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The Drive to Precarity: A Political History of Work, Regulation, & Labor Advocacy in San Francisco's Taxi & Uber Economies

Veena B. Dubal

UC Hastings College of the Law, dubalv@uchastings.edu

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The Drive to Precarity: A Political History of Work, Regulation, & Labor Advocacy in San Francisco's Taxi & Uber Economies

V.B. Dubal[†]

This Article examines both the creation of secure work and its ongoing demise through a critical historical and contemporary case study: over a century of chauffeur work in San Francisco, California. Employing a combination of historical archives and sociological research, I show how chauffeur driving became a site of secure work for much of the twentieth century and how this security unraveled over the course of many years. Since their entrée on the streets in 1909, chauffeur corporations—from the Taxicab Company to Uber—underwent formative re-organizations to shift the liabilities and responsibilities of business onto workers. Counterintuitively, these changes in corporate form were met with decreased regulation and a contracted business-labor bargain. I contend that the transformation of the corporate form, the shrinking bargain, and the rejoinders of the state triangulated to produce worker risk and weaken the relationship between work and security.

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[†]. Associate Professor of Law, University of California, Hastings College of the Law. Postdoctoral Fellow, Stanford University; Ph.D., University of California at Berkeley; J.D., University of California at Berkeley School of Law; B.A., Stanford University. I thank Professors Reuel Schiller, Joan Williams, Catherine Albiston, Ruth Collier, and Manoj Viswanathan along with Christopher Carter, all of whom generously provided thoughts, ideas, and feedback. I am also grateful to my brilliant brother Sam Dubal who gave this piece many critical reads. I thank the incredible librarians at the San Francisco State University Labor Archives and the San Francisco History Room at the San Francisco Public Library. I am grateful to my research assistants Ashley Ripplone and Justin Donner and to the assiduous and patient editors of this journal. I thank Pumima Mankekar and Akhil Gupta whose guidance and support are integral to my life. And I am forever indebted to my amazing parents, Bharat and Saroj Dubal, whose love and support are unconditional. Last, but not least, I thank J. Ryan Gilfoil and our children Jaya and James who tolerated my weekends and evenings spent away from them writing. I dedicate this Article to my dear friend Mark Gruberg, an unsung hero and longtime San Francisco taxi worker advocate. Mark, your principled resolve, selfless advocacy, and incomparable dedication to the fight for decent work gives me hope and inspiration in these uncertain times.

Part I of this Article describes how militant labor advocacy transformed taxi driving from precarious to secure work in the earliest decades of the twentieth century by compelling municipal regulation and using collective power to shape the business model. Part II explains how by the 1970s, legal decisions to withdraw from the business-labor bargain combined with political and racial discontent among rank-and-file workers set the stage for the complete decline of union power. Part III then tells the post-union story. In the following three decades, even without official bargaining power, worker advocates leveraged municipal regulation to exert minimal control over wages and working conditions. The impact of these tactics, however, was both limited and shaped by the possibilities and constraints of work law. Finally, Part IV turns to the current Uber era and details the course of industry deregulation and labor's response to the reproduction of risky, early 20th century working conditions.

As the "Uber economy" model rapidly expands into other spheres of service work, I maintain that the political history of how chauffeur work went from precarity to security and back may hold important lessons for contemporary labor struggles.

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INTRODUCTION

The contemporary growth of uncertain, risk-laden work in the United States constitutes a central social, political, and economic concern. By some estimates, more than one-third of the workforce today is made up of “contingent” workers—temporary workers, contract workers, and part-time workers who labor outside the boundaries of traditional employment protections.¹ These workers live precarious lives, facing increased job insecurity, higher rates of occupational injuries and illnesses, and lower wages, among other difficulties.²

How did we get here? Academics across disciplines have blamed the growth of risky or *precarious* work on the “fissured workplace”³ and the

1. The number of contingent workers laboring in the United States is a subject of some contention. See Chris Opfer, *Gig Workforce Estimates Still in Question*, BLOOMBERG BNA: DAILY LABOR REPORT (Oct. 7, 2016), <http://www.bna.com/gig-workforce-estimates-n57982078231/>. A 2016 study conducted by the Freelancers’ Union and UpWork estimates that 55 million workers, or 35% of the U.S. workforce, labors in the “freelance economy.” This includes workers who are independent contractors, workers with multiple sources of income, moonlighters, freelance business owners, and temporary workers. See FREELANCERS UNION & UPWORK, *FREELANCING IN AMERICA: 2016* (2016), <http://src.bna.com/jdW>.

2. “Studies in the U.S. and Europe suggest that contingent workers such as part-time, temporary, or contract workers are at higher risk for occupational injuries and illnesses than workers in traditional employment situations.” National Institute for Occupational Safety and Health, *Studies Suggest Higher Risk for Contingent Workers than in Traditional Employment*, NIOSH Researchers Report (Feb. 5, 2008), <http://www.cdc.gov/niosh/updates/upd-02-05-08.html>.

3. Economist David Weil coined the term the “fissured workplace.” In his seminal book by the same name, Weil argues that in sharp contrast to much of the twentieth century, contemporary employment is fissured, meaning businesses no longer directly employ workers to make products or deliver services, but rather transfer those responsibilities to a “complicated network of smaller business units.” DAVID WEIL, *THE FISSURED WORKPLACE* (Harvard University Press 2014).

“Uberization”⁴ of the economy.⁵ In this narrative, the prevalence of precarious work today can be attributed to shifting business models introduced in the 1970s, bent on circumventing liability and evading New and post-New Deal employment protections in order to streamline production and maximize profits.⁶ Today, most large businesses, as economist David Weil points out, no longer employ workers but instead “transfer[] work to a complicated network of smaller units,” where responsibility for workers becomes murky.⁷ Other companies, most notoriously in the “gig” economy, in janitorial services, and in construction, engage workers directly but position them as contractors—individual small businesses responsible to and for themselves.

In the history of U.S.-based paid work⁸, however, precarity has been the norm, not the exception. When we consider precarious work today, we draw an implicit comparison to an exceptional period of three to four previous decades of secure work. As Jefferson Cowie and Nick Salvatore point out, these mid-twentieth century decades are a standout from the otherwise consistent trajectory of unprotected, risky paid work.⁹ Accounts that explain

4. In his book, *Raw Deal: How the Uber Economy and Runaway Capitalism Are Screwing American Workers*, journalist Steven Hill argues that the United States workforce is undergoing a transformation, epitomized by Uber’s business model, in which workers are converted to freelancers, temps, and contractors. Steven Hill, *RAW DEAL: HOW THE “UBER ECONOMY” AND RUNAWAY CAPITALISM ARE SCREWING AMERICAN WORKERS* (2015). In recent literature on contingent work, some academics have used the term “uberization” to describe business models that shift the risks and responsibilities of businesses onto the backs of workers while simultaneously depriving those workers of the protections of employment and labor law. See, e.g., Daniel P Bearth, *Uberization of Trucking*, *TRANSPORT TOPICS* (2015); David Theo Goldberg, *Coming to You Soon: Uber U*, *INSIDE HIGHER ED*, Aug. 12, 2016, <https://www.insidehighered.com/views/2016/08/12/dangers-uberization-higher-education-essay>.

5. The literature on precarity abounds across disciplines. I use the term here to mean work that is, from the perspective of the worker, insecure and risk-laden. My use of the term is primarily informed by the following works: Arne L. Kalleberg, *Precarious Work, Insecure Workers: Employment Relations in Transition*, 74 *AMERICAN SOCIOLOGICAL REVIEW* 1 (2009); ANDREW ROSS, *NICE WORK IF YOU CAN GET IT: LIFE AND LABOR IN PRECARIOUS TIMES* (NYU Press 2009); GUY STANDING, *THE PRECARIAT: THE NEW DANGEROUS CLASS* (Bloomsbury Academic 2011).

6. In another article, I describe how these business models were enabled in the transportation industry by legal decisions subverting the right to collectively bargain to the business decisions of taxi companies. See V.B. Dubal, *Wage Slave or Entrepreneur?: Contesting the Dualism of Legal Worker Identities*, 105 *CALIF. L. REV.* (forthcoming Feb. 2017).

7. Weil, *supra* note 3, at 8.

8. I use the term “paid work” to mean free labor that was performed in exchange for a wage or commission and that is distinguishable from slavery, indentured servitude, and unpaid domestic labor.

9. Jefferson Cowie and Nick Salvatore argue that “[i]t was an extraordinary moment, a singular period in US history, in which all the key factors fell into place to create the New Deal order.” They maintain that this was produced by, among other things, two central transformations: new union leadership that included (at times) women and African Americans and the role of government in actively supporting working people. In their terms, the New Deal era was a “rare moment in the long struggle of organized labor when unions won—and won big. . .” Jefferson Cowie & Nick Salvatore, *Scholarly Controversy: Rethinking The Place Of The New Deal In American History*, 74 *INT’L LAB. & WORKING-CLASS HIST.* 1, 7 (2008).

contemporary insecurity through business models alone overlook the distinctiveness of this relatively brief period. To understand and, more critically, to *address* the predicament of work and workers today, we must go beyond our investigation of present day precarity and also investigate what produced the exceptional years of security preceding it.

This Article examines both the creation of secure work and its ongoing demise through a critical historical and contemporary case study¹⁰: over a century of chauffeur work in San Francisco, California.¹¹ This case study is significant because of the site (San Francisco) and the work examined (chauffeur driving). San Francisco is home to both one of the oldest and most robustly regulated taxi industries in the country and to the Transportation Network Company (TNC) start-ups Uber and Lyft.¹² The TNCs—as second generation, algorithmically-enabled chauffeur companies—have sparked the imagination of entrepreneurs and investors, spawning a global economy of contractor-centered technology businesses bent on “disrupting” traditional models of work. But the remunerative realities of chauffeur driving in San Francisco’s taxi and TNC industries belie the fervor behind this phenomenon. Chauffeur workers today, many of whom are immigrants and racial minorities for whom full-time wage work is unavailable, struggle under the business models of the taxi and TNC industries, driving long hours for little pay.¹³

10. In addition to the historical research, my San Francisco case study is informed by over two years of ethnographic research in the San Francisco taxi industry and over one year of ethnographic and interview-based research amongst San Francisco Bay Area Uber drivers. My ethnographic research of the San Francisco taxi industry, which took place between 2010 and 2013, incorporates over one thousand hours of participant observation at regulatory meetings, taxi worker advocacy meetings, and other places where taxi workers frequently convene, like the San Francisco International Airport holding lot. This research also comprises data from forty-five in-depth interviews of taxi workers. My ethnographic and qualitative research of Uber drivers in the Bay Area is ongoing but began substantively in 2015. This includes hundreds of hours of observation of Uber drivers in organizing meetings, fifteen in-depth interviews of Uber drivers, over 250 Uber driver surveys, and extensive review of legal complaints against Uber and regulatory debates and decisions regarding Uber and Transportation Network Companies (TNCs) across U.S. cities and states. Much of the regulatory research was conducted as part of a larger project investigating the politics of Uber regulation; this project is being conducted with Professor Ruth Collier and Christopher Carter, Department of Political Science, University of California at Berkeley.

11. Although the term “chauffeur” is an outmoded way to refer to a taxi or Uber driver, I draw on its historic implications to connect the actual work done across time and to underscore the degree of hierarchy present in the job. For example, although Transportation Network Company (TNC) work was originally represented as “peer to peer,” the power dynamic between the driver and the rider belies this description. The TNC driver is performing a service for the rider, whose rating of that driver, in the Uber context, can induce driver “perks” or lead to termination. While the driver can also rate the rider, his or her rating has no consequence on the ability of the rider to make a living. *See supra* note 10.

12. For a more extensive discussion of the Transportation Network Company phenomenon, see Section IV.

13. Contemporary chauffeur workers—both taxi and Uber drivers—labor under a business model that does not guarantee them a minimum wage. In most cities, taxi workers pay to work. Uber drivers, too, bear all the costs of business—wear and tear on their cars, payments for their smartphones, gas, and insurance—and suffer from low, unpredictable, company-determined rates. In both contexts, competition

Chauffeur work was not always so precarious. Between the 1920s and the 1970s, taxi driving across the United States was regulated, union work. Drivers worked full-time, but not over-time, earned a “living wage,”¹⁴ and enjoyed the dignities of work and a political voice alongside their union brothers. In this Article, I tell the important, but forgotten, story of how taxi work became secure. I also trace how this security slowly fell apart. Contrary to accounts that attribute the origins of precarity to a decisive moment in the 1970s, a close historical examination of the chauffeur industry in San Francisco suggests that the demise of secure work may have been slower, building over a series of many years through the triangulated decisions of businesses, regulators, and labor leaders.

Centrally, the case study of the San Francisco chauffeur industry illustrates that work was decoupled from security over the course of two critical decades. This began in the 1950s through both the declining willingness of state actors to robustly regulate the industry and later, by rising racial and political conflicts between the Union and its members. It was then exacerbated in the late 1970s by corporate corruption and successful attempts of businesses to evade work laws. The combined results of these decades impacted the Union’s contracting bargain. Over the course of a century, labor steadily regressed from leveraging militant tactics to attain a bargain on behalf of “the social good;” to employing cooperation with business in the negotiation of a moderate bargain; to losing the business-labor bargain but maintaining a just wage through regulation; to ultimately, in the Uber context, losing regulatory leverage and control over wages and settling for market-based benefits and workplace voice.¹⁵

via the onset of an unregulated number of TNC vehicles makes earning a living even more difficult. *See supra* note 10. In another Article, I discuss how and why immigrant and racial minorities are pushed into and/or drawn to this type of work and how they are carved out of more secure wage work. *See Dubal, supra* note 6.

14. Lawrence Glickman traces the use of the “living wage” to an era between the Civil War and the 1930s. LAWRENCE B GLICKMAN, *A LIVING WAGE: AMERICAN WORKERS AND THE MAKING OF CONSUMER SOCIETY* (Cornell University Press 1999). Through an analysis of the history of the living wage, Glickman documents the shift to wage labor. He argues, “At the beginning of this period few workers could countenance a lifetime of working for wages; at the end, very few could imagine anything else.” *Id.* at 4. Notably, while the term ‘living wages’ was initially ambiguous, by the early 20th century, it connoted wages that provided not just minimal economic security but also enabled wage laborers to act as consumers. *Id.* at 5, 68-95.

15. As I discuss in Section IV, most unions and alt labor groups that have attempted to represent TNC drivers have done so outside of the traditional collective bargaining context. Because TNC drivers have not been legally determined to be employees under the National Labor Relations Act, any attempt at collective bargaining over wages risks antitrust liability. National Labor Relations Act § 2, 29 U.S.C. § 152 (1978). To evade this, unions and alt labor groups have advocated for worker benefits that do not involve the state (e.g., in lieu of pension benefits, they have worked towards 401k plans with no corporate contribution) and for “worker voice” through associations that have no bargaining power. For more on this, see Section IV. Notably, these associations are reminiscent of Employee Representation Plans (ERPs) introduced in a range of industries in the United States during World War I. Empirical evidence suggests that ERPs were a “union avoidance device” and undermined the recognition of unions as bargaining

	<u>Worker Status</u>	<u>Labor Rep</u>	<u>Labor Bargain</u>	<u>Regulation</u>
<u>Taxi</u> 1909-1950	Employees with Commission to Employees with a Guaranteed Wage	Chauffeurs' Union	Political Bargain: For Social Good	No Regulation to High Regulation
<u>Taxi</u> 1950-1979	Employees with a Guaranteed Wage	Chauffeurs' Union	Moderate Bargain: For a Secure Wage	Sustained Regulation
<u>Taxi</u> 1979-2013	Independent Contractors with no Guaranteed Wage	United Taxicab Workers	Barely a Bargain: For a Just Wage (subsistence value for work)	Decreased Regulation
<u>Uber</u> 2013-present	Independent Contractors with no Guaranteed Wage	Teamsters & Silicon Valley Rising(?) ¹⁶	Illusory Bargain: For Portable Benefits & Workplace Voice	Deregulation

What do I mean that labor leaders in the earliest days of the chauffeur industry bargained on behalf of “the social good”? In the post-National Labor Relations Act (NLRA) era, the declining role of labor unions is conceptualized through the lens of collective bargaining, which is restricted to contractual negotiations for collective wage and job security between the employer and the union. In Part I of this Article, however, I describe the pre-NLRA character of the Chauffeurs’ Union’s bargain. Fighting for the leisure value of work, the Union negotiated a contract with taxi companies, and also, using their bargain as an instrument, influenced the tone of business and politics. In those early twentieth century decades, the Chauffeurs’ Union shaped business models, set prices, and effected public policy, establishing strong municipal regulation of a once unregulated industry.

In Part II, I tell the story of how after decades of sustained regulation, the Union’s grip became more slippery. This, I argue, was influenced by two major factors: (1) legal and legislative decisions made in the 1950s that sought to subdue labor and reflected a reluctance to intercede in the business-

agents. Greg Patmore, *Unionism and Non-Union Employee Representation: The Interwar Experience in Canada, Germany, the US and the UK*, 55 J. OF INDUS. REL. 527 (2013).

¹⁶ As I discuss in Section IV, whether the Teamsters and Silicon Valley Rising will continue to work towards creating a “worker association” of Uber drivers remains unclear.

labor contract,¹⁷ and (2) the political and racial politics of the Union in the 1960s and 1970s.¹⁸ Those years set the stage for the following, well-recognized era of rising precarity. The combination of corporate corruption and taxi firm restructuring in the late 1970s completed the transformation of the taxi industry. After the city's largest taxi company, Yellow Cab, went bankrupt, it re-opened utilizing a new business model: leasing. Under the leasing system, San Francisco taxi companies created jobs in which drivers, for the first time, paid to work.¹⁹ Rather than providing a daily wage or commission, the firms rented taxis to drivers for a fixed rate and thus turned directly to the workers for their source of profit. The National Labor Relations Board (NLRB) determined that these drivers were independent contractors, and the Union lost the right to collectively bargain on their behalf.

In Part III, I describe how the following three decades (from the 1980s to the late 2000s) saw a limited semblance of work stability in the San Francisco taxi industry. Highly engaged worker activists created and sustained a non-union worker group—the United Taxicab Workers (UTW)—and utilized continuing regulation of the industry to maintain fragile control over wages and working conditions. Nevertheless, the potential militancy of de-unionized activism was constrained by the illusory possibilities of labor law. Instead of employing tactics to organize workers and achieve labor power, the UTW devoted enormous amounts of energy to attempts to re-gain employment status under the National Labor Relations Act, attempts which ultimately failed. Still, while labor advocates had lost the ability to bargain directly with taxi companies, they continued to bargain over wages and working conditions with municipal regulators.

Finally, in Part IV, I turn to the history and politics of the contemporary Uber era. The 2008-9 Great Recession resulted in high rates of unemployment and the loss of many full-time jobs. In this desperate economic and political environment, Transportation Network Companies (TNCs) were born. As an additional regression from once secure, professional chauffeur work, the TNCs disrupted a century of municipal regulations that workers had leveraged for their security. Chauffeur workers

17. In his illuminating book, legal historian Reuel Schiller describes the decline of labor as the result of a postwar “forging” of the commitment to protect the civil rights of racial minorities and the minimizing of government involvement in the relationship between labor and management. Reuel Schiller, *FORGING RIVALS: RACE, CLASS, LAW, AND THE COLLAPSE OF POSTWAR LIBERALISM* 40-41 (2015).

18. Labor historians Cowie and Salvatore argue that the New Deal itself contained a “web of internal fractures,” which, when stressed decades later, “broke open.” Cowie & Salvatore, *supra* note 9 at 5. Key among these fractures was an inconsistent commitment to racial equality. *Id.* at 9.

19. In the “gas and gates” system, drivers pay a lease fee, most frequently for a ten-hour shift, to take the taxi and work for fares. The taxi company pays for commercial insurance and car upkeep while the driver pays for gas. *Supra* note 10.

no longer just leased taxis from firms. Instead, many invested their own capital—including cars, smart phones, insurance, and gasoline—to become chauffeur drivers. Uber, the TNC with the most drivers and riders, claimed to be a technology company rather than a taxi company, thereby placing legal and financial risk and responsibility on its independent contractor driver “partners.”²⁰ In a counterintuitive response to this heightened state of worker precarity, San Francisco municipal and California state regulators almost completely deregulated the industry.²¹ These decisions, which relied on the promise of innovation, drew the ire of the labor community. But given the difficulties of organizing atomized, contingent workers and the looming fear of anti-trust liability, most unions declined to advance the cause of this new generation of chauffeur workers. Some that did exchanged the fight for job and wage security for a “bargain” consisting of workplace voice and market-based benefits.

Through a historical and political account of these four epochs of chauffeur work, this Article analyzes how the shifting positions and tactics of businesses, labor representatives, and municipal regulators dramatically transformed an industry, producing secure, regulated work and then gradually unraveling it. In the Conclusion, I use this century of labor and regulation history to return to the contemporary political and economic ramifications of these major shifts. I argue that by closely examining how chauffeur work became secure and how that security subsequently eroded, we may find insight to inform contemporary struggles for stable work.

20. While taxi companies, too, claimed that their workers were independent contractors, most TNCs take it one step further. For example, in the case of car accidents, the taxi companies assumed liability and carried commercial insurance to that end. *See supra* note 10. In contrast, when a six-year old girl, Sophia Liu, was killed by an Uber driver in late 2013, Uber disclaimed responsibility, arguing in court filings that it was not a transportation company, but a technology company, and therefore should not bear responsibility for the Uber driver’s negligence. *See* John Constine, *Uber’s Denial of Liability in Girl’s Death Raises Accident Accountability Questions*, TECHCRUNCH (Jan. 2, 2014), <https://techcrunch.com/2014/01/02/should-car-services-provide-insurance-when-their-driver-app-is-open/>; *see also* Bay City News, *Family of 6-Year-Old Girl Killed by Uber Driver Settles Lawsuit*, ABC7 NEWS (July 14, 2015), <http://abc7news.com/business/family-of-6-year-old-girl-killed-by-uber-driver-settles-lawsuit/852108/>; *see also* Patrick Hoge, *Dead Girl’s Family Sues Uber*, SAN FRANCISCO BUS. TIMES (Jan. 27, 2014), <http://www.bizjournals.com/sanfrancisco/blog/2014/01/uber-lyft-sidecar-sofia-liu-dolan.html>.

21. San Francisco imposed a single regulatory burden on Uber, and that burden fell on the drivers who were forced, if they believed they were independent contractors, to pay for business licenses to operate in the city. *See* Carolyn Said, *Uber, Lyft Drivers Prepare for SF Business License Crackdown*, S.F. CHRON., (Apr. 21, 2016), <http://www.sfchronicle.com/business/article/Uber-Lyft-drivers-prepare-for-SF-business-7294676.php>. Similarly, the rules eventually promulgated by the California Public Utilities Commission were primarily directed at drivers, not the company. Regulations on the number of TNCs allowed to operate and on fare rates were noticeably absent. *See* Cal. Pub. Util. Comm’n, Rulemaking 12-12-011, *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, at 72-73 (Sept. 23, 2013), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K192/77192335.PDF>.

I.

MAKING WORK PAY: MILITANT TAXI LABOR & ROBUST MUNICIPAL
REGULATION, 1909-1934

When they first appeared on the streets of San Francisco circa 1906 replacing hackneys (or horse-drawn carriages for hire), taxicabs were privately-owned, unregulated vehicles operated by a non-unionized workforce. By 1913, however, taxis were a regulated “semi-public utility”; by 1918, taxi companies guaranteed a wage and a limited workday; and by 1919, 100% of the workforce was unionized.²² While taxi companies and workers in most cities during the Great Depression experienced difficult economic instability, in San Francisco wages remained relatively stable, due in large part to early municipal regulation and high rates of unionization.²³ How did this precarious, unregulated industry become a site of secure work during such a volatile economic moment in national history?

Using newspaper accounts, labor archives, and personal records, this section examines the San Francisco taxi industry in its nascent years.²⁴ The first taxi company business model was strikingly similar to the business models of TNCs in the contemporary taxi economy. Based on an unregulated and commission-based business model, these early taxicab companies produced precarious work with long hours and an unpredictable income. Companies provided drivers with automobiles, paid a 20% commission (not a guaranteed wage), and demanded that workers pay for gasoline.²⁵ But strategic decisions by union leaders to use militant tactics to fight for an expansive bargain and robust municipal regulation of the industry soon changed that. A decade after taxicab companies opened their doors, taxi driving became a site of stable and secure work.

To achieve desirable working conditions, the Chauffeurs’ Union fought for and won a politicized bargain that triangulated the interests of workers, consumers, and the state. The Union embraced a political campaign to

22. CHAUFFEURS’ MAGAZINE (1919) (on file with author).

23. Nationally, the Great Depression decimated the taxi industry. “[T]he number of taxicabs skyrocketed, while occupancy rates and revenue per taxi declined,” resulting in low revenue for companies and untenable working conditions for drivers. Paul Stephen Dempsey, *Taxi Industry Regulation, Deregulation, and Reregulation: the Paradox of Market Failure*, 24 TRANSPORTATION LAW JOURNAL 73 (1996).

24. These archives draw from personal and union records housed at the San Francisco State University Labor Archives and a century of taxi and labor related newspaper clippings housed at the San Francisco History Center.

25. This part of the old taxicab company business model is distinct from the TNC business model today. The biggest difference is that today workers must invest substantial amounts of their own capital and provide the instrument for labor—their vehicle. *Supra* note 10. The TNC companies often facilitate this purchase or lease through their subsidiaries. *Id.* For a detailed account of how these car purchases and leases place greater financial risk and burden on the backs of workers, see Sarah Leberstein, *Uber’s Car Leasing Programs Turns Its Drivers into Modern Day Sharecroppers*, QUARTZ (June 6, 2016), <http://qz.com/700473/ubers-car-leasing-program-turns-its-drivers-into-modern-day-sharecroppers/>.

influence overall economic policy for the San Francisco taxi industry. They expanded their influence far beyond that of workers' wages and hours, ensuring that leisure, dignity, and consumer interests were part of the bargain. For example, rather than fighting for better wages within the boundaries of the business model established by the taxicab companies, the Chauffeurs' Union leveraged consumer regulatory intervention together with direct action to *re-shape* the business model of taxicab companies in San Francisco. In doing so, the Union not only secured better wages and working conditions for taxi workers, but also garnered a great deal of power over the industry, guaranteeing that workers had a voice in business and regulatory decisions.

A. The Chauffeurs' Union and the Politicized Bargain: Setting the Wage and the Price

On October 6, 1909, labor activists founded the Chauffeurs' Union Local 265 to represent taxi, limousine, and funeral drivers, among other transportation craft workers in San Francisco.²⁶ The Chauffeurs' Union was affiliated with the San Francisco Labor Council, Joint Council of Teamsters, the California State Federation of Labor, and the International Union. Less than ten years after its founding under the leadership of taxi driver and business agent S.T. Dixon, the Union achieved 100% representation of taxi workers.²⁷ By 1919, sixteen years before the Wagner Act was passed, the Chauffeurs' Union represented all of San Francisco's 500 taxi drivers, the majority of whom were veterans of World War I.²⁸

S.T. Dixon, referred to in labor leaflets as "The Man at the Wheel," was viewed by critics as a "red" and "radical" and often found himself in conflict with more moderate San Francisco labor leaders.²⁹ Although he emphatically denied communist affiliation, Dixon openly sought to make labor "more effective and more militant," repudiating the principles and policies of the American Federation of Labor as too "conservative" and "reactionary."³⁰ Under Dixon's strident leadership, the Chauffeurs' Union focused on direct action, calling frequent strikes and exercising intolerance (sometimes in the form of violence) towards non-union workers. In sharp contrast to his labor

26. *Labor News*, S.F. BULL., (July 13, 1911); see *Election of Officers, San Francisco Labor Council, Character Summary of S.T. Dixon*, (profiling Dixon for president of the Chauffeurs' Union) (Jan. 20, 1920) (on file with author). Note the Chauffeurs' Union succeeded the old union of hackmen, "an established institution of San Francisco's early days." CHAUFFEURS' MAGAZINE (1919) (on file with author). The Union building, which served as both a social and political hub for taxi workers, was headquartered in the K. of P. building at Valencia and McCoppin, in the heart of what is now San Francisco's Castro District. The space housed clubrooms, reading rooms, officers' halls, and meeting halls for its members. *Id.*

27. *Id.*

28. *Id.*

29. Frederick W. Ely, *Bitter Rivalry in S.F. Labor Campaign* (on file with author).

30. *Id.*

contemporaries, Dixon believed that the state should play an active role in securing just working conditions and called for municipal intervention in the industry.



S.T. Dixon, Business Agent of the Chauffeurs' Union and Taxi Labor Leader

Within just ten months of assuming the position of business agent, S.T. Dixon successfully led taxi workers at San Francisco's largest cab company on their first strike. Considering the difficulties of convincing workers to stop earning to engage in direct action—to voluntarily make their livelihoods vulnerable—the short time period in which Dixon orchestrated this strike was a remarkable feat. In November 1910, San Francisco taxi drivers struck for three weeks and demanded free gasoline and a twelve-hour workday. Their demands were initially rebuffed by the Taxicab Company of California.³¹ The strike was endorsed by the San Francisco Labor Council, the Joint Council of Teamsters, and the International Brotherhood of Teamsters, and was broadly supported by workers throughout the industry.³² It lasted for three weeks and successfully established a twelve-hour workday and free gasoline with a secure commission of 20%.³³

But obtaining a secure commission and limited workday was just the first step in the Chauffeurs' Union long-term approach. Soon after gaining

31. S.T. Dixon reported to the media, "We are striking for free gasoline. . . We make 20 percent of what we take in, which averages about \$3 for 13 hours. Out of that we are expected to pay for gasoline, 12 cents per gallon, which generally amounts to 50 cents. We simply want our percentage clear." *Taxicab Drivers Are Out on Strike: Hotel Service Tied Up and General Walkout Threatened; Free Gasoline Demanded*, S.F. CALL, Nov. 1910.

32. *Id.* The hotels attempted to bring in a company that employed non-union men, the Pacific Taxicab Company, but the non-union men also refused service, "expressing their sympathy with the strikers." Two thirds of the drivers at other, smaller taxicab companies operating in San Francisco at the time—Alco Taxicab Service, Atlas and Pacific Garage, and the Wilson, Rooker Company—signed the strikers' agreement. The striking taxi drivers refused to service the major San Francisco hotels—the Palace, the Fairmont, and the St. Francis. A year later, a newspaper article extolled the leadership of S.T. Dixon and revealed that the strike had been "won in record-breaking time." *Labor News*, S.F. BULL., July 13, 1911.

33. See *Election of Officers*, *supra* note 26. The Chauffeurs' Union was apparently the succession of an old union of hackmen, "an established institution" in the early days of San Francisco. *Id.*

the support of the workforce and securing a contract, the Union strategized to leverage local regulation to achieve a more politicized bargain. While most labor leaders of the day feared government intervention, Dixon saw the city's regulatory foray into consumer legislation of the taxi industry as an important opportunity for workers.³⁴ Union contracts only offered security until the expiry of the contract, at which point wages and hours had to be re-negotiated. Government regulation had the potential to ensure the stability of working conditions indefinitely.

Soon enough, the opportunity arose to lobby municipal leaders and bring them into the relations between taxicab owners and workers. In 1912, the city of San Francisco sought to define "taxicab" in local law, emphasizing the importance of the taxi meter.³⁵ The next year, due to concerns over consumer safety and price gouging, the San Francisco Board of Supervisors passed an ordinance giving the city power to regulate charges for taxi service.³⁶ After much debate, the Supervisors set the maximum taxi fare at "seventy-five cents for one or two passengers without baggage."³⁷ Notably, fare-setting in San Francisco began fifteen years before municipalities elsewhere in the country began to consider taxi industry regulation.

While the fare ordinance was intended to protect consumers who were ostensibly facing erratic prices, the Chauffeurs' Union used the regulation to attain a set wage for workers. Until then, the commission-based system of payment had resulted in unreliable wages for drivers. The hourly rate was variable and too often very low. The Chauffeurs' Union used this fare ordinance as an entrée into publicizing the inequities embedded in the commission-based system. In particular, Dixon argued that the seventy-five

34. Why were labor leaders during this era worried about government intervention? As William Forbath explains, by the early 1900s, the American Federation of Labor (AFL) leaders "had embraced a rigid anti-statist liberalism." WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 130 (1991). Samuel Gompers, the leader of the American Federation of Labor (AFL), and other national labor leaders were concerned that empowering the state to involve itself in labor relations would result in the state crushing the freedom of labor to express collective will. And indeed, the state's primary role in business-labor relations during this period was through the issuance of one-sided injunctions to obstruct work stoppages. To fight state repression, the AFL strategically accepted the idea of freedom of contract and insisted that such a freedom necessitated that the state avoid judicial interventions in protests and work stoppages. *Id.* at 130-35. The route taken by S.T. Dixon and the Chauffeurs' Union—to encourage state intervention in the business-labor bargain—was thus highly unconventional for the era.

35. The ordinance read, "The term taxicab, whenever used in this ordinance, shall be held to embrace and means all motor vehicles propelled by power other than muscular, the rental for which is computed for the distance traveled by means of a taximeter attached thereto. . . ." *Taxicab Defined*, 1912 (on file with author).

36. Note that the Board of Supervisors in San Francisco is equivalent to the City Council in most cities. The unique title is attributed to the fact that San Francisco is both a city and a county.

37. *Taxi Men Laugh at Ordinance*, S.F. BULLETIN, 1913 (on file with author).

cents fare was untenable for the commissioned taxi workers.³⁸ He explained, “The drivers can’t make a living without tips . . . if a driver gets a fair wage at the end of the week it is because of the tips he has received.”³⁹ Dixon testified in a municipal hearing that because of the commission system and despite the twelve-hour union contract, taxi workers were working up to eighteen-hour days.⁴⁰ Those working the longest hours were bringing in an average of \$3.75 per day, and some made only \$6-\$7 per week.⁴¹ The new ordinance, he argued, would exacerbate the situation unless the business model of the taxi companies changed from commission-based earnings to secure wages.⁴²

Having planted the seed, the following year, the Chauffeurs’ Union built on driver outrage over the ordinance to launch a multi-year campaign against commission-based earnings in favor of a stipulated wage for all drivers.⁴³ Four years later, in September 1918, the Chauffeurs’ Union finally won this campaign. At the same time, the Union succeeded in attaining 100% representation through the unionization of two of the largest firms in the taxicab business. Together, the aggressive direct actions and municipal advocacy forced the taxi companies to alter their business model. The taxi industry shifted from a commission-based, split-shift system that coerced drivers to work sixteen, eighteen, or even twenty hours a day to a guaranteed daily wage of \$4 for a ten-hour shift. Newspaper reports specified, “[M]embers feel exceedingly grateful to Dixon, who organized the union and piloted it to success.”⁴⁴

The fare ordinance and the memory of the 1910 strike motivated the San Francisco Board of Supervisors to formally shift their role in the taxi industry, calling it a “semi-public utility” to justify government intervention into the contract between businesses and workers.⁴⁵ The Supervisors argued that since the city set the taxi fare and the taxicab companies’ stands were on

38. According to undercover newspaper reporters, union drivers uniformly charged \$1, in active disobedience of the new ordinance. *See id.*; *see also Taxicab Charges to Be Fixed Soon*, S.F. CHRON., Apr. 27, 1912.

39. *See Taxi Men Laugh at Ordinance*, *supra* note 37.

40. *See Taxicab Charges to Be Fixed Soon*, *supra* note 38.

41. *Id.* As per the Bureau of Labor Statistics’ Consumer Price Index inflation calculator, \$6-\$7 in 1913 amounts to approximately \$146.32-\$170.71 in 2016. *CPI Inflation Calculator*, BUREAU OF LAB. STAT. (Dec. 16, 2016), https://www.bls.gov/data/inflation_calculator.htm.

42. *Id.*

43. *See, e.g.*, Frederick W. Ely, *To Pay Wage Instead of Commission*, Mar. 5, 1914 (on file with author).

44. *Chauffeurs’ Victory*, Sept. 17, 1918 (on file with author).

45. At this historical moment, whether taxis could be regulated as “common carriers” under the common law was still a matter of debate. By 1917, at least two courts in West Virginia and Missouri had decided that they were. But in San Francisco in 1910, regulators found other reasons to justify their intervention into industry. Edwin R. Keedy, Note, *Is a Taxicab Company a Common Carrier?*, 66 U. PA. L. REV. 71 (1917).

public property, they had the right to have a say in labor relations to prevent another strike.⁴⁶ Six years after the passage of the fare ordinance, city regulators publically advocated for higher wages for drivers. Specifically, the Supervisors suggested raising the taxi fare rates and granting drivers a raise from this increase in fare price. Taxicab company representatives turned down the offer, fearful that ridership would decrease if rates increased and weary of the new alliance between municipal leaders and union leaders.⁴⁷ But within two days of a taxi drivers' strike and under pressure from both workers and the City, the taxi companies gave in to the Supervisors' suggestions. On October 1, 1919, the taxicab companies agreed to the Union's demands for a daily wage of \$5 and an eight-hour workday.⁴⁸

Ten years after its founding, the Chauffeurs' Union had succeeded in using municipal lobbying and strike tactics to drastically alter the nature of the San Francisco taxi industry—transforming it from a completely private enterprise to a “semi-public” utility. The Union exerted influence over not just the wages of workers, but also the price of the product and the way in which the taxi companies made their profits. However, this politicized bargain—triangulated among workers, companies, and the city—was soon challenged by the American Plan: local and national efforts by businesses to challenge union power.

B. Taxicab Companies Strike Back: A Four-Year Refusal to Bargain

In 1922, three years after the Chauffeurs' Union won a stipulated \$5 wage for workers, the workers' contract expired and taxicab companies began a multi-year “war” against the Chauffeurs' Union. Adopting the politics of the American Plan—a national policy adopted by U.S. businesses in the 1920s to stamp out unions by refusing to bargain—the cab companies rejected all compromises proposed by the Union.⁴⁹ The Union countered with a strike and violence against American Plan (or “scab”) drivers. In response, the taxicab companies took strikers to court, determined to de-

46. *City to Try to Halt Strike of Taxicab Drivers*, S.F. EXAMINER, Sept. 28, 1919. A local newspaper reported, “The fact that the supervisors have passed ordinances governing rates to be charged in the hotel and other sections of the city, and the fact that most of the large companies are extended many favors in the matter of stands along the streets and squares, the supervisors believe gives them the right to have a voice in the matter.” *Id.*

47. *Id.*

48. *Taxi Drivers Win Battle for \$5 Wage: Demand for Eight-Hour Day Also Unconditionally Granted by the Auto Owners' Association*, S.F. EXAMINER, Oct. 2, 1919. S.T. Dixon declared the outcome a “complete victory” for taxi drivers but agreed to sign an agreement to go before the Board of Supervisors and ask authority to increase taxicab rates. This was a compromise as the riding public could then place the blame for higher fares on the drivers, and not on the businesses. *Taxi Men Return to Work*, 1919 (on file with author).

49. See generally Allen M. Wakstein, *The National Association of Manufacturers and Labor Relations in the 1920s*, 10 LAB. HIST. 163 (1969) (discussing the American Plan).

unionize the industry at all costs.⁵⁰ These long and violent years threatened the power of the Chauffeurs' Union and their politicized bargain. However, by continuing to use radical tactics to bring drivers into the fold, the Chauffeurs' Union and the bargain it established survived.

The war against the Union began when the companies demanded that the Chauffeurs' Union agree to lower drivers' wages to \$4 per day, a 20% wage decrease from the previous contract.⁵¹ The Union countered that they would accept \$4.50 per day. The companies, as per the philosophy of the American Plan, refused. After both sides failed to reach an agreement, the 550 taxi drivers of San Francisco voted for a strike on May 5, 1922.

But San Francisco taxicab companies, seasoned by previous strikes and emboldened by the nationwide, concerted efforts of business to eliminate collective bargaining, launched an all-out attack against the Union. They aggressively advertised a need for "strike condition" drivers in the *San Francisco Examiner* for a full week before the union vote to strike. These "strike condition" drivers were promised compensation, above and beyond the union contract demands—\$5 per day plus room and board. By paying strike condition drivers more than the Union was demanding, the companies made clear that their refusal to bargain was not based on their economic realities, but rather on an effort to stamp out the power of the Union.⁵² The battle with the two largest companies—Yellow Cab and Black and White Cab—continued for over three years, with both companies replacing drivers on strike with non-union replacements.

The scale and level of violence resulting from the strike are hard to imagine by contemporary standards.⁵³ Riots broke out in the streets, and men on both sides were physically attacked. Within the first three weeks of the strike, taxicab companies alleged that the strike had caused \$20,000 of damage on their properties.⁵⁴ W.E. Travis, president of the taxicab company association, began a publicity assault on the Union alleging that "the striking drivers set out to win the strike by violence. . . committ[ing] . . . battery, arson, and assault with intent to kill."⁵⁵ Newspaper accounts corroborated the level of violence alleged by Travis but indicated that such violence

50. *Taxi Strikers Enjoined by Court Order*, S.F. EXAMINER, May 13, 1922.

51. *Chauffeurs Vote to Call Strike Today*, S.F. EXAMINER, May 5, 1922.

52. Within days after the strike began, several smaller companies that could not absorb the economic losses from the strike reached an agreement with the Chauffeurs' Union. By February 1923, Checker Cab Company reached a two-year agreement with the Union, succumbing to the wage demand for \$4.50 per day. *Company Ends Taxicab Strike: Only Two Concerns in S.F. Now Holding Out*. Feb. 3, 1923 (on file with author).

53. On October 2, 1922, newspaper headlines called a street fight a "riot" as, "[h]ostilities in San Francisco's taxicab war broke forth anew . . . when more than a score of drivers and sympathizers engaged in a free-for-all battle at Powell and O'Farrell streets, which resulted in a general riot call for the police." *Riot Marks New Outbreak in Taxi War* Oct. 2, 1922 (emphasis added) (on file with author).

54. *Taxi Strikers Enjoined by Court Order*, S.F. EXAMINER, May 13, 1922.

55. *Id.*

occurred on both sides. Courts ignored the violence instigated by the companies, but enjoined the Chauffeurs' Union from using force.⁵⁶ S.T. Dixon was arrested and charged with conspiracy to assault non-union taxicab drivers and with possession of a concealed weapon. Those charges were later dropped.

But during these difficult American Plan years, many union leaders, Dixon included, focused not just on discouraging potential scabs, but also on bringing them into the fold. With the knowledge that their remarkable power was rooted in their numbers, the Chauffeurs' Union by 1923 had returned to the difficult job of organizing. In August 1925, more than one hundred new taxi drivers (former "scabs") were admitted into the Union, and S.T. Dixon informed the media that he expected complete unionization of the craft within a week under the Union's new open charter.⁵⁷ To facilitate this rapid unionization, the Union admission fee was reduced to \$1 and applicants were admitted without formal initiation.⁵⁸

The organizing focus and tactics worked, and only five months later the "Taxicab War" ended, culminating in a four-year union contract with Yellow Taxicab Company. This contract, termed a "peace pact" between the company and the Chauffeurs' Union went into effect on January 29, 1926, almost four years after the initial strike was launched.⁵⁹ But the "peace" involved union compromise.

The new contract created a new business model for the taxicab companies, one that was a hybrid between commissions and a stipulated wage. Under this contract, all 400 drivers of the Yellow Cab Co. received a guaranteed wage of \$4 per day and commissions over a stated weekly sum each week. For businesses, this hybrid-model was advantageous because it lowered their financial liabilities and increased overall potential revenue. Drivers, under this hybrid system, had an incentive to work harder and longer than under the previous set-pay for set-hours arrangement. The business model also applied to union drivers at the other companies where drivers were previously making \$4.50 per day without commissions. The important tradeoff for the Union was that San Francisco taxi drivers were 100% unionized.⁶⁰ Yellow Cab, relieved to have lowered the set daily wage and partially returned to commissions, proudly declared that the agreement made the company the "largest unionized taxicab company in the country."⁶¹

56. *Id.*

57. *100 Join S.F. Taxi Driver Union*, Aug. 29, 1925 (on file with author).

58. By that time, union drivers received \$4.50 a day plus tips, while the non-union drivers received 20-30% of their earnings plus tips. *See id.*

59. *Taxicab War Ends on 4 Year Pact*, Jan. 29, 1926 (on file with author).

60. *Id.*

61. *Id.* In November 1925, Yellow Cab had acquired Checker Cab Company and Black and White Cab Company. These cab companies merged their operations in both San Francisco and Los Angeles, creating a single company with a gross revenue of almost \$3.8 million and over 2,500 employees. The

Year	Union Demand	Union Action	Outcome
1910	Free Gasoline Limited Workday Set Commission Rate	3 Week Strike	Free Gasoline 12-hour Workday 20% Commission Rate
1914- 1918	Set Wage Limited Workday	Politicized Lobbying of Municipality	\$4 Per Day Wage 10-hour Workday
1922- 1925	Higher Wages	3 Year Strike (resulting in a dramatic increase in the use of "scab" or non- union workers.)	\$4.50 Per Day Wage + Tips for Union Drivers 20-30% Commission Rate for Non-Union Drivers

*C. Stability Amidst Economic Chaos: The Great Depression,
Regulation, and Return of the Politicized Bargain*

In December 1929, at the very outset of the Great Depression, the San Francisco Board of Supervisors leveraged its power over the taxicab industry to pass a historic ordinance regulating the industry. The 1929 Ordinance required the employers to provide insurance and protected union labor in the case of a corporate merger.⁶² The ordinance also limited competition by regulating the number of taxicabs licensed to operate in the city. This was achieved through the introduction of medallions over the next few years. Medallions were municipal permits required before taxicab owners could put taxicabs onto the street (distinct from a license needed to drive a taxi). The medallion system allowed municipal regulators to keep track of the number of taxis on the street and to ostensibly regulate their volume per need.⁶³

Yellow Cab Company of San Francisco at the time operated 225 cabs, Checker operated 145 cabs, Yellow Cab of Los Angeles operated 300, and Black and White of Los Angeles operated 80. The new corporation was headquartered in San Francisco with Arthur C. Smith and George A. Baldi as the heads. *\$4,000,000 Taxi Merger Completed*, Nov. 28, 1925.

62. *Taxi Barons Endorsed By Supervisors*, Dec. 1929 (on file with author).

63. In order to generate income and ensure that taxi owners were not "fly by night" business men, cities often commodified the medallions, giving them artificial value and selling them on the open market. In New York City, as elsewhere in the country, commodified medallions first emerged during the Great Depression under the Haas Act of 1937, issued at a price of \$5 each. San Francisco regulators likely

The new law, which made market entrance more difficult for both firms and drivers, was hailed by the Chauffeurs' Union because it limited competition for individual drivers whose wages above \$4 were from commission.⁶⁴ The new law made it impossible for new companies to enter the field and for existing companies to expand unless they could prove market demand. In the years prior to the implementation of the ordinance, taxi drivers who did not work for a company but drove their own taxis had become an increasingly common phenomenon.⁶⁵ The ordinance limited the number of people—workers, capitalists, and worker-capitalists—who could enter the profession. The ordinance also mandated that employers provide liability insurance to drivers to protect cab patrons and pedestrians.⁶⁶ Finally, and perhaps most remarkably, the Chauffeurs' Union succeeded in adding an amendment to protect union labor in the event of a merger.⁶⁷

Amid the increased competition that propelled the 1929 ordinance, Yellow Cab began a rate war with other taxicab companies, drastically reducing their fares to increase loyalty and patronage. But this fare reduction made drivers fear for their future wages. The Chauffeurs' Union, meanwhile, demanded both a higher wage of \$5 per day and reduced working hours from ten to nine hours per day, including lunch.⁶⁸ Through arbitration, the Union agreed to a new pay scale: \$4 per day, which was \$.25 less than the prevailing wage. But a new basis for commissions was included in the new agreement, which the Union expected would bring about a substantial increase in earnings. Drivers received 25% of all fares more than \$58 per week on a day shift, and \$60 per week on a night shift.⁶⁹

The dropping rates led the Chauffeurs' Union to request that the Board of Supervisors help guarantee an acceptable wage for workers. Savvy to the fact that a "race to the bottom" on rates was not good for taxi workers who would only see their salaries lowered and the income from their commissions decrease, the Chauffeurs' Union pushed the Board of Supervisors to establish a "minimum rate," just as they had established a maximum rate back in 1913.⁷⁰ The request for a minimum rate was met with controversy, with taxicab companies arguing that it would "stifle competition."

attributed financial value to the medallion at or before this time. *See generally* Biju Mathew, *TAXI!: CABS AND CAPITALISM IN NEW YORK CITY* (2005).

64. *Id.*; *see also* *Taxi Men Ask Raise*, Jan. 1930 (providing number of drivers) (on file with author).

65. *Taxi Drivers Urge Law to Settle Rates*, July 2, 1931. Newspaper accounts reveal that although these men were not represented by the union, union officials did hold sway over them.

66. *Id.*

67. *Id.* Specifically, the amendment provided that in the case of a lockout resulting from a corporate taxi merger, the supervisors would permit union forces to operate cabs. *Id.*

68. *Taxi Rate War Looms; Yellow Slashes Price*, *THE DAILY NEWS*, Apr. 4, 1930.

69. *Taxi Drivers Get New Wage Scale*, May 2, 1931.

70. *Taxi Drivers Urge Law to Settle Rates*, July 2, 1931 (on file with author).

The demand for a minimum rate resulted in a raging debate over the role of the city in regulating the taxi industry. Good jobs were on the line, but taxicab companies argued that market prices should not be touched. By June 1931, the Board of Supervisors voted unanimously for such a minimum rate ordinance, but the former city attorney and counsel for two taxicab companies, John Dailey, halted the effort.⁷¹ In this context, S.T. Dixon argued that the only way to keep the industry afloat was to pass an ordinance with a maximum and minimum fare rate. He maintained that total deregulation of the industry, as advocated by Dailey, would be “disastrous”:

The taxicab industry is suffering from cut-throat competition, as a result of which it is in such financial straits as to be unable to pay the \$5 wages to the drivers, which has been recognized as a minimum living wage. . . The demoralized condition of the industry, due to. . . cutthroat competition, is a menace not only to the capital invested in the industry, but to the jobs and the established working conditions of chauffeurs. . . The only alternative to the proposed maximum and minimum rate ordinance is a policy of non-regulation, which would have a disastrous effect both on the industry and the public.⁷²

The next month, on July 3, 1931, *The Daily News* published an editorial, arguing that the taxi industry constituted a public utility but revealing an anxiety about regulatory capitalism more generally. *The Daily News* wrote:

Here is a borderline business in a hazy zone between unregulated private industry and privately owned utilities that are protected in a monopoly of their field in return for submitting to rate fixing by the city or state. Like street railway and lighting companies, the taxis use public streets and must be regulated as to stands, maximum rates and safety standards. Should this regulation be extended to protect them from cutthroat competition? Does the city’s fixing of a maximum above which they may not charge entitle them to a similar fixing of a minimum? In the showing by owners and employees of operating losses and low wages, The News sees a strong argument for an affirmative answer.⁷³

On July 14, 1931, the Board of Supervisors passed an ordinance that guaranteed a minimum rate and an acceptable wage for taxi workers. The vote passed overwhelmingly, fifteen to one.⁷⁴

After this massive regulatory intervention in 1929 and 1931, the city saw relatively secure labor conditions for taxi workers. One strike against Luxor cab arose in March 1932, but otherwise, news archives do not reveal major Union clashes with companies or the Board of Supervisors during much of the early 1930s. While taxi workers in San Francisco certainly suffered during the Great Depression—as all working people did—their conditions

71. *See Hearing on Taxi Protests*, June 30, 1931 (on file with author).

72. *Id.*

73. *Taxi Fares Again*, THE DAILY NEWS, July 3, 1931.

74. *Board Adopts New Taxicab Ordinance*, S.F. BULL., July 14, 1931.

were tolerable.⁷⁵ This was a strikingly different reality than elsewhere in the country, where, amidst the throes of the Great Depression, “the number of taxicabs skyrocketed, while occupancy rates and revenue per taxi declined,” resulting in unbearable working conditions and untenable wages for workers.⁷⁶

As taxi workers across the country suffered during this period, San Francisco drivers enjoyed relatively stable lives, protected by strong union leadership and municipal intervention. The militancy of the Chauffeurs’ Union under S.T. Dixon and the Board of Supervisors’ willingness to heed concerns about worker security allowed taxi workers to earn a stable wage and drive limited hours. A 1935 American Federation of Labor (AFL) article called the San Francisco Chauffeurs’ Union the “strongest organization of its kind in the United States.”⁷⁷ The Union’s efforts reflected a vision of securing a bargain for the greater social good by working to influence overall economic policy, not just wages.

II.

IT’S A (NEW) DEAL: THE TAXI UNION’S MODERATE BARGAIN AND RECEDING REGULATION, 1935-1979

Four decades after the passage of the New Deal and the legalization of collective bargaining by the Wagner Act, the strong political bargain established by the Chauffeurs’ Union unraveled. During this time, San Francisco taxi workers went from 100% unionization to being legally unqualified for unionization. In Part II, I use newspaper archives, municipal records, and interviews with former taxi workers to help explain the decline of the early 20th century radical bargain for taxi workers in San Francisco. I argue that legal and legislative decisions to allow deregulation together with political fracture within the Union led to its demise.

The character of the Union and its leadership by the 1950s had changed from radical to moderate. While the New Deal had legitimized the labor movement and encouraged unionization, the laws and regulations passed in the post-war period—including the Labor Management Relations Act of 1947—served to subdue the Chauffeurs’ Unions’ tactics.⁷⁸ Alongside

75. Interview with Charles Rathbone, San Francisco Taxi Worker and Taxi Historian, in San Francisco, Cal. (Jan. 29, 2012).

76. Dempsey, *supra* note 23 at 73 (citing Mark Frankena & Paul Pautler, FED. TRADE COMM’N, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION (1984)).

77. Arthur Elsten, *Chauffeurs’ Union Seeks Wage Change*, Sept. 12, 1935.

78. Many of the Taft-Hartley amendments focused on undermining the possibility of work-stoppages, including amendments to the NLRA that demanded a “cooling off period”—an 80-day notice before a strike could begin—and that outlawed the use of secondary boycotts but allowed employers to take active anti-union stances to deter their workers from mobilizing. See Steven E Abraham, *How the Taft-Hartley act hindered unions*, 12 HOFSTRA LAB. L.J. 1, 12-16 (1994).

changes in the federal legal regime that undermined strike possibilities, municipal regulators also worked actively to prevent direct actions. In this political and legal environment, the Chauffeurs' Union strategically employed a message of "harmony" with Yellow Cab and distanced itself from the militant organizing ethos that had characterized its early years.⁷⁹

During this time, too, the Union's central focus shifted away from organizing a mass base of workers and establishing a contract with taxi companies. Those accomplishments were complete. Instead, the Union's attentions centered on enforcing the contract and defending the proprietary interests of Yellow Cab from the threats posed by non-union drivers and smaller companies.⁸⁰ While Yellow Cab's interests in many cases coincided with the interests of the large majority of their membership, the Union's defense of Yellow Cab's contracts with the city tarnished its reputation. To both news reporters and some workers, the centrality of this advocacy fostered the impression that the Union was Yellow Cab's ally rather than adversary.

Over the next two decades, the Chauffeurs' Union realized a moderate bargain, its leadership emphasizing "cooperation between labor and management" and municipal regulators providing brokerage whenever necessary. In the postwar years, even when strike possibilities arose, they were most often averted through compromise, frequently facilitated by the intervention of municipal leadership. As a result, the Union spent less energy politicizing and mobilizing its membership—undertakings which had been central to effecting work stoppages in the prior decades. In this atmosphere, the Union lost any leverage it once had over the business model of the large taxi companies.

By the late 1960s and early 1970s, the Union's more conservative stance on a variety of social issues—including race and racism—led to fracture with its more politically radical rank-and-file members. Accordingly, in the late 1970s when San Francisco taxicab companies adopted a lease-based business structure, the Union had limited power to discourage its workers from embracing it. The city's regulatory decision to allow the practice of leasing coupled with legal decisions by the appellate courts and the NLRB ultimately

79. Perhaps influenced by the national discussion resulting in the Taft-Hartley Act, a heated internal Union debate in the late 1940s called for an end to the use of radical or "goon" tactics, including intimidation and assault. Charles Rathbone, *Taxis and SF Labor History*, UNITED TO WIN! (United Taxicab Workers, S.F., Cal.), Fall 2001, at 4.

80. Melvyn Dubofsky argues that for unions nationally during the 1950s and 1960s, "the salient issues concerned contract implementation." Melvyn Dubofsky, *THE STATE & LABOR IN MODERN AMERICA* 213 (1994). He points out that both industrial relations experts and labor lawyers of the time recommended that "both unions and managements negotiate agreements that provided for binding arbitration as a substitute for the right to strike during the duration of a contract." *Id.* This, he argues, guaranteed economic stability, "protect[ed] the rights of individual workers through institutionalized, nondisruptive collective action, and reduce[d] direct state regulation." *Id.*

sanctioned the companies' leasing model, which had been designed to shift corporate risk onto workers and to undermine collective bargaining. When given the choice, many taxi workers, distrustful of their union, embraced the lease and turned their backs on seven decades of organized representation by the Chauffeurs' Union.

A. The Rise of Harmony in the 1950s: The Chauffeurs' Union and Yellow Cab Unite Against Independent Drivers

The years immediately following World War II were marked by discord in the taxicab industry. But the conflict was not centrally between taxicab companies and taxi drivers. Rather, the more significant fight was between smaller businesses (and the workers who drove for them) and Yellow Cab (and the Chauffeurs' Union). By this time, a number of taxi medallions belonged to smaller taxi companies or individual drivers (the "independents") who felt that municipal regulation unfairly favored the larger companies, such as Yellow Cab. Rank-and-file Yellow Cab drivers comprised most of the Chauffeurs' Union's membership, making an unlikely marriage between Yellow Cab and the Union.

In this oligopolistic market, the Union became divisive and exclusionary. Rather than representing the interests of all taxi workers, its efforts were wound up in the proprietary interests of Yellow Cab. This was especially true when it came to regulatory decisions affecting access to ridership. Crucially, labor leadership exacerbated the appearance of a concordant relationship with Yellow Cab by publicly emphasizing harmony and the need to address "transportation needs" rather than workers' problems and needs.⁸¹

Indeed, rather than uniting behind the cause of workers who drove for the smaller companies, the Chauffeurs' Union was an outspoken critic of these workers.⁸² By 1955, the Independent Taxicab Operators' Association

81. See, e.g., DECLARATIONS OF CANDIDACY, CITY OF S.F., at 17 (Nov. 6, 1945), http://sfpl.org/pdf/main/gic/elections/November6_1945.pdf (providing Ernest Lotti's candidacy statement for Board of Supervisors).

82. By the early 1950s, the number of independent operators had grown to 250, and together, they formed an interest group called the "Independent Taxicab Operators' Association." *Hearings Set on Taxicabs* S.F. EXAMINER, Mar. 18, 1955; see also *Driver Invites Jail in Cab Fight*, S.F. EXAMINER, Dec. 3, 1957. The "independents" or the "anti-Yellows," as they were frequently called, waged regulatory battles to gain access to business held by larger companies. See, e.g., *Cab Drivers' 'Beef' Halted*, S.F. EXAMINER, May 20, 1953. These battles included fighting for the right to pick up passengers from taxi stands around town, including at the Ferry Building, where military, tourist, and industrial ships frequently unloaded. *Id.* The independents both lobbied and publicly demonstrated to achieve their ends. Unsupported by the Chauffeurs' Union, the independents represented their own economic interests in demonstrations and protested despite threats of criminal charges. One such demonstration took place in May 1953 outside the Ferry Building, where Yellow and DeSoto cab drivers picked up passengers from the Southern Pacific ferry docking. The Chauffeurs' Union's Business Agent at the time, Ernest Lotti, reported that he spoke with the fifteen or so independent drivers who were protesting. Although the

started a formal campaign against Yellow Cab's parking privileges.⁸³ During the course of this campaign, which was characterized by civil disobedience, protests, and demonstrations (including "honk-outs" in which taxis circled City Hall while honking their horns), taxi drivers' interests diverged.⁸⁴ Drivers working for smaller companies and for themselves favored access to Yellow Cab's parking privileges. But because their Yellow Cab driver-members benefitted from those privileges, the Chauffeurs' Union worked alongside Yellow Cab to oppose their demands.⁸⁵

The rift that the Chauffeurs' Union cemented between Yellow Cab workers and workers at smaller companies foreshadowed the undoing of labor unity in the coming years.

B. Decline of Direct Action and Work Stoppages Against Big Taxi by the 1960s

By the 1960s, the Chauffeurs' Union's lack of direct actions and diminishing political engagement stood in sharp contrast to radical civil rights groups mobilizing in San Francisco. While the Union expended a great deal of energy defending Yellow Cab's proprietary pick-up spots around the city, the Union's tactics regarding actual wages and working conditions at Yellow Cab were decidedly less combative, despite, in at least one crucial instance, the desires of union workers.

In 1964, Yellow Cab drivers voted in favor of a strike but did not receive the necessary strike sanction from the Teamsters' executive board.⁸⁶ The drivers voted "reluctantly" to accept a one-year contract that was opposed by most members. The vote was divided: 297 for the contract and 347 opposed.⁸⁷ Union officers who proposed acceptance of the contract were booed during a work stoppage meeting.⁸⁸

In this instance, the Union emphasized cooperation over direct action. The Union's negotiating committee had originally asked Yellow Cab for a \$2 daily increase in guaranteed wages (which would have raised the taxi

Chauffeurs' Union did not represent these workers, Lotti was able to convince them to end their protest. He told the newspaper, "I just told them to forget it, and go to work. They did." *Id.*

83. *Hearings Set on Taxicabs* S.F. EXAMINER, Mar. 18, 1955; see also *Driver Invites Jail in Cab Fight*, S.F. EXAMINER, Dec. 3, 1957.

84. *Independent Cabs Declare Parking War*. S.F. NEWS, Nov. 5, 1957.

85. *Drivers Oppose 'Open' Cab Stands*. S.F. EXAMINER. Feb. 20, 1963. The president of the Chauffeurs' Union at that time, Anthony Cancilla, stood up for Yellow Cab, speaking out against the independent drivers. He testified before the police committee of the Board of Supervisors stating that the city's independent cab drivers "hate Yellow Cab" and that if the city allowed the independent drivers to park in the cab stands, it would, "add further bewilderment, further confusion, further chaos to the taxicab industry." *Id.*

86. *Reluctant Cab Drivers Settle*, S.F. EXAMINER, June 8, 1964.

87. *Id.*

88. *Id.*

workers' daily pay to \$15), seven paid holidays each year (as opposed to none), a 5% per hour increase in the pension fund, and increased vacation and sick leave benefits.⁸⁹ The only concessions it received from the company were minor—vacation pay and pension improvements.⁹⁰ Nevertheless, the Union's negotiating committee recommended acceptance, according to a committee member "because rejection would have created 'a long and costly strike that would have created undue hardship upon [the workers].'"⁹¹ And yet, the drivers had voted to strike less than a week prior.⁹² The Union's language and rhetoric of harmony, in sharp contrast to the militant ethos of Dixon's era, rang a discordant note in the ears of most taxi workers.⁹³

Even when the Union was willing to strike during this era, both legal maneuvers by the taxicab companies and forced mediation by municipal regulators forestalled the possibility, perhaps sending the message to union members that their leaders were not completely behind them. In late July 1970, the Union declined to bargain regarding the proposed installation of speed recording devices in its cabs and threatened to strike if the company installed the devices in any of its cabs.⁹⁴ Yellow Cab sought to forestall a strike by seeking an injunction in Superior Court. A year later, in June 1971, a strike was again averted when San Francisco Mayor Alioto successfully negotiated a contract between the Union and Yellow Cab.⁹⁵ By this time, Yellow Cab had roughly 500 of the city's 800 medallions, and the 1,200 Yellow Cab drivers who were represented by the Union sought improvements in pension plans, health and welfare benefits, and a higher weekly guarantee of their \$75 per week income.⁹⁶ The Union received strike sanction from both the San Francisco Labor Council and the International Union.⁹⁷ But because of the impact the strike would have on the city, Mayor Alioto mediated until the Union and Yellow Cab reached an agreement.⁹⁸

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Nevertheless, the union did support a strike of cab drivers at the much smaller and less influential taxi company, Veterans' Cab. Veterans' Cab drivers walked out in protest of their contract violations in 1967. The Union alleged that the company refused to pay overtime for the sixth day of work and was requiring drivers to pay for their own gasoline. *Drivers' Strike Ties Up Veterans S.F. Cab Fleet*, S.F. EXAMINER, Feb. 28, 1967.

94. *Yellow Cab Seeks Strike Injunction*, S.F. EXAMINER, July 30, 1970.

95. George Rhodes, *Taxi Strike Off—Alioto in Key Role*, S.F. EXAMINER, June 25, 1971.

96. *Cabbies Set to Strike on Friday*, S.F. EXAMINER, June 22, 1971.

97. *Id.*

98. Rhodes, *supra* note 95.

*C. Turning its Back on Worker Dignity: Racial Minorities and the
Chauffeurs' Union in the 1960s-70s*

Alongside the decline in work stoppages, the Union's fight for worker dignity seemed to take a back seat to harmony with Yellow Cab. In interviews, drivers who entered the industry in the 1960s noted a general perception among cab drivers that the Union was "corrupt" and "in cahoots with the company."⁹⁹ This perception, true or not, is revealing, and corroborates newspaper accounts that documented the disconnect between the Union and workers, particularly racial minorities and "hippies."

In 1971, for example, the Union decided to publically back Yellow Cab in the company's decision to discipline drivers who did not meet its dress code. Specifically, Yellow Cab had suspended twenty-seven drivers for "failing to meet a company requirement that beards be neatly trimmed and that hair not fall below collar length."¹⁰⁰ In the political moment, long hair and a beard were not signs of dishevelment, but political statements, representing personal liberty and leftist activism. Six of the men suspended had filed grievances with the Union, but the Union President publicly stated that Yellow Cab "being a private firm, has the right under the contract to demand a neat and clean appearance."¹⁰¹

The suspended drivers, enraged at the Union, claimed that "the local [had] teamed up with the company 'to get rid of' the younger hairy drivers who have been demanding better working conditions."¹⁰² About one hundred long-haired drivers formed a "Dissident Drivers" committee and converged upon the Union claiming that it was conspiring with Yellow Cab.¹⁰³ The "dissidents" hired their own attorney and told the press, "The local and Yellow Cab are out to eliminate us . . . because the young drivers have formed a coalition with the black drivers to get better working conditions."¹⁰⁴ The dissident workers sued Yellow Cab on the long hair issue, but five years later, the district court decided against them, stating that as their employer, Yellow Cab had the right to dictate the terms of their appearance.¹⁰⁵

99. See Interview with Robin Goodings, Taxi Worker and UTW Advocate, San Francisco, Cal. (Aug. 7, 2013); Interview with Samuel Tesfaye, Taxi Worker, Oakland, Cal. (May 23, 2012).

100. *Taxi-Hair Issue Put in Kagel Hands*, S.F. EXAMINER, Apr. 17, 1970.

101. *Id.*

102. *Id.*

103. *Long-Hairs Assail Cabbies' Union*, S.F. EXAMINER, Apr. 13, 1970.

104. *Id.*

105. See *Rulings on Long Hair for Cab, Bus Drivers*, S.F. CHRON., Mar. 13, 1975 ("U.S. District Judge Stanley A. Weigel said that the Yellow Cab 'had the right to refuse to hire drivers solely because their hair extended below their collar lines. . . .' He cited an opinion by the U.S. Court of Appeals for the Ninth Circuit, which said, in part: 'A private employer may require male employees to adhere to different modes of dress and grooming than those required of female employees and such does not constitute an unfair employment practice.'" (citing *Baker v. Cal. Land Co.*, 507 F.2d 895, 898 (9th Cir. 1974)).



"Long-Haired Cab Drivers Rap Union." *San Francisco Examiner*. April 13, 1970.

In other instances, drivers who did not think the Union was acting in their best interests engaged in "extra-union" protest activity. For example, in 1970, thirty Yellow Cab taxi workers picketed City Hall without the Union's backing "to let the city fathers know what is going on at the airport" with cab drivers from other cities "pirating" their fares.¹⁰⁶ The same year, 169 non-union taxi workers, most of them working for independent operators, signed a petition to repeal an ordinance mandating bulletproof shields inside taxicabs.¹⁰⁷ Although the majority of union drivers had voted in favor of the shields, the independent operators explained that had their votes been counted too, the result would have been not to install the shields.¹⁰⁸ The Board of Supervisors unanimously repealed the ordinance the following year after learning that it was a contentious issue among drivers.¹⁰⁹

In 1974, two symbolic worker-union rifts illustrated the full extent to which the Chauffeurs' Union's politics differed from that of its drivers. By this time, a number of immigrant and minority drivers had entered the profession. The political moment yielded a growing number of leftist drivers who were critical of the U.S.'s foreign policies and interventions abroad. Rather than acknowledging the political landscape and creating solidarity between the civil rights movement, the anti-war moment, and labor, the Union ejected members from its meetings who refused to pledge allegiance to the U.S. flag. As a result, a number of Yellow Cab drivers sued the Union, alleging a violation of their constitutional rights.¹¹⁰ In another incident, an

106. *30 Yellow Cab Pickets Rap Airport 'Piracy'* S.F. EXAMINER, Oct. 20, 1970.

107. *See Cab Shield Law Repeal Demanded*, S.F. EXAMINER, Dec. 30, 1970.

108. *See id.*

109. *See Supervisors Repeal Taxi Shield Law*, S.F. CHRON., Jan. 19, 1971.

110. *See Drivers Sue, Protesting Flag Pledge*, S.F. EXAMINER, Sept. 7, 1974. In August 1970, one month after the tentative agreement had been reached between Yellow, Mayor Alioto, and the Union, drivers at Yellow Cab were given the okay to go on a seven-hour strike. Twenty workers were told that their clothes did not match the companies' "dark-clothes only" dress code. The drivers "prevailed on their

Arab American driver, Robert Abraham, alleged that the Union did not properly support him when he was fired from Luxor for blowing the whistle on Luxor's racist hiring policies, which, he alleged, excluded black drivers.¹¹¹

Dissent within the union grew. The media took note. Dick Nolan, a columnist for the *San Francisco Examiner* who regularly wrote on the taxicab industry, wrote, "And backing Big Yellow [as in Yellow Cab], as it has for years, is Big Labor. Their interests coincide, and have nothing to do with the public weal."¹¹²

D. Partial Deregulation and the Ascendancy of Leasing

Amidst the Union's decreasing authority with its workers came partial deregulation of the taxi industry and corporate restructuring. Transportation legal scholar Paul Dempsey argues that "[by the late-seventies], [d]eregulation emerged in a comprehensive ideological movement which abhorred government pricing and entry controls. . ."¹¹³ While this ideological force resulted in the total deregulation of the taxi industry in many cities across the country (along with deregulation of several other infrastructure industries), San Francisco saw limited deregulation. Nevertheless, the combination of more laissez faire municipal regulation, a weakened union, and clever business restructuring resulted in de-unionization of the industry by 1978.¹¹⁴

While entry into the industry remained regulated, the city deregulated the relationship between the taxi companies and their workers by allowing taxi companies to "lease" taxis to workers instead of requiring companies to pay them per shift. This practice of leasing eventually led to the dissolution of the employer-employee relationship and to the rise of the independent contractor taxi worker. However, because many drivers were initially given a choice between employee and independent contractor status, this shift could have been slowed or halted had taxi workers felt a stronger allegiance to the Chauffeurs' Union.¹¹⁵ But by this time, the Union's values did not reflect the more radical values of its rank-and-file workers.

regulation-obeying co-workers to stay off the job or . . . to return their taxis to the lot. . ." The Union president, Peter Derenale, back-tracked on his earlier position and charged the company with "discrimination, favoritism, and harassment." *Id.* The settlement that was reached after the strike "ban[ne]d floral or brightly patterned shirts, khaki, denim, or corduroy pants, or those with vivid stripes and leather jackets." *Id.*

111. See Ken Wong, *Cabbie Claims Union Work Took His Job*, S.F. EXAMINER, Apr. 3, 1973.

112. Dick Nolan, *Calling Cab Shots*, S.F. EXAMINER, Sept. 17, 1968.

113. Dempsey, *supra* note 23, at 75.

114. See Dubal, *supra* note 6.

115. Interview with Joseph Tracy, San Francisco Taxi Worker, San Francisco, Cal. (Aug. 17, 2013). Joe Tracy was the lead plaintiff in *Tracy v. Yellow Cab Cooperative, Inc.*, No. 938786 (Cal. Super. Ct. Oct. 22, 1996), which sought employee status for San Francisco taxi workers for unemployment insurance and workers' compensation purposes.

Prior to the 1970s, “leasing” taxicabs to drivers had been viewed with suspicion and even outlawed by San Francisco city regulators. After the passage of the Labor Management Relations Act in 1947 and its exclusion of independent contractors from the National Labor Relations Act, taxicab companies nationwide began to experiment with leasing.¹¹⁶

But this practice was not immediately tolerated in San Francisco. In 1950, allegations of medallion holders illegally leasing their medallions reached the Police Commission of the Board of Supervisors, which, by that time, had become the body responsible for regulating the taxicab industry.¹¹⁷ The Police Commission brought the holders of the taxi medallions together during a hearing and asked who had violated the conditions of their permits.¹¹⁸ A Chauffeurs’ Union representative attended the meeting and accused taxicab companies and independent operators of forming “illegal . . . contracts” in which “a flat daily amount [is demanded] by an operator who rents his cab out and lets the driver pocket everything above that amount.”¹¹⁹ The president of the Police Commission explained that both leasing and selling medallions without prior commission approval were illegal activities.¹²⁰ The Chauffeurs’ Union eventually fined three of its members for leasing their permits and working, in effect, as employers, rather than driving the cabs themselves.¹²¹

By the late-1970s, this once illegal practice of taxi leasing had become a ubiquitous phenomenon in the industry. The change to leasing allowed companies to shift risk onto workers during a time of economic uncertainty.¹²² This was not a simple or easy transition. For most of the 1970s, leasing taxicab drivers in San Francisco continued to be represented by the Chauffeurs’ Union and even received employee benefits. For example, in 1972, drivers who operated under the leasing system received \$54.50 a month per driver for a health and welfare plan, \$2.80 per day toward

116. See Dubal, *supra* note 6; see also, e.g., *Party Cab Co. v. United States*, 172 F.2d 87, 91 (7th Cir. 1949) (discussing early taxicab leasing scheme in Illinois).

117. See *Cab Firms Deny Violations of Permit Rules: Holders at Police Commission Hearing Reject Charge*, S.F. EXAMINER, Mar. 25, 1950.

118. *Id.*

119. *Id.*

120. *Id.*

121. Rathbone, *supra* note 75.

122. This was emblematic of what academics call the “neoliberal” turn. In describing the business origins of structural neoliberal practices, Boltanski and Chiapello explain, “[I]nterpretation of the crisis of capitalism as a crisis of Taylorism had, since the beginning of the 1970s, prompted a number of initiatives by employers to change the organization of work. LUC BOLTANSKI & EVE CHIAPELLO, *THE NEW SPIRIT OF CAPITALISM* 218 (Gregory Elliot trans., Verso ed., 2005). “As early as 1980, Gerard Lyon-Caen demonstrated that the proliferation of casual workers was the result of new strategies on the part of firms. These strategies were structured around two points: a new employment policy, making it possible for the employer to ‘maintain a free hand,’ and a new ‘policy of enterprise structures,’ such that employers – by outsourcing manpower, for example – could ‘shield themselves as employer.’” *Id.* at 225-26.

a pension plan, and \$100 a week of vacation pay for up to four weeks.¹²³ Though they did not earn a guaranteed wage by contract, they still benefited enormously from union representation. But by 1979, leasing cab drivers were understood as ineligible to participate in protected collective bargaining because the federal courts were likely to consider them “independent contractors” under the NLRA.¹²⁴

How did leasing emerge so ubiquitously in San Francisco? In the late 1960s, San Francisco taxicab companies found themselves in tough financial straits due to the decrease in tourism and the decline of military traffic through the Bay Area.¹²⁵ Most companies had difficulty filling their shifts. DeSoto, Veterans, and Luxor, the three largest taxicab companies after Yellow Cab, began leasing taxis to willing drivers for \$20-\$22 a shift.¹²⁶ Drivers were approached and asked if they would prefer to “lease” the cab for a fixed amount instead of receive a guaranteed commission. Although the Union discouraged drivers from accepting a “leasing” contract, many drivers embraced leasing when given the choice due to general distrust of the Union and the promise of extra income.¹²⁷

Instead of earning revenue from the riding public, these companies began earning money from the drivers themselves. Company profits, then, were guaranteed, while the workers’ assumed much of the risk because wages were entirely dependent on the ridership on any given day. Why the municipal regulators allowed leasing during this era when they had prevented it just fifteen years prior is unclear from the record, but the dire financial straits of the cab companies combined with the rising ubiquity of the phenomenon nationally likely facilitated their acquiescence.¹²⁸

123. *Ups and Downs of the Taxi Business*, Jan. 31, 1972 (on file with author).

124. *See, e.g.*, *Local 777 v. NLRB*, 603 F.2d 862, 904 (D.C. Cir. 1978) (holding that leasing cab drivers are not “employees” for the purposes of the NLRB).

125. *See Yellow Cab Seeks Some Business Aid*, S.F. EXAMINER, Dec. 31, 1971.

126. These companies were loosely described as “cooperatives” in which individual medallion holders came together under the auspices of the company. DeSoto, Veterans, and Luxor had 77, 65, and 58 medallions, respectively. *See Delay in S.F. Taxi Strike*. S.F. EXAMINER, Mar. 26, 1973. Yellow Cab held over 500 medallions, and the remaining 96 medallions were held by individuals who had anywhere from one to fifteen medallions. Russ Cone. *End of the Road for Yellow Cab*. S.F. EXAMINER, Dec. 7, 1976.

127. Interview with Joseph Tracy, *supra* note 115; Interview with Abebe Magiso, Taxi Worker, Livermore, Cal. (Jan. 31, 2013). Both Mr. Tracy and Mr. Magiso worked under the Chauffeurs’ Union in the 1970s. Mr. Magiso’s name has been changed to protect his identity.

128. Although earnings became unstable and less predictable, leasing drivers initially remained “employees” and members of the Chauffeurs’ Union, and even went on strike as leasing drivers for the smaller companies. By 1973, the three “leasing” companies—Luxor, Veterans, and DeSoto—threatened to raise their lease fees by \$2 to \$22 and \$24 per shift (day and night), because the city-set taxi fare had increased by five cents, allegedly allowing lease drivers to make more money. *Delay in S.F. Taxi Strike*, S.F. EXAMINER, Mar. 26, 1973. The Chauffeurs’ Union voted to strike in response, stating that because the city put more permits on the street in 1969, the drivers’ income would not necessarily be augmented by the rising fare. *Id.* One month after the strike vote, but before the drivers actually went on strike, drivers re-voted and accepted a two-stage \$2 cost of cab rental increase, with a \$1 immediate increase and another 1\$ increase after five months. *3 Cab Firm Drivers OK Rental Hike*, S.F. EXAMINER, Apr. 25, 1973. In

The idea (real or imagined) that the leasing driver could make more money than the driver who worked for wages or on commission resulted in the growing popularity of leasing among drivers. A newspaper account at the time heralded the practice as “inspir[ing the driver] to work as hard as he can.”¹²⁹ Even Peter Derenale, the Chauffeurs’ Union president stated, “We’ve tried to keep them [the leasing drivers] down to [working] eight hours a day but the guys don’t want it.”¹³⁰ One former driver quoted in the newspaper said, “I work for Yellow and I’m guaranteed \$16 no matter how little I bring in on my waybill. If I don’t put it all on the waybill, I can keep it – if I don’t get caught. On the other hand, if I pay \$20 a day for my cab, I’m not going to cheat myself, am I?”¹³¹

E. Losing the Right to Unionize: The Bankruptcy of Yellow Cab, Leasing, and Independent Contractor Status in the 1970s

By the early 1970s, Yellow Cab, the largest carrier that had not yet converted to the leasing model and that employed the greatest number of taxi workers, requested public assistance from the city of San Francisco.¹³² Yellow Cab called itself a “quasi-public utility” and argued that if it received no subsidy from the municipality, it would go out of business.¹³³ Charles O’Conner, the company’s senior vice-president stated that a fare increase and contract modifications with the Union would prevent the company from folding.¹³⁴

Both the City and the Chauffeurs’ Union took immediate action to help Yellow Cab. In an unusual move, the Union took responsibility for the company’s financial losses. The Union went so far as to propose that “volunteer” drivers work for ten hours, instead of the eight-hour limit, to make more money for the company and to reduce the company’s fringe benefit costs.¹³⁵ City regulators, too, committed to assisting Yellow Cab, in large part because mobility in the city depended on the large cab company. Despite receiving an eventual fare increase in the summer of 1971, Yellow Cab attested to a financial loss of more than a half million dollars.¹³⁶ In early 1972, Yellow Cab’s financial struggles persisted, and the company asked the

1976, lease taxicab drivers from DeSoto, Veterans, and Luxor went on a several-day strike, protesting a proposal to raise lease fees by \$3 per shift (which would have put the lease at \$28.50 per day). *Mediator Steps into S.F. Taxi Dispute*, S.F. EXAMINER, Oct. 5, 1976.

129. Charles Raudebaugh, *Ups and Downs of the Taxi Business*, S.F. EXAMINER, Jan. 31, 1972.

130. *Id.*

131. *Id.*

132. *See Yellow Cab Seeks Some Business Aid*, S.F. EXAMINER, Dec. 31, 1971.

133. *Id.*

134. *Id.*

135. *See Jackson Rannels, Yellow Cab’s 2 Plans to Bail Out*, S.F. EXAMINER, July 22, 1972.

136. *Id.*

Union to consider rolling back the terms of the three-year contract signed the previous July.¹³⁷

Although Yellow Cab's financial straits were continually blamed on labor costs and Union demands, the situation was largely caused by corporate corruption and malfeasance, information that only became public knowledge years later. Westgate California, the parent company of Yellow Cab, had siphoned off Yellow Cab's profits to satisfy the obligations of its larger holdings. When Westgate went bankrupt due to embezzlement and mismanagement, the Yellow Cab permits became assets during the bankruptcy proceedings.¹³⁸

Westgate's instability resulted in four years of Yellow Cab ownership uncertainty. Before Westgate's corrupt practices were made public, the company directed Yellow Cab to begin selling its permits for profit.¹³⁹ The Union opposed the individual sale of permits because that would upset its power under the law to protect taxi workers as a group. If Yellow Cab, as a large corporation holding many medallions, dissolved and disaggregated into individual entities, then the Union would have had to reconstitute itself as a bargaining unit or units in the face of multiple employers. As the Union's secretary James Strachen said, "[I]f Yellow continues to sell its permits, 'our members will gradually lose their jobs to individual owner-operators.'"¹⁴⁰

In September 1972, Yellow Cab's continued sale of medallions to individuals prompted a five-hour strike by Yellow Cab drivers.¹⁴¹ The walkout, called by the Union, specifically targeted the *method* of selling the medallions.¹⁴² Since few drivers could actually afford to purchase a medallion outright, Yellow Cab offered a financing option that allowed them to retain interest until the bank loan was fully paid.¹⁴³ This, the Union explained, was a violation of their contract which made it plain that Yellow Cab had to divest itself of any interest in any permit it sold.¹⁴⁴ The strike ended after a mediation session with Mayor Alioto.¹⁴⁵ Yellow Cab agreed to

137. *Yellow Cabbies Stop Work to Talk Strike*, S.F. EXAMINER, Feb. 27, 1972.

138. HEIDI MACHEN & JORDANNA THIGPEN, OVERVIEW OF THE SAN FRANCISCO TAXI INDUSTRY AND PROPOSITION K (2007), <http://www.medallionholders.com/docs/overview-of-prop-k.pdf> (last visited Dec. 16, 2016).

139. *See Union Leader Hits Yellow Cab Sale of Permits*, S.F. EXAMINER, July 27, 1972. Westgate had purchased the company for \$5.5 million, and if it could sell all the medallions, it could make up to \$11 million, at a profit of \$6.5 million. Jim Strachen, *Letter to the Editor*, S.F. EXAMINER, Aug. 20, 1972. At the time, the City sold medallions for \$7,500, but Yellow Cab began selling them piecemeal for \$22,000 each, with a down payment of \$1,000 and the balance due at 7.5%. *Id.* Letters were sent to all the drivers, offering the sale of medallions. The first medallion was sold to a veteran vehicle. *Id.*

140. *Teamsters Move to Buy Yellow Cab*, S.F. CHRON, Aug. 25, 1972.

141. *See* George Rhodes, *Yellow Cabs Truce OKd*, S.F. EXAMINER, Sept. 9, 1972.

142. *See id.*

143. *See id.*

144. *Id.*

145. *Id.*

a sixty-day moratorium on selling medallions, and the Union agreed to consider permitting drivers to work longer hours.¹⁴⁶

In response to Yellow Cab's financial uncertainty, Mayor Alioto put together a three-member committee to make recommendations on how the city should respond. The committee recommended to Mayor Alioto that Yellow Cab rescind all sales of its medallions which had not been completed, that the city make a ten cent per mile increase in fare rates to relieve Yellow Cab's financial difficulties, and that the company design a new work day schedule "to afford drivers more work (and pay) opportunity and the company greater income."¹⁴⁷ The Mayor's committee said sales of Yellow Cab medallions were "retrogressive" because "the prices, plus the \$1000 transfer fee, would place 'an unreasonable burden' on the buyers . . . [and] poses serious problems for minorities . . . because the price would be prohibitive."¹⁴⁸

In 1974, despite receiving a rate increase from the city, Yellow Cab announced plans to terminate all medical, dental, and pension payments for its drivers.¹⁴⁹ Finally, after many decades of taking a conciliatory stance toward the company, the Union sanctioned a strike against Yellow Cab.¹⁵⁰ Yellow Cab filed a complaint with the NLRB alleging secondary boycott charges when Yellow Cab drivers in San Jose and Oakland also began striking.¹⁵¹ After two weeks of strikes, the Board of Supervisors finally agreed to increase the flag rate, which allowed Yellow Cab to increase their pay to workers.¹⁵² The strike ended.¹⁵³

Despite the increase, by the end of 1976, Yellow Cab dissolved. On April 5, 1976, Yellow Cab ceased operations, and its 500 taxicabs and 950 workers were off the road.¹⁵⁴ The Union ordered drivers to apply for unemployment insurance.¹⁵⁵ A court ordered seizure of Yellow Cab's assets

146. *See id.*

147. *Close Scrutiny on Taxi Fares*, S.F. EXAMINER, Dec. 28, 1972.

148. *Id.*

149. James Strachan, Opinion, *An Open Letter to All San Franciscans*, S.F. EXAMINER, June 27, 1974.

150. *Id.*; *Alioto Urges Cab Boost*, S.F. EXAMINER, Aug. 2, 1974.

151. *Yellow Cab Suit on Pickets Outside S.F.*, S.F. CHRON., Aug. 7, 1974.

152. Keith Power, *S.F. Taxi Fares Are Going Up*, S.F. CHRON., Aug. 13, 1974.

153. *Id.* Amidst the strike, then Supervisor (and eventually U.S. Senator) Diane Feinstein voted against a fare increase and urged establishing a "taxi panel." The panel, she said, would bring City Hall "long-term solutions, including a program for effective regulation of the rate structure." She also envisioned that the committee would delve into "taxi fare, issuance of taxi permits, taxi record keeping, policing, use of curb parking, and a possible zone system of fare." Supervisor Feinstein said, "It would bring us a long-term master cab plan for The City." *Diane Urges Taxi Panel*. Aug. 3, 1974 (on file with author).

154. *Yellow Cab Might Shut Down Statewide*, S.F. EXAMINER, Apr. 5, 1976.

155. Raul Ramirez, *Yellow Cab's up for Sale, Moscone Says*, S.F. EXAMINER, Dec. 3, 1976 (on file with author).

after the Union filed suit to recover over \$1.2 million the company owed to the drivers' health and pension funds.¹⁵⁶ The company was idle for eleven days before reopening under bankruptcy protection.¹⁵⁷ On November 30th, Yellow Cab again pulled all of its cabs from the streets of San Francisco, claiming that it could not obtain the state-required liability insurance.¹⁵⁸ Two days later, the company explained that it could not pay its workers due to lack of finances.¹⁵⁹ By early December, a superior court judge issued a temporary injunction, preventing Yellow Cab from selling off its assets.¹⁶⁰ The court held the assets in order to ensure payment for workers.¹⁶¹



Drivers respond to April Yellow Cab shutdown. Stephen Cook, Cab Drivers Wonder If There Will Be Jobs Again, S.F. EXAMINER, Apr. 6, 1976.



Angry Yellow Cab drivers find out they are out of work and will not be paid in December 1976. Raul Ramirez, supra note 155 at 3.

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156. Brenda Payton, *A Brief History of The City's Taxicab Woes*, S.F. EXAMINER, Oct. 12, 1977.
 157. *Id.*
 158. K. Connie Kang, *Yellow Cab Assets Under Court's Wing*, Dec. 11, 1976 (on file with author)
 159. *Id.*
 160. *Id.*
 161. *Id.*

The Superior Court of San Francisco received numerous offers on Yellow Cab's assets.¹⁶² Patrick Shannon, a 26-year-old former Yellow Cab driver who was in college studying political philosophy at the time, made an offer with almost 200 other former Yellow Cab drivers.¹⁶³ Working with an attorney, the workers produced a creative plan to form a worker cooperative in which each driver would own his own medallion and drive his own car, and the workers would jointly share other expenses, such as gas, oil, upkeep, dispatching, and insurance.¹⁶⁴

The Superior Court accepted the offer in May of 1977 only to "re-open the bidding" less than one month later when attorney Harold Dobbs, a prominent Republican politician and former President of the Board of Supervisors, said he would like to offer a bid too.¹⁶⁵ Harold Dobbs and his investors won over the assets and subsequently sold 250 of the medallions over to the "New Yellow Cab Cooperative"—the drivers themselves.¹⁶⁶ About one hundred went to smaller companies, and the remaining 138 were "cancelled" by the Police Commission.¹⁶⁷ In the New Yellow Cab Cooperative, Jimmy Steele, former manager at DeSoto, became president of the board of directors, and Patrick Shannon himself became vice-president.¹⁶⁸

Although the brainchild of workers, the new Yellow Cab evolved to use a business model that was far from labor-friendly. When Yellow Cab re-opened, the medallion holders owned the company cooperatively, but they utilized non-unionized workers to do most of the driving.¹⁶⁹ They also used the leasing system exclusively, and by 1979, newspaper reports indicated that the new Yellow Cab had forced its 600 non-member drivers to be "independent contractors."¹⁷⁰

Both the city and the NLRB investigated the possibility that this was an action taken explicitly to prevent unionizing, which would be a violation of the NLRA, but to no avail.¹⁷¹ In 1979, the Yellow Cab day lease was \$27, and drivers were also paying about \$13 per shift.¹⁷² The fact that drivers could go home from working all day without a dollar in their pockets was not

162. Dexter Waugh, 'A Scandal' — *Drivers Still Demand to Buy Yellow Cab*, S.F. EXAMINER, June 13, 1977.

163. *New Bid Due for Yellow Cab Assets*, Apr. 26, 1977 (on file with author).

164. *Id.*

165. *Cabbies Bid Accepted for Yellow Here*, May 13, 1977 (on file with author); *Drivers Still Demand to Buy Yellow Cab*, S.F. EXAMINER, June 13, 1977.

166. Russ Cone, *Board Begins Again on Taxicab Reforms*, S.F. EXAMINER, Nov. 15, 1977; *No Joke, Yellow Cab Practically Back in Business*, S.F. EXAMINER, May 16, 1977, at 8.

167. *Id.*

168. *No Joke, Yellow Cab Practically Back in Business*, S.F. EXAMINER, May 16, 1977, at 8.

169. *See supra* note 10.

170. *Yellow Cab Faces Probe over Jobs*, S.F. CHRON., Feb. 9, 1979.

171. *Id.*

172. *Yellow Cab Cooperative, Inc.*, Nos. 20-RC-14735 and 20-RC-14736 (N.L.R.B. Mar. 27, 1979).

lost on the public. A *San Francisco Examiner* columnist who had previously extolled the possibilities of the “entrepreneurial” driver and the free market, described the lease practice as “sharecropping.”¹⁷³

Some of the drivers for the medallion holders of the new Yellow Cab cooperative took action. In 1979, 300 drivers participated in a picket and boycott of Yellow Cab, demanding classification as employees.¹⁷⁴ Jimmy Steele, president of the new Yellow Cab cooperative and himself a driver, responded that the boycotters were “a bunch of radicals . . . They’ve got a little minority group of people that are trying to disturb a lot of shit for no reason.” Rachel Burd, speaking on behalf of the boycotting drivers, complained that this NLRB process could take three or four years and that she and the other cab drivers could not wait for that long.¹⁷⁵ Another driver, Bill Williams, a 39-year-old man with two young children, complained that because of his shift to classification as an independent contractor his kids did not have health insurance.¹⁷⁶

Just a month later, the NLRB concluded that because of the technicalities of the leasing system, Yellow Cab did not exert enough control over its drivers to call them employees. The drivers were legally independent contractors under the NLRA. The Chauffeurs’ Union lost its right to collectively bargain on behalf of San Francisco taxi workers.¹⁷⁷

173. See Dick Nolan, Editorial, *The Cabbie Is a Sharecropper*, S.F. EXAMINER, Jan. 25, 1979.

174. Lon Daniels, *Waiting for a Taxi: Yellow Cab Drivers out on the Picket Line*, S.F. EXAMINER, Mar. 9, 1979.

175. *Id.*

176. *Id.* With regard to unionization, Mr. Williams said, “It is the only course for the working man if you want to have any kind of security, in the taxi industry particularly. You can’t afford the benefits individually. . . . Your income varies [from day to day] so you have to have a group plan, which is the union.” *Id.*

177. In particular, the NLRB decision stated that because of the way the lease worked, Yellow Cab did not exert enough “control over the manner and means” of the drivers’ work to “constitute the employer.” Yellow Cab Cooperative, Inc., *supra* note 172. (finding that Yellow Cab Drivers were independent contractors and not eligible for collective bargaining protections under the National Labor Relations Act).



Picketing non-medallion holding yellow cab driver, demanding employee status in 1979. Daniels, supra note 174.

As Joe Tracy, a taxi driver who later became the named plaintiff in a class action lawsuit to regain employee rights for taxi workers recalled of the time:

At some point in the late 70s, after Yellow had gone out of business, the lawyers for the various cab companies in town decided that they could do something very clever which was just have all drivers come in one day and sign a document that said you're no longer employees; you're independent contractors. I knew nothing about this and just like all the other cab drivers, it's like oh, how nice, I'm now independent, right? However, the only thing that changed—there was nothing that changed, except you signed a document. Nothing else changed. *Your relationship with the company didn't change not one iota.*¹⁷⁸

Partial deregulation and a de-militarized Union facilitated the loss of collective bargaining rights and the rise of worker instability within San Francisco's taxi industry by the late 1970s. What had once been a middle-class profession, a unionized craft, became a site of unstable work with large driver turnover.

III.

GRAPPLING FOR ECONOMIC SECURITY: INDEPENDENT CONTRACTOR TAXI WORKERS AND THE REGULATORY BARGAIN, 1979-2012

In the decades after the Chauffeurs' Union lost the right to collectively bargain with the taxi companies, labor leaders and worker organizations arose to unite drivers and stabilize working conditions. Not only did the post-union chauffeur workers lack any legal mechanism to force companies to the bargaining table, but discordant dialogues within the movement about

178. Interview with Joseph Tracy, *supra* note 115.

employment status undermined the potential for widespread collective mobilization.¹⁷⁹ While some workers felt that employee identity was intrinsic to labor power, others felt they could achieve and maintain economic security without official NLRB recognition. The dialogue between workers and their advocates on the employee-contractor issue depleted energy and caused divisions about choice of strategy in emergent worker advocacy organizations, the Alliance and the United Taxicab Workers.

Nevertheless, post-union activist chauffeur workers achieved a number of victories for rank-and-file drivers—including maintaining the fight for a stable wage and safety-net benefits.¹⁸⁰ These victories did not result from bargaining directly with the taxi companies, but rather they arose through near-constant engagement with municipal politics. The City and County of San Francisco continued to have decision-making authority over taxi rates and the number of taxi medallions issued—regulations left over from the militant advocacy of the Chauffeurs' Union. Worker advocates leveraged this hard-fought for regulatory framework from the early part of the twentieth century to attain a measure of work stability. For over thirty years, from the early 1980s to late 2013, full-time taxi workers had a relatively stable, though low, income because driver-advocates constantly lobbied to curtail taxi supply and control the price of their lease and the taxi fare.¹⁸¹

The potential for economic security for the de-unionized taxi workforce certainly diminished toward the end of the twentieth century as San Francisco became one of the most expensive cities in the world, but the concept of a just wage for taxi workers endured in the regulatory arena.¹⁸² Activists forced San Francisco lawmakers to consider the livelihoods of taxi workers each time the city issued a new medallion, considered a fare hike, or adjusted the price of the lease cap.¹⁸³ Worker advocates made sure that city supervisors heard their perspectives during public deliberations and prior to making decisions on industry regulation. While taxi companies continued efforts to increase profits by shifting costs onto drivers, strong municipal regulation made it possible for taxi worker advocates to push back. Though stymied by the loss of their right to unionize and internal discord over their employment status, worker activists successfully leveraged the city regulatory process. These taxi drivers struck a bargain with the municipality and exchanged their labor for a fragile economic security.

179. See Dubal, *supra* note 6.

180. See *supra* note 10.

181. *Id.*

182. While S.T. Dixon of the Chauffeurs' Union owned a home in San Francisco, most San Francisco taxi drivers by the end of the twentieth century could not afford to live in the city where they worked. *Chauffeurs Honor Return of Popular Secretary*, Sept. 9, 1926 (on file with author); see *supra* note 10. In my ethnographic research, I found that most lived in East Bay cities such as Richmond, El Sobrante, and Oakland, and commuted to San Francisco for work. *Id.*

183. *Id.*

A. Give Us Back Our Bargain!: The Alliance and the United Taxicab Workers

Four years after the NLRB decided that leasing taxi drivers were independent contractors without the right to bargain collectively,¹⁸⁴ taxi workers accustomed to the Chauffeurs' Union's leadership realized that they had no one to advocate on their behalf.¹⁸⁵ A number of workers banded together to form ad hoc organizations aimed at using collective power to better working conditions and push for a return to employee status.¹⁸⁶

At the beginning of this uncertain time, on April 2, 1984, a group of six taxicab drivers—four men and two women—founded the Alliance.¹⁸⁷ The Alliance operated on a purely voluntary basis, with no external funding.¹⁸⁸ The six worker-advocates dedicated themselves “to protecting the rights of drivers to make an equitable wage under proper working conditions.”¹⁸⁹ In their first campaign, the Alliance advocates found themselves playing the role that the Chauffeurs' Union had played many times before them: advocating to municipal regulators to limit the number of taxicabs on the street to protect the wages of existing taxi workers.¹⁹⁰ Although taxi workers at the time were no longer working on commission or technically earning a “wage,”¹⁹¹ the Alliance continued to use the language of the labor movement (“wages”) to express both their sense of themselves as workers and their desire to return to the employee status, which had just years before guaranteed a bargained-for minimum wage.¹⁹²

The Alliance founders included Ruach Graffis, Katherine Mann, Jonathan Tufts, Lonnie Schuller, Dennis Gianatassio, and Garry McGregor.¹⁹³ They met regularly in the home of Ruach Graffis, and as a first campaign, vowed to fight then-Mayor Diane Feinstein's proposal to put

184. See *supra* note 124.

185. Interview with Ruach Graffis, San Francisco Taxi Worker and Alliance Co-founder, in San Francisco, Cal. (July 8, 2013).

186. *Id.*

187. Katherine Mann, *Where We Stand, Where We're Headed*, THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) May 10, 1984. In the post-union era, women are overrepresented amongst taxi workers who advocate for better working conditions. See *supra* note 10. Even though the industry remains predominantly male, women figure boldly and importantly in the history of San Francisco taxi advocacy from 1983. *Id.*

188. Interview with Ruach Graffis, *supra* note 185.

189. *Id.*

190. See Press Release, S.F. Taxicab Drivers Alliance (July 15, 1984) (on file with author).

191. Interview with Ruach Graffis, *supra* note 185.

192. Katherine Mann, *supra* note 187. The Alliance worker-advocates also showed a strong sense of solidarity with the labor movement more broadly by supporting local strikes and union-led worker campaigns. See, e.g., *Local 2*, THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) Nov. 1984 (on file with author); *Restaurant Strike Update*, THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) Jan./Feb. 1985, at 5.

193. Interview with Ruach Graffis, *supra* note 185.

almost 300 more taxicabs on the streets of San Francisco.¹⁹⁴ They argued that more taxicabs would depress the wages of existing taxi drivers by increasing taxi supply.¹⁹⁵ In addition to filing a lawsuit with the help of attorney Dan Siegel,¹⁹⁶ which Alliance members funded out of their own pockets,¹⁹⁷ the Alliance threatened to picket the Democratic National Convention, held in San Francisco in 1984.¹⁹⁸ Prior to the Convention, the Alliance successfully staged a protest of several hundred drivers circling City Hall and picketed outside the building.¹⁹⁹ The triumphant outcome was that the city reduced the number of new medallions issued from 300 to 41.²⁰⁰ The Alliance also fought for a meter increase, brought attention to taxi drivers' health and safety concerns, and shed light on police misconduct.²⁰¹

During the Alliance's four-year tenure, leaders operated from the assumption that a "return" to employee status was the key to bettering taxi workers' conditions.²⁰² As a 1986 editorial in the Alliance newsletter stated:

. . . [T]he "independent contractor" stands squarely in the way of this need [for industry-wide organization]. One need only check the law regarding the "rights" of independent contractors to organize. *Establishing employee rights is the first step.* Without such rights, [workers] stand alone. Independent. Easy to push around.²⁰³

Alliance members saw gaining employee recognition under the law as the most important initial step to re-establishing worker rights. Both the legal ambiguity of their worker categorization and the seductive promise of employee rights diverted attention from organizing to unify taxi workers.²⁰⁴ Without the growth of its membership, the Alliance became less active, and the organization was defunct by 1988.²⁰⁵

194. *Id.*

195. *A Message to All of Our Customers.* THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) May 30, 1984.

196. *Id.* Notably, Dan Siegel eventually founded the law offices of Siegel & Yee and continued to play an important role in San Francisco Bay Area social movements. *See supra* note 10. He even ran on a progressive ticket for the Mayor of Oakland in 2014. Judy Silber, *Oakland Mayoral Race '14: Candidate Dan Siegel*, KALW.ORG (Oct. 21, 2014). <http://kalw.org/post/oakland-mayoral-race-14-candidate-dan-siegel#stream/0>

197. Interview with Ruach Graffis, *supra* note 185.

198. *Id.*

199. *Id.*

200. *Id.* Alliance members claimed that even this relatively low number of new medallions resulted in an almost 10% decrease in their wages. *A Message to All of Our Customers*, *supra* note 195.

201. Interview with Ruach Graffis, *supra* note 185.

202. THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) Dec. 28, 1984, 1-2.

203. *Letter to the Editor.* THE ALLIANCE NEWSLETTER (San Francisco Taxicab Drivers Alliance, San Francisco, Cal.) 1986.

204. *See* Dubal, *supra* note 6.

205. Interview with Ruach Graffis, *supra* note 185.

Amidst the Alliance's decline, the United Taxicab Workers, San Francisco's longest-running non-union taxi worker advocacy organization, emerged.²⁰⁶ The organization was initially committed to the radical possibility of strength in numbers and defiantly called itself a "union" despite its lack of status under the NLRA.²⁰⁷ Over the course of the 1990s, however, the UTW gradually became more of a policy organization that advocated for worker interests before regulators and courts. The UTW planned and engaged in protests and organized many successful political campaigns, leveraging municipal regulation and electoral politics to maintain a just wage for taxi workers.²⁰⁸ But, as with the Alliance, the UTW's legal and political approach differed greatly from its early 20th century counterpart. For example, despite calls to strike, the UTW never effected a work stoppage that lasted more than a few hours.²⁰⁹

During its first five years, the organization was mired in an internal debate about whether to prioritize legal advocacy or organizing.²¹⁰ Ultimately, the UTW achieved remarkable victories for workers through policy advocacy alone without engaging in militant organizing or work stoppages.²¹¹ Over the course of thirty years, volunteer taxi workers harnessed their power in political spaces, lobbying city supervisors, mayors, and taxi regulators to advocate for decent wages and working conditions.²¹²

UTW's founders were a group of volunteer taxi workers, all white, U.S.-born men and women, who envisioned organizing San Francisco's increasingly diverse taxi workers to build collective worker power.²¹³ A UTW newsletter underscored the importance of worker unity for the early advocates, stating, "Unity means more power and power means more money in our pockets, better living and working conditions, complete job-security [sic] and respect all around. . ." ²¹⁴ To achieve worker unity, UTW worker-advocates confronted two paths: organize drivers and/or work toward NLRB recognition as a union. Although UTW attempted to travel down both paths

206. The UTW was officially founded on October 9, 1986. Interview with Mark Gruberg, San Francisco Taxi Worker and UTW Advocate, in San Francisco, Cal. (July 21, 2012).

207. Interview with Ruach Graffis, *supra* note 185.

208. *See supra* note 10.

209. *See supra* note 10. The fall of the Alliance and the eventual shrinking of active UTW membership reflected organizational decisions to put law and advocacy before organizing workers. These were pragmatic decisions given the legal and historical moment. Because the California Employment Development Division and the California Labor Commission repeatedly found individual taxi workers to be employees for purposes of workers' compensation and unemployment insurance, drivers were optimistic about the possibility of returning to the employee protections they previously enjoyed. *Id.*

210. *Id.*

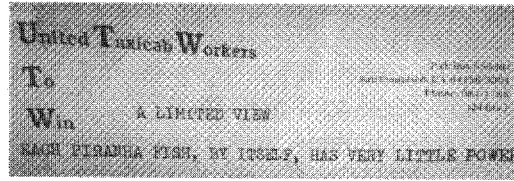
211. *Id.*

212. *Id.*

213. Interview with Mark Gruberg, San Francisco Taxi Worker and Advocate (July 1, 2012).

214. *In Unity There is Strength*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), 1986.

simultaneously, the campaign for NLRB recognition—the promise, the process, and the eventual loss—ultimately overwhelmed the possibility of large-scale organizing efforts.



An early UTW newsletter expressed the importance of driver organizing and unity. The sub-heading reads, “Each piranha fish, by itself, has very little power.” UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), 1986.

During its first decade, UTW evolved from conceptualizing itself as a “union” for which worker unity was paramount to an advocacy group at the forefront of worker wage issues but that deprioritized worker organizing. As an early major campaign, the UTW sought to secure legal acknowledgment as a collective bargaining unit.²¹⁵ This meant that the NLRB had to grant leasing cab drivers employee status under the NLRA. Although the Chauffeurs’ Union had lost a similar case before the NLRB in 1979, which decided the drivers were independent contractors,²¹⁶ UTW advocates tried to secure legal acknowledgment as a collective bargaining unit in 1988. Advocates were optimistic about their chances of winning on the employee issue.²¹⁷ A number of drivers affiliated with the UTW had won employee status for themselves in other administrative contexts, namely in workers’ compensation and unemployment claims.²¹⁸ However, in January 1989, the NLRB definitively ruled that UTW taxicab drivers were independent contractors with no legal right to engage in protected collective bargaining under the NLRA.²¹⁹ The decision that such drivers were not employees relied

215. See *Luxor Cab News*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Dec. 1988, at 3.

216. See *Yellow Cab Cooperative, Inc.*, *supra* note 172.

217. In 1979, the NLRB found that Yellow Cab Drivers were independent contractors and no eligible for collective bargaining protections under the National Labor Relations Act. *Yellow Cab Cooperative, Inc.*, *supra* note 172. But in January 1989, UTW representatives began working with Teamsters and the Communications of America on separate strategies to gain union status. See *UTW and Teamster Reps Agree on Organizing Strategy*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan. 1989, at 1-2; *UTW Gets Assist in Fight for Workplace Justice*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan. 1989, at 1-2; *The 1979 Yellow Cab Strike*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan. 1989, at 4.

218. See Julian Legos, *Drivers Are Eligible for Workers [sic] Compensation*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), June 4, 1988, at 6. See also Interview with John True, plaintiff’s attorney who represented taxi workers in class action in the 1990s (Feb. 29, 2012).

219. See John Kerr, *A Court Says No!*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan. 1989, at 3.

primarily on the finding that the leasing system did not facilitate sufficient employer control over the workers.²²⁰ The NLRB appellate body, and subsequently the Ninth Circuit, denied requests for review.²²¹

Nevertheless, the “return” to an employee rights narrative continued with the assistance of the Communication Workers of America (CWA) who joined forces with the UTW in the early 1990s.²²² Through both local legislative advocacy and litigation, UTW and CWA attempted to achieve collective bargaining status for the UTW.²²³ In late 1990 and early 1991, UTW, under the leadership of paid CWA organizer and former taxi driver Cliff O’Neill, made efforts to amend San Francisco laws to guarantee employee rights for drivers.²²⁴ They also circulated petitions to show drivers’ support for this initiative, but never received enough signatures to effect a shift.²²⁵ Soon thereafter, in late 1991, another membership drive was orchestrated only to be defeated once again with the taxi company asserting that nothing had changed since the NLRB’s analysis three years prior.²²⁶

The CWA withdrew their financial support after this legal loss, but UTW maintained its nominal affiliation with the union.²²⁷ In the decades following this second blow from the NLRB, UTW focused primarily on law and policy issues unrelated to worker organizing in order to protect the rights of taxi workers, shying away from ambitious attempts at organizing workers en masse.

220. *Luxor Cab Co.*, No. 20-RC-16314, 31 (N.L.R.B. 1989).

221. Interview with Charles Rathbone, San Francisco Taxi Worker, in San Francisco, Cal. (Jan. 29, 2012).

222. At this moment, the Communication Workers of America had begun a campaign in “grey” industries to mobilize independent contractor workers and fight for their employee status. The UTW was one of many labor organizations that joined together with the CWA in this effort.

223. During this time, among many other things, the UTW and CWA fought against the issuance of new permits in order to curtail competition and keep stable the income of taxi workers. Clifford O’Neill, *Permit Appeals Disaster Averted*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Mar.-Apr. 1990, at 1. They also fought for the workers’ compensation rights of taxi workers. Clifford O’Neill, *Workers Compensation and the Coleman Case*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), July-Aug. 1990, at 2. Most impressively, they mounted a major campaign to amend the Motor Vehicle for Hire Regulations in San Francisco to guarantee employee rights for drivers if a majority of drivers wanted to make the change. Clifford O’Neill, *Tear Down the ‘Lease’ Wall!*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Ca.), Dec. 1990-Jan. 1991, at 1. This change was embodied in now-repealed S.F., Cal. Police Code, art. 16, div. 1, § 1124.5.

224. *UTW Announces Appointment of Cliff O’Neill as Coordinator*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan.-Feb. 1990, at 5.

225. Interview with Mark Gruberg, *supra* note 213.

226. Ray Arthur, *Anti-Worker Board Obstructs Election Drive*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Jan.-Feb. 1992, at 1.

227. See *supra* note 10.

B. The Regulatory Bargain

While putting organizing for widespread worker mobilization on the back burner, the UTW continued to use law and municipal advocacy to support drivers' interests, achieving an unprecedented municipal bargain. Over the course of decades, UTW members and advocates pieced together rights and regulations in an attempt to recreate the wage security and benefits taxi workers had under the Chauffeurs' Union. In the courtroom, at the ballot box, and in local regulatory and legislative bodies, UTW advanced the fight for chauffeur worker security. The group also consistently issued an award-winning quarterly newsletter, informing taxi workers throughout the industry of the political maneuvering of taxicab companies, relevant changes and happenings affecting the industry, and the work of the organization.²²⁸

An example of the tremendous lobbying efforts of UTW took place in 1995. That year, UTW advocates lobbied against AB 525, a Republican-sponsored bill which would have exempted certain categories of workers—amateur athletes, unpaid sports referees, volunteer ski patrol officers, volunteers at private and non-profit agencies, and taxicab drivers—from having access to workers' compensation, unemployment insurance, and disability benefits, regardless of employment status.²²⁹ Risking termination, UTW advocates testified against the legislation in front of their bosses, including then Yellow Cab president Nathan Dwiri, who had spoken in favor of the bill.²³⁰ Through its newsletter, UTW also encouraged taxi workers to write to lawmakers to vote against the bill.²³¹ AB 525 was eventually defeated.²³²

The following year, in 1997, UTW members procured some of those benefits for San Francisco taxi workers through a major success in state court.²³³ UTW members along with attorneys from the Legal Aid Society-Employment Law Center won a lawsuit against the city's three major taxicab companies, Yellow Cab, Luxor, and DeSoto.²³⁴ The lawsuit alleged that the taxicab companies misclassified drivers as independent contractors for purposes of workers' compensation and unemployment insurance and that they illegally obtained security deposits from drivers before giving them

228. UNITED TO WIN!, the UTW quarterly newsletter, won first prize for General Excellence in Communications Workers of America's annual newsletter competition. UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 1996-1997, at 2.

229. *Cab Companies Push for Bill to Deny Drivers Job Benefits*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 1996, at 2.

230. *See id.*

231. *Id.*

232. *Id.*; *State Senate Rejects Bill to Strip Driver Benefits*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.) Winter 1996-1997, at 2.

233. *Tracy*, *supra* note 115.

234. *Id.*

work.²³⁵ Joe Tracy, a UTW member, served as lead plaintiff and after five years of grueling litigation, the drivers won on summary judgment.²³⁶

Two years later, in early 1998, UTW, fought for and won a municipally-enforced cap on the price of the daily lease, a regulation the likes of which had not been achieved since the Chauffeurs' Union's advocacy during the Great Depression. Following the precipitous rise of the daily lease that drivers paid the taxicab companies for each shift, the UTW set out to obtain municipal restraint on the matter.²³⁷ That year, Mayor Willie Brown called for issuance of 500 taxi medallions, which, while making it easier for consumers to get a cab, would also have increased competition for drivers.²³⁸ In response, UTW and other taxi workers mobilized, calling for expanded regulatory control over how much they paid for each shift.²³⁹ By fall of 1998, 300 new medallions were issued, but the city also enacted a lease cap as a compromise.²⁴⁰ This additional regulation meant that the city of San Francisco controlled the price of the taxi fare, the price that taxi workers paid for their daily lease, and the number of taxis on the street. Over the next decade, UTW continued to influence municipal decisions on these matters to maximize wage stability for taxi workers.

One hard-fought, but ultimately unsuccessful, UTW campaign was for city-provided health insurance for taxi workers. The campaign reflected the breadth of UTW's advocacy and vision, but also its limitations. Recognizing that cab driving was one of the most dangerous occupations in the country, UTW activists led by Ruach Graffis (also one of the Alliance founders) spent years lobbying and strategizing for city-sponsored health insurance.²⁴¹ In 2002, UTW authored and lobbied for a municipal ordinance that would require the city to provide health insurance for taxicab drivers, consistent

235. *Id.*; see also *Complaint, Tracy v. Yellow Cab Cooperative, Inc.*, No. 938786 (Cal. Super. Ct. Oct. 22, 1996).

236. *Tracy*, *supra* note 115. See also *Yellow's Response to Tracy: Long-Term Leasing?*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 1996-1997, at 3. Without collective power, many taxi workers were afraid of enforcing their rights to unemployment insurance and workers compensation. However, every time Yellow Cab attempted to re-introduce security deposits over the next 20 years, UTW advocates reminded them of their obligations under *Tracy*. See, e.g., Morris Gray, *Company Now Requires 1-Shift Advance, But It May Receive Previous Demand*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Summer 2008, at 1. Since the impact of the TNCs on the taxi industry, Luxor in 2016 tried—and failed—to get the decision rescinded. See *supra* note 10.

237. See *Drivers, Public Call for Reform*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Summer 1997, at 1, 6.

238. *Id.* at 1.

239. *Gates Capped at \$83.50 Average; Lease Fee Cap, Legislation on Employee Status Also Approved*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Fall 1998, at 1.

240. *Id.*

241. Interview with Ruach Graffis, *supra* note 185.

with a city feasibility study.²⁴² The law passed.²⁴³ In 2007, after five years of wrangling with regulators, city attorneys, and taxicab companies, a municipal commission came up with a proposal that included a health and welfare trust for San Francisco taxi workers.²⁴⁴ This 2007 proposal, which the UTW supported, would have cost \$11.6 million annually with cab drivers shouldering 30% of the burden.²⁴⁵ In spite of significant lobbying efforts and the municipal mandate, the plan never passed.²⁴⁶ Taxi workers continued to labor in a dangerous occupation without health insurance.

One of the UTW's greatest successes over the course of many years was in the fight against the privatization of medallions.²⁴⁷ In 1977, San Francisco Supervisor Quentin Kopp authored a local proposition—Proposition K—to make taxi medallions non-transferable, non-monetary city licenses that would only be issued to active taxi drivers.²⁴⁸ Supervisor Kopp believed that the for-profit medallion system was creating inequities for taxi workers and corruption within the taxi industry. Proposition K drew the ire of taxicab companies and other business interests who wanted to purchase and sell medallions on the open market.²⁴⁹ Nevertheless, the San Francisco electorate spoke, and the proposition became law.²⁵⁰

In the post-union world, the Proposition K system offered economic protection to older drivers who began referring to the medallion as their “pension.” Taxi workers who had put themselves on a medallion-waiting list and driven consistently in San Francisco for about fifteen years were eventually issued a medallion by the city.²⁵¹ In order to continue to hold a medallion, these taxi workers had to work 800 hours per year. When they

242. Ruach Graffis, *Health Care Plan on Its Way at Last*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 2007, at 1, 4.

243. *Id.*

244. *Health Plan Proposal Gets Board Hearing*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Fall 2007, at 1. This health proposal was drawn from a report written by academics at the UC Berkeley Center for Labor Research and Education. The commissioned report states, “This report represents several years of efforts by policymakers to develop reliable information on realistic alternatives for providing health insurance benefits for San Francisco taxi drivers. In response to requests from the San Francisco Board of Supervisors and the City Controller, DPH and SFHP engaged in a detailed study to determine the cost of providing health insurance to taxi drivers, and to develop models for financing the coverage.” Rhonda Evans, Jabril Bensedrine, Ken Jacobs & Carol Zabin, *Establishing a San Francisco Taxi Driver Health Care Coverage Program: Administration, Cost, and Funding Options*, Report for the S.F. Dep’t of Health (Mar. 2006), http://laborcenter.berkeley.edu/pdf/2006/taxidriver_healthcare06.pdf.

245. See *Health Plan Proposal Gets Board Hearing*, *supra* note 244.

246. Interview with Ruach Graffis, *supra* note 185.

247. Described *supra* at 19, medallions are literally a piece of tin placed inside a vehicle, authorizing the vehicle to operate as a taxicab. Medallions are distinguished from A-Cards, which are professional licenses that individual taxi drivers must attain to drive a taxicab.

248. See Machen & Thigpen, *supra* note 138.

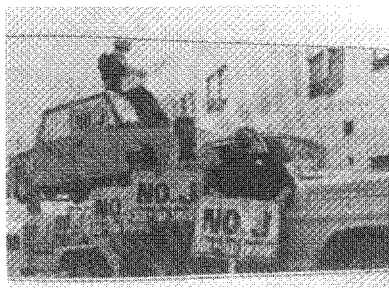
249. *Id.*

250. *Id.*

251. See *supra* note 10.

were not driving, they could lease their taxis to taxi companies or to other drivers, thereby securing stable rental income.²⁵² This augmented the income of many taxi workers with medallions by a considerable amount.²⁵³

UTW fought eight different cab company initiatives to have Proposition K changed or repealed.²⁵⁴ Each time, against immense moneyed interests, the UTW succeeded in its campaign; San Franciscans voted against privatizing medallions. For example, in 1996, UTW helped to defeat Proposition J which would have re-monetized medallions and made them transferable. The UTW succeeded by building political alliances with influential politicians, spreading their message to voters via campaign literature, and raising almost \$12,000 to fight the campaign.²⁵⁵ Although the taxicab companies won the support of the San Francisco Democratic Party, Proposition J was defeated, and the legacy of Proposition K lived on.²⁵⁶



UTW worker activists (left to right) Mark Gruberg, Dave Barlow, and Ruach Graffis Spreading the Word in the "No-on-J" Mobile in 1995. Mark Gruberg, The Unmaking of Proposition J, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 1996-1997, at 4.

Incredibly, without union status or resources, UTW drivers leveraged municipal regulation to fight for better working conditions for taxicab drivers. Activists battled assiduously and relentlessly to achieve a workable balance between the fare rate, the gate cap, and the number of taxi medallions—a balance that amounted to a decent wage for professional drivers. Using direct lobbying, consumer education, protests, and driver and media engagement, UTW ensured that workers had a seat at the table when industry decisions were made. Nevertheless, for the UTW advocates themselves, this situation was fragile and far from ideal. As the Alliance-

252. *Id.*

253. In 2008, for example, taxi workers who held medallions received about \$2,500 per month from taxi companies who then leased the taxi holding the medallion to other drivers. *Id.* The medallion holder got to choose the best, most profitable shifts. *Id.*

254. Interview with Mark Gruberg, *supra* note 213.

255. Mark Gruberg, *The Unmaking of Proposition J*, UNITED TO WIN! (United Taxicab Workers, San Francisco, Cal.), Winter 1996-1997, at 4.

256. *Id.*

founder and UTW advocate Ruach Graffis put it, “We ha[d] to negotiate every fucking thing in our universe in public with the politicians and in the ballot box because we can’t have a union because we can’t have a contract because we are so-called ‘independent contractors.’”²⁵⁷

IV.

FROM TAXI WORK TO UBER WORK: ORGANIZED LABOR, DEREGULATION, AND AN ILLUSORY BARGAIN (2013-PRESENT)

Following the decades of low but relatively stable wages maintained through regulation of rates and competition and accomplished through painstaking advocacy, the UTW and San Francisco taxi workers at large encountered a situation that they could not have predicted: the promulgation of worker precarity enacted—almost overnight—through new chauffeur company business models and subsequent deregulation.

Between 2012 and 2013, the next-generation of taxicabs emerged on the streets in the form of private vehicles. New chauffeur companies, Uber, Lyft, and Sidecar branded themselves as technology start-ups and enabled drivers to operate extra-legally, outside the state and municipal regulatory frameworks of for-hire vehicles. These companies enlisted an unrestricted number of commercially unlicensed drivers to download a centralized dispatch application on their smartphones and to use their personal vehicles to pick up and drop off passengers.²⁵⁸

These business models were one-step removed from the taxicab leasing models enacted in the late 1970s. Under the taxi leasing apparatus, the taxi workers were independent contractors who paid to work. But they drove company cars with commercial insurance and labored in an industry in which competition was regulated. By contrast, the new chauffeur companies operated illegally, outside the context of existing regulations, and demanded that workers utilize their own vehicles and bear all the associated financial and legal risks.

In the nascent years of these new chauffeur companies, UTW and other workers’ rights groups and advocates engaged in fervent protests and lobbying of both municipal and state agencies to put an end to what they called “bandit tech cabs.”²⁵⁹ In 2013, UTW advocates complained that taxi workers’ already low wages had dropped by up to 65% because of the competition created by the uncapped number of chauffeur vehicles suddenly

257. Interview with Ruach Graffis, *supra* note 185.

258. *See supra* note 10. Notably, many of these unlicensed drivers were underemployed or unemployed following the economic upheaval of 2008-2009. *Id.*

259. In a 2013 op-ed in the San Francisco Chronicle, I used the term “bandit tech cab,” which I borrowed from UTW leaders, to argue for regulatory enforcement. Veena Dubal, “Bandit Cabs” Are Bad for Drivers and Passengers,” S.F. CHRONICLE (Aug. 20, 2013), <http://www.sfgate.com/opinion/openforum/article/Bandit-cabs-are-bad-for-drivers-and-passengers-4747566.php>.

on the streets.²⁶⁰ Despite impassioned taxi driver protests and push back from existing taxi companies, state policymakers in 2015 legalized the platform-based chauffeur business models, rebuffing workers' rights concerns and heralding the new companies for their consumer convenience and technological innovation.²⁶¹

State regulators decreed that these new technology-based chauffeur companies were not taxicab businesses, but something new entirely: Transportation Network Companies (TNCs).²⁶² Articulating a desire not to "stifle innovation," state regulators refused to enforce or replicate the long-established and hard-won regulations of the taxi industry.²⁶³ Though wage security for taxi workers had, since the late 1970s, depended on set fares and restrictions on competition, regulators declined to address either issue when it came to TNCs.²⁶⁴ The limited TNC regulations (almost all of which addressed consumer safety) allocated the role long played by city regulators to the TNCs themselves. Critically, the companies were granted the power to control the number of available cars and the fares that consumers were charged.

With the innovation and legalization of the TNCs, early twenty-first century San Francisco chauffeur work rapidly began to resemble early twentieth century, pre-union San Francisco chauffeur work. Much like the taxi workers who struck in San Francisco in 1919, the TNC drivers had no set income, paid for their own gasoline, and drove with no regulatory limit on competition.²⁶⁵ As an additional regression, the TNC drivers also had to drive their own cars, bear the costs of wear and tear, purchase gas and insurance,²⁶⁶ and pay for vehicle upkeep. By operating illegally and then

260. *Supra* note 10.

261. For the codified regulations, see Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry. California Public Utilities Commission Rule Making 12-12-011. Sept. 23, 2013. Available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K192/77192335.PDF>

262. Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21 (codifying rules ultimately passed). This term later became used by the media and by regulators across the nation. See *supra* note 10.

263. See Cal. Pub. Util. Comm'n, Order Instituting Rulemaking, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M036/K204/36204017.PDF> (encouraging innovators); see also Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21 (codifying rules ultimately passed).

264. See *supra* note 10.

265. *Id.* While workers across the chauffeur industry continued to struggle to make ends meet, Uber was subsequently valued at \$68 billion. Liyan Chen, *At \$68 Billion Valuation, Uber Will Be Bigger Than GM, Ford, & Honda*, FORBES.COM (Dec. 4, 2015), <http://www.forbes.com/sites/liyanchen/2015/12/04/at-68-billion-valuation-uber-will-be-bigger-than-gm-ford-and-honda/>.

266. At the outset, the TNC drivers were bearing extraordinary financial risk for operating their personal vehicles commercially without the appropriate commercial insurance. See *supra* note 10. Insurance companies stated that if their clients were driving for a TNC on personal insurance, then their insurance policy would be automatically invalidated. *Id.* In late 2015, insurance companies began offering "hybrid" personal and commercial insurance policies targeted at TNC drivers. See, e.g., Mark Vallet, *Which Insurers Offer Ridesharing Policies?*, INSURANCE.COM (Dec. 14, 2016), <http://www.insurance.com/auto-insurance/coverage/insurance-rideshare-uber-lyft.html>. However, in my

successfully lobbying for legalization with limited consumer safety regulation, TNCs in San Francisco produced a new, but old, version of taxi work.

While UTW—and eventually its successor the San Francisco Taxi Workers Alliance (SFTWA)—continued to fight for regulation of the TNC industry, labor unions also began to respond to the needs of the TNC workers. As the technology-enabled contractor business model spread to other industries and to other parts of the country, labor unions engaged in conversations about how to address this type of contingent labor. In early 2016, labor splintered over strategy. Some unions and alt-labor groups, including the SFTWA, National Taxi Workers Alliance (NTWA), and the national AFL-CIO, believed that the best route to address the rise of the precarious work was to fight for the employee status of TNC drivers.²⁶⁷ Others sought a more contentious and expedient route—accepting the independent contractor status of workers and establishing non-union worker associations.²⁶⁸

In the San Francisco area, the Teamsters Joint Council 7 (“TJC7”) answered the provision of a proposed misclassification class action settlement with Uber which provided for the creation of an Uber-funded “worker association” of Uber drivers.²⁶⁹ One day after the proposed settlement was publicly announced, TJC7 articulated their intention to become that association.²⁷⁰ This method—establishing a worker association absent NLRB recognition—stirred intense discord among chauffeur workers and other labor unions.²⁷¹

While both tactics—seeking employment status and building Uber-funded worker associations—operated simultaneously, how to address the precarious working conditions of the tech-enabled chauffeur drivers became a national concern.²⁷² Taking into account the growing apprehension about

research, most Uber drivers say that these hybrid policies are prohibitively expensive so they continue to drive under their personal insurance policy, risking complete liability in the case of an accident in which they are found at fault. See *supra* note 10.

267. *Id.*

268. *Id.*

269. Joe Fitzgerald Rodriguez, *Teamsters Recruiting Uber Drivers After Settlement of Employee Lawsuit*, S.F. EXAMINER (Apr. 25, 2016), <http://www.sfexaminer.com/teamsters-recruiting-uber-drivers-settlement-employee-lawsuit/>.

270. Riley McDermid, *Uber Picks Up a New Passenger: The Teamsters*, S.F. BUS. TIMES (Apr. 26, 2016), <http://www.bizjournals.com/sanfrancisco/blog/2016/04/uber-drivers-lyft-teamsters-tech-shuttle.html>.

271. See, e.g., Steven Greenhouse, *On Demand & Demanding Their Rights*, AM. PROSPECT (June 28, 2016), <http://prospect.org/article/demand-and-demanding-their-rights>.

272. For example, eight months after the Equal Employment Opportunities Commission Chair Jenny Yang attended a symposium at the University of California at Berkeley co-sponsored by this journal and focused on precarious workers in the tech economy (specifically TNC drivers), the EEOC announced its decision to make discrimination in the so-called “gig economy” a strategic focus. Kevin McGowan, *New EEOC Plan Targets Anti-Muslim Bias, Gig Workers*, BLOOMBERG BNA (Oct. 18, 2016),

tech-enabled contractor work, which originated in the San Francisco taxi industry, this final section examines how chauffeur work became deregulated in the city and explores the contours of labor's schismatic response.

A. *The Emergence of the TNCs & New, but Old, Taxi Work*

In March 2009, amidst the Great Recession, the San Francisco Board of Supervisors dissolved the city's Taxi Commission, a municipal body charged with regulating the taxi industry.²⁷³ The San Francisco Municipal Transportation Agency (SFMTA) took the wheel of the city's taxi industry.²⁷⁴ Mayor Gavin Newsom, a socially progressive Democrat who was later elected Lieutenant Governor of California, announced his intention to privatize medallions in order to generate revenue for the cash-strapped city.²⁷⁵

Notwithstanding raucous protests and pushback from UTW and non-profits representing the interests of low-income workers, San Francisco's thirty-year policy was reversed and medallions were conferred monetary

<http://www.bna.com/new-eeoc-plan-n57982078766/>. Even President Barack Obama in his comments at the White House Summit on Worker Voice reflected his concern that in the “on-demand” economy occupied by Uber and Lyft, hard work and economic security become decoupled. He stated, “We’ve got folks who are getting a paycheck driving for Uber or Lyft; people who are cleaning other people’s houses through Handy; offering their skills on TaskRabbit. And so there’s flexibility and autonomy and opportunity for workers. And millennials love working their phones much quicker than I can. And all this is promising. But if the combination of globalization and automation undermines the capacity of the ordinary worker and the ordinary family to be able to support themselves, if employers are able to use these factors to weaken workers’ voices and give them a take-it-or-leave-it deal in which they don’t have a chance to ever save for the kind of retirement they’re looking for, if we don’t refashion the social compact so that workers are able to be rewarded properly for the labor that they put in . . . then we’re going to have problems. And it’s not just going to be a problem for our politics—creating resentment and anxiety—it’s going to be a problem for our economy because the history shows that when we do best as an economy it’s when workers have money in their pockets and they’re able to buy goods and services. . . . So we’ve got to make sure that as we continue to move forward, both in this new ‘on demand’ economy and in the traditional economy as a whole, hard work guarantees some security.” *Remarks by the President at the White House Summit on Worker Voices*, THE WHITE HOUSE (Oct. 7, 2015), <https://www.whitehouse.gov/the-press-office/2015/10/07/remarks-president-white-house-summit-worker-voice>.

273. *Proposition K Reform*, S.F. METROPOLITAN TRANSP. AUTHORITY, <https://www.sfmta.com/projects-planning/projects/proposition-k-reform> (last visited: Dec. 16, 2016). Regulation of the taxi industry has long been a thorn in the side of San Francisco’s elected officials. Due to the complicated nature of the industry and the number of interested parties (drivers, medallion holders, company owners, hotel owners, dispatch companies, consumers, etc.), Mayor Willie Brown (himself a taxi driver earlier in his career) created a Taxi Commission through a voter-approved charter amendment in 1998. *Board of Supervisors Agenda and Minutes Archive*, CITY AND CNTY. OF S.F. (May 18, 1998), http://sfbos.org/ftp/meetingarchive/full_board/index.aspx-page=2712.html.

274. The primary purpose of the SFMTA is to regulate the bus system. During the November 2007 elections, San Francisco voters passed Proposition A. This proposition concerned bus regulation, but included a brief provision on page thirty-six of the text expanding the role of the San Francisco Municipal Transportation Agency (SFMTA) in making “taxi-related regulations” in the event that the taxi regulatory body, the Taxi Commission, was merged with the SFMTA. *See supra* note 10.

275. Erin Allday, *Mayor Proposes Auctioning S.F. Taxi Medallions*, S.F. GATE (Jan. 13, 2009), <http://www.sfgate.com/politics/article/Mayor-proposes-auctioning-S-F-taxi-medallions-3176782.php>.

value.²⁷⁶ San Francisco taxicab drivers flocked to purchase these permits for the city-issued price of \$250,000, scrounging money from friends and relatives for the 5% down payment.²⁷⁷ The SFMTA ensured drivers that their investment was sound, and the city even facilitated the loan process through the San Francisco Credit Union.²⁷⁸



On August 3, 2010, Ahmed Sidaoui (holding the medallion), a veteran San Francisco taxi driver, became the first person to purchase a medallion since 1978. He put 5% down and received a loan from the San Francisco Credit Union for the remaining \$230,000. His medallion was purchased from Mrs. Megarity (to the left of Sidaoui) who had purchased hers in 1968 for \$20,000. Christiane Hayashi, the then-director of taxi services is to the left of Mrs. Megarity. Nat Ford, the executive director of the SFMTA, is to the right of Sidaoui. Ed Healy, First San Francisco Medallion Sale in 33 Years, PHANTOM CAB DRIVER PHITES BACK (Aug. 4, 2010), <http://phantomcabdriverphites.blogspot.com/2010/08/first-san-francisco-medallion-sale-in.html>.

Just three months after Mayor Newsom announced the privatization of medallions, Travis Kalanick and Garrett Camp officially founded UberCab in San Francisco.²⁷⁹ The tech community touted the company as one that had the potential to disrupt the taxi industry and “break the back of the taxi medallion evil empire.”²⁸⁰ Soon after the company began operations, state and city regulators found that UberCab was operating illegally—not as a pre-

276. See *supra* note 10.

277. *Id.*

278. *Id.*

279. See Avery Hartmans & Nathan McAlone, *The Story of How Travis Kalanick Built Uber into the Most Featured and Valuable Startup in the World*, BUS. INSIDER (Jul. 28, 2016), <http://www.businessinsider.com/ubers-history/>; see also Erin Allday, *supra* note 276.

280. Michael Arrington, *What If UberCab Pulls an Airbnb? Taxi Business Could (Finally) Get Some Disruption*, TECHCRUNCH (Aug. 31, 2010), <https://techcrunch.com/2010/08/31/what-if-ubercab-pulls-an-airbnb-taxi-business-could-finally-get-some-disruption/>. Notably, however, the company’s early business model was not to turn any private vehicle into a taxi, but rather to contract with existing limousine services regulated by the California Public Utilities Commission. See *id.*

arranged carrier but as an illegal taxi service. On October 20, 2010, the SFMTA issued an unenforced cease and desist order to UberCab for operating without authorization.²⁸¹

Though UberCab was threatened with up to \$5,000 per instance of illegal operation and jail time, the company defiantly continued to function, dropping the word “cab” from its name to buttress the argument that it was different from taxicab companies.²⁸² In July 2012, Uber expanded to create UberX, in which any private driver could download their app and begin to drive commercially.²⁸³ Lyft and Sidecar were founded the same year.²⁸⁴ Together, these companies claimed that they were entirely exempt from regulation because the service they provided was a form of “ride-sharing.”²⁸⁵ Like their taxicab company predecessors who embraced the leasing model in the late 1970s, Uber, Lyft, and Sidecar passed the financial and legal risks onto worker drivers.

As more and more UberXs flooded the streets of San Francisco, the value of the privatized taxi medallion plummeted.²⁸⁶ Taxi drivers who had just scrounged up loans and savings to purchase medallions put themselves on a long list to sell their medallions.²⁸⁷ Yet to appease taxicab companies who complained that they could not compete with the new companies, the SFMTA issued even more. Soon, however, many taxi drivers flocked to

281. Lora Kolodny, *UberCab, Now Just Uber, Shares Cease and Desist Orders*, TECHCRUNCH (Oct. 25, 2010), <https://techcrunch.com/2010/10/25/ubercab-now-just-uber-shares-cess-and-desist-orders/>.

282. Lora Kolodny, *UberCab Ordered to Cease and Desist*, TECHCRUNCH (Oct. 24, 2010), <https://techcrunch.com/2010/10/24/ubercab-ordered-to-cess-and-desist/>.

283. Alexia Tsotsis, *Uber Opens up Platform to Non-Limo Vehicles With “Uber X,” Service Will Be 35% Less Expensive*, TechCrunch (Jul. 1, 2012), <https://techcrunch.com/2012/07/01/uber-opens-up-platform-to-non-limo-vehicles-with-uber-x-service-will-be-35-less-expensive/>.

284. Kirsten Korosec, *Lyft Co-Founder John Zimmer Has a Message for the Auto Industry*, FORTUNE (Nov. 17, 2015), <http://fortune.com/2015/11/17/lyft-john-zimmer-la-auto-show/>; Jennifer Van Grove & Tracey Lien, *It’s the End of the Road for Sidecar*, L.A. TIMES (Oct 30, 2015), <http://www.latimes.com/business/technology/la-fi-tn-sidecar-quits-ridehailing-20151229-story.html>.

285. Daniel Rothberg, *UberX, Lyft Reject Latest California Regulation Push*, THE SACRAMENTO BEE (Jun. 17, 2014), <http://www.sacbee.com/news/politics-government/article2601601.html>. CPUC regulations exempted not-for-profit ridesharing in which drivers gave a free ride to persons going in the same direction. See *supra* note 10. To fit this definition, Lyft and Sidecar called the payment exchanged between a driver and passenger a “donation.” But the “donation” was charged automatically unless the passenger overrode it. Erin Huet, *How Ride-Share Services Skirt Taxi Rules*, S.F. CHRONICLE (Sep. 2, 2012), <http://www.sfgate.com/business/article/How-ride-share-services-skirt-taxi-rules-3835566.php>.

286. In 2010, medallions were sold for \$250,000 in San Francisco, and there was a long waitlist of drivers hoping to buy the medallions. See Jesse Garnier, *SF Taxi Medallions Now up for Sale*, SFBAY.CA (Aug. 23, 2012), <https://sfbay.ca/2012/08/23/san-francisco-taxi-medallions-now-up-for-sale/>. As of May 2016, the city of San Francisco had a list of 766 medallion-holders seeking to sell their medallions. That last grew from 500 in December 2015. Peter Kirby, *San Francisco Medallion Program and the Damage Done*. S.F. EXAMINER, May 1, 2016, <http://www.sfexaminer.com/san-franciscos-medallion-program-damage-done/>.

287. See *supra* note 10

become Uber drivers, and taxicab companies—small and large—discovered that they could not fill their shifts.²⁸⁸

At the outset, TNCs maintained that they were not technically transportation companies because they were not providing vehicles to the independent contractor drivers.²⁸⁹ Instead, TNCs argued that they were software companies and therefore not subject to regulation by the California Public Utilities Commission (CPUC) or the SFMTA.²⁹⁰ The companies claimed that while the drivers may have been operating illegally, they, as software companies, were not in violation of the law.²⁹¹ In October 2012, the CPUC issued cease and desist orders to Lyft and SideCar, arguing that they were not properly licensed.²⁹² In November 2012, the CPUC tried to enforce its orders against the companies by issuing \$20,000 citations to each.²⁹³ Then, just one month later, the CPUC halted all enforcement attempts²⁹⁴ and commenced a rule-making proceeding on the operation and regulation of all three companies.²⁹⁵

B. *The Story of Deregulation*

Despite the great protest and lawsuits by taxi companies²⁹⁶ who could no longer fill their shifts, and the economic insecurity of taxi workers who could

288. *Id.* Indeed, in early 2016, San Francisco Yellow Cab went bankrupt. Joe Fitzgerald Rodriguez, *Yellow Cab to File for Bankruptcy*, S.F. EXAMINER, Jan. 6, 2016, <http://www.sfexaminer.com/yellow-cab-to-file-for-bankruptcy/>.

289. See *supra* note 10.

290. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21, at 15.

291. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, Reply Comments of the Taxicab Paratransit Association ("TPAC"), http://sfeda.org/CPUC/TPAC_reply_PD.pdf.

292. Ryan Lawler, *While the California PUC Cracks Down on Ride-Sharing, Sidecar and Lyft Commit to Staying on the Road*, TECHCRUNCH (Oct. 8, 2012), <https://techcrunch.com/2012/10/08/cpuc-ride-sharing-c-and-d/>.

293. Bryan Bishop, *Uber, Lyft, and Sidecar Hit with \$20,000 Citations from California Utilities Commission*, THE VERGE (Nov. 14, 2012), <http://www.theverge.com/2012/11/14/3647170/uber-lyft-sidecar-20000-fines-california-public-utilities-commission>.

294. Indeed, Uber reached a non-monetary "settlement" with the Safety and Enforcement Division of the CPUC. The settlement provided that while the rule-making period was in process, Uber would abide by a limited set of rules. *Term Sheet for Settlement Between the Safety & Enforcement Division of the CPUC & Uber Technologies*, CAL. PUB. UTIL. COMM'N (Jan 30, 2013), http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Transportation_Enforcement_and_Licensing/Enforcement_Actions_Transportation_Network_Companies/UberTermSheetforSettlement.pdf.

295. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21, at 4.

296. The Taxicab Paratransit Association of California (TPAC), which is a taxi company interest group, filed an application for a rehearing of the CPUC's decision on TNC rule-making on a number of grounds. One claim was that the CPUC illegally legalized TNCs before conducting an environmental impact report. Another was that the CPUC erred in assigning TNCs their own legal category separate from taxi companies, arguing that TNCs are, essentially, taxi companies. See *generally*, Application of the Taxicab Paratransit Association of California (TPAC) for Rehearing of Decision 13-09-045, Cal. Pub. Util. Comm'n, <http://www.taxi-library.org/cpuc-2013/rehearing-application-tpac.pdf> (last viewed: Dec. 16, 2016).

no longer earn a living in a climate of such unbridled competition, the CPUC legalized TNCs in September 2013.²⁹⁷ Because these start-ups began in San Francisco, the SFMTA and CPUC were the first regulatory bodies nationwide to respond to the companies' disruption of the existing industry. The rules that the CPUC enacted allowed drivers to remain commercially unlicensed, outsourced the responsibility for safety regulations to the companies, and put no limitations on fare rates or on the number of operating vehicles.²⁹⁸

In its order instituting the rule-making process, the CPUC made clear that their primary goals in regulating the new TNCs were to ensure public safety and to not stifle innovation.²⁹⁹ Concerns about worker security and well-being were notably absent from the enumerated goals of the rule-making. The commission released a carefully worded statement, repackaging a familiar narrative about these companies as innovative and desirable:

The Commission has a responsibility for determining whether and how *public safety* might be affected by these new businesses. The purpose of this Rulemaking is *not to stifle innovation* and the provision of new services that consumers want, *but rather to assess public safety risks*, and to ensure that the safety of the public is not compromised in the operation of these new business models.³⁰⁰

After several meetings with interested parties, including intensive advocacy by the UTW, the CPUC issued its first phase of regulations.³⁰¹ Despite UTW and the SFMTA's advocacy efforts, the CPUC's permissive regulations essentially deregulated the industry.

The TNCs, the CPUC decided, were only required to apply for company permits in order to operate in the state of California, but the individual drivers who drove for the TNCs were not required to register with the state or obtain commercial licenses.³⁰² Trivial safety regulations were promulgated, but in most instances, the duty to ensure compliance was *outsourced* to the companies, rather than enforced by the state.³⁰³ In the taxicab industry context, analogous municipal regulations had long been enforced by city regulators, providing leverage for independent contractor taxi workers to advocate for themselves on related issues. But in the TNC context, the CPUC rules required that the TNCs enforce the rules on drivers and provide

297. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21.

298. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21.

299. See Cal. Pub. Util. Comm'n, Rule 12-12-011, *Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services*, at 1 (Dec. 20, 2012), <http://www.taxi-library.org/cpuc-2013/oir.pdf>.

300. *Id.* at 1-2 (emphasis added).

301. See *supra* note 10.

302. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21, at 26-27.

303. See *id.* at 29-33.

verification of compliance on an annual basis.³⁰⁴ Most glaringly, the rate of rides and the number of vehicles permitted to operate were left completely unregulated.³⁰⁵ The fragile era of sustaining a regulatory bargain had ended. The CPUC anticipated that these rules would need revisiting and ordered a second phase of rule-making.³⁰⁶

Two years later, in April 2016, the CPUC voted on phase II of the TNC rule-making process, and again, the new regulations, rather than placing limitations on the companies, expanded the possibilities of their business models—at the workers' expense. For example, the CPUC approved the practice of fare-splitting for TNC carpool services, a practice that TNC drivers disliked because it forced them to drive further for less money.³⁰⁷ The only new regulations were imposed on TNC drivers, *not* the companies.³⁰⁸ In addition to the municipalities' reluctance to regulate TNCs on top of the CPUC regulations, the California legislature also failed to pass laws that would place any regulatory burden on the TNCs or provide drivers leverage to advocate on their own behalf.³⁰⁹

The resulting unregulated competition effectively undermined both TNC and taxi workers' ability to earn a living as independent contractors. TNC and taxicab drivers remain outside the protections of employment and labor law, including collective bargaining and minimum wage laws.³¹⁰ With

304. See *id.* Uber has taken a recalcitrant approach to these reporting mandates. In January 2016, the CPUC fined the company over \$7.6 million for failure to meet the reporting requirements. Annie Gans, *Uber Slapped with \$7.6 Million CPUC Fine for 'Contempt,' Non-Compliance*, THE BUS. JS. (Jan. 14, 2016, 1:24 PM), <http://www.bizjournals.com/sanfrancisco/blog/techflash/2016/01/uber-7-6-million-cpuc-fine-reporting.html>. The company paid the fine, and appealed the decision in California Superior Court. *Id.*

305. *Id.*

306. See Cal. Pub. Util. Comm'n, Rule Making 12-12-011, *supra* note 21, at 18.

307. See *id.* at 4.

308. This included new rules mandating that drivers obtain inspections for their personal vehicles every year or every 50,000 miles and that they display removable trade dress in the front and the back of the vehicles. *Id.* at 2-3.

309. For example, in response to the TNC work, Assemblywoman Lorena Gonzalez introduced and then pulled AB 1727, a bill that would have allowed independent contractors who obtained their work through a platform to engage in protected collective bargaining. Press Release, Assemblywoman Lorena Gonzalez, Gonzalez Proposes New Workplace Rights for Independent Contractors (Mar. 9, 2016), <http://asmdc.org/members/a80/news-room/press-releases/gonzalez-proposes-new-workplace-rights-for-independent-contractors>. Gonzalez's aids reported that it was pulled because they did not have enough labor support to pass the bill.

310. See *supra* note 10. Anecdotally, a number of taxi workers in my research have stated that TNC drivers tend to leave the industry after four months because of the physical and mental difficulties of the work, the unstable income, and the wear and tear on their cars. *Id.* While their income is curtailed by the lack of regulation regarding the number of TNC vehicles in operation, this same lack of regulation ensures that TNCs' profitability is unbridled. *Id.*

the onset of deregulation, leverage that taxi workers once had at a municipal level to curtail supply and effect a stable wage evaporated overnight.³¹¹

C. *Labor's Schismatic Response to Deregulation*

In February 2014, the National Taxi Worker Alliance, which is affiliated with the AFL-CIO, coordinated a phone conference of taxi workers and organizers all over the country, including those from the United Taxicab Workers.³¹² In addition to discussing their frustration over the lost taxi income and regulatory battles brought on by the TNCs, which by that time had spread all over the world, taxi workers and organizers also relayed a startling fact: *TNC drivers were coming to them for protection.*³¹³ TNC drivers, many of them former taxi workers, had come back to the organizers whom they knew in the taxi industry, asking what they could do to organize against their exploitative conditions.³¹⁴

In the months before and after this call, taxi worker protests and TNC worker protests against the TNCs proliferated across the United States and worldwide.³¹⁵ In San Francisco, taxi workers from different organizations, including the UTW, resolved their differences and united under a single umbrella organization—the San Francisco Taxi Workers Alliance (SFTWA). Reeling against the threat posed by the TNCs, over one third of taxi drivers in San Francisco signed their allegiance to the SFTWA, which became formally affiliated with the NTWA and the AFL-CIO. Amidst the deregulation, the SFTWA organized protests and spearheaded extraordinary lobbying efforts.³¹⁶

311. *Id.* Meanwhile, taxi medallions purchased in 2009 were rendered nearly worthless. As of the time of publication, the SFMTA has a list of hundreds of medallion holders who want to sell their medallions. But as no buyers exist, the list grows longer and longer. As of May 2016, the city of San Francisco had a list of 766 medallion-holders seeking to sell their medallions. That list grew from 500 in December 2015. Peter Kirby, *San Francisco Medallion Program and the Damage Done*, S.F. EXAMINER (May 1, 2016), <http://www.sfexaminer.com/san-franciscos-medallion-program-damage-done/>.

312. *See supra* note 10. The National Taxi Workers Alliance emerged from the successful labor organizing of the New York Taxi Workers Alliance (“NYTWA”) which enacted a number of successful work stoppages and policy campaigns over the course of two decades organizing independent contractor taxi workers in New York City. For more on the NYTWA, *see* Mathew, *supra* note 63. In 2011, the AFL-CIO gave an organizing charter to the National Taxi Workers Alliance. *See* Press Release, AFL-CIO, National Taxi Workers Alliance Affiliates with the AFL-CIO (Oct. 20, 2011), <http://www.aflcio.org/Press-Room/Press-Releases/National-Taxi-Workers-Alliance-Affiliates-with-the>.

313. *See supra* note 10.

314. *Id.*

315. *Id.*

316. *Id.*



July 30, 2013 protest of San Francisco taxi workers against the legalization of TNCs. Image taken by Barry Korengold of the San Francisco Cab Drivers' Association.

While many on the initial National Taxi Workers' Alliance conference call questioned not just whether the TNC workers should be organized in tandem with the taxi workers, but also whether they actually *could be organized* given that they do not congregate in the way that taxi workers do,³¹⁷ the TNC workers have since demonstrated that exploitation produces collectivity, even in the most unlikely of conditions. On June 14, 2014, in front of Uber headquarters in San Francisco, over 250 Uber drivers converged for the first time to protest Uber's exploitative employment practices. In chanting their demands, the protesting drivers demanded that Uber stabilize their wages and take responsibility for some of the risks and liabilities of driving. Notably, these demands were strikingly similar to those made by San Francisco taxi workers in the early 1900s.

However, most large labor unions, though dismayed by the advent of the TNCs, did not jump to organize the thousands of new TNC drivers.³¹⁸ Many worried about the potential anti-trust liabilities of organizing independent contractor workers.³¹⁹ The legal bifurcation of worker identity into employees and independent contractor combined with the subsequent anti-trust liability fears hindered independent worker mobilization and resulted in a schism among the nation's labor unions.³²⁰ Some union leaders believed that the best way to support chauffeur workers was to fight the Uber business model by litigating the TNC drivers' employee status. For these leaders, the aim was

317. *Id.*

318. *Id.*

319. See Interview with Douglas Bloch, Political Director, Teamsters Joint Council 7, in Oakland, Cal. (May 9, 2016).

320. See *supra* note 10. Today, anti-trust violations loom to prevent worker organizing as labor injunctions did in the early part of the 20th century.

unionization and the right to collectively bargain under the existing NLR laws.³²¹ Other unions and alt-labor groups, however, were more willing to relinquish the employee status battle and represent drivers for purposes of “driver voice” and potential market-based benefits.³²²

As part of a proposed settlement in a major misclassification lawsuit against Uber—the TNC with the most workers—Uber agreed to fund a drivers’ association to address the concerns of workers.³²³ Objectors to the settlement, including a San Francisco-based worker group guided by the National Taxi Workers Alliance,³²⁴ maintained that such an association would be, in effect, a “company union,” and would undermine independent worker organizing.³²⁵ These plaintiff objectors claimed that they had waited three years for this case to determine their correct worker classification and any settlement that fell short of conferring employee status was undesirable.³²⁶

However, as soon as the terms of the proposed settlement were announced, Teamsters Joint Council 7³²⁷ (TJC7), whose offices are in Northern California, issued a press release articulating their intention to fulfill the role of the anticipated worker association.³²⁸ Unlike the traditional collective bargaining path, which involves organizing drivers, filing for recognition with the NLRB, and then forcing a company to bargain, TJC7 made the unusual decision to try to contract directly with the company.³²⁹ Within weeks, TJC7 assigned a staff organizer to the TNC driver association.³³⁰ The union had two open meetings with drivers during the

321. See Greenhouse, *supra* note 272.

322. *Id.*

323. Motion for Preliminary Approval. *O’Connor v. Uber Technologies*, CV 13-03826-EMC, Doc. 518 (Apr. 21, 2016), 10. Such an association, funded and facilitated by Uber, could have faced legal challenges under section 8(a)(2) of the National Labor Relations Act which outlaws company unions (if drivers were found to be employees). See 28 U.S.C. § 158 8(a)(2) (2012).

324. The group was represented by this author.

325. Declaration of Veena Dubal in Support of Objections to Class Settlement, at 7-10, *O’Connor v. Uber Tech. Inc.*, No. 13-cv-03826-EMC No. 15-cv-00262 EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016).

326. *Id.* at 16-17.

327. This Teamsters joint council represents workers in Northern California, California’s Central Valley, and Northern Nevada. In the 1990s, TJC7 spearheaded the fight against the misclassification of port truck drivers. Their efforts largely failed to classify these drivers as employees. See *supra* note 10.

328. As the Teamsters Joint Council 7 political director Douglas Bloch told me, “The earlier strategy of the Teamsters [with independent contractor truckers] was to make workers employees first, but that is not going to be our strategy here [with the TNC workers]. I don’t see this business model changing anytime soon, and in the meantime, the drivers need help.” Interview with Douglas Bloch, *supra* note 320.

329. *Id.*

330. See *supra* note 10. Teamsters also announced their intention to partner with Silicon Valley Rising to coordinate this campaign and eventual worker association. The Silicon Valley Rising coalition specifically targets the inequalities created by the tech industry. Their website states, “Silicon Valley Rising is taking on occupational segregation and severe income inequality with a comprehensive

summer of 2016 but continued to worry about the financial implications of fighting for a wage floor.³³¹ Later that summer, the proposed settlement (and with it the proposed drivers' association) was rejected as "not fair, adequate, and reasonable."³³² Whether TJC7 will continue to work with TNC drivers and support them in organizing efforts remains to be seen.

Prior to the court's rejection of the settlement, the Teamsters' political director, Douglas Bloch, said they would not organize the workers for wage purposes out of fear of anti-trust liability. Mr. Bloch stated:

The earlier strategy of Teamsters [in misclassification contexts] was to make them employees first, but that is not going to be our strategy here. I don't see this business model changing anytime soon, and in the meantime, the drivers need help. They are militant; they want to organize. And if this settlement says that they are going to recognize some kind of association and steer resources to it, then we want drivers to organize.³³³

Just days after TJC7 announced its attention to be the drivers' association laid out by the proposed settlement in *O'Connor v. Uber*³³⁴, another labor union and alt-labor group—both based in New York City—revealed that they too were going to accept resources from Uber to assist workers.³³⁵ The labor union—the International Association of Machinists and Aerospace Workers Union (AFL-CIO)—formed a five-year pact with Uber. The Machinists created the Independent Drivers Guild (IDG) to represent the TNC drivers, but they agreed with Uber not to bargain over a contract that would stipulate fares, benefits, or protections.³³⁶ They also agreed to refrain from trying to unionize drivers, from encouraging them to strike, and from waging legal and political campaigns to change their employment status. Instead, the IDG would work to create an appeals process for deactivated drivers and provide members with discounted legal services.³³⁷ In response to labor activists who called the Machinists'

campaign to raise wages, create affordable housing and build a tech economy that works for everyone." SILICON VALLEY RISING, <http://siliconvalleyrising.org/> (last visited Nov. 5, 2016).

331. See *supra* note 10.

332. Order Denying Plaintiff's Motion for Preliminary Approval, *O'Connor v. Uber Technologies*, Case No. 13-cv-03826-EMC, Doc. 748 at 64 (Aug. 18, 2016).

333. Interview with Douglas Bloch, *supra* note 320.

334. Caroline O'Donovan, *Teamsters To Organize California Uber Drivers Association*, BUZZFEED (Apr. 22, 2016) <https://www.buzzfeed.com/carolineodonovan/teamsters-to-organize-uber-drivers-in-california>.

335. *Machinists Union Announces Association For Uber Drivers*, BUSINESSWIRE (Apr. 26, 2016), <http://www.businesswire.com/news/home/20160426006062/en/Machinists-Union-Announces-Association-Uber-Drivers>; see also Caroline O'Donovan, *Worker Advocacy Group Will Profit From Uber Deal*, BUZZFEED (May 11, 2016), <https://www.buzzfeed.com/carolineodonovan/uber-adds-worker-advocacy-group-to-its-payroll>.

336. Noam Scheiber & Mike Isaac, *Uber Recognizes New York Drivers' Group, Short of a Union*, N.Y. TIMES (May 10, 2016), <http://www.nytimes.com/2016/05/11/technology/uber-agrees-to-union-deal-in-new-york.html>.

337. *Id.*

agreement with Uber a “historic betrayal,”³³⁸ an attorney for the Machinists defended the move, arguing that his union “had to adopt to this new economy.”³³⁹ Uber for its part defended the IDG, maintaining that the drivers’ group would create better communications and workplace voice for drivers.³⁴⁰ Had the proposed settlement been judicially sanctified, Uber would likely have pushed for a similar deal with TJC7 in Northern California.

The alt-labor group that struck a deal with Uber—the Freelancers Union³⁴¹—agreed to serve as a consultant for the company to create portable market-based benefits for drivers across the country, including in San Francisco. Rather than challenging the precarious work produced by Uber’s business model, the creation of these benefits may appease political critique about the precarious work created by the TNCs. If worker-funded, market-driven “benefits” were available to drivers—no matter the drivers’ pecuniary ability or inability to purchase these benefits—then the responsibilities to produce secure work would fall away from both Uber and the state. Drivers, who are not guaranteed even a minimum wage under the Uber model, would then be responsible for buying their own unemployment insurance and workers’ compensation plans, in addition to their own cars, gasoline, phones, and hybrid insurance policies.

Still, the limited goals of these worker associations—workplace voice and market-based portable benefits—appear to be incremental improvements in the insecure working conditions of chauffeur drivers. But the Uber-promoted mechanism by which these improvements would be achieved—employer-sponsored worker associations—have historically had a negative impact on independent worker organizing and may interfere with the right of workers to independently collectively bargain. Prior to the passage of the NLRA, similar employer representation associations were part of an arsenal of tactics to undermine independent worker organizing.³⁴² Such “company unions” were subsequently outlawed by the NLRA to preserve the ability of workers to make choices and decisions independent of their employers’ influence.³⁴³ Indeed, if the NLRB finds that Uber drivers are employees

338. Daniel Wiessner & Dan Levine, *Uber Deal Shows Divide in Labor's Drive For Role in "Gig Economy,"* REUTERS (May 23, 2016), <http://www.reuters.com/article/us-uber-tech-drivers-labor-idUSKCN0YE0DF>.

339. *Id.*

340. *Id.*

341. The Freelancers Union is a non-profit advocated on behalf of independent contractors that was launched by Sara Horowitz in 2001. Because they are not a “union” under the NLRA, the Freelancers Union cannot engage in collective bargaining. Instead, their primary form of advocacy has been to create portable benefits for their members. *See supra* note 10.

342. *See* Samuel Estreicher, *Employee Involvement and the “Company Union” Prohibition: The Case for Partial Repeal of Section 8(a)(2) of the NLRA*, 69 N.Y.U. L. REV. 125 (Apr. 1994).

343. *Id.* Senator Wagner referred to company unions as “sham[s],” “masquerades,” and “pretend union[s]” and argued that company-supported systems could not secure democratic consent and

under the NLRA³⁴⁴, the TJC7 and Machinists' worker associations would be illegal.³⁴⁵

In the interim, however, these union and alt-labor tactics exist alongside other small, independent groups of Uber drivers organizing for better conditions.³⁴⁶ Without employment status or regulatory leverage, TNC worker activists—both working with and without union support—struggle to advance changes in their work lives. Through new technology-driven business models, deregulation, and some labor unions' de-radicalized approach to organizing, San Francisco chauffeur work has been undone as secure work.

CONCLUSION

This Article tells the long and complex story of how San Francisco chauffeur work evolved from insecure work, to secure work, and then back to insecure work, all in just over a hundred years. Chauffeur workers' in the early 20th century San Francisco taxi industry achieved security through militant organizing and bargaining practices that sought to influence not just wages and hours, but also, crucially, business models and municipal regulations. Beginning in the 1950s and continuing into the late 1970s, a combination of racial and political conflicts within the Union collided with successful attempts by chauffeur businesses to evade work laws, rendering San Francisco taxi workers de-unionized. Nevertheless, with strong regulations of the industry in place, worker activists from the 1980s to the early 2010s triangulated their advocacy around the price of fares, the price of rents, and limited control over competition to fight for a decent wage. Since 2013, with the loss of both collective bargaining rights and regulations limiting competition and stabilizing fares, chauffeur workers in the San Francisco taxi and Uber economies face a new—but familiar—state of risk and insecurity.

cooperation. Mark Barenberg, *The Political Economy of the Wagner Act: Power, Symbol, and Workplace Cooperation*, 106 HARV. L. REV. 1379, 1456 (1993).

344. The National Labor Relations Board Region 20 is investigating Uber for unfair labor practices committed across the country that are related to the misclassification of workers as independent contractors. It has sued Uber requiring obedience in the investigation. *N.L.R.B. v. Uber Technologies*, No: 3:16-MC-80057 (N.D. Cal. Mar. 2, 2016).

345. Section 8(a)(2) of the NLRA expressly prohibits employers from “dominat[ing] or interfer[ing] with the formation or administration of any labor organization or contribut[ing] financial or other support to it.” 29 U.S.C. § 158 (1974). Further, Section 2(5) of the NLRA extends the definition of “labor organization” to “any organization of any kind . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.” 29 U.S.C. § 152 (1978).

346. For example, I currently am studying the collective organizing of Uber drivers who formed the San Francisco Bay Area Drivers' Association—a worker association that is unaffiliated with any union or established alt-labor group. See *supra* note 10.

What are the political and economic ramifications of the resurrection of precarious chauffeur work and the restricted ability to advocate on behalf of workers? To the extent that secure work has been the hallmark of realized citizenship in the long history of paid work, I close this Article by suggesting that the contemporary rise of precarity undermines not just the ability of large groups of workers to earn their livings—but perhaps more insidiously, it corrodes the political process. Despite the enduring ideological belief in the promise of work for individual and societal betterment, the political and economic insecurities epitomized by modern day chauffeur work undermine this promise. While prior to the late 1970s, workers had a political voice through organized labor, that possibility has been increasingly faint with decisions by some unions in the Uber-era to forego the fight for collective bargaining and by lawmakers to deregulate the industry. Many chauffeur drivers in San Francisco's taxi and Uber economies who lack strong representation and no enforceable protections work long hours only to end their day with less than subsistence wages, or even worse, in debt. Such workers³⁴⁷ are being systematically carved out of the political process. This, I conclude, is a crisis not only for workers but also for the possibilities of democratic politics.³⁴⁸

With so much at stake, the question of what is to be done remains. My hope is that the political history of chauffeur work detailed in this Article may inform the contemporary struggle against precarity. Despite the gauze of innovation and technology, chauffeur work has not changed over the last one hundred years. Qualitatively, taxi work and Uber work are one and the same. And yet, regulators and (some) labor advocates have approached them differently—conceptualizing Uber work as something new—representing the future of work in low-income sectors. In this context, I suggest that a look to the past may be useful. To reverse the processes of precarity, we may find guidance in a close examination of the early twentieth-century production of secure chauffeur work via militant labor organizing, the collective bargain for the social good, and strong industry regulations.

347. In San Francisco, this is a majority-immigrant workforce. *See supra* note 10.

348. For much of the U.S.'s modern history, the right to work (alongside the right to vote) has been the hallmark of realized citizenship, understood as necessary for full participation in the body politic. Political theorists have long maintained that without access to paid work, democratic participation is impossible. Alice Kessler-Harris, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA* (2001). As philosopher Judith Shklar famously wrote, "We are citizens only if we 'earn.'" Judith N. Shklar, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 67 (1991). This is especially true in the United States, where entitlements that are elsewhere universal, such as the right to an old age pension, to unemployment insurance, and to health insurance, are tied either to employment or to an individual's record of employment. Kessler-Harris at 4-6.

