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Eric Holder: Fingerprinting is Racist

Yet another curious development in the Uber wars.

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Former Attorney General Eric Holder has come out against proposals in Chicago and New Jersey to require fingerprint background checks of drivers for ride-hailing platforms such as Uber and Lyft. Why would President Obama's onetime top lawman come out against regulation that is supposed to protect the riding public? Credit the intersection of two forces. First, Holder's tony corporate law firm, Covington & Burling, represents Uber. Also, as Holder sees it, requiring drivers to submit fingerprints may "have a discriminatory impact on communities of color."

I was surprised to read about Holder's opposition, as I have trouble seeing Holder as a model for social justice. As deputy attorney general in the Clinton administration, Holder gave a "neutral-leaning to positive" recommendation for the pardon of billionaire Marc Rich, who fled to Switzerland to evade fraud and tax evasion charges. As President Obama's first attorney general, he was so stingy with the pardon power that political scientist P.S. Ruckman wrote that inmates seeking clemency had "a better chance of being struck by lightning."

Besides, law enforcement relies on fingerprinting because it works. According to the National Rifle Association, gun buyers must undergo fingerprint checks in some states. California teachers submit fingerprints for criminal background checks. California drivers are fingerprinted. I get into my gym thanks to a fingerprint scanner and swipe my index finger to open my phone. Don't tell me, I said to myself, Holder has joined gadflies who question the validity of fingerprints the way others oppose vaccinations.

Holder is no such animal. In a letter to Chicago Alderman Anthony Beale, Holder explained that while fingerprint checks are a valuable law enforcement tool, they "often do not indicate whether a person who was arrested was even charged or ultimately convicted." Thus, mandatory checks "can prevent people from getting a job even if they were never found guilty of a crime." Because black men are arrested more than white men, the policy affects men of color disproportionately.

Pro-fingerprint politicians frame their stance as a matter of fairness. New Jersey limousine drivers must undergo fingerprint background checks. Ergo, the Limousine Association of New Jersey favors the same for ride-hailing service drivers “to adequately protect the riding public.”

Uber contends it can check drivers’ backgrounds more thoroughly with databases that probe applicants’ driving records, criminal history and more. According to a fact sheet, Uber does not contract with drivers who have three or more moving violations in the past three years, have been cited for driving with a suspended or revoked license or without insurance in the past seven years, or were convicted of drunken driving or reckless driving in the past seven years.

Also, the market provides protections that regulation cannot deliver. Because technology identifies passengers and drivers, there is no anonymity. Riders rate drivers; drivers rate riders — an incentive for good behavior. There’s no place to hide, said Matthew Feeney of the Libertarian-leaning Cato Institute. No transportation model is risk-free, Feeney noted, but: “You would have to want to be caught to commit a crime in an Uber car. It is a detective’s dream.”

On television, fingerprinting is the gold standard for identifying suspects, but, Feeney noted, it’s an incomplete tool for screening for criminal convictions. Feeney said he believes politicians who push for more regulations for ride-hailing operations care about public safety, “but there is also the chance that they’re motivated in part by protectionist or anticompetitive feelings about taxis.”

Uber’s blog notes that Alderman Beale says he wants to level the playing field, “but the answer is to introduce new common-sense rules for taxis, NOT to impose the same bureaucratic regulations on ride-sharing apps like Uber.”

Uber and Lyft left Austin, Texas, last month after voters rejected a measure (greased liberally with ride-hailing company capital) to end taxi-style regulations that included fingerprinting. The next battleground is Houston. Lyft left Houston in 2014 when it passed similar regulations. Uber Houston now offers provisional permits for drivers for 30 days, after which they must get fingerprinted. An Uber executive who did not want to be named told me fingerprinting is expensive and time-consuming.

San Francisco has seen sharing-economy startups operate outside the law, then try to work with local lawmakers. Compromise gets startups only so far. See how Airbnb worked to license and tax short-term rentals to get in the good graces of City Hall. Now the Board of Supervisors is threatening large fines and even criminal charges. Trusting City Hall is like thinking you can deal with the mob.