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Platform companies disrupt not only the economic sectors they enter, but also the regulatory regimes that govern those sectors. We examine Uber in the United States as a case of regulating this disruption in different arenas: cities, state legislatures, and judicial venues. We find that the politics of Uber regulation does not conform to existing models of regulation. We describe instead a pattern of disrupted regulation, characterized by a consistent challenger-incumbent cleavage, in two steps. First, an existing regulatory regime is not deregulated but successfully disregarded by a new entrant. Second, the politics of subsequently regulating the challenger leads to a dual regulatory regime. In the case of Uber, disrupted regulation takes the form of challenger capture, an elite-driven pattern, in which the challenger has largely prevailed. It is further characterized by the surrogate representation of dispersed actors—customers and drivers—who do not have autonomous power and who rely instead on alignment with the challenger and incumbent. In its surrogate capacity in city and state regulation, Uber has frequently mobilized large numbers of customers and drivers to lobby for policy outcomes that allow it to continue to provide service on terms it finds acceptable. Because drivers have reaped less advantage from these alignments, labor issues have been taken up in judicial venues, again primarily by surrogates (usually plaintiffs' attorneys) but to date have not been successful.

The disruption brought by the new labor platform economy has been both welcomed as a process of creative destruction and resisted as trampling on well-established regulations that protect the interests of workers and the public. Platform companies increase efficiency in the provision of services. They may also disrupt the economic sectors they enter and existing regulatory regimes. Regulators must classify and create rules for the new phenomenon of platform companies. This article examines Uber as a case of this disruption to analyze the politics of regulatory response. We argue that the main extant models of the politics of regulation do not fit the Uber case, which we analyze instead as a case of challenger capture: a form of "disrupted regulation" in which the new entrant largely prevails.

Uber is one of the most successful hi-tech companies and is the dominant player in the ride-hailing sector. Within 3 years of its launch in 2012, UberX, Uber's most popular service, grew remarkably, reaching nearly half a million active drivers in 150 cities in the United

States.[1] It disrupted a century-old taxi industry, resulting in a sharp decline in medallion values, taxi driver income, and taxi ridership in US cities.[2] Uber entered urban markets claiming to be a "technology company" and operated in disregard of taxi regulations. It thereby disrupted the ride-hailing market and challenged regulations that both controlled entry and fares and imposed consumer protection and safety requirements. How, then, did government respond?

Existing analyses of regulation generally conform to what we may call the industrial capture, public interest regulation, and deregulatory models. The industrial capture model, pioneered by Stigler, puts in opposition the private vs. public (or producer vs. consumer) interests.[3] It argues that concentrated private actors with high stakes use a variety of strategies to influence policy and thwart regulation in the public interest. Trumbull, to the contrary, argues that state regulation can serve the public interest when diffuse interests are represented by advocacy groups or activists, such as consumer rights organizations that form alliances with the state.[4] The third model responds in part to the deregulatory turn since the 1980s. Carpenter and Moss present a model of "corrosive capture," in which regulated "firms push the regulatory process in a 'weaker' direction" through reduced "formulation, application, or enforcement" of existing regulations.[5]

Each of these models has proposed answers to a number of questions: what are the main interest cleavages; which interests tend to be served; and how. The Uber model of disrupted regulation presents a different combination of answers than is suggested by any one of these models. Far from a unitary actor, the private interest must be disaggregated. One cleavage pits pro-regulation incumbents against anti-regulation challengers, as noted by Vogel.[6] A second is the classic intra-challenger cleavage between labor and capital. In addition, the relationship of private and public interests is characterized by neither their opposition, prominent in the capture literature, nor their congruity, as in the pro-consumer, free-market approach that underlies some anti-rent-seeking deregulation assumptions. The pattern is similar to what Carpenter and Moss call "weak capture," in that "firms render regulation less robust than…what the public interest would recommend," but "the public is still served."[7] However, Uber regulation differs from their model of "corrosive capture" in that the regulated industry (taxis) does not favor deregulation. Instead, the anti-regulation disrupter is a competitor that defines itself as a different industry and not subject to the extant regulatory regime. Further, to the extent the overall ride-hailing sector can be considered deregulated, the politics is quite different: the state does not act primarily through administrative agencies nor through the other channels Carpenter and Moss discuss.[8] Finally, contra Trumbull, though the public interest is served by providing a

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[1] The Uber company began operations earlier in 2009 as UberCab, an app for licensed black car and limousine drivers. We analyze here the "peer-to-peer" UberX model, launched in 2012 and refer to it as Uber and UberX interchangeably.
[2] Madhani 2017. Berger et al. 2017.
[3] Stigler 1971.
[4] Trumbull 2006, 2012. In analyzing regulatory policies that may produce pro-consumer outcomes, Trumbull (2012:23-25) focuses on three key actors (the state, industry, and social activists) and outlines three types of coalitions composed of combinations of two. Two of these produce private arrangements (industry self-regulation, and consumer-industry arrangements), and only a coalition between the state and consumer activists (or mobilized NGOs, which the government supports or even helps to form) is said to produce pro-consumer state regulatory policy.
[5] Carpenter 2014, 154; Carpenter and Moss 2014, 17.
[6] Vogel 2018.
[7] Carpenter and Moss 2014, 12, 16.
[8] Carpenter and Moss 2014, 17.

desired service, social activists and public interest advocacy organizations play almost no part, and the industry-consumer coalition (or the mobilization of consumers by and on behalf of Uber) is activated to *oppose* a pro-consumer regulation that Uber argues would cause it to leave the market.

We analyze Uber as a model of disrupted regulation, which has two phases. In the first, an existing regulatory regime, in this case for taxis, was not deregulated but disregarded by the challenger, Uber, who flouted entry and price controls, often triggering cease and desist orders from city regulators. A subsequent phase involves regulation and has occurred at both city and state levels—in legislative and sometimes regulatory bodies—and also in judicial venues. It conforms to an elite-dominated model of contending incumbent vs. challenger interests, in which the latter has largely prevailed. In this model of challenger capture, Uber has been able to defend its core interests of low prices, high driver supply (with no labor regulation), and consumer trust. While Uber initially rejected all regulation, it has most vigorously opposed those central to its business model of low-cost service with dynamic pricing, frictionless entry of drivers, and no vehicle caps.

Uber regulation follows a pattern of elite-driven politics in which dispersed actors (consumers and drivers) are weak and are represented primarily by surrogates. It is a model of challenger capture, with the following traits:

- Rather than deregulation per se, the hi-tech disrupter disregards existing regulations, including barriers to entry and price controls.
- Concentrated interests dominate the subsequent politics of regulation, in which the disrupter has both substantial structural power and novel—as well as conventional—forms of instrumental power and has defended its core interests.
- Dispersed consumers depend on shifting alignments with concentrated interests. Consumers are aligned with challengers on high supply and low cost of service—on which Uber acts as a surrogate and mobilizes their support. They are aligned with taxi incumbents, who fight for consumer protection and safety regulations. Consumer interests have been addressed in legislative venues in a pattern of elite-driven politics.
- Dispersed drivers are aligned with Uber on issues concerning Uber's on-going presence in a city, but, given any further lack of alignment with concentrated actors, labor issues have been addressed primarily by surrogate actors in courts.
- A dual regulatory regime has emerged, which preserves extensive regulations for the incumbent taxi industry while creating much weaker regulations for the challenger, Uber.

Uber is a particularly good case for analysis. To date, it has been subject to the most regulatory attention and thus provides a good basis for empirical examination. Also, Uber is a "most likely" case for high regulation in at least two ways. First, it enters a sector with a strong regulatory regime and one that is defended by entrenched rent-seeking interests. Second, Uber exercises a high degree of control over work conditions, a defining condition of employee status, and it is thereby most susceptible to labor regulation and misclassification lawsuits and rulings.[9] To the extent regulations are limited in the Uber case, they are unlikely to be enacted for other labor platforms. Strikingly, we find that this "most likely" case has experienced only weak regulation.

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[9] Collier, Dubal, and Carter 2017.

The primarily qualitative analysis that follows uses several sources of data, including news coverage and interviews with taxi interests, Uber drivers, Uber employees, plaintiffs' attorneys, defense attorneys, labor advocates, legislators, and legislative aides.[10] We use case studies to examine the politics of city-level regulation. We then turn to regulation by the states, analyzing an original database of all regulations passed between 2014 and 2016 and a case study of California, the first site of UberX as well as the first state to regulate it and a particularly influential case of regulation.[11] Finally, we examine judicial regulation using a database of court dockets from 2012-2016 in federal and state courts in California, Texas, and New York, and focus our discussion on the key "test" cases filed against Uber. It should be noted that regulations generally refer to TNCs, or transportation network companies, as platform-based ride-hailing companies have come to be called.

REGULATORY AGENDA

With the advent of Uber, a number of regulatory issues have been raised by stakeholders and policy advocates, including taxi companies, foundations, NGOs, bloggers, and scholars. Public officials have taken action on only a subset of these issues. Regulatory inaction occurs either because of a failure to pass a proposed law or obtain a ruling in court, or because issues have not even made it to the agenda in legislatures or brought to trial. To assess the areas in which public officials have and have not acted, we compile a "regulatory agenda" of the issues that have been proposed or enacted. We group them into five categories (Table 1).

The first two categories reflect their labels: "safety" and "consumer protection." These regulations aim to protect Uber's customers and the general public. Because Uber's business model depends on customer trust, the company has always provided its own driver training, required background checks, and insisted on minimum vehicle standards. However, these items remain on the regulatory agenda because regulators consider the self-imposed practices inadequate

In addition to their stated purpose, consumer protection and safety regulations also reflect competitive issues in that they "level the playing field" between Uber and taxis. Indeed, taxi interests often demand such regulations on competitive grounds. Uber vigorously opposes some of these regulations, most notably fingerprint-based background checks, as a rigidity in easy driver entry. Other issues are uniquely related to competition between Uber and the taxi sector. We include these regulations as "other competition."

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[10] We conducted more than two dozen interviews with taxi interests in San Francisco and New York, 215 surveys with Uber drivers in San Francisco, 25 in-depth semi-structured interviews with Uber drivers in San Francisco, more than two dozen interviews with labor advocates from California and New York, 5 interviews with legislators and legislative aides at the city level (San Francisco and Seattle) and the state level (California).

[11] The name "Transportation Network Company," or TNC, was first officially used by California state regulators.

Table 1. Regulatory Agenda

Category	Issue addressed	Groups benefitted
Safety	Background checks	Consumers, taxis
	Commercial licenses	
	Driver training	
	Decal visibility	
	Vehicle inspection regulations	
Consumer Protection	Non-discrimination	
	Fare disclosure	
	Accurate fare calculation	
	Accessibility	
	Insurance requirements	
	Limit TNC sharing of consumer data	
Other Competition	Permits and fees	Taxis
	Airport fees	
	Limits on surge pricing	
	Caps on number of vehicles	
	Ban ride-pooling	
	Ban leasing of vehicles	
	Prohibit cash payments	
	Ban street hails	
Worker protection	Employee status	Drivers
	Right to organize/bargain collectively	
	Income (wages and stability)	
	Transparent rankings & process of deactivation	
	Transparent earnings calculation	
	Dispute resolution mechanism	
	Driver privacy	
	Ban penalizing drivers who organize/protest	
	Prohibit discrimination against drivers	
Public goods	Pollution	Public
	Reporting requirements	
	Congestion	
	Coordination with public transit	
	Ride-pooling	
	Taxation	
	Data security and sharing	

Labor issues are also contentious, most saliently drivers' legal classification as independent contractors rather than employees who are protected by work laws, such as the minimum wage, social security, right to unionize, and overtime pay. Those advocating employee status point to Uber's significant control over conditions of work, the legal condition for employee status. Opposing reclassification and other labor regulation, Uber argues that it is not an employer or even a transportation company, but a technology company that simply offers the software that matches riders with drivers. Importantly, some labor issues can be addressed without reclassification. Finally, we include a category of regulations that address public goods, like congestion and public transit.

In the analysis that follows, we analyze the politics of regulating these categories in different policy-making venues.

REGULATION BY CITY GOVERNMENTS

After taxis replaced for-hire horse carriages at the end of the 19th century, city governments took primary responsibility for regulating the industry.[12] A century later, when Uber and other TNCs were launched in cities across the country, city officials debated the best way to address these entrants, which were structured differently from the taxi sector and yet provided the same service. In this section, we examine the way Uber enters markets using an "act first, apologize later" strategy that flouts existing regulations. We then turn to a number of hypotheses that relate city "types" to the regulatory response to this disruption. Finally, we examine the strategies that Uber has employed to achieve its preferred regulatory outcomes.

We examine eight cities using data gathered from an exhaustive review of online sources for each city.[13] Rather than a representative sample of cities, we select three types of cities to explore hypotheses about city characteristics. We examine three steps: initial response to Uber's entry, subsequent regulations, and Uber's response.

The first city type includes San Francisco, Seattle, and Austin: politically progressive cities that are innovation hubs (Figure 1). These two traits (i.e., progressive and hi-tech) give rise to two contradictory hypotheses. Such cities might be friendly to hi-tech interests, given that hi-tech firms hold influence and account for a great deal of local economic activity. Alternatively, as progressive cities, they may be more likely to regulate, especially with respect to consumer protection, safety, and worker protection issues as well as public goods.

The second group of cities—New York City, Chicago, and Philadelphia—have historically strong 1) regulatory agencies and 2) incumbent taxi sectors. They are also older, large, industrial cities with dense urban cores and captured regulatory regimes for the ride-hailing industry.[14] Therefore, they might be expected to do more to prevent Uber's initial

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[12] Dubal 2017.

[13] An internet search of Uber regulation in our cities yielded online versions of local and national newspapers and other online publications/media sources as well as blogs.

[14] San Francisco also has an entrenched taxi industry, but it is a smaller city and from the late 1970s-2009, medallions were non-transferable and had no monetary value. Without medallions as high-value assets, taxis had less lobbying power. See Dubal 2017.

entry and to enact regulations that level the playing field, restrict supply, and inhibit driver entry.

Finally, Houston and San Antonio are Sunbelt cities in the conservative state of Texas, a category in which we can again consider Austin. Given their relatively recent growth and lower density, we might expect them to have a less entrenched taxi sector and do less to halt Uber's initial entry, restrict car and driver supply, or pursue leveling with taxis.
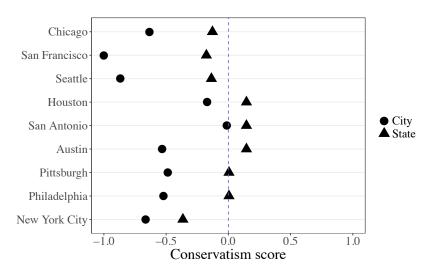

Figure 1. City and State Ideology (Public Preferences)
Source: Tausanovich and Warshaw 2013

Step 1: Disrupting regulation

Uber enters urban markets extra-legally, ignoring an extensive regulatory regime, which includes, among others, barriers to entry and price controls; driver registration, licensing, and insurance requirements; and consumer protection and safety regulations. Uber's entry thereby forces local or state governments to respond reactively to a fait accompli, after Uber has established a base of customers and drivers.[15] City officials are thus confronted with two options: allow Uber to operate or ban it—through cease and desist orders and law enforcement—until regulations are enacted.

The first issue for regulators is whether TNCs are technology companies, as TNCs insist, or transportation companies, as the taxi sector insists. As tech companies, TNCs provide software to match riders with private drivers. As transportation companies, they challenge the incumbent taxi sector, which has benefited from the classic regulations of entry barriers and price controls, thereby restricting supply, maintaining "high" prices, and supporting driver income. How, then, do cities respond, when Uber introduces its app, allowing drivers in their own cars to be algorithmically matched with a rider?

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[15] Griswold and Murphy 2016.

We find that timing, more than city traits, seems to be the stronger predictor of responses to Uber entry (Table 2). Where Uber launched in 2012 or 2013—San Francisco, Seattle, New York, and Chicago—cities did little to prevent Uber's operation upon entry. In the three Texas cities and Philadelphia, Uber launched later—in 2014—after other cities and states

Table 2. Regulatory Steps by Cities

City	Step 1 *Pre-Regulation: Initial Response*	Step 2 *Regulation: Notable features*	Step 3 *Post-Regulation: Uber response*
San Francisco	No action	None	NA
Seattle	No action	Vehicle caps; Driver unionization	Successful Uber protest of cap; formal challenge of unionization ordinance
Austin	Police-enforced ban	Fingerprinting	Leaves city after organizing and losing public referendum on fingerprinting. Successfully lobbies state to overturn.
Houston	Police-enforced ban	Fingerprinting	Initially accepts; then threatens to leave city but remains. Successfully lobbies state to overturn.
San Antonio	Police-enforced ban	Fingerprinting	Leaves city in response to fingerprinting. City changes regulation to make fingerprinting optional.
Philadelphia	Poorly enforced UberX ban	Ban; earmarked taxes for education (state-imposed)	Continues operating UberX service despite ban. Successfully lobbies state to overturn.
New York City	Brief ban	Extensive leveling (e.g., commercial licenses; fingerprinting; driver training; permits/fees)	Successful mobilization against vehicle caps proposed by mayor but does not mobilize against proposals enacted by regulatory agencies.
Chicago	No action	Extensive leveling (e.g., fees that are higher than taxis)	Successful mobilization against fingerprinting.

had begun to regulate; there, Uber's entry was met with a ban. In Austin and Philadelphia, Uber nevertheless continued to operate, aided by software that produced a fake version of the Uber app to thwart regulators and law enforcement.[16]

Step 2: Regulating disruption

Cities must next decide how they will regulate Uber. As discussed above, we expect hi-tech progressive cities to face counter-pressures; old, industrial cities to do more to harmonize TNC regulations with those on taxis; and Texas cities to be Uber friendly. We focus on regulations that have been particularly contentious for Uber.

Consistent with the contradictory predictions of hi-tech, progressive cities, the three cities differ. San Francisco has taken a laissez-faire, tech-friendly approach with virtually no regulation.[17] Seattle has attempted two regulations that are central to Uber's business model. First, it imposed vehicle caps. However, it quickly backtracked following a strong lobbying effort by Uber.[18] Second, alone among US cities, it enacted labor regulations, specifically the right of drivers to bargain collectively. This ordinance remains unimplemented, as its legality is contested in court.[19] Austin has adopted relatively high levels of consumer protection regulation including fingerprinting, in a pattern that conforms to the other Texan cities.

As hypothesized, regulatory agencies play a strong role in the old industrial cities, particularly New York and Philadelphia. By contrast, regulatory attempts by elected officials have been mostly unsuccessful. In New York, Mayor De Blasio was unable to impose regulations (e.g., vehicle caps) that went beyond the extensive leveling rules passed by the Taxi and Limousine Commission (TLC).[20] Politicians in Philadelphia also had a difficult time contesting the authority of the Philadelphia Parking Authority (PPA), a longstanding agency that has regulated taxis. The PPA was constrained only when the state legislature intervened in 2016 to end the ban and preempt further city-level regulation.[21] In Chicago, ride-hailing is regulated by the Department of Business Affairs and Consumer Protection, an agency with a broader mandate than New York's TLC or Philadelphia's PPA. This Chicago agency has played a lesser role and the elected city council and mayor, a greater regulatory role.

Also as hypothesized, regulations in the industrial cities have done the most to level the playing field with taxis. New York went furthest, with TNCs facing many of the same requirements as taxicabs, including driver training, fingerprint-based background checks, and commercial licenses for drivers.[22] Chicago adopted some regulations for TNCs that exceeded those of taxicabs, such as higher city taxes on pick-ups and drop-offs at popular tourist destinations.[23] As mentioned, TNCs were banned in Philadelphia—albeit ineffectively—until late 2016.[24]

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[16] Isaac 2017a.
[17] Rayle and Flores 2016.
[18] Soper 2014.
[19] Levy 2017.
[20] Jorgensen and Bredderman 2016.
[21] Laughlin 2017.
[22] Sanchez 2015.
[23] Barnes 2017.
[24] Tanenbaum 2016.

Finally, the Texas Sunbelt cities were predicted to be the least likely to regulate. Yet, San Antonio, Austin, and Houston all implemented fingerprint-based background checks, which Uber vehemently opposed.[25] Below, we discuss the oppositional tactics of Uber, but note here that in San Antonio, Uber's extensive mobilization was effective, and the regulation was overturned (as it was in the other two cities when state legislation was passed to preempt local regulations).[26]

City regulation of Uber thus varies substantially. These cases mostly support our hypotheses: the "cross-pressured" hi-tech, progressive cities did not follow a consistent pattern. The old, industrial cities did not extend the taxi regulatory regime to TNCs, but they did implement the most extensive leveling regulations, with specialized regulatory agencies leading the way. The Texas cities departed from the hypothesized pattern in passing one of the most contentious regulations—fingerprinting.

Uber has accepted certain consumer protection and safety regulations that are consistent with its need to build customer trust. All of our cities, with the notable exception of San Francisco, have implemented such basic regulations. However, other regulations have been more contentious, and Uber has vigorously opposed those it fears will restrict the easy entry of drivers and the supply of cars on the road, like fingerprint-based background checks, vehicle caps, and, in the most extreme case, full bans. Each of our cities, except San Francisco,[27] implemented at least one of these contentious regulations; however, in almost every case these regulations have been subsequently overturned following Uber opposition at the city or state level. Also contentious are labor regulations, which only Seattle has addressed through legislation. Like labor issues, public goods regulations have also been largely ignored. However, it should be noted that labor and public goods are beginning to receive some attention: in late 2017 and early 2018 New York City regulators announced that they are pursuing a wage floor for drivers and a vehicle cap to decrease congestion; San Francisco's mayor reached a deal with Uber and Lyft to create designated pick-up points to decrease congestion; and Chicago imposed an additional tax on Uber to fund public transit.[28]

Step 3: Uber strategies to influence city-level regulation

Uber has tried to influence or change regulatory outcomes through a combination of insider (i.e. directly lobbying elected officials) and outsider (i.e. mobilizing drivers, customers, and the public) strategies. The outsider strategies are particularly novel, taking advantage of technological features of the platform economy.

The app provides both a list of drivers and customers and an efficient way of communicating with them. It has been a powerful tool in mobilizing customers and drivers to advocate for Uber's position on regulatory matters by merely clicking a link. For instance, in New York and Austin, Uber presented a new "view" of its app, designed to target officials who had proposed vehicle caps and fingerprinting, respectively.[29] When customers opened the app, a pop-up message appeared, asserting that New York City Mayor Bill De Blasio and

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[25] Wear 2015.
[26] Griswold and Grabar 2015.
[27] The San Francisco city government issued a short-lived cease and desist order for UberCab in 2010 but not on UberX.
[28] Barone 2018. Rodriguez 2017; Flegenheimer 2015. Small 2017.
[29] Tepper 2015; McGlinchy and Weber 2015.

Austin Councilwoman Ann Kitchen were proposing regulations that would make it impossible for Uber to operate. Customers were then provided a link to register their opposition to the regulations.

In addition to this "clicktivism," Uber has made extensive use of online petitions, which it has publicized to drivers and customers. For example, to oppose the Philadelphia ban, Uber organized a petition, which garnered 127,000 signatures.[30] Uber also used the contact information from petition signatories to automatically generate emails that opposed regulations and that were sent to policymakers.[31] The company has even initiated public referenda, a strategy that resulted in the suspension of vehicle caps in Seattle but failed to overturn fingerprint-based background checks, a consumer protection issue, in Austin. These strategies have been enhanced by Uber's extensive use of media. The company has taken out ads in newspapers and on television to target public officials, like Councilwoman Kitchen and Mayor De Blasio, and to publicize its referenda and online petitions.[32] Finally, outside of traditional mobilizing efforts, Uber has directly—and deceptively—manipulated public opinion data available to local regulators. In some cities, the company has asked its employees to devise computer programs that automatically respond to city-administered surveys in a way favorable to the company.[33]

Uber's strategies have been employed primarily against elected officials and have mostly been successful. While the direct effects of these efforts cannot be meaningfully measured, Uber's goals were ultimately accomplished in defeating vehicle caps in Seattle and New York City, in legalizing UberX in Philadelphia, and in eliminating fingerprint-based background checks in the Texas cities.

Uber calculates strategically, and in its largest markets, it has ultimately accepted even the regulations it most opposes. In the largest ride-hailing city, New York, Uber has accepted fingerprinting and other regulations that are substantially equivalent to those on taxis—with the important exceptions of vehicle caps and fare control. In Austin, Uber followed through on its threat to leave in response to fingerprinting, but in Houston, the company remained in the larger market, despite similar threats.[34] However, in both cities, the requirement was subsequently overturned by Uber-supported state legislation.[35]

In other cities, Uber's threats to leave a market have been an effective tool of overturning regulations. Officials in San Antonio retracted a fingerprinting ordinance after Uber left the city in protest, and in 2016, Chicago pulled a proposed fingerprinting ordinance following Uber's threat to leave the city.[36] Regulatory agencies comprised of appointed officials, like the TLC in New York and—for a while—the PPA in Philadelphia, have been less affected by pressure brought by Uber and more prone to adopt and maintain regulations that Uber opposes.

Thus, Uber succeeded everywhere in disrupting city ride-hailing regulatory regimes of entry and price controls. In the subsequent process of regulating this disruption, cities have

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[30] Moore 2016.
[31] Isaac 2017b.
[32] Theis 2015; Hunte 2015; Laughlin 2016.
[33] Isaac 2017b.
[34] Bennett 2016.
[35] Herkovitz 2017.
[36] Madhani 2016.

varied with respect to consumer protection, safety, and other competition regulations, which were also initially violated. These have been less contentious because Uber depends on consumer trust, which these regulations enhance. The high priority issues for Uber have been those that challenge its business model of high and flexible supply, particularly vehicle caps, fingerprint-based background checks, and drivers' rights as workers. As a powerful player with significant instrumental and structural power, Uber has prevented or defeated almost all of these regulations.

REGULATION BY STATE GOVERNMENTS

States, which have historically played a limited role in regulating the taxi sector, have often intervened to regulate TNCs. In fact, many states, having been lobbied by Uber, have wrested control from cities, preempting municipal regulation.[37] By December 2016, 38 states had passed TNC legislation. We analyze an original database of all state-level legislation passed between 2014 and 2016, drawn from the Open States website. We test several hypotheses about state-level characteristics and regulatory outcomes. We then turn to a case study of California.

Like cities, states have generally acted in only three categories of the regulatory agenda—consumer protection, safety, and other competition. States have not diverged significantly in the emphasis given to each of these categories, with a high correlation in regulations passed across categories (Table 3).

Table 3. Correlation of percent of regulations passed by category

	Consumer protection	Other competition	Safety
Consumer Protection	1	0.88	0.76
Other competition		1	0.81
Safety			1

States tend to cluster into groups of "high" and "low" regulators (Figure 2). A number of "usual suspects" might explain this variation. A first pair of hypotheses is that ideology and partisanship may influence regulatory outcomes, with liberal, democratic states expected to regulate more. A third hypothesis is that more urban states will regulate more because Uber serves a larger share of the state's population. Measures of ideology, partisanship,

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[37] See also Borkholder, Montgomery, Chen, and Smith 2018.

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urbanization do not appear to be associated with level of regulation (Figures A1-A3). Notably, regulations pass as bipartisan processes, with most bills garnering over 70 percent support from both parties (Figure 3).
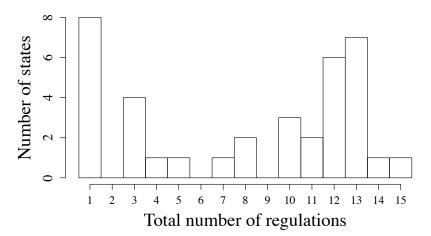

Figure 2. Histogram of Total Number of Regulations (states that have regulated)
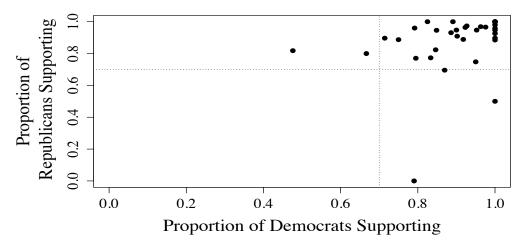

Figure 3. Bipartisan Support of TNC Regulation

An examination of the content of regulations indicates that even "high" regulators are quite moderate in the regulations they enact. Fingerprint-based background checks have been passed in only one state, Kansas, which subsequently repealed the requirement. No state has mandated vehicle caps, imposed a ban, or reclassified drivers as employees. Sometimes, these regulations simply institutionalize practices Uber already follows (e.g., no cash payment). As in cities, states primarily legislate on those consumer protection and safety

requirements that Uber accepts because they are thought to increase consumer trust at a minimal cost.

CALIFORNIA: THE FIRST STATE TO REGULATE

To illustrate the politics of Uber regulation, we examine the particularly contentious initial regulation of TNCs in California, the first state to regulate. This instance of TNC regulation demonstrates many of the political dynamics that have characterized subsequent regulatory efforts, particularly the strength of concentrated private interests, the weakness of drivers and customers as autonomous actors, and the strategies Uber uses to fight regulation.

The California Public Utilities Commission (CPUC) took the first step in 2013 by passing insurance requirements for drivers with passengers, among other minimal consumer protection and safety regulations.[38] Regulation then moved to the state legislature following the highly publicized death of six-year-old Sophia Liu, who was struck and killed by an Uber driver in January 2014.[39] The driver was logged into the app but not engaged in a ride and thus not required by the CPUC to be covered by Uber's commercial insurance policy. Since the driver was using his car for commercial purposes, his personal insurance policy would not cover the accident. In response to this "gap" in insurance coverage, the chair of the Business and Consumer Protection Committee in the California State Assembly, Susan Bonilla, proposed a law requiring commercial insurance whenever drivers were logged onto the app.[40]

Private interests were active participants in the policy process. Taxi companies weighed in, issuing written statements and lobbying legislators to regulate TNCs as they regulate taxi companies on issues of consumer protection, safety, and public goods.[41] However, they were unable to achieve any leveling regulations beyond insurance requirements, an issue on which they were aligned with insurance companies, which organized a coalition with consumer advocates and personal injury lawyers in support of Bonilla's bill and participated in its drafting.[42] Although influential, insurance companies are essentially a one-issue actor.

Uber was extremely active in opposing the Bonilla bill. While it ultimately accepted insurance regulations, it initially argued that personal insurance should cover drivers when they have the app on but are not engaged in a ride. Uber opposed the requirement of commercial insurance either as a cost to itself or one to drivers that would pose a barrier to their entry.

Uber employed the dual insider-outsider strategy outlined above. It used its vast financial resources to hire 14 of the top 15 lobbying firms in Sacramento, and it hired former Obama campaign manager David Plouffe "to make sure…the right outcomes happen."[43] Uber enlisted the support of nonprofit public interest groups, most notably Mothers Against Drunk Driving (MADD), to which Uber has donated a percentage of fares on major

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[38] Ha 2013.
[39] Constine 2014.
[40] Lieber 2014.
[41] Interview, California legislative aide 2015.
[42] Interview, California legislative aide 2015.
[43] Interview, California legislative aide 2015; Badger and Goldfarb 2014.

holidays.[44] MADD sent letters to the governor and legislature opposing the Bonilla bill, arguing that TNCs decrease drunk driving and that the proposed regulations would inhibit the operation of this service.[45] Uber also successfully sought lobbying assistance from high-profile Silicon Valley investors, like Ron Burkle and John Doerr, as well as celebrities, like Ashton Kutcher, who bombarded Assembly members with phone calls.[46]

Uber's outsider strategy to shape and mobilize public opinion was also multi-pronged. The company hired nearly all of Sacramento's public relations firms to improve its image and sent pro-Uber material to newspapers throughout California.[47] As part of this public-oriented strategy, Uber also targeted legislators who supported or were undecided about the bill. In one of the clearest instances of such a strategy, Uber targeted the bill's sponsor and launched a public campaign in the district where she planned to run for state Senate in 2015, claiming that she was anti-technology and a stooge of the insurance industry.[48]

As in cities, Uber used app-enabled clicktivism to mobilize consumers and drivers in a campaign of pressure politics. Just before the vote on the California bill, Uber used its app to tell customers that the proposed regulations threatened its operation in the state and initiated a petition through the app.[49] The company then contacted local news outlets to film boxes of petitions being delivered to Assemblywoman Bonilla's office.[50]

The California case illustrates the elite-driven policymaking pattern typical of Uber regulation. Concentrated private interests were influential, particularly incumbents and challengers, but also in this case, the insurance companies. Although a more comprehensive bill was initially proposed, the final legislation included only weakened insurance coverage requirements that correspond to a compromise amenable to both Uber and the insurance industry. Customers and drivers, dispersed and unorganized, did not have autonomous input into the policy process. To the extent they were participants, they were mobilized by Uber on the basis of maintaining service and work. But they were mobilized against regulations that may have benefited both groups: more extensive consumer protection for consumers and Uber-provided commercial insurance for drivers.[51]

The case of California also illustrates Uber's structural power. Policymakers value Uber's presence as a source of service and work, and fear disinvestment or withdrawal from the market. Many also see regulatory policy as signaling either their welcoming or hostile attitude toward innovation and hi-tech companies more generally. The fear of appearing "anti-tech" and possibly losing future opportunities to attract and spur post-industrial economic activity may be observed in the CPUC's explicit initial regulatory language: "The purpose of this Rulemaking is not to stifle innovation and the provision of new services that consumers want."[52]

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[44] Kalanick and Withers 2014.
[45] Griffin 2014.
[46] Hoge 2014.
[47] Kirkham and Lien 2015.
[48] Dillon 2016.
[49] Lien 2015.
[50]Young 2014.
[51]Helderman 2014.
[52] California Public Utilities Commission 2013.

City-State Comparison

In general, states have become new regulators of for-hire transportation operating at the municipal level. Typically more conservative than cities, states have regulated Uber more lightly than cities have. A large number have preempted municipal regulation, and many have introduced model legislation advocated by Uber.[53] Only a few state legislatures have passed regulations that explicitly allow cities to regulate TNCs.

That said, while cities have been somewhat bolder, disrupted regulation has been generally Uber friendly in both cities and states. With the exception of insurance regulation in California and a short-lived fingerprinting ordinance in Kansas, states, more than cities, have avoided regulations that Uber most opposes. We find that cities have implemented a number of these regulations, although most have been overturned in cities or states following extensive mobilization by Uber.

State action conforms to Uber's preference for uniform regulation rather than a "patchwork of local regulations that [are] in conflict to [*sic*] each other."[54] Our database of state-level regulation revealed that through 2016, twenty state laws had explicitly preempted municipalities from implementing regulations on TNCs, both as a way to prevent cities from implementing regulations that go further than the state and to overturn city-level regulations.[55] For example, as discussed above, the Texas legislation used preemption to override fingerprinting ordinances passed by Austin and Houston. Other states, like Pennsylvania, while not precluding all city-level regulations, passed laws to invalidate specific city laws. Notably, while neither states nor cities have generally considered labor regulation, a few states, including North Carolina, Arkansas, Michigan, Indiana, West Virginia, Florida, and Ohio, have codified the status of TNC drivers as independent contractors. Generally, then, preemption of city-level regulation by state legislatures has resulted in regulatory outcomes that align with Uber's preferences.

Finally, the states have often passed model legislation advocated by Uber. The first example pertained to insurance. After opposing one another in the 2014 regulatory process in California, the major insurance companies and the TNCs privately negotiated a compromise bill as model legislation for other states.[56] The insurance companies sought to prevent drivers from using their personal insurance policy while driving and to take advantage of a new market of TNC commercial drivers. After initial opposition in California, Uber and Lyft saw a benefit in standard insurance requirements across states. The negotiated model legislation advocated differential insurance requirements during the three stages of the drivers' work (i.e. before the rider is assigned, on the way to pick up a rider, and when a rider is in the vehicle) with TNCs sharing responsibility for coverage with drivers. Of the 38 states that had regulated TNCs by 2016, over 75 percent have implemented the exact model (Figure 4). More generally, model legislation addressing other issues has been proposed

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[53] The National Center for Cities puts this number at 41.
[54] Hanks 2017.
[55] In 2017, an additional six states passed laws explicitly preempting city-level regulation. The issue of municipal preemption of TNC laws remains legally ambiguous in a number of states. In 2017 the National League of Cities reported that a total of 37 cities have preempted the authority of cities, and a 2018 National Employment Law Program report suggested that 41 states have interfered to some degree with local policy making (DuPuis, et. al. 2017; Borkholder, et. al. 2018).
[56] O'Donnell 2015.

and circulated by TNC lobbyists and the American Legislative Exchange Council (ALEC).[57] In several states, including Ohio, Texas, and Florida, public records unearthed by the National Employment Law Program indicate that Uber wrote or co-wrote the state legislation.[58]
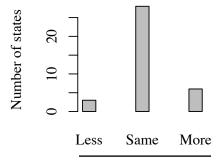

Figure 4. Histogram of State Insurance Regulation Relative to the Model

Uber Strategies

We have seen that Uber has been successful in entering markets and disrupting the ride-hailing regulatory regime and has also been influential in shaping the subsequent regulation of platform-based ride-hailing. It has done this by deploying a vast array of strategies, which are enabled by Uber's significant material resources, unique mobilizational capacity through the app, and structural power as a source of jobs and hi-tech reputation.

Table 4 summarizes these strategies. Some strategies are associated with Uber's instrumental power while others are associated with its structural power. Instrumental power can be used to influence legislators directly through insider strategies or indirectly through outsider strategies. Insider strategies have been most prominent in models of regulatory capture, and indeed they are key in Uber's arsenal. Uber deploys significant financial resources to undertake intense lobbying, particularly at the state level.

In both cities and states, Uber employs a number of outsider strategies, through which the company influences policymakers through popular mobilization. Uber has mobilized its drivers and customers to oppose regulations. While analysts like Walker have examined such mobilizational efforts by firms, the technology of the app allows Uber to go even further.[59] The Uber app is itself a novel resource for mobilization of drivers and customers. Further, Uber has mobilized the broader public through media campaigns and referenda.

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[57] Borkholder, et. al. 2018, 11.
[58] Borkholder, et. al. 2018, 20.
[59] Walker 2014.

Table 4. Uber Strategies

Structural Power	• Threats to leave markets • Hi-tech reputation
Instrumental Power: Insider Strategies	• Hiring of lobbying firms and celebrities • Alliance formation with non-profit groups (e.g., MADD) • Alliance formation with other interested actors (e.g., insurance)
Instrumental Power: Outsider Strategies	• Clicktivism • Online petitions • Public relations strategies • Referenda • Targeting sponsors of regulation • Manipulation of public opinion data

Uber's structural power is also notable and derives from its threats to disinvest and its perceived economic benefits. Uber provides "flexible" work that accommodates many in the 21st century job market. Government decision-makers also see regulation in terms of the city's or state's reputation as tech friendly, affecting future growth. The divestment threat is a real one, as Uber has indeed left markets in response to the imposition of specific regulations. Furthermore, Uber actively wields this threat, as it explicitly threatens that it will leave a market.

JUDICIAL VENUES

As noted, regulation in cities and states, played out among regulators, incumbents, and challengers, has been virtually silent on labor regulation. Yet, the labor-capital cleavage within the challenger interest is a prominent one in the politics of TNC regulation. Online driver forums indicate the many grievances that drivers have against Uber. Drivers complain of fare cuts, lack of transparency in pay calculation, high expenses associated with driving, fear of termination associated with Uber's rating system, and lack of training and driver support—many of which could be addressed through existing labor and employment laws.[60] The neglect in cities and states of worker protection issues reflects imbalance of political influence and the collective action problems of dispersed drivers.

Legal analysts have suggested that politically weak groups "are almost always compelled to resort to litigation," and that litigation is "a technique to be employed when goals are clearly unattainable in other political forums."[61] The Uber case comports with this theory of political disadvantage. As atomized, dispersed actors, drivers are unable to bring effective claims in legislative venues. Even in courts, worker protection issues are rarely brought through the initiative of groups of drivers. Instead, most cases are brought by surrogates, both plaintiffs' attorneys who bring lawsuits against Uber on behalf of drivers and

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[60] These complaints were evident in our survey and interviews with workers and many analyses, including a popular blog "Harry the Rideshare Guy." See, e.g., Campbell 2016.
[61] Epstein 1985, 10.

government agencies that investigate the company for violation of laws that would protect drivers.

As a venue of regulation, judicial processes have a distinct logic. Unlike legislative venues, where lawmakers can break new ground by passing laws, courts and administrative agencies judge compliance with existing statutes, regulations, and previous judicial decisions. Uber's own approach to the law "as something to be tested" has, perhaps unsurprisingly, resulted in much litigation.[62]

We focus here on lawsuits regarding worker protections and misclassification. These have been a strikingly frequent form of litigation against Uber, constituting approximately one-third of all lawsuits against the company, as opposed to two to five percent of cases against large multi-national tech companies.[63] These cases reflect an intra-producer cleavage, the classic struggle between labor and capital, which is an important component of the Uber model of disrupted regulation.

We analyze a database of dockets across federal and three state courts (California, Texas, and New York) from 2012-2016.[64] These three states were chosen because they include multiple cities with large Uber markets; because key test cases were filed in both California and New York; and because they each represent different political and legal regimes with regard to worker protections. California is a progressive state with an expansive, employee-friendly labor code; New York is also a progressive state but our review of state labor codes indicates that it has fewer state worker protections; and Texas is a conservative state with limited state labor protections. Unsurprisingly, California houses the largest number of lawsuits against Uber alleging worker protection violations.

Reflecting the fact that drivers are an unorganized and atomized workforce, most cases are not brought by groups of drivers but by surrogates, who typically conceive of the litigation and then recruit worker plaintiffs (not vice versa).[65] Prominent among these surrogates are plaintiffs' attorneys, who have brought class actions. Like all surrogates, class-action attorneys act simultaneously "on behalf of" drivers but also in their own interests, resulting in a biasing that has affected what issues have been litigated and how the litigation proceeds.[66] Because private plaintiffs' attorneys work on contingency, they have an incentive to bring cases that may yield significant damages or large settlement sums.[67] We find that as a result, income-related claims are most commonly litigated against Uber, and most cases have been settled or dismissed without resolving drivers' employment status.[68] These settlements are enabled by Uber's significant material resources, and they undermine any efforts to regulate Uber through courts. Other surrogate actors representing drivers' interests in courts include government bodies and an NGO.

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[62] Newcomer 2016.
[63] Bloomberg Litigation Analytics (BLA) search of all litigation against Uber between 2012 and November 2016. A BLA search indicates that between November 2012 and November 2017, employment-related cases constituted 1.4% of cases against Apple and 4.1% of cases against Amazon.
[64] Bloomberg law search of federal/state cases in which Uber and/or Rasier LLC (an Uber subsidiary often named in court documents) is listed as a defendant.
[65] Interviews with 4 plaintiff attorneys representing Uber drivers in California and 6 plaintiff Uber drivers.
[66] Macey and Miller 1991, 10.
[67] Macey and Miller 1991, 17.
[68] The exceptions include cases that are still pending and cases that are brought by individual drivers in administrative contexts.

We focus below on the most important "test" cases that were brought primarily in courts but also in administrative and regulatory agencies.[69]The majority of these test cases involve the misclassification of Uber drivers as independent contractors, a status that denies them the labor and employment rights available only to employees.[70] These cases attempt to apply existing employee laws to the new case of Uber.[71] We group these cases by the types of rights litigated.

Income-related Claims

The vast majority of worker protection cases involve income-related claims. The most important, *O'Connor v. Uber*, is a misclassification case filed in 2013 by Shannon Liss-Riordan in the Federal District of Northern California. Alleging misclassification of drivers, the case certified a large class of drivers and, if successful, would have challenged Uber's independent-contractor business model.[72] Many understood *O'Connor* as a test case for the gig economy more generally.[73] However, rather than take the case to trial, in 2016 Liss-Riordan attempted to settle on unfavorable terms.[74] Indeed, the court subsequently rejected the settlement as "unfair" to drivers.[75] The case was then stymied by a 9th Circuit ruling, which decertified a portion of the class, greatly diminishing its size and the potential impact of this case.[76] *O'Connor* has yet to be resolved.

NYTWA v. Uber was filed in federal court in New York in June 2016.[77] The New York Taxi Workers Alliance (NYTWA) is a 20-year-old NGO advocating for taxi drivers' interests. The NYTWA's membership now includes a majority of Uber drivers.[78] However, in many of its actions, it continues to see Uber as a central threat. After having lost the regulatory battle to extend vehicle caps and fare controls to Uber when it first entered New York, the NYTWA turned to the judicial process. On behalf of a class of Uber drivers, it alleged minimum wage and overtime violations (as well as unlawful equipment and tools deductions, and unlawful tax and surcharge deductions). Like, *O'Connor*, these claims challenge the status of Uber drivers as independent contractors. The NYTWA maintains that in the absence of city and

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[69] Our database captured cases filed in state and federal court. However, a number of important legal decisions and investigations were made at administrative levels or by regulatory agencies. These were not represented by our database because they are only reported if the agency or the parties involved release information to the press. Such investigations and decisions were captured in online searches.

[70] Very few exceptions to this rule exist; for example, in some states, independent contractor construction workers do have access to workers' compensation.

[71] Because private arbitration clauses have been enforced against workers in a large number of states—including California in 2016—this potential remedy has since slowed. See Tiku 2017.

[72] Boston-based Liss-Riordan filed in California because the state's judicial interpretation of "employee" under the California Labor Code is one of the most expansive nationwide. She has filed a litany of misclassification lawsuits in California against gig economy companies with similar business models to Uber including Lyft, Instacart, Amazon, DoorDash, Handy, Caviar, and Grubhub. To date, only one of these cases has been adjudicated at trial. In February 2018, a federal district court judge found a GrubHub driver to be an independent contractor. See *Lawson v. Grubhub*, Case No.15-cv-05128-JSC (N.D. Cal 2018).

[73] Interviews, Doug Bloch (Teamsters) 2016; Aaron Peskin (Supervisor, San Francisco Board of Supervisors) 2017; Anonymous NLRB attorney 2016, 2017; Anonymous U.S. Department of Labor Wage and Hour Attorney 2016; Bhairavi Desai (NYTWA) 2015, 2016.

[74] For a list of some objections made by plaintiffs, See *O'Connor v. Uber Technologies Inc.*, 836 F.3d 1102 (9th Cir. 2016).

[75] Wong 2016.

[76] The 9th circuit overruled the district court's decision finding Uber's arbitration agreement unenforceable. See *Mohamed v. Uber Techs., Inc.* 836 F.3d 1102 (9th Cir. 2016).

[77] Wiessner 2016.

[78] As of January 2018, the NYTWA represented roughly 19,000 drivers, more than half of which are Uber drivers.

state regulations that limit the number of TNC vehicles and control fares, employee status is the only way to lift and stabilize the earnings of TNC and taxi drivers.[79] The NYTWA had never previously sought to establish employee rights for taxi drivers, who are also independent workers, but rather worked through city and state regulatory bodies to advance drivers' interests, avoiding the issue of worker status.[80] By making themselves a plaintiff in this case alongside their Uber driver members, the NYTWA sought a settlement or trial adjudication that would undercut Uber's business model. However, the district court dismissed the NYTWA as co-plaintiffs, claiming the organization lacked standing. The case remains undecided.

Meyer v. Kalanick, a federal anti-trust action against Uber's co-founder Travis Kalanick, alleged that Uber's mobile app amounts to a price-fixing conspiracy because it coordinates a uniform price among Uber drivers. The impact of this lawsuit, which ultimately put to question the classification of Uber drivers as independent contractors, was also stymied by an appellate court ruling that sent the case to private arbitration.[81]

Finally, in three contexts not involving a legal challenge to drivers' status as independent contractors, Uber voluntarily agreed to pay drivers for overcharges or underpayment. One was the result of a legal investigation into their leasing program by the Massachusetts Attorney General.[82] Another was prompted by revelations of improper earnings deductions made public by the NYTWA.[83] Yet another, in which Uber agreed to pay $20 million to drivers misled by Uber's exaggerated claims about earnings and vehicle financing, was resolved after an investigation by the Federal Trade Commission.[84] While drivers won monetary gains in all three, none shifted the legal regulatory landscape with regard to workers' rights.

Job Security and Collective Action Claims

Two legal claims against Uber involve the rights of drivers to engage in collective action. In February 2016, the National Labor Relations Board Region 20 began a national investigation of Uber's labor practices to assess whether Uber has misclassified its workers as independent contractors under the National Labor Relations Act.[85] This investigation remains unresolved. Also, the NYTWA filed a claim with the NLRB alleging that Uber's arbitration provision for workers is an unfair labor practice because it prevents class action lawsuits.[86] The Supreme Court took up this legal question in late 2017.

Other Claims

Across the three states in this analysis, two cases against Uber allege discrimination. One was dismissed. The other was filed as an individual Equal Employment Opportunity Commission (EEOC) complaint, alleging that Uber's ratings system—which can result in

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[79] Interview, Bhairavi Desai, 2016.
[80] See Dubal 2017.
[81] Meyer v. Uber Technologies, No. 16-2750 (2nd Cir. 2017).
[82] Massachusetts Attorney General 2017.
[83] Scheiber 2017.
[84] Federal Trade Commission 2017.
[85] Rosenblatt 2016.
[86] Herzfeld 2016.

termination—has a racially discriminatory impact on minorities because of passengers' biases.[87] The resulting EEOC investigation has not been concluded or made public.

Individual Uber drivers in states across the country have filed individual claims in administrative bodies alleging their own misclassification for purposes of unemployment insurance, workers' compensation, and unpaid wages. Individual claim-making is at most a grievance procedure without larger impact.[88] Under *res judicata*, administrative decisions from these claims do not form precedent and have no consequences for other drivers. To leverage these individual claims for broader regulatory purposes, in 2016 the NYTWA sued the New York State Labor Department on behalf of three drivers who had filed individual unemployment insurance claims but did not receive a timely response. As a remedy, the NYTWA asked the Labor Department to audit Uber to determine whether drivers are employees under New York state laws. The case was dismissed.[89]

Thus, important test cases have been brought on workers' rights issues in judicial venues, often by surrogate actors, including plaintiffs' attorneys and an NGO, who bias representation with their own interests, and government agencies, whose pro- or anti-labor perspective varies. Despite the high level of control Uber exercises over work conditions, to date, these judicial processes have not resulted in regulatory constraint on Uber's labor practices. They have been settled without resolution, stymied by arbitration provisions, or remain mired in long processes.

Conclusion: Elite Politics of Disrupted Regulation and Challenger Capture

Uber's brash "act first, apologize later" entrance into urban markets disrupted a highly regulated ride-hailing sector that displayed the classic rent-seeking traits described in the Stigler model of regulatory capture. Prior to Uber, private taxi interests enjoyed anti-competitive barriers to entry and price controls. The taxi regulatory regime, however, also included public interest provisions in the form of customer and labor protections, safety, and, occasionally, public goods. Its disruption following Uber's entry raised key questions for regulators about if and how to regulate Uber.

Uber has played an active role in achieving regulatory outcomes compatible with its business model. Uber has enjoyed both structural and instrumental power and has had the resources to deploy a stunning array of insider and outsider strategies. Its political strength has made it especially influential in the legislative arena. In city councils and state legislatures, it has succeeded in limiting consumer and safety regulations to those that conform to its business model of growth, supply and price flexibility, and low-cost service provision. In general, Uber has been able to influence regulations and, in those cases where it initially fails, often to get them reversed. Worker protections, vigorously opposed by Uber,

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[87] Because this filing was made with the EEOC and is not a lawsuit filed in federal court, it is not publically available. As with other administrative contexts, if similar complaints have been filed with the EEOC, we would not know unless the plaintiff or his attorney went public with the complaint, as was the case here.
[88] We speculate that the numbers are relatively low; few drivers are likely aware of potential "employee" rights or the process to obtain them. We also presume that even fewer are likely to mobilize those rights because they are repeatedly told by Uber representatives that they are independent contractors. The National Employment Law Project has speculated the number to be "dozens" nationally (Ruckelshaus 2016).
[89] The three drivers were individually determined to be employees for purposes of unemployment insurance. Uber is appealing these three decisions claiming the drivers were "handpicked by the NYTWA" (Griswold 2017).

have rarely made it to the agenda in legislative arenas. Drivers' issues have instead been taken up as legal issues in judicial venues and have not resulted in broad regulatory change.

The Uber model of disrupted regulation is an elite-driven politics of challenger capture. The major regulatory models in the literature are not good fits for this model. Most feature only two interests—private vs. public, or equivalently, producer vs. consumer. Interest alignment is more complex in the Uber case. The private interest is often divided, and the private and public interest is not always opposed. Intra-producer conflict occurs along an incumbent-challenger cleavage, which is primarily played out in the legislative arena, as well as along a labor-capital cleavage, which is most often played out in judicial venues. Atomized customers and drivers do not have autonomous power. They have benefited from their alignment with private interests and have participated in the politics of regulation primarily when mobilized by elite actors. Consumers and drivers are aligned with, and mobilized by, Uber in the initial disruption or "deregulatory" step on issues of entry and price controls, which ensure Uber's continued presence in the market as a provider of a service and jobs. In the subsequent TNC regulatory step, consumers are aligned with taxis on some leveling issues, which has contributed to regulations addressing consumer protection and safety. Drivers lack alignment with concentrated interests in legislative arenas. As a result of this political disadvantage, labor issues are taken up in judicial venues primarily by surrogates, but to date, without success.

Disrupted regulation has given rise to a dual regulatory regime of the ride-hailing sector in cities across the country. Uber's entry undermined the taxi regulatory regime not by the adoption of deregulatory policy or non-implementation through "corrosion," but by disruption. The subsequent regulation bifurcated the ride-hailing sector by creating an alternative classification of "TNC," thus exempting Uber from taxi regulations. The regulatory regime on taxi incumbents remains intact but no longer operates to their advantage. On the contrary it puts taxis at a competitive disadvantage relative to the regulations (or lack thereof) for TNCs. The politics of regulating the new entrants has thus been one of challenger capture.

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