

# Uber's Consumer Democracy

BY

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In October 2014, just a month after UberX's debut in Toronto, *National Post* columnist Chris Selley was already worrying about the ride-hailing service's future.

While Uber was "absolutely, mind-bogglingly fantastic," Selley gushed, "Toronto's municipal government is where bold, innovative ideas go to die." Uber was in jeopardy because "regulators gotta regulate." Toronto taxi drivers were required to have special licenses, and UberX — the budget branch of the Uber tree — wouldn't thrive if the city enforced that mandate.

But Selley had a plan: "immediate, massive Uber adoption." If enough people started using the regulation-flouting service, it would be both impractical and politically unpopular to crack down.

"Download Uber. Ride Often. Spread the gospel," Selley preached. "Resistance may not be futile."

And insofar as Torontonians took Selley's advice, it appears their "resistance" wasn't for naught. Last week, the City Council voted to legalize the service, beginning on July 15. True to form, Uber pledges to continue to operate illegally until then.

Uber's rise in Toronto has followed a pattern established in cities from Edmonton to Mexico City. Confronted with legal obstacles, Uber employs "principled confrontation" to circumvent them, paying its drivers' fines and fighting their court cases. In the meantime, the company lobbies politicians and wins over consumers. Eventually city governments relent and bring Uber's practices within the four corners of the law.

In nearly every city it's entered, Uber's strategy has succeeded — with far-reaching consequences.

By muscling into urban center after urban center, Uber hasn't just changed how people work and get around. It's transformed what it means to be a consumer. It's turned people's buying habits into a means to subvert the democratic process.

# Permissionless Innovation

Uber's strategy looks a lot like "permissionless innovation" — the libertarian idea that we should make just about everything legal and let the individualized choices of consumers dictate the shape of society. And when people get hurt, laws and lawsuits can retroactively sort things out.

"Experimentation with new technologies and business models should generally be permitted by default," Adam Thierer, a fellow at the Mercatus Center, explains in his book *Permissionless Innovation*. "Unless a compelling case can be made that a new invention will bring serious harm to society, innovation should be allowed to continue unabated and problems, if they develop at all, can be addressed later."

Practically speaking, "permissionless innovation" often means start-ups breaking laws so they can give consumers what they want. Statutes shackle entrepreneurialism, inhibiting the development of a healthier and wealthier world. And laws are often corrupt anyway.

"Permissionless innovation" advocates would look at Toronto's licensing requirement for taxis, for example, as a way to insulate established companies from competition, allowing them to get away with providing bad service.

"What is Uber if not the biggest lawbreaker in the world today?" Thierer said in an interview. "And God bless them for it!"

And Uber's lawbreaking may be unprecedented. Steve Tombs, a corporate crime expert at The Open University, says that the company's open defiance of municipal law sets it apart from even other "disruptors" like Airbnb.

Still, the rhetoric around Uber's lawbreaking should sound familiar. "Permissionless innovation" is just another way of saying "it's easier to ask forgiveness than permission" or "move fast and break things."

Thierer insists that permissionless innovation doesn't mean that absolutely any entrepreneurial experiment should be allowed to go forward. An over-the-counter bazooka business, he half-jokes, should get nipped in the bud. And Thierer said the idea allowed for some bare-bones, preemptive safety restrictions, like barring drones from the skies over big events — without waiting for somebody to get concussed by a quadcopter at a Blue Jays game.

But Thierer's utopia would still be a perilous one. The growth of drug resistant germs, for instance, may have been accelerated by the "advertising-fueled" popularity of anti-bacterial products.

"From the EPA to the FDA to OSHA, nearly every federal (and state) regulatory agency exists because of significant, usually deadly failures of industry to restrain itself," David Golumbia writes. "Permissionless

innovation' suggests that the correct order for dramatic technological changes should be 'first harm, then fix.'"

## Consumer Democracy

Chris Selley's populist-inflected call to stand up for a company worth sixty billion dollars would be hilarious if there wasn't so much demand for what Uber is selling: in its first year alone, UberX provided more than four million rides to Torontonians.

But should the decisions of riders overrule the laws drawn up by duly elected officials?

Last summer, as Judge Sean Dunphy threw out Toronto's suit to shut down Uber, he acknowledged that the city was caught between "the existing regulatory system" and "thousands of consumers/voters who do not wish to see the competition genie forced back into the bottle."

Whether he realized it or not, Dunphy was speaking the language of permissionless innovation proponents, who equate consumer choice with direct democracy. Every purchase, they reason, is a vote for a product and its business model.

Yet, as historian Lawrence Glickman points out, assuming that what's good for consumers is good for society papers over the tension between workers' interests and consumers' interests.

An Uber rider's desire for doting customer service, for example, generates additional emotional labor for the Uber driver — who is forced, by dint of Uber's rating system, to cater to passengers' whims.

More than that, workers and consumers enjoy fundamentally different levels of power under capitalism. Most workers can't choose between competing employers the way a shopper chooses which t-shirt to buy. Millions of workers can't even find employment — in Canada, there are more than three unemployed people for every job vacancy.

Uber benefits from and exacerbates this precarity, drawing many of its drivers from the desperate ranks of the un- and underemployed — and then completing the circle by classifying them as independent contractors.

But mis-classifying workers isn't what sets Uber apart. What's different is Uber's unconcealed contempt for the rules set out by citizens' elected representatives. Therein lies the danger. You don't have to regard monopolistic taxi laws as democracy incarnate to recognize the threat Uber poses to basic norms of popular governance.

“Permissionless innovation” produces a world where a paying customer justifies any and all business practices, where scrapping laws — like the minimum wage and overtime pay — is entirely warranted if the market deems them unnecessary.

Citizens are not synonymous with consumers. Consumers act according to different imperatives, and in ways that often undermine the rights of workers. And if you confer on them supreme power — sidestepping the ballot box and other forms of democratic control — you create a reactionary new order. You create, in a word, libertarianism.

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