

1-26-2021

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Publication Citation

Nicholas Browning, What Is Shared in the Sharing Economy? Ethics and Externalities in Public-Private Partnerships, 9 Ind. J.L. & Soc. Equality 18 (2021).

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What Is Shared in the Sharing Economy? Ethics and Externalities in Public-Private Partnerships

Nicholas Browning, Ph.D.*

INTRODUCTION¹

Though George Orwell is among my favorite writers, I have not found his recent resurgence in popularity particularly comforting.² Whenever *1984* is “chiming with people,” it should give us all pause.³ Newspeak concepts have an eerie relevance in our age of alternative facts (think *double-speak/double-talk*) and gaslighted, partisan filter bubbles (or *doublethink*).⁴ Meanwhile, the slow, pervasive creep of Silicon Valley, fueled by our collective, consistent willingness to trade information for convenience—or simply access to platforms—oozes with overtures to Big Brother. We have allowed, and arguably empowered, tech giants to watch over us with too little concern for erosions of our privacy and Fourth Amendment rights.⁵

There are, however, moments of punctuated concern over the government’s ability to access our data; for example, the tight Senate vote in May 2020 that allowed for continued, warrantless governmental collection of Americans’ browser histories drew intense criticisms.⁶ Interestingly, much of the public vitriol was aimed at the government’s right to access the information, with few people questioning the potential harm done by the companies that collect that

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¹ In February 2020, the Indiana Journal of Law and Social Equality hosted its annual symposium in Bloomington, Indiana. This year’s theme was *Social Equality in the “Sharing” Economy?* This article is a reflection on and outgrowth of the session, “From Digital to Physical: The Reality of the Sharing Economy of Communities,” for which I was a panelist. Other panelists included Daniel Bingham, community organizer and climate justice activist; Mike McAfee, executive director of Visit Bloomington; and Beth Rosenbarger, planning services manager for the Bloomington Department of Planning and Transportation. For the full session, see IU Maurer, *IJLSE Symposium Spring 2020 from Digital to Physical*, YOUTUBE (Feb. 25, 2020), <https://www.youtube.com/watch?v=m2Y6trlg7u0>.

² Kimiko de Freytas-Tamura, *George Orwell’s ‘1984’ Is Suddenly a Best-Seller*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/books/1984-george-orwell-donald-trump.html>.

³ *Id.*

⁴ GEORGE ORWELL, 1984, at 44–45 (Rosetta Books 2000) (1949) (ebook); *Double-talk, double talk*, OXFORD ENGLISH DICTIONARY (2d ed. 1989), www.oed.com/view/Entry/57061 (“[D]eliberately ambiguous or imprecise language; used esp. of political language that is subject to arbitrary national or party interpretation.”).

⁵ See U.S. CONST. amend. IV; *Olmstead v. United States*, 277 U.S. 438, 473 (1928) (5–4 decision) (Brandeis, J., dissenting) (warning that as advancements in technology become available to the government, it can use the technology to slowly encroach on individual privacy rights).

⁶ Trevor Timm, Opinion, *The US Senate Voted to Let Trump Spy on Your Search History. But All Is Not Lost*, GUARDIAN (May 16, 2020, 6:20 PM), <https://www.theguardian.com/commentisfree/2020/may/16/us-senate-congress-privacy-bill-search-history>; Patricia Zengerle, *U.S. Senate Blocks Bid to Curb Surveillance of Americans’ Internet Habits*, REUTERS (May 13, 2020, 6:24 PM), <https://www.reuters.com/article/us-usa-surveillance-congress/u-s-senate-blocks-bid-to-curb-surveillance-of-americans-internet-habits-idUSKBN22P3C1>.

information—or, indeed, whether the collection and storage of seemingly unquantifiable amounts of data lead to net societal gain.⁷

Data mining is one of many pivotal ways in which established tech companies, as well as more recent start-ups, fundamentally alter individual lives, communal ties, corporate strategies, government policies, international affairs, and the myriad of relationships all these individuals and entities have with one another.⁸ The analogy of *1984* breaks down somewhat here, especially when we consider the economic consequences of these advances—even more so when focusing on the so-called “sharing” or “gig” economy that has emerged in the last decade or so.

Animal Farm, another Orwell masterpiece, more accurately captures the economic slight-of-hand potentially at play here. Orwell’s biting satire of the totalitarian Soviet Union mocks the nature in which party leaders co-opted the ideal that shared economic ownership would create social equality. In effect, strict government control served to bolster a solidified caste system of inequality. The linguistic turn in *Animal Farm*’s most famous line summarizes my more cynical views of the sharing economy: “All animals are equal but some animals are more equal than others.”⁹

I. DEFINING THE SHARING ECONOMY

From my introductory remarks, the reader might view my reaction as alarmist. In truth, I do not foresee a collapse of civilization into some Orwellian dystopia based on the growth of Silicon Valley and the sharing economy, which many of its companies fuel. That said, I remain pessimistic that the sharing economy can deliver on its bolder promises. At the risk of appearing Luddite, I worry that such “advances” will, on the whole, do more harm than good, particularly in exacerbating inequalities. I believe the assessment of Eckhardt and colleagues aptly highlights my concerns: “In theory, the sharing economy only democratizes marketplaces, expands opportunities for small business and individuals, and enables access to resources. . . . Despite these hopeful contentions, the question of the value of the sharing economy to society is far from closed.”¹⁰

To my mind, when we talk about the sharing economy’s value, we are asking less a singular question and more a series of inquiries, the most prescient of those being: What is shared? Among whom? And how is that sharing distributed and governed?

Here, it is best to set up at least a working definition of a sharing economy. Though various scholars and commentators have cited examples and developed

⁷ See Timm, *supra* note 6; Zengerle, *supra* note 6.

⁸ See, e.g., Brian Hubbard, *What Is Media Intelligence and Why Does It Matter?*, MEDIUM (Sept. 13, 2020), <https://medium.com/@xbhubbardx/what-is-media-intelligence-and-why-does-it-matter-b06f577486fa>.

⁹ GEORGE ORWELL, *ANIMAL FARM* 148 (Harcourt, Brace & Co. 1946) (1945).

¹⁰ Giana M. Eckhardt, Mark B. Houston, Baojun Jiang, Cait Lamberton, Aric Rindfleisch & Georgios Zervas, *Marketing in the Sharing Economy*, J. MARKETING, Sept. 2019, at 5, 18–19.

useful typologies,¹¹ none are absolute. That said, five defining characteristics of entities operating in the sharing economy commonly appear in the literature.¹²

1. *Temporary rather than permanent access.* While traditionally, individuals have purchased products for permanent possession, the sharing economy promises only temporary access to products.¹³ For example, services such as Zipcar only offer use rather than ownership of automobiles; members pay a fee to register and share the supply of cars.¹⁴
2. *Access based on entity-to-entity value transfer.* Colloquially, we think of sharing as a kindness, or a favor of sorts.¹⁵ While we may offer a ride to a friend with no expectation of monetary gain, Uber drivers are willing to share their vehicles with consumers only in exchange for payment, marking the exchange economic rather than interpersonal.¹⁶
3. *Reliance on a facilitating platform.* Individuals and entities in the sharing economy usually depend on technological middlemen. Traditional car rental or taxi services do not operate primarily in this manner, whereas carshare and rideshare services rely on mobile applications to connect consumer and provider.¹⁷
4. *Expanded roles for consumers.* Consumers are traditionally defined solely by the act of consumption, either of products or services.¹⁸ In sharing economies, consumers take on expanded roles. Zipcar, for instance, requires its members to clean and prep cars for future users, which is typically the role of the provider.¹⁹ The line between production and consumption blurs in sharing economies, hence the proliferation of “prosumers.”²⁰

¹¹ ARUN SUNDARARAJAN, THE SHARING ECONOMY: THE END OF EMPLOYMENT AND THE RISE OF CROWD-BASED CAPITALISM 26–27 (2016). See generally Bernard Marr, *The Sharing Economy – What It Is, Examples, and How Big Data, Platforms and Algorithms Fuel It*, FORBES (Oct. 21, 2016, 2:16 AM), <https://www.forbes.com/sites/bernardmarr/2016/10/21/the-sharing-economy-what-it-is-examples-and-how-big-data-platforms-and-algorithms-fuel/#16b795817c5a>.

¹² Eckhardt et al. *supra* note 10, at 7. See generally JEREMY RIFKIN, THE AGE OF ACCESS (2000) (exploring the implication of the networking economy on human interaction with the market); SUNDARARAJAN, *supra* note 11; Wolfgang Kathan, Kurt Matzler & Victoria Veider, *The Sharing Economy: Your Business Model’s Friend or Foe?*, 59 BUS. HORIZONS 663, 665 (2016); Cait Poyner Lamberton & Randall L. Rose, *When Is Ours Better than Mine? A Framework for Understanding and Altering Participation in Commercial Sharing Systems*, J. MARKETING, July 2012, at 109 (examining multiple studies on the shared economy); Marr, *supra* note 11.

¹³ Fleura Bardhi & Giana M. Eckhardt, *Liquid Consumption*, 44 J. CONSUMER RES. 582, 585 (2017).

¹⁴ *How It Works*, ZIPCAR, <https://www.zipcar.com/how-it-works> (last visited Aug. 27, 2020).

¹⁵ Bardhi & Eckhardt, *supra* note 13.

¹⁶ See *How to Use the Uber App*, UBER, <https://www.uber.com/us/en/about/how-does-uber-work/> (last visited Aug. 27, 2020).

¹⁷ See Anne Sraders, *Uber vs. Taxi: What’s the Difference?*, THE STREET (Feb. 27, 2019, 11:15 AM), <https://www.thestreet.com/technology/uber-vs-taxi-14872678>.

¹⁸ Bardhi & Eckhardt, *supra* note 13.

¹⁹ *Rules of Vehicle Use*, ZIPCAR, <https://www.zipcar.com/apply/rules-of-vehicle-use> (last visited Sept. 13, 2020).

²⁰ *Prosumer, n.1*, OXFORD ENGLISH DICTIONARY (3d ed. 2007), <http://www.oed.com/view/Entry/258773> (“A consumer who . . . purchases component elements of products in order to build or administer his or her own goods and services.”).

5. *Crowdsourced supply.* Again, colloquially speaking, sharing implies limited supply.²¹ Even if I were inclined to offer endless rides to friends, temporal and material restraints prevent me from doing so. Sharing economies scale by employing large numbers of providers, such as the pool of Uber drivers, which crowdsources supply to meet growing demand.

Two other features are common in sharing economies, though they are less quintessential. First, the resources shared among peers are often provided by one of the exchange parties. In the case of Uber, the driver typically owns the car rather than Uber itself,²² though for other entities in the sharing economy, such as Zipcar, the shared product is owned by the company.²³ Second, sharing economies are often dependent on a reputation system, such as the rating of Uber drivers and riders.²⁴ While common across the sharing economy, the reputational or rating aspect has spread and formalized in more traditional sectors of the economy as well.²⁵

II. PROBLEMS FOR PROSUMERS

As we have seen, the sharing economy redefines traditional roles of consumers and providers, such that, in certain scenarios, these roles overlap and become one and the same. Poshmark, for instance, operates like a social networking site that allows users to connect with others with similar tastes in fashion.²⁶ Within these networks, people can sell and exchange clothing—or even attend “Posh Parties”²⁷—to quickly update their respective wardrobes.²⁸ In such a setting, consumer and producer are practically indistinguishable. However, the lines of demarcation between these roles are cleaner for other entities in the sharing economy, such as TaskRabbit. It allows users to sign up to complete specific jobs, ranging from the relatively mundane (*e.g.*, picking up groceries) to more specialized, skilled labor (*e.g.*, remodeling a bathroom).²⁹ In most of these interactions, the role

²¹ Bardhi & Eckhardt, *supra* note 13, at 586.

²² See *Here’s What You Need to Use the Driver App*, UBER, <https://www.uber.com/us/en/drive/> (last visited Sept. 13, 2020).

²³ See *What is Car Sharing?*, ZIPCAR, <https://www.zipcar.com/carsharing> (last visited Sept. 13, 2020).

²⁴ *How to Use the Uber App*, *supra* note 16.

²⁵ See Eckhardt et al. *supra* note 10, at 7–8, 8 tbl.2.

²⁶ See *What is Poshmark*, POSHMARK, https://poshmark.com/what_is_poshmark (last visited Oct. 17, 2020) [https://web.archive.org/web/20201017224814/https://poshmark.com/what_is_poshmark] (“At Poshmark, we focus on offering a one-of-a-kind experience in connecting people and their closets. Join us and be part of an awesome community where we thrive on trust, respect, and a shared affinity for discovering fashion!”).

²⁷ *Posh Parties: The FAQs*, POSHMARK (Aug. 1, 2014), <https://blog.poshmark.com/2014/08/01/posh-parties-the-faqs/> (“Posh Parties are real-time virtual shopping events where fashion lovers . . . meet up in the Poshmark app to shop, share, and sell clothing and accessories.”).

²⁸ *What is Poshmark*, *supra* note 26.

²⁹ *Services Offered*, TASKRABBIT, <https://www.taskrabbit.com/services> (last visited Aug. 26, 2020).

of consumer and “tasker” are separated, as they would be in more traditional economies.³⁰

What remains true of virtually every company operating in the sharing economy is that each acts mostly—often exclusively—as a facilitator connecting individuals within networks. The decentralized nature of such economies presents a host of challenges for virtually every stakeholder in the sharing economy, only some of which I will touch upon here. Given their interconnections as stakeholders, it makes sense to begin with consumers and producers.

A. Consumers

Decentralization leads to inconsistent consumer experiences for a host of reasons. The scale of sharing economies in terms of geography, as well as numbers of consumers and providers, proves inherently inhibitive.³¹ Indeed, “[b]ecause platforms do not typically produce offerings, they cannot control quality or guarantee consistency.”³² Anecdotally, most people who have ever relied on Uber or Lyft can relate at least one horror story in which the vehicle was not properly cleaned or maintained, or the driver was distracted, reckless, or downright disturbing in the conversational details he or she disclosed.

Rating systems are in place to provide companies feedback and regulatory mechanisms, but they are notoriously unreliable.³³ While some have suggested the anonymity of such platforms might lead to scathing reviews,³⁴ there is mounting evidence that social pressure not to harm another’s livelihood actually leads users to inflate ratings, meaning bad actors are underreported.³⁵ Compounding matters, consumers are likely to associate a bad experience with the individual actor as opposed to the platform, possibly viewing negative interactions as exceptions over which companies have little control.³⁶ Because final judgment falls on the individual provider rather than the collective platform, companies have little incentive to weed out bad actors as the organizations themselves face minimal threats of reputational damage or the loss of repeat customers.

Even when platforms produce or own shared offerings, quality control still presents challenges. Again, what drives gentler ratings of providers is that

³⁰ See *What Is TaskRabbit and How Does TaskRabbit Work? Let Us Scrutinize About It*, NCRYPTED BLOG (July 7, 2020), <https://www.ncrypted.net/blog/what-is-taskrabbit/> (last visited Oct. 13, 2020) (“TaskRabbit has two different groups of people: one called Taskers – ones who offer the services and another Task-Givers – ones who demand the services.”).

³¹ Eckhardt et al., *supra* note 10, at 17.

³² *Id.* at 10.

³³ See generally RACHEL BOTSCHAN, WHO CAN YOU TRUST?: HOW TECHNOLOGY BROUGHT US TOGETHER—AND WHY IT MIGHT DRIVE US APART (2017) (exploring how institutional trust supports governance, economy, and community as well as technology’s role in building and eroding that trust); Apostolos Filippas, John J. Horton & Joseph M. Golden, *Reputation Inflation* 32–34 (Nat’l Bureau of Econ. Research, Working Paper No. 25857, 2019), https://www.nber.org/system/files/working_papers/w25857/w25857.pdf.

³⁴ See BOTSCHAN, *supra* note 33.

³⁵ See Filippas et al., *supra* note 33.

³⁶ See Eckhardt et al., *supra* note 10, at 15.

consumers in the sharing economy often view providers as peers.³⁷ As a consequence of this viewpoint, norms governing social decency are major drivers of good behavior, which leads to rules of interpersonal interaction carrying over to the economic exchanges within the sharing economy.³⁸ Seen as such, good behavior from both consumers and providers are regulated by norms of reciprocity.

However, even the most optimistically minded would admit not everyone acts responsibly or courteously. This truth limits platforms' ability to control for quality experiences as the behavior of one consumer often dictates the experience of another. A Zipcar user may fail to properly clean and prepare the vehicle for the consumer next in line, or the last operator of a Bird or Lime electric scooter³⁹ may have damaged the scooter or parked it in an inconvenient or inaccessible location. Some companies try to thwart such behavior by penalizing irresponsible consumers; for instance, Lime's user agreement stipulates, "[w]e may charge you up to \$450 if we are not able to retrieve any Product due to your actions."⁴⁰ In Bloomington, Indiana, where I live and work, I have seen scooters "parked" in streets, drainage ditches, and even trees. Presumably, a penalty could apply in such cases.⁴¹

Ironically, despite the interpersonal nature of many interactions within the sharing economy, an element of community appears lacking. By community, I reference two different contexts, the first being the more nuanced *brand community*.⁴² In more traditional economies, in which people purchase rather than share offerings, consumers often develop connections with the companies and brands they patronize—sometimes deeply enough that these purchase decisions reflect or imbue a sense of identity.⁴³ That identification can be relatively simple; certain brands signal attributes of their users, such as wealth or status.⁴⁴ Other times, that identification is more value-laden: being loyal to a brand for its stance on sociopolitical issues, using energy-efficient appliances, and patronizing locally owned businesses signal users' commitments to causes important to them.⁴⁵

³⁷ See Filippas et al., *supra* note 33, at 5.

³⁸ See generally JOHN W. THIBAUT & HAROLD H. KELLEY, *THE SOCIAL PSYCHOLOGY OF GROUPS* (1959).

³⁹ Bird and Lime are both companies that operate dockless electric scooters which are shared between users for a fee. See Lilly St. Angelo, *Bird Scooters Land in Bloomington*, IND. DAILY STUDENT (Sept. 14, 2018, 5:12 PM), <https://www.idsnews.com/article/2018/09/bird-scooters-land-in-bloomington> ("Bird scooters are electric scooters designed to be ridden and parked wherever the rider desires. . . . Bird is one of many new companies including Lime, Ofo and Pace using short-range vehicle sharing to solve the problem of 'the last mile.'").

⁴⁰ *User Agreement*, LIME, <https://www.li.me/user-agreement> (last updated Oct. 28, 2019).

⁴¹ The Lime user agreement goes further. If the company can demonstrate a user damaged an electric scooter, it can charge the user a replacement fee—valued up to \$1,500. *Id.* If the vehicle is deemed lost or potentially stolen, Lime reserves the right to file police reports against the user. *Id.*

⁴² See generally Albert M. Muniz, Jr. & Thomas C. O'Guinn, *Brand Community*, 27 J. CONSUMER RES. 412 (2001).

⁴³ *Id.* at 413.

⁴⁴ *Id.* at 419.

⁴⁵ See generally Nicholas Browning, Ejae Lee, Young Eun Park, Taeyoung Kim & Ryan Collins, *Muting or Meddling? Advocacy as a Relational Communication Strategy Affecting Organization–Public Relationships and Stakeholder Response*, 97 JOURNALISM & MASS COMM. Q. 1026, 1031 (2020) (exploring the relationship

Just as individuals organize into groups based on hobbies or interests, identifiable connection to a brand can serve as the impetus for communities to emerge. These brand communities are active online and/or in person. Harley-Davidson and Jeep provide good examples of both: owners of the iconic motorcycles and off-road vehicles can share information about modifying vehicles in online forums or schedule in-person meetups for rides and excursions. Both Harley-Davidson and Jeep also host several events for avid fans.⁴⁶

Entertainment companies build similar communities relying on experiential marketing tactics, which focuses not only on consumers' rational desires for functioning products but instead treats consumers as emotional creatures who define themselves by memorable moments that may feature brands as focal points.⁴⁷ From the world of *Harry Potter* to the ever-expanding properties of Disney, companies have learned that the real value of the brand is less in the product or service and more in the memorable emotional experiences people connect to these brands.⁴⁸ Fostering that sense of connection naturally leads to avid fandom and the emergence of communities formed around a brand or property.⁴⁹

These brand communities enrich the experiences of consumers beyond simple economic exchanges, fostering meaningful social engagement while also strengthening brand loyalty. However, in the sharing economy, in which consumers merely access brands and products rather than own them, this sense of brand community erodes, as do the benefits for both consumer and company.⁵⁰

The notion of community also applies in our more common understanding of the term, as a meaningful social connection between proximate others.⁵¹ Relationships between consumer and provider may begin from the necessity of economic exchange but often blossom into more personal relationships—and sometimes even friendships. Businesses reliant on repeat customers and referrals such as barbershops, mechanics, and restaurants are archetypal of such

between consumers and companies, as related to consumers' identity); C.B. Bhattacharya & Sankar Sen, *Consumer-Company Identification: A Framework for Understanding Consumers' Relationships with Companies*, J. MARKETING, Apr. 2003, at 76, 80 (same).

⁴⁶ James H. McAlexander, John W. Schouten & Harold F. Koenig, *Building Brand Community*, J. MARKETING, Jan. 2002, at 38, 40–41; see also Susan Fournier & Lara Lee, *Getting Brand Communities Right*, HARV. BUS. REV., Apr. 2009, at 105, 111.

⁴⁷ See BERND H. SCHMITT, EXPERIENTIAL MARKETING: HOW TO GET CUSTOMERS TO SENSE, FEEL, THINK, ACT, AND RELATE TO YOUR COMPANY AND BRANDS 21–22 (1999).

⁴⁸ See Allen Adamson, *Disney Knows It's Not Just Magic That Keeps a Brand on Top*, FORBES (Oct. 15, 2014, 9:44 AM), <https://www.forbes.com/sites/allenadamson/2014/10/15/disney-knows-its-not-just-magic-that-keeps-a-brand-on-top/?sh=6f280c195b26>; Sandra O'Loughlin, *Six Experiential Marketing Lessons from Harry Potter: The Exhibition*, EVENT MARKETER (Dec. 8, 2017), <https://www.eventmarketer.com/article/experiential-insights-harry-potter-the-exhibition/>.

⁴⁹ While certain product and service categories more readily lend themselves to experiential marketing and brand community initiatives, research demonstrates that the capacity to generate deeper emotional connections at the heart of such endeavors is relatively widespread. See, e.g., Marc Fetscherin, Michèle Boulanger, Cid Gonçalves Filho & Gustavo Quiroga Souki, *The Effect of Product Category on Consumer Brand Relationships*, 23 J. PRODUCT & BRAND MGMT. 78, 84 (2014).

⁵⁰ See Bardhi & Eckhardt, *supra* note 13, at 587–88.

⁵¹ See *Community*, OXFORD ENGLISH DICTIONARY (3d ed. 2009), www.oed.com/view/Entry/37337.

connections.⁵² The Bloomington Community Farmers' Market presents a ready personal example: over the past five years I have come to know almost every farmer from whom I buy produce. The relationships that "regulars" foster with the producers in traditional economies are largely absent in sharing economies because "the matching algorithms and the sheer number of participants on both sides of a sharing platform make it unlikely that a user would have enough repeated interactions with one provider to establish a close interpersonal relationship."⁵³

Sharing economies present broader and deeper challenges to communities than just these immediate hurdles consumers face. I will address some of these momentarily, but, for now, I must speak to concerns from the other major player in economic exchanges: workers.

B. Workers

Though the sharing economy blurs the lines between consumer and producer, provider, and worker, there are moments of separation.⁵⁴ As such, it is worth asking how developments in, and the structure of, the sharing economy have altered our conception of work and how that alteration ultimately affects workers.

Historically, the labor market has constantly been in flux, punctuated by moments of great upheaval. The Industrial Revolution drastically transformed the nature of work, globally as well as domestically, by pushing a largely rural people and their agrarian economies toward urban centers of manufacturing and wage labor.⁵⁵ Following the U.S. Civil War, the Gilded Age marked further centralization of wealth and monopoly control of key industries, such as steel, oil, and railroads, bringing with it countless abuses of poorer workers.⁵⁶

The push for protections sparked the labor movement beginning in the late nineteenth century, and despite severe—and often violent, sometimes deadly—corporate pushback, there were key victories.⁵⁷ Though arguably passed more out of concern for preserving competition than aiding workers, the Sherman Antitrust Act of 1890,⁵⁸ would eventually limit the power of monopolies and trusts, particularly

⁵² See Eckhardt et al., *supra* note 10, at 15.

⁵³ *Id.*

⁵⁴ *Id.* at 9–10; Bardhi & Eckhardt, *supra* note 13, at 584.

⁵⁵ Charles Hirschman & Elizabeth Mogford, *Immigration and the American Industrial Revolution from 1880 to 1920*, 38 SOC. SCI. RES. 897, 897 (2009); see also Jeffrey G. Williamson, *Migrant Selectivity, Urbanization, and Industrial Revolutions*, 14 POPULATION & DEV. REV. 287, 312 (1988) (analyzing the demographic composition of rural-urban immigration). For a more comprehensive analysis of the Industrial Revolution, see PETER N. STEARNS, *THE INDUSTRIAL REVOLUTION IN WORLD HISTORY* (1993).

⁵⁶ See generally ALAN AXELROD, *THE GILDED AGE: 1876-1912: OVERTURE TO THE AMERICAN CENTURY* (2017); RICHARD WHITE, *THE REPUBLIC FOR WHICH IT STANDS: THE UNITED STATES DURING RECONSTRUCTION AND THE GILDED AGE, 1865-1896* (2017).

⁵⁷ Nicholas Browning, *Ethics and the Profession: The Crystallizing of Public Relations Practice from Association to Accreditation, 1936–1964*, 35 AM. JOURNALISM 140, 157 (2018).

⁵⁸ Sherman Antitrust Act of 1890, 26 Stat. 209 (1890) (codified at 15 U.S.C. §§ 1–7 (2018)).

during President Theodore Roosevelt's administration.⁵⁹ Additionally, President Theodore Roosevelt's intervention in the 1902 coal strike was praised as a major step forward for labor unions.⁶⁰ Ultimately, it would be President Theodore Roosevelt's cousin, President Franklin Delano Roosevelt, who delivered the most sweeping victories for labor. New Deal reformers would secure passage of the Wagner Act in 1935, which finally guaranteed the right of workers to unionize and collectively bargain for fair wages and treatment.⁶¹

Following the passage of the Wagner Act, many corporate leaders were outraged,⁶² but given the public's general distrust of big business in the wake of the Great Depression, early efforts at repealing or watering down the Wagner Act were largely unsuccessful.⁶³ However, by the late 1940s and 1950s, oppositional forces had secured passage of the Taft-Hartley and Landrum-Griffin Acts.⁶⁴ Together these Acts banned closed union shops; paved the way for right-to-work laws; and heavily regulated the internal affairs of unions, including financial and voting practices.⁶⁵ By the 1960s, prominent figures, such as William F. Buckley Jr. and Barry Goldwater, were advocating a retreat from Keynesian economic policy to the classical liberalism of Friedrich Hayek.⁶⁶ As Thatcherism and Reaganomics took hold in the 1970s and 1980s, neoliberalism became the de facto economic policy of much of the Western world, leading to, among many things, a weakening of unions and labor power.⁶⁷ In the United States, union membership peaked in the 1950s, when roughly one-third of all laborers belonged to unions;⁶⁸ by 2019, that number

⁵⁹ See generally SUSAN BERFIELD, *THE HOUR OF FATE: THEODORE ROOSEVELT, J. P. MORGAN, AND THE BATTLE TO TRANSFORM AMERICAN CAPITALISM* (2020); EDMUND MORRIS, *THEODORE REX* (2001).

⁶⁰ See MORRIS, *supra* note 59, at 169.

⁶¹ National Labor Relations (Wagner) Act of 1935, Pub. L. No. 74-198, 49 Stat. 449 (codified at 29 U.S.C. §§ 151–169 (2018)). The National Labor Relations Act of 1935 is commonly known as the Wagner Act after its drafter, Robert F. Wagner. See *About NLRB*, NAT'L LAB. REL. BOARD, <https://www.nlrb.gov/about-nlrb/who-we-are/our-history/1935-passage-of-the-wagner-act> (last visited Sept. 10, 2020).

⁶² Browning, *supra* note 57; Earl Harding, Member, Pub. Relations Comm., Nat'l Ass'n of Mfrs., *The Right to Work: We Are Now in the Hands of a Super-Government of Labor Organizations* (June 28, 1941), in 7 VITAL SPEECHES DAY 756, 757–59 (1941).

⁶³ See Browning, *supra* note 57, at 157–58; Thomas Roy Jones, President, Am. Type Founders, *Industry Looks at Labor: Asleep Standing Up* (Dec. 4, 1941), in 8 VITAL SPEECHES DAY 166 (1942).

⁶⁴ Labor Management Relations (Taft-Hartley) Act of 1947, Pub. L. No. 80-101, 61 Stat. 136 (codified at 29 U.S.C. §§ 141–197 (2018)); Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, Pub. L. No. 86-257, 73 Stat. 519 (codified at 29 U.S.C. §§ 401–531 (2018)). The Labor Management Relations Act is commonly referred to as the Taft-Hartley Act, referring to Senator Robert A. Taft and Congressman Fred. A. Hartley Jr., who introduced prior bills that were eventually incorporated into the final Act. The latter Act is commonly referred to as the Landrum-Griffin Act for its sponsors, Senators Phillip M. Landrum and Robert P. Griffin.

⁶⁵ MICHAEL BOWEN, *THE ROOTS OF MODERN CONSERVATISM: DEWEY, TAFT, AND THE BATTLE FOR THE SOUL OF THE REPUBLICAN PARTY* 49–50 (2011); *Chapter 5: Eisenhower Administration 1953-1961*, U.S. DEP'T LAB., <https://www.dol.gov/general/aboutdol/history/dolchp05> (last visited Jan. 13, 2021).

⁶⁶ See generally NICHOLAS WAPSHOTT, *KEYNES HAYEK: THE CLASH THAT DEFINED MODERN ECONOMICS* (2011).

⁶⁷ See generally *id.* at 251–65.

⁶⁸ Anna Stansbury & Lawrence H. Summers, *Declining Worker Power and American Economic Performance*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2020, at 1, 11, <https://www.brookings.edu/wp-content/uploads/2020/12/StansburySummers-Final-web.pdf>.

had plummeted to six percent.⁶⁹ Currently, twenty-eight states—mostly southern and midwestern, including Indiana—have passed some form of right-to-work laws,⁷⁰ further weakening union power.⁷¹

I include this brief history of organized labor here because, in many ways, the sharing economy serves to perpetuate the neoliberal ideal of worker autonomy. While workers in the sharing economy may possess increased agency,⁷² they are not truly employees of sharing platforms; they operate more as freelancers or contractors.⁷³

Almost without fail, sharing economy platforms tout the freedom such autonomy brings to workers. The rideshare service Lyft asks prospective drivers: “Want to be your own boss?”⁷⁴ Similarly, Uber plainly states: “You decide when and how often you drive.”⁷⁵ As TaskRabbit guarantees its taskers, “Find local jobs that fit your skills and schedule. With TaskRabbit, you have the freedom and support to be your own boss.”⁷⁶ Airbnb allows owners and renters to host travelers in their homes, promising that “You’re in full control of your availability, prices, house rules, and how you interact with guests.”⁷⁷ JustPark offers people the chance to rent out parking spaces ad hoc, assuring providers they can “choose when your space is available to rent.”⁷⁸ Rover, a platform that connects pet owners with possible sitters, tells prospective sitters, “Set your own schedule and prices[.] Offer any combination of pet care services[.] Set size, age and other pet preferences that work for you[.]”⁷⁹

Clearly, a major selling point of these platforms is the freedom and autonomy of the worker. On the one hand, the offer is inherently appealing, particularly to the entrepreneurial spirit woven tightly into the fabric of the American mythos. In fact, most academics (myself included) would say that a sense of independence and freedom within a workplace was a major driver in their choice to pursue the

⁶⁹ *Union Members Summary*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/news.release/union2.nr0.htm> (last updated Jan. 22, 2020).

⁷⁰ *E.g., Right-to-Work*, IND. DEP’T LAB., <https://www.in.gov/dol/2784.htm> (last visited Oct. 13, 2020) (“The Indiana Right-to-Work law provides that no employer, labor organization or any person may require an individual to become or remain a member of a labor organization, or pay dues, fees or assessments (or charitable donation substitutes) as a condition of employment, new or continued.”).

⁷¹ Stansbury & Summers, *supra* note 68, at 12.

⁷² The autonomy and flexibility of gig workers is highly debatable. *Cf.* Shelly Steward, *Five Myths About the Gig Economy*, WASH. POST (Apr. 24, 2020, 12:09 PM), https://www.washingtonpost.com/outlook/five-myths/five-myths-about-the-gig-economy/2020/04/24/852023e4-8577-11ea-ae26-989cfce1c7c7_story.html.

⁷³ Eckhardt et al., *supra* note 10, at 11.

⁷⁴ *Become a Driver – Drive with Lyft*, LYFT, <https://www.lyft.com/driver> (last visited Aug. 31, 2020).

⁷⁵ *Drive with Uber - Be Your Own Boss*, UBER, <https://www.uber.com/us/en/drive/> (last visited Aug. 31, 2020).

⁷⁶ *Register as a Tasker*, TASKRABBIT, <https://www.taskrabbit.com/become-a-tasker> (last visited Aug. 31, 2020).

⁷⁷ *Rent out Your Home, Apartment or Room on Airbnb*, AIRBNB, <https://www.airbnb.com/host/homes> (last visited Aug. 31, 2020).

⁷⁸ *Rent out Your Parking Space*, JUSTPARK, <https://www.justpark.com/about/rent-your-space/> (last visited Aug. 31, 2020).

⁷⁹ *Dog Sitting Jobs*, ROVER, <https://www.rover.com/become-a-sitter/> (last visited Aug. 31, 2020).

profession.⁸⁰ However, though university research faculty may operate in some ways like contractors, we are very much employees of our respective institutions, with all the security and benefits that come with such status. This is not the case for many workers in the sharing economy, as “the individuals who provide sharing services are often not classified as employees and generally lack traditional employee benefits. Furthermore, as the sharing economy grows, providers experience greater price and volume competition between platforms, which threatens to reduce wages.”⁸¹

For some sets of sharing economy workers, this lack of benefits may be a minor problem—if it is a problem at all. For instance, a married person might be covered by his or her spouse’s health insurance plan—though these individuals would still lack access to retirement or other employment benefits. For many, a job in the sharing economy may be a second or third source of income.⁸² The sharing economy is also commonly referred to as the gig economy, and these side gigs or hustles may be a source of extra, rather than primary, income, in which a first job carries with it benefits.⁸³

However, there are certainly some workers in the sharing economy for which this gig is not so much a gig as a job. For them, a lack of benefits—particularly health insurance and retirement planning—could wreak disastrous effects on their lifetime earnings.⁸⁴ Moreover, the decentralized, contract-like nature of their work may make it particularly difficult for gig workers to organize and leverage their collective bargaining power, especially when new entrants are readily available to join the market.⁸⁵ For example, studies have found that as few as four percent of

⁸⁰ See MAGGIE BERG & BARBARA K. SEEBER, *THE SLOW PROFESSOR: CHALLENGING THE CULTURE OF SPEED IN THE ACADEMY* 17 (2016).

⁸¹ Eckhardt et al., *supra* note 10, at 19 (citations omitted).

⁸² Megan Cerullo, *Nearly Half of Millennials Turn to Gig Economy to Earn More Cash*, CBS NEWS (June 7, 2019, 2:12 PM), <https://www.cbsnews.com/news/side-hustle-jobs-american-workers-turn-to-gig-economy-to-earn-cash-boost-savings/>; Jonathan Rothwell, *Earning Income on the Side is a Large and Growing Slice of American Life*, N.Y. TIMES (Dec. 18, 2019), <https://www.nytimes.com/2019/12/18/upshot/multiple-jobs-united-states.html>.

⁸³ This, of course, raises a further question of socioeconomic inequality: Why would an individual need a second or third gig in the first place? If one’s primary employment fails to provide adequate income on which to live, we might rightfully be concerned with the injustice that some people are not provided enough working hours to make a decent income, or that their hourly wages or salaries are themselves too low. While these concerns certainly merit further discussion, I would consider the sharing economy at best a byproduct capitalizing on this situation or, at worst, perpetuating it, but in neither case its primary cause. Therefore, those questions lay outside our current purview.

⁸⁴ See Press Release, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – September 2020* (Dec. 17, 2020), <https://www.bls.gov/news.release/pdf/ecec.pdf>; Cynthia Meyer, *How Much Are Your Benefits Really Worth?*, FORBES (Sept. 24, 2018, 10:00 AM), <https://www.forbes.com/sites/financialfinesse/2018/09/24/how-much-are-your-benefits-really-worth/?sh=ec729a378797>.

⁸⁵ See Greg Iacurci, *The Gig Economy Has Ballooned by 6 Million People Since 2010. Financial Worries May Follow*, CNBC (Feb. 4, 2020, 12:00 PM), <https://www.cnbc.com/2020/02/04/gig-economy-grows-15percent-over-past-decade-adp-report.html>; Elka Torpey & Andrew Hogan, *Working in a Gig Economy*, CAREER OUTLOOK (May 2016), <https://www.bls.gov/careeroutlook/2016/article/what-is-the-gig-economy.htm>.

Uber drivers stick with the platform for over a year,⁸⁶ and while that turnover rate does create supply problems for rideshare companies, the number of ready drivers remains massive.⁸⁷ Lyft estimates that two million Americans drove for the company at some point during 2018, roughly one percent of the U.S. workforce.⁸⁸

Looking beyond just rideshare services, a 2016 Pew Research Center report found that “nearly one-in-ten Americans (8%) have earned money in the last year using digital platforms to take on a job or task. Meanwhile, nearly one-in-five Americans (18%) have earned money in the last year by selling something online, while 1% have rented out their properties on a home-sharing site.”⁸⁹ While the sharing economy by no means encapsulates the majority of U.S. workers, a sizeable and growing number of Americans are performing gig work.

This ready supply of gig workers, combined with the disconnected networks in which they operate, limits their bargaining leverage and likely leads to wage exploitation. Workers in the sharing economy often earn shockingly low wages; some argue that the system is exploitative.⁹⁰ Consider Amazon Mechanical Turk (MTurk), a service run by Amazon that the company describes as “a crowdsourcing marketplace that makes it easier for individuals and businesses to outsource their processes and jobs to a distributed workforce who can perform these tasks virtually.”⁹¹ In plain language, you can pay a worker a set fee to complete some electronic task. Academic researchers are increasingly using this platform for data collection, offering workers a small payment for completing surveys and questionnaires—and I do mean small: MTurk workers earn a mean hourly wage of just over three dollars, with the median wage just below two dollars.⁹² Sadly, for many researchers—myself included⁹³—these lower costs are not simply a byproduct

⁸⁶ Chantel McGee, *Only 4% of Uber Drivers Remain on the Platform a Year Later, Says Report*, CNBC (Apr. 20, 2017, 4:11 PM), <https://www.cnbc.com/2017/04/20/only-4-percent-of-uber-drivers-remain-after-a-year-says-report.html>.

⁸⁷ See Eliot Brown, *Uber and Lyft Face Hurdle of Finding and Keeping Drivers*, WALL ST. J. (May 12, 2019, 11:11 AM), <https://www.wsj.com/articles/uber-and-lyft-face-tough-test-of-finding-and-keeping-drivers-11557673863>.

⁸⁸ *Id.*

⁸⁹ Aaron Smith, *Gig Work, Online Selling and Home Sharing*, PEW RES. CTR. (Nov. 17, 2016), <https://www.pewresearch.org/internet/2016/11/17/gig-work-online-selling-and-home-sharing>.

⁹⁰ See Alexia Fernández Campbell, *The Recession Hasn't Ended for Gig Economy Workers*, VOX (May 28, 2019, 12:30 PM), <https://www.vox.com/policy-and-politics/2019/5/28/18638480/gig-economy-workers-wellbeing-survey>.

⁹¹ AMAZON MECHANICAL TURK, <https://www.mturk.com/> (last visited Aug. 31, 2020).

⁹² Kotaro Hara, Abigail Adams, Kristy Milland, Saiph Savage, Chris Callison-Burch & Jeffrey P. Bigham, *A Data-Driven Analysis of Workers' Earnings on Amazon Mechanical Turk*, 2018 CHI CONF. ON HUM. FACTORS COMPUTING SYS. no. 449, at 1–2. See generally Alice M. Brawley & Cynthia L.S. Pury, *Work Experiences on MTurk: Job Satisfaction, Turnover, and Information Sharing*, 54 COMPUTERS HUM. BEHAV. 531 (2016) (analyzing MTurk user experience while exemplifying how MTurk is used for research). All figures are in U.S. dollars.

⁹³ Nicholas Browning, Sung-Un Yang, Young Eun Park, Ejae Lee & Taeyoung Kim, *Do Ethics Matter? Investigating Donor Responses to Primary and Tertiary Ethical Violations*, 96 JOURNALISM & MASS COMM. Q. 1145, 1153–54 (2019) (using MTurk); Browning et al., *supra* note 45, at 1035, 1042 (same); Kaye D. Sweetser & Nicholas Browning, *Credibility or Credulity? Examining Political Organization-Public Relationships in an Election of Interloping Candidates*, 29 J. PUB. REL. RES. 200, 205–06 (2017) (same).

of the service but a central feature driving the bump in usage. MTurk samples provide access to data that is roughly similar in quality to that collected through more rigorous panel services, and for pennies on the dollar.⁹⁴ Absent grant money, university researchers—particularly in the humanities and social sciences—face budget constraints that often place us in the uncomfortable position of relying on MTurk in spite of the moral objections we may have to the payment structure.

MTurk, as it turns out, is more the rule than the exception when it comes to wages.⁹⁵ People that round up and charge Lime electric scooters (called “juicers”)⁹⁶ have experienced a recent crash in wages. Lime initially offered juicers upwards of ten dollars to pick up, charge, and drop off an electric scooter.⁹⁷ That rate had fallen to about three dollars by early 2020.⁹⁸ Moreover, as Lime limits juicers to four chargers, rolls out more durable and heavier scooters that are harder to load, and cuts back on drop-off hubs, the margins for juicers have become even tighter.⁹⁹

Calculating wages for rideshare drivers is much more complex. According to the U.S. Bureau of Labor Statistics, drivers earn a median hourly wage of about \$16.01, but that number lumps taxi drivers, chauffeurs, and bus drivers in with rideshare drivers.¹⁰⁰ Uber reports that drivers earn, on average, \$19.35 an hour, while other outside studies estimate the number to range from fourteen to sixteen dollars.¹⁰¹ Problematically, none of these wage reports factor in other expenses, such as “costs for maintenance, repairs, and earlier replacement due to wear-

⁹⁴ Joseph K. Goodman, Cynthia E. Cryder & Amar Cheema, *Data Collection in a Flat World: The Strengths and Weaknesses of Mechanical Turk Samples*, 26 J. BEHAV. DECISION MAKING 213, 214, 222 (2013); Jeremy Kees, Christopher Berry, Scot Burton & Kim Sheehan, *An Analysis of Data Quality: Professional Panels, Student Subject Pools, and Amazon’s Mechanical Turk*, 46 J. ADVERT. 141, 141 (2017).

⁹⁵ See Jennifer Liu, *The Top Companies That Pay Gig Worker the Most, from Airbnb to Costco*, CNBC (Aug. 31, 2019, 10:00 AM), <https://www.cnbc.com/2019/08/31/companies-that-pay-gig-workers-the-most-from-airbnb-to-costco.html>; Jena McGregor, *How Much People Really Make in the ‘Gig Economy,’* WASH. POST (Sept. 24, 2018, 5:24 PM), <https://www.washingtonpost.com/business/2018/09/24/how-much-people-really-make-gig-economy/>. Wages for gig workers are notoriously difficult to estimate because of varying definitions of what even constitutes gig work, differing pay structures across platforms, and varying rates based on time and geography.

⁹⁶ See *How to Make Money as a Lime Charger*, GIGWORKER, <https://gigworker.com/job/lime-juicer/> (last visited Jan. 15, 2021) (“Lime Juicers are independent contractors who take on the responsibility of collecting low-battery Lime scooters from scooter locations, charging the scooters overnight at their homes, and dropping off the scooters the next day.”).

⁹⁷ Susan Carpenter, *In the Van with the ‘Juicers’ Who Round Up and Recharge Lime Scooters*, N.Y. TIMES (Oct. 25, 2019), <https://www.nytimes.com/2019/10/25/business/lime-bird-scooters-rechargers.html>.

⁹⁸ Tessa McLean, *Pay to Charge Lime Scooters Has Sunk So Low ‘Juicers’ Won’t Do It Anymore*, SFGATE (Feb. 20, 2020), <https://www.sfgate.com/bayarea/article/Pay-to-charge-Lime-scooters-has-sunk-so-low-15071339.php> (“At \$3.30 you’re basically paying Lime for the privilege of charging their scooters for them,” one juicer commented on Reddit.”).

⁹⁹ Aaron Gordon, *Lime Has Slashed Pay Rates for Scooter Chargers So Much People Have Stopped Doing It*, VICE (Feb. 19, 2020, 12:56 PM), https://www.vice.com/en_ca/article/pkez8v/lime-has-slashed-pay-rates-for-scooter-chargers-so-much-people-have-stopped-doing-it.

¹⁰⁰ *Passenger Vehicle Drivers*, U.S. BUREAU LAB. STAT., <https://www.bls.gov/ooh/transportation-and-material-moving/passenger-vehicle-drivers.htm> (last visited Sept. 21, 2020).

¹⁰¹ See Rani Molla, *Half of U.S. Uber Drivers Make Less than \$10 an Hour After Vehicle Expenses, According to a New Study*, VOX (Oct. 2, 2018, 3:41 PM), <https://www.vox.com/2018/10/2/17924628/uber-drivers-make-hourly-expenses>.

out.”¹⁰² These expenses are notoriously difficult to account for because rideshare drivers use their own vehicles; separating out personal and professional use on issues of wear and tear is not simple. Still, researchers have tried. One highly contested study argues that rideshare drivers may net as little as \$3.37 an hour after accounting for expenses and fees.¹⁰³ Others more generally estimate expenses to shave roughly five dollars off a driver’s hourly rate.¹⁰⁴ By most estimates, that would drop hourly earnings below ten dollars, down to roughly \$7.50 relying on U.S. Bureau of Labor Statistics calculations, just twenty-five cents higher than the federal minimum wage.¹⁰⁵

Table 1*Monthly Earnings in the Sharing Economy*¹⁰⁶

Company	Monthly Average	Monthly Median
Airbnb	\$924	\$440
TaskRabbit	\$380	\$110
Lyft	\$377	\$210
Uber	\$364	\$155
Doordash	\$229	\$100
Postmates	\$174	\$70
Etsy	\$151	\$40
Fiverr	\$103	\$60
Getaround	\$98	\$70
Total	\$299	\$109

Extrapolating outwards, workers in other sectors of the sharing economy do not fare much better, especially when one considers these are often part-time jobs for many workers. Table 1 takes this into account, displaying the average and median monthly wages of workers on nine common sharing-economy platforms. On average, these workers can expect to take home about \$300 a month, with median wages much lower, at about \$100. These lower median values suggest that, while some may earn living wages in the gig economy, they represent an astonishingly

¹⁰² Eckhardt et al., *supra* note 10, at 17.

¹⁰³ James Doubek, *Uber, Lyft Drivers Earning a Median Profit of \$3.37 Per Hour, Study Says*, NPR (Mar. 2, 2018, 6:25 AM), <https://www.npr.org/sections/thetwo-way/2018/03/02/590168381/uber-lyft-drivers-earning-a-median-profit-of-3-37-per-hour-study-says>.

¹⁰⁴ Molla, *supra* note 101.

¹⁰⁵ See *Minimum Wage*, U.S. DEPT LAB., <https://www.dol.gov/general/topic/wages/minimumwage> (last visited Sept. 9, 2020).

¹⁰⁶ See Catherine New, *How Much Are People Making from the Sharing Economy?*, EARNEST, <https://www.earnest.com/blog/sharing-economy-income-data/> [<https://web.archive.org/web/20201112040021/https://www.earnest.com/blog/sharing-economy-income-data/>] (last updated Mar. 31, 2020).

small minority across most platforms—in most cases, fewer than ten percent of total users.¹⁰⁷

III. THE SOCIETAL COSTS OF “SHARED” EXTERNALITIES

Part of the wage suppression comes from hidden costs assumed by workers in the gig economy. Essentially, these amount to externalities, what Eckhardt and colleagues refer to as “the dark side of the sharing economy.”¹⁰⁸ According to sociologist Michel Callon, externalities occur when “certain agents pursue courses of action the costs of which are borne by other agents, with no visible transfer taking place Negative externalities imply social costs that are not taken into account by private decision-makers; positive externalities discourage private investment by socializing the benefits.”¹⁰⁹ Technically, externalities represent a type of market failure.¹¹⁰ Generally, we frame economic exchanges as taking place between actors within a closed system in which all costs and benefits are accounted for.¹¹¹ When these costs or benefits overflow outside the exchange frame, the resultant gap represents an inefficiency in what was designed as a zero-sum game.¹¹²

Depending on whether the externality is positive or negative, the organization taking part in the exchange may experience a burden or a boon. As such, a company—whether in a traditional or sharing economy—is highly incentivized to eliminate positive externalities. After all, why would a for-profit entity offer a product, service, or feature for free when it could charge for such elements? This, in part, explains things such as increased costs for organic versus nonorganic produce, high prescription drug prices to recoup R&D costs, or demands for municipal tax breaks when relocating hubs and headquarters.¹¹³ There is no profit in socializing a benefit that could otherwise be monetized.

On the other hand, negative externalities shift costs away from the organization to some other agent: consumer, worker, government, society writ large, etc. While negative externalities may visit harm—economic or otherwise—onto organizational stakeholders, they do create boosts in profit, and, as such,

¹⁰⁷ I set a standard for living wage relatively low, at \$1,257 a month, the gross earnings of an individual working at minimum wage (\$7.25 per hour) for 40 hours a week, 52 weeks a year. *See id.* (showing that less than ten percent of gig workers make more than \$1,000 a month).

¹⁰⁸ Eckhardt et al., *supra* note 10, at 20.

¹⁰⁹ Michel Callon, *An Essay on Framing and Overflowing: Economic Externalities Revisited by Sociology*, 46 SOC. REV. (SPECIAL ISSUE) 244, 246, 248 (1998).

¹¹⁰ *Id.* at 247.

¹¹¹ *See id.* at 248.

¹¹² *See id.* at 247.

¹¹³ *See* Charles Fombrun & Mark Shanley, *What's in a Name? Reputation Building and Corporate Strategy*, 33 ACAD. MGMT. J. 233, 233 (1990); John Peloza & Jingzhi Shang, *How Can Corporate Social Responsibility Activities Create Value for Stakeholders? A Systematic Review*, 39 J. ACAD. MARKETING SCI. 117, 199 & tbl.1 (2011) (extrinsic and intrinsic value of organic food); Carl Shapiro, *Premiums for High Quality Products as Returns to Reputation*, 98 Q.J. ECON. 659, 678 (1983) (“High quality items sell for a premium above cost. This premium provides a flow of profits that compensate the seller for the resources expended in building up the reputation.”).

organizations may be slow to rectify them. In fact, some parties “have an interest in maintaining the state of controversy and ignorance” that allows for such externalities to perpetuate.¹¹⁴

This is not to say that organizations in the sharing economy shift every burden to outside actors. In several instances, they actively take them on. Airbnb offers the dual services of host guarantee and host protection insurance. The former service insures hosts against damage done to their home or possessions by guests and their service animals;¹¹⁵ the latter service provides up to one million dollars in liability insurance for bodily injury to guests.¹¹⁶ Uber offers similar insurances for drivers,¹¹⁷ but the breakdown is somewhat telling. While drivers are awaiting a ride request—that is, they are alone in the car—bodily injury insurance caps out at \$100,000 per accident and \$50,000 per person—and that liability insurance only kicks in “if your personal auto insurance doesn’t apply.”¹¹⁸ When drivers are en route to a pickup or carrying passengers, that amount jumps to one million dollars.¹¹⁹ This distinction indicates that Uber values the health and well-being of its consumers more so than its workers, as the company is more willing to ameliorate negative externalities that apply to riders as opposed to drivers.

Indeed, what Uber does not cover is just as telling. Drivers are required to hold comprehensive and collision coverage on their auto insurance,¹²⁰ outpacing the legal liability standard applied by most state governments.¹²¹ If a driver’s car is damaged in an accident—regardless of fault—Uber does not provide any funding for a rental car.¹²² At the very least this creates a major inconvenience for drivers, and for those who drive as a primary source of income, the loss could be devastating—and this does not even touch on the personal burdens faced by a lack of transportation (*e.g.*, taking children to school, purchasing groceries and other essentials, etc.). Finally, maintenance, gas, and repairs are driver responsibilities. The company’s policy clearly uses the contractor standing of workers as a primary reason in its FAQs: “Does the insurance that Uber maintains on behalf of drivers cover regular maintenance on my car? No, as an independent contractor you’re responsible for your car maintenance.”¹²³ The classification of Uber drivers—and of most workers in the sharing economy—as independent contractors also exempt companies from providing insurance to gig workers under the Affordable Care Act’s

¹¹⁴ Callon, *supra* note 109, at 263.

¹¹⁵ *Airbnb’s Host Guarantee*, AIRBNB, <https://www.airbnb.com/d/guarantee> (last visited Sept. 6, 2020).

¹¹⁶ *Host Protection Insurance*, AIRBNB, <https://www.airbnb.com/d/host-protection-insurance> (last visited Sept. 9, 2020).

¹¹⁷ *Auto Insurance*, UBER, <https://www.uber.com/us/en/drive/insurance/> (last visited Sept. 9, 2020).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See Liability Laws*, AAA DIG. MOTOR LAWS, <https://drivinglaws.aaa.com/tag/liability-laws/> (last visited Nov. 11, 2020).

¹²² *Auto Insurance*, *supra* note 117.

¹²³ *Id.*

(Obamacare) requirements.¹²⁴ Under the law, businesses that employ fifty or more people full time are required to provide insurance or pay an additional tax;¹²⁵ estimates for the number of Uber drivers range from one to three million, presumably more than fifty of whom clock more than thirty hours a week.¹²⁶

While the negative externalities of rideshare companies seem purposely created and maintained, others seem to come about more by happenstance. As Eckhardt and colleagues succinctly state, “a sharing economy brand’s actual value may differ from its intended value.”¹²⁷ This is not unique to the sharing economy, and one way to boost sales of a product is to develop new uses.¹²⁸ As a seemingly odd example, consider baking soda. Developed in 1846, baking soda was designed as an additive to prompt baked goods to rise during cooking.¹²⁹ The problem for a company like Arm & Hammer is that you do not need a lot of it. For instance, a recipe for 48 cookies calls for about 1 teaspoon of baking soda;¹³⁰ with 48 teaspoons in a typical 8-ounce box, that comes out to 2,304 cookies. Needless to say, baking alone will not move much product in typical households, but when you use boxes as fridge fresheners or include baking soda in various cleaning and hygiene products, now you have added value beyond its original intended use.

Now consider electric scooters as a similar case in the sharing economy. Lime and Bird are two of the major players in this industry, and each clearly states a commitment to re-envisioning transportation with an eye toward environmental sustainability.¹³¹ Lime’s mission statement reads, in part, “[t]hrough the equitable distribution of shared scooters, bikes and transit vehicles, we aim to reduce dependence on personal automobiles for short distance transportation and leave future generations with a cleaner, healthier planet.”¹³² Bird is even less equivocal: “Bird’s mission is to make cities more livable by reducing car usage, traffic, and carbon emissions.”¹³³ These aims are admirable, especially considering that environmental externalities are often overlooked, so much so that scholars have

¹²⁴ *Independent Contractors and Health Care Reform*, FRASER TREBILCOCK (Mar. 3, 2014), <https://www.fraserlawfirm.com/blog/2014/03/independent-contractors-and-health-care-reform/> (explaining the distinction between employees and independent contractors and its relationship to the Affordable Care Act’s requirements).

¹²⁵ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended at 42 U.S.C. §§ 18001–18120 (2018)).

¹²⁶ See Jonathan Cousar, *How Many Uber Drivers Are There? We Dive in to Find Out*, RIDESTER.COM, <https://www.ridester.com/how-many-uber-drivers-are-there/> (last updated Jan. 7, 2021).

¹²⁷ Eckhardt et. al., *supra* note 10, at 14.

¹²⁸ See, e.g., Brian Wansink & Jennifer Marie Gilmore, *New Uses that Revitalize Old Brands*, J. ADVERT. RES., Mar.–Apr. 1999, at 90, 91 tbl.1.

¹²⁹ Ben Panko, *The Great Uprising: How a Powder Revolutionized Baking*, SMITHSONIAN MAG. (June 20, 2017), <https://www.smithsonianmag.com/science-nature/great-uprising-how-powder-revolutionized-baking-180963772/>.

¹³⁰ See *Ultimate Chocolate Chip Cookies*, BETTY CROCKER, <https://www.bettycrocker.com/recipes/ultimate-chocolate-chip-cookies/77c14e03-d8b0-4844-846d-f19304f61c57> (last updated Jan. 13, 2021).

¹³¹ *About Us*, LIME, <https://www.li.me/about-us> (last visited Sept. 10, 2020); *Life at Bird*, BIRD, <https://www.bird.co/about/> (last visited Sept. 10, 2020).

¹³² *About Us*, *supra* note 131.

¹³³ *Life at Bird*, *supra* note 131.

proposed developing *return on sharing* metrics that capture environmental impacts, as well as other key externalities.¹³⁴

Assuming these companies are authentic in their pursuit of environmental benefits, the manner in which consumers use electric scooters may undercut that mission. Broadly speaking, there are two major ways electric scooters could reduce carbon emissions: replacing car trips or supplementing city transit systems.¹³⁵ The latter aspect involves addressing the first-mile, last-mile problem: people are most likely to use public transportation when bus, train, or underground stops are no farther than one mile from their beginning and ending destinations, as people are often unwilling to walk longer than one mile from a transit stop to terminal destinations.¹³⁶ Theoretically, electric scooters could supplement public transportation by allowing users to quickly cover longer distances from transit stops to final points of arrival.

¹³⁴ See Eckhardt et al., *supra* note 10, at 19.

¹³⁵ See Jeremiah Johnson, *Are Shared E-Scooters Good for the Planet?*, CONVERSATION (Aug. 2, 2019, 8:01 AM), <https://theconversation.com/are-shared-e-scooters-good-for-the-planet-only-if-they-replace-car-trips-121166> (explaining that scooters need to replace car travel, not public transit, in order to reduce carbon emissions).

¹³⁶ See David A. King, *What Do We Know About the “First Mile/Last Mile” Problem for Transit?*, TRANSPORTIST BY DAVID LEVINSON (Oct. 6, 2016), <https://transportist.org/2016/10/06/what-do-we-know-about-the-first-milelast-mile-problem-for-transit/>.

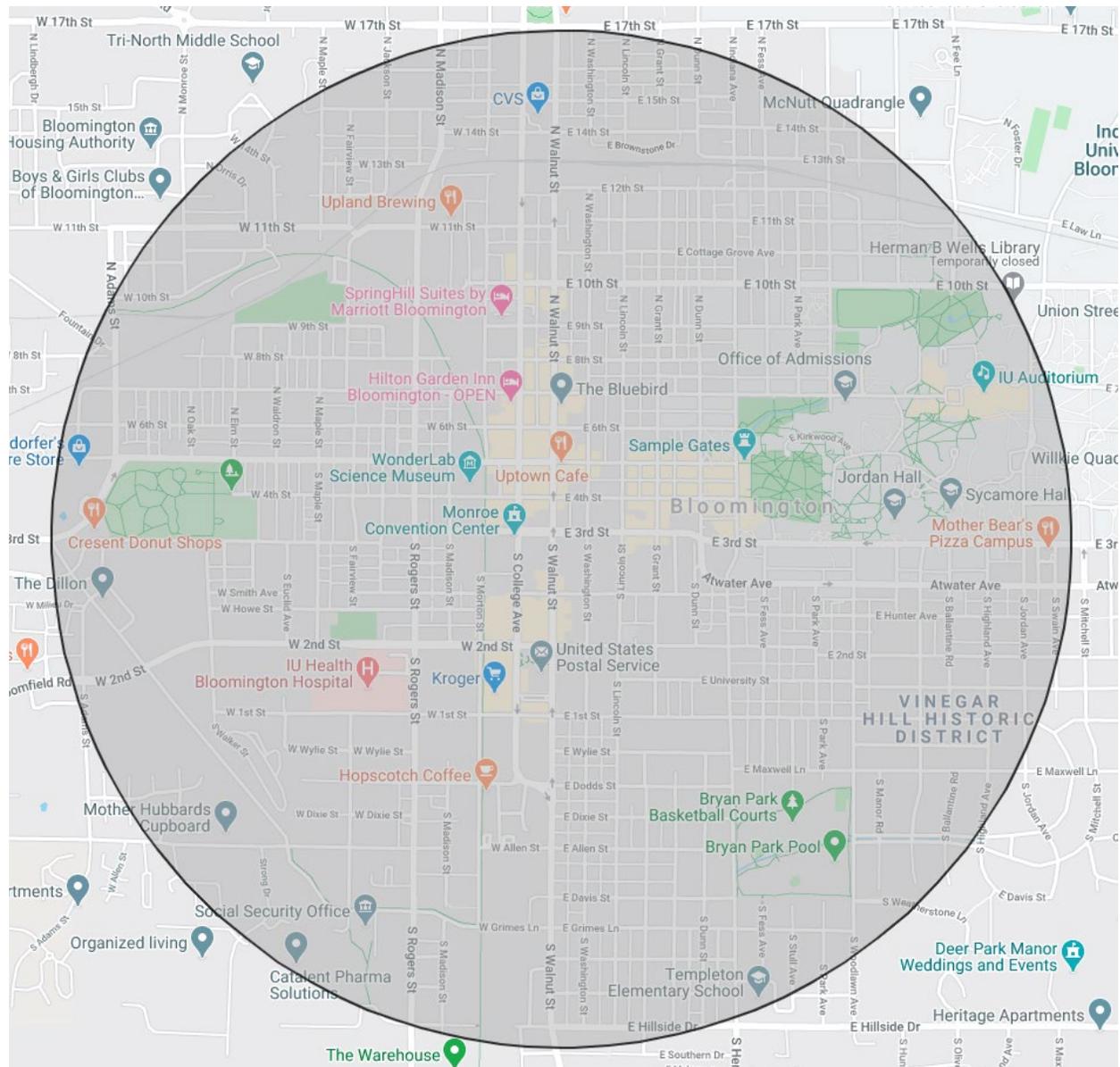


Figure 1 – A 1-Mile Radius from Bloomington’s Downtown Transit Hub

There is ample evidence that this is not the case. Consider Bloomington, Indiana, anecdotally. Figure 1 depicts an image of the city. The circle has a one-mile radius, with the Bloomington bus depot at its center, where all of the city’s bus routes intersect.¹³⁷ You can easily see that what is colloquially considered the downtown area lies within one mile of the main transit hub. As such, you would expect to see relatively few electric scooters in the area if they were being used to supplement the bus system. What you find is just the opposite: Bloomington’s downtown has a high concentration of electric scooters.

¹³⁷ See GOOGLE MAPS, <https://www.google.com/maps/> (enter “Bloomington IN” as search term; then enter “Bloomington Transit” as search term) (last visited Nov. 11, 2020).

While these observations are anecdotal, data from other municipalities, such as Portland, San Francisco, Santa Monica, and Denver, support the general assertion.¹³⁸ Researchers in these cities have found that less than half of electric scooter trips are replacing car trips.¹³⁹ Instead, roughly ten percent are replacing a public transit trip, ten percent are replacing a biking trip, and thirty-six percent are replacing a walking trip.¹⁴⁰ As biking and walking are carbon neutral, the use of electric scooters in their stead actually *increases* environmental damages as opposed to reducing them, with studies estimating that a one kilometer electric scooter ride generates sixty-two grams of carbon dioxide emissions.¹⁴¹ Also consider that this measure does not capture the environmental impacts of mining or developing materials to build the scooters, with the aluminum-ion and lithium-ion batteries being particularly costly.¹⁴² Moreover, early models of many electric scooters only lasted about two months given the abuse visited upon them by users,¹⁴³ meaning many of those materials quickly made their way into landfills.¹⁴⁴

In the end, the use of electric scooters may be causing greater environmental harm than good. This is arguably the fault of the consumer who uses the product/service in ways not originally intended, but because these companies still profit from the usage and because the cost of the negative externality is borne by others, there is little incentive to address the problem. Similar issues occur with unintended usage patterns in other sectors of the sharing economy, perhaps most notably in rental services like Airbnb.

Airbnb began in 2007, when two cash-strapped roommates rented space in their San Francisco apartment to make extra money.¹⁴⁵ This experience is a microcosm of the gig economy as theoretically envisioned: a side hustle undertaken by workers to earn supplemental income.¹⁴⁶ Scaled, Airbnb was designed to replicate this experience, allowing hosts to rent extra rooms or potentially their entire residences when they themselves traveled for work or pleasure. Like a sort of working-class venture capitalism, the service would allow even those without access to large amounts of capital to put their limited assets to work making money.

¹³⁸ Anthony Eggert, *E Is for Environment: Unpacking the Benefits of E-Scooters*, FORBES (Mar. 5, 2020, 12:39 PM), <https://www.forbes.com/sites/anthonyeggert/2020/03/05/e-is-for-environment-unpacking-the-benefits-of-e-scooters/#5843cf2261c3>.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*; Sigal Samuel, *We Regret to Inform You that Scooters Aren't Actually Good for the Environment*, Vox (Aug. 8, 2019, 12:35 PM), <https://www.vox.com/future-perfect/2019/8/8/20759062/electric-scooter-environment-climate-change-bird-lime>.

¹⁴³ Eggert, *supra* note 138.

¹⁴⁴ TAUR, *Electric Scooter Battery Maintenance and Disposal Tips*, MEDIUM: TAUR (Apr. 18, 2020), <https://medium.com/@ride.taur/electric-scooter-battery-maintenance-and-disposal-tips-17f4d75efa1b>.

¹⁴⁵ Rebecca Aydin, *How 3 Guys Turned Renting Air Mattresses in Their Apartment into a \$31 Billion Company, Airbnb*, BUS. INSIDER (Sept. 20, 2019, 10:27 AM), <https://www.businessinsider.com/how-airbnb-was-founded-a-visual-history-2016-2>.

¹⁴⁶ *See id.*

As the company has grown, the wealthy and investor classes have become responsible for an increasingly larger percentage of Airbnb listings and profits.¹⁴⁷ While data is difficult to come by, the two pivotal groups to consider here are multiple-unit operators (hosts who list more than one property) and full-time operators (hosts that list a single property for 360 or more days a year).¹⁴⁸ For these hosts, Airbnb appears less a gig and more of a primary income source.¹⁴⁹ A 2014 to 2015 analysis of Airbnb revenue in twelve major U.S. markets found that multiple-unit operators accounted for 39% of revenue, and full-time operators accounted for 29%.¹⁵⁰ Similarly, looking at growth in Airbnb hosts from 2016 to 2019, the most significant expansion has come from those listing two or more properties simultaneously.¹⁵¹

This changing host profile has effectively transformed a sizeable chunk of workers from one-off renters to independent hotel operators. COVID-19 has laid bare this reality. Several upper middle-class and upper-class hosts have broken into this hybrid real estate, hotel-mogul market hoping to build wealth.¹⁵² Many over-leveraged and over-extended their finances to do so.¹⁵³ The crash in tourism and travel that accompanied the coronavirus left many with no recourse as several depended on the income from Airbnb guests to pay mortgages.¹⁵⁴ Hemorrhaging money, receiving little to no support from Airbnb, and facing limited prospects of substantial government bail-out money based on their contractor-like status, many of these multiple-listing hosts are facing foreclosures and possible bankruptcy.¹⁵⁵

Nevertheless, the over-extended hosts may engender little sympathy from onlookers. After all, they undertook the risk freely, and most had other opportunities for earning income. Bluntly speaking, they gambled and lost, a common outcome in capitalist economies. Still, the expansion of full-time and multiple-listing operators bring with them a string of other societal externalities that place local municipalities in a series of seemingly intractable dilemmas.

¹⁴⁷ AM. HOTEL & LODGING ASS'N, FROM AIR MATTRESSES TO UNREGULATED BUSINESS: AN ANALYSIS OF THE OTHER SIDE OF AIRBNB (2016), https://ahla.com/sites/default/files/2016-10/Airbnb_Analysis_September_2016.pdf.

¹⁴⁸ *Id.* Note that there is sometimes overlap between these two groups.

¹⁴⁹ *See id.*

¹⁵⁰ *Id.*; Jelisa Castrodale, *Study Says that a Large Percentage of Airbnb Revenue Comes from Hosts with Multiple Listings*, USA TODAY (Jan. 22, 2016, 9:00 AM), <https://www.usatoday.com/story/travel/roadwarriorvoices/2016/01/22/study-says-that-a-large-percentage-of-airbnb-revenue-comes-from-hosts-with-multiple-listings/83314154/>.

¹⁵¹ Rosie Spinks, *What Even Is Airbnb Anymore?*, QUARTZ (Mar. 23, 2019), <https://qz.com/quartz/1574182/ahead-of-its-ipo-what-even-is-airbnb-anymore/>.

¹⁵² JOSH BIVENS, ECON. POL'Y INST., THE ECONOMIC COSTS AND BENEFITS OF AIRBNB, 6–8 (2019), <https://files.epi.org/pdf/157766.pdf>.

¹⁵³ *See* Tripp Mickle & Preetika Rana, 'A Bargain with the Devil'—Bill Comes Due for Overextended Airbnb Hosts, WALL ST. J. (Apr. 28, 2020, 10:15 AM), <https://www.wsj.com/articles/a-bargain-with-the-devilbill-comes-due-for-overextended-airbnb-hosts-11588083336>.

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

IV. PUBLIC COSTS AND BENEFITS

A. *Economic Gains and Losses*

Governments, from local municipalities all the way up to the federal level, have complex relationships with sharing platforms. On the one hand, sharing platforms pump money into city coffers, both directly and indirectly.¹⁵⁶ Mike McAfee, the executive director of Visit Bloomington (essentially the city's tourism bureau), spoke to the value of these companies to the Bloomington community, in particular Airbnb.¹⁵⁷ Citing statistics from Airbnb, McAfee stated that there were 660 active listings in Bloomington.¹⁵⁸ During 2019, roughly 34,000 guests stayed in these short-term rentals, netting hosts about four million dollars for the year, for an average of \$6,060 per listing.¹⁵⁹

Airbnb produces some gains for the community. First, competition brings down hotel rates, not just through lower pricing but also by adding to the supply of short-term rentals, encouraging travel to Bloomington.¹⁶⁰ Second, as of July 1, 2019, Airbnb and other short-term rental platforms were required to pay as much in local taxes as a hotel would, boosting that pool of tax revenue six percent.¹⁶¹ Third, forty-one percent of Airbnb guests' spending occurs in neighborhoods and towns where guests stay, much of which goes to local businesses; indeed, hosts commonly recommend restaurants, bars, and tourist destinations to guests.¹⁶² Tourist dollars not only help the local economy, but they also boost city revenue through sales and other local taxes.¹⁶³

However, such economic gains are potentially offset by material losses to the community. As McAfee remarked, "I know several people in Bloomington that are buying second homes to put on the Airbnb market, and they call that their retirement."¹⁶⁴ While that is certainly a potential gain for those residents, he and other panelists from the IJLSE symposium also rightly acknowledged the negative impacts Airbnb expansion has on the local housing market. Community organizer Daniel Bingham pointed out that Airbnb reported 280 active listings in

¹⁵⁶ See, e.g., Tod Newcombe, *The Sharing Economy: Developing an Outcome-Based Strategy*, GOV'T TECH., (Dec. 11, 2015), <https://www.govtech.com/dc/articles/The-Sharing-Economy-Developing-an-Outcome-Based-Strategy.html> (states consider taxing services). See generally Sebastian Vith, Achim Oberg, Markus A Höllerer & Renate E. Meyer, *Envisioning the 'Sharing City': Governance Strategies for the Sharing Economy*, 159 J. BUS. ETHICS 1023 (2019).

¹⁵⁷ IU Maurer, *supra* note 1, at 8:22.

¹⁵⁸ *Id.* at 8:52

¹⁵⁹ *Id.* at 9:37, 10:07; see also Barbara Brosher, *Airbnb: Bloomington Hosts Earned \$359,000 During Football Weekends*, IND. PUB. MEDIA, (Nov. 22, 2017), <https://indianapublicmedia.org/news/airbnb-bloomington-hosts-earn-359000-football-weekends-1328621.php>.

¹⁶⁰ See BIVENS, *supra* note 152, at 9–10.

¹⁶¹ IU Maurer, *supra* note 1.

¹⁶² *Id.* at 10:47, 11:20.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 10:14.

Bloomington during 2017.¹⁶⁵ During that same year, Bloomington added roughly 500 housing units during a period of larger-than-usual expansion.¹⁶⁶ The Airbnb growth from 2017 to 2019 amounts to 380 new listings.¹⁶⁷ While it is unlikely that all those new listings are full-time, some almost certainly are—particularly the “retirement” homes McAfee spoke of.¹⁶⁸ Such listings limit an already small supply of affordable housing, driving housing costs even higher. In 2017, the median sales price for a home in Indiana was \$146,900 (up 5.7% from the previous year).¹⁶⁹ In Monroe County, home to Bloomington, that figure was \$179,950 (up 6.5%), making Monroe the seventh most expensive housing market out of the state’s ninety-two counties.¹⁷⁰

By no means is this scenario unique to Bloomington. A 2019 Economic Policy Institute report found that, for most municipalities, the “economic costs Airbnb imposes likely outweigh the benefits.”¹⁷¹ According to the report, there are numerous reasons for the loss. First, the net tourism benefits Airbnb touts are likely overstated.¹⁷² While Airbnb might offer guests cheaper accommodations, the costs of lodging are not major barriers for most travelers.¹⁷³ If Airbnb were unavailable, most would still travel and simply opt for slightly more expensive hotels, still pumping tourism dollars into local economies.¹⁷⁴

This replacement of traditional hotel stays by Airbnb feeds into a second cause for limited economic gains: many cities do not tax Airbnb short-term rentals in the same manner or at the same rate as hotel lodging.¹⁷⁵ Therefore, when Airbnb pulls guests away from hotel chains, cities often lose tax revenue.¹⁷⁶

Third, in cities with high concentrations of Airbnb listings, the resultant reduction in housing supply drives housing costs up for residents.¹⁷⁷

Fourth, Airbnb rentals operate outside the confines of many zoning laws that restrict competing hotels.¹⁷⁸ As a result, residential neighborhoods face increased

¹⁶⁵ *Id.* at 44:48.

¹⁶⁶ *Id.* at 45:14

¹⁶⁷ *Id.* at 8:55, 45:04. As of January 1, 2019, there were 660 Airbnb listings in Bloomington, an increase of 380 from the 2017 number of 280.

¹⁶⁸ *Id.* at 10:14.

¹⁶⁹ MATT KINGHORN & SHINWOO LEE, KELLEY SCH. OF BUS., IND. BUS. RESEARCH CTR., THE STATE OF INDIANA’S HOUSING MARKET app. at 24 tbl.3 (2018), https://www.ibrc.indiana.edu/studies/IAR_2018_Final.pdf.

¹⁷⁰ *Id.* at 25 tbl.3.

¹⁷¹ BIVENS, *supra* note 152, at 2.

¹⁷² *Id.* at 12.

¹⁷³ *See id.* at 9–10.

¹⁷⁴ *See id.*

¹⁷⁵ *Id.* at 16.

¹⁷⁶ *Id.* at 17.

¹⁷⁷ *Id.* at 13.

¹⁷⁸ *Id.* at 18.

externalities ranging from the inconvenience of increased noise to increased stress on infrastructure like roads, trash, and waste management.¹⁷⁹

Fifth, and finally, the monetary gains from Airbnb are skewed to benefit property owners, in particular those who own and operate multiple or full-time listings on the platform.¹⁸⁰ Not surprisingly, this profile is comprised of individuals who are predominately wealthy and White.¹⁸¹ This pattern exacerbates both income and racial inequalities (1) on the front end by funneling money to wealthy, White operators and (2) on the back end by limiting the supply of affordable housing units, which disproportionately harms poorer and minority populations.

B. Safety Concerns

The growth of Airbnb also creates concerns about public safety that present regulatory challenges stretching far beyond a single platform. Because Airbnb hosts operate like independent contractors, regulations regarding safety, access for those with disabilities, and other rules that apply to hotels often do not apply to Airbnb rentals.¹⁸² Public safety issues reverberate throughout the sharing economy, with electric scooters as perhaps the most prominent example—at least in Bloomington.¹⁸³

A major problem here is how to classify the electric scooter as it is a relatively new mode of transportation.¹⁸⁴ Existing laws governing similar modes of transport, such as bicycles or motorcycles, often serve as umbrellas under which electric scooter regulations are placed or, at the very least, jumping off points for specific electric scooter regulatory standards. Consider the issue of helmets. Despite the fact that D.C. and forty-nine states have mandated seat belt use since 1996,¹⁸⁵ only D.C. and nineteen states have universal helmet laws for motorcycle riders.¹⁸⁶ Three states—Illinois, Iowa, and New Hampshire—have no helmet laws, while the remaining twenty-eight states require only specific riders (typically minors) to wear

¹⁷⁹ Consequently, McAfee noted that a major concern of Bloomington residents is that Airbnb rentals sometimes turn into “party houses” that, in turn, add these same stressors. See IU Maurer, *supra* note 1, at 17:30.

¹⁸⁰ BIVENS, *supra* note 152.

¹⁸¹ *Id.* at 7–8.

¹⁸² See Casey Rockwell, Chase Edwards & Stephen Burns, *Legal Ambiguity as a Competitive Advantage: Airbnb’s Use of Technological Novelty to Avoid Liability*, 46 REAL EST. L.J. 356, 358–59 (2017).

¹⁸³ See Kurt Christian, *Proposal to Ban Scooters on City Sidewalks Struck Down*, HERALD-TIMES (May 1, 2019), https://www.hoosiertimes.com/herald_times_online/news/local/proposal-to-ban-scooters-on-city-sidewalks-struck-down/article_eebc7ceb-038e-5137-a17d-cc42e7279c1c.html.

¹⁸⁴ Kurt Christian, *‘Scooter Anarchy!’ Bloomington Comments on City’s Scooter Survey*, HERALD-TIMES (Apr. 10, 2019), https://www.hoosiertimes.com/herald_times_online/news/local/scooter-anarchy-bloomington-comments-on-citys-scooter-survey/article_b3162e8a-ebb5-5176-b757-f21a76506a70.html.

¹⁸⁵ New Hampshire, whose residents apparently take the state’s “Live Free or Die” motto quite seriously, is the lone holdout. *Primary Enforcement of Seat Belt Laws*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/motorvehiclesafety/calculator/factsheet/seatbelt.html> (last updated Dec. 2, 2015).

¹⁸⁶ *Motorcyclists*, GOVERNORS HIGHWAY SAFETY ASS’N, <https://www.ghsa.org/state-laws/issues/motorcyclists> (last visited Sept. 13, 2020).

helmets.¹⁸⁷ Moreover, no state has a universal helmet law for bicyclists.¹⁸⁸ D.C. and twenty-one states require riders under a certain age (usually about sixteen years old) to wear helmets, while the other twenty-nine states have no bicycle helmet laws.¹⁸⁹ Indiana repealed its universal motorcycle helmet law in 1977 and now only requires that minors wear helmets;¹⁹⁰ the state has no bicycle helmet law.¹⁹¹ As such, though electric scooter companies like Bird and Lime *encourage* helmet use, lax laws applying to vehicles similar to electric scooters make it virtually impossible for cities like Bloomington to mandate helmet use despite the mounting cases of head injuries that result from electric scooters.¹⁹²

Though such injuries create negative externalities for communities, one might argue that riders assume the brunt of the damage that results from the refusal to wear helmets, so they should be free to assume that risk. Even if we accept that logic, for the sake of argument, electric scooters also represent public safety threats to nonriders, most commonly pedestrians. Again, given the relative novelty of electric scooters, laws regarding other similar vehicles typically govern their use as well.¹⁹³ In terms of where electric scooters may be ridden, bicycle laws typically apply, or at least set an initial standard considering similarities in vehicle sizes and speeds.¹⁹⁴ Bloomington's case may serve as a microcosm representing the broader regulatory issues faced by local governments.

Bloomington considers itself a bike-friendly town, but like most other U.S. cities, its infrastructure is designed with a car-first mentality.¹⁹⁵ Though Bloomington has added dedicated bike lanes on several streets, many roads are too narrow for such lanes. Additionally, several major thoroughfares connecting the city center to the suburban and rural areas allow for high-speed traffic (greater than fifty miles per hour). The result is that cyclists often feel unsafe riding bikes on many city and county roads.¹⁹⁶ To encourage greater bicycle transit use, the City

¹⁸⁷ *Id.* (select "Illinois" and "Iowa" from dropdown menu to view more information).

¹⁸⁸ *Bicyclists and Pedestrians*, GOVERNORS HIGHWAY SAFETY ASS'N, <https://www.ghsa.org/taxonomy/term/501> (last visited Sept. 13, 2020).

¹⁸⁹ *Id.*

¹⁹⁰ *Motorcyclists*, *supra* note 186 (select "Indiana" from dropdown menu).

¹⁹¹ *See Bicyclists and Pedestrians*, *supra* note 188.

¹⁹² *See generally Bloomington City Council 4/10/2019*, COMMUNITY ACCESS TELEVISION SERVS. (Apr. 10, 2019), <https://catstv.net/m.php?q=6701>; *Bloomington City Council Meeting 4/17/19*, COMMUNITY ACCESS TELEVISION SERVS. 1:38:00–4:55:00 (Apr. 17, 2019), <https://catstv.net/m.php?q=6743>.

¹⁹³ *See Scooter and Motorcycle Laws by State*, GENUINE SCOOTER COMPANY, <http://www.genuinescooters.com/scooter-state-laws.html> (last visited Sept. 13, 2020).

¹⁹⁴ *See id.*

¹⁹⁵ *See* John Frazer, *The Reshaping of City Cores that Were Designed for Cars*, FORBES (Aug. 6, 2019, 12:01 AM), <https://www.forbes.com/sites/johnfrazer/2019/08/06/the-reshaping-of-city-cores-that-were-designed-for-cars/#649494401e46>; Doug Gordon, *American Cities Are Built for Cars. The Coronavirus Could Change That.*, NEW REPUBLIC (May 26, 2020), <https://newrepublic.com/article/157805/american-cities-built-cars-coronavirus-change-that>.

¹⁹⁶ Ernest Rollins, *City Council Legalizes Bicycling on Sidewalks*, HERALD-TIMES (Aug. 10, 2017), https://www.hoosiertimes.com/herald_times_online/news/local/city-council-legalizes-bicycling-on-sidewalks/article_e12c2b0d-3c60-5b74-931f-917c17e240ed.html.

Council passed an ordinance allowing cyclists to ride on some sidewalks.¹⁹⁷ When electric scooters arrived in Bloomington, sidewalk use of scooters was permitted, largely as a result of the bicycle ordinance.¹⁹⁸ The sheer volume of scooters, combined with their speed (up to fifteen miles per hour), led to pedestrian injuries.¹⁹⁹ In an informal survey of Bloomington residents, just under ten percent of those who reported an injury from an electric scooter classified themselves as non-users of electric scooters, meaning that at least that percentage of injuries were suffered by nonriders—though the actual number may be higher.²⁰⁰

Additionally, electric scooters have proven particularly hazardous for those with disabilities. First, the vision and hearing impaired are uniquely vulnerable to collisions with electric scooters on sidewalks given their inability to either see or hear vehicles approaching.²⁰¹ Additionally, the lack of dedicated parking spaces for the grab-and-go scooters leads many riders to “park” scooters in the middle of sidewalks, which creates tripping hazards for all pedestrians.²⁰² However, scooter-littered walkways are particularly problematic for the blind and those in wheelchairs.²⁰³ The Americans with Disabilities Act (ADA) requires five feet of walking space on sidewalks to accommodate wheelchair users, and even if properly parked on the sidewalk, electric scooters eat into this required space.²⁰⁴

C. The High Price of Access

The story of electric scooters and the ADA represents just one of several inequities in how burdens are borne in the sharing economy. While I have touched on many of these externalities, the nature and cost of access to platforms merits more detailed discussion here. As Bingham points out, companies in the sharing economy typically do not share anything; rather, their main role is to provide consumers and workers access to a marketplace, and the price of that access is

¹⁹⁷ Tyler Lake, *Bicycles, Skateboards Now Allowed on Some Bloomington Streets*, IND. PUB. MEDIA (Aug. 10, 2017), <https://indianapublicmedia.org/news/bicycles-skateboards-allowed-city-streets-125237.php>.

¹⁹⁸ See *Scooter Guidelines*, CITY BLOOMINGTON, IND., <https://bloomington.in.gov/transportation/scooters> (last visited Sept. 13, 2020).

¹⁹⁹ See Cathy Bussewitz & Amanda Morris, *Boom in Electric Scooters Leads to More Injuries, Fatalities*, ASSOCIATED PRESS (June 6, 2019), <https://apnews.com/33f376b91e5945efbcb2c460b1d0dcc>.

²⁰⁰ See CITY OF BLOOMINGTON, SCOOTER SURVEY REPORT 5, 11 (2019), <https://bloomington.in.gov/sites/default/files/2019-04/Scooter%20Survey%20Report.pdf>. See generally Peter Holley, *Pedestrians and E-Scooters Are Clashing in the Struggle for Sidewalk Space*, WASH. POST (Jan. 11, 2019, 12:08 PM), https://www.washingtonpost.com/business/economy/pedestrians-and-e-scooters-are-clashing-in-the-struggle-for-sidewalk-space/2019/01/11/4ccc60b0-0ebe-11e9-831f-3aa2c2be4cbd_story.html.

²⁰¹ James Tapper, *Invasion of the Electric Scooter: Can Our Cities Cope?*, GUARDIAN (July 15, 2019, 1:00 AM), <https://www.theguardian.com/cities/2019/jul/15/invasion-electric-scooter-backlash>.

²⁰² Holley, *supra* note 200.

²⁰³ Tapper, *supra* note 201.

²⁰⁴ Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. § 12101 (2018); see PUBLIC RIGHTS-OF-WAY ACCESS ADVISORY COMMITTEE, FINAL REPORT: BUILDING A TRUE COMMUNITY 35 (2001), <https://www.access-board.gov/files/advisory-committee-reports/prow-report.pdf>; *Bloomington City Council Meeting 4/17/19*, *supra* note 192, at 3:18:00.

rather steep.²⁰⁵ For example, for every ride Uber charges a twenty-five percent commission while Lyft charges twenty percent, which they both call a service fee.²⁰⁶ While that advertised rate is already high, it does not account for booking and safe ride fees, which, percentagewise, are especially extreme on shorter, lower-priced trips. The end result is that rideshare companies take cuts of about forty percent on some trips.²⁰⁷

Rates for other platforms in the sharing economy often are not as steep as those for rideshares, but they are still high. TaskRabbit charges users fifteen percent of the total price paid for a specific task, on top of what is paid to the Tasker.²⁰⁸ Amazon's MTurk uses a similar fee structure, though the rate is twenty percent.²⁰⁹ Airbnb charges relatively high fees as well, though they vary depending on the fee structure chosen by the host: under a split-fee structure, the host typically pays three percent while guests pay about fourteen percent; under a host-only fee structure, the host pays fourteen to sixteen percent.²¹⁰

V. REGULATING OUR WAY OUT?

Clearly, the sharing economy is not all bad, but neither is it all good. Broadly speaking, the local government's regulatory role requires juggling responsibilities to disparate—sometimes competing—interests and constituencies to reach some desirable equilibrium:

How should policy entities balance the costs and benefits of implementing sharing economy regulation? . . . On the one hand, regulators should consider issues such as protecting consumers and creating a level playing field for both new and incumbent competitors. . . . On the other hand, regulators must balance these concerns against the benefits that sharing platforms deliver.²¹¹

In an ideal world, representatives and policymakers would simply create rules that close systems, meaning companies in the sharing platform would be fully responsible for curbing the impacts of negative externalities while still capturing the value their platforms provide to consumers and workers. Unfortunately, this ideal world is pure fantasy: “No contract is capable of, or has an interest in,

²⁰⁵ IU Maurer, *supra* note 1, at 43:48.

²⁰⁶ Brett Helling, *Uber Fees: How Much Does Uber Pay, Actually? (With Case Studies)*, RIDESTER.COM, <https://www.ridester.com/uber-fees/> (last updated Jan. 7, 2021) [hereinafter Helling, *Uber Fees*] (“Both Lyft and Uber claim that they never take more than 25 percent commission from their drivers.”); Brett Helling, *Understanding Lyft Fees for Passengers and Drivers*, RIDESTER.COM, <https://www.ridester.com/lyft-fees/> (last updated Dec. 3, 2020) (taking fifty percent in the worst case).

²⁰⁷ Helling, *Uber Fees*, *supra* note 206.

²⁰⁸ *What's the TaskRabbit Service Fee?*, TASKRABBIT, <https://support.taskrabbit.com/hc/en-us/articles/204411610-What-s-the-TaskRabbit-Service-Fee> (last visited Aug. 31, 2020).

²⁰⁹ *Pricing*, AMAZON MECHANICAL TURK, <https://www.mturk.com/pricing> (last visited Aug. 31, 2020).

²¹⁰ *What Are Airbnb Service Fees?*, AIRBNB, <https://www.airbnb.com/help/article/1857/what-is-the-airbnb-service-fee> (last visited Jan. 17, 2021).

²¹¹ Eckhardt et al., *supra* note 10, at 12 (citations omitted).

systematically suppressing all connections, burning all bridges or eliminating the dual nature of every element involved. . . . It is therefore illusory to suppose that one can internalize every externality by drawing up an all-embracing contract that provides for every eventuality”²¹²

The systems, entities, and individuals interacting within the sharing economy are simply too intertwined to cleanly separate, especially when you consider the multiple roles they may serve. After all, an Uber driver is not always an Uber driver: sometimes he or she is a rider or an employee of another enterprise, but he or she is always a citizen. Consider also that relationships within the sharing economy are ever changing, and the pace of innovation and introduction of new platforms is too great to allow for silver bullet, catchall regulatory reform.

But that does not mean individuals should simply resign themselves to every societal burden placed upon them by major players in the sharing economy, nor should they stand idly by when organizations perpetuate and/or exacerbate inequities we collectively deem unacceptable. There are certain actions local governments can take both before and after new entrants and evolutions in the sharing economy emerge, which may lead to principled regulation and reform that, though perhaps not sweeping, might at least be sufficient to limit negative societal impacts. It is here where Beth Rosenbarger, planning services manager for the Bloomington Department of Planning and Transportation, offers valuable guidance.²¹³

At the start, it is worth noting that the novelty of sharing economy platforms and the changes they introduce sometimes prompt contrasting emotional reactions. The first is a distracted awe, resulting in an eagerness to blindly embrace such offerings as harbingers of promise and progress.²¹⁴ The second is a visceral fear of change, resulting in a pugnacious attempt to preserve a community, economy, and lifestyle with which one is comfortable.²¹⁵ Neither reaction is particularly rational, inherently correct, or remotely useful. Instead, a more prudent approach would be to greet new entrants with an open mind and a tempered optimism regarding the benefits they may provide, but also with healthy skepticism that promises are sometimes broken, plans often do not work out, and negative externalities—whether intended or not—almost always accompany any gains.

From that frame of mind, representatives and policymakers can astutely examine the impacts of sharing economy platforms and develop optimum rules and regulations. When considering regulatory action, Rosenbarger argues it is best to start with a discussion of broader principles, asking, “What are our goals as a

²¹² Callon, *supra* note 109, at 255.

²¹³ See IU Maurer, *supra* note 1, at 22:35.

²¹⁴ See Judith Wallenstein & Urvesh Shelat, *Hopping Aboard the Sharing Economy*, BCG HENDERSON INST. (Aug. 22, 2017), <https://www.bcg.com/publications/2017/strategy-accelerating-growth-consumer-products-hopping-aboard-sharing-economy> (noting that “[v]ariety, access to better products and services, and the ability to have a unique experience” are among the benefits that attract consumers to the sharing economy).

²¹⁵ See *id.* (finding that some people do not participate in the sharing economy because they prefer ownership, doubt the reliability of sharing platforms, and dislike sharing their payment information).

community? And how does this new platform or option support or oppose our community goals?”²¹⁶ This 30,000-foot view can be telling.

One of Bloomington’s community goals is to reduce damaging impacts on the environment,²¹⁷ a goal I am sure many other cities share. Using this framework as a starting point, we can rather easily evaluate whether certain platforms support, oppose, or remain neutral to the goals our community sets for itself. Carsharing services, like Zipcar, likely support this environmental goal as they reduce the need for car ownership, limit car trips, and encourage use of greener transportation alternatives—on top of improving air quality, which has several health benefits as well.²¹⁸

Ridesharing companies like Uber and Lyft employ business models in direct opposition to the city’s environmental goals.²¹⁹ First, traditional taxi services drop off one passenger and typically pick up another passenger in that same location.²²⁰ Uber and Lyft drivers rely on apps to prebook their next riders, whom they rarely pick up at the same location as their previous passenger.²²¹ As a result, rideshare services increase the number of miles traveled via car, consequently leading to increased carbon emissions.²²² Second, rideshare services are often used as alternatives to public transit, which again increases total carbon emissions.²²³ Finally, Uber and Lyft offer transit options to users outside the limits of traditional transit services.²²⁴ While on the one hand this provides a desirable option for many users, it may also encourage urban sprawl by offering an alternative transit service that was quite purposely excluded by city planners.²²⁵

²¹⁶ See IU Maurer, *supra* note 1, at 23:06.

²¹⁷ See Press Release, City of Bloomington, Ind., Environmental Commission’s Bloomington Environmental Action Plan Published (Feb. 1, 2017), <https://bloomington.in.gov/news/2017/02/01/2193>; see also Press Release, Ind. Univ., Indiana Cities to Develop Climate Action Plans in Partnership with IU (Mar. 9, 2020), <https://news.iu.edu/stories/2020/03/iu/releases/09-indiana-cities-reduce-greenhouse-gases-resilience-cohort.html> (discussing steps that eleven Indiana cities are taking to improve the environment).

²¹⁸ See Jennifer L. Kent, *Carsharing as Active Transport: What Are the Potential Health Benefits?*, 1 J. TRANSPORT & HEALTH 54, 56–57 (2014); see also Dimitrios Efthymiou, Constantinos Antoniou & Paul Waddell, *Factors Affecting the Adoption of Vehicle Sharing Systems by Young Drivers*, 29 TRANSPORT POL’Y 64, 66 (2013); N.T. Fellows & D.E. Pitfield, *An Economic and Operational Evaluation of Urban Car-Sharing*, 5 TRANSP. RES. PART D 1, 6, 9 (2000).

²¹⁹ See IU Maurer, *supra* note 1, at 29:00.

²²⁰ See *id.*

²²¹ See *id.*

²²² See *id.* Pool options for Uber and Lyft do offer riders the option to join rideshares already engaged en route to a specified destination or another destination along the way. This provides users the chance to save on fares while also reducing miles traveled by the driver, thus curbing emissions compared to regular booking avenues. See *About Shared Rides*, LYFT, <https://help.lyft.com/hc/en-us/articles/115013078848-About-Shared-rides> (last visited Nov. 11, 2020); *Uber Pool*, UBER, <https://www.uber.com/us/en/ride/uberpool/> (last visited Nov. 11, 2020).

²²³ See IU Maurer, *supra* note 1, at 29:00.

²²⁴ See *id.*

²²⁵ See *id.* Bloomington city planners limit the range of traditional transit options (e.g., buses) to within the city rather than extending to outlying areas in the county. Transit, like many other municipal services, is supported by city taxes, and businesses often locate outside city limits to avoid higher tax burdens. By limiting routes to operate only inside the city, Bloomington prevents such businesses from reaping the benefits of transit service without having contributed to maintaining the infrastructure.

Once communities understand how players in the sharing economy impact the community's set goals, they can take action in the service of those goals. Now, given the laissez-faire attitude many Americans hold toward innovation and business ventures—at the individual, elected official, and judicial levels—outright banning companies in the sharing economy from operating within specific cities or townships remains difficult.²²⁶ However, there are regulatory tools we can employ to meaningfully alter behaviors and advance community goals.

Sticking with the environmental community goal, consider electric scooters. Earlier, I outlined several negative environmental externalities of Bird and Lime scooters, many stemming from the manner of use.²²⁷ Specifically, when electric scooters replace walking or biking trips, they create damaging externalities.²²⁸ Changing the fee structure could alleviate this problem, at least to some extent. Both Bird and Lime charge users one dollar to unlock an electric scooter for usage, and then a per-minute rate while riding, which varies from city to city but typically hovers in the neighborhood of twenty to forty cents.²²⁹ Given the relatively low unlocking charge, riders do not find it cost prohibitive to use electric scooters for short trips. If, however, the unlocking fee were raised and included a preset number of usage minutes, riders would be disincentivized from replacing walking trips with electric scooter rides and instead encouraged to use electric scooters for longer distances in place of car trips.²³⁰ In much the same way companies lobby governments for policy changes, the two-way nature of this relationship enables governments to press platforms to make adjustments.

Another regulatory tool is the power of planning and infrastructure. Often businesses succeed not simply because they offer a useful or innovative product or service but because that product or service fits within existing infrastructures.²³¹ As Bingham points out, a majority of sharing economy platforms build software code using Linux, a collaboratively built, free, and open-source operating system.²³² Additionally, app developers often rely on other companies' application programming interfaces (APIs) and software development kits (SDKs) to make their

²²⁶ See generally Dennis R. Shaughnessy, "The Business of America Is Business!," SEI FEB. 2017 NEWSL. (Ne. Univ. Soc. Enter. Inst., Boston, Mass.), Feb. 2017, <https://www.northeastern.edu/sei/2017/02/the-business-of-america-is-business/> (noting that some individuals believe "economic growth cures the ills of society"); David W. Moore, *Majority of Americans Want to Start Own Business*, GALLUP (Apr. 12, 2005), <https://news.gallup.com/poll/15832/majority-americans-want-start-own-business.aspx> (discussing survey responses that indicate most Americans, if given the choice, would prefer to start their own business).

²²⁷ See *supra* text accompanying notes 131–144.

²²⁸ Eggert, *supra* note 138.

²²⁹ See Luz Lazo, *That Scooter Ride Is Going to Cost You a Lot More*, WASH. POST (Oct. 18, 2019, 7:00 AM), <https://www.washingtonpost.com/transportation/2019/10/18/that-scooter-ride-is-going-cost-you-lot-more/>; see also Ethan May, *Here's Everything You Need to Know About Bird and Lime Electric Scooters*, INDYSTAR (June 21, 2018, 1:07 PM), <https://www.indystar.com/story/news/2018/06/21/bird-electric-scooters-rental-costs-hours-charging-locations/720893002/>.

²³⁰ See IU Maurer, *supra* note 1, at 26:12.

²³¹ Michael E. Porter & Mark R. Kramer, *Creating Shared Value: How to Reinvent Capitalism—and Unleash a Wave of Innovation and Growth*, HARV. BUS. REV., Jan.–Feb. 2011, at 62, 72; IU Maurer, *supra* note 1, at 32:25.

²³² IU Maurer, *supra* note 1, at 32:25.

own apps functional and scalable.²³³ For example, Uber and Lyft use Google's mapping API and SDK to track the location of their drivers and riders.²³⁴ Had Google not licensed that information, both Uber and Lyft would have to build their own mapping services from the ground up. Developers' willingness to share such data makes the proliferation of apps and tech start-ups possible, with new entrants benefiting from the work of other companies.²³⁵

Similarly, infrastructure built and maintained by local municipalities can either encourage or hinder the growth of platforms in the sharing economy.²³⁶ For instance, zoning laws that often apply to hotels and other short-term rental operations typically do not apply to the residential properties rented out by Airbnb hosts.²³⁷ Zoning law loopholes allow Airbnb to establish footholds in neighborhoods and communities where traditional competitors are barred.²³⁸ Similarly, most U.S. cities are designed with car travel in mind.²³⁹ Uber and Lyft thrive in these communities in part because the infrastructure favors their business model, whereas many bikeshare services struggle because roads are often not designed with cyclists in mind—and even when they are, the needs of cars often come first.²⁴⁰

²³³ See *Interacting with Other Apps*, ANDROID DEVELOPERS, <https://developer.android.com/training/basics/intents> (last visited Nov. 13, 2020); *Receiving Simple Data from Other Apps*, ANDROID DEVELOPERS, <https://developer.android.com/training/sharing/receive> (last visited Nov. 13, 2020) (showing examples and providing guidance based on version of API).

²³⁴ Andrew J. Hawkins, *Lyft Says It Will Use Google Maps as Its Default Navigation Tool for Drivers*, VERGE (Oct. 12, 2017, 3:13 PM), <https://www.theverge.com/2017/10/12/16465414/lyft-google-maps-waze-navigation-app-drivers>; Jordan Novet, *Uber Paid Google \$58 Million over Three Years for Map Services*, CNBC (Apr. 11, 2019, 4:48 PM), <https://www.cnbc.com/2019/04/11/uber-paid-google-58-million-over-three-years-for-map-services.html>.

²³⁵ See Charlie Warzel, Opinion, *The Loophole that Turns Your Apps into Spies*, N.Y. TIMES (Sept. 24, 2019), <https://www.nytimes.com/2019/09/24/opinion/facebook-google-apps-data.html>; Sara Morrison, *The Hidden Trackers in Your Phone, Explained*, VOX (July 8, 2020, 10:30 AM), <https://www.vox.com/recode/2020/7/8/21311533/sdks-tracking-data-location>.

²³⁶ Anna Rutkowska-Gurak & Agata Adamska, *Sharing Economy and the City*, 55 INT'L J. MGMT. & ECON. 346, 354–56 (2019); Brooks Rainwater, *The Sharing Economy Needs to Be Better Partners with Cities*, BLOOMBERG (Feb. 7, 2018, 12:56 PM), <https://www.bloomberg.com/news/articles/2018-02-07/the-sharing-economy-s-love-hate-relationship-with-cities>; Michael Scott, *Shared Cities: Building the Infrastructure for a Collaborative Economy*, GOV'T TECH. (Apr. 21, 2014), <https://www.govtech.com/local/Shared-Cities-Building-the-Infrastructure-for-a-Collaborative-Economy-GT.html> [<https://web.archive.org/web/20170920153227/https://www.govtech.com/local/Shared-Cities-Building-the-Infrastructure-for-a-Collaborative-Economy-GT.html>] (discussing collaborative efforts).

²³⁷ BIVENS, *supra* note 152, at 16–18.

²³⁸ Some municipalities have begun to push back with new regulatory measures, which have at time been met with hostile reactions from Airbnb and other similar platforms. See Paris Martineau, *Inside Airbnb's 'Guerrilla War' Against Local Governments*, WIRED (Mar. 20, 2019, 7:00 AM), <https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/>; Scott Zamost, Hannah Kliot, Morgan Brennan, Samantha Kummerer & Lora Kolodny, *Unwelcome Guests: Airbnb, Cities Battle over Illegal Short-Term Rentals*, CNBC (May 24, 2018, 7:00 AM), <https://www.cnbc.com/2018/05/23/unwelcome-guests-airbnb-cities-battle-over-illegal-short-term-rentals.html>.

²³⁹ See Frazer, *supra* note 195; Gordon, *supra* note 195.

²⁴⁰ Rutkowska-Gurak & Adamska, *supra* note 236, at 363 tbl.4 (mentioning that local authorities should design cities to reduce car usage); Frazer, *supra* note 195; IU Maurer, *supra* note 1, at 32:25.

As Rosenbarger describes it, the key is to understand how infrastructure systems influence consumer choices.²⁴¹ With that information, cities can make changes that nudge—or sometimes shove—consumers in the sharing economy to act in ways that advance community goals.²⁴² In the cases of rideshares and bikeshares, infrastructure considerations include designs of streets, parking, sidewalks, transit routes, and land use, among several other factors.²⁴³ Problematically, even minor changes in policy and infrastructure can be difficult to secure because of costs or a lack of political will.²⁴⁴

Again, focusing on Bloomington, the city faces challenging hurdles in ensuring public safety with electric scooter use. First, securing usable data from Bird and Lime has been frustrating to a certain degree.²⁴⁵ While the companies are willing to share information with the city—sometimes in real time—it comes in bulk, and the numbers are not easy to interpret.²⁴⁶ Once organized into a standard reporting format, the city government would ideally wish to share the information with the public to foster informed debate about proposed ordinances. However, much of the data provided potentially falls under trade secret protections, even information as seemingly innocuous as how many, when, and where scooters are deployed because the data could be employed by rival companies to erase some competitive edge.²⁴⁷

Putting that concern aside, the cost of regulatory action is often more than cash-strapped cities and towns can afford. As previously discussed, existing Indiana state laws regarding motorcycle and bicycle helmet use make it difficult to pass any law requiring electric scooter riders to wear helmets.²⁴⁸ However, even if Bloomington felt it could pass such an ordinance, enforcing it would be virtually impossible.²⁴⁹ The cost in terms of human effort would be too great.²⁵⁰ Indeed, some of the impetus for passing the recent ordinance to allow bicycle use on sidewalks was because the city faced similar limitations enforcing the prohibition.²⁵¹

Other times, cost complications are compounded by political realities. For instance, a serious public safety concern about electric scooters is the haphazard nature in which they are parked.²⁵² Bloomington thus considered establishing dedicated parking zones, particularly downtown, to minimize tripping hazards for

²⁴¹ IU Maurer, *supra* note 1, at 32:25.

²⁴² *See id.*

²⁴³ Frazer, *supra* note 195.

²⁴⁴ *See* Christian, *supra* note 183; Christian, *supra* note 184.

²⁴⁵ *Bloomington City Council Meeting 4/17/19*, *supra* note 192.

²⁴⁶ *Id.*

²⁴⁷ *See Bloomington City Council Meeting 4/17/19*, *supra* note 192; Economic Espionage Act of 1996, Pub. L. No. 104-294, 110 Stat. 3488 (codified at 18 U.S.C. §§ 1831–1839 (2018)); Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376 (codified at 18 U.S.C. § 1836 (2018)).

²⁴⁸ *See supra* text accompanying notes 184–94.

²⁴⁹ *See* Christian, *supra* note 183.

²⁵⁰ *Id.*

²⁵¹ *See Bloomington City Council Meeting 4/17/19*, *supra* note 192; Lake, *supra* note 197.

²⁵² *Bloomington City Council Meeting 4/17/19*, *supra* note 192.

pedestrians and ensure compliance with ADA regulations regarding sidewalk space.²⁵³ Again, however, the cost of regulation is a problem. Much like helmet laws, the police would be hard-pressed to enforce an electric scooter parking ordinance.²⁵⁴

On top of that concern lies another: Where would the city put dedicated scooter parking? Streets, alleyways, and sidewalks are not viable options as the goal is to clear parked scooters from these areas. The most viable option would be converting existing street-parking car spaces to electric scooter parking zones. But in Bloomington, like many towns, street parking for cars is already a sparse premium, and residents are unlikely to back such legislative action.²⁵⁵

In the end, the capacity of government at any level to regulate elements of the sharing economy depends on the will of the citizenry. However, because every legislative act comes with built-in tradeoffs—some known, some unknown—measures are often extremely difficult to pass or simply dead on arrival. The issue of climate change presents a good example. According to a Pew Research Center report, two-thirds of Americans feel the federal government is not doing enough to reduce the negative impacts of climate change, and sixty-three percent say they are willing to bear increased costs to address this issue.²⁵⁶ While local data is sparse, given the partisan divide on climate change²⁵⁷ and Bloomington's record of liberal voting patterns,²⁵⁸ one could reasonably assume Bloomington residents at least match, if not outpace, the national numbers.²⁵⁹ Mayor John Hamilton, thus, felt comfortable proposing a plan to create a sustainability investment fund for the city and county that will be financed by increasing income taxes half a percent, resulting in \$16 million added annually to the fund.²⁶⁰ Considering that Monroe County taxes are the twenty-second lowest of the ninety-two counties in the state, the tax increase seemed justifiable.²⁶¹ The measure received immense blowback,

²⁵³ *Id.*

²⁵⁴ *Id.*; *Bicyclists and Pedestrians*, *supra* note 188.

²⁵⁵ See generally DESMAN DESIGN MGMT., DOWNTOWN AREA PARKING STUDY: BLOOMINGTON, IN (2018), <https://bloomington.in.gov/sites/default/files/2020-06/Bloomington%20Final%20Report%206.21.18-Downtown%20Parking%20Study.pdf>.

²⁵⁶ Cary Funk & Brian Kennedy, *How Americans See Climate Change and the Environment in Seven Charts*, PEW RES. CTR. (Apr. 21, 2020), <https://www.pewresearch.org/fact-tank/2020/04/21/how-americans-see-climate-change-and-the-environment-in-7-charts/>.

²⁵⁷ *Id.*

²⁵⁸ See Ernest Rollins, *Dems Sweep Races for Monroe County Posts; Hennessey Tops Wanzer in MCCSC Contest*, HERALD-TIMES (Nov. 4, 2020), https://www.hoosiertimes.com/herald_times_online/news/elections/dems-sweep-races-for-monroe-county-posts-hennessey-tops-wanzer-in-mccsc-contest/article_9a86bac6-1e57-11eb-b9f2-97fb96f6faac.html.

²⁵⁹ See *2017 U.S. Party Affiliation by State*, GALLUP, <https://news.gallup.com/poll/226643/2017-party-affiliation-state.aspx> (last visited Sept. 7, 2020).

²⁶⁰ Joey Bowling, *Bloomington Mayor, Environmental Experts Discuss Proposed Income Tax Increase*, IND. DAILY STUDENT (Mar. 5, 2020, 11:19 PM), <https://www.idsnews.com/article/2020/03/bloomington-mayor-environmental-experts-discuss-proposed-income-tax-increase>.

²⁶¹ *Id.*

some from conservative groups who oppose virtually any new tax,²⁶² but much criticism was levied by those who agree with the principle of climate protections but feel the increased tax burden unnecessary, unfeasible, or poorly structured.²⁶³ The proposal ultimately failed.²⁶⁴

Curbing the negative impacts of the gig economy is likely to result in similar tradeoffs. It is easy to see and complain about the undue financial burden placed on rideshare drivers because of low wages and no access to benefits because of their independent contractor status;²⁶⁵ the social inequalities created by the lack of affordable housing, which are proliferated by expanded Airbnb listings;²⁶⁶ or the dangers faced by pedestrians sharing sidewalks with speeding, or even parked, scooters.²⁶⁷ However, to correct these injustices visited upon some may require sacrifice from all. Are we willing to expand Obamacare to cover gig workers? Are we willing to sacrifice some agency in how we use our own properties—or perhaps even regulate how many we might own within a given area? Are we willing to forfeit parking spaces to ensure clear sidewalks?

Regulation can and should internalize some negative externalities visited upon us by platforms operating in the sharing economy, but it is a fantasy to assume full containment within set systems. At some level we have to recognize our ability to correct injustices and social inequalities both as individuals and members of the broader electorate. Collectively, we have been willing to sacrifice much of our search, seizure, and privacy rights for the convenience of accessing a litany of internet platforms. The million-dollar question, then, is this: Will we be similarly willing to sacrifice the more fundamental rights of health, safety, and dignity of many of our fellow citizens, or will we act in accordance with our conscience and our founding principles? Harkening, yet again, back to Orwell, it is a hard truth that in America, some animals have always been more equal than others,²⁶⁸ but much of our historical arc has embodied an effort to close that gap, albeit ever so slowly. Hopefully, we will allow “the better angels of our nature” to prevail.²⁶⁹

²⁶² Kevin Rader, *Bloomington Proposing Climate Change Tax Increase*, WTHR (Jan. 8, 2020, 3:25 AM), <https://www.wthr.com/article/news/local/bloomington-proposing-climate-change-tax-increase/531-f2884d7a-ccfc-458a-9164-fb107d6482e6>. Grover Norquist’s work in this area is an apt example at the national level, particularly his Taxpayer Protection Pledge, in which “candidates and incumbents make a written commitment to oppose any and all tax increases.” See *About the Taxpayer Protection Pledge*, AMS. FOR TAX REFORM, <https://www.atr.org/about-the-pledge> (last visited Nov. 16, 2020).

²⁶³ See Nicholas Baird & Nicholas Browning, Opinion, GUEST COLUMN: *The City Council Irresponsibly Struck Down Hamilton’s Tax Proposal*, IND. DAILY STUDENT (Oct. 8, 2020, 6:26 PM), <https://www.idsnews.com/article/2020/10/guest-column-bloomington-city-council-mayor-hamilton-tax-proposal>.

²⁶⁴ Ethan Burks, *Bloomington Mayor’s Tax Hike Proposal Fails*, IND. PUB. MEDIA (Sept. 17, 2020), <https://indianapublicmedia.org/news/final-vote-on-local-income-tax-increase-fails.php>.

²⁶⁵ See *supra* Section II.B.

²⁶⁶ See *supra* Section IV.A.

²⁶⁷ See *supra* Section IV.B.

²⁶⁸ See ORWELL, *supra* note 9.

²⁶⁹ Abraham Lincoln, U.S. President, First Inaugural Address (Mar. 4, 1861), in SPEECHES AND LETTERS OF ABRAHAM LINCOLN 1832-1865, at 99 (Merwin Roe ed., 2006) (ebook).