NATIONAL AFFAIRS

Embracing the Peer-Production Economy

Eli Lehrer and Andrew Moylan

Enthusiasts of the growing "peer-production" or "sharing" economy are convinced that the new decentralized, technology-based approach to connecting consumers and providers of services is going to revolutionize commerce and transform modern life. The true promise of this emerging sector — which has taken the form of ride-sharing apps like Uber, space-sharing platforms like Airbnb, work-sharing businesses like TaskRabbit, and a host of other emerging digital services — remains to be seen. But it is already becoming apparent that the sharing economy could have some significant political implications.

The key political questions are to what extent peer-production services should be regulated and how. These are particularly challenging questions for the left. Taking an accommodating, hands-off approach to such regulation would appeal to the educated, young, urban consumers of such services who tend to be liberals, but it would run the risk of alienating core liberal constituencies like unions, trade guilds, and trial lawyers — not to mention undercutting the default progressive faith in the wisdom of the regulatory state. For the right, there is more opportunity than risk, but making the most of it would require finding a way to shape a free-market message that would appeal to the largely young, wealthy city-dwellers who use sharing services and for whom the broader conservative agenda is largely anathema.

Managing the peer-production economy in a prudent fashion and standing up for its interests has the potential to pay huge political dividends for the party that does it best, but it will not be easy. To see why

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will require a grasp of how the peer-production economy evolved, why it is important (and how it has been oversold), and the challenges that our legal and regulatory systems present to its future growth.

THE PROMISE OF PEER PRODUCTION

In some ways, the peer-production economy marks a return to the early modern and colonial eras, when it was more common for individual craftsmen to own their tools of production. The crucial difference with the new sharing economy, of course, is that new technologies vastly reduce transaction costs and create new markets to connect buyers and sellers. All sharing-economy companies operate websites as hubs for their activities, and many rely on smart-phone applications to match parties to a transaction. Traditional brick-and-mortar firms like Wal-Mart and internet retailers like Amazon have websites and smart-phone apps too, of course. But peer-production companies innovate either by disintermediating labor, "unlocking" otherwise dormant capital, or both.

Labor-disintermediation services help individuals sell productive work—skilled or unskilled—by offering a platform that vastly reduces the cost of doing so. Online marketplaces like Fiverr and Amazon's Mechanical Turk service allow people to hire others to do simple tasks for small sums of money. The website eBay, arguably the oldest sharing-economy company, creates an enormous market for peddling almost any type of merchandise. Etsy creates a massive international market for crafts. The mobile-app-based Lyft, Sidecar, and Uber's UberX service let amateur drivers earn extra money by giving rides to others in their personal cars. TaskRabbit provides a market for simple home repairs, moving help, and errands. EatWith allows people to open their homes as "restaurants" for an occasional meal. Without these platforms, the marketing and other overhead expenses of this type of labor almost certainly would not pass cost-benefit tests. In some cases, such as ride-sharing, new services might also violate certain outdated laws and regulations.

Unlocking capital involves putting otherwise dormant capital to productive use. Companies like Airbnb and HomeAway allow people to rent otherwise unoccupied rooms to travelers and boarders. Store At My House offers the same service for storage space. RelayRides and FlightCar allow people to rent their otherwise unused cars to others. The possibilities can get very specific (PastureScout allows the rental of otherwise unused grazing fields), controversial (Parking Panda allows "subleases" of metered public parking spaces), and bizarre (Airpnp allows people to rent their private bathrooms for one-time use). The capital involved in these transactions has value, but without a platform to move it into the stream of commerce, it has long remained dormant.

A subset of capital-unlocking models encourages and facilitates "gifting" of resources that have little or no apparent value: Couchsurfing allows people to give out "crash space" on their sofas for free while Freecycle — which, unlike most other peer-production firms, operates mostly via e-mail lists — allows people to dispose of unwanted property by giving it to their neighbors without charge.

While the technologies involved make the peer-production economy different in many ways from previous economic developments, the ways in which peer production unlocks previously dormant physical and human capital are familiar and have historically coincided with times of significant economic growth. For instance, as Mark Smith describes in his *Toward Rational Exuberance*, the prosperity of the 1920s coincided with the development of a liquid stock market for non-railroad companies, and the emerging high-yield bonds of the 1980s underwrote enormous capital investment. The entry of women into the workforce after World War II and the end of policies and laws that excluded women and racial minorities from most high-status professions in the second half of the 20th century also paid enormous economic dividends in almost every industry.

The peer-production economy offers the potential for a similar revolution. The potential value from fuller utilization of un-driven cars, unused bedrooms, and even un-grazed pasture land is immense. Likewise, the mass of underused human skills have enormous potential value. The market valuations of some existing firms — eBay is worth $67 billion, and Uber is now valued at $18 billion — offer a window into just how big investors feel the peer-production economy might become.

THE LIMITS OF PEER PRODUCTION

Just as with prior economic innovations, however, there are some natural limits to the benefits that peer production can provide. Bed and breakfasts, so-called "gypsy" cabs, clothing swaps, and short-term rental agreements all long predate the internet and smart phones, yet none have been sources of tremendous economic value. So for a true peer-production revolution, services like Uber and Lyft, for instance, would need to not merely replace taxis; they would have to significantly expand the market for on-demand transportation services.

Similarly, by allowing people to work for themselves with relatively small capital inputs, peer-production platforms offer a path toward upward mobility for those with little money or formal education. But the work ethic and skills necessary to truly lift oneself up in the peer-production economy are similar to those needed in any other economic sector. For example, an internal Airbnb survey found that over half of the hosts in the expensive San Francisco and New York markets relied on income produced by short-term rentals to subsidize their housing costs, suggesting that services like these offer some the ability to enjoy a better quality of life. But most people do not want to take strangers into their homes or serve as taxi drivers, and some who try these things will almost certainly find they lack the skills, motivation, or engagement to do them well.

The environmental benefits of peer production — which nearly all companies in the market emphasize — are likely oversold, too. More intensive use of existing physical resources will, all else being equal, lead to less waste and greater economic efficiency. But all else is not necessarily equal. If ride-sharing services provide more reliable, better-quality transportation, they could actually encourage more car trips, rather than environmentally friendly options like walking, biking, or public transport. Services like RelayRides and FlightCar provide airline passengers with free airport parking in exchange for renting out their cars which otherwise would have been idle while they were away. This is economically efficient, but likely causes such vehicles to wear out more quickly, making the environmental benefits difficult to tease out. Services like Etsy offer a platform for hand-crafted goods that decentralizes physical production. But this decentralization may actually serve to decrease productive efficiency, as a single factory likely uses less energy and produces less pollution than a hundred home-based workshops.

All of this isn't to say that the environmental benefits of peer production are entirely illusory. The hundreds of rooms that Airbnb and HomeAway can provide in a large metropolitan area may result in fewer new hotels being built. And even if they increase total miles driven, services like Lyft and Uber may reduce the amount of open space paved over for parking lots. But these results are likely to be diffuse and difficult to measure, particularly in the short term. One would expect, in practice, that many of the purported environmental benefits will probably be smaller than today's wild-eyed optimists suggest.

The growth of the peer-production economy also isn't likely to result in fundamental changes in the nature of the goods people consume. While some techno-optimists like Lisa Gansky have championed the idea of super high-quality, very costly "heirloom design" goods being shared widely— raising the possibility that there might be more swapping of luxury items like high-end clothes, jewelry, and dishware—any actual trends in this direction have been extremely modest. Nor has the more widespread access to luxury goods driven the growth of ride-sharing or space-sharing. In fact, trends have run the opposite way. Uber started with a "black car" service but now offers rides in humble Toyota Prius, Honda Accord, and Ford Fusion cars that are similar or even inferior to the full-size cars and minivans that make up most cities' taxi fleets. Airbnb hosts also are rarely, if ever, equipped to provide the daily housekeeping and 24-hour room service offered in full-service hotels. Just as mobile phones still largely do not offer the same clarity of reception as "land line" sets, many peer-production services are likely to be, in some respects, inferior to what they replace.

They also clearly have very significant negative consequences for incumbent producers. Just since late 2013, the market for rationed taxi medallions in cities like Chicago and New York (where the price of a medallion briefly topped $1 million) has appeared to be seriously undermined, with auctions for new medallions failing to attract bidders and transactions of existing medallions essentially ceasing. Hoteliers in construction-unfriendly, high-density cities like San Francisco also have complained about space-sharing services, calling on municipalities to crack down by enforcing laws originally passed to deal with slumlords and brothels.

Some of these revolts by incumbent producers have crossed the line from policy advocacy to direct action, such as when Washington, D.C., and London cabbies blocked traffic for days to protest ride-sharing. Because the cab drivers lack a defensible argument for why their monopoly should be legally protected, it is easy to dismiss these protests, and the public largely has.

But some of the other complaints against peer-production firms potentially have more force. Underground restaurants opened in people's homes really do leave customers without the security of regular inspections and food-sanitation certificates. A number of these supper clubs specialize in relatively risky foods like raw milk and sushi — as at least two home-based restaurants in San Francisco did during one week in July 2014. These sorts of services may genuinely raise public-health and safety concerns. What's needed is a legal framework in which peer-production services may thrive and grow, but where the legitimate public-policy interests of preserving public health and standards of safety and protecting individuals from fraud are maintained.

BARRIERS TO THE SHARING ECONOMY

A range of policies administered largely by state and local governments present major challenges to the future growth and success of the peer-production economy. Broadly speaking, these policies can be divided into four partially overlapping groups: archaic laws, professional licensure, torts, and taxes.

Across the country, laws that were written long before the emergence of the peer-production economy to address issues quite different from those under consideration today are now being invoked as barriers to peer-production services. These antiquated regulatory structures have led to something of a "ban first, ask questions later" mentality in many cities. New Orleans sent cease-and-desist orders to Uber before the company even started operations in the city. New York City has threatened evictions for certain apartment owners renting their properties on Airbnb, while San Francisco has considered paying citizens who report owners engaged in space sharing.

Cities like Chicago and San Francisco technically forbid short-term space rentals through laws initially enacted to fight prostitution, though these laws are not enforced. In New York City, efforts to crack down on "slumlords" motivated laws that, in their plain language, appear to outlaw almost all short-term rentals, including existing bed-and-breakfast establishments. New York and California laws intended to assure that owners of large fleets of vehicles don't shirk pollution-control requirements have been invoked in threats to seize cars used by individual ride-sharing drivers. Virginia, Maryland, Illinois, Florida, and Texas all have laws or regulations requiring all clothes to be washed before they are resold. This reasonably common requirement is a regulation intended for consignment and other second-hand shops, but it could have serious consequences for clothing-swap websites.

Burdensome professional-licensing regimes present an even larger barrier to peer production. The Institute for Justice estimates that roughly one-third of all U.S. jobs require a government-provided license of some sort, imposing a $100 billion deadweight loss on the economy and destroying thousands of jobs. There are states that even license occupations like florists and interior decorators, despite the lack of any notable public-safety concerns. There are licensing requirements for electricians and cosmetologists in all 50 states. That might be expected, as both present some public-safety risks, but the training and certification requirements far exceed what would be necessary to promote safety.

The costs of licensing requirements have the same effect on the peer-production economy as they do on the economy at large: to discourage valuable work on the margin. Self-taught barbers, braiders, and beauticians will be less likely to contribute their skills on a small-scale or ad hoc basis if the law requires them to pay to attend nine months of cosmetology school. Ride-sharing could be effectively shut down if states insist that participants obtain commercial drivers' licenses designed for truck drivers. Continuing-education requirements for everyone from lawyers to nurses' aides likewise make it harder for people to pitch in and use valuable skills that now remain out of the stream of commerce.

The American system of tort law also presents unique challenges to peer-production services. Auto- and homeowners-insurance policies that Americans use to indemnify themselves for third-party liability tend to exclude nearly all commercial activities. It also remains unclear to what extent peer-production firms themselves can or would be held liable in such cases, given that they may offer the defense that they are merely "publishers" of information. Person-to-person gift transactions do not enjoy the same safe harbor from tort claims granted to charitable donations and volunteer work. In the past, there have been tort claims over gifts of clothing, sleeping space, and other items. Those engaged in peer production may find that they have exposed all of their assets to litigation, and an explosion of such torts could do grave damage to these emerging markets.

For transactions that may be subject to sales and use taxes in at least some states, a federal bill called the Marketplace Fairness Act presents another clear and present danger. The proposal would abolish the "physical nexus" standard that currently prevents states from imposing tax-collection duties on businesses that are not physically present in that state. Under the MFA, states and localities could project their taxing authority into the pockets of sellers anywhere in the country, even in states that have no sales taxes, so long as the buyer resides in the taxing state, county, or city. The law would impose significant administrative burdens on many merchants, even in spite of its exemption for very small businesses, and could saddle those selling through peer-production platforms with new tax-compliance burdens not faced by brick-and-mortar operations. A business selling goods on the internet would face the risk of separate sales-tax audits from 46 states the second it became too large to qualify for the exemption.

Similarly, for businesses that sell digital goods like smart phone applications, the lines of tax authority are in need of significant clarification. In some cases, multiple jurisdictions might attempt to assert tax authority over a single sale of an item. Consider a Massachusetts-based customer purchasing an app from a California-based company while waiting to catch a flight in a New York airport. In cases such as these, two or even three jurisdictions might attempt to capture tax revenue associated with the sale. A federal bill called the Digital Goods Tax Fairness Act would clarify that only one jurisdiction may collect taxes on a given sale, giving certainty to peer-production companies trading in digital goods that they won't face double or even triple taxation.

taxing and regulating

Broadly speaking, peer-production transactions should be subject to ordinary tax law, and, in most cases, existing laws will suffice. Online sellers are already required to collect sales tax from buyers in states where the seller has a physical location, like a storefront or warehouse. It also would be perfectly reasonable to expect space-sharing hosts to collect whatever local taxes are assessed on more conventional bed-and-breakfast establishments. So long as broad principles of tax fairness are applied, the peer-production economy should present few truly novel challenges for tax authorities, and creating new taxes for these services almost certainly would be a mistake.

In the abstract, the best way forward in many of these markets would be comprehensive reform that makes it easier for small businesses to operate across the board, not just in the peer-production economy. Efforts to enact tax reform and tort reform, to repeal archaic laws, and to gut costly regulations and occupational-licensing regimes all have much to commend them. But the thick underbrush of existing law, and the structural barriers to comprehensive reform, may make implementing new regulatory regimes for peer production a more realistic approach. Where trying to force regulatory solutions into pre-existing structures proves impossible or infeasible, separate regulatory treatment may be a second-best option, so long as lawmakers preserve the goal of ensuring that similar economic activity is regulated similarly, regardless of business model.

Very few local and state governments have begun to wrestle with the legal issues surrounding the peer-production economy. Recent research by our colleagues at the R Street Institute has found that fewer than half of the country's 25 largest cities have any sort of framework for dealing with ride-sharing. None have seriously revisited their laws dealing with short-term rental agreements, although Portland, Oregon, may soon become the first.

Where feasible and reasonable, lawmakers should try to model peer-production regulations on the existing rules for comparable services. But some of these lines are fuzzy. For driving services, it is reasonable to ask ride-sharing drivers who work on a full-time basis to submit to the same background checks as traditional taxi drivers. But the scale of operations changes what might be reasonable to ask of large fleets of taxis as opposed to individual ride-sharing drivers: Should all UberX cars, for instance, be required to be fully equipped as handicapped-accessible? Regarding space-sharing services, state and local laws almost universally require that hotels have fire-alarm systems, maintain multiple exits, and provide ready access to fire-suppression equipment. These rules have been so effective in eliminating deaths in hotel and motel fires that the annual "Fire in the United States" report issued by the United States Fire Administration has stopped tracking them as a separate category. But imposing the same requirements on room-sharing hosts would likely make the practice close to impossible.

Of course, the fact that existing regulations would be difficult to impose on peer-production activities does not vitiate the legitimate public interests those rules are meant to serve. Therefore, it might be appropriate for policymakers to look to mandatory insurance or surety and fidelity bonds to address some of the concerns that would otherwise be handled by prescriptive regulation. For example, while a traditional driver's license might be the only licensing that should be required of ride-sharing drivers, it would make sense to require them to carry additional liability insurance, whether it is provided by the peer-production service or by the drivers themselves.

By carving out a role for insurance providers in assessing and underwriting risk, companies and consumers alike would benefit from the knowledge embedded in price signals. Auto insurers will probably do more to weed out truly awful drivers than any sort of additional licensing requirement would. Insurers also could determine whether home-based restaurants that serve raw milk and sushi are reasonably safe.

But insurance can only serve this vital role if regulators do not interfere with the development of new and innovative products to serve these new and innovative markets. The best and most dynamic insurance products may take time to evolve. Regulators should be wary both of calls from the insurance industry to mandate that peer-production activities be excluded from standard consumer-policy language and calls by peer-production companies to force insurers to cover things they do not want to cover.

The bias to tread lightly in the peer-production space, either in drafting new regulations or in applying existing ones, should be heightened in cases where no money changes hands. In so-called "gifting" transactions, there should be a very clear public-health and safety concern before regulators get involved. The dangers of allowing people to give one another free rides or share used household goods appear minimal, and the harms appear not to persist. As sources of potentially enormous consumer surplus, gifting transactions deserve special protection, such as the limited tort liability shield granted to volunteers who work for non-profits under the Volunteer Protection Act of 1997.

THE POLITICS OF PEER PRODUCTION

The legislative and regulatory issues raised by the peer-production economy could be a godsend to the political right. Repealing archaic laws and regulatory standards, reducing professional-licensing requirements, relying more heavily on price signals than command-and-control regulation, and restricting costly tort claims all figure highly on the agenda of many free-market advocates.

To date, however, the peer-production sector has not engaged the political right, and many of its strongest proponents have come from the political left. Reliably "blue" cities like Washington, D.C., and San

Francisco have been among the most open to the peer-production economy. Relatively conservative states like Nevada, Missouri, and Virginia have proven far less receptive, and each has put serious obstacles in the way of ride-sharing. The California legislation that pre-empted local regulations regarding ride-sharing passed the two houses of the state legislature with significant Democratic majorities, while incumbent taxi companies called on some Republican allies to fight it. Analysis by the Sunlight Foundation found that ride-sharing companies have been outspent by taxi interests by an amazing 3,500:1 ratio, with legislation to outlaw ride-sharing (not passed anywhere so far) gaining ground in Republican-controlled legislatures in states like Georgia, Virginia, and Arizona.

Peer-production organizations themselves tend to lean left as well. Peers.org, the de facto trade group for the room-sharing hosts, drivers, and others who make up the sharing economy, had a founding staff drawn largely from Barack Obama's presidential campaigns. More recently, former Obama campaign manager and White House adviser David Plouffe was named Uber's senior vice president of policy and strategy.

Overwhelmingly, peer-production companies cultivate a young, hip, urban vibe that clashes with much of the Republican Party's older, overwhelmingly white, largely suburban and rural base. For example, the handful of peer-production companies that *aren't* located in the Bay Area or New York City typically set up in politically and culturally liberal places like Chicago or Austin. Ride-sharing company Lyft places pink mustaches on the front of its cars in most areas and encourages drivers and their fares to greet each other with a "fist bump." This contributes to a cultural divide not entirely dissimilar to that seen on other issues like climate change or immigration, where public opinion varies widely between urban and rural voters. Peer-production services themselves, many of which require a smart phone to use, also generally aren't that attractive to the Medicare set.

Many peer-production services, such as ride-sharing, are intrinsically more profitable and economically viable in areas with high population densities. Since urban areas skew younger and overwhelmingly liberal, it's only natural that liberal politicians have taken more interest in the future of peer production than have their conservative counterparts. But because it is precisely this younger, more ethnically diverse urban base that has helped drive Democrats' success in recent presidential elections, Republicans should be more attentive to these issues if they wish to attract enough votes to win in 2016 and beyond.

Evidence suggests that both the Republican establishment and the broader conservative movement are growing wise to the political power of the peer-production economy. After Virginia's Department of Motor Vehicles sent a cease-and-desist order to ride-sharing companies Uber and Lyft, the Republican National Committee sent an appeal to supporters urging them to sign a petition to overturn the agency's decision. Conservative and libertarian policy organizations, for their part, have long been engaged in fights against overzealous regulators and entrenched business interests. The Institute for Justice has led the charge in litigating against anti-competitive fare restrictions that make it hard for low-cost competitors to enter markets. Tax-policy stalwarts Grover Norquist and Patrick Gleason recently published an op-ed about the political opportunity inherent in advocating a free-market approach to disruptive transportation and housing models.

The cultural distance between some conservatives and the peer-production economy should not be seen as a huge problem. Almost none of it results from any fundamental difference with regard to public policy. Although capitalizing on the peer-production economy may require taking on some powerful campaign donors, it will prove difficult indeed for many on the political right to maintain their free-market bona fides without embracing these calls for regulatory reform. To the extent that there is a disconnect between peer-production services and right-leaning politicians, it is much more cultural and social than ideological. The solution, therefore, should be cultural and social as well.

In the 1980s, "Atari Democrats" (later renamed "New Democrats") transformed their party by embracing the culture and ethos of Silicon Valley while still hewing close to many of their party's core principles. Conservatives can do the same, by embracing the culture and ethos of the peer-production economy and using it to make a case for economic deregulation. Conservatives who ignore or fail to embrace peer production do so at their own political peril.

THE FUTURE OF PEER PRODUCTION

While some aspects of the peer-production economy are no doubt overhyped and oversold, this sector has the potential to unlock immense economic value and ultimately transform the way some Americans go about their lives. But providing the political space necessary for a peer-production economy to thrive will require flexibility from both the left and the right. Political liberals will not be keen to pursue anti-regulatory, free-market policies against which their core constituencies rail. At the same time, conservatives must learn to work with firms that cater to a demographic decidedly different from the older rural and suburban voters who constitute the conservative base. While both sides face significant political challenges and both have much to lose, their free-market economics and hands-off approach to regulation make conservatives the natural champions of the new peer-production economy, and they should capitalize on the opportunity.

Supporting a thriving peer-production economy requires a program of minimalist, common-sense economic regulation that takes technology into account. Those who already favor free markets have the best chance to advance such a program. Missing the opportunity to expand and advance the peer-production economy would be a major political and economic mistake.