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Welcome to the Gig Economy: neoliberal industrial relations and the case of Uber

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Abstract The competitive pressures of neoliberal economies have compelled employers to devolve responsibilities to contractors and subcontractors. The rise information technology platforms have significantly accelerated this trend over past decade. "Sharing economy" companies have such widespread adoption of neoliberalism's industrial relations that a new moniker—"the Gig Economy"—has taken root. Although shareholders and consumers have benefited, middle-class jobs have been squeezed in the process. This paper uses Uber as a case study to discuss how Sharing Economy entities are merely the latest iteration of companies to enact the neoliberal playbook, including (a) (mis)classifying workers, (b) engaging in regime shopping, and (c) employing the most economically vulnerable, rather than giving rise to a new world of work altogether. The result is a crowding out of middle-class employment by precarious 'gigs' that lack legal protections and benefits.

Keywords Sharing economy · Gig Economy · Neoliberalism · Internet · Labor relations · Wages and benefits

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Introduction

The days of a long-term social contract between companies and their employees is over. Companies instead have slowly become more reliant on workers hired on short-term contracts in place of traditional employees. This replacement of employees with independent contractors, who are also known as contingent workers, is intended to drive down their cost structure and increase their ability to match their workforce to rapidly changing staffing demands and market conditions. Companies argue that short-term employment, temporary projects without any promises of longer-term employment, has benefited workers to have more work-life balance. Although the characterization of offering "flexibility" to workers has always been a feature of capitalism (Martin 2006; Herzenberg et al. 1998), the recent explosion in growth of these precarious, casual contracts is a defining feature of the new economy (McDowell and Christopherson 2009). This tactic, paired with regime shopping and employing the economically most vulnerable, has created an economic environment where the last remnants of a Keynesian middle-class economy are being torn down. Business consulting firms are at the cutting-edge of this trend. A study by McKinsey Global Institute (2016) estimates that between 20 and 30% of workers engage in independent work. A different study by Intuit (2010) predicts that over 40% of American workers will work as and independent contractors by 2020. A third study by The

Freelancers Union (2016), whose status as a union is strongly contested, estimates that 55 million Americans currently engage in some type of freelance work. They go on to estimate that 54% of these workers have been hired for projects that that were initiated and compensated for through the internet.

It is clear that the rise of the internet is, at least in part, responsible. Digital forms of labor have been characterised by piece-work, labor fragmentation, along with under-payment for goods and services (Irani 2015; Lehdonvitra 2016). But this trend did not begin with the internet. Labor has been devalued through neoliberal economic restructuring, but the speed, scope, and scale has changed. Previously temporary employees were the specialty of "temp agencies" where jobs would last weeks or months (Peck and Theodore 2002), but now with a new generation of "sharing economy" companies—i.e. companies borne out of information technology platforms—the jobs may last as little as a few minutes. This new industry has exacerbated neoliberalism's industrial relations to the point where a new term, the "Gig Economy", has arisen to describe that workers now have "gigs" instead of jobs. "Labor laws have not kept up" (Kennedy 2016). The Bureau of Labor Statistics (2016) notes the existence and the growing trend of the gig workforce but finds that, under its current methods, it is incredibly difficult to count how many people are employed as gig workers. These workers may fall under different categories such as part-time, self-employed, multiple jobs, or in some cases not be counted as part of the workforce at all. Sharing economy companies, such as Uber, argue that they are facilitating person-to-person transactions and therefore they are not an employer but merely an enabler for interdependent contractors. Harris and Krueger (2015) argue that a new category of worker, an "independent worker", ought to be created to capture these workers. Eisenbrey and Mishel (2016) rebut this, arguing that these workers are employees and should be legally labeled as such. The courts are beginning to agree with the latter argument, but the process is still very much underway.

Uber has been on the forefront of this debate. The company has transformed the personal transportation industry in only a few short years, making the company a subject of interest in numerous academic articles with questions being raised about its business strategy (Cohen and Kietzmann 2014), safety record (Feeney 2015), consumer protection (Koopman et al. 2015), amongst others. This paper uses the company as a case study to illustrate how (a) how neoliberalism has lead to the devolution of business which has shaken out onto industrial relations, (b) the tactics that companies use to disenfranchise workers from their rights and benefits, and (c) how Uber has executed this neoliberal playbook to their—and their consumers—benefit. The underlying point of this article is not to put forth the argument that the sharing economy does not offer tangible benefits to the working class—it does, particularly for their role as consumers—but rather that it is imperative to understand the origins and impacts of the Gig Economy because it is quickly becoming the new norm.

Neoliberalism's role: innovation and competitive pressure

Over the last few decades, firms have been moving away performing all services in-house to a more flexible form of production where the firm becomes a central node in a regional network that taps the assets of other firms through a combination of ownership, partnership, contracts, cross-investments, collaborations, and alliances dependent on the function needing to be performed (Baddarco 1998; Mytelka 1990; Mowery 1988; Cooke and Morgan 1991). Saxenian (1994), in investigating the tech industry, describes how this allows firms to remain nimbler to exploit evolving market opportunities, and therefore vertical-integration has gone from an asset to a liability, leading firms to "vertically disintegrate". Specialized firms, who can execute particular functions at higher quality and lower cost, are becoming more prevalent (Scott and Storper 1987; Markusen et al. 1986). This transformation of production has been coined "post-industrialism" (Cohen and Zysman 1987), "information economy" (Castells 1989), "Toyotaism" (Nomura 1993), "Japanization" (Wood 1993), "flexible specialization" (Piore and Sabel 1984), "post-Fordism" (Thompson 2003), amongst others. This change in production has filtered its way down to employment relations. Firms have been transitioning from traditional employment relationships to temporary, contractual ones, which has taken on the popular moniker of the "gig economy". This lower cost form of production is partly passed onto the consumer, in the

form of consumer surplus, and is partly paid out to executives and shareholders, at the cost of middle-class employment.

In broad terms, "neoliberalism is [an ideology] rooted in the… trilogy of the individual, the market, and the noninterventionist state" (Hackworth 2007: 9–10). The values that neoliberal theory advocates for include strong individual protections of property rights, the rule of law, freely functioning markets, and fair trade, along with a "legal framework of freely negotiated contractual obligations between juridical individuals in the marketplace. The sanctity of contracts and the individual right to freedom of action, expression, and choice must be protected… at all costs" (Harvey 2005: 64). The firm operates on contractual basis with suppliers, customers, and creditors, but also with their employees as well, as firms see no substantial difference between an employment contract and those for other goods and services (Jensen and Meckling 1976). Larner (2000) subdivides the academic literature on neoliberalism into three different interpretations. This paper view neoliberalism follows the governmentality framework interpretation, where

> Neo-liberal strategies of rule, found in diverse realms including workplaces, educational institutions and health and welfare agencies, encourage people to see themselves as individualized and active subjects responsible for enhancing their own well being… the basis for active labour market policies, and is associated with the 'desocialization' of unemployment and poverty.

Neoliberalism as it relates to industrial relations has never been well-defined (Bray and Underhill 2009). Here it is defined as the rise of individual contractual relations over that of those that are state-determined or collectively bargained, which in effect: (a) liberates firms from legal liability of labor and employment laws, (b) transfers risk from employers to individuals, and (c) reduces middle-class employment at the benefit of consumers and financial stakeholders. The state, in order to obscure its role as its creator, facilitator, and enforcer of these relations, frames such market interactions as voluntary contractual relations between private parties and individuals (Butler 1989; Bowman 1996). But neoliberal industrial relations is more than the receding of the state from public life, but in practice the state granting firms the freedom from collective organisations, such as trade unions and employer associations, to maintain a monopoly on workplace governance (Bray and Underhill 2009; Boxall and Haynes 1997). The firm turns to short-term and insecure employment relations where workers can "be fired as quickly as they are hired" (Sporton 2013: 450). In exchange, the individual receives the "freedom to choose one's own job and negotiate one's own conditions of work", but because of the asymmetry in negotiating power between the firm and the individual, the terms and conditions of the employment contract regularly become standardized and non-negotiable (Cahill 2004: 73). Hardin (2014: 203) interpreting Polanyi (1944) also argues that, despite using universal discourse, neoliberalism in reality empowers freedom for property to eschew it from individuals. Because of this, it is seen "as a political project to re-establish the conditions for capital accumulation and to restore power of economic elites" (Harvey 2005: 19).

The trouble becomes that firms who do not wish to abide by this framework, for ethical reasons or otherwise, pay the price as they operate at a cost disadvantage to their competitors, who have "reported improved productivity, squeezing more work out of fewer workers" (McDowell and Christopherson 2009: 336). Consumers, voting with their dollars, have spoken in favor of this system. The norm is becoming for employers to become reliant on precarious employment contracts, which the International Labour Organization (ILO) as ''work relation[s] where employment security, which is considered one of the principal elements of the labour contract, is lacking. This term encompasses temporary and fixed term labour contracts, work at home and sub-contracting'' (ILO 2005). Cockayne (2016) argues that the 'sharing economy' is no more than an attempt to normalize precarious work relations through discourse of capitalist exchange and altruistic social values.

The neoliberal playbook: tactics of companies

Because of the pressures of neoliberalism, companies follow a very similar set of tactics to drive down their own costs. Words such as 'flexibility' and 'competitiveness' becomes euphemisms for denying workers' rights and engaging in a race-to-the-bottom in terms of wages and benefits. There are three main tactics that

firms employ to empower themselves at the expense of workers: (1) legal (mis)classification, (2) regime shopping, and (3) employing economically vulnerable, typically migrant, labor. These tactics began long before the internet, yet the widespread adoption of information technology platforms have significantly accelerated its pervasiveness. Gig Economy companies have perfected the neoliberal playbook.

Workers in the Gig Economy are subject to the terms and conditions that the driver tacitly consented to by using the software, and that includes not being an employee of the entity signing their paycheck. This is only the latest version of a long-standing trend. Firms use independent contractors, also known as contingent workers, to drive down their cost structure and increase their ability to rapidly match their workforce to rapidly changing staffing demands and market conditions (Abraham 1988; Tsui et al. 1995; Coolidge 1996; Wysocki 1996). The way businesses are organized, with lengthening subcontracting chains in particular, has facilitated evasion and violation of labor standards (Weil 2014). Carré (2015) says that:

> Employers who play by the rules and comply with all employment laws lose when they are underbid by others who have lowered their labor costs by shedding workers and avoiding mandated payroll taxes and compliance with wage and hour laws.

Beck (2000) describes the growth of such contracts more explicitly as the shifting of risk from the employing organization onto the worker. But the legal line between what is an employee versus what is an independent contractor has always been unclear. Barron (1999) writes that different federal agencies and different states have their own definitions, each reliant on their own multi-factor test with none being determinative. These include the *Right to Control Test* and the *Economic Reality Test,* both of which look interactions of the specific workplace to determine the degree of autonomy versus employer control. Many of the factors considered are up for interpretation. The US Internal Revenue Service (IRS) established their own 20-factor 'economic realities' test, with no one factor being determinative, to decide the category into which an employee is supposed to fall. Allowing for significant leeway and interpretation on the part of the employer. In direct response to the growth of the Gig Economy, the US Department of Labor issued a 15-page memo in 2015 meant to clarify whether workers were employees or independent contractors (U.S Department of Labor 2015). "We very much believe that misclassification is a problem that has been growing," wrote Labor Department's wage and hour division Administrator David Weil. "It undermines all the legitimate employers who are doing the right thing… but they are put at a competitive disadvantage" (Rugaber 2015).

If workers want to challenge their classification, the only way to settle these dispute is in court. In *Vizcaino v. Microsoft* (1997), Microsoft was found guilty of misclassifying employees as independent contractors and therefore illegally exempting them from federal and corporate benefits and protections. Eventually, this class-action lawsuit ended by a non-precedent-setting out-of-court settlement during the appeals process. The next landmark case was in August 2014, when the U.S. Court of Appeals for the 9th Circuit Court ruled on 42 misclassification lawsuits brought by FedEx drivers in 27 states (Reibstein 2014). They found that the workers are employees under a myriad of state laws. Shortly after in September 2014, the National Labor Relations Board (NLRB) rejected FedEx's claims that its drivers are independent contractors. Finding that they are employees, FedEx was in violation of federal labor laws by refusing to bargain them (Eidelson 2014). In exchange for dropping its appeals, the drivers agreed with FedEx to an out-of-court settlement for a total of $466 million dollars (Reibstein 2016; Norup 2016). Again, no legal precedent was set.

Countless other incidents never make it to court. Ordonez and Locke (2014b) found that approximately one-third of construction workers in Southern states such as North Carolina and Texas have been misclassified. Carré and Wilson (2004) find that the percentage of Massachusetts employers engaged in misclassifying workers was between 25 and 39% between 2001 and 2003. Carré (2015) reviews a many state-level studies and estimates that anywhere from 10 to 20% of employers misclassify at least one worker. Despite the legal risk, the economic incentive for companies to label workers as independent contractors remains. The Harvard Law Review (1997), put it this way:

> Employers have a powerful incentive to call workers anything but 'employees' in order to

avoid the panoply of federal laws regulating the employment relationship. The independent contractor agreement is a popular, if not always successful, way to avoid the 'employee' label.

Even if an employer is found guilty of misclassification of workers, it may be exempted from back taxes and federal penalties if they can show they had 'reasonable basis' to believe the workers were independent contractors (Hege 2000). Under this provision known as the 'Safe Harbor' loophole, they are often allowed to continue misclassifying workers (McClatchy 2014). As these companies do not pay payroll taxes, which pay for programs including Social Security, Medicare, unemployment insurance, and workers' compensation insurance, the result is a loss of billions of dollars in tax revenue creates a significant financial burden for local, state, and the federal governments. President Obama proposed closing this loophole in each of his budget proposals between 2012 and 2015, only to be turned down by Congress. The U.S. Treasury estimates that eliminating Safe Harbor would bring in $9 billion in additional tax revenue over 10 years (Ordonez and Locke 2014a).

Though misclassification is company's primary tactic, it is far from the only one. Over the last few decades, there has been significant change in the strategy and organization of firms by means of the internationalization of production through subcontracting and relocation in order to stay competitive (Rabellotti et al. 2007). When the worksite is mobile, firms engage in 'regime shopping' of labor markets to find those that are most favorable to them in terms of minimization of costs and maximization of the flexibility of management prerogatives (Streeck 1992; Traxler and Woitech 2000). This often means shifting work overseas or between facilities in order to avoid and undermine the negotiating power of unions (Perry 1997). Hyman (2001: 473) goes as far to call multi-national corporations the "visible hand" of the processes of marketization and the dismantling of social regulations. Crouch (2004: 31), in echoing the sentiments in Reich (1991), believes that internationalization of corporations undermines political and economic democracy because "if the owners of a global firm do not find a local fiscal or labour regime congenial, they will threaten to go elsewhere." Even if the company does not move, the threat itself has a chilling effect on labor organizing and the ability of workers to exercise their constitutionally-protected rights (Bronfenbrenner 2000).

When the worksite is immobile, then firms resort to recruiting economically vulnerable—often migrant—workers regardless of the price of local labor (Menz 2001; Traxler and Woitech 2000) in order to maintain a pool of docile, disciplined workers who are often subject to different terms of employment than other workers (Menz 2001; MacKenzie and Forde 2009; Sporton 2013). Temporary work agencies and labour-only subcontractors act as intermediaries: they recruit migrants in the home country, organise the migration process, and then place workers in employment in a host country (Sporton 2013). The "earlier generation of immigrants led a relatively settled existence in industrial towns, mainly paid according to the bottom rungs of collective bargaining agreements. By contrast, employers today use migration to undermine collective bargaining and employment regulation" (Lillie and Greer 2007). Carré (2015) states that:

> Businesses also misclassify to bypass requirements of the 1986 Immigration Reform and Control Act, which forbids employers to knowingly hire undocumented immigrants and requires them to verify immigration status. By treating such workers as independent contractors, businesses can avoid carrying such workers on their payroll and any resulting penalties.

Migrant workers are more inclined to accept low-paid, low-status jobs at the bottom end of the labour market because can earn significantly more than in their home market (Piore 1979). Furthermore, migrant workers are often bilked out of wages promised to them through dodgy accounting tricks, including inflated charges for accommodation and transportation (Menz 2001). Foreign workers, the most vulnerable type of migrant laborers, "have to fear legal sanctions in case of encounters with law enforcement agencies, which makes them hesitant to come forward in cases of abuse" (Menz 2001). Lopez (2014) writes that the California labor commissioner's office examined more than 300 claims of wage theft related to misclassification in 2013 alone. At best, these workers become trapped in low wage work with few prospects of advancement, increased benefits, or permanent employment (Castells 2000; May et al. 2007; McDowell 2009). This not to imply that all migrants are

economically taken advantage of: employers may readily pay higher 'going rates' in terms of wages because this cost is off-set by other advantages of the workers, such as lower benefits and tax avoidance (Rodriguez 2004). When all aspects are taken into consideration, temporary workers make less money on average than their equivalent full-time, employee peers (Nicholson 2015).

The Gig Economy the neoliberal playbook: the case of Uber

A survey by Pew Research (Smith 2016) found that nearly one-in-ten American adults reported that they have earned money from some type of digital work platform in the last year, with the largest demographic being young (18-29), non-whites. Less than half of workers use it as a full-time job, while nearly a quarter of them are students. One-in-three digital gig workers say the income they earn is "essential to meeting their basic needs". When asked if these jobs are the type of work people can "build careers out of", only 16% said "yes" while 41% said "no". Whenever technology enters new industries, it substitutes workers who are performing routine tasks with capital. This leads to downward pressure on employment and wages in routine jobs (Autor and Dorn 2013; Berger and Frey 2016). But the advantage of these Gig Economy companies may also stem from another cause, Harris and Krueger (2015) note:

> If an intermediary succeeds by displacing traditional employers who offer the same service because the intermediary gains a cost advantage by avoiding provision of certain legally mandated benefits and protections, then welfare is reduced by the innovation.

In the same manner that a clothes company has offshored production to a low wage alternative to be able to offer better prices to consumers for the exact same product, Uber does the same with the personal transportation industry. Uber has excelled at the neoliberal playbook. Cohen et al. (2016) estimated that "for each dollar spent by consumers [on Uber rides], about $1.60 of consumer surplus is generated. Back-of-the-envelope calculations suggest that the overall consumer surplus generated by the UberX service in the United States in 2015 was $6.8 billion." This rise in value occurred while Uber provided over 140 million rides worldwide in 2014 (Huet 2014). Fraiberger and Sundararajan (2015) had similar findings regarding consumer surplus, but also found that the benefits accrued most significantly to below-median income consumers. By providing this consumer service at a lower cost, Uber's valuation has increased exponentially from its founding to over $50 billion dollars and made the CEO's net worth reach over $5.3 billion dollars (Kosoff 2015). This accrued, at least in part, because Uber has undermined legal protections by engaging in (1) legal (mis)classification, (2) regime shopping, and (3) employing the economically vulnerable.

Legal (mis)classification

According to their Chief Advisor and Board Member David Plouffe (2015), Uber currently has more than 400,000 active drivers in the United States and more than 1.1 million active drivers globally ("active driver" defined as taking at least four trips a month), and half of all drivers use the platform fewer than 10 h a week. If Uber considered all of its "active drivers" as employees, it would be the 4th largest employer in the United States behind only the Federal Government, Walmart, and McDonalds—but it considers them independent contractors instead.

Like independent contractors are defined, Uber drivers do have some control over their working conditions. Anyone with a car and a valid drivers' license can become a driver. Drivers can choose when to start and end their shifts, when to take breaks, and respond to economic incentives in the contract. There is no direct oversight by a manager. The drivers are not paid benefits and have that understanding when agreeing to the terms of service. Drivers log into the smartphone app, wait for a nearby car request, and then pick up their customer. Uber charges only a $1 per ride to the customer and 25% of the fare to the driver to facilitate this transaction. Drivers make as much as the number of customers they serve and they can choose not to serve certain customers.

But in many more ways, Uber drivers are employees. Uber's software algorithm and quality control standards determine compensation and conditions of employment. Uber requires vehicle inspections to meet their cleanliness and safety standards. Uber requires background checks of its drivers. Uber

provides insurance to drivers as long as they are logged in. Uber will even help a potential driver rent, lease, or finance a vehicle—the terms of which have been so onerous that it has been compared to "modern-day sharecroppers" (Leberstein 2016). Uber software dictates to its drivers which routes to take, and drivers only have limited autonomy to change routes with respect to traffic. When there are an exceptional number of requests compared to drivers in a given area, "surge pricing" kicks into attract more drivers to come online and to the area. Approximately 21% of all rides have surge fares (Cohen et al. 2016). Additional bonuses are awarded for very high customer reviews. Though drivers have the option of turning down rides when logged into the app, *O'Connor v. Uber Techs* (2015) cites the Uber Driver Handbook that expressly states: "We expect on-duty drivers to accept all [ride] requests… [we] consider a dispatch that is not accepted to be a rejection… [and] will follow-up with all drivers that are rejecting trips." Even though they have the right to reject certain customers, that right can be exercised in only a limited capacity without penalty. In this case, the computer algorithm is acting like a digital manager because the algorithm is designed to enact discipline, including possible termination from the Uber platform, as well as bonuses.

Rogers (2016) argues that Gig Economy workers do not neatly fit into either category, but because the "unequal bargaining power" between the two—they ought to be classified as employees. The courts are beginning to agree in legal cases in the United Kingdom and California. London's courts were the first to clamp down on the misclassification of Uber's drivers as "independent contractors" instead of employees (Espiner and Thomas 2016). Despite the companies' claims, the judges ruled that Uber's workers are full employees because the company fully determines the terms and conditions of employment, and therefore Uber is in violation of wage and labor laws. To continue to operate in London, Uber has been ordered to pay the national minimum wage and offer benefits, including paid time off. Uber is appealing the verdict by arguing that this does not adequately portray the working relationship between the company and its drivers. Although Uber correctly points out that most of its drivers are part-time and can choose their own hours, they have not shown how this is significantly different than any other company with flexible, part-time employees. The company is rightfully concerned that this ruling may entice other government entities to follow suit.

Addressing a single person's case, California's Employment Development Department (CEDD) ruled that the driver was an employee of Uber and not an independent contractor and was entitled to $4000 worth of unpaid benefits. Uber decided not to fight the case further as it was not precedent-setting (Alba 2015). That single case emboldened a $1 billion class-action lawsuit that covered 385,000 former and currents drivers in California and Massachusetts who claimed they were misclassified and owed overtime pay, tips, and reimbursements for expenses. Uber agreed to an out-of-court settlement for $100 million and would make changes in its terms-of-service to address some of the issues, but the independent contractor classification would remain. A San Francisco federal judge rejected the settlement as completely inadequate in addressing the scale and legal concerns of the lawsuit (Alba 2016). The lawsuit proceeds.

Regime shopping

What Uber does not do is ask drivers to comply with local laws, rather the company makes it their explicit policy to break local laws until local jurisdiction bends to their will. If they don't do so, the Uber pulls out. Spicer and Eidelman (2017) found that 8 of 10 cities Uber entered, the initial municipal response was either a cease and desist order, legal injunction, of a state-wide ban. Despite being barred, the company continued to operate. In cities in which it operates without a license, such as its on-going battles with New York City (Lapowsky 2015) and the State of Nevada (Rindels 2015), Uber offers to pay for tickets and other fines that drivers may incur. Furthermore, Uber has also been caught blacklisting regulatory authorities from using its software, using a program called Greyball, which they claim stopped using after backlash in the press (Isaac 2017). As enforcement of these injunctions has proved ineffective, most cities give in and negotiate a regulatory framework that grants the company legal status (Spicer and Eidelman 2017). Some, such as Toronto (Pagliaro 2014) and Miami-Dade (Garvin and Hanks 2015), even do so while claiming it is an important symbol of supporting innovation in the city. When regulations passed were

too onerous, such as in Austin (Wee 2016) and Anchorage (Doogan 2016) who passed laws that made "car sharing" services meet the same standards at taxi companies, Uber pulled out as a way to punish these cities. The company is not bound by geography and can choose which markets to operate in based on the regulatory regimes they find suitable.

Hiring the economically vulnerable

The provision that the company found most egregious, which has invoked them to pull out of various markets, is government-regulated background checks of its drivers. The District Attorney of San Francisco George Gascon has called Uber's self-run background checks "completely worthless" as the company doesn't require fingerprinting as part of the process, allowing many drivers to be approved by applying under a false name (Hill 2015). Uber turns a blind eye to drivers who may be operating under a false identity, and potentially without legal immigration status. California prosecutors, in their legal complaint, mention 22 Uber drivers that were caught in a police sting operation at the Los Angeles airport who were convicted felons who "slipped through" Uber's background check system, while three more drivers were working under a different person's account (Huet 2015). Uber is one of the most lucrative opportunities available to felons and migrant workers. This is not to argue that these drivers should not be hired, but rather to emphasize that Uber is complicit in their hiring practices.

Cramer and Krueger (2016) offer an explanation for the documented higher incomes by Uber drivers than conventional taxis by documenting that they benefit from higher capacity utilization. While that may be true, it does not tell the whole story. While Uber drivers may see a gross pay increase compared to conventional taxi drivers, this does not take into account driver's expenses or benefits that they are missing out on (Hall and Krueger 2015). Other analysts (Bogage 2016; Kosoff 2016; Tencer 2016) have shown that the average Uber drivers, after considering gas and the maintenance of their personal vehicles, only make approximately minimum wage and potentially less. Some make more, but are reliant on surge fares and good reviews for bonuses. For workers who have few employment opportunities that come with benefits to begin with, Uber becomes a relatively lucrative job for the economically vulnerable.

The company's business model is dependent upon a constant flow of low-wage labor. Drivers sign up under false promises of advertised wages of between $15 and $25 an hour. After a Federal Trade Commission (FTC) investigation concluded that less than 30% of its drivers make the advertised wage in 17 out of 18 cities, Uber was forced to pay a $20 million settlement to drivers and only make "actual, substantiated claims" about wages going forward (Burns 2017). Uber has signed up over 8 million drivers globally (Huet 2014), but as only approximately an eighth of them are considered active, Uber is attempting to find those who will self-select to accept the lowest possible wages and/or the worst possible shifts. Some see it as a 'gig' between jobs, while others wished it could pan out as a job itself. But that's often not feasible on its own. A third of its drivers are solely employed as Uber drivers, while two-thirds maintain an additional source of employment (Huet 2014). Most workers don't stick around. 'Quitting' would be too strong of a word because, legally-speaking, they were never employed to begin with.

Uber's CEO Travis Kalanick when taking an UberBlack vehicle, got into a heated disagreement with one of their drivers when asking about why the wages are lower now than they used to be. The driver's dashcam recorded the conversation, and it quickly became a YouTube sensation after he uploaded it. Kalanik's angry response in the video was, in short, because lower wages meant more customers and a sufficient number of drivers are still willing to work at what is being offered. A statement made more explicit in a press release by the company over a year previously, when advertising lower prices being offered by Uber (Adams 2017). Pay rates are subject to unilateral change by the company, and often made with little to no warning for the drivers. The CEO later apologized and that he needed "leadership help" after public backlash occurred (Agrawal 2017).

Discussion

Competitive pressures cause industries to constantly be upended and reinvented. Whenever this disruption occurs, winners and losers emerge. Over the last few decades, a pattern has developed where the winners are consumers and financial stakeholders, whereas the losers are the middle-class incumbent job holders in

the industry being disrupted. This pattern has developed because executives face similar pressures to keep costs down by all available means, and therefore they have turned to the same neoliberal playbook of tactics to engage in. The Gig Economy, driven by technological innovation, has seized upon and accelerated these trends. Uber is the poster child. "Behind the shiny veneer of Uber's venture capital–backed technological innovation lies a time-tested business model: labor exploitation" (Leberstein 2016).

Uber obtained a competitive advantage over the taxi industry not by implying supplying a superior product, but also because they've been able to arbitrage shortcomings in the law and law enforcement with technology. It has accelerated trends that have been ongoing for the past few decades of decentralizing the marketplace, increasing consumer surplus while pushing executive compensation to historic levels. They successfully use technological innovation to (a) undermine employment laws and other regulation, (b) transfer risk from the industry onto the individual driver, and (c) lower wage and labor standards of the industry in the name of competition, which drives up profitability of the firm.

Berger et al. (2017) found that "hourly earnings among wage-employed drivers on average declined by up to 10% in cities where Uber became available relative to the ones where it remained absent." But this does not mean, in the face of a revolution of information technology, that the traditional taxi model is worth defending. It is worth acknowledging the benefits of the previous model in order to advocate for a Hegelian synthesis of the two models to be constructed in the future. This would prevent the reduction of overall societal welfare, as Harris and Krueger (2015) warned about, caused by technological disruption. Rogers (2016: 483) states,

> laws are a crucial means of ensuring that workers are free from domination. Basic employment duties deter economic and social practices that undermine workers' individual dignity and equal social standing; such duties also prohibit excessive concentrations of wealth or power, encouraging a more egalitarian and democratic political economy.

Until new legislation is passed or the US Supreme Court makes a binding nationwide ruling, Uber drivers maintain a more precarious economic situation than their conventional taxi driver peers. If they were classified as employees, beyond the implicit necessity of forcing Uber to put proper checks in place to ensure they are employing who they say they are, this would trigger legislation such as protections from discrimination under the Civil Rights Act (CRA), Age Employment Discrimination Act (AEDA), and Americans with Disabilities Act (ADA). They would be entitled to benefits under the Family Medical Leave Act (FMLA), Social Security Act (SSA), and the Employment Retirement and Income Security Act (ERISA). It would also allow them to collectively bargain under the National Labor Relations Act (NLRA). All together, these laws ensure that employers have a responsibility for their employees (Barron 1999).

This becomes even more the case with the Affordable Care Act coming into effect, employers must buy health care for their employees or pay a penalty if they do not do so. As these drivers are not employees, Uber is under no such obligation unlike taxi companies. For that matter, Uber drivers are not legally entitled to work breaks, corporate benefits, or the ability to collectively bargain as taxi drivers are. Uber only bought car insurance for its drivers after immense public and legal pressure to do so, which is a standard inclusion in the taxi industry. Neither model is perfect, but drivers should have a legally-mandated minimum set of benefits and working conditions no matter who their employers are.

Conclusion

The case of Uber highlights how Gig Economy employers have exacerbated the disconcerting trends under neoliberal industrial relations. Uber engaged in misclassification of its workers, withdrawing from cities that did not acquiesce to their demands, and economically vulnerable workers, all with the intention to push down wages and to avoid paying benefits. Uber's business model is based on circumventing—and then negotiating—federal, state, and local laws in order to gain a competitive advantage in the industry. Uber, though the largest Gig Economy employer, is by far from the only sharing economy company employing the neoliberal playbook. It preceded their existence and will last long after the company folds. But the trends they've accelerated, and the concerns which

are raised because of it, are only going to become more pertinent as internet technology platforms continue to revolutionize the world of work.

Compliance with ethical standards

Conflict of interest The author does not have any conflict of interest.

Human and animal rights This research did not involve human subjects. This research did not involve any testing on animals.

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