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FIVE PRINCIPLES FOR REGULATING THE PEER PRODUCTION ECONOMY

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The growth of the Internet will slow drastically, as the flaw in 'Metcalfe's law'—which states that the number of potential connections in a network is proportional to the square of the number of participants—becomes apparent: most people have nothing to say to each other! By 2005 or so, it will become clear that the Internet's impact on the economy has been no greater than the fax machine's.

- Economics Nobel Laureate
Paul Krugman, 1998 [1]

1. Paul Krugman, "Why most economists' predictions are wrong," *Red Herring, June 1998. http://web.archive.org/web/19980610100009/www.redherring.com/mag/issue55/economics.html*

INTRODUCTION

Economic history over the last 200 years is largely the story of the industrial move from small-scale domestic production and piece work to systems dominated by economies of scale: factories, big businesses and multi-national corporations.[2] But over just the past two decades, new technologies have radically altered this trend, disaggregating physical assets in space and time and employing digital platforms that allow for more individually tailored pricing, matching and exchange.[3] Changes in the way we communicate and transact business have reduced economies of scale in some industries, shifting value to producers who have access to distributed capital.[4]

In some cases, this shift has allowed small startups to threaten dominant market incumbents, as long-standing asset-intensive firms like car rental giants Avis and Hertz now must compete with new firms like RelayRides and Getaround that can tap the tens of millions of privately owned cars that currently sit idle in American driveways. [5] Overall, the effect has been to eliminate many of the benefits of being big.[6]

These changes have led not only to a greater diversity of products to meet niche demands, but to a panoply of divergent business models in sectors previously dominated by a just a handful of options, whether the consumer need is to find lodging or to get across town, to take just two notable examples.

2. Ross Thomson, *The Path to Mechanized Shoe Production in the United States, University of North Carolina Press, 1989.*

3. Arun Sundararajan,"From Zipcar to the Sharing Economy," *Harvard Business Review, Jan. 3, 2013. http://blogs.hbr.org/2013/01/from-zipcar-to-the-sharing-eco/*

4. Michael Bauwens, "The Political Economy of Peer Production," *CTHEORY, Dec. 1, 2005. http://www.ctheory.net/articles.aspx?id=499*

5. Tomio Geron, "Airbnb and the Unstoppable Rise of the Share Economy," *Forbes, Jan. 23, 2013. http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/*

6. Rachel Botsman, *What's Mine is Yours, Harper Business, 2010.*

As a result, there are more opportunities for individuals and small groups either to develop and build upon innovative ideas or to bring their marginal capital and/or labor into productive use. This phenomenon goes by a number of names, including the "sharing economy" and the "mesh economy." We will use the phrase "peer production" as the hallmark of this emerging economic phenomenon. To be sure, the participants in this market aren't necessarily peers, but we feel this label better describes the underlying dynamics. Peer production is not sharing, per se, nor is it a seamless mesh of production. Rather, it is about harnessing technological platforms to connect buyers and sellers who otherwise would not have connected, either because of supply- or demand-driven constraints.

Alas, the development of these new modes of doing business has been threatened by legislators and regulators — particularly on the state and local level — who in too many cases attempt to apply regulatory models developed in an earlier era to the individuals and small firms that are innovating through peer production. These actions do little to protect consumers, but rather they prevent innovative ideas from coming to market and keep potential service providers sidelined. Too often, the presumption is to "ban first; ask questions later."

In exploring how to regulate new firms that shake up existing markets — especially those who develop entirely new business models — or what rules should apply to individuals who develop smartphone apps or rent out their power tools over the Web, legislators and regulators should step back and reexamine the first principles of consumer protection. Consumer-oriented regulation should be about providing basic standards to market players and should not serve as a barrier to entry, either for those who seek to compete with incumbent producers or for those with innovative ideas that redefine markets.

As the markets for peer production services evolve, it is the welfare of consumers that most concerns us and that should most concern policymakers. Innovation and "creative destruction," as the economist Joseph Schumpeter termed it,[7] are not prized because of their effects on incumbent producers, which are in many cases negative. Nor are they prized because of their "jobs created" or similar workforce metrics frequently espoused by politicians. Rather, they are valued because, from the perspective of the consumer, they improve on existing goods and services, reduce costs for households and create a host of new options to increase consumer utility.

In many cases, regulators charged with defending consumers' interests instead work to protect incumbent producers from innovative market forces. This phenomenon, known as "regulatory capture" in public choice literature, not only impedes innovation and economic growth, but is profoundly unfair to consumers. [8]

FORMS OF PEER PRODUCTION

New technologies have given rise to business models that dramatically change both the production and consumption side of a variety of consumer services.[9] These new business models may seem disparate, but what connects them is that they all use technologies – including websites and, in many cases, smartphone apps – to reduce information asymmetries and connect willing buyers and sellers who otherwise would face overwhelmingly high search costs.[10] In other words, they are businesses that always technically were possible, but simply were not feasible before the advent of new communication technologies.

Peer production can take on a number of different forms:

Putting unused capital into the stream of commerce. Services like Homeaway and Airbnb allow people to rent rooms in their homes or entire houses or apartments on a short-term basis, effectively making what were formerly unproductive resources productive. StoreAtMyHouse.com allows people with excess storage space in their homes to rent this space to those who need it. Snapgoods allows people who own power tools to rent them to others who need specialized tools for short-term projects. FlightCar, GetAround, JustShareIt and RelayRides allow people to rent their unused cars. ShareDesk and a host of similar services allow companies to rent out a desk, meeting room or office to those who need short-term professional space.

Gifting. Resources that appear worth very little – such as outdated computer equipment, inexpensive used furniture and "crash space" on sofas – can be gifted to others with no expectation of direct payment through services like Freecycle and Couch Surfing. In Europe, Carpooling.com allows commuters and others in need of transportation to coordinate carpooling more easily. ThredUP allows people to trade or barter for used clothing.

Reducing the costs of doing productive work on the margin. Uber, Lyft and Sidecar enable a vehicle owner to choose to spend a free afternoon or weekend driving on a for-hire basis. Online marketplaces like Etsy allow artisans to produce small runs of handcrafts and sell them directly to con-

7. Joseph Schumpeter, *Capitalism, Socialism and Democracy, 1942.*

8. George Stigler, "The theory of economic regulation," *The Bell Journal of Economics and Management Science, Vol. 2, No. 1, pp. 3-21, RAND Corp., Spring 1971*

9. Botsman, 2010.

10. Juho Hamari, Mimmi Sjöklint and Antti Ukkonen, "The Sharing Economy: Why People Participate in Collaborative Consumption," working paper, May 31, 2013. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271971

sumers. TaskRabbit allows users to outsource household errands and small-scale skilled and unskilled tasks. DogVacay allows canine lovers to provide short-term boarding to pets, while also doing the work of pet-sitting for vacationing pet owners.

Corporate-owned rental firms. These are related to, but different than, "peer production" in any meaningful sense of the term, but they were also unthinkable in their present forms without new technologies to facilitate what were once costly and labor-intensive transactions. Rent the Runway allows short-term rentals of haute couture. Car2Go and Zipcar enable short-term car rentals to paid subscribers, while Alta Bicycle Share is a company that provides a similar bike-sharing concept under a variety of local brand names in cities like New York, Washington, Boston, Chicago and San Francisco. A new service called Blade even offers booking of short-term helicopter rentals through a mobile app. Each of these services bears similarities to the peer production economy. Nonetheless, they are corporations that retain ownership of the vehicles and equipment, even if, from a consumer perspective, they offer a substantially different experience than traditional rental companies.

CONNECTING BUYERS AND SELLERS

The hallmark of peer production is the direct connection of buyers and sellers through new markets. This "disintermediation," or removal of middle men who previously were necessary to facilitate those connections, helps to democratize production, liberate underutilized capital and reduce costs for consumers and producers.[11]

On the production side, actors who previously would not have thought of themselves as "producers" are in fact producing economic value. Some of this is made possible through peer production services unlocking the productive capacity of otherwise dormant infrastructure. For instance, in 2008, England had nearly 8 million homes (greater than one of every three households) which it classified as "under-occupied," or having more bedrooms than people to sleep in them.[12] Of the world's roughly 1 billion cars, about 740 million are mostly used by only a single rider.[13]

11. Enrico Cassinelli, "How Collaborative Consumption Will Improve Our Production Systems," *ShareDesk, March 27, 2013. http://www.sharedesk.net/blog/2013/03/how-collaborative-consumption-will-improve-our-production-systems/*

12. U.K. Department for Communities and Local Government, "English Housing Survey: Household report 2008–09," U.K. Office for National Statistics, October 2010. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6695/1750765.pdf

13. Kristina Dervojeda, et al., "The Sharing Economy: Accessibility Based Business Models for Peer-to-Peer Markets," European Commission Business Innovation Observatory," September 2013. http://ec.europa.eu/enterprise/policies/innovation/policy/business-innovation-observatory/files/case-studies/12-she-accessibility-based-business-models-for-peer-to-peer-markets_en.pdf

In other cases, the services enable small-scale productive work without the strictures of traditional employers and intermediaries, such as an individual with a traditional full-time job who drives his or her own vehicle on weekends with Lyft or who sells hand-knitted goods through Etsy.[14]

The economic consequences of the peer economy may prove immense. Many significant economic expansions in American history have been sparked by the unlocking of new forms of capital. For instance, public offerings of stocks in non-railroad companies played a major role in the United States' 1920s prosperity.[15] The development of high-yield bonds helped fuel the economic expansion of the 1980s.[16] These new financial instruments allowed firms to more easily raise and deploy capital from deeper and more liquid markets, and thus more quickly and more efficiently approach their productive capacity. A perhaps even larger unlocking of capital came in the form of the tremendous human capital that accompanied the mass movement of women into the U.S. workforce and the opening of skilled jobs to African-Americans in the second half of the 20th century.[17]

The unlocking of tremendous untapped value through the use of social networking technologies – including, but not limited to, peer production – has the potential to add trillions of dollars to the economy over the next several decades. McKinsey estimates that $900 billion to $1.3 trillion of annual consumer surplus could be unlocked in just four key sectors of the economy: consumer packaged goods, consumer financial services, professional services and advanced manufacturing.[18]

On the consumption side, consumers have access to many more service providers and models than previously were available to solve basic problems. While headline-grabbing technological innovations tend to be things people didn't know they had need for (e.g.,smartphones, tablets, Google Glass), many peer production services are new ways of solving old problems.

14. Bauwens, 2005.

15. James M. Poterba, "Stock Market Wealth and Consumption," *The Journal of Economic Perspectives, Vol. 14, No. 2 pp. 99-118, Spring 2000. http://www.jstor.org/discover/10.2307/2647097?uid=3739256&uid=2&uid=4&sid=21104456578153http://www.jstor.org/discover/10.2307/2647097?uid=3739256&uid=2&uid=4&sid=21104456578153*

16. Frank K. Reilly, David J. Wright and James A. Gentry, "Historic Changes in the High Yield Bond Market," *Journal of Applied Corporate Finance, Vol. 21, No. 3. Summer 2009. http://www.business.illinois.edu/j-gentry/workshop/exhibit-14.pdf*

17. Katrin Elborgh-Woytek, et al., "Women, Work, and the Economy: Macroeconomic Gains from Gender Equity," International Monetary Fund Strategy, Policy, and Review Department and Fiscal Affairs Department, September 2013. https://www.imf.org/external/pubs/ft/sdn/2013/sdn1310.pdf

18. Michael Chui, et al, "The social economy: Unlocking value and productivity through social technologies," McKinsey Global Institute, July 2012. http://www.mckinsey.com/~/media/McKinsey/dotcom/Insights%20and%20pubs/MGI/Research/Technology%20and%20Innovation/The%20social%20economy/MGI_The_social_economy_Full_report.ashx

For instance, the question of how to get from the U.S. Capitol to Washington's Dupont Circle used to be a matter of driving a private car, riding one's own bicycle, hailing a taxi, taking a bus, getting on the Metro or walking. Those options have expanded to include limousine services through Uber black car and Uber SUV; radio taxi services through Hailo, TaxiMagic and Uber Taxi; semi-professional drivers booked through Lyft, SideCar and UberX; short-term car rentals through Car2Go and ZipCar; and bicycle rentals through Capital Bikeshare.

PRINCIPLES OF REGULATION

Governments promulgate rules for consumer-oriented services to provide basic protection standards that correct information asymmetries and to protect the public's health and safety.[19] For any such regulatory action, it should be clear how it accomplishes these aims. We propose a series of principles for legislators and regulators to refer to when thinking about how to regulate the peer production economy.

One word of note: the process of regulation should be divorced from the question of taxation. Ideally, tax codes would be written to apply equitably to all market participants regardless of size and scope.[20] In reality, however, that is not how tax codes work, particularly in highly regulated industries like communications, insurance and the hospitality industry. Questions of regulation and taxation are best addressed separately, since the former is ostensibly about protecting consumers and the latter is about collecting revenue for the state. Confusing and conflating these two issues does no favors for buyers, sellers or the government.

I. Tread lightly

First and foremost, we suggest regulators tread extremely lightly in this emerging sector, allowing firms and industries to self-regulate to the extent practical. Unless and until there can be demonstrated specific and direct harm to consumers for which no market solution exists or seems likely to emerge, there is no need to regulate emerging business models. Applying the precautionary principle to innovative business models is not only unwise; it's deleterious to economic growth and imposes real harms on consumers.[21]

Reputation is an extremely powerful mechanism for quality assurance, which regulatory actions tend to squelch rather than buttress.[22] In most cases, if the worst thing that happens to a consumer is a temporary, minimal harm, such as a driver attempting to overcharge a passenger or a rented tool that does not work as advertised, reputation is a much more effective means of regulating market than prescriptive regulation from bureaucracies. [23] For this reason, most companies that are in the business of connecting buyers and sellers offer a system for each participant in the transaction to rate the other. Those who receive consistently poor ratings have this made known in advance of future transactions, or they are barred from the market altogether. Those who receive good ratings see that translated into better sales. [24]

For example, while formally regulated taxicab companies typically are required to submit potential drivers to background checks that use criminal databases from state authorities and the the Federal Bureau of Investigation, this also allows them deny responsibility should a potential bad actor slip through the screening. By contrast, when companies like Uber and Lyft perform their own background checks, their reputation is on the line, providing clear incentive to exercise appropriate due diligence. Moreover, ride-sharing companies' extensive use of consumer reviews serves a crucial market-monitoring function that many regulated companies lack, and drivers with consistently substandard reviews are dropped from the service.

2. Insurance as a market-regulating instrument

Where there are serious risks to consumers, it's best to use existing market instruments to protect consumers, like insurance contracts and surety and fidelity bonds, rather than prescriptive regulation. Many states require surety bonds of a variety of professions – including general contractors, mortgage brokers, notaries and auto dealers – to ensure that a payment mechanism is in place in the event services are not rendered as promised.[25] It may be appropriate for providers of some services, such as transportation and lodging, to require they maintain liability insurance to cover the costs of any injuries sustained by consumers. Liability insurance companies will respond naturally to differences in the risk presented by and behavior demonstrated by different firms and individuals by making coverage available at attractive rates to those who demonstrate good market conduct, while limiting coverage or raising rates on those who do not take proper precautions or who demonstrate a pattern of reckless behavior.

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19. Robert W. Hahn, *Risks, Costs and Lives Saved: Getting Better Results from Regulation, Oxford University Press, 1996.*

20. Joel Slemrod, "Optimal Taxation and Optimal Tax Systems," *Journal of Economic Perspectives, Vol.4, No. 1, pp. 157-178, Winter 1990. http://www.nber.org/papers/w3038*

21. Nancy A. Nord, "Time to Discard the Precautionary Principle at the CPSC," RegBlog, May 23, 2012. http://www.regblog.org/2012/05/time-to-discard-the-precautionary-principle-at-the-cpsc.html

22. Joachim Klewes and Robert Wreschniok, *Reputation Capital: Building and Maintaining Trust in the 21st Century, Springer, Nov. 3, 2009.*

23. Ibid.

24. Eric Clemons, Guodong Gao and Lorin Hitt, "When Online Reviews Meet Hyperdifferentiation: A Study of the Craft Beer Industry," *Journal of Management Information Systems, Vol. 23 Issue 2, No. 2, pp. 149-171, October 2006. http://dl.acm.org/citation.cfm?id=1278045*

25. Bryant Surety Bonds Inc., "What is a Surety Bond?," http://www.bryantsuretybonds.com/what-is-a-surety-bond Accessed July 10, 2014.

There may be circumstances where peer production services may also benefit from the use of assurance contracts, in which parties to the contract all agree to contribute to some goal, but only if a threshold of consent from all the other parties is reached. [26]

In some cases, existing insurance products may be inadequate for the nature of the risks at hand. For instance, an Uber or Lyft driver or an Airbnb property owner may not be covered for commercial activities under their personal auto or homeowners policies, but nor are they sufficiently engaged in the volume of commercial transactions that would merit purchase of a separate and costly commercial auto and commercial liability policy. In these cases, it is crucial that peer production companies work with the insurance industry to develop new products that better fit the nature of the risk, such as a personal auto policy that also contains a rider or endorsement for a small amount of commercial activity. We also would urge insurance regulators to be flexible and proactive in providing for these market solutions to consumer concerns to come to market without undue delay.

3. Reduce reliance on licensure

In the United States, nearly 500 occupations are licensed by at least one state, with at least a fifth, and perhaps as much as a third, of the workforce directly affected by licensing laws.[27] Occupational licensing laws are estimated to cost the U.S. economy roughly $100 billion annually in lost economic output, despite the fact that licensing has been shown to have either no impact or even a negative impact on the quality of services provided by licensed practitioners.[28] Licensing limits consumers' choices and raises their costs largely by benefiting incumbent licensed producers, who enjoy an average wage premium of 15 to 18 percent.[29]

Given those figures, licensure, if it is ever used, should be a last resort. Where a genuine need for standard-setting exists, the peer production economy has built-in mechanisms, including consumer reviews, to allow this without increasing the number of licenses required. In fact, peer production services offer a justification to reduce, rather than increase, reliance on licensure. Because new tools allow for easier exchange of information and eliminate many information asymmetries, it's likely that peer production should reduce the need for specific licensing in many professional categories.

If there really is a need for government regulation, it's best to set standards that all comers can meet, rather than relying on licensing individual producers or requiring them to undergo a specific screening. For instance, this may include the requirement that any participant in a "ridesharing" service have a reasonably clean driving record, pass a criminal background check and carry sufficient insurance to protect riders in the event of an accident. Such standards, if clearly written and easily met, allow for more market dynamism than the requirement that every such driver be licensed specifically under a separate set of regulations than those that already exist for driving on public roads.

4. Markets usually find their own equilibria

Under the theory of market efficiency handed down by the great Italian economist Vilfredo Pareto, we consider a market to be "optimal" when no individual can be made better off without making someone else worse off. [30] In the real world, there are any number of factors that contribute to suboptimal markets, including information asymmetries, a failure to account for the costs of negative externalities and the free-rider problems that accompany provision of public goods. Some of these market failures may require government intervention to correct, but public choice theory cautions that such interventions present their own host of problems – including regulatory capture, concentrated benefits and diffuse costs and knowledge problems associated with the lack of appropriate price signals –which sometimes are lumped under the term "government failure."[31]

Regulators should be cautious and humble in any attempt to determine appropriate market equilibria. With lower barriers to entry and reduced information asymmetries, markets for the services provided by the peer production economy can match supply and demand faster and more efficiently than ever, both in the short term and the long term. There is no good rationale for attempting, for instance, to cap the number of rentable rooms in a city or the number of cars on the road at any given time. In the absence of clear and demonstrable market failure, the best way to respond to shortages is to allow prices to rise — as can be observed in real time with car-sharing companies that employ a "peak pricing" model, for instance — and oversupply is best ameliorated through producers discovering that prices or the number of clients has fallen too low to make participation in the market worthwhile.

26. Alexander Tabarrok, "The private provision of public goods via dominant assurance contracts," *Public Choice, 96:345–362, March 6, 1996*. http://mason.gmu.edu/~atabarro/PrivateProvision.pdf

27. S. David Young, "Occupational Licensing," *The Concise Encyclopedia of Economics, 1st* Edition. http://www.econlib.org/library/Enc1/OccupationalLicensing.html#box%201 Accessed July 10, 2014.

28. Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?, W.E. Upjohn Institute, June 1, 2006.*

29. Morris M. Kleiner and Alan B. Krueger, "The Prevalence and Effects of Occupational Licensing," British Journal of Industrial Relations, 48(4): 676–687, September 2008. http://www.nber.org/papers/w14308

30. Vilfredo Pareto, *Manual of Political Economy, 1906.*

31. David Weimar and Aidan R. Vining, *Policy Analysis: Concepts and Practice, Fifth Edition, Pearson, March 4, 2010.*

5. Be neutral across business methods and models

Regulators and legislators should strive for neutrality in regulation, so as not to benefit either incumbent or emerging business models at the expense of others. In many cases, peer production will not and should not require new regulations at all. At minimum, regulators and legislators should think very carefully about banning any peer production activity that isn't already banned and should review existing laws to assure that policies created for one purpose do not place an undue burden on the sharing economy.

A desire to prevent brothels from operating, for example, once may have created a perceived public need to prevent short-term rentals in private homes.[32] Now that prostitution rarely if ever takes place in organized "houses," many laws intended to prevent brothels from operating have the consequence of preventing individuals from renting rooms. (There may still be other concerns with short-term rentals in some cities, such as whether they circumvent tenants' rights or rent-control laws.)

Likewise, since many peer production technologies are disruptive, they may sometimes provide services inferior in some respects to those offered by market incumbents. Many on-demand ride services allow drivers to use cars that are smaller than the full-size sedans and minivans that localities often require taxicab companies to use. This does not obviously harm consumer welfare and, since smaller cars have lower operating costs, likely enhances it.

CONCLUSION

The peer production economy offers the potential of enormous economic benefits to people all over the world. With a sensible, minimal regulatory structure, it can and will create enormous new wealth, generate jobs and put previously underutilized resources to work. In considering new laws and regulations concerning this economic sector, policy makers should consider the risk of "government failure"—overreaction or inappropriate reaction to real or perceived problems—at least on par with that of market failure. New ways of meeting consumer needs – in some cases, in some places –may require new laws and different regulations. But the new technologies that support peer production often themselves already deal with many of the barriers to entry and information asymmetries used to justify regulation. The sharing economy will function best if government regulates it with a light hand.

32. Emma Brockes, " The truth about Airbnb: not a racket, nor brothel, just sparing a dime on rent," *The Guardian, April 30, 2014. http://www.theguardian.com/commentisfree/emma-brockes-blog/2014/apr/30/airbnb-rent-your-apartment-questions-real-estate*

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