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Mapping Precarity: How the UK Supreme Court Redistributes Risk and Value in the Gig Economy

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ABSTRACT

Dominant labour-law commentary treats gig-economy litigation as a cartographic exercise: are drivers and couriers being 'correctly' mapped into the statutory boxes of employee, worker, or independent contractor? Drawing on critical labour law theories of law's constitutive power, this article shifts the focus from misclassification to the political economy. Using the UK Supreme Court's twin flagship cases, *Uber BV v Aslam* (2021) and *IWGB v CAC & Deliveroo* (2023), as analytical prisms, it shows how section 230(3)(b) ERA 1996 constructs a legal subject who is at once too 'entrepreneurial' to merit full employment protection and sufficiently subordinated to fuel on-demand logistics. The analysis traces the distributive consequences of that construction. It argues that doctrinal valorisations of 'substitution' and 'multi-apping' redirect wages, liability and bodily depletion onto racialised migrant workers and, downstream, onto the UK welfare state, while freeing platforms to realise extraordinary profits. Law, welfare policy and shareholder returns thus form a single redistributive circuit. By foregrounding these entanglements, the article questions whether jurisprudential tinkering can deliver substantive change: when legal categories are already embedded in—and reproductive of—the very accumulation regimes they purport to regulate, any emancipatory project must look beyond classificatory refinement to structural re-engineering of value and risk flows.

1. INTRODUCTION

Critical labour scholarship—drawing on feminist socio-legal, post-structuralist, critical legal and institutionalist theory—has long insisted that law is not an external referee that merely traces the contours of an already-given social

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order.[1] Rather, law is constitutive: it actively produces, and continually reproduces, the very subjects, relationships and material distributions that it later purports neutrally to regulate.[2] In this view, the juridical order is inseparable from and entangled with the political-economic order that sustains it. To ask what law 'does' is therefore to look into how it scripts the allocation of risk, value and bodily vulnerability across differentiated populations. In other words, law is thus better pictured as infrastructure than as cartography: it dams, diverts and stratifies the flows of value, risk and vulnerability that make up everyday life.[3]

To intervene in the rapidly growing debate on platform-mediated gig work in the UK and elsewhere, this article draws on the understanding of law as a constitutive force within political economy. Much of the current literature quite properly interrogates questions of doctrinal classification—whether delivery couriers or drivers are *employees*, *workers* or *independent contractors*; whether judicial tests are coherently applied; and how statutory language might be refined. Without dismissing the importance of those questions, this article begins from a different starting point: that classification disputes are themselves moments of political-economic engineering. By bringing the constitutive power of law to the foreground, the article examines how recent Supreme Court decisions—*Uber BV v Aslam* (2021][4] and *IWGB v CAC &*

[1] I. Bakker, 'Social Reproduction and the Constitution of a Gendered Political Economy' (2007) 12 *New Political Economy* 541; S. Braedley and M. Luxton, 'Social Reproduction at Work, Social Reproduction as Work: A Feminist Political Economy Perspective' (2021) 25 *Journal of Labor and Society* 559; D. Dinner, 'Social Reproduction in and of Feminist Legal Theory' (2023) 34 *Yale Journal of Law & Feminism* 22; S. Ferguson, *Women and Work: Feminism, Labour, and Social Reproduction* (Toronto: Between the Lines, 2019); M. E. Giménez, *Marx, Women, and Capitalist Social Reproduction: Marxist-Feminist Essays* (Leiden: Brill, 2018); T. I. Zhurzhenko, 'Social Reproduction as a Problem in Feminist Theory' (2001) 40 *Russian Studies in History* 70; S. Deakin and others, 'Legal Institutionalism: Capitalism and the Constitutive Role of Law' (2017) 45 *Journal of Comparative Economics* 188; J. Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990); D. Ashiagbor, 'Race and Colonialism in the Construction of Labour Markets and Precarity' (2021) 50 ILJ 506; G. K. Bhambra, 'Colonial Global Economy: Towards a Theoretical Reorientation of Political Economy' (2020) 28 *Review of International Political Economy* 307.

[2] Butler, Ibid., 2.

[3] K. D. Thomas, 'Taxing the Gig Economy' (2018) 166 *University of Pennsylvania Law Review* 1415; S. Fredman and D. Du Toit, 'One Small Step towards Decent Work: Uber v Aslam in the Court of Appeal' (2019) 48 ILJ 260; Z. Adams, 'One Step Forwards for Employment Status, Still Some Way to Go: The Supreme Court's Decision in Uber v Aslam under Scrutiny' (2021) 80 *The Cambridge Law Journal* 221; R. Upex, 'Workers and the Gig Economy: An Appraisal of the Supreme Court's Decision in the *Uber* Case' (2021) 26 *Coventry Law Journal* 1.

[4] *Uber BV v Aslam* (2021) UKSC 5.

Deliveroo (2023)—[5]construct a legal subject whose very design reallocates risk, harm and value along racialised lines.

This article is structured in twelve sections. Section 2 develops the theoretical framework, drawing on feminist materialism, legal institutionalism and Butler's account of law as constitutive, and reframes law as a hydraulic infrastructure of risk allocation. Section 3 analyses the Supreme Court's *Uber* judgment and its narrowing of 'working time' under section 230(3)(b) ERA 1996. Section 4 examines the substitution clause in *Deliveroo*, showing how a notional liberty is treated as decisive despite its practical absence. Section 5 turns to multi-apping, exploring how juridical reasoning converts a desperate tactic into evidence of entrepreneurial independence. Section 6 links these marginal liberties together to show how courts generalise theoretical freedoms to deny worker status. Section 7 maps the bodily depletion that follows from juridical exclusion, while Section 8 examines how costs of capital decay and risk transfer are displaced onto workers. Section 9 traces how those hidden costs are absorbed by the welfare state, before Section 10 analyses the racialised and undocumented strata drawn into substitution networks and their exclusion from statutory protections. Section 11 connects these dynamics to the 'asset-light' accumulation model celebrated in investor discourse. Section 12 concludes by arguing that the Supreme Court's doctrinal manoeuvres do not simply describe gig work but actively constitute it, and that juridical reform alone cannot undo the distributive architecture these judgments reinforce.

2. THE JURIDICAL AS INFRASTRUCTURE: LAW, SUBJECTIVITY AND THE POLITICAL ECONOMY OF RISK

What generally informs my thinking is a foundational insight shared across feminist, Marxist and post-structuralist accounts of law: that law is not an external, neutral instrument that merely regulates a pre-existing social order.[6] Instead, law, as scholarship in the field of legal institutionalism also makes

[5] *Independent Workers Union of Great Britain v Central Arbitration Committee and another* [2023] UKSC 43, [2024] 1 WLR 108

[6] Bakker, 'Social Reproduction and the Constitution of a Gendered Political Economy' (n.1); Braedley and Luxton, 'Social Reproduction at Work, Social Reproduction as Work' (n.1); Dinner, 'Social Reproduction in and of Feminist Legal Theory' (n.1); Ferguson, *Women and Work*(n.1); Giménez, *Marx, Women, and Capitalist Social Reproduction* (n.1); Zhurzhenko, 'Social Reproduction as a Problem in Feminist Theory' (n.1); Deakin and others, 'Legal Institutionalism' (n.1).

clear, is fundamentally constitutive.[7] It is a productive force, implicated in the construction and maintenance of the very subjects and categories—of personhood, gender, race and labour—that it then purports to neutrally govern.[8] From this critical perspective, a legal text like a statute is not a mirror reflecting social relations, but a technology of subject-formation,[9] institutional practice and material distribution. To analyse such a text is therefore to investigate the mechanisms through which a particular mode of social order is produced and reproduced—by defining who can be a legal subject, under what conditions and with what consequences.[10]

Within this broader critical tradition, Judith Butler's feminist legal theory, which draws on and extends post-structuralist thought, especially Foucault's analysis of power and his concept of the *apparatus (dispositif)*, offers a particularly generative analytic for apprehending the constitutive operations of law at the level of the juridical.[11] Far from casting the law as simply a prohibitive apparatus that represses or curtails agency (a conception Foucault critiqued as overly juridico-discursive, insofar as it reduces power to law-like commands and overlooks its productive, dispersed and capillary operation), Butler, drawing from Foucault, situates legal power as fundamentally generative: the law does not merely constrain pre-formed subjects but inaugurates them through regimes of intelligibility that render certain bodies, identities and relations legible and regulable.[12] This inaugurative dimension is frequently obscured by dominant juridico-political imaginaries that cast law in sovereign terms—as an external power that acts upon subjects from above.[13] Yet, as Butler insists, this appearance of exteriority is itself a discursive effect, one that masks the production of subjectivity through legal norms. The juridical subject is not antecedent to law but comes into being through subjection to its structuring grammars; grammars that do not merely reflect political life but actively script its contours. As Butler writes, '[j]uridical notions of power appear to regulate political life in purely negative terms',[14] yet in truth, 'the subjects regulated by such structures are, by virtue of being subjected to them, formed, defined, and reproduced in accordance with the requirements of those

[7] Deakin and others, 'Legal Institutionalism' (n.1).
[8] J. Butler, 'Foucault and the Paradox of Bodily Inscriptions' (1989) 86 *The Journal of Philosophy* 601; Butler, *Gender Trouble* (n.1).
[9] Butler, 'Foucault and the Paradox of Bodily Inscriptions' (n.8); Butler, *Gender Trouble* (n.1).
[10] Ibid.
[11] Ibid.
[12] Butler, *Gender Trouble* (n.1) 2.
[13] Ibid.
[14] Ibid.

structures'.[15] On this view, the juridical is inseparable from its discursive operations: it is *both* an *effect* and a *vector* of representational politics.

Significantly, then, any uncritical appeal to law as a vehicle of emancipation risks entrenching the very forms of subjectivation and exclusion it seeks to dismantle.[16] By which it is meant, the danger is not merely that legal recognition can be co-opted or delayed, but that the petition itself must be articulated in the material discourse of the prevailing juridical grammar—one that predetermines which injuries can be voiced and which remedies can be imagined.[17] As Wendy Brown has argued, the promise of rights often converts political antagonism into an administrable claim of harm that sutures structural domination to a form of "juridical consolation" that leaves the underlying relations of power intact.[18] Likewise, Crenshaw's account of intersectionality shows how entrance through a single axis of identity can obscure compound subordination that reinscribes hierarchies precisely at the moment of ostensible protection.[19] The effect is a feedback loop: law offers inclusion on terms that it alone scripts, movements accept those terms to gain standing, and the resulting recognition stabilises the normative horizon against which future demands will be measured. What might appear as incremental progress, in this way, ossifies into a horizon of epistemic closure that forecloses more radical possibilities for reimagining labour, kinship or sovereignty outside the coordinates of state legality.[20] A critical praxis, then, must reckon with the ambivalent temporality of legal gain—leveraging strategic recognitions while refusing to forget the structural reiteration that shadows every juridical victory. That is to say, questions about legal technicality and juridical acts (as an institutional and discursive and symbolic practice) cannot be neatly self-contained or detached from broader socio-economic and political contexts within which they are situated and entangled.[21]

[15] Ibid.
[16] Ibid.
[17] Ibid.
[18] W. Brown, *Walled States, Waning Sovereignty* (New York: Zone Books, 2010).
[19] K. Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Colour' (1991) 43 *Stanford Law Review* 1241; S. Cho, K. W. Crenshaw and L. McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 *Signs* 785.
[20] Brown, *Walled States, Waning Sovereignty* (n.18); Butler, *Gender Trouble* (n.1).
[21] C. Mackenzie and Natalie Stoljar, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford: Oxford University Press, 2000); W. E. Forbath, 'Courts, Constitutions, and Labor Politics in England and America: A Study of the Constitutive Power of Law' (1991) 16 *Law & Social Inquiry* 1; D. A. Ballam, 'The Law as a Constitutive Force for Change: The Impact of the Judiciary on Labor Law History' (1994) 32 *American Business Law*

Recognising law's constitutive entanglement with political economy necessarily recasts it as an apparatus for the allocation of material risk. That is to say, juridical definition—be it 'worker', 'independent contractor' or 'client/customer'—functions as a routing mechanism that decides whose time counts as productive, whose wear on body and equipment is compensable, and whose vulnerability is absorbed by private insurance, public subsidy, or personal debt.[22] In this sense, legal form, as this article will show, is inseparable from fiscal form: a clause that withholds employment status does not simply withhold symbolic recognition; it triggers an actuarial cascade in which sickness, old age and market volatility are downloaded onto those least able to price or hedge them.[23] The distributional pattern that follows is not an unintended spill-over of otherwise neutral regulation; it is the material expression of the very subject the clause calls into being.

A second, closely related consequence is that juridical constructions operate as infrastructural channels through which value is extracted, converted and eventually materialised or assetised as capital. When law carves out zones of 'entrepreneurial' activity that enjoy freedom from payroll levies or collective bargaining duties, as will be argued, it engineers a differential of obligation that can be capitalised by firms and discounted by markets. The apparent intangibility of platform assets—often celebrated as 'asset-light'[24] innovation—is therefore anchored in highly tangible transfers of social cost, made invisible by legal designations that reclassify wages as contractor fees and

Journal 125: E. W. Steinman, 'Mobilizing the Constitutive Power of Law through Institutional Entrepreneurship' (2005) 39 *Law & Society Review* 759; K. Andrias and B. I. Sachs, 'Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality' (2020) 130 *Yale Law Journal* 546; J. Read, 'The Antagonistic Ground of Constitutive Power: An Essay on the Thought of Antonio Negri' (1999) 11 *Rethinking Marxism* 1; Helena Silverstein, 'The Symbolic Life of Law: The Instrumental and the Constitutive in Scheingold's *The Politics of Rights*' (2003) 16 *International Journal for the Semiotics of Law* 407; R. Buchanan, 'The Constitutive Paradox of Modern Law: A Comment on Tully' (2008) 46 *Osgoode Hall Law Journal* 495; V. F. Nourse, 'Law's Constitution: A Relational Critique' (2002) 17 *Wisconsin Women's Law Journal* 23; Deakin and others, 'Legal Institutionalism' (n.1).

[22] Ballam, Ibid.

[23] House of Commons Work and Pensions Committee, *Self-employment and the Gig Economy: Government Response to the Committee's Thirteenth Report of Session 2016–17* (HC 644, 2017) <https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/644/644.pdf> accessed 1 September 2025.

[24] Uber Technologies Inc, 'Investor Meeting: Corrected Transcript' (14 February 2024) <https://s23.q4cdn.com/407969754/files/doc_events/2024/Feb/14/uber-investor-update-transcript_february-14-2024.pdf> accessed 1 September 2025.

injuries as private misfortune.[25] To treat these transfers as incidental is to overlook how the juridical map actively directs flows of liquidity[26] and long-term liability.[27]

One might object that such distributional outcomes stem from legislative policy choices rather than from the constitutive power of legal categories themselves. However, that does not quite hold in light of the fact that policy is enacted through the very categories at issue, and doctrinal tests—that is,. personal service, substitution rights, client/customer distinctions that will be discussed momentarily—are precisely the means by which fiscal burdens are reassigned. To analyse law's role in the political economy of risk is therefore not to import economics into an otherwise self-contained legal debate; it is to acknowledge that the economic and political is already wired into the architecture of legal intelligibility.[28] Any critical project that ignores this circuitry risks mistaking structural redistribution for technical misfire, and in doing so forfeits the chance to contest how injury and value are being differentially produced and apportioned beneath the surface of formal neutrality.

Put differently, and speaking metaphorically, there are two distinct critical optics available for analysis. The first treats labour-law doctrine like a map: tribunals are asked to verify whether the doctrinal contour lines—'employee', 'worker', 'self-employed'—have been faithfully drawn around a landscape presumed to pre-exist them. This cartographic image invites debates over accuracy and misclassification, but it leaves intact the deeper assumption that the river of social relations flows of its own accord. The second, more demanding optic sees law not as cartography but as hydraulic engineering. In this frame, the statute, the judgment and the algorithm are sluice-gates in a dam system that actively redirects torrents of risk and reward—deciding whose livelihood is flooded, whose assets are irrigated, and which valleys of vulnerability are left to dry out. Questions, therefore, shift from 'Does the law trace the river correctly?' to 'Why was the spillway cut here, at whose behest, and with what downstream consequences for bodies, budgets, and balance-sheets?'

[25] Brown, *Walled States, Waning Sovereignty* (n.18); Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (London: Verso, 2004).

[26] Uber Technologies, 'Investor Meeting: Corrected Transcript' (n.24).

[27] House of Commons Work and Pensions Committee, *Self-employment and the Gig Economy* (n.23).

[28] Butler, *Gender Trouble* (n.1) 2; Ashiagbor, 'Race and Colonialism in the Construction of Labour Markets and Precarity' (n 1); Dalia Gebrial, 'Racial Platform Capitalism: Empire, Migration and the Making of Uber in London' (2024) 56 *Environment and Planning A: Economy and Space* 1170–94.

It is only through this engineering lens that the political economy of flow—of what is valued, de-valued and rendered invisible—can be made visible.[29]

3. FROM LOG-ON TO LOCKOUT: TEMPORAL THRESHOLDS OF WORKER STATUS IN UBER AND DELIVEROO

With that hydraulic perspective in place, the next section turns to the sluice-gate par excellence: section 230(3)(b) ERA 1996, and the legal subject it conjures before channelling the attendant costs and benefits across the wider political economy. Section 230(3) anchors much of the academic debate on platform-mediated work in the UK and has sat at the centre of headline Supreme Court judgments such as *Uber BV v Aslam (2021)*[30] *(Uber)* and *Independent Workers Union of Great Britain (IWGB) v Central Arbitration Committee and Roofoods Ltd (t/a Deliveroo) (2021)*[31] *(Deliveroo)*. Although each litigation travelled a distinct doctrinal route—*Uber* through labour-law claims for wages and holiday pay, *Deliveroo* through Article 11 ECHR arguments over collective bargaining rights—both, in the end, revolved around the same hydraulic valve: the definition of 'worker' in section 230(3)(b) (or its functional equivalent in Article 3 of the Trade Union and Labour Relations (Consolidation) Act 1992, as applied in *Deliveroo*). In *Uber*, the Supreme Court faced a two-step question about contract interpretation in employment law. First, applying *Autoclenz*, how should written terms be read when deciding whether a platform-mediated driver is a statutory 'worker'? Secondly, once that status is established, when does time spent in the app actually count as 'working time' for the Working Time Regulations 1998 and as hours to be remunerated under the National Minimum Wage Regulations 2015? The Uber drivers argued that the clock should start the moment they logged on, even before a ride was accepted; Uber said only the minutes spent ferrying a passenger qualified. The Court agreed in principle that drivers were workers while logged on, but, in the end, confined the compensable window to periods in which drivers were at the *exclusive disposal* of *Uber*. As the Court explained in paragraph 136, agreeing with the Court of Appeal on its position that:

[29] Ashiagbor, 'Race and Colonialism in the Construction of Labour Markets and Precarity' (n.1); Gebrial, Ibid.
[30] *Uber BV v Aslam* (n.4).
[31] *IWGB v CAC* (n.5).

> …*If* the reality is that Uber's market share in London is such that its drivers are, in practical terms, *unable to hold themselves out as available to any other PHV operator*, then, as a matter of fact, [when they have the Uber app switched on] they are working at [Uber London's] disposal as part of the pool of drivers it requires to be available within the territory at any one time. … *if, however, it is genuinely the case that drivers are able to also hold themselves out as at the disposal of other PHV operators when waiting for a trip, the same analysis would not apply.*
>
> …So far as this court has been shown, no evidence was adduced at the hearing in the employment tribunal in 2016 that there was at that time any other app-based PHV transportation service operating in London or that drivers logged into the Uber app were as a matter of practical reality also able to hold themselves out as at the disposal of other PHV operators *when waiting for a trip*. No finding was made by the tribunal on this subject. In these circumstances I do not consider that the tribunal was wrong to find that periods during which its *three conditions were* met constituted "working time" for the purpose of the Working Time Regulations 1998.[32] [my emphasis]

In other words, 'logged-on time' only counted as working time (that is, for the purposes of the Working Time Regulations 1998 (SI 1998/1833), which determine when time is compensable, and for calculating which mode of pay applies under the National Minimum Wage Regulations 2015 (SI 2015/621))[33] when three factual predicates coincided: (1) app activation—the driver had the Uber app switched on and running, signalling formal readiness to accept jobs; (2) geographic positioning–the driver remained within a designated geofenced area in which Uber's platform permitted them to receive trip requests and counted them as actively available; and (3) exclusive availability—the driver was not offering services to any other platform or client during that period, meaning they were monogamous and available to Uber alone, since prevailing market dynamics made it practically unworkable to 'multi-app'—i.e. advertise or accept work from competing apps simultaneously.

In 2016, those predicates were satisfied: Uber's dominance in London meant that a driver who kept the app open could not realistically solicit work elsewhere, so the entire waiting period formed part of Uber's labour supply.[34] Once competing platforms entered and drivers could multi-app, predicate (3) was not satisfied. The same physical posture—engine idling, phone in hand—no longer placed the driver uniquely at Uber's command; the pool of on-call

[32] *Uber BV v Aslam* (n.4) paras 136–137.
[33] Ibid., 136–142.
[34] Ibid., 136–137.

time fragmented across several principals. Under the Court's logic, that shift switched the legal sluice gate: only the segment spent in a live passenger journey now met the statutory test of the Working Time Regulations of being 'at the disposal' of a single employer, and the previously recognised stretch of remunerable waiting time drained away.

That is, the Court's focus on exclusive availability as the decisive predicate drains legal visibility from everything that happens during those 'on-duty' stretches when a driver is logged in, engine idling, but not yet carrying a passenger. In practice, that interval is anything but inert. The driver is continuously interpreting demand signals—heat-map surges, school-run peaks, Friday-night closures—triangulating them with an intimate, street-level cartography of shortcuts, chip-shop queues, traffic-light phasing and roadworks.[35] They creep towards the bar-belt just before closing, hover outside stadium exits 10 min before the whistle, or angle for that narrow lay-by beside the theatre because the app's GPS routinely mispins the stage door.[36] Each micro-adjustment is a wager that places the platform in the strongest position to deliver on its promise of near-instant availability. The driver's phone screen must stay lit; their cognitive bandwidth is locked onto two parallel feeds—one eye on the Uber dispatch radius, the other on Waze road alerts—while fuel ticks away and the car racks up wear from stop-start manoeuvres designed to hold pole-position in the invisible queue.[37]

These attentional, spatial and mechanical expenditures are productive capital for the platform: they are what makes the app appear magically responsive to the passenger who presses 'Request' and expects a 3-min ETA.[38] Yet, once predicate (3)—exclusive disposal—drops out, the entire block of labour is reclassified as entrepreneurial downtime, no longer compensable or even legally cognisable. Uber denies payroll responsibility because the driver could, in theory, accept another operator's ping; the rival operator refuses liability because the driver is not yet on its clock. In effect, the regulatory sluice closes at both ends, converting a dense, skill-laden zone of marketable readiness into ownerless, unpaid work. The driver still burns fuel, depletes tyres and

[35] A. Rosenblat, *Uberland: How Algorithms Are Rewriting the Rules of Work* (Oakland, CA: University of California Press, 2018); C. Cant, *Riding for Deliveroo: Resistance in the New Economy* (Cambridge: Polity, 2019); C. Popan, 'The Fragile "Art" of Multi-apping: Resilience and Snapping in the Gig Economy' (2024) 56 *Environment and Planning A: Economy and Space* 802.

[36] Rosenblat, *Uberland* (n.35); J. Prassl, *Humans as a Service: The Promise and Perils of Work in the Gig Economy* (Oxford: Oxford University Press, 2018).

[37] Rosenblat, *Uberland* (n.35); Cant, *Riding for Deliveroo* (n.35).

[38] Rosenblat, *Uberland* (n.35); Popan, 'The Fragile "Art" of Multi-apping (n.35).

translates urban knowledge into platform value,[39] but the juridical frame treats that effort as if it evaporated the moment multi-apping became conceivable. All the questions of power—who orders positioning, who grades acceptance speed, who can deactivate for slipping metrics—are sidelined; the legal subject's productive activity is rendered invisible by a doctrinal test that measures only the moment a single fare is locked in. The sluice gate has shifted, and everything upstream now flows, uncompensated, into the platform's reservoir of 'asset-light'[40] efficiency.

4. THRESHOLDS OF SUBSTITUTION: THE LEGAL MECHANICS OF INCLUSION AND EXCLUSION UNDER SECTION 230(3)(B)

In *Deliveroo*, the question resurfaced again and the Supreme Court had to decide whether the company's riders qualified as 'workers' for the purposes of Section 3 and Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992—the domestic gateway for exercising the Article 11 European Convention on Human Rights freedom to organise and bargain collectively, and the functional counterpart to ERA 1996, s 230(3)(b)—even if their contracts purported to give them an unfettered right of substitution and the liberty to accept work from competing platforms. Different factual textures from *Uber*, but similar doctrinal fulcrum: the legal subject constructed by ERA 1996, section 230(3)(b).

In that, section 230(3)(b) defines a 'worker' as[41]: …an individual who has entered into or works under (or, where the employment has ceased, worked under)—

> a. a contract of employment, or
> b. any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or *perform personally* any work or services *for another party* to the contract whose status

[39] Rosenblat, *Uberland* (n.35).
[40] Uber Technologies, 'Investor Meeting: Corrected Transcript' (n.24).
[41] Comparable definitions of 'worker' appear across multiple statutory instruments. Notably, s 54(3) of the National Minimum Wage Act 1998 and reg 2(1) of the Working Time Regulations 1998 adopt formulations that closely mirror s 230(3)(b) of the Employment Rights Act 1996, extending protection to individuals who undertake to perform work personally, other than in a commercial or client–customer capacity. A similarly worded definition also appears in s 296(1)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), which governs eligibility for statutory recognition of trade unions.

> is *not* by virtue of the contract that of *a client or customer of any profession or business undertaking* carried on by the individual. [my emphasis]

Section 230(3)(b), then, can be said to operate as a juridical threshold that delimits which kinds of contractual arrangements can give rise to 'worker' status. The first, positive requirement is the existence of a contract—express or implied, written, oral, or *inferred from conduct*—in which an individual undertakes to supply labour.[42] The breadth of that opening gesture ('any other contract') is immediately channelled by three narrowing conditions: the commitment must be to 'do or perform' work or services; the obligation must be assumed 'personally' rather than through delegation or substitution[43]; and the counter-party benefiting from the labour must not stand in the market position of the worker's 'client or customer'.[44]

For example, as established in *Autoclenz Ltd v Belcher* (2011)—[45] the leading Supreme Court authority on how section 230(3)(b) should be construed—tribunals are required to assess the entirety of the parties' conduct, rather than rely solely on written contractual terms, in order to ascertain their true legal relationship.[46] At the same time, the Court made clear that the presence of a genuine and unrestricted substitution clause disqualifies the individual from being recognised as a 'worker' under the provision.[47] And, subsequent authority—*Pimlico Plumbers v Smith* and *Deliveroo*, specifically—treats *the scope of the power to substitute*, not its actual use, as decisive in deciding worker status[48]: where the rider/courier may appoint *any* competent courier without platform consent, personal dependency is severed and the statutory gate closes.

This doctrinal configuration carries significant consequences for how tribunals weigh competing indicia of dependency. Once a tribunal concludes that a substitution clause confers a *genuine and unqualified* right—unencumbered by platform oversight, prior approval, or functional impracticality—it is not the *use* of substitution that matters, but the *platform's non-interference* with its exercise. As the Supreme Court stated in *Deliveroo*:

[42] *Autoclenz Ltd v Belcher* [2011] UKSC 41, [2011] ICR 1157 [34–35].
[43] *Pimlico Plumbers Ltd v Smith* [2018] UKSC 29, [2018] ICR 1511 [32–33].
[44] *IWGB v CAC* (n.5) para 52.
[45] *Autoclenz Ltd v Belcher* (n.42).
[46] Ibid., 34–35.
[47] Ibid.
[48] *IWGB v CAC* (n.5) paras 51–52, 69–70.

> The power conferred on Riders under the new contract to appoint a substitute is virtually unfettered… [and] applies both before and after a Rider has agreed to make a delivery. Such a broad power of substitution is, *on its face, totally inconsistent with the existence of an obligation to provide personal service*… *Particularly significant*… were the following findings… [Deliveroo] did not police a Rider's use of a substitute and Riders would not be criticised or sanctioned for doing so… [It] *did not object* to substitution for profit.[49] [my emphasis]

Taken together, these findings were held to 'genuinely reflect the true relationship'[50] and were 'of [themselves], sufficient to determine'[51] the absence of worker status. That is, the important factor was that the employment tribunal found that Deliveroo did not police or object to the use of a substitute[52] and granted riders a 'virtually unfettered' power to appoint *any* substitute, 'both before and after' a delivery has been accepted, which, according to the Court, made it 'totally inconsistent with the existence of an obligation to provide personal service'.[53] The Court held this position even after noting that, in practice: 'a few, if that, Riders use substitutes'.[54] In effect, the Court concedes that substitution is not just rare but verges on non-existent. The qualifying phrase 'if that' signals not only a statistical marginality but also epistemic hesitation—an acknowledgment that even the claim of 'a few' may be overstated. The implication is that the legal weight is being placed on a theoretical right whose practical uptake is negligible, perhaps entirely absent.

What is, then, striking about this is the Court's almost studied incuriosity about why 'a few, if that' couriers invoke a power it proclaims as 'virtually unfettered'. The judgment itself supplies the answer with regards to Deliveroo's contractual clause on the right to appoint a substitute,[55] yet does not draw the inference: any would-be substitute, according to this clause, must satisfy *all* of the contractual pre-requisites that bind the registered courier—identity verification, right-to-work checks, commercial insurance, Food Hygiene certification, possession of a Deliveroo-approved thermal bag and acceptance of every service term that exposes the original account-holder to algorithmic penalties.[56] In effect, the clause demands that the substitute replicate the platform's onboarding journey from scratch.

[49] Ibid 69–70.
[50] Ibid 70.
[51] Ibid 71.
[52] Ibid 27–29.
[53] Ibid 69.
[54] Ibid.
[55] Ibid., 25.
[56] Ibid.

Once those hurdles are cleared, the substitute possesses *everything required to open an account in her own name and capture the full fee*. In other words, the so-called right of substitution is not an unfettered delegation mechanism but an indirect replication of the onboarding process for formal account-holding. The practical effect is that anyone qualified to act as a substitute is, by definition, also qualified to become a Deliveroo rider in their own right. This folds the distinction between substitute and account-holder: the former is indistinguishable from the latter in every respect except contractual title. It is therefore *economically irrational* for an individual who meets the equivalent of all of the platform's access conditions to work under someone else's account, surrendering both autonomy and a share of earnings, when they could instead retain the full fee by registering directly. Far from creating meaningful flexibility, the clause operates as a structural incentive for account-holders to subcontract labour to others who are unable or ineligible to enrol independently.

That is, what is even more disquieting is the Court's silence on *who* could plausibly occupy the role of substitute within this contrived market. In that, the only individuals likely to accept such an arrangement are those blocked from holding their own accounts: undocumented migrants, asylum-seekers or workers whose immigration status precludes direct platform enrolment/work.[57]

For these excluded groups, the contractual 'right' of substitution operates less as flexibility and more as an underground rental market in digital work permits—what Émile Baril refers to as 'citizen-rentier-ship'.[58] Here, a documented or authorised rider—armed with the necessary right-to-work checks, commercial insurance and Deliveroo-approved kit—leases their account to those locked out of formal employment. Access can be sold by the hour, the shift, or the week, with two revenue streams for the 'citizen-rentier': an upfront access fee and a running percentage of every completed order.[59] All algorithmic penalties, insurance excesses, or deactivations remain *nominally* the account-holder's problem, yet in practice the substitute shoulders the entire pressure to avoid lateness, customer complaints, or route deviations—knowing a misstep could see their access instantly revoked and their earnings confiscated.[60]

[57] É. Baril, 'Citizen-rentier-ship: Delivering the Undocumented to Labour Platforms in Paris' (2024) 56 *Antipode* 1132. Ibid.
[58] Ibid.
[59] Ibid.
[60] Ibid.

Deliveroo, in consequence, reaps a double dividend. It indirectly/informally expands labour supply with workers who, because of their immigration precarity and lack of recourse to labour law, ride harder, accept riskier routes and seldom dispute pay.[61] Meanwhile, the company can disclaim knowledge of any breach because it does not police or "object" to substitutions that its own compliance hurdles make all but irrational for anyone except the most insecure. In effect, the platform harvests the surplus generated by racialised and migrant vulnerability while laundering that exploitation through the contractual fiction of entrepreneurial delegation. The state's hostile-environment regime—criminalising work for asylum-seekers and many visa-overstayers—[62]funnels precisely these workers into the shadows where Deliveroo's substitution clause becomes their only point of entry in ways that transform statutory exclusion into private profit and deepen the racialised stratification of risk and reward in the gig economy.

And, relatedly and foundationally, what drops out of view, is the entire ecology of unilateral control that dominates the ordinary working day, *even for those working under accounts in their own names*. While the judgment dwells on an almost mythical 'freedom' to delegate, it treats as legally trivial the facts that riders cannot set their own tariffs, cannot port customer data to a rival service, cannot choose routes without algorithmic override, and can be suspended or de-ranked for lateness, ratings drift, or a momentary dip in acceptance rates.[63] By assigning near-total doctrinal weight to a single, rarely usable escape hatch (for those it is ostensibly provided for), the Court allows every other lever of managerial domination to be re-coded as neutral, if not benign, background noise.

The effect is a doctrinal redirection. Substitution functions as a kind of procedural fixation: once courts certify its presence, the analytical spotlight shifts away from wage-setting asymmetries, data opacity, algorithmic punishments and the structural impossibility of collective exit. Genuineness is reduced to the absence of *direct* platform policing at the moment of delegation; exploitation that happens everywhere else—through price floors, route obligations, probabilistic shadow banning or working—is declared outside the frame. Thus, the test that claims to search for economic dependence ends

[61] Ibid.
[62] M. Griffiths and C. Yeo, 'The UK's Hostile Environment: Deputising Immigration Control' (2021) 41 *Critical Social Policy* 521.
[63] Cant, *Riding for Deliveroo* (n.35).

up obscuring it, because dependence is expressed through the very mechanisms (pricing, routing, ratings) that the substitution discourse brackets out.

5. 'IN ALL THE CIRCUMSTANCES': MULTI-APPING, JURIDICAL CLOSURE AND THE ERASURE OF RISK

Like substitution, client diversification through multi-apping (as in *Uber* in paragraphs 136–137) is also read by the Court in *Deliveroo* as a functional equivalent to substitution because it displaces the 'for another' requirement by re-situating the rider in a competitive market. In *Deliveroo*, for instance, the Court treated the 'unfettered' right to accept competing apps' work—as well as Deliveroo's express statement that this was 'fine with us'—[64]as evidence that riders operated on their own account.[65] The legal logic being that the more the courier *can* toggle between principals, the more each principal resembles a *client or customer* of an independent business.[66] Significantly, as with substitution, the Court made it clear in *Deliveroo* that tribunals do not require factual evidence/data on hours spent multi-apping; *contractual latitude*—the absence *in fact* of a need to seek prior permission—appears to suffice to recharacterise the relationship.[67]

For example, the Court conceded that exercising this latitude is hazardous, noting that:

> In practice, however, it would be *tricky and risky* to undertake simultaneous deliveries for different food-delivery companies. Since delivery times were monitored and persistent slow deliveries were a cause of termination, there was a disincentive in doubling up orders for different companies.[68] [my emphasis]

A closer reading of this statement indicates that the Court, in effect, tacitly acknowledges a series of material and algorithmic hazards associated with any attempt to 'double-up' orders. And, to appreciate why 'doubling-up' orders is little more than a theoretical liberty, consider what must align perfectly for a rider to pull it off without immediate sanction. Both jobs have to launch within minutes of each other, originate from restaurants that release food at comparable speeds, and terminate along an almost identical corridor

[64] *IWGB v CAC* (n.5) para 30.
[65] Ibid., 71.
[66] Ibid., 69–70.
[67] Ibid.
[68] Ibid., 30.

of streets.[69] Any divergence—an extra traffic-light cycle, a slow kitchen, an unexpected road closure—creates a visible anomaly on the customer's live-tracking map, which pings the platform's lateness detector and automatically debits the rider's punctuality/completion score. Because the algorithm benchmarks each courier against fleet-wide median drop-times accurate to the second, a single tardy leg can push the account below the performance threshold that triggers 'shadow-banning': fewer subsequent offers, lower surge eligibility and a rating spiral that is exceptionally hard to reverse.[70]

To compensate, riders could resort to speed. However, that means running amber lights on a bicycle, threading through oncoming traffic on a scooter, etc.[71] All three tactics raise the probability of collision—statistically concentrated at precisely the evening rush-hour window when restaurants queue orders and multi-apping looks most tempting.[72] A minor scrape has cascading effects: insurance excesses wipe out days of earnings, the vehicle sits idle pending repair, and the platform's risk-scoring tool flags the rider for possible deactivation.[73]

Navigation stress can also complete the trap. Two competing GPS prompts issue overlapping turn-by-turn instructions, while push-notifications from both apps demand photo confirmation of the pick-up, all of it arriving through a single handset mounted to shaky handlebars.[74] The cognitive load is akin to toggling between two air-traffic-control screens while sprinting. Occupational-psychology studies locate this level of split-attention close to the threshold at which micro-sleeps proliferate—episodes lasting fractions of a second yet long enough to miss a pedestrian stepping off the kerb or a brake light flashing ahead.[75]

The upshot is that multi-apping is sustainable only as a *rare, dangerous, opportunistic gamble*: a perfect overlap of destinations in free-flowing traffic with forgiving customers and algorithms that, on that occasion, do not

[69] Popan (n 35); N. Christie and H. Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (2019) 13 *Journal of Transport & Health* 115.
[70] Popan, 'The Fragile "Art" of Multi-apping' (n.35).
[71] Ibid.; Christie and Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (n.70).
[72] Popan, 'The Fragile "Art" of Multi-apping' (n.35); Christie and Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (n.69).
[73] Popan, 'The Fragile "Art" of Multi-apping' (n.35).
[74] Ibid.; Christie and Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (n.69).
[75] Popan, 'The Fragile "Art" of Multi-apping' (n.35); Christie and Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (n.69).

retroactively penalise the jagged route data. For the overwhelming majority of shifts—and riders—it is an invitation to a punitive feedback loop of lateness, low ratings, hardware damage and eventual account loss.[76] In other words, the 'latitude' celebrated by the Court operates more as a juridical mirage than a real entrepreneurial option; the costs of exercising it, whether measured in bodily risk or algorithmic reprisal, render it practically self-defeating.

6. EXCLUSION BY EXCEPTION: HOW COURTS GENERALISE MARGINAL LIBERTIES TO DENY WORKER STATUS

In practical terms, multi-apping replicates the same structure of doctrinal distortion already observed with substitution clauses. Like substitution, multi-apping is a largely theoretical liberty—rarely exercised in the form imagined by courts and tribunals, and rendered practically irrational by the structure of platform incentives and penalties. Yet, the Court, much like in its treatment of substitution, demonstrates minimal curiosity about *why* sustained, simultaneous use of multiple platforms is so uncommon. Nor does it ask *how* multi-apping actually manifests in riders' working lives. The empirical silence is telling. For when one examines the material conditions under which multi-apping occurs, what emerges is not a portrait of independent enterprise, but a signal of economic distress.[77]

Far from toggling between principals as an expression of business acumen, multi-apping typically signals a struggle to remain solvent amidst algorithmic drought.[78] It is not that workers strategically accept jobs from multiple sources concurrently; rather, when one platform fails to yield sufficient offers, they may activate others in hope—often vain—of receiving something viable. A food-delivery rider with no pending offers might briefly enable a ride-hailing app, or a package-collection platform, to see whether demand exists elsewhere. These activations are not attempts to *simultaneously* deliver food, passengers and parcels, but expressions of desperation: an effort to salvage value from otherwise idle time.

Significantly, once a job is accepted on one app, the others are usually switched off. The rider commits to a single task and a single platform at a

[76] Popan, 'The Fragile "Art" of Multi-apping' (n.35).
[77] Ibid.
[78] Ibid.

time. This is not entrepreneurial diversification; it is defensive rationing in a hostile algorithmic environment.[79] The risk is not simply that jobs are sparse, but that when they do arrive, they are so unprofitable that accepting them constitutes a net loss. Many riders report being offered deliveries that would not even cover the cost of petrol required to reach the pick-up point.[80] Others describe 'dead zones' where they can complete the journey, but have no guarantee of return fares—meaning they personally absorb the cost of repositioning their vehicle to areas of higher demand.[81] Platforms often exploit this desperation by saturating riders with exploitative offers, anticipating that fear of de-ranking or deactivation will induce eventual compliance.[82]

In this context, multi-apping is not the hallmark of client diversification, but a last-ditch tactic deployed to avoid financial ruin. And yet, because the platform terms do not *prohibit* it, the Court treats a finding in fact that a platform does not object to multi-apping as determinative—sufficient to reframe the relationship as one between autonomous commercial actors rather than economically dependent workers.

This formalist framing systematically erases the actual dynamics of platform control. It recodes algorithmic precarity as market freedom, and rationalises economic coercion as a matter of voluntary choice. In so doing, it repeats precisely the same doctrinal manoeuvre as with substitution: it elevates an unusable liberty over the concrete conditions of its exercise. It defers to *notional* independence while turning away from the *actual* asymmetries of power, risk and compulsion that define the day-to-day experiences of riders.

That is the deeper juridical issue. By treating multi-apping as functionally equivalent to client pluralism, the Court trades actual evidence of dependency for the *appearance* of independence. In the process, it suppresses the most urgent questions about power: How are offers priced? Why are riders incentivised to accept loss-making jobs? What happens to those who decline? And how do performance metrics construct a coercive behavioural environment that riders cannot meaningfully opt out of? These are the questions buried beneath the Court's abstraction. They are not resolved by pointing to a

[79] Ibid.; Rie H. Hernandez and others, '"At the End of the Day, I Am Accountable": Gig Workers' Self-tracking for Multi-dimensional Accountability Management', in *Proceedings of the 2024 CHI Conference on Human Factors in Computing Systems* (ACM, 2024) art 852.

[80] Popan, 'The Fragile "Art" of Multi-apping' (n.35); Hernandez and others, Ibid.

[81] Ibid.

[82] Popan, 'The Fragile "Art" of Multi-apping' (n.35); Hernandez and others, '"At the End of the Day, I Am Accountable"' (n.79); Rosenblat, *Uberland* (n.35); Cant, *Riding for Deliveroo* (n 35).

theoretical freedom to open multiple apps. They are sharpened by confronting the structural realities of gig labour—and by recognising that legal tests anchored in fictional liberty will inevitably produce fictional autonomy.

And, at an even more fundamental level, taken together, the twin devices of substitution and multi-apping converge on a single doctrinal lock-out. In both *Uber* and *Deliveroo*, the Supreme Court made clear that the decisive question is not what *this* rider actually does, but what *someone*—'a few, if that'—in the contractual cohort *could* do. Once the judges identify even a marginal subset of couriers who can (i) hand a job to a fully credentialled stand-in or (ii) keep a second app running in the background, the mere unpoliced *possibility* of such conduct is projected across the entire population. Worker status is therefore extinguished by statistical imagination: the hypothetical latitude of the few is imputed to the many, and the lived realities of those who cannot risk delegation, cannot afford multiple accounts, or simply refuse to endanger themselves are ruled immaterial. The result is an unequal evidentiary economy in which the conduct of a marginal few suggestive of entrepreneurial behaviour colonises the legal identity of every platform labourer. Whether by substitution or by multi-apping, the jurisprudence builds a revolving door that appears open in principle yet closes in practice—rendering the attainment, and certainly the retention, of 'worker' status virtually impossible for the vast majority of riders and drivers who actually inhabit the precarity that the law purports to address.

7. DEPLETION AS THE METABOLIC COST OF JURIDICAL ABSENCE

Once protection is denied in this way, the platform's logistics engine reroutes the operational expense of its 'asset-light'[83] model through the labourer's body and wallet.[84] For example, the kinetic and environmental stresses embedded in platform logistics produce a multi-system cascade of harm that far exceeds the familiar litany of wrist and lumbar injuries. Prolonged loading of 8–10 kg thermal backpacks above the centre of gravity imposes continuous

[83] Uber Technologies, 'Investor Meeting: Corrected Transcript' (n.24).

[84] P. Bérastégui, *Exposure to Psychosocial Risk Factors in the Gig Economy: A Systematic Review* (Brussels: European Trade Union Institute, 2021); A. J. Wood and others, 'Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy' (2019) 33 *Work, Employment and Society* 56; M. A. Anwar and M. Graham, 'Between a Rock and a Hard Place: Freedom, Flexibility, Precarity and Vulnerability in the Gig Economy in Africa' (2021) 25 *Competition & Change* 237.

compressive force on the intervertebral discs, accelerating degenerative disc disease and radicular pain.[85] Simultaneously, handle-bar vibration in the 5–50 Hz range—well within the spectrum linked to hand-arm vibration syndrome—propagates through forearm fascia, precipitating early-onset carpal-tunnel compression and micro-lesions of the ulnar nerve (which controls fine motor function in the hand and forearm).[86] Neuromechanical fatigue compounds cognitive load: as glycogen stores deplete, reaction times elongate, micro-sleep episodes proliferate,[87] and the odds of high-impact collision rise exponentially during the final hours of a shift.[88] Respiratory insult is no less acute. Riders inhale a cocktail of fine particulate matter, ultrafine brake dust and nitrogen oxides at roadside concentrations that routinely breach WHO thresholds and inflame bronchial tissue and elevate long-term cardiovascular risk.[89] Add the neuro-behavioural toll of asynchronous notification pings—dopaminergic spikes followed by cortisol-laden vigilance cycles—and the picture shifts into what occupational-medicine scholars term 'allostatic overload': a state in which cumulative physiological stress outpaces the body's capacity for repair, leaving headaches, mood dysregulation and musculoskeletal pain as early warning signals of systemic breakdown or burnout; what Popan, in relation to gig workers, terms 'snapping'.[90]

Snapping is the moment at which the worker's finely stretched coping regime—fuelled by caffeine, adrenaline and the promise of the next fare—finally gives way. It is not a single dramatic collapse so much as a sudden recognition that nothing further can be extracted: wrists seize when the handlebars jolt over another pothole; vision blurs after the tenth consecutive notification ping; or the rider realises, mid-intersection, that they have no clear

[85] T. M. Benson and others, 'Factors and Prevalence of Musculoskeletal Pain Among App-based Food Delivery Riders in Tamil Nadu: A Cross-sectional Study' (2025) 5 *Discover Social Science and Health* 14.

[86] V. Kamala and others, 'Investigating the Physical Ergonomic Risks Associated with Last-Mile Delivery Personnel Riding Motorcycles' (2025) 74 *International Journal of Productivity and Performance Management* 1261; S. Kwangsukstith and others, 'Assessment of Occupational Hazards, Health Effects, and Personal Protective Equipment Usage Among Motorcycle Food Delivery Riders in Thailand: A Cross-sectional Survey' (2025) 20 *Journal of Occupational Medicine and Toxicology* 13.

[87] Popan, 'The Fragile "Art" of Multi-apping' (n.35); Christie and Ward, 'The Health and Safety Risks for People Who Drive for Work in the Gig Economy' (n.69).

[88] Ibid.

[89] Kwangsukstith and others, 'Assessment of Occupational Hazards, Health Effects, and Personal Protective Equipment Usage Among Motorcycle Food Delivery Riders in Thailand' (n.86).

[90] B. S. McEwen, 'Protection and Damage from Acute and Chronic Stress: Allostasis and Allostatic Overload and Relevance to the Pathophysiology of Psychiatric Disorders' (2004) 1032 *Annals of the New York Academy of Sciences* 1.

memory of the previous mile. The snap may follow a near-miss with a bus, a micro-sleep at a red light, or the dull thud of an ankle twisted on a kerb—any concrete signal that the body's warning systems have been ignored too long. In that instant, the algorithmic imperatives to stay logged on—avoid de-ranking, chase surge pricing, clear acceptance-rate thresholds—lose their hold, replaced by a visceral sense of threat and depletion. What follows is often a forced withdrawal: switching off the app, abandoning the shift, or leaving the bike at the roadside because continuing feels physically or emotionally impossible. Snapping, then, makes visible the hidden costs of 'asset-light' logistics in the most personal register imaginable: the point at which a human body, treated as endlessly elastic infrastructure, refuses to bear any more load.

8. THE ENGINE OF ATTRITION: CAPITAL DECAY AND RISK TRANSFER IN PLATFORM WORK

Beyond this somatic toll, the platform's logic engineers a parallel process of accelerated capital decay that systematically shifts the entire life-cycle cost of the worker's primary assets—vehicle, phone and delivery gear—onto a personal balance-sheet already starved of liquidity.[91] The operational tempo of on-demand logistics—high-mileage, stop-start urban bursts governed by real-time dispatch—inflicts a form of mechanical attrition far more severe than ordinary consumer use.[92] Algorithmic cadence converts distance travelled into compounded wear: tyres scallop under hard cornering, brake pads shed copper dust that eventually fouls ABS sensors, and drivetrains—whether bicycle chains or automatic transmissions—absorb uninterrupted torque spikes.[93] Short, heat-soaked runs deny internal-combustion engines the chance to reach stable operating temperatures and so accelerate oil shear and carbon deposit formation[94]; e-bike battery packs are daily deep-cycled well below their

[91] Hernandez and others, '"At the end of the day, I am accountable"' (n.79).

[92] M. Young, S. Farber and M. Rahman, 'On the Road: Analysis of Driver Earnings in Toronto's Vehicle-for-Hire Industry' (UTTRI Research Report 20-02, University of Toronto Transportation Research Institute, 2020).

[93] Hernandez and others, '"At the end of the day, I am accountable"' (n.79); I. Ladegaard, A. J. Ravenelle and J. Schor, '"God is Protecting Me… and I Have Mace": Defensive Labour in Precarious Workplaces' (2022) 62 *British Journal of Criminology* 773.

[94] W. Cheng and others, *Lubricant Formulations to Enhance Engine Efficiency in Modern Internal Combustion Engines* (Cambridge, MA: Massachusetts Institute of Technology, 2017); D. Growney and others, 'Hybrid Electric Vehicle Engine Operation and Engine Oil Degradation: A Research Approach' (2023) 17 *SAE International Journal of Fuels and Lubricants* 3.

optimal charge floor and cut cell longevity in half.[95] Microscopic operations that bracket each order multiply these losses. Idling 10 min while awaiting a ping burns fuel (or drains an e-scooter's battery) that no mileage-allowance recoups.[96] Repetitive use of hazard lights and screen-on navigation draws from an auxiliary battery already weakened by frequent cold starts that spawn electrical faults that MOT testers treat as major defects. Parking moments—kerb-side, hazards flashing—invite penalty-charge notices that function as a de facto occupational tax,[97] while the necessary 'two-minute' dash into restaurants accelerates zipper failure on thermal bags whose branded replacements the worker must purchase at non-competitive prices.[98] Even supposedly frictionless digital infrastructure siphons value: continuous GPS polling erodes smartphone battery health, and data-plan overages attract premium tariffs.[99]

The financial consequences of this configuration compound further at the personal-finance level. In the absence of predictable wages or employer support, many workers come to rely on consumer credit to smooth out volatility.[100] Credit cards become a lifeline for upfront fuel costs, tyre replacements, phone upgrades or franchise onboarding kits.[101] Instalment-based 'buy now, pay later' products cover essentials the platform does not: second helmets, high-visibility rain gear, power banks. What begins as short-term liquidity management hardens into structural dependency, especially when irregular earnings and negative working-capital cycles push riders into revolving debt.[102] Once balances accrue interest—often at high rates—minimum payments trap the worker in a cascading debt spiral, where servicing the cost of work becomes indistinguishable from servicing the cost of credit itself.[103] The platform,

[95] T. Washington, K. Heesch, S. Wilson and A. Ng, *A Report on Good Practices in E-Bike Charging at Workplaces* (Brisbane: Queensland University of Technology, 2021).

[96] R. Schein, 'From Free Time to Idle Time: Time, Work-discipline, and the Gig Economy' in P. O'Connell and U. Özsu (eds), *Research Handbook on Law and Marxism* (Cheltenham: Edward Elgar, 2021) 400.

[97] M. Mathews, S. Zainuddin, L. Thian Wen and F. Phoa, *Precarity in Platform Work: A Study of Private-Hire Car Drivers and Food Delivery Riders* (Singapore: Institute of Policy Studies, Lee Kuan Yew School of Public Policy, National University of Singapore, 2022) IPS Working Paper No 44.

[98] Cant, *Riding for Deliveroo* (n.35).

[99] Schein, 'From Free Time to Idle Time' (n.96).

[100] G. Buchak, 'Financing the Gig Economy' (2024) 79 *Journal of Finance* 219.

[101] Ibid.; M. Celestin and N. Vanitha, 'The Gig Economy and Its Effects on Personal Finance' (2021) 5 *Indo-American Journal of Multidisciplinary Research and Review* 39.

[102] Buchak, 'Financing the Gig Economy' (n 100); Celestin and Vanitha, Ibid.

[103] Buchak, 'Financing the Gig Economy' (n.100); Jordan Mitchell, Xiao Li and Phillip Decker, 'Gig workers' financial confidence and behavior' (2021) 5(2) *Global Journal of Accounting and Finance* 88–105.

meanwhile, incurs none of the liability but captures the revenue stream those debts enable.

Financially, this relentless equipment rot does not appear as a predictable, amortised business expense that a fleet operator could forecast and absorb; it materialises instead as a series of acute cash-flow shocks.[104] A failed MOT, puncture-induced wheel alignment, or e-bike battery replacement can obliterate weeks of net earnings that, then, force recourse to high-interest debt.[105] Insurance magnifies the fragility. Specialist hire-and-reward cover already embeds an actuarial premium for crash-prone urban mileage; a single not-at-fault claim erases a no-claims bonus and catapults renewal quotes into high territory.[106] Excess payments, due upfront, are large enough to push many riders temporarily off the road, severing income entirely. Attempts to mitigate exposure by leasing simply swap one vulnerability for another. Mileage caps, punitive wear-and-tear clauses and mandatory comprehensive insurance bind the rider to monthly obligations indifferent to seasonal demand swings.[107] And because residual values drop sharply once a vehicle breaches popular resale brackets, the depreciation 'cliff-edge' arrives sooner than a rider can accumulate the capital to replace the asset, locking them into an endless cycle of high-rate credit and depreciating collateral.[108]

For those operating openly on the apps, the damage just described is at least cushioned—however thinly—by formal visibility. A registered rider can, in principle, spread shocks across overdrafts, credit-card limits, or a short-term loan; can claim on an insurance policy in their own name; and can negotiate with a garage that recognises the vehicle's V5C and the rider's driving licence. None of those stop-gaps exist for the 'citizen-rentier-ship' layer that toils underneath the official cohort.[109] An undocumented courier working through a rented profile finds every rupture magnified. When a rear derailleur snaps

[104] Buchak, 'Financing the Gig Economy' (n.100); Celestin and Vanitha, 'The Gig Economy and Its Effects on Personal Finance' (n 101).
[105] Ibid.
[106] Y. Huang, H. Chen, Q. Chen, R. Jia, J. Liu, X. Yan and Y. Yin, '"There is No Future in this Business": Further Platformization of Ride-hailing Service in China and the State's Intervening Policies Under the COVID-19 Outbreak' in J. L. Qiu, S. Yeo and R. Maxwell (eds), *The Handbook of Digital Labor* (Hoboken, NJ: John Wiley & Sons, 2025) 248–63.
[107] V. Brailovskaya, *Digital Labor Gig Economy from the Worker's Perspective: A Literature Review* (IDinsight, 12 December 2023) <https://www.idinsight.org/wp-content/uploads/2024/01/PUBLIC-Digital-Labor-Gig-Economy-From-the-Workers-Perspective_-A-Literature-Review-.pdf> accessed 1 September 2025; R. E. Zietlow, 'The New Peonage: Liberty and Precarity for Workers in the Gig Economy' (2020) 55 *Wake Forest Law Review* 1087.
[108] Zietlow, Ibid; Celestin and Vanitha, 'The Gig Economy and Its Effects on Personal Finance' (n.101).
[109] Baril, 'Citizen-rentier-ship' (n 57).

or a phone screen shatters, the full replacement cost must be produced in cash, immediately, or work stops. There is no instalment plan, no Section 75 protection, no recourse to 'pay-in-three' schemes that require a credit file and proof of address. A traffic fine cannot be challenged without exposing one's status; a theft claim cannot be lodged because the bike is not insured—and could not be, given the lack of documentation.[110] Even the platform's own 'instant payout' feature is unavailable, because it funnels earnings through the registered account holder's bank.[111]

Economic self-insurance therefore takes the form of relentless overwork.[112] Extra shifts are piled on to create a private contingency fund held, quite literally, in cash or mobile-money wallets. But the more hours worked to build that buffer, the faster the hardware degrades, the sooner the next failure arrives, and the deeper the dependence on the account-renting middle-person who extracts a nightly fee. Catastrophe is never an outlier event; it is the predictable climax of a system that withholds every formal shock absorber—credit, insurance, legal identity—and then demands continuous, capital-intensive mobility.[113] Where the visible rider faces accelerated depletion, the invisible rider confronts free-fall: a single blown tyre or confiscated bike can erase the entirety of working capital, snap the already-taut survival rope and silence the only income stream available.

9. INVISIBLE CONTRIBUTIONS, VISIBLE LIABILITIES: HOW PLATFORM LABOUR CONSUMES THE SOCIAL STATE

For those with citizenship, however, the precarity built into gig-work contracts means that the state is subtly braided through almost every stage of a courier's occupational life-cycle, even when the worker experiences that life as a largely private battle with fluctuating earnings, mounting wear-and-tear and chronic fatigue. And, of course, this subsidisation is not a historical anomaly: It extends a lineage that, as Deakin and Wilkinson have shown, stretches from the late-nineteenth-century reform of the Poor Laws, through the mid-twentieth-century management of casual labour, to the flexible labour markets and

[110] Ibid.
[111] Ibid.
[112] Ibid.
[113] Ibid.

zero-hours infrastructure consolidated in the 1980s, each iteration reframing insecurity as 'autonomy' while displacing its costs onto the public purse.[114]

Although no official dataset yet traces how welfare transfers map onto day-to-day platform earnings, the structure of the benefits system allows us to reasonably infer that such redistribution is occurring. To begin with, volatile pay is stabilised by Universal Credit's earnings taper.[115] When weekly income drops below the basic cost of living, the digital UC calculator automatically inflates the award, topping up rent through the Housing Element and,[116] if children are present, releasing additional Child Elements that in turn unlock Free School Meals, Healthy Start vouchers,[117] and, in some local authorities, subsidised holiday meal schemes. Council tax liability is similarly softened by Council Tax Support: most English authorities apply sliding-scale discounts that deepen as net earnings fall.[118] All of this means that each algorithmic lull in orders is, in effect, underwritten by a second algorithm in DWP servers that converts lost platform income into means-tested public transfer.

When the rhythm of stop–start riding injures the body—sprained wrists, torn menisci, the creeping neuropathy of handle-bar vibration—the National Health Service absorbs the acute shock. A&E departments treat fractures from car-door 'dooring' incidents; fracture clinics, physiotherapy suites, diagnostics centres and community pain teams handle the slower attrition. If symptoms linger for 4 weeks and a GP issues a fit note, the welfare system pivots: the courier can add a Work Capability Assessment to the ongoing UC claim[119] and, if found to have Limited Capability for Work and Work-Related Activity, draw an additional monthly element while NHS Talking Therapies or Community Mental Health Teams address the anxiety, insomnia, or

[114] S. Deakin and F. Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (Oxford: OUP, 2005); Z. Adams and S. Deakin, *Re-Regulating Zero Hours Contracts* (Liverpool: Institute of Employment Rights, 2014).

[115] GOV.UK, 'Universal Credit: How Your Payments Are Worked Out' (31 May 2025) <https://www.gov.uk/universal-credit/how-your-payments-are-worked-out> accessed 1 September 2025.

[116] Department for Work and Pensions, 'Discretionary Housing Payments Guidance Manual' (GOVUK 2025) <https://www.gov.uk/government/publications/discretionary-housing-payments-guidance-manual> accessed 1 September 2025.

[117] Department for Education, 'Apply for Free School Meals' (31 May 2025) <https://www.gov.uk/apply-free-school-meals> accessed 1 September 2025.

[118] GOV.UK, 'Apply for Council Tax Reduction' (31 May 2025) <https://www.gov.uk/apply-council-tax-reduction> accessed 1 September 2025.

[119] Department for Work and Pensions, 'Benefit and Pension Rates 2024 to 2025' (31 May 2025) <https://www.gov.uk/government/publications/benefit-and-pension-rates-2024-to-2025/benefit-and-pension-rates-2024-to-2025> accessed 1 September 2025.

depressive episodes that ordinary occupational health schemes would have intercepted in a standard employment setting.[120]

Because gig workers oscillate around the auto-enrolment threshold, pension contributions seldom accrue.[121] That foregone saving re-enters the ledger decades later, when low private income triggers Guarantee Credit under Pension Credit,[122] Housing Benefit for pensioners, and—if mobility has been eroded by years of heavy lifting—Attendance Allowance.[123] Local authorities, meanwhile, pick up the bulk of social-care costs once savings slip under the statutory capital limits, as mandated by the Care Act 2014.[124] What looks like an individual deficit in retirement planning is, from the fiscal side, a pipeline of deferred expenditure that the Treasury must meet from general taxation long after the platform has booked its revenue.

Intermittent earnings also force couriers into high-cost credit. Rent-to-own phones, fuel bought on credit cards (with representative APRs for sub-prime borrowers often exceeding 30%), and 'buy now, pay later' helmets create a debt stock serviced, when it finally collapses, through statutory solutions such as Debt Relief Orders (DROs)[125] and Breathing Space moratoria.[126] These mechanisms are administered by the Insolvency Service, with associated debt advice often funded via levies on mainstream lenders and managed by the Money and Pensions Service (MaPS). Even parking fines, an almost occupational inevitability when double-parking for two-minute pick-ups, activate public machinery: liability orders flow through the Traffic Enforcement Centre,[127] and when households buckle, local hardship funds or discretionary Council Tax support schemes may absorb part of the arrears.[128]

[120] NHS, 'Find an NHS Talking Therapies Service' (31 May 2025) <https://www.nhs.uk/service-search/mental-health/find-an-nhs-talking-therapies-service> accessed 1 September 2025.
[121] House of Commons Work and Pensions Committee, *Self-employment and the gig economy* (n.23).
[122] GOV.UK, 'Pension Credit' (31 May 2025) <https://www.gov.uk/pension-credit> accessed 1 September 2025.
[123] GOV.UK, 'Housing Benefit' (3 June 2025) <https://www.gov.uk/housing-benefit> accessed 1 September 2025.
[124] 'Care Act 2014' pt 1.
[125] GOV.UK, 'Options for Dealing with Your Debts: Debt Relief Orders' (3 June 2025) <https://www.gov.uk/options-for-dealing-with-your-debts/debt-relief-orders> accessed 1 September 2025.
[126] The Insolvency Service, 'Breathing Space (Debt Respite Scheme)' (2 June 2025) <https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors> accessed 1 September 2025.
[127] GOV.UK, 'If You Get a Parking Ticket' (3 June 2025) <https://www.gov.uk/parking-tickets> accessed 1 September 2025.
[128] 'Local Government Finance Act 1992' ss 13A(1)(c).

Periodic vehicle failure reopens the housing-support loop. A £600 brake repair financed on credit can tip a household into rental arrears; the second missed payment may trigger a Section 8 notice from the landlord.[129] This, under the Homelessness Reduction Act 2017, obliges councils to open a prevention case.[130] Officers may award Discretionary Housing Payments or negotiate repayment plans—[131] public outlays that mask what is essentially the knock-on effect of under-regulated labour markets on housing stability.

Finally, every hour spent logged on yet unpaid diminishes future public revenues. Low taxable earnings reduce employee Class 1 National Insurance contributions (NICs); platforms pay no employer Class 1 NICs at all for self-employed individuals, shrinking the National Insurance Fund that finances many contributory benefits and part of the NHS budget.[132] In actuarial terms, the model is self-cancelling: today's missing contributions become tomorrow's higher call on means-tested transfers, health services and local-government care budgets.

Seen in the round, then, gig work is neither self-contained nor privately financed. It leans continuously on a lattice of state supports—instant when income falls, episodic when injury strikes, lifelong when low pay crystallises into old-age poverty. The platforms' promise of 'asset-light' flexibility is secured by a tax-funded shock-absorber that begins with Universal Credit and ends, years later, with Pension Credit and social care. Far from being residual safety nets, these schemes operate as the hidden working capital of the on-demand economy, smoothing cash-flow for firms by socialising the risks they decline to carry.

10. BETWEEN THE ALGORITHM AND THE HOSTILE STATE: UNDOCUMENTED WORKERS AND THE DOUBLE BIND OF SUBSTITUTION

The rentier-citizenship circuit multiplies these risks because the substitute's immigration status disqualifies her from almost every back-stop the state provides to lawfully present workers. Under the 'no recourse to public funds' rules in section 115 Immigration and Asylum Act 1999 and the NHS (Charges

[129] 'Housing Act 1988' ss 8 and sch 2.
[130] 'Homelessness Reduction Act 2017' s 1.
[131] Department for Work and Pensions, 'Discretionary Housing Payments Guidance Manual' (n.116).
[132] GOV.UK, 'National Insurance: Overview' (3 June 2025) <https://www.gov.uk/national-insurance> accessed 1 September 2025.

to Overseas Visitors) Regulations 2015,[133] an undocumented courier can register with a GP and receive A&E triage free of charge, but any subsequent hospital admission—fracture repair after a crash, surgery for a crushed wrist, even in-patient physiotherapy—is chargeable at the commercial overseas-visitor tariff.[1] A bill of £500 or more not only accrues 50% surcharges after two months; it is also reportable to the Home Office and can, also, therefore, jeopardise any later attempt to regularise status.[134] Because she is neither an employee nor a recognised self-employed taxpayer, she cannot claim Statutory Sick Pay, contributory Employment and Support Allowance, Personal Independence Payment, or Universal Credit; nor will employer liability insurance or the Motor Insurers' Bureau cover them if they are injured while riding on a borrowed account. Debt, therefore, spirals immediately into private high-interest credit or community fundraising, magnifying the economic shock that the injury already represents.

For asylum-seekers, the medical picture is less punitive—secondary care remains free while the claim is pending—but the social-insurance deficit is just as stark. Section 95 subsistence (£49.18 a week) and basic accommodation are flat-rate humanitarian supports, not earnings replacement; nothing in that regime insures against lost income, vehicle repair, or the monthly rent due on the leased account itself. Meanwhile, the platform continues to take its commission and the citizen-rentier his access fee, because neither bears any downstream cost when the substitute crashes, is ticketed, or slips off the algorithmic performance cliff.

The result is a double invisibility. In the production chain, the undocumented rider is invisible to the platform: all metrics, penalties and reputational scores attach to the account-holder's profile, not to the person who actually pedals the miles. In the welfare state, she is invisible because immigration control bars her from the very schemes—Universal Credit, Council Tax Support, Industrial Injuries Disablement Benefit—that cushion lawful gig workers' volatility. Caught between two data voids, she inhabits a risk landscape in which every mishap is privately absorbed yet publicly unrecorded, allowing both the company and the state to deny the externalities they jointly manufacture. What appears as entrepreneurial flexibility in the judgment books is,

[133] 'Immigration (Health Charge) Order 2015, SI 2015/792' <https://www.legislation.gov.uk/uksi/2015/792/contents> accessed 1 September 2025.

[134] GOV.UK, 'NHS Patient Debt: Guidance on Administration and Data Sharing' (22 September 2023) <https://www.gov.uk/government/publications/nhs-patient-debt-guidance-on-administration-and-data-sharing> accessed 3 June 2025.

for this stratum of riders, an unprotected labour market that can bankrupt them with a single pothole or late delivery—even as their work continues to generate fee income for account-owners, investors and the Exchequer alike.

11. ASSET-LIGHT, BURDEN-HEAVY: PLATFORM ACCUMULATION AND THE DISPLACEMENT OF RISK

Platforms are keenly aware of how offloading labour costs onto workers and the public sector fuels their profitability. In a February 2024 investor meeting, for example, Uber's Chief Financial Officer outlined how its 'asset-light model'—[135] one in which labour costs are externalised and offset by public subsidy and worker absorption—delivers exceptional financial returns, telling investors that:

> In the most recent period ending 2023, we generated positive $3 billion. Given our asset light model, we expect free cash flow as a percentage of adjusted EBITDA over the next three years to be 90-plus-percent annually as EBITDA to cash flow conversion continues to improve, translating to a three-year free cash flow CAGR of 40-plus-percent… we are very asset light and the plan is to remain so… We are $140 billion gross bookings enterprise that has a path to high teens top line growth with over 2 times that in profit growth. Our asset-light model enables significant cash flow generation and our shareholder focus underscores our commitment to return this capital to you via repurchases.[136]

To translate, Uber's finance chief is, in effect, telling investors that the company has turned the logic of 'asset-light' logistics into an extraordinarily powerful cash machine. In 2023, the group produced free cash flow of roughly $3 billion (about £2.4 billion if we assume an exchange rate of $1 = £0.80). Free cash flow is the money left over after operating costs, interest, taxes and limited capital expenditure have been paid; *it is the sum that can be returned to shareholders*. The executive links that figure to 'adjusted EBITDA', a measure of operating profit that strips out interest, tax, depreciation and certain one-off charges.[137] They are promising that, because Uber directly owns very little physical infrastructure or workforce liabilities, *more than 90%* of that adjusted EBITDA will drop through to *free cash* over the next three years. In practical terms, if adjusted EBITDA stabilises around the 2023 level of roughly $3.3 billion, free cash should continue to hover at—or even edge above—the

[135] Uber Technologies, 'Investor Meeting: Corrected Transcript' (n.24).
[136] Ibid.
[137] J. Berk and P. DeMarzo, *Corporate Finance* (5th edn, Harlow: Pearson, 2020).

current $3 billion mark. But the guidance goes further: management expects free cash flow to *compound* at '40-plus per cent' a year. Apply that compound annual growth rate to last year's cash number and the pool available to distribute *could exceed $8 billion* (£6.4 billion) by 2026.

Taken seriously, the figures unveiled in that February 2024 call imply an earnings engine that would be almost impossible to replicate were even a modest share of today's externalities brought back on-balance sheet. A 90% conversion of adjusted-EBITDA into free cash flow is, by any historical yardstick, extraordinary: most mature logistics or transport businesses struggle to convert much above 40–50% once they have met ordinary payroll taxes, vehicle depreciation, insurance premia and pension costs.[138] Uber's CFO is effectively boasting that nine-tenths of what the income statement labels 'profit' escapes the gravitational pull of capital-expenditure and working-capital sinks because the company neither owns the fleet nor appears on any payroll ledger for the drivers who keep that fleet circulating.

The second metric (i.e. the promise that free cash itself will compound at '40-plus per cent' annually) maps the arithmetic of those externalities into capital-market time. Compounding works only because the base on which growth is calculated is itself unburdened: each extra dollar of gross bookings can flow through with minimal incremental labour cost, no secondary Class 1 National Insurance contribution, no pension auto-enrolment match, and no provisioning for statutory sick, holiday, or redundancy pay. Precisely because laws such as Section 230(3)(b) ERA 1996 insulate platforms from those obligations, the denominator in the cash-conversion ratio does not inflate, while the numerator—the service fee—scales with booking volume.

Where does such cash go? The CFO's answer—buy-backs—tells us that the bulk will not be recycled into safer vehicles, higher driver pay, or an employer's share of social insurance, but into shrinking the share count and lifting earnings per share. Buy-backs are not investment; they are a distribution that magnifies returns to existing holders. Their rationale rests on the forecast that the firm can continue to harvest work and risk that remains unpriced on its own ledger and unbooked on the public one.

Seen in that light, the 90 to 40-plus narrative is less a tale of operational genius than the financial mirror image of the welfare-state liabilities catalogued earlier. For every basis-point of margin applauded in the call, a corresponding quantum of risk is landing elsewhere: on the driver's balance sheet

[138] Ibid.; T. Koller, M. Goedhart and D. Wessels, *Valuation: Measuring and Managing the Value of Companies* (7th edn, Hoboken, NJ: Wiley, 2020).

(fuel, tyres, physical wear), or on the Exchequer's (Universal Credit, NHS treatment, future Pension-Credit outlays). Were a reformed statutory regime—say, an hour-based social-insurance levy or a rebuttable presumption of worker status—to redirect a significant fraction of those costs back to the platform, the cash-conversion maths would degrade immediately. The "asset-light" miracle is thus revealed as a distributive one: a sluice-gate (to reprise the earlier metaphor) that channels liquidity upward to shareholders while routing liability downward to households and the state.

12. CONCLUSION: RETHINKING JURIDICAL ENGINEERING AFTER THE GIG ECONOMY

And so, how have we got here? The fundamental problem lies with the Supreme Court's *interpretive choices*, not *just* with the text of section 230(3)(b) ERA 1996. As I have repeatedly emphasised, alternative readings were open to the Court but not taken. For example, in the *Uber* analysis, I have shown how the Court chose to narrow 'working time' to moments of exclusive availability, when it could equally have recognised the full block of logged-on hours as 'at the disposal' of Uber. By focusing on those three predicates (app activation, geofence and exclusivity), the Court narrowed the compensable window, rather than asking whether either the material reality of continuous app-driven readiness or the very power platforms exert over drivers merited protection in its own right.

Likewise, in *Deliveroo*, I examined how a substitution clause, although practically unusable, was treated as decisive. The Court emphasised that riders had a 'virtually unfettered' right to appoint a nominee—even if, in practice, 'a few, if that, Riders use substitutes'—and simply refused to probe why. It might have examined whether functional impracticality or platform power rendered substitution illusory, but instead elevated a theoretical freedom over the lived impossibility of exercising it. Similarly, on multi-apping, I have noted how the Court rested worker status on the absence of prohibition, despite acknowledging that simultaneous deliveries are hazardous and algorithmically punished. It reframed what riders actually do—switch off every other app the moment a job is accepted—as an entrepreneurial choice, rather than as a defensive tactic against precarity. In this, and other instances, had the Court chosen differently—by reading 'personal service' to reflect material constraints on substitution or by treating all logged-on time as 'working time' in light of Uber's power and control over drivers—it could have brought hundreds of thousands of on-duty hours back onto the employment ledger.

Instead, by selecting the narrowest possible predicates, the Court rendered worker status all but unattainable.

In so doing, as critical scholarship—and especially Butler's account of law's generative and productive power—has long warned, the Court was not merely tracing the contours of existing legal doctrine but actively participating in the construction of the social and economic world it purported to adjudicate. These judgments do not simply reflect the gig economy's political and racialised configuration; they help produce it. By juridically enshrining contingent availability as entrepreneurial freedom, and practical constraints as legal irrelevance, the Court authorises a subject whose labour is always already outside the reach of protection. It is this constitutive act, framed as a doctrinal constraint, that (re)installs the very conditions under which exploitability is rendered lawful, racialised exclusions are naturalised, and the asset-light model can continue to extract at scale. The law here is not external to the platform economy's logics; it is the architecture through which those logics are made real.

And so, in terms of resistance—at least with regard to the focus of this article, which is on juridical formations—the problem is that one does not enter these formations as a pre-existing subject. Rather, subjects are constructed through them. Given the way the Court has delineated limb (b) worker status and the conditions attached to it, any attempt to resist *through juridical discourse* cannot avoid being shaped by that discourse. There is no external vantage point within these formations from which an alternative form of resistance can be launched as something wholly outside or untouched by its logic.

Non-juridical forms of resistance are, of course, possible: informal networks, acts of refusal, and—as seen in the shadow economy of substitution—alternative modes of labour organisation.[139] But were these brought within the existing juridical frame, they would inevitably be reconstituted by it. For many operating in these informal and alternative orders, those who exist outside the juridical logic of *Uber* and *Deliveroo*, recognition would not bring protection. Instead, it would trigger criminalisation.[140] Their forms of work would be cast not as legitimate labour but as unauthorised, out of order and place

[139] M. A. Anwar and M. Graham, 'Hidden Transcripts of the Gig Economy: Labour Agency and the New Art of Resistance Among African Gig Workers' (2020) 52 *Environment and Planning A: Economy and Space* 1269: Economy and Space 1269; O. Alyanak and others, 'Platform Work, Exploitation, and Migrant Worker Resistance: Evidence from Berlin and London' (2023) 34 *Economic and Labour Relations Review* 667.

[140] Griffiths and Yeo, 'The UK's Hostile Environment' (n.62).

and framed through the racialised bordering practices that render their labour invisible and illegitimate.[141] Visibility in this context invites not remedy, but state violence: deportations, raids, detention, exclusion from public support.[142]

This means that even if worker status were extended beyond the narrow confines set by the Court in *Uber* and *Deliveroo*, undocumented workers are unlikely to benefit. Their labour exists precisely because its possibility is juridically denied. It is made viable only through the operation of substitution clauses that function as legal fictions plausible only because the actual, invisible labour behind them cannot be acknowledged without destabilising the juridical logic that depends on their absence—a generative void through which the law operates and derives its meaning.[143] Yet, the deeper paradox is this: even the claim to 'save' undocumented workers from exploitation (e.g., by shutting down informal work, increasing workplace raids, or intensifying ID-check regimes) does not correct the structural harm.[144] It simply compounds it. It replaces exploitation with destitution. It forces survival further underground. It does not rescue, but buries.[145]

The only meaningful exit lies beyond the logic of criminalisation and selective recognition. It demands safer immigration routes, decriminalised access to work and a material reckoning with the imperial histories and economic dependencies that shape who is seen, who is rendered disposable and who is made deportable.[146] Absent that, juridical reform will only ever shift the coordinates of harm, redirecting the flow without closing the breach. For those already at the sharpest edge, the struggle is not simply for inclusion but for survival within a system that names their very visibility as the problem.

[141] Baril, 'Citizen-rentier-ship' (n.57).
[142] Griffiths and Yeo, 'The UK's Hostile Environment' (n.62).
[143] Ibid.
[144] Baril, 'Citizen-rentier-ship' (n.57).
[145] Ibid.
[146] Bhambra, 'Colonial Global Economy' (n.1); Ashiagbor, 'Race and Colonialism in the Construction of Labour Markets and Precarity' (n.1).