

The Politics of Regulating App-Based Work in the Gig Economy

Paul Christopher Gray (Brock University), Stephanie Ross (McMaster University) and Larry Savage (Brock University)

With the rise of companies like Uber, TaskRabbit, and Deliveroo, app-based gig work is transforming labor markets. But does the growing gig economy offer workers and employers an innovative workforce model, or does it make work even more insecure than it already is? In this paper, we examine the gig economy, explore both mainstream and critical perspectives on gig work, situate app-based gig work within the broader history of capitalism, and analyze ideas and efforts to improve the terms and conditions of work in the gig economy. We argue that while aspects of gig work involve novel applications of technology, the underlying motivations and strategies of employers remain the same: to maximize profit and minimize workers' cost and power to disrupt production. Moreover, gig workers experience many of the same problems that other workers have throughout the history of capitalism, namely low wages, insecurity, alienation and a loss of control over their work lives. Indeed, these problems deserve thoughtful consideration, because the gig economy is expanding and replacing more stable, better compensated, and unionized work. Thus, the politics of regulating app-based work has taken on greater importance from a public policy perspective. The rise of the gig economy also gives us pressing reasons to rethink the design of labor and employment law and social entitlements to better include all workers in non-standard and precarious employment.

Digital commercial platforms or apps match potential buyers to sellers and receive a percentage of the transactions. Proponents argue that platforms allow a broader range of choices, and their online transactions are faster and cheaper than in-person ones requiring travel to brick-

and-mortar buildings. Compared to a traditional taxi, for example, an Uber is often easier to order, arrives more quickly, and costs less.

Digital platforms are the foundation of what has been called the ‘gig economy.’ Platforms facilitate two kinds of transactions — exchanges and rentals — involving two kinds of commodities — labor and non-labor. If, after using eBay Classifieds, someone arrives at your door to pick up the old guitar you sold them, you are exchanging your non-labor commodity for their money. Or, if they arrived because you used Airbnb to sell them the temporary use of your spare room, you are renting your non-labor commodity for their money. If, however, they came to your door with the food you ordered on Uber Eats, they are exchanging their labor power, their effort to pick up and deliver your food, for money, a part of which becomes their wages.

All three of these transactions comprise the gig economy and each of them can loosely be described as a ‘gig’ in certain contexts. However, only the third kind of transaction, the exchange of money for labor power, counts as gig work. It has also been called ‘platform work’ or ‘app-based work.’ In this paper, when we refer to gig work, we mean it in this sense.

There are some basic features of gig work. First, it is contingent on on-demand labor. Instead of ongoing employment based on an indefinite contract, gig workers are hired only when a specific service is needed. If you use Placer to pay someone to wait in a line on your behalf, once they deliver you the tickets you wanted, the relationship ends. Second, gig workers are usually paid for each product they produce, a ‘piece-rate,’ not for the number of hours worked, a ‘time-rate.’ The person you found on Instacart is paid for each order of grocery shopping and delivery, not the hour it took them to do it. Finally, gig workers often provide much of their own equipment. The Lyft driver supplies the car, the SkipTheDishes courier the bicycle, and the ChoreRelief cleaner the mop.

There are also some important variations between different kinds of app-based gig work. Though the work is arranged through an online platform, the work itself can be done either online or offline. A common example of online gig work is ‘crowdsourcing,’ where a complex set of ‘microtasks,’ some taking a few minutes each, are presented to an undefined group of gig workers, who can be paid as little as ten cents per microtask (Kirven 2018: 258-259). These can include labelling parts of images or movies, screening online content for inappropriate material, or writing product descriptions. Offline gig work is on-demand, in-person services, such as delivery, cleaning and transportation. Finally, in either kind of gig work, the customer or client can be an individual, a group, or a company.

Mainstream perspectives on app-based gig work

Advocates of the gig economy model argue that, in the near future, many workers will no longer be regular employees of a single company. Instead, they will be entrepreneurs who use cutting-edge technology to connect with people and move from gig to gig (Sherk 2016). Platforms allow gig workers independence and flexibility. Each gig worker, deciding when to connect and disconnect, can choose their own hours. These platforms are as mobile as the devices used to access them, so gig workers can choose where they will work. Since gig workers can register with multiple apps at once, they can decide with whom they will work. They need not deal with the bureaucracy of working for a single company, nor conform to the expectations of the regular 9-to-5 job (Sherk 2016).

This positive view of gig work often appears to be shared by gig workers themselves. Although we should be wary of company surveys, which can apply selective framing and ask leading questions, Uber often refers to those it commissions, such as a 2014 survey in which

87% of Uber drivers said they were motivated “to be my own boss and set my own schedule” (Hall and Krueger 2015: 11). Platform companies make appeals not only to workers seeking alternative forms of work, but also to those having difficulties finding regular employment. Indeed, Airbnb has marketed itself as “an economic lifeline for the middle class” (Heller 2017). In the Uber survey, 74% of respondents agreed that one of their motivations is “to help maintain a steady income because other sources of income are unstable/unpredictable” (Hall and Krueger 2015: 11).

How big, then, is the gig workforce? Various studies give divergent answers. In part, this is because researchers use different definitions of the gig economy. Even if there were common definitions, however, there is a lack of suitable data. Platform companies are usually reluctant to release their figures. Labor market statistics are also inadequate for capturing gig work, because, for example, employment is measured in some countries only when work has occurred for at least one hour in a day or a week (Bajwa et al. 2018). Furthermore, it is hard to estimate a total number when people are working simultaneously for multiple companies (Forde et al. 2017; Stefano 2016). It is also unclear to what extent gig workers report their activities and earnings. Finally, given the extent of digital mediation, much of the work is invisible (Bajwa et al. 2018).

The general consensus, however, is that the gig workforce is small but significant and growing. One study argues that, in Canada, the share of gig workers among all workers increased from 5.5% in 2005 to 8.2% in 2016 (Jeon, Liu and Ostrovsky 2019). Another study, which defined gig work as platform-based work, surveyed a random sample of 2,304 residents of the Greater Toronto Area and found that 9% had engaged in gig work and 38% had purchased services from online platforms (Block and Hennessy 2017). These numbers undoubtedly grew

during the COVID-19 pandemic as both workers and consumers increased their engagement with digital platforms to deal with job loss and as a strategy to survive economic lockdowns.

Studies in the US and EU have found that around one-third of adults have participated in the gig economy, broadly conceived, and those who have engaged in gig work usually range between 1-5% (Forde et al. 2017). The vast majority of gig workers, usually more than 9 out of 10, use it to supplement their earnings from other jobs. Only a small minority are ‘professional’ gig workers for whom it constitutes all or most of their income. Nevertheless, as an indication of trends in the future of work, this minority seems to be growing. In the UK, for example, the percentage of professional gig workers grew from 5.2% in 2016 to 9.4% in 2019 (Huws, Spencer and Coates 2019). With respect to gig work in general, one survey of the literature asserts: “there is a broad consensus among researchers that growth is likely; indeed, it is widely considered inevitable” (Forde et al. 2017: 38).

The likely causes for this growth are not, as it might first appear, the platform technology itself, but rather the “the prevailing regulatory environment in the national economy, and broader economic and social conditions” (Forde et al. 2017: 40). These include the influx of venture capital to platform companies, their ability to bypass many of the traditional regulations, and, as part of a broader corporate trend, hiring independent contractors instead of employees, which saves money not only on labor costs but also employer contributions to things like social insurance (Forde et al. 2017). Amongst proponents of the gig economy, Paul Barter, a professor at the Schulich School of Business at York University, expresses a common view: “To bet against Uber is to bet against the future” (Nicoll and Armstrong 2016).

Critical perspectives on gig work

Despite widespread assertions that app-based gigs constitute ‘the future’ of work, this perspective is not universally shared. In fact, the perceived advantages and implications of the gig economy are highly contested. Gig workers face a number of significant challenges, and some are actively resisting the growth of the gig economy model. One of the challenges is that gig workers are not deemed workers at all.

Employment misclassification

When someone is formally hired for a job, they are usually assigned one of two legal classifications: employee or independent contractor. These classifications confer significant but distinct rights and responsibilities. They depend on the economic reality, which is determined by the extent of the payer’s control over the worker; the degree to which the worker provides their own equipment and assumes financial risk; the duration of the working relationship; the extent to which the work is integral to the payer’s business; and the worker’s opportunity for profit (Canada n.d.; Donovan, Bradley and Shimabukuro 2016). It is more likely that a worker is an employee and the person who hires them an employer if, for example, the latter controls the manner of work and the former must get permission to work for others. Conversely, a worker is more likely to be an independent contractor if they have control over their manner of working, when they work, and for whom they work.

Classification is significant because employees are legally entitled to rights that are not available to independent contractors. These include minimum standards, such as minimum wages, maximum hours, overtime and vacation pay as well as employer liability for workplace health and safety. These also include associational rights, such as the right to unionize,

collectively bargain and strike. Given the character of gig work, its proper economic status is not immediately clear. Platform companies thereby “inhabit a legal ‘grey zone’” (Stanford 2017: 385). They almost always misleadingly register the gig workers operating through their platforms as independent contractors, allowing platform companies to avoid the regulatory standards applicable to employers of employees, thus denying gig workers their statutory rights.

In general, the independent contractor designation transfers much of the risk to gig workers. For example, if platform companies are not liable for workplace health and safety, when bike couriers are injured on the job, they must pay the costs of their own healthcare and, if they are unable to work, bear the lost wages. Costs are also transferred to gig workers. They likely make less income than is alleged by platform companies when we account for the expenses of providing and maintaining their own equipment (Kirven 2018).

Increasingly, gig workers are challenging their misclassification as independent contractors. They contend that they are employees, or, at the very least, dependent contractors. This is a hybrid classification, which means that, like independent contractors, workers are not entitled to certain regulatory standards like minimum wages, but, like employees, have associational rights such as the right to unionize (Arthurs 1965-66).

These intensifying conflicts around economic classification are due, in part, to the changing character of gig work. Although many gig workers valued the independence they had when they first registered, over time, these platforms have implemented changes that have undermined this initial independence while instability persists or increases. Indeed, gig workers point to these unilateral changes as evidence that they are not self-employed or equal partners in these platforms. Gig workers have had some success in their lawsuits against misclassification. In the following account of the arguments and counter-arguments made by platform companies and gig

workers, we draw extensively from a 2020 ruling by the Ontario Labour Relations Board (OLRB) in a case brought against Foodora by Toronto-based food couriers alleging misclassification.¹

Platform companies argue that gig workers are independent contractors because they provide most, if not all, of their own equipment. Gig workers thereby generate income from this equipment as a return on their investment. In turn, platform companies are said to derive their income solely from their own investment: “Thus, in Uber and Lyft’s estimation, they generate income through their software and not through the activities of the drivers” (Kirven 2018: 280).

Gig workers and their advocates offer numerous counter-arguments. Although gig workers often own much of their own equipment, the most important tool is the platform itself, which they do not own. Even an investment as substantial as a car pales in importance to the platform in gig work. The platform is how customers place orders. If there is a third party, such as the restaurants participating in food delivery apps, the platform is how they receive orders. It is how customers pay and how gig workers and third parties get paid. The platform develops lists and information of customers and participating third parties. It also develops the brand image. For all these reasons, the platform is clearly the most significant piece of equipment in gig work. If it was licensed or sold to gig workers, this might approximate the situation of independent contractors.² Otherwise, whatever else gig workers possess, they do not possess the platform.

App-based gig workers argue further that their hard work cannot be confused with entrepreneurialism if the company, through its platform, sets all the rules. Typically, gig workers must agree to the platform’s terms and conditions before using it. Since there is no opportunity to negotiate, they must either take or leave these conditions (Flanagan 2019). Usually, these terms prohibit gig workers from selling their labor directly to customers, outside of the platform.³

Further, gig workers are usually prohibited from subcontracting part or all of a job to helpers or substitutes, which is typical of independent contractors like electricians. Since the platform is registered to a personal account, the user must be the one who does the work. Users are often prohibited from swapping shifts with other gig workers and, if they cannot work, the shift goes back into the pool. Unlike independent contractors, gig workers must rely exclusively on their own labor and skill.⁴

Platform companies contend, however, that gig workers have the independence and flexibility typical of independent contractors because they can choose their own hours and worksites. Gig workers respond that these companies can still control shifts with respect to time, length, geographic location, number of spots and the assignment of shifts according to the company's ranking system. For example, gig workers often face significant constraints on their ability to choose their own hours. Delivery workers in particular often have to sign up for shifts on the app. This can be quite competitive, forcing many workers into less desirable shifts (Garneau 2019).

Platform companies have floated the idea that, since they do not employ managers who directly supervise and control gig workers, they are equal partners in the business. Gig workers counter that the platforms do monitor and control their work by using technology like the Global Positioning System (GPS). Platforms apply warnings and sanctions, usually called 'strikes,' when gig workers fail to perform work in the way determined unilaterally by the companies. In particular, they usually require workers to maintain a certain acceptance rate, or customer rating, or both. Indeed, platform companies can terminate work relationships by deactivating workers' accounts, thereby preventing them from using the platform. Consequently, even if platforms do not directly supervise gig workers, they are not "uninterested middlemen" (Kirven 2018: 252).

Finally, platform companies argue that gig workers are independent contractors because they can work for multiple people or companies, and can even work for multiple platforms at the same time, as long as they do not compromise service standards. Gig workers reply that economic dependence is not lessened simply because they can work for multiple companies. This is also true of employees with multiple part-time jobs. Indeed, having to work multiple jobs can be an indication of *greater* economic dependence. Moreover, even if someone works for multiple platforms, it is often the case that a single company must be given priority (Garneau 2019).⁵

Another way of evaluating economic dependence is ‘integration,’ the extent to which workers are integrated into a company’s main activities. Integration increases the longer or more frequent their relationship and the more important each is for the compensation the other receives. Platform companies often require gig workers to work shifts with a certain amount of regularity to maintain their accounts, which entails a more continuous employment relationship than is required of independent contractors. Furthermore, on the one hand, platform companies’ profits rely heavily on gig workers’ efficiency and reliability and, on the other hand, gig workers depend on the platform company for their access to customers (Kirven 2018).⁶ Some scholars argue that this mutual dependence is such that “Uber and Lyft are not ‘technology companies’ so much as they are transportation companies that take advantage of technology to sell labor” (Kirven 2018: 288). These arguments have resonated in some courts. For example, according to a U.S. District Court in California, Uber “does not simply sell software; it sells rides” (De Stefano 2016: 490).

For all these reasons, the OLRB ruled in February 2020 that Foodora had misclassified food couriers as independent contractors:

There is no opportunity, nor reason, for the Foodora courier to develop any type of relationship with the customer or restaurant. In every practical sense, Foodora ensures the relationship is between itself, the customer and the restaurant. The courier is a cog in the economic wheel — an integrated component to the financial transaction. This is a relationship that is more often seen with employees rather than independent contractors.⁷

Such legal victories, however, can be fleeting. In August 2020, when a California court ordered Uber and Lyft to comply with a new law requiring them to classify all their workers as employees, the companies threatened to suspend operations across the state. The court extended the deadline for complying with the law (Press 2020a). In the meantime, Uber, Lyft, and other platform companies poured millions of dollars into a campaign supporting Proposition 22, a ballot measure that would overturn the new law requiring gig companies to classify workers as employees. These companies spent \$205 million on the campaign, outspending their opponents ten-to-one. On November 4, 2020, 59% of California voters favoured the ballot measure: “Included in Proposition 22’s fine print is a requirement that the measure cannot be modified with less than seven-eighths of the state legislature’s approval, all but ensuring it cannot be overturned” (Press 2020b). In Ontario, when Toronto-based food couriers won their misclassification lawsuit, Foodora promptly announced its withdrawal from all of Canada (Mojtehedzadeh 2020). Two years earlier, Foodora similarly withdrew from Australia after the initiation of a misclassification lawsuit (Chau 2018).

Such actions by these gig companies belie their claims that gig workers are equal partners. Uber and Lyft’s threats to suspend the service, traditionally called a ‘capital strike,’ and Foodora’s exit from Canada and Australia, referred to as ‘capital flight,’ show who owns the

most important piece of equipment, who controls production, who has capital, and thus, who does not.

Gig work, precarious work, and the history of capitalism

Tom Goodwin (2015), the senior vice president of Havas Media, asserts:

Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world's largest accommodation provider, owns no real estate. Something interesting is happening.

Theories of digital platforms and the gig economy sometimes feature a peculiar mélange of the new and the old. On the one hand, commentators frequently deem the current technological revolutions and social transformations so unprecedented that we need entirely new concepts to explain them. On the other hand, in their search for imagery that conveys the growing dominance of platform companies, some of these very same commentators end up describing the gig economy as feudal (Weatherby 2018; De Ruyter and Brown 2019). We contend, however, that the gig economy is actually something much more familiar.

As previously described, commercial platforms take a percentage of each transaction they mediate. What we call this percentage depends on how we think of the triangular relationship between the platform owners, gig workers and customers. Some call it rent. Others call it commissions or fees. Still others call it profit. What should we call this percentage? Platforms are frequently described as marketplaces that match sellers with buyers. When the transactions involve

exchanging or renting non-labor commodities, this is accurate. The percentage taken by companies like Carousell and Airbnb is payment for a service provided to the platform users who are engaging in buying, selling, and renting. These platform companies have employees, say, the coder who helps to develop the software. But these employees are not necessarily the platform users. With the exchange of labor power, however, the situation is different.

Sympathetic accounts of platform companies will portray Uber, for example, as providing an opportunity for “people who have an under-used car” (Forde et al. 2017: 24-25). Nevertheless, we must note that, from Uber’s perspective, the car is not a person’s only under-used asset. So is their labor. If an under-used car can be an asset for a person, then a person’s under-used labor can be an asset for a company. This is because platforms are not merely a place of exchange. They can also be employers who control a place of production. An Uber rider can buy a service through the platform only because Uber, the owner of that platform, first buys and controls the labor power of the Uber driver who provides that service. The exchange of commodified labor power for wages, the contract by which the Uber driver works for Uber, is the precondition of the exchange between Uber and the Uber rider. Uber then uses a part of this latter exchange to pay the wage of the Uber driver and keeps the rest for itself. This is why the percentage they take from each exchange, the product of gig work, is most appropriately described as profit. The gig economy in general, and gig work in particular, are neither anachronistic nor futuristic. They are capitalism pure and simple.

Each platform company attempts to not only become a market leader, but to achieve “network effects” (Flanagan 2019: 63), because “strong economies of scale and scope in networking tend to reinforce its dominance” (Stanford 2017: 384). Having a large number of users becomes the main draw for a still larger number of potential users. People choose a platform because most

people already seem to be there. Nevertheless, there is another important feature of these network effects. It is how a platform becomes capital, how it becomes a privately owned, digitally based place of production (Grandini 2019).

The strategy is to grow to such a size that the platform becomes one of a few dominant companies in and across particular industries. A part of this strategy is that, when people seek a service, they increasingly turn to these platforms. But more importantly, this strategy makes it increasingly difficult to provide a service outside of these platforms. This squeezes out people who are genuinely self-employed and have control of their own labor. Formerly, the self-employed person made profit. Now, as they turn increasingly to platforms, they make wages while the platform owners make the profits.

Even when proponents of the gig economy acknowledge its capitalist character, they nonetheless emphasize its innovations, describing gig work as the future of work. But in many respects, gig work is a return to the past, when work was largely unregulated and the inequalities between employers and employees were deep. To understand why, we must situate gig work within the history of capitalism.

Gig work is often described, by proponents and critics alike, as ‘non-standard employment.’ This draws a contrast with the ‘standard employment’ that prevailed in the post-war era (1945-1975). Standard employment is full-time, permanent work for a single employer. It tends to take place in a central worksite, like a factory, which is owned and supplied by the employer, as is most of the equipment (Stanford 2017).

Proponents of gig work often emphasize its independence and flexibility by focusing on the shortcomings of standard employment. They will point to workers’ feelings of subordination because they work for the same boss their entire lives, or to the drudgery of mass production and

the assembly line, or to the alienation provoked by corporate bureaucracy. And much of this is true. But supporters of the gig economy often neglect the advantages achieved by workers with standard employment, including stability, union representation, as well as decent pay and benefits. Indeed, one reason for the emergence of the gig economy has been the decline of the availability of standard employment and the erosion of the advantages that people with standard employment enjoy (PEPSO 2015).

This erosion is due to a series of policies and practices commonly referred to as ‘neoliberalism.’ Neoliberalism has a number of features: (1) deregulating economic activities and rolling back labor protections; (2) liberalizing trade across national borders, which intensifies global integration and competition; (3) cutting or privatizing public services in order to expand for-profit provision in the market; and (4) a more coercive turn against workers by governments and employers (Panitch and Swartz 2003). These are not merely economic policies, but a political project to reconstitute the power of employers against organized labor (Harvey 2007).

Neoliberal policies have caused the transition from standard to non-standard employment, and with it, the growth of what is called ‘precarious work.’ Precarious work is usually part-time, temporary work for low wages and meagre benefits. Precarious workers rarely have union representation and collective bargaining. If they negotiate with their employers, it is usually as individuals, which tends to mean little power to exercise the few workplace rights they do have. There is also substantial overlap between precarious work and gig work. To see how the employment instability and insecurity of precarious work is particularly pronounced for gig workers, we can look at the comments of Lukas Biewald, the co-founder and former CEO of the platform CrowdFlower: “Before the Internet, it would be really difficult to find someone, sit them down for ten minutes and get them to work for you, and then fire them after those ten

minutes. But with technology, you can actually find them, pay them the tiny amount of money, and then get rid of them when you don't need them anymore" (Marvit 2014). This is why critical scholars reject platform companies' claims to be "novel" or "innovative," let alone "emancipatory" (Flanagan 2019: 58). Rather, these platforms create "an extreme example of a range of forms of insecure work that have come to prominence over the last 40 years" (Flanagan 2019: 58). What is often positively depicted as independence is more realistically described as precarity.

Since gig workers are usually misclassified as independent contractors, they "end up with none of the benefits of self-employment, in terms of control, and all the problems of income insecurity" (Ford et al. 2017: 11). For example, a 2017 survey of Europe and the US found that gig workers' wages were consistently lower than minimum wages, ranging from a 3.4% gap in the US to a 54.1% gap in France (Ford et al. 2017). Gig workers also experience longer periods of unemployment than the average worker: "This might suggest that vulnerability and the amount of income insecurity inherent in unemployment renders individuals more likely to consider working through the internet as a viable option" (Agnieszka and Drahoukupil 2019: 40). In a comparison of European countries, there seems to be more gig work where there is more poverty (Huws, Spencer and Coates 2019).

Gig workers also face employment instability by shifting between unpredictable periods of under-work and overwork. Even when they can find a reasonable amount of work, it is often at irregular hours (Joyce et al. 2020). Despite this instability, the much-vaunted flexibility is often overstated. Gig work is regularly presented as an ideal opportunity for women, who, because they disproportionately have familial responsibilities, need more flexible work. Nevertheless, the

forms of gig work in which women are the majority tend to offer less flexibility (Hegewisch, Childers and Hartmann 2019).

Proponents of the gig economy who describe gig work as the future of work are aided somewhat by its depiction as non-standard employment. If it is not the standard, it seems innovative. But the terms ‘standard’ and ‘non-standard’ employment can be misleading. Employment is ‘standard’ if it is stable, long-term, and predictable, not because this form of employment has been the standard under capitalism. Rather, standard employment has been the historical exception (De Ruyter and Brown 2019). It only became prominent in the postwar era, and even then, many were excluded on the basis of gender, racialization, immigration status, and occupation (Stanford 2017). Indeed, non-standard employment, which is unstable, short-term, and unpredictable, has been the historical standard in capitalism. For this reason, much of gig work is not new, but rather a return to older practices (Palmer 2014; Betti 2018).

Some aspects of gig work, such as piece rates, existed from the earliest days of capitalism (Joyce et al. 2020). Furthermore, the casual, contingent, or on-call character of gig work is not new, particularly in occupations like cleaning, childcare, and delivery services (Huws, Spencer and Coates 2019; Stanford 2017). As is true of so much of the gig economy, “These practices are as old as capitalism, perhaps even older” (Stanford 2017: 383).

If this is the case, what, if anything, is new about gig work? It is neither the kind of work (e.g. cleaning services), nor the way it is organized (e.g. casual labor), but rather, that every aspect of the work process occurs through a piece of internet-connected software. It is historically unique that the worker is not only hired and paid entirely through a digital platform, but also supervised, managed and disciplined through it. Indeed, it is often the case that there is no direct human interaction between a gig worker and the company that hires them, or even between the

gig workers who work for the same company, especially for those doing crowdsourcing work entirely online (Joyce et al. 2020; Huws, Spencer and Coates 2019). The sites of gig work are often quite dispersed, extending across a major metropolis, and sometimes around the globe. But platform technology can allow employers to monitor and control gig workers as if they were in a more centralized workplace, like a factory or office (Joyce et al. 2020). This is worth exploring in more detail.

Surveillance and control

Platforms collect massive amounts of data on gig workers' movements, which allows these companies to monitor the most minute details of their performance. For example, Uber collects information on drivers' routes, speeds, and customer ratings "in a way that is integrated into its very business model: drivers must have the application switched to 'on' when they are working so that it can properly calculate the fare" (Kirven 2018: 284-285). This data is used to determine, among other things, pickup times and surge pricing, when fares are increased in periods of high demand. Therefore, "even when Uber drivers are not driving or picking up fares, they are still providing the company with valuable information. Ride-share drivers, it would seem, are always on the clock" (Huws, Spencer and Coates 2019: 19). Furthermore, platform companies are constantly refining these algorithms to produce ever more sophisticated performance indicators, incentives, and penalties.

Platform companies' reliance on customer ratings outsources managerial and supervisory activities to their customers. In the case of Uber, for example, this is the "thick surveillance" of in-car behaviours and interactions, because riders become quality assurance inspectors from the back seat (Jamil 2020). Gig workers depend on these ratings for continuing to attract customers

on the platform. Furthermore, platform companies use these ratings to evaluate gig workers, to offer suggestions and to penalize them, and, if their ratings fall below a certain level, to deactivate their accounts (Joyce et al. 2020). It remains legally permissible to use unverified customer ratings to withhold payment from or to discharge gig workers (Stanford 2017).

When gig workers are assessed by customers instead of qualified professionals, this lowers professional standards and deskills their labor (Huws, Spencer and Coates 2019). Given the significance of online reputations for continuing to get work, as well as the inability to transfer ratings from one platform to another, gig workers are “trapped in a relationship of dependence on that platform” (Forde et al. 2017: 21). Platforms, usually lacking any process for vetting these evaluations, take them at face value (Kirven 2018). Furthermore, there is often much less recourse for gig workers to challenge and appeal these evaluations than if they had been applied by qualified professionals hired by the company. This can put immense pressure on gig workers to tolerate customers’ abusive behaviour (Huws 2019:).

This pressure is particularly acute in gig work that involves caring labor, like childcare, eldercare and housekeeping, where “the question of who does the caring is frequently as important as the caring itself” (Flanagan 2019: 60). Since customers have much more discretion in choosing who they would like to hire through the platform, unfair negative reviews have an additional layer of consequences.

Reliance on customer ratings leaves gig workers susceptible to inaccurate, arbitrary, or biased evaluations (Stanford 2017). There is evidence of gender and ethnic biases in these customer ratings. Biases can be particularly acute in caring or domestic labor platforms, because customers often select from a pool of gig workers who are encouraged or required to provide extensive information about themselves. This increases the likelihood for discrimination and online

harassment, especially because women disproportionately engage in caring and domestic labor. Furthermore, we must account for bias and discrimination not only in the way the technology is used, but in the technology itself (Huws, Spencer and Coates 2019). Those platforms that require workers to provide extensive personal information and engage in self-promotion can disadvantage older workers, who might be less familiar with social media, and immigrant workers for whom English is a second language (Hegewisch, Childers and Hartmann 2019).

By making the employment relationship more impersonal, platforms allow employers to evade re-sponsibility by claiming that the algorithms make managerial decisions. Whereas workers can confront a flesh-and-blood manager, they are less able to mount challenges in a digitally mediated employment relationship. For example,

In the case of an Uber driver in Vermont, he learned that Uber had deactivated his account, an action that blocked him from working for the company, not from a person, but from a notification on his smartphone. When the driver tried to find out what happened and what he could do to reactivate his account, he discovered that he had little recourse. Instead, he confronted an impenetrable web of online forms, generic emails, and no human interaction. (Kirven 2018: 252)

This experience also belies the claim that app-based gig workers, as independent contractors, can avoid corporate bureaucracy.

Digital mediation can also increase gig workers' alienation from their jobs: "A reduction in face-to-face contact may also mean a reduction in informal on-the-job training, a lack of mentorship and a loss of opportunities for dialogue, improvement and social interaction, leading to a

range of psycho-social risks that can affect the quality of service to clients as well as the wellbeing of workers” (Huws, Spencer and Coates 2019: 24). The impersonal character of these relations also tends to hide the workers “at the other side of the screen,” rendering them invisible, especially for online crowdworkers (De Stefano 2016: 477). Consequently, “these activities are not even recognized as work. Indeed, they are often designated as ‘gigs,’ ‘tasks,’ ‘favors,’ ‘services,’ ‘rides,’ etc. The terms ‘work,’ ‘labor,’ or ‘workers’ are very scarcely used in this context” (De Stefano 2016: 477-478).

These increasingly sophisticated forms of surveillance can also intensify precarity. It is easier to punish and fire workers who do not meet performance targets when they are not protected by laws, regulations, and unions. As performance monitoring technology becomes increasingly cheap and intrusive, and as it becomes easier to remove contingent workers by declining to renew their contract, there is less motivation to provide positive inducements, such as higher wages or more stable jobs (Stanford 2017).

The increasing reliance on customer ratings and digital management is not unique to gig workers. In countries like France, Estonia and Slovenia, the number of non-gig workers reporting these practices actually exceeds that of gig workers (Huws, Spencer and Coates 2019). “Employers often ‘sell’ home-work arrangements on the basis of supposed convenience or flexibility for workers,” Stanford notes, but it is “also for extending the reach of paid work time into greater portions of a worker’s day” (Stanford 2017: 394). This can also extend to unpaid efforts to secure work as an integral part of that work (PEPSO 2015). Prior to the COVID-19 pandemic, workers had begun advocating for the ‘right to disconnect,’ or the ‘right to log off.’ In France, companies with 50 or more employees are now legally prohibited from emailing workers after 6 pm (Huws, Spencer and Coates 2019). But the expansion of unpaid work is particularly

pronounced for gig workers, who “exist in a perpetual state of being ‘online,’ awaiting their next task from an employer” (Kirven 2018: 286-287). Since they are paid piece rates, most, if not all, of this time spent waiting is unpaid.

Finally, we must note how platform companies deepen their control over gig workers by intensifying the division of labor and the deskilling of labor. Some gig work is increasingly controlled by algorithms that automatically determine various parts of the labor process. Gig workers thus have less discretion over how to perform their work and are less able to use their minds and creativity. This practice furthers the division between mental labor and manual labor. Furthermore, when tasks are broken down into their constituent parts, workers no longer require the skills necessary for conducting a number of different complex tasks. Instead, they are responsible only for one simple task, akin to a digital assembly line. This is particularly pronounced in online crowdwork, where gig workers engage in ‘microtasks’ such as verifying which customer reviews are from real users rather than spam bot accounts. Restructuring work in this way has to do with power, in the sense of efficiency, of increasing the productive power of labor. But it also has to do with power in the other sense. By intensifying the division of labor, by deskilling labor, gig workers are made more replaceable. This reduces their leverage, thereby increasing the power of platform companies over the gig workers they employ.

How to ‘fix’ the gig economy

App-based gig workers and their allies are not accepting defeat in the face of platform companies’ relentless drive to restructure work in an effort to generate greater profits. In this section, we explore the actions undertaken by gig workers to fix the gig economy before discussing some

of the broader public policy and labor and employment law reforms suggested by scholars and gig workers.

Gig worker organizing

A 2020 global study found that there were over 300 protests by gig workers since January 2015 (Joyce et al. 2020). These protests have increased over time. They occur most frequently among gig workers in the courier, food delivery and transportation industries. The three main forms of gig worker protest are demonstrations (27%), lawsuits (34%) and strikes (30%). Gig workers have also pursued corporate campaigns, which put pressure on a company by publicizing its bad practices, harming its brand image and encouraging customers and investors to side with workers or potentially end their commercial relationships.

Globally, the most common reason for gig worker protests is low wages, particularly in the US, UK, India, and Pakistan. Another significant reason is working conditions, which is the primary focus in Latin America. In continental Europe, gig worker protests have been more evenly distributed between a range of grievances, including wages, working conditions, regulatory issues, and their misclassification as independent contractors, which robs them of the rights of employees, including minimum standards and the right to unionize. These protests take various forms, including picketing in front of the company headquarters or strikes in the form of mass order refusals. The majority of gig worker protests there are led by unions of various kinds, but non-union organizations, such as informal networks and online groups, are a significant minority (Joyce et al. 2020: 4-5).

Gig workers have also pursued successful lawsuits challenging their misclassification. In addition to Foodora couriers in Ontario Canada, gig workers have achieved legal victories in

France, Spain, the Netherlands, and the UK. They have also used lawsuits to contest their employers' evasions of regulations, particularly in the transportation industry, likely due to "apps such as Uber having a well-known track record of attempting to circumvent transportation regulations" (Joyce et al. 2020: 5).

Gig worker organizing faces several challenges. First, app-based workers often have little institutional power. This is the power that derives from the existence of social institutions, such as unions and government regulatory agencies, that aid workers in enforcing their rights. There is a dearth of such institutions in the gig economy. Instead, they regularly depend on their structural power, which is related to their place within labor markets and workplace production processes. Workers' marketplace bargaining power gives them the ability to make demands based on the rarity of their skills, the high level of demand for the product they make or service they provide, and the low level of competition amongst workers amid high employment rates. Workers also have workplace bargaining power, their ability to use their position in the production and distribution process to be strategically disruptive (Vandaele 2018). Gig workers are disproportionately dependent on collective action because, as individuals, they have little marketplace or workplace bargaining power. In more centralized workplaces, like factories, "a single worker might disrupt the work of hundreds of others," which "enhances workers' capacity to demand premium pay for requisite discipline and reliability" (Stanford 2017: 393). Conversely, in a decentralized workplace, the individual's disruptive power is greatly reduced.

Online gig workers engaging in crowdwork have little workplace bargaining power (Vandaele 2018). But those working in more public settings, such as delivery, transport and logistics, seem to be an exception. Their protests can be more disruptive because they are strategically positioned in important nodes in the relations between producers and consumers. This is increased

by the network effects of these platforms, which can become near monopolies in local markets. However, as Vandaele (2018: 14) notes, “because of this disruptive capacity, it is no coincidence that digital labor platforms in the delivery and transport sector are beginning to test drone delivery systems and autonomous, self-driving vehicles; as a bonus, announcing or leaking this information can help demoralise the platform workers concerned and put a damper on any collective action.” In that sense, although some gig workers have more structural power to disrupt their workplace to back demands for improvements, the challenges they face in exercising that power are still significant.

App-based workers have also made attempts to increase their institutional power. One of the major motivations for lawsuits against misclassification is to achieve the right to unionize, collectively bargain and strike. There have been several successes on this front. The Danish union, 3F, achieved “the world’s first-ever collective agreement in the platform economy” with the Danish home cleaning platform, Hilfr.dk (Vandaele 2018: 23). The German-based platform company, Delivery Hero, signed an agreement with a union federation, the European Federation of Food, Agriculture and Tourism Trade (EFFAT), to establish a cross-border works councils, a form of workers’ representation prominent in Germany. In the UK, a February 2021 Supreme Court ruling unanimously held that Uber drivers had been misclassified and should be treated as ‘workers,’ a form of employee under employment law.⁸

Gig workers face an uphill battle in the fight for unionization even if they manage to overcome a host of specific challenges in building institutional and structural power. For example, since the worksite is digitally mediated and can be incredibly dispersed, co-workers often lack the face-to-face interactions that are key to building a collective sense of purpose. When

there is no “brick-and-mortar worksite” where workers begin and end their shifts, it can be difficult to know who your co-workers are (Garneau 2019).

Dispersed, digitally mediated worksites also make it difficult for workers to achieve certified unions that must be recognized by both the employer and the government. Typically, to certify a union, a significant portion of the affected workers must express support for the union through card signing and a Board-supervised vote. The union must demonstrate that it has achieved the minimum threshold required by law to obtain certification or trigger a formal certification election. The exact percentage threshold required differs from jurisdiction to jurisdiction, but is calculated based on a list of employees provided to the labor board by the employer. Employers sometimes ‘stack the list’ by including names of people who are not actually part of this workforce in order to dilute union support. List stacking makes it more difficult for the actual workers to achieve the percentage thresholds necessary in the various phases of certification. Although labor board procedures allow unions to challenge specific names on the employer’s list, this is much more difficult when workers do not know the identity of most of their co-workers. Consequently, the union avoidance strategy of stacking the list is much more likely to be successful in the context of the gig economy (Braley-Rattai and Savage 2020).

Gig workers are developing creative strategies for overcoming some of these challenges. For example, Foodora couriers in Toronto found that their organizing campaign was connecting with bike couriers, but not car-based couriers. Bike couriers organized free workshops on fighting parking tickets and winterizing cars, which brought many of the car-based couriers into the campaign. Foodora couriers eventually achieved 89% support in their union certification vote (House and Gray 2021). Gig workers are also creating “platform cooperatives,” that is, platforms that are owned and controlled jointly by the workers rather than a corporate entity. Platform

cooperatives are emerging in Spain and Belgium (Vandaele 2018) and Toronto couriers have mused about pursuing such a model in the wake of Foodora's exit from the Canadian market (Hayes 2021).

Broader public policy and labour and employment law reforms

Scholars and gig workers have proposed several reforms to laws and regulations that would better account for the situation of gig workers. First, since “[g]ood policy requires good evidence,” the need for national statistical agencies to collect more and better data on gig work has been highlighted (Forde et al. 2017: 99). Governments, could for example, require platform companies to provide better information about their workforces and practices.

Second, some commentators have argued that we need to establish minimum standards for gig work, or, alternatively, introduce a Universal Basic Income (Ford et al. 2017). Minimum standards for the use of customer ratings in performance evaluations has also been proposed. For example, if non-payment is legally permitted, gig workers should be able to view a prospective customer's rates of non-payment. One minor reform could allow gig workers to be able to export and transfer their ratings and reputation history between platforms in order to lower their dependence on a particular platform. Furthermore, account deactivation could require as much transparency, just cause, and due process as firing an employee (Forde et al. 2017; De Stefano 2016).

Third, with respect to the legal classification of gig workers, the burden of proof could be reversed. Since companies have more wealth and power than the people who work for them, they should arguably have to prove that those they hire are independent contractors, instead of workers having to prove they are employees. There could also be stricter enforcement and harsher penalties for companies that misclassify workers and flout previous rulings (Forde et al. 2017).

Some commentators favour creating an intermediate legal status between independent contractors and employees, which has already occurred in several countries, including Canada. This status has been called ‘dependent contractor’ or ‘independent worker’ (Kirven 2018: 275). Workers with this status would not have the right to things like minimum wages, but they would have the right to unionize, bargain collectively and strike.

Others contend that the existing employee classification should be expanded to include gig workers. De Stefano (2016: 495) argues that intermediate classifications will only complicate matters, “shifting the grey-zone somewhere else without removing the risk of arbitrage and significant litigation in this respect, especially if the rights afforded to workers in that category afford any meaningful protection.” Furthermore, in many places where intermediate classifications already exist, workers only qualify if a significant portion of their work, often 50-80%, is with a particular company, a standard many gig workers cannot meet.

Fourth, broader reforms have been proposed to ensure that access to social benefits includes gig workers. Even if gig workers were classified as employees, many would still lack access to many social benefits because they were designed in a time that assumed most people were engaged in standard employment. For example, gig workers, and workers in non-standard employment more generally, cannot qualify for unemployment benefits or parental leave because they require continuous employment for a certain period of time (De Stefano 2016). National social protection systems therefore need to be adapted to include all workers in non-standard employment, including gig workers. Some argue for portable benefits and social insurance that workers can bring from job to job. The multi-employer plans in the construction industry are a potential model, where each employer makes pro-rated payments into a plan depending on the number of hours each worker has worked for them (Kirven 2018).

Fifth, some scholars (Vosko 2000; O’Grady 1992) have called for sectoral bargaining as a mechanism to extend workplace protections to precariously employed workers. They point to the decree system in Quebec as a “possible starting point for conceiving of a new model, particularly for small workplaces and nonstandard workers” (Slinn 2015: 69). A decree allows government to extend certain negotiated terms and conditions of work to cover all employers and workers in a given sector (Slinn 2015). Such a system could provide all app-based gig workers in a particular jurisdiction with collective representation and bargaining rights beyond a single platform. This would ensure minimum standards across the sector.

Of course, such sweeping public policy changes are not easily implemented given the digital platforms’ tenacious and well-funded opposition to regulation. However, they do demonstrate that the status quo is far from permanent and that a different set of choices could produce very different outcomes for app-based gig workers and the future of work. This issue is becoming ever more important to resolve, as growing numbers of workers come to rely on gig work, a trend that only accelerated as a result of the COVID-19 pandemic and is unlikely to be reversed.

In sum, the rise of the gig economy raises key questions about the future of work for policy makers, for gig workers, and for the rest of the workforce whose labor may yet become subject to these practices. Platform-based gig work is said to provide workers with opportunities for entrepreneurship, independence, flexibility and greater control over work than is typical in standard employment. However, this lucrative business model is in fact premised on precarious employment and employee misclassification by which employers retain control but evade responsibility for those who work for them. Skirting labor and other forms of regulation are central to platform companies’ profitability, thus pointing to the need for broader reforms in labor and

employment law and the social safety net that would benefit all workers, especially those in other forms of precarious employment.

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Notes

¹ *Canadian Union of Postal Workers, Applicant v Foodora Inc. d.b.a. Foodora*, 2020, OLRB Case No: 1346-19-R:

<<https://www.canlii.org/en/on/onlrb/doc/2020/2020canlii16750/2020canlii16750.pdf>> (henceforth *CUPW v. Foodora*).

² *CUPW v. Foodora*, at para 94, 99.

³ *CUPW v. Foodora*, at para 105, 142.

⁴ *CUPW v. Foodora*, at para 84, 87, 89, 91.

⁵ *CUPW v. Foodora*, at para 110, 112, 113, 122, 125, 129.

⁶ *CUPW v. Foodora*, at para 126, 143, 144.

⁷ *CUPW v. Foodora*, at para 147.

⁸ *Uber BV and others (Appellants) v Aslam and others (Respondents)* [2021] UKSC 5, On appeal from: [2018] EWCA Civ 2748 <<https://www.supremecourt.uk/cases/docs/uksc-2019-0029-judgment.pdf>>