Abstract

From the rise of the “on-demand” economy to the proliferation of low-wage, contingent, and precarious work, it is becoming increasingly clear that the old models of the social contract are eroding. This paper provides an overview of the drivers behind this collapse and the key frontlines in developing a 21st century social contract. First, it suggests that the collapse of the old social contract is rooted in deeper trends in technological change, financialization, and the reallocation of economic power in 21st century capitalism. Second, it argues that to address these changes, public policy must focus on three major goals: regulating the new forms of private power in the economy; expanding the voice and economic independence of workers through new modes of organizing and an updated social safety net; and creating more responsive and inclusive institutions of governance to implement these policy changes. These initiatives are about more than just worker rights and wages; they are fundamental to creating an inclusive and egalitarian economy.

Introduction

Last year, a group representing 400,000 Uber drivers filed a class action lawsuit against the company, claiming that they were not independent contractors as formally stated, but rather de facto employees of the company who were owed back pay and benefits required for full-time workers. A proposed $100 million settlement was thrown out by a judge who declared that the potential value of the suit was over a thousand times more.¹ Uber is the leading exemplar of the latest wave of Silicon Valley innovation: the rise of “platform” companies that link consumers and buyers to a range of sellers, producers, and services on-demand. These companies present themselves as technology companies that merely match buyers and sellers rather than directly employing the service providers. This fluidity is their central hallmark, making them more dynamic and effective in providing services, and purportedly offering service providers a sense of greater flexibility and independence. But the lawsuit is indicative of the pitched battles over Uber’s labor practices. How can we ensure workers in these platform systems are adequately paid and have access to benefits and labor protections?

Meanwhile, in the fast food and restaurant industry, efforts to mobilize fast food workers into strikes has

escalated into a nation-wide movement to raise the minimum wage to $15 per hour. Here too workers face an increasingly precarious position: low wages, extremely inconvenient scheduling, lacking in the protections and benefits that are afforded to many full-time and unionized workers. From restaurant workers to farmworkers to domestic workers, these laborers exist outside the scope of conventional labor unions, excluded from collective bargaining by limitations built into existing labor laws. For many new-generation worker organizers, this is a key frontier for labor rights and social policy.

In both these “online” and “offline” worlds, there is a common set of underlying problems that run deeper than the surface-level debates over wages and worker rights. Our default ways of governing and structuring the modern workplace is increasingly at odds with the nature of the modern economy. 20th century liberalism was implicitly organized around three presumed pillars: large corporate employers like Ford or GM that had extensive internal pathways for upward mobility; unionized workforces that could collectively bargain for wages and labor rights; and a regulatory apparatus that would oversee both big business and organized labor. This triad collectively comprised the core social contract. In exchange for full-time work, most families were assured a basic level of welfare, social insurance, and upward mobility. This basic structure systematically excluded many communities, including women and minorities, but for those included, it provided an engine for economic dynamism, mobility, and equality.

The problem is that this tripartite structure no longer describes the 21st century economy. In both the online and offline worlds, work is increasingly organized not in large, multifaceted companies, but rather in highly disaggregated, fragmented, and disintermediated forms; many workers are increasingly freelance or contingent and non-union; and regulations are being left far behind the pace of technological innovation and economic transformation. While marginalized and disempowered constituencies often bear the brunt of this upheaval, the trends driving this changing nature of work indicate that the erosion of the 20th century social contract will affect workers up and down the income scale.

Yet it would be a mistake to shoehorn today’s struggling workers into old regulatory regimes. The problems in many offline, contingent work sectors arose in large part because these sectors and constituencies were deliberately excluded from the labor standards and social contract arrangements of the 20th century New Deal order.

In the on-demand economy, even if Uber drivers were regulated as full-time employees, this would seem to undermine much of the social value of the on-demand economy itself. As a fluid network of drivers who can clock in and out dynamically—and by matching riders and drivers through sophisticated algorithms—Uber can more effectively and rapidly meet fluctuating user demand. By creating a single platform that operates across cities, Uber has made this kind of taxi service provision much more efficient and effective than the often corrupt, ineffectual practices of local taxi franchises—who, it must be noted, are not themselves paragons of equitable worker treatment or regulatory compliance.

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The ability of online platforms like Uber to leverage consumer ratings addresses issues of consumer protection and trust in ways that are more efficient and effective than ex ante licensing. It is also the case that many “freelancers” who work part-time as Uber drivers (or as service providers for other on-demand economy platforms) highly value the degree of personal control they have over when, where, and how much they choose to work via these platforms.

The problems with Uber, or guest workers and domestic workers, or fast food companies, are not really ones of individual corporate malfeasance; rather they are deeper, more structural failures of our social contract writ large. These changes in the nature of online and offline work are indicative of a major shift in the dynamics of 21st century capitalism, arising from a powerful confluence of new technologies, finance, new business practices, and eroding labor and social welfare regulations. These shifts present a major challenge for fundamental values of economic equality and opportunity, as well as democratic accountability.

To address these problems, we first need a better understanding of the underlying drivers of the collapse of the old 20th century social contract model. This in turn clarifies how we must go about reinventing our laws, policies, and practices to assure opportunity and accountability in a 21st century economy.

This paper provides an overview of the drivers behind this collapse, and the key frontlines in developing a 21st century social contract. First, the paper suggests that the collapse of the old social contract is rooted in deeper trends in technological change, financialization, and the reallocation of economic power in 21st century capitalism. Second, the paper argues that to address these changes, public policy must focus on three major goals: regulating the new forms of private power in the economy; expanding the voice and economic independence of workers through new modes of organizing and an updated social safety net; and creating more responsive and inclusive institutions of governance to implement these policy changes. These initiatives are about more than just worker rights and wages; they are fundamental to creating an inclusive and egalitarian economy.

**Structural changes in technology, economy, and power**

The anxieties arising from the on-demand economy and the proliferation of low-wage, precarious, and contingent work are manifestations of deeper trends reshaping our economy. First, changes in technology, finance, and business practices are radically altering the corporate structure. Second, these changes are also altering the distribution and flow of income and benefits, which are concentrated at the top of the income scale. Third, these trends produce a very different distribution of economic power. These are the three deep dynamics that a progressive economic agenda will ultimately have to tackle.

1. **The fragmentation of corporate structure**

The archetype of work for much of the 20th century was, at least on paper, the large employer, like General Motors or Ford. These companies were vast, employed tens of thousands of people at all levels, and offered a

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v See e.g. “Freelancing in America: 2015,” Report by Freelancers’ Union and Upwork.
range of jobs, wages, and pathways for upward mobility. They were discrete entities that were subject to government regulations, and conduits for social contract provisions, tying the provision of healthcare and Social Security to individual workplaces and employment status.

Today that structure is increasingly an anachronism. The modern corporation is instead a highly fragmented, disaggregated entity. Through subcontracting, franchising, and outsourced third-party management, corporations increasingly rely on a whole ecosystem of nominally independent but ultimately subservient entities. These organizations are the ones that bear the direct costs and challenges of managing frontline workers in factories, shipping goods to market, and the like. The brand name company itself no longer directly employs or controls much of the work that produces its core products. Just as Uber can claim to be merely a technology company matching independent drivers to riders, most large corporations today, from clothiers to restaurants, can claim a similar distancing from their most foundational—and low-wage and precarious—workforce.

This practice, which economist (and now Department of Labor administrator) David Weil calls the “fissured workplace,” is endemic, and poses a major problem both for workers and for public policy. As Weil documents, this new model of corporate structuring means workers have less security, upward mobility, and benefits—and that regulators have little purchase on the activities occurring off-site and off-books of primary regulated corporate entities. As a result, this fragmentation plays a role in driving the growing disparity of income and wealth in the U.S. economy.

This fragmentation of the corporate structure is partly a product of technology: Advances in computer and information technologies dramatically reduce the cost for the primary corporation to monitor and oversee its various subcontractors and franchisees. As search, information, and transaction costs decrease, following the logic of Ronald Coase’s famous article on the size of firms, it becomes more efficient for firms to procure goods and services over the open market rather than internally. But this is not just a story of technological efficiency; there are also very powerful economic and political incentives at play. As Weil documents, part of the story is also a fiscal one: investors and financiers increasingly play a large role in shaping corporate strategy by demanding ever-increasing returns, creating intense pressures on firms to raise profits and cut costs. And one of the most effective ways to cut costs is to move workers (and their Social Security and healthcare benefits) off the company balance sheet—and in the process, remove them from the umbrella of regulatory oversight.

But this is also a product of the changing distributions of power in the modern economy. A permissive legal and regulatory environment means companies can get away with contractual relationships with various subcontractors that allow the lead company to fully retain control while diffusing responsibility. The growing dominance of finance, investors, and primacy of shareholder value orient corporate incentives around balance-sheet pressures. The decline of countervailing pressure from organized labor both domestically and transnationally magnifies the ability of corporate leadership to take this path. And the ready presence of a vast reserve labor force of under-employed and underpaid workers means there are always takers for the

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precarious jobs offered under these arrangements.

These trends explain the proliferation of low-wage, contingent, and precarious work in industries like apparel, food, and restaurants. But it also largely explains the rise of the seemingly new business models of the on-demand economy. Consider Uber once again: Uber is at its core a platform, replacing taxi dispatchers and middlemen by directly connecting drivers and riders through a technology-enabled platform, without the structure of full-time employed workers. This basic model is at the heart of all on-demand companies, and is a recurring strategy in the Silicon Valley playbook, from Airbnb to Taskrabbit to other startups.  This platform approach is what gives rise to the paradoxical nature of these businesses: On paper, they have few direct employers and very little responsibility over the conduct, wages, and benefits for the service providers whose “voluntary” (and rapidly scalable) participation in the platform makes the service attractive to consumers; yet they also seem to exert an outsized level of control over the markets they enter. It also institutionalizes the fissuring of the workplace that Weil describes in low-wage sectors: workers are increasingly “off the books,” and control is centralized in the lead company.

2. Technological change, automation, and economic inequality

A second structural trend animating the rise of Uber and other similar business models is the powerful combination of technological change, automation, and economic inequality.

There is a growing debate among economic sociologists over the drivers of income inequality today. For some, like Thomas Piketty in his now-famous *Capital in the Twenty-First Century*, the primary driver of inequality is the increasing returns to capital, which allows the wealthy to grow their wealth faster than the rate of overall economic growth. The increasing returns to capital are partly a result of technological change and the rise of modern finance, but also about shifts in political power that drove deregulation and the decline of labor. For others, inequality is a result of increasing returns to skilled labor, leading to the rise of a super-elite of highly-skilled, over-compensated workers such as financiers, lawyers, CEOs, and the like, who capture an increasing share of the wealth created by booming economic productivity—and in turn, use their wealth and cultural capital to secure favorable public policies from government officials. Indeed, there is good evidence that while productivity has continued to grow, top earners claim a growing share of the wealth created, while lower-income groups and communities of color fare worse.

At the same time, many low- and middle-skill jobs are evaporating, not so much because of globalization and outsourcing but because of technological changes that enable the cost-cutting fragmentation of the corporation and automation of many former jobs. Here too the story is a mix of technological change and shifting political power. The decline of labor plays a major role in both explanations for inequality, as ideological capture of the policymaking apparatus to create a legal and regulatory environment increasingly favorable to big business, finance, and hyper-elite.
We are largely familiar with critiques of booming management incomes in comparison to stagnant worker wages, and this inequality story is also present in the on-demand economy. Uber is a glaring manifestation of these broader trends: The social value created by Uber’s platform and network of drivers does not primarily accrue to the drivers who make Uber work; despite promises of $15–20 per hour wages, Uber drivers often take home far less while bearing the costs of their own gas and insurance. Rather, the fabulous wealth generated by Uber flows primarily to its investors—who, by owning the “capital” of the product, the technological platform itself, and its underlying data, are capturing the returns—and to a lesser extent to its founders and top leadership, the highly skilled and thus highly remunerated workers at the top.

On-demand companies like Uber capitalize on a readily available low-wage workforce willing to take its offer of insecure, under-waged labor, precisely because of the structural rise in inequality. Recent data suggests that as many as 54 million Americans, over a third of workers, have taken on work as “freelancers”—a category that includes not only individual entrepreneurs but also temp workers, independent contractors, and workers cobbling together income from a mix of employers and “gigs.” At the same time, there are a growing number of vulnerable “precarious” workers—low-wage, often from communities of color.

As a number of critics have noted, the so-called “sharing economy” actually depends on the displacement of workers and their exploitation: because of the lack of wages and jobs in the economy as a whole across most wage and skill levels, there are plenty of workers willing to take Uber’s terms, lacking in job security, benefits, or stability. The image of a sharing economy seamlessly matching skills (e.g. drivers) with demand (e.g. riders) and spreading the benefits equitably is a sham. This is less futuristic egalitarian utopia and more plain-vanilla, 19th century capitalism at work: an extraction of value from workers with little choice in the matter and few mechanisms for collective bargaining or advocacy, sanctified by the appeal to a superficial notion of liberty of contract, where workers are free to take it or leave it.

While some futurists have suggested that the boom in information technology will have explosive and exponential effects, transforming production and consumption to the point where it will radically expand economic wealth and opportunity, it seems likely that, absent political and policy change, only a select few will benefit from these technological changes: the owners of capital, and those with highly placed, technology-complementing skills. Furthermore, it seems likely that the continued shift toward a fissured workplace and technological displacement of workers will work its way up the value chain, affecting increasingly skilled middle-income workers. Even Uber drivers, already in the position of low-wage precarious work, are not safe: Uber itself is investing in self-driving cars. Uber is thus both an instantiation of the most radical structural changes in the modern economy and a vision of the kind of future that likely awaits a wide range of industries and workplaces.

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xvi “Freelancing in America: 2015.”


3. Economic power and the task of democracy in the 21st century

These underlying changes in the structure of the modern corporation and the ways in which technology mediates production, distribution, consumption, and inequality suggest a major realigning of the modes of power that shape the modern economy.

First, on this account, even as technological tools help distribute the work of production, whether through the fissured workplace or through automation, power and control is ironically centralized among those groups that control the platforms and algorithms that enable the coordination of these distributed and automated modes of production. To put it another way, in the fragmented corporation, it is the lead company that consolidates power through its control over the nexus of monitoring technologies and contractual provisions governing franchisees and subcontractors. Similarly, in an increasingly automated mode of production, power resides among those who design and control the algorithms governing these systems.

Uber is indicative here too: The ultimate control of the Uber system lies not with the drivers, but with the coders who design and operate the platform itself. By creating and operating a platform on which the rest of the ecosystem depends, the platform operators can extract rents as a condition for participating in the platform. The platform operators also control the terms of exchange, setting prices, wages, and standards. This form of “platform power” is not limited to Uber; every company operating on a similar business model of consolidating control over the platform that matches users and producers of various kinds, whether Google, Facebook, Airbnb, or even Wal-Mart, possess this form of power.xx

Second, this platform power is itself responsive to two other loci of power: investors and consumers. Investors, whether in the form of venture capital, private equity, or other forms, structure the incentives of platforms to prioritize returns and cost-cutting over other social objectives. Consumer demand, meanwhile, remains the ultimate siren call for these firms: So long as they can capture greater market share and consumer dollars—particularly from higher-income consumers who are willing and able to spend more on the margin—these businesses can thrive. This reallocation of power also converts a conventional focus on consumer welfare into an especially pernicious form. Where the idea of consumer protection has at times been a motivating force for progressive economic reform, it has also at times served to obscure realities of power and exploitation of workers and small producers by large corporations and systems of production.xxi

In the 21st century economy, the changing nature of work and income creates a powerful convergence of interests among high-end consumers, such as those purchasing the cheaper products produced by fissured workplaces and made available by on-demand platforms, and the lead companies and their investors, who extract the primary returns from those consumer purchases. Left out of this distribution of power are workers, whose interests are subservient to investors, consumers, and the platform itself, and the public, whose interests, nominally represented through government regulation and public policy, are increasingly obsolete and toothless in the face of these structural changes.


xxi On the tensions of consumerism in progressive politics and thought, see Lizabeth Cohen, A Consumer’s Republic.
Post-New Deal, the archetype for American capitalism was essentially a tripartite bargain between large corporations, well-organized labor unions, and technocratic government regulators to provide the basic protections and benefits of the social contract through a mix of public oversight and private spending. Though this arrangement excluded many constituencies, from communities of color to women, much of social policy retains this framework, seeking to extend its reach to cover those left out of the initial New Deal synthesis. But these structural changes to the corporation, technology, and inequality—and their implications for labor and regulation—suggest that we need a fundamentally different approach to holding modern forms of private power accountable, and to reinventing the basics of the social contract.

**Democracy and equality in the 21st century**

The bargain and interaction between large, consolidated corporations, union-organized workers, and governmental regulatory oversight produced the foundations for Social Security, healthcare, and wages in the 20th century. This arrangement, which never included large swaths of American society, no longer functions even on its own terms to meet our needs for economic equality and democratic accountability. But there is nothing sacrosanct about the New Deal-era regulatory regime; the New Deal itself was largely a translation of ideas generated in a much richer period of innovation and experimentation with social policy and democratic governance arising in the Populist and Progressive Era, as reformers struggled to develop new forms of worker organizing, corporate structure, and government regulation to tackle the realities of industrialization. Now, at the start of the 21st century, we face a similar challenge of innovating new modes of economic governance to grapple with these structural transitions.

1. Holding private power accountable

A. Public utility regulation and the problem of platform power

A hundred years ago, the antitrust movement emerged to tackle what Louis Brandeis called “the curse of bigness,” the threat of concentrated private power and monopoly arising from the corporate titans of the first Gilded Age, from J.P. Morgan to John D. Rockefeller. Platform power presents a modern form of the curse of bigness, as platforms have outsized abilities to set the terms of exchange, influencing wages, prices, and standards and extracting rents in the process. Yet modern antitrust law focuses on the harms to consumer welfare—a standard that is difficult to breach for services structured around meeting consumer demand. Even under a broader standard of antitrust enforcement, it is not clear that antitrust policies are the best response to platform power: Breaking up Uber or other platforms into smaller entities would arguably destroy the social value of the services. The question then becomes, how can these platforms be held accountable to labor standards and the public interest?

The platform power of these companies stem from a few different sources. First, by centralizing control over access to the marketplace matching buyers and sellers, platforms have outsized influence on wages, prices, and terms of access to the service. This raises questions of fairness in terms, possible extractive pricing, possible

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See e.g. Daniel Rodgers, Atlantic Crossings; Charles Postel, The Populist Vision.

See Rahman, “Curbing the New Corporate Power.”
discrimination, and access to the services. But platform power is also manifest over the increasingly troubling control these businesses have over mountains of data accumulated from their users. On the one hand, this data helps platforms optimize their algorithms, but it also raises troubling questions about privacy, subtle forms of discrimination as services automatically screen users, and lack of transparency about how platforms might shape the flow of people, services, goods, and resources.xxiv

A number of current proposals suggest converting these platforms into more publicly oriented organizations—or displacing them with counterparts more attuned to the public interest. One option, suggested by Nick Grossman, the chairman of Union Square Ventures, is to subject platforms like Uber to competition from rival platforms that are “thinner”—offering only the basic service without imposing additional requirements and extracting too much from workers and the public. While platforms will have a tendency to “thicken” over time, imposing more and more requirements as they achieve a more dominant market position, Grossman argues that technology monopolies are eventually challenged by more open source alternatives. The key is for these alternatives to match the original platforms in terms of technology and user experience. While that is a high bar to meet, if it can be met, then we could see the emergence of platforms that prioritize worker support and safety, or that offer more plain-vanilla “thin” services without the add-ons.xxv Indeed, a number of critics have suggested that worker-owned cooperative platforms would be a simple solution to the problem of extractive platforms.xxvi If, for example, an Uber rival were structured as a worker cooperative with its profits cycling back to its drivers, then things would look very different.

A challenge with the rival platform approach, however, is that existing platforms like Uber and Airbnb may have already achieved an insurmountable lead in establishing a network of providers and users, and in accumulating so much user data that their algorithms will always be superior. Networks offer increasing returns to scale, and so does accumulated data; past some threshold it is difficult for new entrants to rival the sophistication, depth, and penetration of existing platforms. Consider for example how difficult it would be for new search engines to challenge Google’s optimization algorithms, or how hard it would be to build a network of drivers as extensive as Uber’s.

Elsewhere I have suggested that another Progressive Era regulatory model may be better suited to addressing the problem of platform power: the public utility model.xxvii Under this approach, platforms could be subjected to additional public policy requirements such as common carrier and antidiscrimination obligations by virtue of their size and expansive influence. These obligations can be structured as part of franchise agreements permitting the platforms to operate in particular metro areas or states. There is a rich history of regulating public utilities, even in platform-like contexts. Financial exchanges like the New York Stock Exchange and commodities exchanges, for example, have often been private organizations that operate under tight restrictions and public policy directives from regulatory overseers. Prior to deregulation in the 1980s, this hybrid public-private model ensured that individually motivated financial transactions generated public goods of liquidity,

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xxiv See e.g. Frank Pasquale, Black Box Society.
xxvii Rahman, “Curbing the New Corporate Power.”
information, and credit. Pre-New Deal regulation often involved state and municipal charters for public utilities not only in industries like electricity and transportation, but also in the production and distribution of goods that were deemed essential to a good life, like milk and ice.

The potential for a modern analogue to the public utility model is best exemplified by the recent battles over net neutrality and municipal broadband. The net neutrality fight was not about eliminating internet service providers (ISPs), but rather about requiring basic common carrier obligations to allow equal access to different types of content. Because ISPs control the terms of access to the internet, they can be understood as a kind of infrastructural good, upon which a wide variety of stakeholders depend. This control brings with it the need to ensure that all comers are treated equally. Similarly, efforts to provide greater municipal access to broadband services has resulted in questions about the franchise agreements under which cable and internet companies are permitted to operate in cities, and whether companies like Verizon have done enough to meet their public obligations under these franchise agreements.

In context of Uber and other platforms, it is plausible to imagine that as a condition for franchises from city or state governments permitting operation in metro areas, these services might be obligated to comport with some basic regulations about labor standards, antidiscrimination, and common carrier principles, and addressing public interest concerns such as Uber pricing in emergency contexts. Already some advocacy groups have called for platform companies to voluntarily adopt public-interested codes of conduct, such as the National Domestic Workers Alliance proposal for a Good Work Code, which highlights core values for how platforms should relate to the service providers in their systems, including stability and flexibility, transparency, livable wages, shared prosperity, and inclusion and input.

Public utility principles can help defuse some of the more pernicious threats of platform power among technology firms. But in other contexts, the problem of private power will also requires two complementary policy responses: first, a revival of conventional antitrust enforcement and competition policy; and second, a serious grappling with the problem of an overly financialized economy.

B. Reviving antitrust and competition policy

In many traditional, “offline” sectors of the economy, we are seeing an increased concentration of market share in dominant firms, from airlines to pharmaceuticals. There is a growing body of research that suggests that such market concentration may be a driver of inequality and declining economic dynamism through several channels. Reduced competition naturally opens up the possibility for dominant firms to charge extractive prices from consumers. But it also enables them to depress wages, as workers have fewer alternative job opportunities. Furthermore, increased competition reduces the rates of new firm entry and exit, suggesting decreased economic vibrancy, opportunity, and innovation. These are not new problems; if anything they

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\[^{xxviii}\] See e.g. Julia Ott, When Wall Street Met Main Street.


\[^{xxxi}\] Good Work Code, online at http://www.goodworkcode.org/.

represent a 21st century return to the kinds of concerns that animated the emergence of antitrust law and enforcement in the late 19th and early 20th centuries.

C. Financialization

Similarly, we are also seeing a return to an old turn-of-the-century concern with the problem of big finance. Despite the 2008 financial crisis and attempts at financial regulatory reform, we have yet to address the deeper problem of financialization. As suggested above, financialization is what partially drives the shift in power and incentives toward shareholder value and investor returns over worker, producer, and market competition concerns. Since the financial crisis, several scholars and policymakers have raised concerns about the degree to which modern finance is absorbing an overly large share of societal resources, including not just funds but also talent. It is possible that reducing the size of the financial sector may be a necessary complement to antitrust and public utility strategies aimed at reining in private power and restoring economic vibrancy.

2. The new social contract

Regulating the platforms and networks of fissured corporations directly may be one way to address the labor standard questions, shifting to a regime where the platforms themselves abide by codes of conduct and common policies for wages and benefits. A corollary to this strategy is the expansion of existing labor law enforcement. David Weil, now the Administrator of the Wage and Hour Division of the Department of Labor (DOL), has argued for a shift to strategic enforcement of labor law requirements. First, enforcement can target lead brands to create greater deterrence and incentives that ensure responsibility for labor conditions down the chain of subcontractors. This move is facilitated by new rulings from the National Labor Relations Board that even in hiring contractors or working through franchisees, firms may still be held to be a “joint employer,” facing the obligations and requirements of the employer-employee relationships, particularly the obligation to bargain collectively with unions. California has similarly amended its labor code via AB 1897 (2014), imposing joint liability on businesses that use labor contractors and fail to hold to wage standards, while bill SB 179 establishes vicarious liability for a contractor’s employees, making it unlawful to enter in the contract in the first place if the contractor lacks the resources to comply with all existing state and federal labor laws.

But this enforcement approach by itself cannot address the underlying structural shifts away from worker power described earlier. In the long run, we will likely need to create structures that complement increased regulatory oversight by enabling workers to exercise more dynamic and effective forms of voice in light of the fragmented corporation and technological change. Conventional labor organizing structured under the Wagner Act presumes a single employer, a single workplace, and a set of duties and obligations that can be structured around a contract that stays in place for several years. But these factors do not describe the growing majority of workers in today’s economy, given the moves away from full-time work and direct employment. Furthermore, workers in this economy face difficulties in self-organizing: whether “freelancers” or low-wage precarious workers drawn largely from communities of color, workers are dispersed throughout the system and face large barriers and costs to direct advocacy.

xxxiii Benjamin Friedman, “Is our financial system serving us well?” Daedalus.
xxxv Browning-Ferris of California, NLRB decision, August 27, 2015.
A. Reinventing labor organizing

This in turn suggests the need to go beyond 20th century models of union organizing. Indeed, much of the energy in new forms of labor organizing today is in working with vulnerable populations, such as communities of color in the restaurant sector, domestic workers, freelancers, and precarious workers in the “gig” economy. Groups like the Restaurant Opportunities Center, the National Domestic Workers Alliance, the National Guestworker Alliance, and Peers.org provide worker organizing and mutual aid and services such as access to training and healthcare programs. They also operate as important advocates for workers outside of the legal structure of Wagner Act collective bargaining. Similarly, new online platforms like Coworker.org have succeeded in organizing disparate communities of workers, such as a recent campaign mobilizing over 17,000 Starbucks workers around the world to press for improvements in scheduling, wages, and workplace safety. xxxvi

The growth of these “alternative-labor” organizations and worker centers suggests a future for building labor power in the new economy. Rather than focusing on traditional NLRA-sanctioned organizing, where unions act as exclusive representatives of workers to engage in binding collective bargaining, these organizations focus on more dynamic forms of advocacy—including interfacing with and at times pressuring regulators to step in. By organizing effectively, workers can place pressure but also be effective counterparts and collaborators with both regulators and businesses in building a more equitable set of worker standards and policies.

B. Reinventing social insurance

The other mode of structurally shifting power toward workers and producers in a changing economy is decoupling the basics of income and social insurance from the workplace. The ability of workers to exercise economic independence—being able to set the terms of their entry into the labor market from a position of autonomy rather than necessity—has long been a touchstone for labor organizing. xxxvii Here too, major policy initiatives of recent years—such as the Affordable Care Act and the creation of state exchanges where individuals can access health insurance, and the recent Department of Labor proposal to extend the reach of traditional overtime pay to cover a wider range of middle-income and white-collar workers xxxviii—are partial, stopgap measures at best. Ultimately, basic access to social insurance, healthcare, Social Security, and the like should not be conditioned on full-time employment. If access to these basic needs is decoupled from full-time work, this reduces the pressure to shoehorn modern workers into full-time work structures—and it also reduces the pressure on workers to take any kind of employment from a position of insecurity.

In one proposal, workers could have individualized “Shared Security Accounts,” which accrue basic employment benefits like Social Security, days off, paid sick leave, retirement, health insurance, workers’ compensation, and the like over time, regardless of particular employers, full-time or part-time work. Employers would pay into these accounts on a prorated basis, but instead of the benefits being tied to a

xxxvii See e.g. Alex Gourevitch, From Slavery to the Cooperative Commonwealth (New York: Cambridge University Press, 2014) on 19th century labor republicanism.
xxxviii Department of Labor, Wage and Hours Division, “Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees,” 80 F.R. 38515 (July 6, 2015).
particular employer and particular job, they would be portable and owned by the workers themselves.\textsuperscript{xxxix}

More broadly, the changing economic structure suggests the importance of reviving proposals for universal basic income. Basic income proposals have come in a variety of forms, from a “negative income tax” that operates like the earned income tax credit supplementing individual income, to “stakeholder grants” of lump sums given to every citizen at a certain age, to universal basic income of a fixed amount equal for every citizen on a monthly basis. Across these different policy mechanisms, there is a common root in providing individuals with a greater degree of security and autonomy: If everyone has a basic level of income on which to depend, they have greater autonomy in deciding what kinds of jobs to take and when, freed of the dependency on work to make basic ends meet.\textsuperscript{xl} This in turn empowers service providers to take advantage of the flexibility and individual agency that gig economy jobs purport to provide: Individual service providers can be truly in command of their decisions about where, how, and how much to work, so long as they have a basic income and safety net on which to rely.

3. Restoring democratic social control

Workers and service providers aren’t the only constituency finding its power dramatically curbed in light of the structural changes of the modern economy. The public as a whole is also largely disempowered by these shifts. As power flows to privately owned platforms, investors, and consumer demand, it erodes the capacities of government agencies to make and enforce public policies—and in the process, limits the public’s capacity to exert some degree of democratic control over these central matters of social and economic life. A 21st century social contract, then, also requires an updating of our systems of democratic governance and regulation.

A. A modern regulatory state

To some degree, efforts to enhance regulatory enforcement, such as the proposals by Weil and others, represent an attempt to restore a level of governmental oversight in the public interest. Indeed, many of the policy strategies suggested earlier would require a revived creativity and boldness among regulatory bodies, from the Department of Labor to the Federal Trade Commission. Some of the most significant attempts to grapple with the changing nature of the economy in recent years have taken precisely this form, including not only the DOL’s approach to strategic enforcement under Weil, but also its updating of overtime pay rules, as well as the FCC’s push for net neutrality.

These examples suggest that a key frontier for reform will be in streamlining, empowering, and making more democratically responsive and accountable the regulatory agencies that have the rulemaking and oversight authority to begin tackling the problems of private power and social welfare. This means staffing regulatory agencies with personnel who have the expertise and vision to exercise regulatory powers creatively. It also means finding ways to invest in and expand regulatory capacity through legislation or other policy changes that might be envisioned to tackle the problems of the new economy. For example, statutory attempts to update antitrust laws or social insurance programs like the Affordable Care Act might include provisions that expand


\textsuperscript{xl} See e.g., Bruce Ackerman, Anne Alstott, and Philippe van Parijs, Redesigning Distribution: Basic Income and Stakeholder Grants as Cornerstones for an Egalitarian Capitalism (New York: Verso Books, 2006).
authority and funding for relevant agencies to execute these ideas, while also developing creative institutional fixes to ensure that major constituencies are adequately represented in agency policymaking processes.\textsuperscript{xli}

**B. Democracy and the city**

This problem of democratic oversight and control also manifests at the local level.

Consider the cumulative impact of services like Airbnb and Uber on the nature of the city. These services, while nominally accessible to all, cater primarily to upper-income consumer demand: It is ultimately the relatively well-off who can enjoy the benefits of easy ride-sharing and short-term vacation rentals. Others may participate in these transactions as service providers (“sharers”), but they are ultimately in the position of offering services for sale to wealthier clients. At the same time, these services also represent a skewing of labor and city resources toward servicing a tourist class of visitors. There are many different ways to structure a local urban economy, and orienting a city around elite consumption or tourism are two plausible models of urbanism. But they are not the only ones, nor are they uncontroversial.

As these platform services become more prevalent and saturated, they can induce a dramatic reorientation of the city away from its residents. At the extreme, recent studies by the Los Angeles Alliance for a New Economy (LAANE) suggest that Airbnb alone has pulled over 60 percent of all new housing units that came online in the last four years out of the rental market into the short-term vacation rental space—in a city facing a chronic housing and affordability crisis.\textsuperscript{xlii} Further investigation indicates that the majority of Airbnb listings and revenue come from landlords with multiple listings operating de facto hotel services; this in turn spurs greater harassment and eviction of existing rental tenants who are already under pressure in rapidly gentrifying cities like New York and Los Angeles.\textsuperscript{xliii} The issue here is not so much the evasion of hotel industry tax and regulatory regimes, although that has been a major sticking point for most city governments. Rather, the broader problem is the ways in which decisions about the very character of cities and neighborhoods—about zoning, urban planning, urban infrastructure, and development—are effectively being outsourced to platforms that channel flows of people and resources without particular attention to these systematic consequences.

And yet there is tremendous potential to leverage these platforms to magnify our ability to make livable, inclusive cities. Imagine if the data collection, algorithmic optimization, and market-making capacities of platforms could be utilized to fill gaps in mass transit systems, housing access, or urban planning more broadly. This would require a major shift on the part of Silicon Valley platforms. For example, rather than being “everyone’s private driver,” Uber would have to reorient to act as a responsible partner in developing a public and collective infrastructure for transit in the metro area. Rather than servicing wealthy tourists, Airbnb could actively help weed out illegal rental conversions through its data algorithms, and even help cities bridge chronic housing shortages and coordinate with neighborhood development planning. Government too would have to radically change its stance from a knee-jerk and oppositional one to a more dynamic and collaborationist mode. And both platforms and government would have to be checked and complemented by stakeholders including neighborhood residents, workers, and others.

\textsuperscript{xix} See e.g. Rahman, “Rethinking Regulation,” Roosevelt Institute, April 2016; Rahman, Democracy Against Domination, Chapter 7.

\textsuperscript{x} Roy Samaan, “Short-Term Rentals and L.A.’s Lost Housing,” LAANE, August 2015.

We have yet to develop effective models for stakeholder voice and representation in shaping the aggregate effects of platforms and algorithms. But this is an important arena for future innovation in governance. It is no accident that many of the modern powers of city government to exercise Home Rule, as well as their zoning powers, emerged out of the ferment of turn-of-the-century industrialization as an attempt to create both a more effective and more democratically responsive model of managing economic upheaval. As cities emerge as the frontlines for grappling with the impact of on-demand businesses operating at scale, it is perhaps time to think about a new reinvention of the modes of democracy, participation, and urban planning processes.

**Conclusion**

Our received 20th century model of the social contract is eroding. As this paper suggests, the current debates over wages, worker protections, and inequality are in large part products of deeper trends: the fragmenting of the corporation, technological change and the reallocation of returns and resources to the elite, and the broader reconfiguration of power in the economy. To address these underlying dynamics, we need to develop a new 21st century social contract.

In particular, there are three frontlines for new policy innovation.

First, we must update our legal and regulatory tools to hold accountable the new forms of concentrated private power in the economy. This could include reviving antitrust enforcement and competition policy; adapting public utility principles to deal with new platform companies and infrastructural service providers like Comcast; and addressing the problem of financialization.

Second, we must restore the economic independence of individuals, families, and communities by accelerating the creation of new forms of worker organizing and updating our systems for social insurance, welfare, and benefits.

Third, we need to think seriously about institutional reform in our governing institutions themselves. Unless governing bodies are politically inclusive and responsive to the full range of affected constituencies, it is unlikely that these policies will move forward and stay true to their purpose. This means thinking about how to reform not just our electoral and legislative process, but also our regulatory agencies and the role of cities in governing the new economy.

The need to reinvent the social contract for the 21st century is not just the defining economic policy challenge of the moment; it also provides us with a unique opportunity to make good on deep progressive aspirations. It should be no surprise that the most powerful movements for worker rights in the new economy, whether online or offline, such as the Fight for 15 or the National Domestic Workers Alliance, often use the language of inclusion, dignity, and standing. It should also be no surprise that the frontiers of progressive organizing and policy innovation are found among communities that were excluded from the 20th century New Deal order: communities of color, contingent workers, and women.

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Progressives today have an opportunity to build, for the first time, a truly equitable and inclusive economy that encompasses different kinds of work and different communities of workers. The history of labor and civil rights movements is replete with missed opportunities and failed attempts at creating a genuinely inclusive economy that addresses the structural inequalities of class, race, and gender. If we are successful in redesigning the social contract and modes of governance for the on-demand economy—if we curb the extractive power of platforms, empower workers by creating independent avenues for voice and universal access to basic income and social insurance needs, and enable all stakeholders to participate in the regulatory oversight of the modern economy—then the prize may well be a realization of this aspiration for a more inclusive economy and polity.