One for the Road: The Threat of Monopoly and Municipal Regulation of Ride-hailing Platforms in Toronto and the Greater Golden Horseshoe

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Abstract

The vehicle-for-hire industry is widely recognized as a critical municipal service that is commonly provided in the private sector but regulated to limit market imperfections and externalities (Dempsey, 1996; Cooper, Mundy & Nelson, 2010). With the emergence of ride-hailing platforms, such as Uber and Lyft, these regulatory regimes have not been extended to cover new business types, but rather have yielded a parallel self-regulatory regime for platforms (Collier, Dubal & Carter, 2018; Sundararajan, 2016). An emerging literature about digital platforms, however, suggest these firms are remaking capitalism in a fashion that encourages monopolistic and domineering practices, something that could threaten the mandate of regulators to protect consumers, protect health and safety, control nuisances and ensure the continued presence of the service (Harding, Kandlikar & Gulati, 2016; Srnicek, 2017; Zuboff, 2019). Through a case study of the regulatory regime for ride-hailing platforms in the City of Toronto and surrounding Greater Golden Horseshoe, this paper examines, how municipalities are confronting these threats from platform firms. The study assesses how local municipalities value the gift of private sector regulation and how they are confronting questions of data extraction, the potential for price discrimination, and the sustainability of local investment in the industry. The paper concludes that, while municipalities may be motivated to move away from regulating the vehicle-for-hire market, they are nonetheless making a concerted effort to develop new frames of analysis and enforcement capacity for managing platform capitalism.
Introduction

The vehicle-for-hire industry is a critical service for cities that, while privately delivered, has been traditionally regulated by municipalities to ensure safe and affordable transportation without discrimination (Dempsey, 1996). The emergence of digital ride-hailing platforms, or transportation network companies (TNCs), like Uber and Lyft, has transformed these industries and called into question the rationale for public regulation. Indeed, where regulators have loosened rules of vehicle-for-hire markets, we have not seen a repeat of past patterns of deregulation, which were characterized by rising fares, and falling levels of service (Harding, Kandlikar & Gulati, 2016). Yet this new approach remains contested by workers and scholars, who have begun to document a new logic of capitalism at work (Rosenblat, 2018; Zuboff, 2019; Srnicek, 2017). Among features of this proposed capitalist logic, the propensity to form monopolies, the lack of reciprocity with platform participants, and the use of asymmetries of information between market actors have all been identified as concerns for which political leaders, regulators and society at large ought to be concerned (Slee, 2015; Srnicek, 2017; Zuboff, 2019).

In confronting this emerging capitalist logic, regulators must contend with a host of unknowns, such as the application of pricing mechanisms and labour practices. Digital platforms have shown themselves to be shrewd interpreters of the law and have frequently operated in ways that challenge existing regulations (Rosenblat, 2018). Regulators, in turn, have hesitated to act quickly in ways that might obstruct the development of the industry overall (Collier, Dubal & Carter, 2018). While this restraint is prudent, a lack of critical inquiry into platforms could jeopardize the capacity of regulators to recognize and limit anti-social business practices. Municipal regulators have a mandate that varies across jurisdictions but generally demands for the protection of health and safety (regarding vehicle inspections, driver background checks), protection of consumer interests (regarding complaints of errors in fares) and the control of nuisances (regarding traffic congestion, impact on transit ridership) (Dempsey, 1996; Cooper, Mundy & Nelson, 2010). Just as past efforts at deregulating the industry have led to market failures, resulting in quick policy reversals (Dempsey, 1996), regulators today must be careful to balance the promises of TNCs with their mandates to maintain the long-term sustainability of the service.

This case study of the TNC industry in the City of Toronto and surrounding municipalities that make up the Greater Golden Horseshoe, looks at the discourse and rules developed by regulators throughout the region as they confront TNCs and the dynamics of a remade vehicle-for-hire
marketplace. I begin with an introduction to common frameworks of regulation for the vehicle-for-hire industry throughout North America and present the critical literature on digital platforms as a novel and domineering structure of capitalism. From this background, I develop a set of challenges that face municipalities as they move from a highly regulated vehicle-for-hire marketplace to one characterized in large part by self-regulation. After a brief introduction to the Greater Golden Horseshoe region, I examine how regulators in the region have approached this challenge. Through interviews with key informants who work as staff with city licensing departments or represent municipalities as council members and a document analysis of municipal bylaws and reports, I describe the themes that organize the relationship between the platform and regulatory bodies and assess the capacity of regulators to ensure a robust and sustainable marketplace.

Challenging the Municipal Regulatory Regime

It is unclear how platform businesses will impact market practices and social values in the long term. Whereas a properly functioning market is one important social value, there are numerous social repercussions that can result from changes in the marketplace. In this section we will examine the literature on social consequences of the emergence of digital platforms, with a focus on TNC companies. In the past, the vehicle-for-hire industry, has been found to have several market imperfections and externalities that required regulators to step in. The structure of the industry has traditionally made it difficult for passengers to compare prices or know the condition of the service with which they were engaging. The low barriers to entry frequently resulted in congestion and thin markets, particularly in dispersed settlements made it a challenge to match passengers with rides. (Dempsey, 1996; Harding et al., 2016). Over time, various models of regulation developed to address these challenges. Traditional regulatory mechanisms include quantity control of the number of licensed for-hire vehicles allowed on the road, quality control of the mechanical reliability of these vehicles, and economic control of the fares that are possible to be charged (henceforth the QQE framework, see Cooper et al., 2010).

Past challenges to the QQE framework in the decade of the 1980s demonstrated the value of these measures (Dempsey, 1996). In his review of taxi deregulation in 21 markets across to United States between 1980 and 1993, Dempsey (1996) finds that deregulation resulted in higher prices, lower income for workers, and falling levels of service. Drivers proliferated, packed into designated taxi stands and, after waiting long periods between rides, tended to add to prices to compensate for their time,
often refusing short-distance rides as a consequence. Overall this led to price increases on the order of 21%. By 1996, Dempsey finds that all but four cities had returned to regulation and that these cities that remained deregulated tended to be smaller than the average on the list and did not have an important airport to generate a large number of rides (Dempsey, 1996).

Dempsey (1996) characterizes the traditional vehicle-for-hire regulatory regime as an instance of an urban commons. Under such an arrangement what is held in common is the trust between passengers and drivers generated by the application of local regulation. Such regulation, then creates an “implicit compact” where small actors are able to access the marketplace, creating a safe market for on-demand rides at reasonable prices in the context of an otherwise hostile marketplace subject to low liquidity, and high externalities (Cooper et al., 2010). The QQE framework that generated these commons, has now been challenged in many markets with the entrance of ride-hailing platforms. As research on commons has shown, they are vulnerable to rapid expansions of the number of participants (Ostrom, 1990). Little surprise then that TNCs, that are premised on alternative measures such as easing barriers to working in the market, private mechanisms of trust building, and variable “surge” pricing policies to coordinate supply and demand, would threaten municipal regimes as a result of their rapid growth (Harding et al., 2016; Sundararajan, 2016).

However, the challenge of TNCs to the QQE framework has not been a repeat of past experiences of reduced regulation but the institution of a form of self-regulation for ride-hailing platforms that is administered alongside existing or modified QQE regulations for incumbent taxis (Collier et al., 2018; Harding et al., 2016). Under this framework, quantity and economic controls are eliminated, while quality controls are delegated to the platform for enforcement (Sundararajan, 2016). Harding et al. (2016) argue that TNCs overcome many of the traditional challenges of taxi markets. These platforms create a system of peer-review that give passengers insight into the quality of the service being offered, while guaranteeing a rate to riders before the ride begins. Ride-hailing platforms also provide a centralized virtual clearinghouse to efficiently distribute service while avoiding congestion in traditional pick up locations.

If the contemporary experience of deregulation does not match past experiences, Harding et al. (2016) identify a new threat – the threat of monopoly or cartel-like oligopoly. A recent episode of the reality television series Dragon’s Den, where entrepreneurs pitch their ideas to potential angel investors, presents a sobering commentary upon the competitive marketplace facing TNCs. InstaRyde, a licensed competitor for Uber and Lyft in the Toronto market addressed the panel of investors. While InstaRyde
did find an investor that day, the demonstration during the pitch revealed not a single driver available to
make a pick up in downtown Toronto at 5:30 pm. One potential investor made the point that “the driver
is going to use the app that’s giving them the rides and the app that’s giving them the most money and
right now you’re just not going to have the demand to get those drivers” despite an investment of over
$700,000 (cbc.ca, 2019). As another investor opted out, he added to the description of IntaRyde’s
challenge, “there’s a gorilla out there and it’s called Uber and I think to try and challenge them I think is
foolhardy” (cbc.ca, 2019). For Harding et al. (2016) the threat for municipalities of a lack of competition
due to monopoly or oligopoly that these investors describe is that monopoly companies will “set prices
above marginal costs and... act indifferently to market signals due to the absence of the discipline
brought by competition” (Harding et al., 2016, p. 22). In the following section we will explore this threat
further and consider the qualities of a cautious approach to oversight of these firms.

Are Platforms a New Regime of Accumulation?

The threat of monopoly amongst digital platforms has received significant attention in the
media as a result of the astonishing rates of growth of these firms, their disregard for many rules and
regulations, and their abrupt effect on the surrounding marketplace (Collier et al., 2018; Srnicek, 2017;
Slee, 2015; Zuboff, 2015; Wu, 2010, Khan, 2016). Uber, for instance, though only operating since 2009,
has reached a valuation of over $50 billion despite never making a profit and has successfully moved
into markets despite local regulators actively barring entry to the company (Rosenblat, 2018).

Digital platforms have emerged at a time when service industries are undergoing a dramatic
change from “sinkhole” to “a source of productivity growth and dynamism in the economy” (Zysman et
al., 2010, p. 1). Zysman et al.’s (2010) analysis of this changing industry landscape categorizes TNCs as
“hybrids” bringing together advanced algorithmic tools with human service workers. These companies
are updating formerly “irreducible services” in industries that were dependent on local individuals and
were, hence, sheltered from international competition. The innovation of these new platforms has been
to unbundle service offerings into small tasks that can be managed through digital intermediaries. This
invites competition amongst workers on international labour markets, or in the case of TNCs from
unlicensed workers, part-time workers, or even self-defined working hobbyists (Rosenblat, 2018).

Within this transformed competitive landscape, platform firms provide the infrastructure upon
which a host of new marketplaces operate. Matthew Hindman describes these firms, with reference to
George Stigler’s “dealer markets”, which are firms that provide “a meeting place for potential buyers and sellers” (Stigler, 1961: 216; Hindman, 2019). Digital platforms are collections of mostly online tools, such as online payment processes, digital reputation measures, and matching algorithms, that mediate the transaction of goods and services between individuals. Whereas Stigler regards these firms as producing marketplaces which are “largely competitive” (1961: 216), Hindman argues that competition in digital marketplaces consistently produces monopolistic conditions for the dealer market firm itself (Hindman, 2019). Increasingly, it is understood by scholars that what these firms have created is not just a marketplace infrastructure but a new potentially dominant regime for the accumulation of capital (Zuboff, 2015; Srnicek, 2017).

The recognition of the digital platform as a new class of capitalist institution proceeds from the language of the regulation school of political economy where scholars have examined the economics of the platform as a consequence of economic valuations drawn from social distinctions of class (Boyer, 1989; Aglietta, 1976). In the context of platform mediated industries, the greatest distinction is between participants transacting over the platform and those firms that operate the platform (Rosenblat, 2018). In creating and maintaining the platform, the platform firm occupies a privileged position from which to set the terms of transactions, to extract data, to feed data back into their products, and also package data for use in other businesses (Benkler, 2011; Srnicek, 2017; Zuboff, 2019).

Scholar Nick Srnicek (2017), finds that competition in this new form of capitalism is structured by the development of network effects and cross-subsidization, which encourages a winner-take-all dynamic. Given that vehicle-for-hire markets were typically thinly distributed across a city (Harding et al., 2016), what is most deterministic about the competition between TNCs in this industry begins with the need to promote growth on both sides of a marketplace. Arun Sundararajan (2016) argues that, whereas industrial capital mostly competes on the scale of production, two-sided markets (platforms) build value from the growing scale of demand. On two-sided markets value grows as the number of potential transaction partners grow more dense, creating a feedback loop that has come to be labelled “network effects”. As Nick Srnicek notes, the buildup of a network “generates a cycle whereby more users beget more users, which leads to platforms having a natural tendency towards monopolization” (2017: PG?). Hindman (2019) adds that technical aspects of digital economies also contribute to this winner-take-all dynamic. He claims that small differences in the speed of loading software; the capacity to use big data and experimentation to personalize products to user tastes; and the ability to build integrated networks of tools can have a dramatic impact on user retention. Over time this builds on the
advantages of early movers to “lock in” users to particular networks. As a result, while platforms are
often considered unbiased, they must channel user actions for the interests of the platform operator in
order to survive (Srniccek, 2017).

The threat of ‘monopoly’ is typically attributed to the use of market dominance as a tool to
secure rising consumer prices (Khan, 2016). However, this formula has been criticized for ignoring the
broad market effects that can come from monopoly even as consumer prices remain low or fall (Khan,
2016). In the case of TNCs, for instance, Hubert Horan (2015) argues that large platforms benefit from
an uneven regulatory framework compared to incumbent competitors in the taxi industry. He finds
argues that TNCs they have fewer restrictions on business operations, lower costs of insurance and
lower fees for the provision of regulation. He adds that TNCs also have the ability to incur annual losses
in the billions funded by their investors. Faced with well-resourced firms and predatory pricing
behaviour, small competitors are likely to be put out of business, thus fulfilling the rational expectation
of investors whose valuations of Uber demand market dominance to recoup losses from temporary
below-market prices (Horan, 2015). Horan concludes that while consumer prices have indeed fallen
from the era of the QQE regime, there is a risk that once a monopoly emerges, consumer prices will
begin to rise.

The extraction and analysis of data is another factor that appears to help build market
dominance at the same time as it threatens users and society with new risks. Firms increasingly benefit
from extracting and analyzing data compiled from a wide range of sources using technology that probes
deeply into the personality and emotional makeup of market participants (Zuboff, 2019). This data is
used to improve and personalize services for users on one hand, but also to develop behavioural
prediction products for clients and other business ventures on the other (Zuboff, 2019). Critics allege
that consent granted by platform users is often poorly informed and that this surveillance is a
transgression of user privacy. It is also not possible to make use of the service without submitting to
surveillance. The platform that emerges then resembles a leviathan into which people must submit to
be recognized and relevant in the marketplace (Zuboff, 2019; Purcell, 2013). By entering into
transactions through the platform, rights to privacy, control of private data, and even the capacity for
self-determination are waived to various degrees (Zuboff, 2019). Among TNCs, one illustration of this
issue is the development of upfront pricing strategies. Such policies leverage the massive amount of
data gathered over time by the TNC to inform an upfront price for passengers that will typically not vary
regardless of the details of the ride. This creates a competitive advantage for platforms who can offer
customers certainty regarding their final price. At the same time, it presents a risk to individuals where their data may be misused.

Critics of this use of personal data by large TNCs argue that upfront pricing allows platforms to conceal their fees and overcharge passengers based on that customer’s willingness to pay (Rosenblat, 2018). This policy, known in the literature as discriminatory pricing, allows TNCs to use data to assemble customer personas upon which prices may be based regardless of the costs of providing the service. Research from Chen, Mislove, and Wilson on Uber’s surge pricing algorithm in 2015 found that customers making requests simultaneously and only meters apart were routinely given different fare estimates. Further, the common variance of fares by 50% or more between adjacent surge areas was identified as a weakness that could allow more sophisticated and dedicated individuals to exploit the system (2015, p. 12). more recently Uber representatives have described their use of “route-based pricing”, which “charges customers based on what [the algorithm] predicts they’re willing to pay” (Newcomer, 2017). While discriminatory pricing is frequently employed among utilities to subsidize low-income or dispersed populations (Marvin & Graham, 2001), it is unclear how it is used by TNCs. In the past statements from Uber staff, for instance, it has been reported that Uber knows that passengers are willing to pay more when their phone battery is low (Calo & Rosenblat, 2016). While TNCs may not be acting on this kind of information, it shows that there are many factors that could go into determining an individual price that do not support access but are more predatory in nature.

Another threat of a monopoly or oligopoly of TNCs described in the literature is the risk that it may lead to undervaluing local investment. Whereas TNCs have invested in software, they do not generally invest in all segments of the means of production, leaving the provision of cars and training to local investors and workers (Horan, 2015). At the same time, the platform software has not made local investors any less necessary for the offering of the service. Given that TNCs have consistently decreased earnings potential for drivers (Rosenblat, 2018), they have relied on alternative means of ensuring sufficient levels of local investment. TNCs have encouraged local investment by lowering regulatory barriers. This has clearly been an important element of their approach as they have pulled out of communities where regulations have been set in ways that would raise barriers (Collier et al., 2018). This policy has been a success insofar as numbers of drivers have risen in recent years. However, success today does not mean that such an approach will be sustainable in the long run. If conditions on the platform deteriorate for drivers, there will be growing pressure for these individuals to exit the market, as was documented in earlier periods of deregulation in the 1980s and 1990s (Dempsey, 1996). Such a
result may also happen with less conspicuous outcomes. Already reports have emerged of drivers acting in ways that harm the system by ignoring calls, leading passengers to cancel their rides and triggering a cancellation fee to passenger accounts (Griswold, 2018).

The threats described here may never materialize. Many people are already habituated to the idea that business will gather market data. Many local markets continue to have more competition than in the past when one includes traditional taxis in the equation. However, the literature suggests that transparency itself is necessary, whether these threats listed above are real or imagined. Critics demand structures to protect users through democratic control. Measuring and enforcing compliance from platforms to provide this transparency is, itself, a challenge. In regard to price, for instance, Lina Khan argues that when platforms “implement discriminatory pricing on a wide scale, each individual would be subject to his or her own personal price trajectory, eliminating the notion of a single pricing trend” that could be easily monitored across a jurisdiction using aggregated data (Khan, 2016: 763). Calo & Rosenblat note those who “investigate [platform] firms may need to reverse engineer platforms, scrape data, impersonate consumers, and perform other activities aimed at exploring firm practices” (2016, p. 1685). Exposing the industry to regulatory oversight presumably then requires the capacity in the regulator to examine data, draw qualitative distinctions regarding acceptable market actions, and assess the conditions for local investment (Calo & Rosenblat, 2016; Khan, 2016). In the study that follows, we examine how such concerns align with the goals and objectives of local municipal regulators and whether these municipalities are undertaking this responsibility.

Method

In this study I have asked whether local regulators are capable of regulating the vehicle-for-hire industry given the emerging threat of monopoly that is increasingly being found amongst platforms. To answer this question, I have examined a single regional case study that provides a wide range of regulators of the ride-hailing industry within a consistent political setting. The study includes a document analysis as well as interviews with municipal staff and council members for jurisdictions directly responsible for the regulation of ride-hailing services within the Greater Golden Horseshoe (GGH). The GGH region was chosen for this study due to its economic importance within Canada and North America and because it captures a large number of municipal regulators within a consistent constitutional structure. The GGH region also conforms to the general pattern found in earlier studies
that shows a loosening of the regulatory regimes for the vehicle-for-hire industry in North America (Cooper et al., 2010).

Documents reviewed for the study included by-laws and municipally produced documents as well as provincial legislation and report. Interviews with key informants included government representatives primarily from staff of municipal licensing offices and city council members as well as industry watchers who provided context in the lead up to interviews. A total of 25 interviews were conducted. Interviews were semi-structured allowing for a consistent set of question themes but also the freedom to follow up on novel concepts and opinions raised by participants. Participants gave responses that represented official municipal policies but often gave personal opinions that went beyond the policies pursued by the municipality. Interviews lasted approximately 50 minutes with staff and 30 minutes with council members. All interviews were transcribed, reviewed on multiple times and coded in an iterative way as themes emerged upon multiple reviews. These themes and representative quotations were then used to identify a discourse and common practices and distinctions between municipalities that describe the regulatory approach taken in the region.

The Greater Golden Horseshoe Regulatory Context

The Greater Golden Horseshoe (GGH) region stretches from Niagara Falls around the western end of Lake Ontario, past the City of Toronto all the way to Northumberland County in the East and Simcoe County in the North (See Figure 1). The region has a population of over 9 million spread between urban centers as large as the City of Toronto (pop. 2,731,571) and as small as Grand Valley in Dufferin County (Pop. 2956). Though not a distinct legal jurisdiction, the GGH region has been used by the Province of Ontario as an important scale for the governance of processes of urban agglomeration and transportation (Ministry of Infrastructure, 2006). Altogether, the GGH includes 82 lower-tier municipalities or regions with the legislative authority to regulate the vehicle-for-hire industry in their local jurisdiction. Municipalities throughout the province of Ontario are delegated authority to license business operations within their jurisdiction. These powers, delegated by the province of Ontario in the
Municipal Code (2001, Ch. 156) and City of Toronto Act (2006, Ch. 94), include the capacity to license drivers and taxi brokerages, limit numbers of drivers and set pre-determined fares. The taxi industry is explicitly singled out among business licenses in the Municipal Code and City of Toronto Act, reflecting the importance of the service to urban life.

Among the 82 municipalities, 13 have developed explicit regulations directed at TNCs. TNCs take a variety of names within municipal bylaws including Private Transportation Providers (PTPs) in Hamilton, Private Transportation Companies (PTCs) in Toronto, and Auxiliary Taxis in Waterloo Region, among others. Dempsey (1996) describes those large municipalities with important central business district, and/or a large international airport as being particularly vulnerable to unregulated for-hire vehicle industries. And indeed, in the GGH, the two municipalities, Toronto and Mississauga that fit those criteria are regulated. Among peripheral urban areas, there is an equal chance that the municipality will have regulation as not, at the present point in time. In rural areas, however, there is very little regulation of TNCs. Only one community of the GGH, the town of Innisfil, intervenes in the ridehailing platform industry through subsidies to the business advertised as a form of public transit.
Overall this pattern of regulation demonstrates a trend that is broadly based on population density (See Table 1).

Throughout North America state and provincial governments have begun to play an increasingly large role in the regulation of the industry. Within Canada’s federal system, the province has authority for municipal affairs and delegates powers to the municipality, including the authority to regulate for-hire vehicles. It should be noted then that, TNCs were only regulated by municipalities after provincial legislation was put in place to permit the use of ridesharing insurance by the Financial Services Commission of Ontario a provincial body that oversees finance and insurance sector. Special concerns such as insurance, the use and management of passenger data, accessibility for people with disabilities are among the policy areas where the province has been particularly involved. Still, it generally falls to the municipality to determine the details about how provincial legislation applies to for-hire vehicles.

### Table 1: Greater Golden Horseshoe Municipalities that Regulate Ride-Hailing Platforms

<table>
<thead>
<tr>
<th></th>
<th>Total Municipalities</th>
<th>Total population</th>
<th>Average Density</th>
<th>Average Median Income</th>
<th>No. of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GGH Municipalities</strong></td>
<td>82</td>
<td>9,161,162</td>
<td>489.0</td>
<td>$83,854</td>
<td>23</td>
</tr>
<tr>
<td><strong>GGH Municipalities with Regulations</strong></td>
<td>13</td>
<td>6,536,169</td>
<td>1,361.7</td>
<td>$83,610</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Total Municipalities</th>
<th>Regulated Municipalities</th>
<th>Total population</th>
<th>Average Density</th>
<th>No. of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rural Municipalities</strong></td>
<td>53</td>
<td>1 (2%)</td>
<td>1,493,804</td>
<td>74.5</td>
<td>3</td>
</tr>
<tr>
<td><strong>Peripheral Urban Municipalities</strong></td>
<td>27</td>
<td>10 (37%)</td>
<td>4,073,204</td>
<td>1,278.0</td>
<td>14</td>
</tr>
<tr>
<td><strong>Core Ride-Generating Municipalities</strong>¹</td>
<td>2</td>
<td>2 (100%)</td>
<td>3,453,170</td>
<td>3,401.0</td>
<td>6</td>
</tr>
</tbody>
</table>


¹ The core ride-generating municipality is distinguished by a large central business district and/or the presence of a large international airport (Dempsey, 1996, p. 116).
Consequently, all urban and several rural municipalities in the GGH region have a regulatory agency and established taxi industry.

I argue that this long-standing municipal presence places municipalities in the GGH region into the category of municipalities with historically strong regulatory agencies as defined by Collier et al. (2018). Like other cities in this category, municipalities in the GGH initially opposed the entrance of TNCs. Throughout the GGH region, Uber entered the marketplace “extra-legally” and drivers were frequently subject to ticketing operations (Collier et al., 2018, p. 8). In the GGH region this conflict came to a climax in the Ontario Superior Court of Justice decision that services like Uber were not subject to Toronto’s municipal taxi licensing bylaw due to the limited and technology-specific nature of the language used in the legislation (City of Toronto v. Uber Canada Inc. et al, 2015). The judge determined that the regulation of TNCs is a “political” issue that should not be legislated through the courts (Toronto v. Uber, 2015). This decision had an immediate chilling effect on enforcement of the taxi bylaw throughout the region and began a new process to regulating the ride-hailing industry through an independent licensure category (Municipal Staff #10; Municipal Staff #3; Council Member #7).

The trajectory of regulation that followed is described by Collier et al. (2018) as a form of regulatory capture (See also Stigler, 1971). While cities with historically strong regulatory agencies have been the most active in pursuing a “level playing field” between traditional taxis and new TNCs, there has been a common experience of “challenger capture” (Collier et al., 2018). Under this theory TNCs have successfully used consumer support, digital forms of populist mobilization, and state level lobbying in order to capture the regulatory process and dictate acceptable policy formulations. Where local politicians demand standards of safety or consumer protection that are deemed excessive by the industry, these strategies have been used to encourage more industry-friendly alternatives. Examples of this strategies were seen in the GGH region where Uber withdrew from the Town of Orillia as a result of demands for more onerous vulnerable sector screening checks (MacLennan, 2018). In a city nearby the GGH, London, Ontario, similar threats led to a revision of the legislation requiring cameras mounted in the car in favour of Uber’s desired camera-optional policy (Dehaas, 2017).

The capacity to regulate TNCs has produced a regulatory structure that is far removed from the traditional regulatory regime found in these communities. As a result, distinctions and processes of maintaining compliance are still unsettled and will be subject to review over the coming years. Still a culture has developed in regards to regulation within the past few years. Interviews were used to gain access to how that culture is forming.
**Interview Results: Perspectives on the Gift of Regulation**

The concept of challenger capture by TNCs and the increased role for provincial action for the regulation of TNCs has upended the rationale for regulating local vehicle-for-hire markets. Municipal staff who participated in the interviews primarily grappled with three principles as the basis of their ongoing role in regulation: health and safety, consumer protection, and nuisance control. A fourth rationale for on-going regulation also came up where participants shared concerns about the sustainable continuance of vehicle-for-hire services in their municipality. Across the 13 municipalities these have produced a fairly consistent regulatory regime that includes platform self-regulation, platform administration of driver licensure, third-party safety checks, and per-ride licensure fees. Subtle differences, such as additional insurance or licensure requirements were occasionally highlighted by municipal staff. Explanations for these variations were generally motivated by idiosyncratic analyses by municipal staff in their observation of practices in other municipalities.

The general trend of regulatory policy moving from the QQE framework to the contemporary regulation for TNCs expressed by municipal leaders was the withdrawal from matters of nuisance control and consumer protection, while maintaining a level of oversight to ensure health and safety amongst passengers and drivers. As one staff person noted,

> for years we regulated taxi fares, and heavily regulated the taxi industry because they were really the only provider of ground transportation... so we regulated them very much. Now the market is much broader and we are able to say, you know what, we want to take some of those regulations off and let you make business decisions” (Municipal Staff #2).

Just the opposite, for several municipal leaders, policy goals should be strictly limited. “Are they insured? are the vehicles inspected? Those are the types of baseline [considerations] that we need to have to ensure consumer safety. Anything beyond that, I don’t think needs to be our concern at all” (Council Member #5). Another Municipal Staff agreed stating that “we actually made a conscious decision to step away from regulating the business. That’s not what our mandate is. It’s not to protect any particular business, and industry or any particular business interest. That’s for the market to decide” (Municipal Staff #10). This idea of withdrawing from active regulation of consumer protection was common, particularly among municipal staff.

The new ride-hailing regulations make use of competitive markets rather than deterministic standards and public enforcement to ensure high-quality service. And while municipalities resisted TNCs
initially, the benefits of this system have become clear in the years since. As one staff noted, taxis had been a “regulatory nightmare” (Municipal Staff #6). “One thing you will learn,” one council member stated, “is that any councillor that has had to deal with taxis hates it because it’s always awful and it always takes forever.” (Council Member #2). In contrast, six of the twelve staff persons interview reported hearing very few complaints regarding TNCs. As one municipal staff person explained,

“let’s say that someone gets into an Uber car and they are not satisfied, they report that to Uber. They don’t necessarily, and I would say 95% or higher, don’t report that to us...
So, we get complaints. We generally field them back and work in conjunction with the [TNC] company itself. And I hate to use the term, I don’t like the term, ‘self-regulating’...
but from an enforcement perspective it takes a burden off of us” (Municipal Staff #9).

For some municipal staff the sheer number of drivers using the platforms and short-term nature of the work makes platform administration not just a gift but an absolute necessity. In some municipalities drivers are not licensed by the municipality at all. Other municipalities made a point that “if we don’t license the driver, then we don’t have jurisdiction over the driver” (Municipal Staff #10).
Regardless of this formal relationship, however, compliance to the regulations on ride-hailing platforms are primarily enforced through data gathering from the platforms and warnings or penalties levied against the drivers through enforcement projects. As one municipal staff person described their methods of ensuring compliance thus,

“[the platforms] supply us with the data that we require, that’s required in the by-law. We request information from them on an ad-hoc basis based on a complaint. There have been very few complaints about the levels of service that they provide or the type of service they provide. And then we interact with the individual TNC operators themselves through inspections that take place in the field daily for a large number of operators” (Municipal Staff #6).

These inspections in several municipalities are done with a statistically significant proportion of the population of drivers over the course of a year to ensure broad compliance. Despite the capacity of municipalities to independently ensure compliance through these procedures, informants expressed enthusiasm about working with platforms because, “if a vehicle is found not to be safe? It’s removed immediately [by the platform]” (Municipal Staff #12). Ride-hailing platform face none of the delays associated with municipal hearings and other legal procedures typical of municipal systems, “which [are] time consuming” (Municipal Staff #9).

This system is not without some benefits for the TNCs. By submitting to regulation, the platform gains legitimacy in the eyes of some customers. Municipal regulators are also able to play a role of
limiting competition for platforms. As one participant noted, “the limo industry gets really creative and they say, ‘you can download this app and do this’ and they don’t realize they are verging into a different market altogether” (Municipal Staff #7). Municipal staff routinely monitor online advertising to ensure there is no unlicensed operations in the municipality. Alternatively, had the ride-hailing industry’s behaviour resulted in a complete elimination of municipal ride-hailing regulations, it might have undermined large TNCs with the emergence of innumerable small players, dragging down fares and undermining confidence in the industry overall. As it stands, municipalities actively police individuals who attempt to enter this market by leveraging social media or classified websites such as Craigslist and Kijiji (Municipal Staff #9).

The new regulatory regime continues to face threats. Relaxed regulations for health and safety standards could eventually lead to declining conditions; data extraction by platforms may become a growing nuisance in itself; pricing policies may threaten consumers with rising costs; and, market dynamics may lead to reduced services particularly for individuals with disabilities. One council member was circumspect about the capacity of municipalities to address these concerns under the new framework. “I mean we have a document that says that we can license [the ride-hailing platforms] but the license is effectively meaningless. It has no meaningful restrictions. You keep the principle that we are allowed to license in exchange for giving away the value of licensing” (Council Member #2). It is noteworthy that prior to the renewed by-laws municipal enforcement officers agree that controlling the ride-hailing space “was a difficult and time-consuming process” (Municipal Staff #9). With the updated regulation of for-hire vehicles, Council Member #2 goes on to list a number of measures where procedures aimed at protecting consumer health and safety, for instance, have been loosened including lower standards for driver screening and the use of third-party vehicle inspections². The recent high-profile death of an Uber passenger in the City of Toronto, and subsequent campaign by the family suggests that issues such as a lack of training may present early signs of strain to this system (cbc.ca, 2018).

Other areas of concern where new regulations may not be meeting the regulatory needs of the community regard the privacy of passengers and drivers as data is gathered from their use of the platform. One councillor questioned “if the drivers and the ride-takers are actually aware that their data is being mined. That would be the only risk that I see” (Council Member #1). However, this sentiment was limited amongst council members and non-existent amongst staff, who were more likely to support

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² Driver screening is what in taxi world????
the process of corporate data extraction or state that the issue that required further consideration.

Nuisances, after all, are not a nuisance if no one complains (Council Member #7). Municipal staff were more likely to consider the accumulation of data by platforms “as just good business” (Municipal Staff #1). Others appeared to be swayed by the benefits these practices brought to municipalities. One municipal staffer argued that

the collection of data certainly helps us because we have access to that data. You know, it helps me predict where trends are, where there’s a volume trend... So, we can look at where those fares are going, when... So, we can look at the time periods, the days and I’ll look at that and have officers in that area, that go out and do proactive enforcement”. (Municipal Staff #5).

Another stated that

we are appreciative of Uber doing that screening and that checking of their drivers. From what we’re aware of, it’s pretty rigorous surveillance of drivers that operate on the platform. Such as if they are holding their phone when they are driving. That is something that is detected as well and those drivers are reminded of certain things as well if they are going too fast or breaking, so it’s something that we appreciate that level of surveillance” (Municipal Staff #5).

Where data gathering is not simply knowing the customer, but allows for discriminatory pricing, municipal leaders are similarly non-interventionist. As one staffer notes, “a big component in the bylaw is] where the passenger has to accept the price of the ride before the ride is confirmed” (Municipal Staff #8). Another staff person picks up this train of thought.

Again, its buyer beware. You have to accept that you’re willing to pay that. And you have to accept that you are only going to receive that much money for what you’re doing as well. If gas is $1.60 a litre and I’m not making enough money to cover my gas for the night, why am I working part time” (Municipal Staff #1)?

Whereas the literature frequently warns readers about the great power of platforms to gather consumer data and modify behaviour (Zuboff, 2019), municipal staff projected much more autonomy upon the platform user. “Consumers are not naïve,” one staff person concluded. “They know that they can see what the Uber price is and they can also pull up the [local taxi competitor] online, on the platform, to see what it’s going to cost from them. So really what’s happening, is... the consumer benefits by choosing the cheapest price” (Municipal Staff #12).

Another threat to the system is the potential for drivers and investors to exit the market due to poor operating conditions. Given the lack of direct investment from ride-hailing platforms in vehicles,
failing rates for local investors and workers could threaten the reach of the industry. Indeed, the work
conditions facing drivers has emerged as an important topic in the literature (See Rosenblat, 2018;
Kessler, 2018). There was no overwhelming opinion between municipal leaders regarding this role.
Among participants from the largest cities such concerns did not register. In peripheral urban
settlements, some informants argued that, “we [municipalities] don’t have a role to ensure that [the
vehicle-for-hire industry] exists. We provide a service, it’s called transit” (Municipal Staff #12). And
others found these services to be more critical in nature, arguing that

We want to make sure across the entire landscape that we’re allowing for the provision
of service to the people who need it... if you look at the TNC model, they’re not necessarily
in a position to serve some of that market the way they’re currently constituted. Taxis
are. So, I think they both provide service that needs to be there” (Municipal Staff #2).

With the growth in numbers of licensed platform drivers to some 67,000 drivers (Lucs, 2018),
alleged poor conditions for drivers does not appear to have resulted in falling investment. By easing
entry and exit to the vehicle-for-hire industry, ride-hailing platforms have liberated large sums of time
and money to be invested in the industry. However, if a lack of local investment has not been a threat to
vehicle-for-hire services in general, the same cannot be stated for services for individuals with
disabilities. In 2014, the City of Toronto was moving towards 100% accessibility on public for-hire-
vehicles (Hui, 2014). Since that time the entrance of ride-hailing platforms has reversed these plans
(Transportation Standards Development Committee, 2018). Drivers of accessible for-hire-vehicles have
reported to municipalities that they have withdrawn from those services as they aim to survive under
the tough competition from ride-hailing platforms (Municipal Staff #3). A review of the multi-year plans
of ten major Ontario municipalities in 2018 “confirmed that none appeared to show a guaranteed
proportion of accessible taxicabs, or appeared to provide any details with respect to progress toward
determining a goal proportion” (Transportation Standards Development Committee, 2018).

In order to improve regulatory outcomes participants suggested, that competition would be
encouraged by their use of unobtrusive regulations and inexpensive fee structure. However, market
factors were not the only tools identified for monitoring TNC operations. Given the importance of
passenger awareness of the fares being charges, one municipal staff person described how the
municipality monitors software design. “We look at each of the screens before and after a ride. So, we
make sure that the estimated fare comes up, the information about the vehicle comes up. Things like
that, we just make sure that those elements that are outlined in the bylaw... are met” (Municipal Staffs
Another staff person reported seeing “standard monthly data that [the platforms] give us… that has the number of trips that were taken, the average distance of those trips, the average… fare” (Municipal Staff #5). Yet, no municipality asks for raw data regarding fares and aggregate reports on fares likely fail to provide effective data for oversight by eliminating alternative strategies for data analysis described in the literature (Khan, 2016).

While fares were an important subject for which no raw data was collected, there were other data points where the municipalities were improving their capacity. One staff person noted when asked about expanding oversight through data that “we can demand all types of data, if there’s a justified reason for it” (Municipal Staff #4). Some municipalities reported having a data scientist on staff or in a consultant position to help monitor data reports from the ride-hailing platforms. There may also be an emerging industry for “compliance monitoring service[s],… where if our municipality has got a licensing system… they have got an algorithm that can… provide you with the information for enforcement” (Municipal Staff #4). Indeed, one staff member from a rural municipality reported that “we have been approached by… universities to assist with analyzing the data as well. So that’s something that may happen in the near future” (Municipal Staff #5). As threats materialize, all participants anticipate a process of bylaw review whereby these policies will be assessed and potentially changed.

In many respects, municipalities are well-placed to grow regulatory capacity. Municipal staff showed no anxiety about securing a budget. With municipalities gathering a modest $0.08 or $0.30 per ride there is likely room to raise budgets before these fees become onerous. Municipalities also carry a tool whereby they can generally withdraw a license or fail to renew a license of a TNC in the event that it is found that platform is not “acting with honesty and integrity” (Municipal Staff #8). While this is a relatively blunt instrument it does provide a flexible means of promoting pro-social behaviour without attaching explicit metrics at this early stage of regime development. Staff of different municipalities argued that such a tool is frequently used by the municipality throughout the business licensing regime (Municipal Staff #7; Municipal Staff #2) and in the City of London, England, it was a similar type of regulatory procedure that was used to discipline Uber for failing to report cases of sexual assault on rides with their platform (Kollewe & Topham, 2017).

Discussion and Conclusion: Is the Gift of Regulation a Lump of Coal
Municipalities have long held a critical position in the governance of local vehicle-for-hire industries. They have long maintained the common infrastructure of a marketplace to facilitate trust and encourage investment from local actors who would otherwise lack the capacity to overcome the market inefficiencies particular to the vehicle-for-hire industry (Cooper et al., 2010). The entry of ride-hailing platforms has allowed municipal regulators to step back from this contentious role by providing private regulatory services for a critical urban service at no cost to the municipality. Services like the administration of user background checks and mechanical inspections, dispute resolution, and traffic and road network analysis are some of the important functions that TNCs perform that were previously performed only by municipal staff. Whether intended as such, these services are a gift to municipalities. However, at the same time, there is a risk to municipalities from these services. Private safety inspections and background checks may not be effective in the long-run, there exists a potential for discriminatory pricing from platforms, the accumulation of data by platforms may emerge as a nuisance for residents, and poor treatment of local investors and workers could result in falling investment in the means of production.

Gifts, such as Google’s web search service and Facebook’s messenger program, have become a common business strategy among companies in digital industries, yielding considerable speculation regarding their role in competitive markets (Eldar-Vass, 2016; Hindman, 2019; Zuboff, 2019). Among many writers there is a sense in which these gifts are “loaded” (Eldar-Vass, 2016). Shoshana Zuboff describes free digital services as a “lure” for participants to seize participant attention for the purposes of targeted advertising. Such an account supports Christian Fuchs description of online free services as exploitative processes of commoditizing user data (Fuchs, 2008, 2014). Contesting this point, Eldar-Vass argues that the quid pro quo is rather more “incidental” to users, insofar as they volunteer to participate and benefit from the exchange. It is this latter view which was most commonly expressed by municipal leaders, who frequently brushed off concerns about surveillance and the potential for discriminatory pricing, as “good business” (Municipal Staff #1).

Rather than understanding this gift of private regulation as the exploitation of municipalities in the way gifts are often framed in relation to individual consumers in the digital economy, I argue that the gift in this context is a political maneuver. Following Mary Douglas, in her discussion of Mauss’ original framing of the gift economy, “there are no free gifts; gift cycles engage persons in permanent commitments that articulate the dominant institutions” (Douglas, 2002). Why would TNCs have not been in favour maintaining the status quo of municipal regulation, pooling the costs of regulatory
functions with other TNCs in the hands of the city? I argue, for TNCs, the capacity to offer private
regulation gives them control to pursue their business plan, it gives them control over the narrative
regarding which disputes are made public, and it provides a bulwark against any potential political
pressures to impose higher regulatory requirements, as was seen in past periods of industry
deregulation of the 1980s and 1990s (Dempsey, 1996).

Despite the focus from participants on the free market approach taken by this regime, the gift of
private regulation may not be such a clear move to independent markets. Nearly half of municipal
leaders interviewed here argued for moving to a model of regulation similar to the restaurant industry.
Both industries are monitored by municipal inspectors to maintain safety standards, but participants
argued, this does not entail minimum or maximum prices for what’s on the menu or limits placed on the
number of pizza shops\(^3\). Municipal leaders suggest with such a comparison, that traditional taxi
regulations are a relic of a by-gone era that is no longer appropriate. Yet, municipalities do not demand
that each restaurant owner operate through a franchise, the way drivers are required to be licensed
through the TNC. Further, competition on ride-hailing platforms is far from the competitive marketplace
we see among restaurants as there are few players competing over price. Continued oversight and a
concentrated marketplace imply that there remains an important question of trust in the system.
Whether government is creating an urban commons or privatizing that role, municipal governments
retain a critical role in defining how that trust is generated and governed.

This high level of control within the market does leave the municipality vulnerable to charges of
regulatory capture (Collier et al., 2018). The controversy at Facebook regarding the improper
accumulation and misuse of data by Cambridge Analytica even allowing for meddling in American
electoral politics, highlights the speed and intensity with which public opinion can turn in regards to
emerging practices of online business (Wong, 2018). The vehicle-for-hire industry remains a critical
urban service for which there continues to be intense local interest. Discriminatory pricing strategies
may be acceptable to residents and the municipality where the outcomes of these differential prices can
be framed as cross-subsidization with transparent and defensible social and commercial goals. However,
under the new regime, while market mechanisms appear to be strengthened, vehicle-for-hire markets
remain vulnerable to the threat of monopolistic domination that undermines public goals by centralizing

\(^3\) Let’s ignore the fact that within the City of Toronto, for example, there are strict limits on the numbers of food
vendors, the space they are permitted to use, and the foods they are permitted to serve when operating in the
municipal right-of-way.
control without any of the democratic governance procedures of the QQE framework (Harding et al., 2016).

The literature tells us that the avoidance of domination requires diligent oversight, new tools for monitoring compliance, and thoughtful standards for market behaviour. The discourse that surrounds the TNC marketplace, places great confidence in TNC companies to monitor themselves. This does not however, suggest that municipal leaders are ignoring a responsibility to grow capacity. The regulation of for-hire vehicles has followed a path of continual change. Just as Uber was entering the Toronto market, city council was in the process of significant regulatory changes intended to solve long-standing problems regarding the concentration of power in the hands of taxi license holders (Hui, 2014).

Municipal leaders foresee a similar process for TNC regulations. We are likely to continue to see the evolution of this industry in the near and distant future. Whether that be due to changing economic conditions or the proliferation of self-driving cars.

I conclude by suggesting areas of future research that could be important for assessing the bylaw in the future. First, given the political nature of the exchange between the municipality and TNCs there is reason to be concerned for how the loss of municipal oversight is affecting outcomes for various classes of user. Already the literature has highlighted the exploitation of drivers as a failing of the current regime (Rosenblat, 2018). An examination of how municipal policies are contributing to these injustices, is one area that deserves further study. Second, in the face of concentrated power in TNCs, there is a need to recognize the potential for discriminatory pricing within this regime, understand how it is currently being applied, and to establish standards by which to judge cross-subsidization policies.


Ontario


