would harmonize well with worker co-ops that already have workers' issues at the very core of their organization and mission. It would also resist the type of "mission drift" of cooperatives that lose their social vision, such as electric co-ops that continue using polluting coal. To date, eleven states have passed enabling legislation to recognize B Corporation status, with additional states passing similar or complimentary types of legislation, such as California's flexible purpose corporation. These business forms put social benefit at the heart of the organization's mission.

Regardless of the choice of business entity, another important issue is designing a workable governance structure in the operating agreement or corporate documents. There are some issues unique to online platform co-operatives that could present particular challenges to governance. Some of the issues include accommodating for flexibility and part-time work. One of the main attractions of the gig economy is flexibility. Worker/owners in platform cooperatives may be working part-time and there will be the need for ease of entry or exit. Another issue could arise around the amount of effort workers contribute. Although one hopes that workers who work for themselves and other workers will dedicate themselves to building their platform, cooperative endeavors could create moral hazard and the risk of shirking. The other challenge with crowdwork, where the work can be performed in any geographical location, is that there will be participants from many different countries, each with its own set of legal rules.

Because there are no “tailor made” enabling statutes geared specifically toward platform cooperatives, that contributes to increased set-up costs and barriers to entry. But many businesses that do not fit the “traditional mold” have had to confront this issue before. Platform cooperatives will be eligible to seek out financial and technical assistance from the same worker centers and legal services agencies that have helped set up worker owned businesses in the past. Others, perhaps those that seek B Corporation status, may benefit from seeking pro bono legal assistance or accounting advice from for-profit firms that are looking to give back to the community. The basic legal structures for platform cooperatives, while not “off the rack,” do exist. They just require the tailoring that legal and financial professionals can provide.

Given the turnover and flexibility of online platform work, the operating documents should be written to allow for relative ease of entry and exit as a member. In addition, the organizing documents must also set up the relationship in a way that sets out what the expectations are for the members, clearly and succinctly. The documents need to include provisions for reducing the share of profits if an individual member is shirking, and also contain clear provisions defining under what circumstances a member or shareholder may be disassociated. In terms of the global or international scope of many platforms, the operating agreement and other documents can be written to provide for choice of law and choice of jurisdiction. Current statutes allow for electronic or remote voting for boards of directors or members, so long as such procedures are set out in the corporate charter or operating agreement. Note that running the business is riskier for the individual worker as a platform cooperative – like any business, the LLC members or B Corporation shareholders run the risk that there will be no profits.

Perhaps the answer to the misclassification lawsuits and the struggle over employee status is to work around it, regardless of the outcome. While not the “perfect solution,” already-existing legal structures can be modified to accommodate platform cooperatives.