

A Framework for Thinking About Regulating Platforms

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Orly Lobel, [The Law of the Platform](#), 101 **Minn. L. Rev.** 87 (2016).

Much ink has been spilled over whether platform workers — be they Uber drivers, Task Rabbit taskers, or others — are employees or independent contractors, and litigation over alleged misclassification of platform workers is ongoing. Likewise, there is robust debate over whether the rise of such platforms benefits workers by expanding their earning capacity and flexibility, or simply serves to increase income insecurity and income inequality. Beyond employment, similar debates rage over other platforms, such as whether Airbnb and other home-sharing platforms enhance consumer choices and provide individuals with positive ways to monetize underutilized space, or exacerbate shortages of affordable housing and undermine stable residential neighborhoods.

Orly Lobel's article provides a broad framework in which to analyze such issues. The article is much broader than the work law implications of the platform economy, but it is extremely useful for scholars and policymakers facing work law issues.

Lobel usefully catalogues ten characteristics of platforms: They achieve economies of scale for individual-to-individual transactions. They facilitate utilization of idle capacity, whether it be spare bedrooms or workers' otherwise unproductive time. They facilitate commerce over extremely small transactional units, even a few minutes. They allow individuals to monetize almost anything, turning them into mini entrepreneurs. They facilitate customization of transactions. They substitute access for ownership in consumption. They reduce overhead. They reduce barriers to entry. They facilitate dynamic pricing driven by demand. They offer dynamic ratings of providers by consumers and consumers by providers.

Lobel discusses what she regards as easy cases for applying traditional regulation to platforms. For example, she sees no difference with respect to taxation, which she regards as designed to extract a percentage of profits wherever they are produced. She sees the issue of taxing platform transactions as a question of efficient collection and suggests that requiring the platform company to collect taxes may be the most efficient solution. (Interestingly, Lobel does not follow through on the implications for collection of employment taxes.) Other easy cases are permitting and occupational licensing. Lobel urges that where these regulations serve primarily to erect barriers to entry, they be replaced by liability rules and insurance requirements.

Lobel regards the employment question as one of the hard cases. Another hard case is zoning regulations. These raise tradeoffs that policymakers must confront. With respect to the employment status of platform workers, Lobel suggests focusing not on classification but on the protections that are valuable to society, such as anti-discrimination, safety and health, insurance, and portable benefits, regardless of classification. Generally, she observes that "[o]ff-on categories such as consumer-business; employee-freelancer; residential-commercial are, in some instances, no longer viable as organizing frameworks.... What this means for regulators is that, rather than a unified legal entity, which has traditionally been the object of regulation, transactions are now shaped by multiple actors, with varying capacities, interests, and needs."

Consistent with her scholarship concerning the “new governance” approach to regulation, Lobel highlights private approaches to handling risk: platforms providing insurance, platforms performing background checks, and dynamic ratings of service providers by consumers and of consumers by service providers. She recognizes that some of these developed as responses to litigation or were compelled by regulatory authorities. She observes that the advanced technologies employed by platforms enable better data collection and analysis, and urges that rather than devising regulations top-down, lawmakers collaborate with platforms to use the data to analyze problems and develop responses. Examples given include addressing ride-hailing platforms’ shortcomings in serving persons with disabilities and preventing discrimination by hosts on home-sharing platforms.

Lobel’s article raises many questions and provides no definitive answers. But it provides a very useful framework to consult in approaching legal issues raised by the platform economy with respect to treatment of platform workers as well as other social policy issues.

Editor’s note: For an earlier Jotwell review of *The Law of the Platform* see Margot Kaminski, [Disruptive Platforms](#) (July 19, 2017).

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