

# Can Human Rights Survive Inequality in the Digital Age

**Mark Elliot:** It's my great pleasure to welcome Amos Toh to the festival. Amos has worked at UC Irvine Law School, as legal advisor to the United Nations Special Rapporteur on the right to freedom of expression, and as Counsel and Katz Fellow at the Brennan Centre for Justice. Currently, he is senior researcher at Human Rights Watch where he leads on the impact of AI and other data-driven technologies. Amos work epitomises the value of cross sector research, embodies the principle of the mutual embedding of research and voicing influence work. Themes coming out elsewhere in the festival on participatory research and most particularly the special session about NCRM project on investigative social research tomorrow afternoon, are all part of the same movement. An important theme running through all of this work is the undiminished importance and methodological rigour. And I'm pleased that Amos will be including some commentary on the methodological challenges that working in this base presents. The talk addresses the impact that algorithms have in our lives, and most particularly in the areas of welfare administration, and the management of the gig economy. I will now hand over to Amos.

**Amot Toh:** Hi, everyone, it's great to be here. It's an honour to be part of the 2021 Research Methods e-festival. My name is Amos Toh and I am a senior researcher at Human Rights Watch, where I investigate and try to make sense of the human rights implications of artificial intelligence and other forms of data-driven decision making. Human Rights Watch is a nonprofit, non governmental organisation that investigates and advocates against human rights abuses around the world. My colleagues and I work in about 100 countries. And we tell stories of what we found to hold governments and the private sector accountable to human rights abuses, and to create a social, economic and political environment where the protection of people's rights is possible. In assuming this role, I saw the opportunity to shine the spotlight on the role of technology in supercharging conditions of poverty and inequality.

A lot of media and public scrutiny has been focused on the impact of technology on privacy, freedom of expression and related civil and political rights. And understandably so, since technology has become the default medium of communication and access to information for many people. The rise of dominant social media giants and tech companies as gatekeepers of the information environment has also contributed to a sense of urgency about the need to adapt well-established human rights norms to address these new and fast changing realities, as recent events just in the last weeks have shown. What I sometimes fear about what gets lost in this coverage is how powerful actors are using technology to advance their economic position at the expense of people with far fewer economic advantages in life, such as people living below or near the poverty line and precarious workers.

One of the first articles I read that articulated this disquiet was Barton Gellman and Sam Adler-Bell's article for the Century Foundation, entitled 'The disparate impact of surveillance'. In that 2017 article they wrote, quote, that 'surveillance is not at all the same thing at higher and lower elevations on the contour map of privilege' did go on to write quote, 'at age 65, tens of millions of Americans claim their Medicare benefits, which is the National Health Insurance programme for older people, with nothing more eventful than the completion of some forms. On the other hand, an impoverished single mother on Medicaid, which is the health insurance programme for low income people, faces modifying questions face-to-face with benefit managers about her lover's hygiene, parental shortcomings and personal habits. But surveillance is really just the tip of the iceberg. Powerful actors are advancing artificial intelligence and other forms of algorithmic decision making in ways that conspire with existing systems of policing and surveillance to increase the financial hardship that people face on the other side of the economic divide to increase their exploitation in the workplace, while diminishing their access to life saving benefits and social security programmes. Virginia Eubanks in her seminal 2018 book, 'Automating inequality', wrote that quote, 'marginalised groups face higher levels of data collection when they access public benefits, when they walk through highly policed neighbourhoods enter the healthcare system across national borders'. That data acts to reinforce their marginality when it used to target them for suspicion and extra scrutiny. These groups, seen as undeserving, are singled out for punitive public policy and more intense surveillance, and the cycle begins again, it is a kind of collective red flagging of feedback loop of injustice.

At Human Rights Watch, Watch, we are trying to shine a light on the profoundly unequal impact of concentrating technology in the hands of the few. To this end, we have begun two separate but interconnected streams of work. The first is on documenting the impact of algorithmic decision making on the social safety net, including cash and food assistance programmes, and the second stream of work concerns documenting the conditions that people face when they work for an algorithm, particularly in the app-based gig economy. Last year, we published an investigation into Universal Credit, a digitised and automated benefits system in the UK that the government began rolling out in 2013, in a bid to simplify access to benefits, cut administrative costs, and quote unquote, improved financial work incentives. What we found is that the algorithm used to calculate people's monthly universal credit payments is deeply flawed. I won't here go into the mechanics precisely of how it's flawed which are detailed in our report. But what we essentially found was that the algorithm would create unpredictable reductions and fluctuations in people's benefit payments, making it extremely difficult to budget and causing them and their families to go hungry, fall into debt and experience psychological distress. And here I'm going to show you a video of, you know, these findings of our report.

So one of the things that came up during our research into Universal Credit was that it was important to recognise that the misfiring algorithm that was explained in the video is part of a broader string of tech-enabled indignities that people face from the beginning, when you try to apply for Universal Credit, up to the time they need follow job seeking requirements in exchange for the benefit and under the threat of sanctions. In other words, it's not just about the algorithms. It's about how the government has introduced technology into a key social safety net programme to police, monitor and control people in poverty.

Penny Walters, an anti-poverty activist based in Newcastle, whom you also saw in the video, told me that the application process which requires a lot of form filling online can be very stressful for people who don't necessarily have the requisite digital literacy skills, or enough of an online presence. She said, quote, 'because everything is online, that's harder. If I don't pay the rent, or I don't have my name on the council tax or the utility bills, I am a no person. So where do I get ID from?' And when it comes to the punitive job search requirements, Mary G., a resident in the Northeast told me quote, 'they want a very graphic description of what you are doing to find work. It's a bit like Big Brother watching you to make sure you are doing all the work to find a job.'

Another thing that kind of came up during our research was that it's important not to stop at the technology itself. To understand the human rights impact of technological change also requires understanding the political economy that informs the way it works and the way it affects people's lives. In the UK, the automation of Universal Credit is part of a decade-long pursuit of financial austerity. My co-, my colleague, Kartik Raj, who is the Western European researcher for Human Rights Watch report on food poverty in the UK, where he found that the rise in reliance on food aid coincided quote, 'with a period in which three successive governments have sought to stabilise growing public fiscal deficits through austerity policies, emphasising significant reductions to government expenditure'. Since 2010, the significant, the government in response to the impact of the global financial crisis, successive chancellors in a conservative liberal democratic coalition government, and in subsequent conservative governments have made the case that financial austerity is an unavoidable choice characterised but tough but fair decisions. What all of this really has done is that each government has focused its attention on achieving savings by reducing the overall welfare budget. And it is in this context that we begin to see more clearly why the UK government automated Universal Credit in the way that it did with such disastrous effects on people's lives?

Another critical takeaway from this research was how reliant low income app-based gig workers are on Universal Credit, because they're unable to make a decent living despite working long hours delivering food, or accumulate enough savings to tide them over crises like the initial lockdown early on in the COVID 19 pandemic, where many of them found themselves suddenly out of work. At the time of my research, the independent workers union of Great Britain, the UK's leading union for for precarious workers had a system of volunteers dedicated specifically to helping young members claim Universal Credit. This, this finding and this takeaway was part of what inspired our current work in the United States, where we are investigating the conditions in the app-based gig economy.

This work started with a campaign against Proposition 22, a ballot initiative in California that would have diluted minimum wage protections and other labour rights standards for app-based gig workers. Together with my colleague and senior poverty and inequality researcher Lena Simet we found that workers for grocery shopping and delivery apps were incentivized by opaque Pay and Work management algorithms to work long hours for low pay, leaving them struggling to buy food and pay rent. And here I'm going to show you a video that really encapsulates the problems and the challenges that Prop 22 brought.

Have you ever ordered food or groceries on an app? Did you know that many workers hired by apps are being exploited? These workers are known as gig workers because they work on demand and are

paid for each task they complete. A 2016 Pew Research survey found that nearly one in ten people in the US have taken on gig work. Gig companies classify workers as independent contractors instead of employees. That allows them to circumvent federal and state labour protections as independent contractors don't get minimum wage protections, guaranteed sick pay or the ability to join a union. The gig companies also don't pay into Social Security or Medicare on behalf of the workers they classify as independent contractors. Grocery shopping and delivery services is the latest boom area for the gig economy. During the COVID 19 pandemic shopping platforms have seen demand skyrocket. Instacart, one of the biggest service providers increased sales by 500% in the last year. But that success isn't shared with its shoppers. The platform uses an opaque algorithm to calculate how much each gig will pay and workers say pay fluctuates dramatically and is now less than what it was before the algorithm. A 2019 study by Working Washington found that the average base pay is \$7.66 an hour.

While I was working full time for Instacart, I had to go on financial assistance and receive food stamps, just to survive to feed myself.

I am not suggesting that they pay us enormous salaries. I'm just suggesting that they pay us guaranteed minimum wage. I also would like to know how I'm being paid.

One of Instacart's rivals is Target-owned Shipt, which also has its own opaque algorithm to calculate pay.

They are really underestimating the shop time. So then we're not being paid a fair amount. And it's really potentially \$15 an hour. But then once you minus all the expenses on top of that, then you're not really, you're being being paid less than minimum wage unless somebody tips.

Workers told us that tips make up as much as 50% of their pay. But companies have not made it easy for workers to get tips.

There's a tremendous amount of glitches that that we keep running into, glitches in the app and other problems are making tips even more unreliable. So it's causing a huge fluctuation in our pay. We'd like to report that the issues have been resolved, but they have not. And it is really, really hurting the shopper community.

Shipt told us that its 'updated pay model accounts for the effort it takes to complete and deliver orders'. Adding, 'throughout this change we've been transparent with shoppers'. But Shipt didn't discuss whether it complies with minimum wage standards. Instacart did not respond for a request for comment. California has a new law, Assembly Bill 5, that addresses some of these problems in that state. AB5 prevents gig companies from misclassifying workers under state law. Under the law, gig workers will have minimum wage, paid sick leave, overtime, necessary expenditures reimbursed and some basic rights protected. But some gig companies are trying to take away these worker protections by using Proposition 22.

It says that that all of these workers, all of these low income workers don't get access to the minimum wage, they don't get access to overtime compensation. They don't get worker's compensation. I know

that this Proposition is incredibly dangerous, it creates a lower standard of worker protections for the most vulnerable workers in our economy.

Labour rights protect us from exploitation at work. Say no to exploitation. Vote no on Proposition 22.

So that was a campaign that we did and we organised around Proposition 22 and to give you all an update on what happened. Unfortunately, Prop 22 was passed by voters in the November 2020 election. However, there has been a bit of good news. Federal, sorry, California Superior Court overturned the Proposition as unconstitutional, as and unenforceable a few weeks ago. And while I think the legal battle is still ongoing, Proposition 22 is for now not enforceable. So I would also say that our research is ongoing on this particular topic. But what I would like to echo from our previous research on Universal Credit is that we are not just focusing on what it's like to work for an algorithm or a specific app.

Something that has emerged from our research on this is that our focus has to be broader. It has to situate this phenomenon of algorithmic exploitation within the racialized history of income inequality in the United States. It has to be situated in the ageing system of labour rights protections that really needs to be updated, not just on a piecemeal basis, but on a comprehensive basis at the federal level, it must be situated in the context of how special interests can really hinder the way in which we hold, you know, these technologies and these companies accountable to workers' protections in the age of automation. And so in collaborating, you know, not just among technology-oriented researchers, but also people with diverse kind of social technical backgrounds, such as people with country expertise, or people with a quantitative expertise in studying poverty and inequality statistics, or with deep knowledge, poverty and inequality issues, in kind of combining these various forms of expertise. What we are hoping to do in this work is to really centre social and economic rights, particularly the rights to Social Security, and an adequate standard of living, not just in human rights discourse about technology, but also in multidisciplinary conversations, and public discourse about the social impact, and the need to regulate these technologies.

Since this is a research methods festival, what I thought I would do is also explain a bit some of the challenges of fact finding in this area, and how we conduct that finding, and some of the things that we have learned about along the way, about conducting fact finding. I think the primary principle that we tried to live by is that fact finding needs to be centred on people who have experience claiming benefits and workers themselves. In an age where transparency and information about algorithmic decision making is blocked by powerful actors in government and the private sector, our best source of evidence about how these algorithms work, are often the people who directly experience the effects. In conducting interviews and sourcing interviews with people on... it's really important to evolve our approach, which was, has traditionally been oriented around crisis situations and conflict situations.

So I think the first thing that is important to mention is that we must be able to build trust, with people sharing with us their stories, which are very sensitive and personal, and sometimes can really put them at risk. A lot of workers, for example, we spoke to fear that given that there are very few labour rights protections to protect them, a lot of workers fear that they might be deactivated from the app that they are working for, essentially being fired automatically by the app, if they are seen to have spoken out.

And what we have to realise is that we are also asking them about their financial situation, sometimes in very specific ways, like how much they earned last month, how that is affecting their ability to support their families and health problems they're experiencing, working long hours for low pay. We have a short time to build rapport because we have to really respect that, you know, workers have not a lot of time because they're always working and they live paycheck from paycheck. So we have a very short time to build rapport. And the question I really have to answer at the start of any interview is why should they trust me? To build trust, I need to be upfront about who I am and what I do, and also the limits of what I can do. I'm there to report and dare to really listen to them. But I can't, for example, represent them before the company, or file an appeal for them if they encounter an issue with, with the app that they are working for. And so while it's also important to get really the details right, you know, we, when we talk to workers, we are also just collecting screenshots of what's going on behind the scenes, you know, their pay stubs, you know, some of the trips or gigs or grocery deliveries and food deliveries they have done. And while it's important to get all of these details right, so that we can paint as compelling and as accurate a picture as possible, it's also important to make sure in the context of the interview, that I am listening to people and really understanding what they are trying to tell me even if it isn't on the list of things that I may want to discuss with them.

Ed Yong, who writes for The Atlantic, and who has produced groundbreaking coverage and analysis of the COVID 19 pandemic, has said in an interview with Nieman Labs, that if you're really listening and trying to actually think about what you're seeing in real time, which is in itself a skill, then your interview should change according to what people are telling you. And frequently, what I find in the interviews that I do with workers, as well as people who are claiming benefits is there isn't a lot of structure in those interviews, and what happens is that we end up discussing the things that they feel are important for me to know. And in those moments, I actually get a lot more information than what I had originally set out to get a lot of the time. Finally, I would say that we have a responsibility to also kind of connect the dots. And this is particularly challenging, because a lot of the time people experienced the effects of technology, not as the effects of technology, when they for example, experienced a decrease in benefit payments or unpredictable fluctuations in their benefits, they see and experience that phenomenon as unpredictable fluctuations. Some people don't necessarily connect their experience to the inner workings of an algorithm that they don't necessarily know about and is not public facing. So what we have to do is to really kind of, while at the same time honouring the stories that people tell us to also kind of pull out those threads and see how they fit within the broader technical research we are doing about the algorithm and about this automated system as a whole. So I think I've gone on for long enough. Um, thank you so much for the invitation to be here and I hope you got something out of my talk about the ways in which we at Human Rights Watch are looking at the role of technology in poverty and inequality. Thank you.