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Sharing and the City

Michele Finck

Sofia Ranchordas

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Sharing and the City

Michèle Finck & Sofia Ranchordás***

ABSTRACT

The sharing of public infrastructure, the exchange of small services, and the traditional “cup of sugar borrowed from the neighbor” are practices intrinsic to most urban agglomerations. In the digital age, these sharing initiatives are facilitated by online platforms such as Feastly, Peerby, and HomeExchange. These platforms allow city residents to share the idle capacity of some of their assets (e.g., clothing, tools, or a spare bedroom) with other residents living in close proximity to them, or with tourists looking for accommodation. While these practices can be justified by efficiency and sustainability concerns, some of them appear to be in conflict with longstanding regulations on local transportation, food safety, zoning, taxation, and short-term accommodation. This Article explores urban peer-to-peer sharing practices from a comparative perspective and discusses how a number of large cities in Europe, the United States, and Asia are currently addressing the regulatory challenges inherent to sharing platforms. We argue that cities should rethink their regulations in light of this new form of urban sharing.

The legal literature has thus far conveyed an incomplete image of the sharing economy by focusing on controversial platforms such as Uber and their ongoing lawsuits. In this Article, we reestablish the historical, economic, and legal meaning of genuine “urban sharing.” First, this Article distinguishes between genuinely collaborative initiatives that promote the sharing of underutilized assets (e.g., spare guestrooms) and non-collaborative platforms that are not driven by sustainable consumption (e.g., Uber). Second, it provides an overview of the economic and geographic sharing potential of cities and discusses how outdated regulations might restrict it. Third, drawing on the experience of the so-called sharing cities (e.g., Seoul), it suggests a new legal framework for the regulation

* Michèle Finck, Fellow, London School of Economics, Lecturer in EU Law, Keble College, University of Oxford.

** Sofia Ranchordás, Resident Fellow, Yale Law School, Information Society Project; Assistant Professor of Administrative Law, Leiden Law School, The Netherlands. The Authors would like to thank Jack Balkin, Frank Pasquale, Nathan Schneider, Trebor Scholz, and the Information Society Project at Yale Law School. The Authors thank as well the participants of the New School “Platform Cooperativism” conference and the Second International Workshop on the Sharing Economy.

of genuine sharing practices. In this context, we argue that cities should, in some cases, experiment with the regulation of sustainable sharing initiatives in order to gather more information as to their benefits or risks, and, in other cases, engage in collaborative decision-making by negotiating the content of new legal provisions and policies with digital platforms.

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I. INTRODUCTION

Cities are at a crossroads in the regulation of sharing-economy practices. The “sharing economy” is commonly associated with Uber and Airbnb’s controversial and, to a large extent, unregulated practices, as well as their ongoing lawsuits. Alleged attempts to circumvent existing local regulations, limit their liability for potential damages, and avoid labor law requirements for their service providers have also been reported.¹ The expansion of these platforms has therefore been accompanied by taxi drivers’ demonstrations in different capitals, and multiple incidents with these platforms’ users and city councils.² This is, however, a limited and inaccurate image of the sharing economy for two reasons. First, Uber and other commercial peer-to-peer platforms often do not facilitate any form of “sharing” of

1. See, e.g., Christian Patrick Woo & Richard A. Bales, *The Uber Million Dollar Question: Are Uber Drivers Employees of Independent Contractors?*, MERCER L. REV. (forthcoming 2016) (manuscript at 3), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759886 [<https://perma.cc/BW74-4ELE>] (archived Oct. 13, 2016) (discussing the concept of “employee” and “independent contractor” in the context of the sharing economy); Alexi Pfeffer-Gillett, Note, *When “Disruption” Collides with Accountability: Holding Ridesharing Companies Liable for Acts of Their Drivers*, 104 CALIF. L. REV. 233, 234–35 (analyzing whether injured consumers can recover damages from the transportation platforms rather than from their drivers); Arvind Malhotra & Marshall Van Alstyne, *The Dark Side of the Sharing Economy*, 57 COMM. OF THE ACM 14, 24–27 (2014) (providing an overview of the risks of the uncontrolled expansion of the sharing economy).

2. Ron Lieber, *Airbnb Horror Story Points to Need for Precautions*, N.Y. TIMES (Aug. 14, 2015), <http://www.nytimes.com/2015/08/15/your-money/airbnb-horror-story-points-to-need-for-precautions.html> [<https://perma.cc/BF8V-VQCG>] (archived Sept. 24, 2016); Marc Santora & John Surico, *Uber Drivers in New York City Protest Fare Cuts*, N.Y. TIMES (Feb. 1, 2016), <http://www.nytimes.com/2016/02/02/nyregion/uber-drivers-in-new-york-city-protest-fare-cuts.html> [<https://perma.cc/E99G-PULK>] (archived Sept. 24, 2016); Max Slater-Robins & Barbara Tasch, *French taxi drivers shut down Paris as protests over Uber turn violent*, BUS. INSIDER (Jan. 26, 2016), <http://uk.businessinsider.com/uber-protests-in-paris-2016-1> [<https://perma.cc/MEN2-TJTV>] (archived Sept. 24, 2016); Ron Lieber, *Airbnb Horror Story Points to Need for Precautions*, N.Y. TIMES (Aug. 14, 2015), <http://www.nytimes.com/2015/08/15/your-money/airbnb-horror-story-points-to-need-for-precautions.html> [<https://perma.cc/BF8V-VQCG>] (archived Sept. 24, 2016).

underused assets.³ Therefore, they should not be categorized as part of the narrower concept of the sharing economy or benefit from more flexible rules than professional service providers. Second, local restrictive regulations and policies towards Uber and Airbnb should not be interpreted as a rejection of the idea of sharing facilities or assets. Rather, many cities across the globe currently aspire to become “sharing cities,” in particular by making a broader use of “genuine sharing economy practices.” Genuine sharing economy practices are considered to be those local collaborative practices that involve some form of sustainable exchange based on resource inequality, excess capacity, power parity, and the possibility to engage in repeated interactions.⁴ Examples of genuine sharing practices are home-swaps (e.g., HomeExchange), ride-sharing and carpooling platforms (e.g., BlaBlaCar), or the exchange of tools (e.g., community tool banks), books (e.g., BookMooch), and children’s clothing (e.g., SwapMamas).⁵ Third, research has shown that the costs of not embracing sharing practices might be significant.⁶

This Article fills an important gap in the legal literature. Contrary to the rest of the literature, the analysis goes beyond the risks and regulation of Uber or Airbnb. Instead, this Article sheds light on the genuine forms of sharing economy that many cities currently aim to support. It explores how local, outdated regulations and policies may impede these initiatives and how cities should rethink them in order to embrace beneficial sharing-economy practices.

3. See Giana N. Eckhardt & Fleura Bardhi, *The Sharing Economy Isn't About Sharing At All*, HARV. BUS. REV. (Jan. 28, 2015), <https://hbr.org/2015/01/the-sharing-economy-isnt-about-sharing-at-all> [<https://perma.cc/5QJ6-H4J3>] (archived Sept. 24, 2016) (highlighting that no sharing occurs when exchanges are mediated by professional platforms). See also Fleura Bardhi & Giana M. Eckhardt, *Access-based Consumption: The Case of Car Sharing*, 39 J. CONSUMER RES. 881, 894 (2012) (analyzing the transition from ownership to access-base models of consumption in the case of car-sharing).

4. Chris J. Martin, *The Sharing Economy: A Pathway to Sustainability or a Nightmare Form of Neoliberal Capitalism*, 121 ECOLOGICAL ECON. 149, 150 (2016); Cait Lambertson, *Collaborative Consumption: A Goal-Based Framework*, 10 CURRENT OPINION IN PSYCHOL. 55, 59 (2016) (analyzing the central features of collaborative consumption). See generally Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273 (2004); ROBIN CHASE, PEERS INC: HOW PEOPLE AND PLATFORMS ARE REINVENTING CAPITALISM (2016) (discussing power parity and the sharing economy).

5. See KIDIZEN, <https://www.kidizen.com/about/> (last visited Oct. 3, 2016) [<https://perma.cc/5KML-S2S8>] (archived Sept. 24, 2016) (a parent-to-parent marketplace for the sharing of children’s clothing); Cait Lambertson, *Consumer Sharing. Collaborative Consumption, from Theoretical Roots to New Opportunities*, in CAMBRIDGE HANDBOOK OF CONSUMER PSYCHOL., 693–721 (Michael. I. Norton et al. eds, 2015) (providing an analysis of community tool banks as platforms often supported by local authorities that allow individuals to share their underused tools with other individuals living in the same community).

6. See PIERRE GOUDIN, EUROPEAN PARLIAMENTARY RESEARCH SERVICE, THE COST OF NON-EUROPE IN THE SHARING ECONOMY. ECONOMIC, SOCIAL AND LEGAL CHALLENGES AND OPPORTUNITIES at 101–02 (2016) (discussing the cost for EU Member States of restricting sharing economy practices).

This Article starts with an analysis of the development of sharing-economy practices in urban contexts. Digital platforms including Zipcar, Lyft, Airbnb, Peerby, and EatWith appear to offer the perfect solution to a number of urban problems. These platforms facilitate the sharing of underused skills and assets (e.g., a vehicle, a guestroom, or tools), meals with individuals located in close geographic proximity, and the exchange of services.⁷ However, there is another side to this story. The development of Airbnb and other home-sharing platforms has been blamed for the rising cost of living in, for example, Los Angeles, Barcelona, and Berlin.⁸ City officials, consumer associations, and traditional service providers (namely, taxis and hotels) have also been critical of these platforms since they appear to circumvent local regulations on short-term housing, zoning, fire safety, and private transportation, as well as national and local taxes and labor law protections.⁹ In addition, while many so-called sharing-economy platforms might waive the flag of conscious and sustainable consumption,¹⁰ in reality, they may not be sharing anything.¹¹ Instead, some of these platforms have been captured by professionals who offer apartments for competitive prices¹² or have become subsidiaries of

7. Annabel Lau, *Dip into the Sharing Economy for Convenience, Community, and Extra Cash*, FORBES (June 3, 2015), <http://www.forbes.com/sites/annabellau/2015/06/03/dip-into-the-sharing-economy-for-convenience-community-and-extra-cash/#72d5dc086817> [<https://perma.cc/3GBE-SGGA>] (archived Sept. 24, 2016).

8. See ROY SAMAAAN, AIRBNB, RISING RENT, AND THE HOUSING CRISIS IN LOS ANGELES, 18–20 (2015), https://www.ftc.gov/system/files/documents/public_comments/2015/05/01166-96023.pdf [<https://perma.cc/7W66-G9NU>] (archived Sept. 25, 2016) (analyzing the impact of Airbnb on housing prices in Los Angeles). See also the case of German cities explained on the website “<https://airbnvsberlin.de>.” *AirBnB v. Berlin*, AIRBNBVSBERLIN, <https://airbnvsberlin.de> (last visited Oct. 13, 2016) [<https://perma.cc/26U8-W9D6>] (archived Sept. 24, 2016).

9. See Diane M. Ring & Shu-Yi Oei, *Can Sharing Be Taxed?*, 93 WASH U.L. REV. 989, 994, 1032, 1042, 1045, 1046 (2016) (discussing taxation in the sharing economy). Although this Article does not address the classification or misclassification of platform service providers as independent contractors, this problem has been widely discussed in the literature and the media. See, e.g., Benjamin Means & Joseph A. Seiner, *Navigating the Uber Economy*, 49 U.C. DAVIS L. REV. 1511 (discussing the case law on the misclassification of Uber and Lyft drivers as independent contractors).

10. See generally RACHEL BOTSMAN & ROO ROGERS, *WHAT'S MINE IS YOURS: HOW COLLABORATIVE CONSUMPTION IS CHANGING THE WAY WE LIVE* (2011) (explaining the core principles of the sharing economy and distinguishing between this concept and collaborative consumption where underused goods are shared).

11. Rob Killide, “*Sharing Economy*” *Companies Like Uber and Airbnb Aren't Really “Sharing” Anything*, BUS. INSIDER (Oct. 6, 2015), <http://www.businessinsider.com/sharing-economy-companies-like-uber-and-airbnb-arent-really-sharing-anything-2015-10> [<https://perma.cc/TW7V-PDSY>] (archived Sept. 24, 2016).

12. According to the Airbnb listings in New York City, most hosts had multiple listings, suggesting that they were not renting their own houses while on vacation. See AIRBNB IN THE CITY, REPORT OF THE OFFICE OF NEW YORK STATE ATTORNEY GENERAL ERIC T. SCHNEIDERMAN (Oct. 2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf> [<https://perma.cc/3WLP-N2BK>] (archived Sept. 25, 2016) (reporting, for example, that one Airbnb host offered 272 unique listings, making \$6.8 million in revenue between 2010 and 2014). In London 40 percent of all listings are probably “professional hosts

large traditional companies. To illustrate, HyreCar and Uber subsidiary Xchange Leasing lease vehicles at high prices to individuals interested in driving for Uber.¹³ Also, Zipcar, one of the original symbols of the sharing economy, is now owned by car-rental giant Avis.¹⁴

This Article delves into the definition and the boundaries of the sharing economy, as well as the distinction between commercial peer-to-peer marketplaces (e.g., Ebay), platforms that facilitate collaborative consumption (e.g., Peerby or 1000Tools), and other forms of sustainable “platform cooperativism.”¹⁵ It suggests a narrow definition of *genuine sharing economy* as the category of sporadic peer-to-peer transactions involving the exchange of services (e.g., time-banks) or the sharing of underutilized assets that are capable of producing social value and are not primarily driven by profit.

The phenomenon of providing peer-to-peer services, sharing goods, and crowdsourcing resources through such platforms has emerged as an innovative exchange model which is currently disrupting traditional market paradigms (e.g., business-consumer transactions).¹⁶ The regulation of these platforms has therefore proven

running pseudo-hotels.” See *Supplementary Written Evidence from the British Hospitality Association*, UK HOUSE OF COMMONS 1 (Jan. 2016), <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/business-innovation-and-skills-committee/the-digital-economy/written/26821.html> [<https://perma.cc/W7F4-Y3ND>] (archived Sept. 24, 2016).

13. See HYRECAR, <http://www.hyrecar.com> (last visited Oct. 13, 2016) [<https://perma.cc/47LD-KSEZ>] (archived Sept. 24, 2016) (a service that explicitly offers its services to individuals that are interested in driving for Lyft or Uber). In 2015, Uber started piloting a new leasing program that allows drivers to rent a car from Uber. See Carmel DeAmicis, *Uber Starts Directly Leasing Cars in a Program that Might Appeal Some Drivers*, RE/CODE (Jul. 29, 2015), <http://recode.net/2015/07/29/uber-offers-revised-car-leasing-program-that-could-be-more-appealing-for-drivers/> [<https://perma.cc/V83L-2LYD>] (archived Sept. 24, 2016) (this pilot will start in California, Maryland, and Georgia. However, Uber’s leasing terms might be more expensive for drivers than a regular dealership.).

14. Neal Gorenflo, *The Avis Zipcar Acquisition: End of the Beginning for Carsharing*, TRIPLEPUNDIT (Jan. 11, 2013), <http://www.triplepundit.com/special/rise-of-the-sharing-economy/avis-zipcar-acquisition/> [<https://perma.cc/475X-5SUA>] (archived Oct. 13, 2016).

15. Katie Arthur, *What is Platform Cooperativism and Why Is It Important?*, MIT CENTER FOR CIVIC MEDIA (Nov. 13, 2015), <https://civic.mit.edu/blog/natematias/what-is-platform-cooperativism-and-why-is-it-important> [<https://perma.cc/RL6Z-PJM9>] (archived Sept. 24, 2016) (citing Trebor Scholtz, who said “platform cooperativism . . . is about cloning the technological heart of online platforms and puts it to work with a cooperative model, one that puts workers, owners, communities, and cities in a kind of solidarity that leads to political power”).

16. The emergence of the digital sharing economy has been analyzed in the literature through the lens of disruptive innovation theory—see Daniel Guttentag, *Airbnb: Disruptive Innovation and the Rise of an Informal Tourism Accommodation Sector*, 18 CURRENT ISSUES IN TOURISM 1192, 1206 (2015) (exploring Airbnb’s potential to significantly disrupt the traditional accommodation sector and the positive and negative impacts of the platform). See also Sofia Ranchordás, *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, 16 MINN. J. L. SCI. & TECH. 413,

to be challenging. In these early days of the digital sharing economy, there are two major regulatory tendencies: cities have either tolerated them by adopting a *laissez-faire* or minimal regulatory approach to these innovative practices, or restricted their operations by applying longstanding regulations originally designed for commercial transactions. However, this second approach might not serve the exceptionalism that characterizes digital platforms. Existing local regulations on tourist accommodation, restaurants, and private local transportation were enacted decades ago in order to respond to market failures with licensing and permit systems that might not be necessary in the digital age.¹⁷ The existence of outdated legal frameworks penalizes not only Uber and Airbnb but also genuine sharing-economy practices such as home-exchanges operated within hospitality networks (e.g., CouchSurfing), which in some cities might be subject to complex authorization procedures.¹⁸ In June 2016, the European Commission issued guidance on this matter, devoting particular attention to market-access requirements and underlining the fact that European cities with restrictive regulatory approaches should rethink the proportionality of these requirements, considering the benefits of the sharing economy.¹⁹ This Article argues that it is possible to think beyond this regulatory dichotomy, since sharing-economy platforms are merely recreating a reality that cities are historically well-acquainted with.²⁰

470 (2015) (arguing that the disruptive innovation potential of sharing economy platforms should not be restricted by outdated regulations). On the concept of “disruptive innovation,” see generally CLAYTON CHRISTENSEN, *THE INNOVATOR’S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FALL* (1997).

17. For example, with the development of GPS-operated systems, digital maps, and detailed peer-review mechanisms, consumers have access to more information regarding the quality and prices of ride- and home-sharing services. See Molly Cohen & Arun Sundararajan, *Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy*, 82 U. OF CHI. L. REV. DIALOGUE 116, 122–23 (2015) (arguing that in the digital age the ratio of many regulations has disappeared as market failures such as information asymmetries are suppressed by peer-review mechanisms. Instead of top-down regulations, potential problems should therefore be addressed by self-regulatory mechanisms.).

18. Nathan Schneider, *Owning the New Sharing*, SHAREABLE (Dec. 21, 2014), <http://www.shareable.net/blog/owning-is-the-new-sharing> [<https://perma.cc/6PBP-NJ2X>] (archived Sept. 24, 2016) (criticizing the model of so-called “sharing economy platforms” where little sharing takes place and discussing the legal and financial problems faced by CouchSurfing due to the inability to raise capital and at the same time fit within outdated rules on nonprofit organizations).

19. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Council and the Committee of the Regions, “A European agenda for the collaborative economy”*, at 19–20, 27–32, 42 COM (2016) 356 final (June 2, 2016).

20. There is a vast literature on the development of peer-to-peer exchange networks, barter, and other non-pecuniary transactions. See, e.g., John M. Carroll & Victoria Bellotti, *Creating Value Together: The Emerging Design Space of Peer-to-Peer Currency and Exchange*, PROCEEDINGS CSCW’15, PROCEEDINGS OF THE 18TH ACM

While sharing-economy platforms might be the children of the Internet Age, the practice of sharing underused resources, knowledge, and assets is as old as mankind.²¹ This is particularly true of large cities where talent, goods, and manpower concentrate, favoring collaboration and exchange transactions.²² The German Hansestädte of the Middle Ages, for example, thrived due to this sharing mentality and the development of exchange networks.²³ However, in the twenty-first century, German cities are erecting legal obstacles, for example to Airbnb, without distinguishing commercial platforms from genuine sharing practices and the different types of sharing practices that platforms facilitate. If the sharing of goods and resources is an intrinsic urban phenomenon, why have digital sharing platforms become a challenge to many local regulators and policymakers in the United States and Europe?²⁴ This Article aims to solve this puzzle.

This Article argues that genuine sharing practices—but not purely commercial platforms where no sustainable sharing takes place—should benefit from a more flexible regulatory regime, since they produce social value, are often sporadic, rehabilitate the sharing potential of cities, and promote sustainable consumption. Drawing on the examples of Manchester and Leeds and the so-called sharing cities (e.g., Seoul), this Article contends that sharing initiatives can also contribute to a more efficient use of both private and public urban resources.

Considering the evolving nature of the sharing economy and the need to rethink traditional regulation, cities should experiment with

CONFERENCE ON COMPUTER SUPPORT, COOPERATIVE WORK & SOCIAL COMPUTING 1500, 1507 (Mar. 14–18, 2015), <http://dl.acm.org/citation.cfm?id=2675270> [<https://perma.cc/L2EA-QSV5>] (archived Sept. 25, 2016) (“[P]aradigms for the collaborative creation of value through trade and exchange have developed over millennia.”) See generally PAUL SEABRIGHT, *THE VANISHING ROUBLE: BARTER NETWORKS AND NON-MONETARY TRANSACTIONS IN POST-SOVIET SOCIETIES* (2002) (analyzing how bartering persisted in the former Soviet Union due to the economic instability and low value of money).

21. Russell Belk, *Your Are What You Can Access: Sharing and Collaborative Consumption Online*, 67 J. OF BUS. RES. 1595, 1596 (2014) (providing an overview of digital collaborative consumption).

22. Edward L. Glaeser & Matthew G. Renssenger, *The Complementarity Between Cities and Skills*, 13 (Nat’l Bureau of Econ. Research, Working Paper No. 15103, 2009).

23. The German Hanseatic Cities were free towns in northern Germany and neighboring areas, including Hamburg and Bremen. They founded their own confederation: the Hanseatic League for defense and economic purposes. For a history of the Hansestädte and the Hansa, see generally ROLF HAMMEL-KIESOW, *DIE HANSE* (2004); PHILIPPE DOLINGER, *THE GERMAN HANSA* (1970).

24. This Article does not delve into the compatibility of local restrictions with EU Law. This is however a pertinent aspect of the European debate as Member States (both national and local regulators) are not allowed to restrict directly or indirectly the provision of services that are protected by the Services Directive (for example, short-term accommodation) by providers from other Member States unless they are non-discriminatory, are not justified by the public interest and are proportionate to the goal they aim to achieve. See generally Niamh Nic Shuibhne, *Exceptions to the Free Movement Rules* 473–75, in *EUROPEAN UNION LAW* (Catherine Barnard & Steve Peers, eds., 2014).

new regulations and policies on sharing initiatives so as to gather information about their benefits, risks, and the most effective legal framework. In addition, cities should be open to collaborating with sharing platforms in the drafting of new regulations and policy instruments for platforms. This collaboration can help cities have access to affordable and effective technological means to connect urban communities and allow them to exchange and share goods and services within a clear legal framework. An example of this collaborative approach can be found in the Memorandum of Understanding signed by Airbnb and Amsterdam in 2014. The platform and Amsterdam agreed to initiate a relationship of mutual cooperation so as to establish a level playing field for comparable market players, advance local tax policy, and guarantee that hosts were provided with correct information regarding applicable regulations.²⁵ This collaborative document was originally due to expire on December 31, 2015, but was recently renewed for another year.²⁶

Instead of conducting a systematic comparative analysis, this Article operationalizes the concept of *true sharing economy* by providing a complete overview of different sharing-economy practices and regulatory approaches. The narrative focuses on how large urban agglomerates, in particular in Europe and the United States, have regulated sharing-economy practices, since it was also in these densely populated centers that the original collaborative exchanges emerged. The aim is not to strictly compare Phoenix or San Antonio to London or Berlin, but rather to shed light on the multiplicity of available sharing practices and the diversity of legal approaches. This draws attention to common problems (e.g., housing shortages) that the sharing economy and city policies aim to solve in large cities.

This Article proceeds as follows: Part I reestablishes the concept of the sharing economy, particularly in cities, by distinguishing between genuine sharing-economy practices, which are driven by social values, and other commercial platforms that are illustrative of the broader phenomenon of the “platform economy.” Part II delves into the sharing potential of cities. Drawing on the economic and historical literature, it describes cities as intrinsic spaces of sharing and explains how the sharing economy is currently reshaping the manner in which

25. MEMORANDUM OF UNDERSTANDING BETWEEN AIRBNB AND AMSTERDAM (Dec. 18, 2014), https://www.amsterdam.nl/publish/.../2014_12_airbnb_ireland_amsterdam_mou.pdf [<https://perma.cc/S2MY-RMLN>] (archived Sept. 25, 2016) (this document remained confidential until March 11, 2016 and was published by decision of the executive council of Amsterdam).

26. *Kennisnemen van de voortgang van de verlenging en opheffen geheimhouding Memorandum of Understanding tussen de gemeente Amsterdam en Airbnb* (2016, nr. 81/186) (Neth.) [Decision of the Executive Council of Amsterdam to renew and publish the Memorandum of Understanding between the municipality of Amsterdam and Airbnb], <https://zoek.officielebekendmakingen.nl/gmb-2016-38310.html> [<https://perma.cc/PK2H-YXLD>] (archived Sept. 24, 2016).

cities arrange their territory and how their inhabitants live, consume, and work. Part III discusses the regulatory responses of different cities in the United States and Europe to the sharing economy. Part IV proposes a normative framework for the regulation of the genuine sharing economy in the digital age. It suggests two flexible regulatory paths: (1) that of experimentalism, where cities can adopt experimental regulations and pilot projects for the sharing of facilities and the governance of common assets; and (2) that of collaboration, which can consist of negotiated rulemaking or, at an earlier stage, letters of intent or other non-binding documents that can be prepared in order to establish an initial dialogue between platforms and more skeptical cities.²⁷

II. THE SHARING ECONOMY

In the digital age, platforms such as Airbnb, TaskRabbit, RentTheRunway, and HelloFresh have become convenient technological intermediaries that connect supply and demand. However, the mere existence of a platform that provides on-demand access to a commodity does not necessarily convert the transaction into a sharing-economy exchange. This Part analyzes the essence of the sharing economy and distinguishes between purely commercial platforms and collaborative platforms that facilitate genuine sharing. As will be explained in Part IV, this distinction is essential, as some cities associate genuine sharing practices with the promotion of sustainability and an efficient use of resources, imposing fewer regulatory requirements on their agents.

A. *The Age of On-Demand Access*

With the advent of the digital age and the do-it-yourself economy, new business models, phenomena, and mentalities have emerged. The digital sharing economy is one of them.²⁸ Contrary to the baby-boomers, the millennials appear to value experiences over ownership,²⁹ trust individuals rather than large companies,³⁰ and, in times of crisis,

27. See also Johanna Interian, *Up in the Air: Harmonizing the Sharing Economy through Airbnb Regulations*, 39 B. C. INT'L. & COMP. L. REV. 129, 159–61 (2016) (discussing regulatory solutions to current issues in the sharing economy).

28. Rashmi Dyal-Chand, *Regulating Sharing: The Sharing Economy as an Alternative Capitalist System*, 90 TUL. L. REV. 241, 243–46 (2015).

29. Blake Morgan, *No Ownership, No Problem: Why Millennials Value Experiences over Owning Things*, FORBES (June 1, 2015), <http://www.forbes.com/sites/blakemorgan/2015/06/01/nownershipnoproblem-nowners-millennials-value-experiences-over-ownership/> (accessed Feb. 27, 2016) [<https://perma.cc/3WMH-E6YW>] (archived Sept. 25, 2016).

30. Andrew T. Bond, *An App for That: Local Government and the Rise of the Sharing Economy*, 90 NOTRE DAME L. REV. 77, 78 (2015) (“Millennials consume products

accept work flexibility to the detriment of employment security.³¹ The economic crisis was partly responsible for the shift from an ownership-model, based on the desire to hoard goods and display wealth, to an access-model of consumption, where individuals question the need to own goods that are not utilized on a regular basis.³² Along with these new consumer preferences comes a desire for convenient, on-demand services, immediate rewards (including good reputation on the internet), and more conscious and sustainable consumption. These demands are currently being met and shaped by new technologies which promise more efficient and sustainable access to underused assets (e.g., a vehicle parked outside an office during the day that could be used by someone who needs to go grocery shopping).³³

The *platform economy* refers to the broad phenomenon of employing digital platforms to connect supply and demand, in most cases, in order to grant one-time and uncommitted access to goods or services.³⁴ As this Section explains, this concept encompasses both sharing-economy platforms and online commercial marketplaces (e.g., Amazon), that is, collaborative peer-to-peer transactions as well as business-to-consumer interactions where little sharing takes place. The concept of platform economy also refers to the broader phenomenon of digital crowdsourcing for both financial and informational ends.³⁵ However, managing the “crowd” is not always an easy task, as any form of excessive sharing (e.g., information or goods) can produce negative outcomes if it does not follow clear rules.³⁶

differently, they wish to conduct business differently [They] trust individuals rather than businesses or large corporations.”)

31. PRICEWATERHOUSECOOPERS, *MILLENNIALS AT WORK: RESHAPING THE WORKPLACE* 11 (2011), <https://www.pwc.com/gx/en/managing-tomorrows-people/future-of-work/assets/reshaping-the-workplace.pdf> [<https://perma.cc/SG5H-D3AF>] (archived Sept. 25, 2016).

32. Fleura Bardhi & Giana M. Eckhardt, *Access-based Consumption: The Case of Car Sharing*, 39 *J. CONSUMER RES.* 881, 884 (2012).

33. On the relation between the sharing economy and sustainability, see for example Chris J. Martin and Paul Upham, *Grassroots Social Innovation and Mobilization of Values in Collaborative Consumption: A Conceptual Model*, 134 *J. OF CLEANER PRODUCTION* 204 (2015).

34. This has at least been the original, general model. Some food delivery services, for instance, are however deviating from this, such as Hello Fresh and Blue Apron as their business model relies on subscriptions. See generally HELLO FRESH, <https://www.hellofresh.com/tasty> (last visited Oct. 3, 2016) [<https://perma.cc/7Q35-MAV2>] (archived Oct. 13, 2016).

35. See, e.g., E. Mollick, *The Dynamics of Crowdfunding: An Exploratory Study*, 29 *J. OF BUS. VENTURING* 1, 14 (2014) (providing an overview of different crowdfunding initiatives). There is a vast literature on the crowdsourcing of information, in particular in the context of the interaction between citizens and government, see for example BETH NOVECK, *WIKI GOVERNMENT: HOW TECHNOLOGY CAN MAKE GOVERNMENT BETTER, DEMOCRACY STRONGER, AND CITIZENS MORE POWERFUL* (2009).

36. See, e.g., Christian Borch, *Crowd Theory and the Management of Crowds: A Controversial Relationship*, 61 *CURRENT SOC.* 584, 597 (2013) (arguing that there is no guarantee that the employment of the rational motions of crowds will be successful).

Platforms facilitate the mobilization of a large number of people at both the local and global levels to perform different tasks, ranging from activism (e.g., civic crowd sourcing like the petitions used by Uber and its users to prompt cities to regulate or deregulate its platform),³⁷ to fundraising for innovative projects through crowdfunding (e.g., with Kickstarter and Indiegogo), to the organization of volunteer-based labor.³⁸ This Article excludes an analysis of crowdfunding, as it raises issues which are mainly regulated by federal agencies and not local public bodies.³⁹

1. The Platform Economy

Nowadays, large and small companies rely on digital platforms to offer their products and services.⁴⁰ The “platform” has become a new business model where intermediaries play a key role. The literature has distinguished between traditional product industries and platform industries: “a product is largely proprietary and under one company’s control, whereas an industry platform is a foundation technology or service that is essential for a broader, interdependent ecosystem of businesses.”⁴¹

With the development of Web 2.0, increasing affordability of smartphones, more widespread use of Internet, and improvement of smartphone cameras and GPS, digital platforms have been able not only to mobilize citizens to interact with one another through social networks or with the government but also to offer sophisticated and complex commercial services. Digital platforms play the role of professional intermediaries, bridging producers and consumers,

37. See, e.g., Alexandra Stiver et. al., *Civic Crowdfunding Research: Challenges, Opportunities, and Future Agenda*, 17 *NEW MEDIA & SOC.* 249 (2014) (describing the history of civic crowd funding and current digital landscape as well as its challenges and future opportunities).

38. See Aniket Kittur et. al., *The Future of Crowd Work*, in *CSCW'13 PROCEEDINGS OF THE 2013 CONFERENCE ON SUPPORTED COOPERATIVE WORK* 1301 (2013). It is also worth drawing attention to “Amazon Mechanical Turk,” a platform that gives businesses and developers access to an on-demand scalable workforce, see *AMAZON MECHANICAL TURK*, <https://www.mturk.com/mturk/welcome> (last visited Oct. 31, 2016) [<https://perma.cc/6AZL-NXPL>] (archived Sept. 24, 2016).

39. See, e.g., Jason W. Parsont, *Crowdfunding: The Real and Illusory Exemption*, 4 *HARV. BUS. L. REV.* 281 (2014). See generally Robert B. Thomposon & Donald C. Langevoort, *Redrawing the Public-Private Boundaries in Entrepreneurial Capital Raising*, 98 *CORNELL L. REV.* 1573 (2013); C. Steven Bradford, *Crowdfunding and Federal Securities Law*, 2012 *COLUM. BUS. L. REV.* 1 (2012).

40. See generally CRAIG DEMPSTER & JOHN LEE, *THE RISE OF THE PLATFORM MARKETER: PERFORMANCE MARKETING WITH GOOGLE, FACEBOOK, AND TWITTER, PLUS THE LATEST HIGH-GROWTH DIGITAL ADVERTISING PLATFORMS* (2015).

41. Annabelle Gawer & Michael A. Cusumano, *How Companies Become Platform Leaders*, 49 *MIT SLOAN MGMT. REV.* 28, 28 (2008).

connecting service or product providers and consumers, and mediating payment transactions and conflicts.⁴²

Platform industries provide a technological intermediation service between two parties that otherwise would not be easily connected due to informational or geographical obstacles. Etsy, for example, allows anyone to sell homemade products to clients located anywhere in the world. For the purposes of this Article, digital platforms are understood as electronic infrastructures that mediate peer-to-peer and business-to-consumer transactions, and allow citizens to use networks to effectively communicate, interact, and share underused assets with other citizens.⁴³

Platforms fill in “structural holes” in networks or clusters that would otherwise be disconnected.⁴⁴ They do so by offering a two-way bridge between supply and demand.⁴⁵ The role of digital platforms can be compared to that of brokers. Platforms reduce the natural uncertainty and lack of trust that exist when two strangers interact by providing allegedly secure payment systems and peer-review mechanisms. A platform’s brokerage services, moreover, generate innovation and social capital; that is, they create an advantage or derive value from the maintenance of a reliable network.⁴⁶ The social capital triggered by digital platforms is particularly salient first in the sharing-economy segment of the platform economy, where actors tend to collaborate closely and rely on existing networks, and second in cities, which tend to be privileged places to develop social networks.⁴⁷

42. See Ranchordás, *supra* note 16 at 415–16.

43. See Tarleton Gillespie, *The Politics of Platforms*, 12 *NEW MEDIA & SOC.*, 347, 3–6 (2010) (defining platform). See generally YOCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* (2006).

44. Ronald S. Burt, *Structural Holes versus Network Closure As Social Capital*, in *SOCIAL CAPITAL: THEORY AND RESEARCH* 31–35 (2001) (arguing that social capital is created by a network in which people can broker connections between otherwise disconnected segments).

45. See MARINA KRAKOVSKY, *THE MIDDLEMAN ECONOMY: HOW BROKERS, AGENTS, DEALERS, AND EVERYDAY MATCHMAKERS CREATE VALUE AND PROFIT* 25, 26–29 (2015) (“Bridges . . . are the people directly connected to more than one cluster; often they belong to one of the clusters but have at least one close tie to another.”).

46. Ronald S. Burt, *Structural Holes and Good Ideas*, 110 *AM. J. OF SOC.* 349, 351–53 (2004) (arguing that brokerage provides social capital and people standing close to the structural holes of networks are at a higher risk of being innovative). There is a vast bulk of literature on social capital. See, e.g., Pierre Bourdieu, *Le Capital Social*, 31 *ACTES DE LA RECHERCHE EN SCIENCES SOCIALES* 2–3 (1980) (“[S]ocial capital is the sum of the resources, actual or virtual, that accrue to an individual or group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition.”); see also James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 *AM. J. OF SOC.* 95, 98 (1988).

47. On social capital in cities and the spatiality of the concept, see for example MIKE SAVAGE & TALJA BLOKLAND, *NETWORKED URBANISM: SOCIAL CAPITAL IN THE CITY* (2008); Margit Mayer, *The Onward Sweep of Social Capital: Causes and Consequences for Understanding Cities, Communities, and Urban Movements*, 27 *INT. J. OF URB. AND REG. RES.* 108, 114 (2003).

The *platform economy* refers to different marketplaces that provide professional or peer-to-peer services (e.g., TaskRabbit) to consumers and offer both professionals and amateurs a marketplace to sell their goods (e.g., Etsy). The concept of the platform economy encompasses an array of platforms, varying from peer-to-peer shared consumption and exchange to peer-to-peer marketplaces (e.g., Ebay) where very little to nothing is shared and where most transactions are purely commercial.⁴⁸ This type of digital marketplace is excluded from the scope of this Article because it does not reflect one of the central aims of the sharing economy: shared access.

There is, nonetheless, a thin line separating sharing-economy platforms from more traditional electronic or “app” commerce. Besides the case of peer-to-peer marketplaces (e.g., Ebay), this thin line is visible in the debate on the regulation of Uber. While the platform allows for collaborative exchanges with its UberPool service, when compared to platforms like BlaBlaCar, Uber appears to be characterized by a strong business-oriented model rather than a sharing nature. The platform’s place in the sharing economy has therefore been challenged in the last two years, even though Uber was initially regarded as a landmark of the sharing-economy revolution. In addition, the traditional dividing line between consumers and producers is disappearing in the context of the platform economy, leading to the emergence of what has been described as “prosumerism.”⁴⁹ This contrasts with the current economy, labor markets, and law, which were conceived along different lines. These traditional paradigms are currently being shifted by the platform model that, in many cases, relies on digital intermediaries and prosumers without any certified skills, but who also do not benefit from any social protections. While prosumerism might resonate with many platform’s users as an easy way of “making an extra buck,” the media and the literature have warned against the social costs of the sharing economy, including low wages and unfair competition.⁵⁰

48. Etsy is more difficult to categorize since sellers usually manufacture their own products to sell to peers, however, this is another marketplace which does not always comprehend the idea of sustainable sharing and does not fall within the jurisdiction of cities.

49. See George Ritzer, *Prosumer Capitalism*, 56 SOC. Q. 413, 413, 439–41 (2015) (analyzing the relationship between presumption and capitalism).

50. See, e.g., Philip Kotler, *The Prosumer Movement: a New Challenge For Marketers*, in ADVANCES IN CONSUMER RESEARCH 510 (1986) (analyzing the concept of prosumers); ALVIN TOFFLER, *THE THIRD WAVE* (1984); Brishen Rogers, *Social Costs of Uber*, 82 U. CHI. L. REV. ONLINE 85 (2015) (discussing the social costs of the sharing economy).

2. The Sharing Economy

The *sharing economy* is defined as “an economic system in which assets or services are shared between private individuals, either for free or for a fee, typically by means of the Internet.”⁵¹ A narrow definition of *sharing-economy platforms* encompasses any technology-based collaborative peer-to-peer practice that involves either temporary access to an asset (e.g., platforms such as 1000Tools, which allow peers to share tools) or the provision of services (e.g., ride-sharing platforms such as Lyft, or the European platform BlaBlaCar). A broader definition of this phenomenon could encompass any transaction where the sharing of an asset is facilitated by a digital platform (e.g., Uber). However, it is precisely this perception of the sharing economy that this Article rejects.

There is a growing awareness that the sharing economy is having a significant impact on the economy. The five main sharing-economy sectors are estimated to generate \$15 billion in global revenues per year, and experts predict that this number will rise to \$335 billion by 2025.⁵² This new model, based on shared access rather than ownership, has already started reshaping the capitalist economy.⁵³ The economic impact of the sharing economy is not limited to platforms with significant market power but also extends to the benefits conferred by a more efficient use of existing infrastructures and capacities. According to the European Parliament’s Committee on Internal Market and Consumer Protection, such sharing practices could result in a potential economic gain of €572 billion in annual consumption across Europe.⁵⁴

The definition of sharing economy thus includes electronic infrastructures that support the development of mainly two types of platforms: service provision and asset hubs.⁵⁵ These categories are fluid in some cases, since the provision of access to an underused asset (a spare room) may often be accompanied by a related service (serving breakfast).⁵⁶ There is currently a wide array of platforms that allows individuals to share their time and skills with their peers: TaskRabbit

51. *Sharing Economy*, OXFORD DICTIONARIES, https://en.oxforddictionaries.com/definition/sharing_economy (last visited Nov. 1, 2016) [<https://perma.cc/EF8X-T9GK>] (archived Sept. 24, 2016).

52. John Hawksworth & Robert Vaughan, *The sharing economy – sizing the revenue opportunity*, PWC, <http://www.pwc.co.uk/issues/megatrends/collisions/sharingeconomy/the-sharing-economy-sizing-the-revenue-opportunity.html> (last visited Feb. 4, 2016) [<https://perma.cc/B8XJ-3DBP>] (archived Sept. 25, 2016).

53. GOUDIN, *supra* note 6 at 5.

54. *Id.* at 8.

55. Daniel E. Rauch & David Schleicher, *Like Uber, But for Local Government Policy: the Future of Local Regulation of the “Sharing Economy”*, 76 OHIO ST. L. J. 901, 913–15 (2015) (describing and defining service provision and asset hubs).

56. OneFineStay, SabbaticalHomes, and Airbnb hosts provide not only access to their homes but they also often offer breakfast and small tours to guests.

offers a variety of skilled handymen, Splinster facilitates bicycle-sharing, Turo offers ride-sharing, and Poshmark offers clothing-sharing services.

The sharing economy is characterized by four distinctive characteristics.⁵⁷ The first is technology. Digital sharing-economy initiatives imply the availability of an Internet connection and the existence of an electronic infrastructure that supports simultaneous and interactive transactions. This often involves multiple technologies such as GPS and social networks (e.g., Facebook). In the eyes of the consumer, the technological element is visible in the form of a website or a smartphone application.

The second feature is the existence of a sociological or cultural element of the so-called sharing mentality. The expansion of the sharing economy appears to show that there is idle capacity in many sectors (in particular, housing) and there are many people willing to share this excess capacity with strangers, as long as they are provided with some reputational information and are compensated.⁵⁸ The media often refer to the millennials' tendency to favor access over ownership and to prefer sustainable economic practices, such as sharing of underused goods.⁵⁹ Sustainability is one of the main underlying motivations of the sharing economy. Aside from those for whom sustainable and collaborative consumption is an important goal, other participants may engage in the sharing economy to access a wider array of products, establish a good reputation among peers, enjoy economic benefits, and/or convey a certain attitude.⁶⁰

The existence of trust (or even a fiduciary relationship) is the third essential element of digital sharing transactions.⁶¹ The digital economy implies a triangular trust relationship: users are required to trust each other as well as the platform that mediates the transactions and payments. This trust is generated by the availability of personal photographs of other peers, their social media profiles, and the possibility to provide or receive feedback using peer-review or

57. Ranchordás, *supra* note 16 at 417.

58. Ingrid Gould Ellen, *Housing Low-Income Households: Lessons From the Sharing Economy?*, 25 HOUSING POL'Y DEBATE 783, 783 (2015).

59. Jeff Fromm, *Affluent Millennial Travelers Embrace the Sharing Economy*, FORBES (Dec. 16, 2015), <http://www.forbes.com/sites/jefffromm/2015/12/17/affluent-millennial-travelers-embrace-the-sharing-economy/#d3a97f77a240> [<https://perma.cc/4JHL-9M2Z>] (archived Sept. 25, 2016). See Dara O'Rourke & Niklas Lollo, *Transforming Consumption: From Decoupling, to Behavior Change, to System Changes for Sustainable Consumption*, 40 ANNUAL REV. OF ENV'T & RES. 233, 240 (2015) (highlighting millennials' declining interest in owning cars).

60. Juho Hamari, Mimmi Sjöklint & Antti Ukkonen, *The Sharing Economy: Why People Participate in Collaborative Consumption*, J. ASS'N FOR INFO. SCI. & TECH. 1, 19 (2015) (analyzing the different motivations underlying collaborative consumption and arguing that sustainability might only be one of these factors).

61. See Jack Balkin, *Information Fiduciaries and the First Amendment*, 49 U.C. DAVIS L. REV 1183, 1221 (2016) (exploring the new emphasis on fiduciary relationships in the digital age).

reputational systems.⁶² Users and providers can be rated according to their performance, the quality of their products, and the accuracy of the disclosed information. The thoroughness of these peer-review mechanisms is also variable, depending on the complexity of the task and the interests at stake.⁶³

The fourth element is the urban nature of the sharing economy. Although digital sharing also occurs in rural areas, allowing for the redynamization of agricultural areas and socially innovative projects, the sharing economy, as such, is an intrinsically urban phenomenon.⁶⁴ This Article devotes particular attention to this element in an attempt to explain the urban roots of the sharing economy and how space and talent clusters can create an environment favorable to collaborative exchanges. Sharing networks emerge where products and services are widely distributed, easily shared, and involve high fixed costs but low marginal costs.⁶⁵ As Part II explains, this tends to occur in urban agglomerates, where sharing initiatives are naturally facilitated by the city's geography, population, infrastructures, and economic activities.

3. Genuine Sharing Practices

The broad concept that the sharing economy encompasses is a highly diversified set of practices and platforms, which range from non-monetary transactions (the "gift economy"), where peers use technology to collaborate and exchange user-generated production and knowledge regardless of economic incentives,⁶⁶ to commercial sharing practices. Drawing on Rachel Botsman's work, this Article distinguishes the true sharing economy from other sharing-economy practices by reference to the clear values-driven mission, community-

62. Eyal Ert, Aliza Fleischer & Nathan Mager, *Trust and Reputation in the Sharing Economy: The Role of Personal Photos in Airbnb*, 55 TOURISM MGMT. 62, 65, 68 (2016).

63. See Yannis Bakos & Chris Dellarocas, *Cooperation Without Enforcement? A Comparative Analysis of Litigation and Online Reputation as Quality Assurance Mechanisms*. 57 MGMT. SCI. 1944, 1958 (2011) (discussing the role of reputation mechanisms and how these instruments are replacing traditional legal instruments, notably enforceable contracts).

64. An example hereof is Colporterre, a collaborative consumption initiative in the French Bretagne which is the extension of a city initiative Brest Creative.

65. WHAT THE SHARING ECONOMY MEANS FOR YOUR BUSINESS, PRICEWATERHOUSE COOPERS 1, 15 <https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf> (last visited Feb. 27, 2016) [<https://perma.cc/6G3J-MZ4L>] (archived Sept. 24, 2016).

66. On the concept of the "gift economy", which relies on the exchange of creative goods, and its opposition to the market economy, see for example Richard Barbrook, *The Hi-Tech Gift Economy*, FIRST MONDAY (Dec. 5, 2005), <http://firstmonday.org/article/viewArticle/1517/1432> [<https://perma.cc/7CQA-V6Aj>] (archived Sept. 24, 2016). See also Giancarlo F. Frosio, *Users' Patronage: The Return of The Gift in the "Crowd Society"*, 2015 MICH. ST. L. REV. 1983, 2029–30 (2015).

building character, and underlying transparency, humanness, and authenticity that tend to inform the first category of practices.⁶⁷

This Article underscores the importance of using technology to facilitate genuine sharing economy practices, including community co-ops, tool libraries, community development through the creation of shared asset hubs, and solidarity or hospitality exchange networks.⁶⁸ These initiatives are currently being promoted by multiple cities in the context of the so-called sharing-cities initiatives. Collaborative practices such as tool libraries have existed in their current form since the 1970s, but their potential has exploded with the emergence of digital platforms.⁶⁹ Technological sharing no longer requires previously established relationships, as the internet allows people to connect with others (yet) unknown.⁷⁰ While sharing has always relied on networks, platforms allow users to navigate new networks that are created for them on the grounds of their geographical location, occupation, or social networks.⁷¹

This Subsection explains the concept of *genuine sharing practices* by providing an overview of sharing practices promoted and facilitated either by private parties within communities or by public bodies in an attempt to address urban problems such as housing prices, the temporary need for additional accommodation during large events or emergencies, and urban congestion.⁷²

a. Collaborative Consumption and Sharing Networks

In the context of genuine sharing, many communities have created common pools of assets that can be shared by their members. These

67. Rachel Botsman, *Defining the Sharing Economy: What Is Collaborative Consumption and What Isn't*, FASTCOEXIST (May 27, 2015, 6:15 AM), <http://www.fastcoexist.com/3046119/defining-the-sharing-economy-what-is-collaborative-consumption-and-what-isnt> [<https://perma.cc/D3LZ-9EUC>] (archived Sept. 25, 2016).

68. On community development and peer-to-peer shared asset hubs, see generally GARY PAUL GREEN & ANNA HAINES, *ASSET BUILDING AND COMMUNITY DEVELOPMENT* (2008) (community development is defined as “the participatory effort to mobilize community assets that increases the capacity of residents to improve their quality of living”).

69. Cat Johnson, *How to Start a Tool Library in Your Community*, SHAREABLE (Sept. 12, 2012), <http://www.shareable.net/blog/how-to-start-a-tool-library-in-your-community> [<https://perma.cc/CPN9-DRKU>] (archived Sept. 25, 2016).

70. Boyd Cohen & Pablo A. Munoz, *Sharing Cities and Sustainable Consumption and Production: Towards an Integrated Framework*, 134 J. OF CLEANER PRODUCTION 87, 88 (2016).

71. See BOTSMAN & ROGERS *supra* note 10 at 55.

72. See Stephen R. Miller, *Decentralized, Disruptive, and On Demand: How the Sharing Economy Will Re-shape Local Government: A Response to Like Uber but for Local Government*, 77 OHIO ST. L. J. FURTHERMORE 47, 49–50 (2016) (outlining methods through which municipalities can benefit from sharing practices).

initiatives include cooperatives, food sharing,⁷³ book-boxes,⁷⁴ shared offices, shared home-offices, CityDogShare, and urban gardening.⁷⁵ This Subsection surveys examples of collaborative consumption of food, office space, and housing.⁷⁶

In Oxford, UK, for example, a food surplus café reclaims surplus food and transforms it into meals that can be purchased on a pay-as-you-feel basis.⁷⁷ In Berlin, and elsewhere in Germany, “food-sharing refrigerators” allow restaurants and individuals to leave unwanted food (e.g., the food you cannot finish before going on vacation) so that others can pick it up free of charge.⁷⁸ Germany’s organic supermarkets have started to work with these sharing networks to avoid trashing surplus food.⁷⁹ It is estimated that within a single year, one thousand tons of foods were saved through these initiatives.⁸⁰ Similarly, in the United Kingdom, Foodcycle and Fareshare have negotiated with supermarkets and food businesses to redistribute excess short-life food

73. Food-sharing platforms include OLIO, Leftoverswap, EatWith, and Ratatoille. OLIO, for example, allows individuals to advertise food they would otherwise throw away. For an overview of the proliferation of the food-sharing phenomenon, see *What’s Cooking in the Sharing Economy? Plenty*, CNBC (Sept. 16, 2015), <http://www.cnbc.com/2015/09/16/sharing-economy-plenty-of-meal-sharing-plat-forms-emerge.html> [<https://perma.cc/9D4C-UPCS>] (archived Sept. 25, 2016) (describing new innovations in the food-sharing industry).

74. These book-boxes can for instance be found in an increasing number of European municipalities. For Aix-en-Provence (France) see Robert Papin, *Des boîtes à livres dans les parcs d’Aix-en-Provence*, FRANCE TV 3 (Aug. 9, 2014), <http://france3-regions.francetvinfo.fr/provence-alpes/2014/08/09/des-boites-livres-dans-les-parcs-d-aix-en-provence-529790.html> [<https://perma.cc/8ZWN-SUXD>] (archived Sept. 25, 2016). For Bordeaux (France), see Coralie Horgue, *Les boîtes à lire de Bordeaux pour échanger et partager vos livres de chevet*, FRANCE TV (May 29, 2013), <http://culturebox.francetvinfo.fr/livres/evenements/les-boites-a-lire-de-bordeaux-pour-echanger-et-partager-vos-livres-de-chevet> [<https://perma.cc/MQD6-PE5Q>] (archived Sept. 25, 2016). They can also be found in small towns such as Badn Schandau in the German State of Saxony, Carina Brestrich, *Lesespaß in der Telefonzelle*, SACHSISCHE ZEITUNG (Nov. 2, 2015), <http://www.sz-online.de/nachrichten/lesespass-in-der-telefonzelle-3239980.html> [<https://perma.cc/2QM3-HZHF>] (archived Sept. 25, 2016).

75. A number of shared-office space apps, such as “ShareDesk” allow individuals, such as free-lance workers to book office space on a temporary basis.

76. Lending circles, participatory budgeting, community currencies, cooperatives, open public spaces, time banks, and barter markets are but a few of the many sharing practices manifesting across cities. For a more comprehensive overview, see DUNCAN MCLAREN & JULIAN AGYMEAN, *SHARING CITIES* (2015).

77. See FOOD SURPLUS CAFÉ, <https://oxsurpluscafe.wordpress.com/> (last visited Oct. 13, 2016) [<https://perma.cc/2NTM-A6M2>] (archived Sept. 25, 2016).

78. Sally McGrane, *Finding Takers for Lonely Leftovers in a Culinary Nook of the Sharing Economy*, N.Y. TIMES (Nov. 26, 2014), <http://www.nytimes.com/2014/11/27/world/europe/german-matchmakers-pair-lonely-leftovers-and-rumbling-bellies.html> [<https://perma.cc/NH7Q-XZVH>] (archived Sept. 25, 2016) (describing these initiatives in Germany. It is important to note that these refrigerators also have their online counterparts, notably the websites lebenmittelretten.de and foodshare.de).

79. *Id.*

80. *Id.*

to local charities.⁸¹ The platform *Thuisafgehaald*, which has over forty thousand users in the Netherlands and Belgium, allows “home-cooks” to share their family meals with interested neighbors.⁸²

Co-working and the sharing of office space have emerged in many cities around the globe to minimize office space costs and avoid the underuse of offices, for instance in companies offering “home-office days” to their employees. This has been particularly visible in cities like San Francisco, Berlin, and Amsterdam, which host many startups that do not always have abundant office space.⁸³

Shared living has re-emerged in the last few years as a sustainable option for many city residents. In the Bay Area, young professionals take over leases of grand estates and turn them into communal living spaces.⁸⁴ In Copenhagen, a cohousing movement emerged in the 1970s that is now spreading internationally.⁸⁵ This model was inspired by feminist theories and initiatives that aimed to combat women’s isolation in the home and confinement to the domestic life.⁸⁶ Under this model, several families live separately but share extensive communal space in neighborhoods designed specifically for social interaction.⁸⁷ More recently, co-living projects started to emerge in New York City due to the rising housing prices and the lack of space. A number of startups (e.g., Common, WeLive, WeWork, and Pure House) are now converting buildings into communal kitchens, dining rooms, and working spaces.⁸⁸

81. See MCLAREN & AGYEMAN, *supra* note 76, at 35 (explaining Foodcycle and Foodshare).

82. *Id.* at 35.

83. *Id.* at 21. See also BOTSMAN & ROGERS, *supra* note 10, at 169 (stating that shared working spaces combine “the best elements of a coffee shop (social, energetic, creative) and the best elements of workspace (productive, functional)”).

84. Elise Hu, *Bay Area’s Steep Housing Costs Spark Return to Communal Living*, NPR (Dec. 19, 2013), <http://www.npr.org/sections/alltechconsidered/2013/12/19/250548681/bay-areas-steep-housing-costs-spark-return-to-communal-living> [<https://perma.cc/4SNE-RM6Y>] (archived Sept. 25, 2016).

85. See MCLAREN & AGYEMAN, *supra* note 76, at 249. In the Netherlands, there are currently 100 co-housing projects (“*centraal wonen*”) in which each household has a private home and shared community space to generate social contact and sharing of amenities and management of resources.

86. See generally DOLORES HAYDEN, *THE GRAND DOMESTIC REVOLUTION: A HISTORY OF FEMINIST DESIGNS FOR AMERICAN HOMES, NEIGHBORHOODS, AND CITIES* (1982) (describing the creation of women’s cooperatives, shared kitchens, and developed collaborative communities).

87. MCLAREN & AGYEMAN *supra* note 76, at 140. See generally DORIT FROMM, *COLLABORATIVE COMMUNITIES. COHOUSING, CENTRAL LIVING AND OTHER NEW FORMS OF HOUSING WITH SHARED FACILITIES* (1991) (discussing co-housing and collaborative housing communities).

88. Diana Ransom, *Forget Renting. This is the Next Big Thing in the Sharing Economy*, INC (Oct. 20, 2015), <http://www.inc.com/diana-ransom/common-brad-hargreaves-co-living-space-in-new-york.html> [<https://perma.cc/QK5X-JU2Z>] (archived Sept. 25, 2016).

Time-sharing is a different form of genuine sharing also worth mentioning here. Time-sharing was particularly popular between the 1960s and 1980s, and it consisted in the division of ownership of a condominium unit (often a vacation house) into a fixed number of time periods during which each owner would have exclusive rights to use and occupy the unit.⁸⁹ Contrary to the typical model where property is owned by one individual and access is granted to other individuals for a short period, time-sharing referred primarily to shared ownership. Although time-sharing, temporary sub-lease, and different forms of co-ownership of vacation apartments predate the digital age, the emergence of Airbnb and other digital platforms, accompanied by reputational mechanisms, has lowered the participation threshold and facilitated the lease of property from outside an individual's circle of acquaintances.⁹⁰

b. Shared Mobility

Although Uber and Lyft are the most iconic ride-sharing platforms, shared mobility predates these platforms and refers to a broad array of collaborative initiatives.⁹¹ Shared mobility encompasses many phenomena, from sharing a bicycle to old-fashioned car-pooling to renting someone's yacht via a smart phone application.⁹² Cities have long encouraged commuters to share cars to unclog urban streets during rush hour, offering incentives such as permission to use the HOV or carpool lane.⁹³ This well-established form of shared transportation has experienced a revival with the emergence of digital platforms (e.g., 511 RideMatch, Carma Carpooling, or Hitch-a-Ride)

89. Ellen R. Pierce, *Time-Share Interests in Real Estate: A Critical Evaluation of the Regulatory Environment*, 59 NOTRE DAME L. REV. 9, 9–11 (1983) (discussing the state legislation framework applicable to time-sharing).

90. Bryant Cannon & Hanna Chung, *A Framework for Designing Co-Regulation Models Well-Adapted to Technology-Facilitated Sharing Economy*, 31 SANTA CLARA HIGH TECH. L. J. 23, 30 (2015); Eugenia G. Dacoronia, *Time-Sharing in Greece*, 44 REVUE HELLÉNIQUE DE DROIT INT'L 211, 221 (1991) (providing an overview of time-sharing legislation in Greece where this sharing practice thrived for decades in tourist locations).

91. For an overview of the different forms of mobility sharing, see Boyd Cohen & Jan Kietzmann, *Ride On! Mobility Business Models for the Sharing Economy*, 27 ORG. & ENV'T. 279, 284–85 (2014).

92. For a historical overview of car-sharing, see Eric Britton, *A Short History of Early Car Sharing Innovations*, 5 WORLD TRANSPORT POL'Y & PRAC. 9, 15 (1999); Jaclyn Trop, *Call this company the 'Airbnb of boats'*, FORTUNE (Aug. 4, 2015), <http://fortune.com/2015/08/04/sailo-airbnb-of-boats/> (last visited February 27, 2016) [<https://perma.cc/R552-YU83>] (archived Sept. 25, 2016).

93. HOV lanes exist in many cities. In the United States, the first HOV lane was implemented in the Henry G. Shirley Memorial Highway between Washington, D.C., and the capital beltway in 1973. See MIT *"Real-Time" Rideshare Research, Ride-Share History and Statistics*, MIT (Jan. 24, 2009), <http://ridesharechoices.scripts.mit.edu/home/histstats/> [<https://perma.cc/NH8R-SWBB>] (archived Sept. 25, 2016).

that match passengers and drivers.⁹⁴ An NYC-based project seeks to reduce congestion by working on a platform that allows individuals to share yellow cab rides.⁹⁵

Digital platforms have also allowed the traditional model to develop from short-distance pooling into long distance car-pooling.⁹⁶ A notable example is the European BlaBlaCar, one of the most active collaborative consumption communities.⁹⁷ This French platform has become the world's largest long-distance car-sharing community and is valued at about \$1.2 billion.⁹⁸ Founded in 2006, it allows passengers and drivers to travel between cities and share the costs of the journey; it has about 20 million members across twenty countries. Crucially, drivers do not make a profit out of sharing their car; they are only compensated for part of the journey's cost.⁹⁹ Compared to Uber, BlaBlaCar charges a smaller fee (10 percent of the total cost of the ride) and does not make a large profit off passengers. The distinction also resides in the intent of the exchange: in the case of BlaBlaCar, a driver had already planned to travel, for example, from Paris to Amsterdam by car, and it will only make her trip more affordable and sustainable to share it with others; with Uber, the driver will make an additional trip, since drivers and passengers do not share a common destination.¹⁰⁰

Considering the benefits of carpooling for the reduction of greenhouse gas emissions and urban congestion,¹⁰¹ carpooling is

94. Cohen & Kietzmann *supra* note 91 at 282. ("Although these shared mobility business models have existed for decades . . . recent enhancements due to improved information and communication technologies have made them possible at scale."); Mark A. Mallery, Susan A. Shaheen, & Karla J. Kingsley, *Personal Vehicle Sharing Services in North America*, 3 RES. IN TRANSP. BUS. & MGMT. 71, 80 (2012) ("[P]ersonal vehicle sharing has gained momentum in Europe and North America, largely as an outgrowth of traditional car-sharing.")

95. Emily Badger, *How a System for Shared Taxi Rides Could Transform New York City*, ATLANTIC CITYLAB (Mar. 12, 2014), <http://www.citylab.com/cityfixer/2014/03/how-system-shared-taxi-rides-could-transform-new-york-city/8530/> [<https://perma.cc/BU4H-HFN9>] (archived Sept. 25, 2016).

96. For an early report, see MERRITT POLK, CARSHARING IN SWEDEN: A CASE STUDY OF THE IMPLEMENTATION OF AN INTERNET BOOKING SYSTEM IN MAJORNAS COOPERATIVE IN GÖTEBORG (2000).

97. *A Sharing Economy*, OECD OBSERVER (2014), http://www.oecdobserver.org/news/fullstory.php/aid/4648/A_sharing_economy.html [<https://perma.cc/QGV9-T57D>] (archived Sept. 23, 2016) [hereinafter *A Sharing Economy*].

98. For more information on how BlaBlaCar works, see BLABLACAR, <https://www.blablacar.fr> (last visited Oct. 13, 2016) [<https://perma.cc/TJX5-VTNJ>] (archived Sept. 21, 2016).

99. To safeguard this goal, BlaBlaCar recommends a price per passenger for every journey. Drivers offering a ride can fix the price inside the recommended window with a strict ceiling. *A Sharing Economy*, *supra* note 97.

100. See William Chang, *Growing Pains: The Role of Regulation in the Collaborative Economy*, 9 INTERSECT 1, 3 (2015).

101. COMMISSARIAT GÉNÉRAL AU DÉVELOPPEMENT DURABLE, LE COVOITURAGE POUR LES DÉPLACEMENTS DOMICILE-TRAVAIL: QUEL POTENTIEL?, ÉTUDES & DOCUMENTS 3 (June 2014), <http://www.developpement-durable.gouv.fr/IMG/pdf/ED107.pdf>

actively encouraged in many cities.¹⁰² Aspen, CO, for instance, had the first municipal car-sharing program with an entirely hybrid fleet in the United States.¹⁰³ In 2011, Portland, OR actively started promoting peer-to-peer car-sharing by partnering up with the start-up Getaround, the Federal Highway Administration, and the State Administration.¹⁰⁴ These are, of course, but two examples of many, as car-sharing is now widely encouraged by municipalities around the globe.

Bike-sharing systems provide bike-docking stations throughout a city, allowing individuals to use a bike for their journey before returning it to a different (or the same) docking station. Bike-sharing schemes are provided by private operators or local governments themselves. Paris' Velib' is a famous and successful example of the latter that was initiated in 2007.¹⁰⁵ Municipal bike-sharing was first pioneered by a number of European cities, most famously by Copenhagen's Bicyklen program, which inspired local decision makers in both Europe and in the United States.¹⁰⁶ Bike-sharing is now supported by the European Commission, which recognizes that bike-sharing can foster "clean and energy efficient sustainable modes of mobility in urban areas."¹⁰⁷ To this end, it has created an initiative to

[<https://perma.cc/ZD2F-RTBT>] (archived Sept. 22, 2016). Similarly, a study sponsored by the Federal Transit Administration has found that "car-sharing brings substantial benefits in terms of reduced vehicle ownership and travel, and improved mobility." ADAM MILLARD-BALL ET AL., CAR-SHARING: WHERE AND HOW IT SUCCEEDS, TCRP REPORT 108 (2005) (describing the benefits of car-sharing in urban environments).

102. See, e.g., CARMA, <https://www.gocarma.com/> (last visited Oct. 13, 2016) [<https://perma.cc/U32A-93JC>] (archived Sept. 21, 2016); see also *The Benefits of Car Sharing*, PORTLAND BUREAU OF TRANSPORTATION (Oct. 25, 2011, 12:51 PM), <https://www.portlandoregon.gov/transportation/article/370985> [<https://perma.cc/65F4-VBA5>] (archived Sept. 23, 2016) ("Portland is arguably the birthplace of North American car sharing, so it's no surprise that we have one of the stronger car sharing markets in the country.").

103. Press Release, Lynn Rumbaugh, Transportation Manager, City of Aspen, Colorado, Aspen Car Share Program 100% Hybrid (Feb. 2, 2012), <http://www.aspenpitkin.com/Whats-New-/Press-Releases/newsid378/371/> [<https://perma.cc/MMT5-G4XW>] (archived Oct. 13, 2016).

104. *Peer to Peer Car Sharing Coming to Portland*, PORTLAND BUREAU OF TRANSPORTATION (Dec. 14, 2011, 11:38 AM), <https://www.portlandoregon.gov/transportation/45195?a=378214> [<https://perma.cc/PXE3-YJQW>] (archived Sept. 23, 2016).

105. VELIB', <http://en.velib.paris.fr/> (last visited Feb. 28, 2016) [<https://perma.cc/4DKN-8G37>] (archived Sept. 23, 2016).

106. Janet Larsen, *Bike-Sharing Programs Hit the Streets in Over 500 Cities Worldwide*, EARTH POL'Y INST. (Apr. 25, 2013), http://www.earth-policy.org/plan_b_updates/2013/update112 [<https://perma.cc/CEJ2-RXW7>] (archived Sept. 22, 2016); see also VELOV, <http://www.velov.grandlyon.com/?L=1> (last visited Feb. 27, 2016) [<https://perma.cc/L3G9-EUA8>] (archived Sept. 23, 2016) (describing how the French cities of Lyon, Bordeaux, and Paris joined the bike-share movement in the mid-2000s).

107. European Comm'n, *Optimising Bike Sharing in European Cities*, INTELLIGENT ENERGY EUROPE, <https://ec.europa.eu/energy/intelligent/projects/en/projects/obis> (last visited Feb. 27, 2016) [<https://perma.cc/N9H5-GLJR>] (archived Sept. 22, 2016).

“identify good practices, success factors, limits and market potentials by analyses, demonstrations and optimized strategies.”¹⁰⁸

Personalized bus services are a less frequent form of shared transportation that some cities presently experiment with.¹⁰⁹ Private initiatives have also emerged, most famously Bridj, which operates in the greater Boston and Washington, D.C. metro areas.¹¹⁰ A similar project was launched in Helsinki, Finland, but failed.¹¹¹

4. Implications of the Platform Economy

Digital platforms are currently changing the way in which citizens interact with one another, how they provide and consume services, and even how labor is organized. However, in 2016, the platform economy has become a business model that is often looked at with suspicion: platforms do not own any assets, instead they strive to develop the most efficient, trusted, profitable, and user-friendly ways of sharing.¹¹² In the wake of recent life-threatening incidents between Airbnb hosts and visitors, concerns regarding the liability of these platforms have arisen.¹¹³ There is currently a high degree of uncertainty regarding the liability rules applicable to the sharing economy, notably to home-

108. *Id.*

109. Helsinki's Kutsuplus initiative was an intriguing example in this respect that failed. See Olli Sulopuisto, *Why Helsinki's innovative on-demand bus service failed*, CITYSCOPE (Mar. 4, 2016), <http://citiscopes.org/story/2016/why-helsinki-innovative-demand-bus-service-failed#sthash.HNTtV4Uy.dpuf> [<https://perma.cc/QF94-N6DZ>] (archived Sept. 23, 2016) (noting that the project, which had been initiated by the Helsinki municipality, failed as the cost to taxpayers was deemed too high).

110. See Jess Zimbabwe, *First Over the Bridj*, URB. LAND MAG. (July 6, 2015), <http://urbanland.uli.org/economy-markets-trends/first-bridj/> (last visited Mar. 1, 2016). [<https://perma.cc/77YD-HX9P>] (archived Sept. 23, 2016) (noting that rather than following a traditional scheduled route, “Bridj—much like the car-sharing services Uber and Lyft—uses real-time data to take the transit to where the people are”).

111. See Sulopuisto, *supra* note 109 (noting that the project failed as the cost to taxpayers was deemed too high).

112. Cf. PRICEWATERHOUSE COOPERS, *supra* note 65, at 29 (“By design, the sharing economy disrupts the balance of the marketing mix for nearly every industry it touches.”).

113. See, e.g., Michelle Maese, *Rethinking “Host” and “Guest” Relations in the Advent of Airbnb and the Sharing Economy*, 2 TEXAS A&M J. OF PROP. L. 481, 483–84 (2015) (describing the rights Airbnb visitors may maintain against hosts); see also Brittany McNamara, *Airbnb: A Not-So-Safe Resting Place*, 13 COLO. TECH. L.J. 149 (2015) (discussing Airbnb users’ uncertainty under current regulations over whether renting out their homes is lawful); Talia G. Loucks, *Travelers Beware: Tort Liability in the Sharing Economy*, 10 WASH. J. L. TECH. & ARTS 329, 331–34 (2015) (stating that Airbnb-users should realize that hosts do not owe guests the same duties as hotel operators). To circumvent landlord-tenant law, some platforms suggest hosts and guests enter “loan agreements”, which bear more risks and liability uncertainty in case of theft or accidents. See, e.g., Rosalie Koolhoven, *Kwalificatie en rechtspluralisme in de ‘deeleconomie’* [Qualification and Legal Pluralism in the Sharing Economy], 6 MAANDBLAD VOOR VERMOGENSRECHT 186 (2015) (explaining the risks incurred by Dutch hosts in such cases).

sharing platforms, which might not be subject to the same liability as hotels.

B. Urban Sharing

Cities are currently interested in the sharing economy, since this economic model involves the concepts of sustainability, empowerment of individuals, and the possibility of improving their quality of living by using networks to have access to others' unused assets and offer theirs, or a reasonable payment, in exchange.¹¹⁴ Indeed, sharing-economy practices appear to thrive if three conditions are present: (1) urban density, (2) internet connectivity, and (3) excess labor capacity or underused goods. These three features are typically present in large cities. The sharing economy is gaining more traction in urban areas due to the presence of these features and the availability of internet connections and smart phones.¹¹⁵

Cities, in particular those aspiring to become sharing cities, have welcomed and started engaging with the creation of collaborative and sustainable sharing practices, that is, platforms that promote the exchange of unused or underutilized goods (e.g., tools, a car that is parked the whole day outside your office, or your house while you are away on vacation) either for monetary or nonmonetary (e.g., HomeExchange) benefits.

Urban municipalities also encourage platforms that facilitate occasional sharing, community empowerment, and the exchange of small services. Although at first sight, some local governments appear opposed to commercial businesses that use digital platforms to evade compliance with labor and consumer protection rules and standards by waving the sharing-economy flag and invoking the benefits of disruptive innovation.

Cities are "breeding grounds for a new, circular economy driven by emerging and long-standing sharing activities"¹¹⁶ due to the existence of multiple potential sharers in close enough proximity to other individuals who are interested in their underused goods and services. The importance of proximity is visible in clothing-sharing: DateMyWardrobe, a platform for the exchange of high-end fashion, relies on the geographic proximity of people with similar fashion tastes,

114. See ALEX STEPHANY, *THE BUSINESS OF SHARING: MAKING IT IN THE NEW SHARING ECONOMY* 40–69 (2015) (highlighting the empowerment and positive motivations associated with the sharing economy); see also April Rinne, *To Share = To Empower, The Collaborative Economy in Colombia*, *COLLABORATIVE CONSUMPTION* (Apr. 28, 2014), <http://www.collaborativeconsumption.com/2014/08/28/to-share-to-empower-the-collaborative-economy-in-colombia/> [<https://perma.cc/UNE5-3CHR>] (archived Sept. 23, 2016) ("[T]he collaborative economy offers an opportunity to understand and build trust on many new levels.").

115. Cohen & Munoz, *supra* note 70, at 88.

116. *Id.* at 87.

requiring users to meet in person in order to exchange the clothing items.

A recent study by Sciences Po confirmed that urban territories, given their density, appear more promising for the success of sharing practices than rural or suburban areas.¹¹⁷ Not surprisingly, as cities turn more to technology to maximize the use of their resources, sharing-economy platforms such as Airbnb tend to be, first and foremost, urban phenomena.¹¹⁸ The home-sharing platform first emerged in San Francisco before gradually spreading to other cities.¹¹⁹ Multiple other sharing platforms, such as VRBO and OneFineStay operate on a city-by-city basis, having different websites, apps, and often even different rules for the different localities in which they operate. The same is true for Zipcar, which is considered to have been the “gateway to the sharing economy.”¹²⁰ This all confirms that human density significantly facilitates collaborative consumption.

III. CITIES AS SPACES OF SHARING

Humans have been sharing and exchanging assets for thousands of years, especially before the emergence of monetary currency.¹²¹ As an innate human economic behavior, sharing has been profoundly transformed in the contemporary age by the rise of urban density and information and communications technology. Cities are spaces of sharing. The economic and historical literature has demonstrated that the desire and need to share resources, infrastructure, and knowledge

117. DAMIEN DEMAILLY AND ANNE-SOPHIE NOVEL, SCIENCES PO, INSTITUT DU DEVELOPPEMENT DURABLE ET DES RELATIONS INTERNATIONALES, ÉCONOMIE DU PARTAGE: ENJEUX ET OPPORTUNITÉS POUR LA TRANSITION ÉCOLOGIQUE, STUDY N°03 14 (July 14, 2014).

118. Cf. Mitchell L. Moss, *Technology and Cities*, 3 CITYSCAPE 107, 108 (1998) (examining how telecommunications technologies influence the economic development of U.S. cities).

119. For an overview of the origins of Airbnb, see BOTSMAN & ROGERS, *supra* note 10 at x-xiv; see also Michael Sinan, *On heels of new funding and global expansion, car service Uber launches in D.C. today*, VENTURE BEAT (Dec. 15, 2011), <http://venturebeat.com/2011/12/15/uber/> [<https://perma.cc/7FMT-ZVVY>] (archived Sept. 23, 2016) (describing how after its founding in San Francisco, Uber spread to a new city in the United States each month starting May 2011).

120. Cf. Janelle Nanos, *The End of Ownership*, BOSTON MAG. (May 2013), <http://www.bostonmagazine.com/news/article/2013/04/30/end-ownership-sharing-economy7> [<https://perma.cc/ETB5-FGFJ>] (archived Sept. 22, 2016) (articulating a negative association with globalizing the concept of “sharing”). *But see* Arun Sundararajan, *From Zipcar to the Sharing Economy*, HARV. BUS. REV. (Jan. 3, 2013), <https://hbr.org/2013/01/from-zipcar-to-the-sharing-eco> [<https://perma.cc/HM4E-5VSW>] (archived Sept. 23, 2016) (“[T]his is still a dedicated fleet, still inventory that the company has to acquire, manage and monetize. Under the hood, the business model is fundamentally not very different from that of a traditional rental car company.”).

121. See Belk, *supra* note 21, at 1595 (“Sharing is a phenomenon as old as humankind, while collaborative consumption and the ‘sharing economy’ are phenomena born of the Internet age.”).

explain why urban agglomerations first emerged and continue to inform their existence. This Part delves into the historical and economic sharing value of cities and explores the impact of common sharing-economy practices on urban agglomerations.

A. *Historical and Economic Perspectives*

1. Historical Insights

Urban agglomerations have always been collaborative and sharing environments. Cities emerged to allow individuals to pool resources, infrastructure, and knowledge.¹²² There is evidence that human density rose as agriculture emerged after the Neolithic revolution.¹²³ This evolution encouraged individuals to gather close to those producing food, thus the sharing of agricultural products appears to have been the first trigger in the ever-continuing increase in human density.¹²⁴ An unprecedented emigration movement from the countryside to cities started during the Industrial Revolution and continued in the centuries thereafter. In the twenty-first century, city inhabitants account for 50 percent of the world population and this number is expected to increase to 75 percent by 2025.¹²⁵ This migration march has been driven by the need to have access to more and better services, employment, educational opportunities, infrastructures, and goods.

Before urban agglomerations emerged, people gathered in tribal societies, which operated on a small scale.¹²⁶ In this simple and generalized economy, families produced their own food, built their own houses, and made their own tools.¹²⁷ This soon proved to be inefficient and individuals started benefiting from the urban economies of scale

122. For an overview of the historical evolution of cities, see generally LEWIS MUMFORD, *THE CITY IN HISTORY: ITS ORIGINS, ITS TRANSFORMATIONS, AND ITS PROSPECTS* (1968); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

123. Cf. Louis Putterman, *Agriculture, Diffusion, and Development: Ripple Effects of the Neolithic Revolution* 19 (2006) (unpublished manuscript) (on file with Brown University Department of Economics) (asserting that differences among societies regarding the transition to agriculture led to differences in levels of social and technological development).

124. *Id.*

125. Francisco Javier Carrillo, *Introduction: The Century of Knowledge Cities*, in *KNOWLEDGE CITIES: APPROACHES, EXPERIENCES, AND PERSPECTIVES* xi (Francisco Javier Carrillo ed., 2006).

126. See generally Henri Pirenne, *Les villes du Moyen Age, essai d'histoire économique et sociale* [*Medieval Cities: an essay on economic and social history*], *J. DES SAVANTS* 15 (1928) (providing a general historical overview on different economic and social aspects of the development of medieval cities).

127. Michael E. Smith, *The Earliest Cities*, in *URBAN LIFE READINGS IN THE ANTHROPOLOGY OF THE CITY* 3, 3 (George Gmelch & Walter P. Zenner eds., 2009).

that arose in transportation, production, defense, and consumption.¹²⁸ Cooperation proved then to be essential to human survival.¹²⁹ The emergence of cities also facilitated military protection, as the pooling of resources allowed individuals to use the available means of protection in a more efficient manner.¹³⁰

The benefits of human density and the concentration of resources are particularly valuable with regard to indivisible commodities with high fixed costs, such as residences, markets and other trading posts, and public facilities.¹³¹ Shared infrastructure (e.g., roads or bridges) and services (e.g., schools) have underpinned urban development and quality of life in cities for centuries.¹³² In cities, residents have shared access to a wide variety of local resources including local streets, parks, and public spaces.¹³³ The sharing of infrastructures, housing, and assets occurred both in Europe and, later, in the United States not only within the urban community but also with commuters and passing strangers (e.g., pilgrims and merchants). Dutch merchants in the seventeenth century were offered temporary shelter during their business trips to cities.¹³⁴

While geographic density facilitates sharing,¹³⁵ more recently, Duncan McLaren and Julian Agyeman have contended that the urban

128. See EDWARD GLAESER, *TRIUMPH OF THE CITY: HOW OUR GREATEST INVENTION MAKES US RICHER, SMARTER, GREENER, HEALTHIER, AND HAPPIER* 46 (2012) (“The growing city’s large home market and its waterborne access to other customers also enabled industrialists to take advantage of what economists call *returns to scale*, a term for the fact that per unit costs are cheaper in bigger plants that produce more units.”).

129. See Belk, *supra* note 21, at 1596 (stating that people share for functional reasons like survival); cf. Seymour H. Fine, *Toward a Theory of Segmentation by Objectives in Social Marketing*, 7 J. OF CONSUMER RES. 1, 2 (1980) (discussing how consumers conceptualize a hierarchy of objectives based on the social collective). See generally ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* (1984) (discussing the evolution of cooperative behavior through the lens of the prisoner’s dilemma).

130. See BRENDAN O’FLAHERTY, *CITY ECONOMICS* 13 (2005) (evaluating military protection’s increasing returns to scale in cities).

131. See MASAHISA FUJITA, *URBAN ECONOMIC THEORY: LAND USE AND CITY SIZE* 133–35 (1989).

132. MCLAREN & AGYEMAN, *supra* note 76, at 135.

133. Sheila R. Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 57 (2011).

134. See Jamila Jefferson-Jones, *Airbnb and the Housing Segment of the Modern “Sharing Economy”: Are Short-Term Rental Restrictions an Unconstitutional Taking?*, 42 HASTINGS CONST. L.Q. 557, 561 n.17 (2015) (providing a brief overview of the historical roots of the housing segment of the sharing economy and arguing that municipal restrictions to home-sharing are unconstitutional); see also DAVID FAFLIK, *BOARDING OUT: INHABITING THE AMERICAN LITERARY IMAGINATION, 1804–1860*, at 39–41 (2012) (referring to the Dutch merchants who enjoyed temporary shelter in the New World and noting that this was a long-standing practice in Europe which later developed in the United States).

135. Cf. John A. Price, *Sharing: the integration of intimate economies*, 17 *ANTHROPOLOGICA N.S.* 1, 6 (1975) (“[S]haring is expressed in ethical systems, in religions, and in many social forms and rituals.”).

sharing paradigm has been undermined due to economic and social change that has led to a “destabilization and fragmentation of human identities,” as city inhabitants became more individualistic and focused on protecting their assets.¹³⁶ The technological rise of sharing practices in urban areas is starting to reverse that trend.¹³⁷ McLaren and Agyeman argue that, as a result, humans are drawn back to their inherent nature as sharers.¹³⁸ The European Commission has in fact noted that urbanization facilitates sharing. This is so, as increasing population density within cities “has provided the basis for a critical mass of resources and suppliers to support online markets for localised services.”¹³⁹ Indeed, between 2007 and 2013, urban populations in the European Union have increased to more than the total population in the majority of EU Member States, and this trend “may provide a greater potential for the development of collaborative services.”¹⁴⁰ This is considered to give the European Union a structural advantage over the United States with respect to the development of the sharing economy, as Europe “is more densely populated and urbanized.”¹⁴¹

Cities are now increasingly seeking to harness and concentrate the economically advantageous effects of human density in urban agglomeration through the creation of “sharing districts.”¹⁴² These efforts, aimed at furthering the generation of innovation in a particular part of the locality, allow local economies to grow with minimal investment in new infrastructure. The Boston Innovation District, for example, is a 2010 city initiative to transform one thousand acres of the South Boston waterfront into an “urban environment that fosters innovation, collaboration, and entrepreneurship.”¹⁴³ The area includes shared working spaces and incubators for start-ups. While these districts do not always host sharing-economy companies, shared access

136. MCLAREN & AGYEMAN, *supra* note 76, at 4.

137. For an overview of the relation between urban density and the sharing economy, see generally GOUDIN, *supra* note 6.

138. See MCLAREN & AGYEMAN, *supra* note 76, at 4 (arguing that sharing is inherent to human nature).

139. European Commission Staff, Report on the Implementation of the Communication 'Unleashing the Potential of Cloud Computing in Europe' 12 (July 2, 2014) (unpublished report) (on file with European Commission).

140. *Id.*

141. *Id.* at 10.

142. Cf. Michael N. Widener, *Shared Spatial Regulating in Sharing-Economy Districts*, 46 SETON HALL L. REV. 111, 117 (2015) (“[U]nderstanding the intrinsic order of cities requires planners to undertake and endorse others' actions that create economic growth from networks of proximity, casual encounters and their economic ‘spillovers’ in optimizing municipal performance.”).

143. BOSTON REDEVELOPMENT AUTHORITY, <http://www.bostonredevelopmentauthority.org/businessdev/initiatives/innovationboston/overview> (last visited Oct. 3, 2016) [<https://perma.cc/3LSW-EDCY>] (archived Oct. 13, 2016).

characterizes their very essence, as they are meant to concentrate the advantages of urban density, ideas, and talent on a smaller scale.¹⁴⁴

2. Agglomeration Economics

Agglomeration economies explain why individuals are willing to move to urban centers, pay higher prices, and suffer the consequences of negative agglomeration (e.g., congestion and pollution).¹⁴⁵ The successful development of cities has been described as the result of a trade-off between agglomeration economies—or localized aggregate increasing returns—and the costs of urban congestion.¹⁴⁶ As this Subsection explains, agglomeration economies result from three main sources: (1) labor market interaction, (2) linkages between intermediate- and final-goods suppliers, and (3) knowledge spillovers. In addition, these economies are also based on the existence of sharing mechanisms that allow city inhabitants to obtain essential public goods by sharing indivisible facilities with high fixed costs but low constant marginal costs (e.g., a football stadium, local swimming pool, or hockey rink), improve their professional networks and “social capital,” and have access to a wider variety of goods.¹⁴⁷

First, agglomeration economies occur because of the production benefits of physical proximity to other highly skilled workers, firms, consumers, and individuals with similar interests.¹⁴⁸ Urban density is also conducive to the creation of labor markets, the production of labor pooling, specialization, and reinvention of human capital.¹⁴⁹ Research has shown that average productivity increases with the size of the labor market, since the larger the size of the market, the better the

144. See generally Bruce Katz & Julie Wagner, *The Rise of Innovation Districts: A New Geography of Innovation in America*, METROPOLITAN POLICY PROGRAM AT BROOKINGS (2014), <http://www.brookings.edu/~media/Programs/metro/Images/Innovation/InnovationDistricts1.pdf>. [https://perma.cc/HCM9-CVGF] (archived Sept. 22, 2016) (describing “innovation districts” where companies group with start-ups, business incubators, and accelerators while offering housing, office, and retail space).

145. See generally EDWARD GLAESER, *CITIES, AGGLOMERATION AND SPATIAL EQUILIBRIUM* (2008).

146. Cf. Gilles Duranton & Diego Puga, *Micro-foundations of Urban Agglomeration Economies 1* (Nat’l Bureau of Econ. Research, Working Paper No. 9931, 2004) (considering forms of agglomeration economies to generate localized aggregate increasing returns).

147. *Id.* at 3.

148. See Edward L. Glaeser & Albert Saiz, *The Rise of the Skilled City*, BROOKINGS-WHARTON PAPERS ON URB. AFF. 47, 60 (2004) (attributing faster technological innovation and more sophisticated activities to the geographical concentration of higher educated people).

149. See ALLEN J. SCOTT, *THE CULTURAL ECONOMY OF CITIES* 330 (1997), http://spartan.ac.brocku.ca/~dvivian/planningcommittee/boggs/Cultural_Economy_07112016553026229.pdf [https://perma.cc/8RYT-TXR6] (archived Sept. 23, 2016) (explaining how production is typically centralized in industrial districts characterized by local labor markets).

matches between workers and firms, resulting in lower on-the-job training costs.¹⁵⁰ The close geographic proximity of labor and talent facilitates the flow of information and the exchange of products, services, and knowledge. Individuals benefit at different levels from the geographical concentration of other individuals, in particular, of highly skilled people with similar interests.

Second, given the concentration of a number of factors, such as talented human capital and transportation networks, cities become production and innovation clusters. Silicon Valley is the typical example of an innovation cluster.¹⁵¹ Urban centers like San Francisco tend to offer favorable conditions for the development of innovation, since the innovative process emerges in environments where individuals exchange ideas on a daily basis due to the proximity of their habitations and the existence of sharing fora (e.g., historically, a visit to the weekly market, and, nowadays, to a coffee shop in San Francisco).¹⁵² Moreover, the clustering of activities has been regarded as an important element for higher levels of productivity, the emergence of comparative advantages, the development of industries that share common infrastructures and costs (e.g., security of large facilities), and benefits from educational clusters (e.g., engineering universities that cooperate with different industries).¹⁵³ Moreover, besides these individual informational spillovers, firms in close geographical proximity are likely to learn more from one another than from isolated firms.¹⁵⁴

Third, many cities tend to be production clusters, since they are well served by transportation networks such as railways or ports.¹⁵⁵ Many cities are located on rivers or coasts and benefit from good and

150. Sunwoog Kim, *Labor Heterogeneity, Wage Bargaining, and Agglomeration Economies*, 28 J. OF URB. ECON. 160 (1990) (“With heterogeneous production technology, increasing returns to scale, and specific labor requirements, . . . average productivity increases with the size of the labor market.”).

151. See Takuo Imagawa, *Information Technology and Economic Growth: Discovering the Informational Role of Urban Density*, in INDUSTRIAL AGGLOMERATION AND NEW TECHNOLOGIES: A GLOBAL PERSPECTIVE 71 (Masatsugu Tsuji, Emanuele Giovannetti & Mitsuhiro Kagami eds., 2007) (highlighting the public attention to industrial clustering in Silicon Valley, California).

152. See generally ORLY LOBEL, *TALENT WANTS TO BE FREE: WHY WE SHOULD LEARN TO LOVE RAIDS, LEAKS & FREE RIDING* (2013) (discussing the innovation and sharing culture of San Francisco).

153. See Diego Puga, *The Magnitude and Causes of Agglomeration Economies*, 50 J. OF REGIONAL SCI. 203, 210 (2010) (“[A] larger market allows for a more efficient sharing of local infrastructure and facilities, a variety of intermediate input suppliers, or a pool of workers with similar skills.”).

154. See Edward Glaeser, *Introduction to NAT'L BUREAU OF ECON. RES., AGGLOMERATION ECONOMICS* 1, 5 (Edward Glaeser ed., 2010) (reflecting that industrial and urban clustering is a result of agglomeration economics).

155. For a thorough study of innovation clusters, see Camilla A. Hrdy, *Cluster Competition*, 20 LEWIS & CLARK L. REV. (forthcoming 2016).

inexpensive sea or land access to international products.¹⁵⁶ The existence of these clusters facilitates the development of social networks, knowledge spillovers, and the generation of “social capital.” This promotes efficient market transactions based on mutual trust, shared norms, and the willingness and capacity to cooperate.¹⁵⁷ Professionals communicate and connect more easily due to their geographic proximity and the existence of shared facilities. As the legal and sociology literature explains, this social capital results from the existence of repeated interactions, which tend to take place in urban centers.¹⁵⁸

As mentioned earlier, cities are the result of a trade-off between increasing returns on human and talent concentration and urban congestion. Agglomeration can nonetheless generate multiple side effects. There are limits to urban growth, and, as cities become too large and transportation networks too congested, cities might experience a decrease in population, employment, and productivity.¹⁵⁹ In addition, although cities are attractive centers because they allow their inhabitants to share infrastructures and assets, there are also limits to how much access can be granted to these facilities, and rules on how sharing should take place may become necessary. Excessive sharing can result in the depletion of shared infrastructures, ultimately leading to a scenario close to a tragedy of the commons.¹⁶⁰

Urban concentration is thus offset by high living costs, social and income inequality, traffic congestion, pollution, and higher rates of criminality. In order to minimize these negative externalities, modern land use law and zoning regulations have emerged to maintain the quality and character of neighborhoods and protect homeowners from

156. See Hideo Konishi, *Formation of Hub Cities. Transportation Cost Advantage and Population Agglomeration*, 48 J. OF URB. ECON. 1, 2 (2000) (explaining the importance of geographic location and solid transportation networks for hub cities).

157. See James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. 95, 98–99 (Supp. 1988) (analyzing social capital in New York City’s wholesale diamond market); see also Sheila R. Foster, *The City as an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527, 529 (2006) (defining social capital as “the ways in which individuals and communities create trust, maintain social networks, and establish norms that enable participants to act cooperatively toward the pursuit of shared goals”).

158. See, e.g., Xavier de Souza Briggs, *Social Capital and the Cities: Advice to Change Agents*, 86 NAT’L CIVIC REV. 111, 113 (1997) (“Social capital is built up through repeated exchanges among people (or organizations) over time.”).

159. Daniel J. Graham, *Variable Returns to Agglomeration and the Effect of Road Traffic Congestion*, 62 J. OF URB. ECON. 103, 104 (2007) (“[A]s cities become too large . . . the processes which give rise to positive externalities consequently become less efficient.”).

160. See Christian Iaione, *The Tragedy of Urban Roads: Saving Cities from Choking, Calling on Citizens to Combat Climate Change*, 37 FORDHAM URB. L.J. 889, 889 (2010) (“Indeed, in tragedies of the commons, users over-exploit a resource and impose mutual externalities upon each other.”); see also Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243, 1243 (1968) (“In a finite world [population growth] means that the per capita share of the world’s goods must steadily decrease.”).

devaluation by industrial and commercial uses of property.¹⁶¹ Zoning laws, moreover, seek predictability in land regulation, whereas the sharing economy “experiments continuously with assets and technology,” disrupting established business models.¹⁶²

B. Impact of the Sharing Economy on the City

Cities and networks of prosperous city-regions have long been in the driving seat of the global economy.¹⁶³ With the advent of the sharing economy, cities, more than rural areas, will experience the initial economic effects of this new form of capitalism.¹⁶⁴ This Section provides an overview of the potentially transformative effects of the sharing economy. Sharing has indeed already started to leave its marks on the operation, structure, and nature of local government.

1. Transformative Effects

The challenges and opportunities of the sharing economy are currently transforming cities at different levels. First, the sharing economy is altering how urban residents live and consume.¹⁶⁵ This can be leveraged to produce positive externalities and promote social innovation, namely the empowerment of communities, through the value of sharing initiatives.¹⁶⁶

161. See, e.g., *Southern Railway Co. v. City of Richmond*, 139 S.E.2d 82, 88 (1964) (“[T]he purpose of zoning is in general two-fold: to preserve the existing character of an area by excluding prejudicial uses, and to provide for the development of the several areas in a manner consistent with the uses for which they are suited.”). See generally William A. Fischel, *An Economic History of Zoning and a Cure for its Exclusionary Effects*, 41 URB. STUD. 317 (2004) (outlining the history of American zoning and the rise of homeowners as dominant actors in zoning content and administration).

162. Widener, *supra* note 142, at 116–17.

163. See Saskia Sassen, *The Global City: Introducing a Concept*, XI BROWN J. OF WORLD AFF. 27 (2005) (asserting that economic forces, most notably the financial sector, turn cities into “Global Cities”); see also THOMAS J. COURCHENE, QUEENS UNIVERSITY AND INSTITUTE FOR RESEARCH ON PUBLIC POLICY, CITISTATES AND THE STATE OF CITIES: POLITICAL-ECONOMY AND FISCAL-FEDERALISM DIMENSIONS 85 (2005) (on file with author) (stating that Global City-Regions “are in the forefront of regional and global economic integration”).

164. See Cohen & Munoz, *supra* note 70, at 3 (stressing that the sharing economy is “impacting life throughout the globe, but its impact has been highest in cities.”).

165. Cf. NAT’L LEAGUE OF CITIES, CITIES, THE SHARING ECONOMY AND WHAT’S NEXT 1, 1 (2015), <http://www.nlc.org/Documents/Find%20City%20Solutions/City-Solutions-and-Applied-Research/Report%20%20%20Cities%20the%20Sharing%20Economy%20and%20Whats%20Next%20final.pdf> [https://perma.cc/ZE3U-2UKJ] (archived Sept. 22, 2016) (“From innovative technologies and business models to redefined concepts of equity and safety, the sharing economy is impacting cities.”).

166. See Jana Rückert-John et al., *Sustainable Consumption Through Social Innovation: A Typology of Innovations for Sustainable Consumption Practices*, 108 J. OF CLEANER PRODUCTION 784, 789 (2015) (asserting the community-empowering consumption model to focus on alternative social settings as an alternative consumption practice).

Second, sharing can help cities save costs, and studies indeed confirm the potential of sharing for local budgetary savings.¹⁶⁷ When the London borough of Croydon replaced its fleet cars with a Zipcar partnership, it cut staff car travel costs by as much as 40 percent.¹⁶⁸ Municipalities can also save resources through the sharing of heavy equipment with other local governments, which permits them to reduce overall expenditures and to have access to tools that would otherwise have been unavailable.¹⁶⁹ Munirent, for example—a platform that allows municipalities to lend equipment (e.g., trucks) to one other—is currently being used by multiple local governments in Michigan and Oregon.¹⁷⁰ Moreover, some cities have developed their own platforms, inspired by and adapted from existing commercial models. After banning Uber, for example, Seoul is working on the development of its own open source cab-hailing app.¹⁷¹

Third, the sharing economy has the ability to render cities more attractive to certain categories of potential residents, recurrent visitors, and commuters.¹⁷² For many, access to particular amenities, including goods and services the sharing economy provides, is the most important factor guiding their housing and location decision.¹⁷³ As some individuals value access rather than ownership and, consequently, possess fewer personal belongings, the demand for smaller housing units increases.¹⁷⁴ These phenomena require municipalities to revise their housing and zoning policies¹⁷⁵ and create

167. Cf. Stephen R. Miller, *First Principles for Regulating the Sharing Economy*, 53 HARV. J. ON LEGIS. 147, 159 (2016) (“[M]ost sharing economy uses require very little additional infrastructure because they typically do not increase use to the point where new infrastructure is necessary.”).

168. MCLAREN & AGYMEAN, *supra* note 76, at 51.

169. NATIONAL LEAGUE OF CITIES, *supra* note 165, at 1.

170. See Colin Wood, *Munirent Brings the Sharing Economy to the Government*, GOV'T TECH. (Aug. 21, 2014), <http://www.govtech.com/internet/Munirent-Brings-Sharing-Economy-to-Government.html> [<https://perma.cc/9FMS-F329>] (archived Sept. 23, 2016) (describing how Munirent allows local municipalities rent equipment to each other).

171. Neal Gorenflo, *Why Banning Uber Makes Seoul Even More of a Sharing City*, SHAREABLE (July 25, 2014), <http://www.shareable.net/blog/why-banning-uber-makes-seoul-even-more-of-a-sharing-city> [<https://perma.cc/93VE-V6UE>] (archived Sept. 22, 2016).

172. Cf. MCLAREN & AGYMEAN, *supra* note 76, at 21 (“Companies who locate in the cities connect better, both with their users and the qualified potential employees choosing to live there.”).

173. Cf. John Infranca, *Spaces for Sharing: Micro-Units Amid the Shift from Ownership to Access*, 43 FORDHAM URB. L.J. (forthcoming 2016) (manuscript at 10), <http://ssrn.com/abstract=2678072> [<https://perma.cc/GE9T-RMXH>] (archived Sept. 22, 2016) (“This ‘on demand’ access to goods and services resembles an important characteristic of the sharing economy, which is often referred to as the ‘on demand’ economy.”).

174. *Id.* (manuscript at 1–2).

175. See *id.* (manuscript at 1–2) (noting that local governments need to revise their housing policies).

incentives to increase car- and bike-share units.¹⁷⁶ Innovation generated by sharing can develop local economies. This is the idea behind local innovation districts with, for instance, shared workspaces.¹⁷⁷ “Sharing Districts”¹⁷⁸ or “Sharing Cities”¹⁷⁹ are expected to “foster innovation and the development of new business by encouraging collaboration and the sharing of ideas and knowledge.”¹⁸⁰

Fourth, sharing practices have started to change how local services are being delivered, since some cities rely on the technology behind sharing platforms to fulfill traditional public tasks.¹⁸¹ Berlin, for instance, relies on a platform to find housing for the increasing number of refugees that have arrived in its territory in the last two years.¹⁸² This builds on private initiatives elsewhere in Europe that seek to match refugees with individuals offering free rooms in their homes.¹⁸³ In collaboration with San Francisco, Airbnb has created a new tool to allow fee-free accommodation listings that would be activated in the case of a natural disaster, such as an earthquake, in the Bay Area. The city is, accordingly, relying on the platform to provide emergency accommodation to its residents when an urgent need arises rather than attempting to fulfill the impossible task of doing so itself.¹⁸⁴ Moreover, more sector-specific local government operations are being inspired by the sharing economy, including transportation. As urbanites increasingly rely on bike-share, car-share, and parking-share schemes, local governments are compelled to adapt transportation policies.¹⁸⁵

176. See *id.* (manuscript at 12) (“[A] number of jurisdictions have begun to consider the provision of car and bike share infrastructure in the residential land use approval process generally and in the review of micro-unit developments specifically.”)

177. BOSTON REDEVELOPMENT AUTHORITY, *supra* note 143.

178. Infranca, *supra* note 173 (manuscript at 28).

179. See DEBBIE WOSSKOW, UNLOCKING THE SHARING ECONOMY: AN INDEPENDENT REVIEW 11 (2014) (recommending the creation of a pilot “sharing city”—where transport, shared office space, accommodation and skills networks are joined together and residents are encouraged to share as part of their daily lives”).

180. Infranca, *supra* note 173, (manuscript at 28).

181. See Moss, *supra* note 118, at 108 (“[C]ommunications technologies affect the function of cities in an information-based economy.”).

182. Ute Schuhmacher, *Berlin sucht Flüchtlingsquartiere über Online-Plattform* [Berlin wants refugee quarters through online platform], RBB ONLINE (Nov. 4, 2011), <https://www.rbb-online.de/politik/thema/fluechtlinge/berlin/2015/11/fluechtlinge-czaja-unterkuenfte-fanhaus-union.html> [<https://perma.cc/6K86-ZJU4>] (archived Sept. 23, 2016).

183. For the case of “Refugees Welcome,” see REFUGEES WELCOME, <http://www.refugees-welcome.net/#countries> (last visited Feb. 27, 2016) [<https://perma.cc/CG5D-8UPW>] (archived Sept. 23, 2016) (reporting that as of February 2016, 471 refugees have found accommodation through this means).

184. Press Release, S.F. Office of the Mayor, Mayor Lee & Board President Chui Announce New Sharing Economy Emergency Preparedness Partnership (June 11, 2013) (on file with the City and County of San Francisco Office of the Mayor).

185. Cf. Hannah A. Posen, *Ridesharing in the Sharing Economy: Should Regulators Impose Uber Regulations on Uber?*, 101 IOWA L. REV. 405, 409 (2015)

Fifth, sharing practices can transform urban aesthetic and promote the development of historically neglected neighborhoods. The most noted example is Medellín, Colombia, which went from the world's murder capital under the Escobar Cartel to one of the most celebrated success stories of social urbanism.¹⁸⁶ By promoting collaborative reconstruction projects and shifting public investments to recover poor neighborhoods, places like Medellín and Seoul use esthetics and architecture as tools of social transformation and inclusion.¹⁸⁷ This spirit is also gaining ground elsewhere. San Francisco has created Living Innovation Zones that seek to improve and enliven public space through creativity and technology.¹⁸⁸

2. Potential Virtues

Sharing practices have already started to impact urban residents' quality of life and are expected to do so even more in the future.¹⁸⁹ Repair cafés, urban gardens, and various models of shared transportation facilitate their users' daily lives.¹⁹⁰

The sharing economy is, furthermore, assisting cities in operating on a more sustainable basis and improving their environmental record. The role of cities in addressing environmental concerns is ever more significant considering current urbanization levels.¹⁹¹ Cities are important actors in sustainability not only because they are key sites of pollution but also because they offer potential solutions for more

(showing that the taxicab's arrival in American cities at the turn of the twentieth century was influenced by the evolution of mass transit vehicles, replacing horses.)

186. For a case study on the development of Medellín, see MCLAREN & AGYEMAN, *supra* note 76, at 191–98.

187. See April Rinne, *Sharing Economy in Cities: Moving Towards a More Inclusive Urban Future*, GUARDIAN (June 26, 2014, 07:25 AM) <http://www.theguardian.com/sustainable-business/circular-economy-policy-cities-inclusive-urban> (last visited Feb. 27, 2016) [<https://perma.cc/7GRU-AGCT>] (archived Sept. 23, 2016) (“Seoul's Sharing City initiative has supported dozens of resident-led sharing initiatives with public funding and other resources, with the primary goal of boosting community connectedness and trust.”).

188. See MCLAREN & AGYEMAN, *supra* note 76, at 23 (discussing the Living Innovation Zone program, “which improves and enlivens public spaces through creative projects and technologies”).

189. See OECD, CITIES FOR CITIZENS, IMPROVING METROPOLITAN GOVERNANCE 18 (2001) (claiming that cities should be “developed, not only to meet the needs of the economy, but also to help fulfil the aspirations of people for a higher quality of life”).

190. See Julian Agyeman & Duncan McLaren, ‘Smart Cities’ Should Mean ‘Sharing Cities,’ TIME (Sept. 29, 2014), <http://time.com/3446050/smart-cities-should-mean-sharing-cities/> [<http://perma.cc/E4R7-NWW3>] (archived Sept. 21, 2016) (noting that “[s]hared public Bus Rapid Transit systems are transforming cities like Medellín in Colombia by providing previously marginalized communities with access to jobs and facilities”).

191. See OECD, *supra* note 189, at 11 (articulating the pressures of rising populations, the growing size and number of metropolitan regions, and environmental problems).

sustainable ways of human existence.¹⁹² The sharing economy counters some of urbanization's most negative effects.¹⁹³ Walkable neighborhoods well-served by public transportation are believed to serve green objectives, contributing to the reduction of urban pollution.¹⁹⁴ In Denver, the city's bike-sharing scheme, B-Cycle, is estimated to have replaced 41 percent of car trips, and the Cleantech Group has found that Airbnb guests use 78 percent less energy than hotel guests, also reducing water consumption.¹⁹⁵

The German Association of Cities (*Deutscher Städtetag*) believes that stationary car-sharing should be encouraged, as it reduces the number of cars on urban streets, creates space needed for other modes of transportation, and, in doing so, contributes to climate protection and urban quality of life.¹⁹⁶

IV. CITIES AS REGULATORS

In the United States and Europe, cities have not remained indifferent to new sharing practices. On the contrary, local governments are becoming the key regulators of the sharing economy. In 2015, already 40 percent of all American cities surveyed had regulated at least some aspects of sharing practices.¹⁹⁷ However, 58 percent of them do not have any form of specific home-sharing regulations and 59 percent do not regulate ride-sharing. As the U.S. National League of Cities found, cities can facilitate or restrict the

192. *Id.* at 1. ("To sustain life, the global economy will need to transition to more sustainable consumption and production systems (SCP), and it is expected that cities will form part of the solution.")

193. *Cf. id.* at 12. ("The governance structures presently in place in the metropolitan areas of many OECD Member countries are, however, outdated and not well adapted to the tasks they face.")

194. *See* Infranca, *supra* note at 173 (manuscript at 6) ("Collaborative consumption and denser living in walkable neighbourhoods dependent upon public transportation can both serve sustainability goals.")

195. *New Study Reveals A Greener Way to Travel: Airbnb Community Shows Environmental Benefits of Home Sharing*, AIRBNB, <https://www.airbnb.com/press/news/new-study-reveals-a-greener-way-to-travel-airbnb-community-shows-environmental-benefits-of-home-sharing> (last visited Oct. 13, 2016) [<https://perma.cc/3TKU-AS2S>] (archived Oct. 13, 2016).

196. *Positionen des Deutschen Städtetages zum (Gesetzesentwurf) Car-Sharing* [Position of the German Association of Municipalities concerning planned car-sharing legislation], DEUTSCHER STÄDTETAG (June 9, 2015), <http://www.staedtetag.de/presse/beschluesse/073985/index.html> [<https://perma.cc/2E8H-PD83>] (archived Oct. 2, 2016) ("The Bureau of the German Association of Cities considers the promotion of the stationary car sharing for a suitable means to replace private cars in cities, to reach a reduction in the space requirements for stationary traffic in the long term, thus contributing to climate protection and a livable city.")

197. NAT'L LEAGUE OF CITIES, *SHIFTING PERCEPTIONS OF COLLABORATIVE CONSUMPTION* 6 (2015), <http://www.nlc.org/Documents/Find%20City%20Solutions/City-Solutions-and-Applied-Research/Brief%20%20Shifting%20Perceptions%20of%20Collaborative%20Consumption2015.pdf> (last visited Oct. 13, 2016) [<https://perma.cc/MTA3-SMKH>] (archived Oct. 13, 2016) [hereinafter *SHIFTING PERCEPTIONS*].

implementation of sharing practices. This has local and global consequences, as municipal restrictions may impede the platform's ability to grow worldwide.¹⁹⁸

Local regulators are competent regarding many policy areas immediately affected by the sharing economy, such as transportation (for shared transport), food sales (for food-sharing), zoning, and hotel taxes (for house-sharing).¹⁹⁹ In the past five years, local regulators have been caught between demonstrations and interest wars and between traditional, licensed businesses and new market entrants, namely commercial and collaborative digital platforms. The European Union's Committee of the Regions has stressed that, given the potentially disruptive impact of the sharing economy at local and regional levels, subnational actors should regulate these practices.²⁰⁰

While some cities have permitted sharing-economy platforms to operate without undertaking any legal action, others have adopted an explicit but minimal regulatory position. The next Sections provide an overview of the different regulatory approaches, distinguishing between cities like San Francisco, which permit home-sharing platforms (e.g., Airbnb) to operate but establish explicit limits to their operation, and cities like Berlin and Barcelona, which have adopted more restrictive approaches so as to limit the commercial capture of home-sharing platforms and the negative impact of the sharing economy on housing prices.²⁰¹ One of the interesting aspects of the restrictive regulation of home-sharing platforms is the fact that many cities (and national courts) have activated landlord-tenant regulations. This has occurred, for example, in the Netherlands in Rotterdam in 2015.²⁰² However, these practices appear to be closer to unlicensed hotels or bed-and-breakfasts, given the temporary character of most advertised leases.

Until now, most cities in the New and Old World have either tolerated or banned sharing-economy practices. This "tolerate-or-ban" dichotomy has affected both commercial platforms and genuine sharing practices, and it appears to result in the maintenance of a traditional approach to regulation that is typical of competitive, but not collaborative economies. This Part provides an overview of this

198. *Id.* at 1.

199. See Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059 (1980) (showing and explaining the reasons why cities are entities of limited power that can only regulate in specific areas).

200. See *Opinion of the Committee of the Regions on the "Local and regional dimension of the sharing economy,"* 115th plenary session, December 2015 ECON-VI/005, [<https://perma.cc/F8ZL-RR8V>] (archived Oct. 2, 2016) (explaining the need for localities to regulate the sharing economy).

201. See *infra* Part 2.

202. Rechtbank Rotterdam, 6 november 2015, ECLI:NL:RBROT:2015:7899 (Stichting Woonstad Rotterdam/[gedaagde]) (Neth.) <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2015:7899&keyword=%22Airbnb%22> [<https://perma.cc/BF2R-9H94>] (archived Oct. 2, 2016).

regulatory dichotomy in a number of representative cities in the United States and Europe, clarifying the underlying reasons for their permissive or restrictive regulatory position on sharing-economy practices.

A. *The Permissive Approach*

This Section discusses the permissive approach of a number of “sharing-economy-friendly” cities that have, thus far, tolerated the operation of sharing platforms within their territory, either by allowing them to function despite existing legislation (i.e., not enforcing local regulations), or by imposing restrictions on the frequency or duration of these practices, collecting taxes through home-sharing platforms, and requiring registration with the city council before leasing the unit.²⁰³

1. The “Tolerant” Cities

When the first sharing-economy platforms like Airbnb emerged in San Francisco and New York City, cities did not have specific regulations and policies for this new exchange model.²⁰⁴ Fast-forward five years and there is a different picture. Although many cities do not yet have a regulatory framework for the sharing economy, many have tolerated these platforms, either by leaving them unregulated or by changing their regulations to facilitate development.

The state of Arizona has been an example of this *laissez-faire* approach to home-sharing.²⁰⁵ Phoenix, Tucson, and the Black Hills region offer hundreds of Airbnb accommodations, but, until 2015, the enforcement of local regulations remained very minimal.²⁰⁶ Since July 2015, following the conclusion of an agreement between Airbnb and the city of Phoenix, local taxes started being collected.²⁰⁷ However, there

203. See, e.g., Cecilia Kang, *Airbnb Takes its Case to U.S. Mayors Conference*, N.Y. TIMES (Jan. 21, 2016), http://www.nytimes.com/2016/01/22/technology/airbnb-takes-its-case-to-us-mayors-conference.html?smid=tw-share&_r=1 (subscription required) [<https://perma.cc/3QSF-8PUK>] (archived Nov. 1, 2016) (giving various examples of how cities have regulated Airbnb).

204. See Jenna Wortham, *Room to Rent, via the Web*, N.Y. TIMES (July 25, 2011), <http://www.nytimes.com/2011/07/25/technology/matching-travelers-with-rooms-via-the-web.html> (subscription required) [<https://perma.cc/N6SJ-SAZ2>] (archived Oct. 13, 2016) (although Airbnb started leasing shared rooms and entire houses in 2007 in New York City, it was only in May 2011 that the NYC city council passed regulations designed to curb this practice).

205. See Gregory E. Lines, *Hej, Not Hejda: Regulating Airbnb in the New Age of Arizona Vacation Rentals*, 57 ARIZ. L. REV. 1163, 1165 (2015) (stating that Airbnb remains largely unregulated in Arizona).

206. *Id.* at 1165.

207. Justin Gardiner, *Airbnb to Charge Sales Tax on Phoenix Rentals*, AZ CENTRAL (June 26, 2015), <http://www.azcentral.com/story/news/local/phoenix/>

appear to be no other legal restrictions for Phoenix hosts sharing their apartments with tourists. The enforcement of existing Phoenix zoning ordinances would, however, impede many hosts from doing so.²⁰⁸ The city has thus knowingly decided to not enforce its existing regulatory framework and to allow the sharing economy to develop. In May 2016, the Arizona Governor signed three bills that aimed to promote sharing-economy platforms, allowing, for example, platforms to structure their workforce as they wish, giving priority to independent contractors.²⁰⁹

Similar *laissez-faire* approaches are present in Dallas, Texas where the city appears not to enforce local regulations against Airbnb. In addition, in 2015, it was mentioned in the media that only a very limited number of hosts were paying local taxes on the property being sublet on Airbnb.²¹⁰ Similarly, San Antonio, TX has offered no explicit regulatory obstacles to Airbnb or other home-sharing platforms, allowing the sector to develop.²¹¹

Laissez-faire approaches would be more necessary in other sectors of the sharing economy that are characterized by more literal forms of collaborative consumption. Similar to home-sharing, many food-sharing practices would often be seriously impeded under existing local health and safety regulations. Cities have long imposed protections regarding the conditions under which food is to be stored and handled in restaurants.²¹² Imposing these same requirements on food-sharing initiatives would make them unlikely to succeed.²¹³ Some local governments even outlaw sharing food with the homeless, despite the

2015/06/25/airbnb-charge-sales-tax-phoenix-rentals/29283651/ [https://perma.cc/T6ZJ-5HKG] (archived Oct. 2, 2016).

208. See Lines, *supra* note 205, at 1176 (noting that many properties would not be able to operate under existing bed and breakfast ordinances).

209. Steve Totten, *Governor Ducey signs Airbnb bill, other sharing economy bills*, PHOENIX BUS. J. (May 12 2016 1:57 PM), <http://www.bizjournals.com/phoenix/blog/business/2016/05/governor-ducey-signs-airbnb-bill-other-sharing.html> [https://perma.cc/T8A6-M2T8] (archived Oct. 2, 2016).

210. See Eric Nicholson, *Dallas Has Hundreds of Airbnb Hosts. Two of Them Pay Their Taxes*, DALLAS OBSERVER (Sept. 2, 2015), <http://www.dallasobserver.com/news/dallas-has-hundreds-of-airbnb-hosts-two-of-them-pay-their-taxes-7542795> [https://perma.cc/9EU2-GNKX] (archived Oct. 13, 2016) (noting that only two hosts in Dallas, out of two hundred listings, were paying taxes on their home-sharing practices).

211. Mark Reagan, *No Rules: Will San Antonio Regulate Airbnb and Home Away?*, SAN ANTONIO CURRENT (Feb. 18, 2015), <http://www.sacurrent.com/sanantonio/no-rules-will-san-antonio-regulate-airbnb-and-homeaway/Content?oid=2397765> [https://perma.cc/P9CP-RPYJ] (archived Oct. 13, 2016).

212. It should however be noted that in the United States anything that qualifies as a private club is not bound by these regulations. See, e.g., *Tillman v Wheaton-Haven Recreation Ass'n, Inc.*, 410 U.S. 431 (1973); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972); *Daniel v. Paul*, 395 U.S. 298 (1969).

213. Urban food production also involves questions of access to land, which are not dealt with here. For an overview of these issues, see Gerda R. Wekerle & Michael Classens, *Food Production in the City: (Re)negotiating Land, Food and Property*, 20 LOCAL ENV'T 1175 (2015).

social value of this practice.²¹⁴ Also, selling fruit grown in your backyard to a neighbor may be contrary to local zoning regulations in many American cities. Local governments are now realizing that such regulations and policies might be undesirable because they undermine the potential social value and are, hence, contrary to the public interest.

The Los Angeles Department of City Planning, for instance, is experimenting with industrial mixed-use areas that include hybrid industrial live/work zones to facilitate peer-to-peer sharing initiatives.²¹⁵ A number of local governments have also made changes to their planning codes to facilitate urban gardening. In 2011, Oakland adopted new commercial and residential zones that allow crop and animal raising activities with a conditional use permit in all commercial and residential areas.²¹⁶ These changes have now been endorsed through an amendment of the local zoning regulations to allow community gardens to operate without a special permit²¹⁷ where the site is no bigger than one acre.²¹⁸ This facilitates small-scale urban agriculture and the sale of the resulting products.

In 2010, the mayor of Seattle, Washington signed an urban farm and community garden ordinance to promote locally grown food and achieve greater local food sustainability and security.²¹⁹ The municipality also made available multiple online guides on growing and selling food for residents of the city.²²⁰ Examples of other cities that have updated their planning regulations to accommodate urban

214. See NATIONAL COALITION FOR THE HOMELESS, FOOD-SHARING REPORT: THE CRIMINALIZATION OF EFFORTS TO FEED PEOPLE IN NEED 4 (October, 20, 2014), <http://nationalhomeless.org/wp-content/uploads/2014/10/Food-Sharing2014.pdf> [<https://perma.cc/98LT-K2MY>] (archived Oct. 2, 2016) (stating that twenty-two cities have passed ordinances that restrict food sharing).

215. HYBRID INDUSTRIAL LIVE/WORK (HI) ZONE QUICK GUIDE, L.A. DEPT. CITY PLANNING 1 (June 10, 2015), <http://planning.lacity.org/ordinances/docs/hybrid/HiZoneFAQ.pdf> [<https://perma.cc/W44B-Z44U>] (archived Nov. 1, 2016).

216. *Major Urban Ag Legislation*, URBANAGLAW, <http://www.urbanaglaw.org/planning-and-zoning/oakland-california/> (last visited Oct. 13, 2016) [<https://perma.cc/5TLY-X53D>] (archived Oct. 2, 2016).

217. This is conditional upon the fact that no animal husbandry is involved. See OAKLAND, CAL., PLANNING CODE Ch. 17.11.060, <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak032032.pdf>. [<https://perma.cc/T89T-PV4N>] (archived Oct. 13, 2016) (providing special provisions for permitted and conditionally permitted activities in the OS zone).

218. *Id.* at Ch. 17.13.

219. See SEATTLE, WASH., ORDINANCE 123378, <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s3=116907&s4=&s2=&s5=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F~public%2Fcbory.htm&r=1&f=G> (last visited Oct. 13, 2016) [<https://perma.cc/KF44-33AD>] (archived Oct. 2, 2016).

220. See *Food Gardening*, CITY OF SEATTLE, <http://www.seattle.gov/Util/EnvironmentConservation/MyLawnGarden/FoodGardening/index.htm> (last visited Oct. 13, 2016) [<https://perma.cc/CSN9-NN5F>] (archived Oct. 2, 2016).

gardening include San Francisco, California²²¹ and Philadelphia, Pennsylvania.²²²

2. The “Minimalists”

Minimalistic regulators can be found in both the New and the Old Worlds. Amsterdam was one of the first Old World cities to explicitly authorize and regulate Airbnb and other forms of “vacation rental.” In 2014, the city signed a Memorandum of Understanding with Airbnb establishing some conditions for the platform to operate in Amsterdam. The content of this document was made public in March 2016 as well as the fact that the temporary permission for Airbnb to operate on lightly regulated terms had been extended for one year.²²³ Since 2014, Amsterdam has allowed homeowners and tenants (with their landlords’ permission) to lease their houses for a maximum of two months per year.²²⁴ Hosts are, however, required to be legal residents in these houses (even if temporarily absent). Amsterdam expects Airbnb to provide an overview of applicable legislation and regulation and expects hosts to comply with them. This includes the payment of local tourist taxes²²⁵ and income tax,²²⁶ a limitation on the maximum

221. SAN FRANCISCO, CA, ORDINANCE 66-11 (2011), <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances11/o0066-11.pdf> (last visited Oct. 13, 2016) [<https://perma.cc/5Y23-DT8C>] (archived Oct. 13, 2016).

222. PHILADELPHIA, PA., PLANNING CODE § 14-600, [http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:philadelphia_pa](http://library.amlegal.com/nxt/gateway.dll/Pennsylvania/philadelphia_pa/thephiladelphiacode?f=templates$fn=default.htm$3.0$vid=amlegal:philadelphia_pa) (last visited Oct. 13, 2016) [<https://perma.cc/4RND-D5YQ>] (archived Oct. 2, 2016).

223. Kennisnemen van de voortgang van de verlenging en opheffen geheimhouding Memorandum of Understanding tussen de gemeente Amsterdam en Airbnb (2016, nr. 81/186) [Decision of the Executive Council of Amsterdam to renew and publish the Memorandum of Understanding between the municipality of Amsterdam and Airbnb], <https://zoek.officielebekendmakingen.nl/gmb-2016-38310.html> [<https://perma.cc/BD28-SVW3>] (archived Oct. 13, 2016).

224. Gemeente Amsterdam, *Mag ik mijn woning verhuren als ik op vakantie ben?* [*Can I rent my home when I am on vacation?*], GEMEENTE AMSTERDAM, <https://www.amsterdam.nl/veelgevraagd/?caseid=%7B9B2C2273-F797-460B-AD20-05DFB9F6F39F%7D> (last visited Oct. 13, 2016) [<https://perma.cc/3K7A-SF7X>] (archived Oct. 13, 2016) (providing an overview of municipal rules for short-term home-sharing).

225. In a recent case in Den Bosch, an individual exploiting a bed and breakfast tried to justify his refusal to pay tourist tax on the grounds of the alleged inequality between licensed hotels and bed and breakfasts and Airbnb. The court rejected the argument. See Rechtbank Oost-Brabant, 23 September 2014, ECLI:NL:RBOBR:2014:5512 (Neth) <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBOBR:2014:5512&keyword=%22Airbnb%22> [<https://perma.cc/UD5Z-4UBG>] (archived Oct. 13, 2016).

226. Dutch tax law exempts the payment of taxes on amounts inferior to about 5000 euros. See *Verhuur deel eigen woning (kamerverhuurvrijstelling)*, BELASTINGDIENST, http://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/prive/woning/eigen_woning/u_hebt_een_woning/verhuur_deel_eigen_woning_kamerverhuurvrijstelling (last visited Oct. 13, 2016) [<https://perma.cc/48G3-YE9A>] (archived Oct. 13, 2016).

occupancy to four people at a time, a requirement to inform their insurance company, and a requirement to comply with fire safety regulations. But, despite the municipality's claim that it welcomes sharing-economy practices, there have been many legal incidents both in Amsterdam and in other Dutch cities.²²⁷ In most cases, hosts were evicted for violating lease agreements or social housing regulations that limit the ability to sublet.²²⁸ In March 2016, Amsterdam published a report with the results of the evaluation of Airbnb's presence in the city, including its compliance with local regulations. While Airbnb complied with the requirements imposed by the municipality, Amsterdam's residents appeared to be very critical of the platform. Considering the significant number of professionals using the platform "illegally," the municipality also announced that it was planning to review its regulations.²²⁹

In many cases, minimal regulation aims to prevent the professional use of home-sharing platforms—by limiting the duration of the lease or the number of listings per host—and tax evasion. To illustrate, in Jersey City, New Jersey, sharing housing is legal, but residents can only rent their homes for fewer than thirty days per year.²³⁰ The city council emphasized the need to consider a number of "commonsense protections": homeowners and renters are not allowed to "change the character of the neighborhood," users can only rent up to five units (to avoid the formation of "illegal hotels"), and Airbnb's insurance must be maintained at its current level (\$1 million).²³¹ The New Jersey City Council is currently collaborating with Airbnb and,

227. See, e.g., Rechtbank Noord-Holland, 6 mei 2015, ECLI:NL:RBNO:2015:2337 (Neth.) <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2015:2337> (last visited Oct. 13, 2016) [<https://perma.cc/9T5F-EUQF>] (archived Oct. 13, 2016) (the eviction of the Airbnb host was attributed to the lack of landlord's permission).

228. Rechtbank Amsterdam, 22 oktober 2014, ECLI:NL:RBAMS:2014:7231 (Neth.). <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2014:7231> (last visited Oct. 13, 2016) [<https://perma.cc/U3RF-UWEX>] (archived Oct. 13, 2016). More recently, see also a similar case in Amsterdam. See Rechtbank Amsterdam, 7 juli 2015, ECLI:NL:RBOBR:2015:4335 (Neth.), <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:4335&keyword=%22Airbnb%22> (last visited Oct. 13, 2016) [<https://perma.cc/J8PE-8AP9>] (archived Oct. 13, 2016).

229. Amsterdam versterkt grip op toeristische verhuur [*Amsterdam strengthens the control of tourist accommodation*], GEMEENTE AMSTERDAM (Mar. 18, 2016), <https://www.amsterdam.nl/wonen-leefomgeving/wonen/nieuws-wonen/amsterdam-versterkt/> [<https://perma.cc/GYZ3-J6JZ>] (archived Oct. 13, 2016).

230. OFFICE OF JERSEY CITY, MAYOR FULOP LEADS ON SHARING ECONOMY, JERSEY CITY TO BE FIRST IN THE TRI-STATE AREA TO OFFICIALLY ALLOW AIRBNB (Oct. 12, 2015), http://www.cityofjerseycity.com/uploadedFiles/Public_Notices/Press_Releases/10-12-15%207am%20Airbnb%20RELEASE%20.pdf [<https://perma.cc/Z26U-KE8X>] (archived Oct. 13, 2016).

231. *Id.*

like what happens in Amsterdam, the platform is helping the city collect hotel taxes.²³²

San Francisco, California has adopted similar minimal regulatory requirements.²³³ As of February 1, 2015, home-sharing platforms are permitted, but strictly regulated to avoid the establishment of illegal hotels and the deterioration of the housing market.²³⁴ There are also *ex ante* registration requirements, as hosts must register to rent their primary residential units for periods of fewer than thirty nights.²³⁵

In Austin, Texas, homeowners also have to comply with minimal requirements, including obtaining an operating license to share their housing space for a profit and setting the maximum duration at thirty consecutive days.²³⁶ The rental of partial units must also comply with a number of requirements, notably, providing the exclusive use of a sleeping room and shared use of a full bathroom, requiring the “general” presence of the owner, prohibiting rental of more than one partial unit on the property, and prohibiting rental to more than a single party of individuals.²³⁷

Other European cities have adopted regulations and policies favorable to the sharing economy. In London, Airbnb is a £300 million business.²³⁸ Despite the city’s clear housing problem, the UK government decided in 2015 that existing regulations from 1973 limiting the use of residential premises were difficult to enforce and updated them “to boost the sharing economy.”²³⁹ The 2015

232. Steven Fulop, *Why Jersey City Will Allow Airbnb*, HUFFINGTON POST (Oct. 19, 2015), http://www.huffingtonpost.com/steven-fulop/why-jersey-city-will-allo_b_8331016.html [<https://perma.cc/H2U9-2ZQ3>] (archived Oct. 2, 2016).

233. MCLAREN & AGYEMAN, *supra* note 76, at 21.

234. See SAN FRANCISCO, CAL., ORDINANCE NO. 218-14, <http://www.sf-planning.org/index.aspx?page=4004> [<https://perma.cc/4UB7-83QE>] (archived Oct. 13, 2016). Ordinance 218-14 amends the Administrative and Planning Codes to allow platform hosts to rent their properties without violating the City’s Residential Unit Conversion and Demolition Ordinance (Administrative Code Chapter 41A) or the Planning Code.

235. See City and County of San Francisco, *Office of Short-term Residential Rentals and FAQs*, OFF. OF PLANNING, <http://www.sf-planning.org/index.aspx?page=4004> (last visited Nov. 1, 2016) [<https://perma.cc/J6VU-AT2R>] (archived Oct. 2, 2016) (“This includes renting a portion or the entire unit while [the host] is also present for an unlimited number of nights per year and renting a portion or the entire unit while the host is *not* present for a maximum of 90 nights per year.”).

236. AUSTIN, TEX., Ordinance No. 20130926-144, <http://www.austintexas.gov/edims/document.cfm?id=199458> (last visited Nov. 1, 2016) [<https://perma.cc/X2FK-ZF46>] (archived Oct. 13, 2016).

237. See *id.* Besides adequate home insurance, Airbnb homeowners must show proof of payment of hotel room occupancy tax. This short-term rental license is valid for one year and can be renewed annually, provided that the homeowner pays the license fee and provides the necessary documents. *Id.*

238. UK HOUSE OF COMMONS, *supra* note 12.

239. UK DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT, PROMOTING THE SHARING ECONOMY IN LONDON. POLICY ON SHORT-TERM USE OF RESIDENTIAL PROPERTY IN LONDON (2015), <https://www.gov.uk/government/uploads/system/>

Deregulation Act henceforth allows residential accommodation to be sublet for a maximum of ninety nights per calendar year without becoming an unlawful “change of use.”²⁴⁰

In France, the national legislature enacted the 2014 *Loi Allur*, which allows owners to rent out their principal residence for up to four months with no need for any formalities other than taxing the revenues.²⁴¹ For secondary residences, the approval of the local authority is needed.²⁴² Despite the existence of national legislation, local authorities retained some autonomy in deciding how to approach sharing in the housing sector. Since October 2015, Airbnb has collected hotel taxes in Paris, and the city has been conducting investigations (including door-to-door raids) to control compliance with the different legal requirements and to avoid the professional exploitation of units through sharing platforms.²⁴³ Also, in Italy, some cities are becoming increasingly sharing-friendly. Lombardy introduced new rules in 2015 to allow residents to share parts of their homes on home-sharing platforms.²⁴⁴ The city of Milan and Airbnb have entered into a partnership, which included Airbnb helping to provide accommodation to the numerous but temporary visitors of the 2015 Milan Expo.

The imposition of minimal requirements reveals that local authorities are willing to embrace the benefits of the genuine sharing economy and use it to address common problems, such as accommodation shortages during events. However, the limitations on the duration of the leases and the non-onerous registration requirements appear designed to limit the use of these platforms by

uploads/attachment_data/file/402411/Promoting_the_sharing_economy_in_London.pdf [https://perma.cc/FZ6W-CHM4] (archived Oct. 13, 2016). Section 25 of the Greater London Council (General Powers) Act 1973 provided that the use of residential premises for less than ninety consecutive days amounts to a change of use, which requires planning permission.

240. See Deregulation Act 2015, c. 20 § 44 & 45 (UK). The UK Government has pointed out that this rule is difficult to enforce as housing platforms donot share their data with local officials. In addition, hosts might still risk breaching other local regulations, which have not been updated, such as those on food safety, when offering breakfast to their guests. See UK HOUSE OF COMMONS, *supra* note 12.

241. Loi 2014-366 du 24 mars 2014 pour l'accès au logement et un urbanisme rénové [Act 2014-366 of 24 March 2014 for Access to Housing and Renovation planning], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], March 26, 2014, p. 5809.

242. *Id.*

243. Oliver Gee, *Paris in new crackdown on illegal Airbnb flats*, THE LOCAL (Jan. 13, 2016), <http://www.thelocal.fr/20160113/paris-cracks-down-on-illegal-airbnb-flats> [https://perma.cc/3E7X-UMTV] (archived Oct. 13, 2016); John Lichtfield, *Airbnb in Paris to Collect City Taxes As Site Upsets Hotels and Residents*, INDEPENDENT (Aug. 27, 2015), <http://www.independent.co.uk/news/world/europe/Airbnb-in-paris-to-collect-city-taxes-as-site-upsets-hotels-and-residents-10475503.html> [https://perma.cc/229K-SNQW] (archived Oct. 2, 2016).

244. The new regulation makes clear that individuals renting spaces are not bound by the rules applicable to professionals. See Legge Regionale 8 agosto 2016 n.32 (It.).

professionals. In addition, the legalization of home-sharing platforms on these terms—as seen in Amsterdam—is susceptible to limiting the expansion of the black market economy and tax evasion, as platforms can easily collect tourist tax and be used by tax authorities to locate unlicensed bed-and-breakfasts.

B. *The Restrictive Approach*

Despite its benefits, the sharing economy continues to generate mixed feelings in many cities, which perceive unlicensed home-sharing practices as violations of their longstanding zoning, fire safety, tourist accommodation, and local tax regulations. This Section provides an overview of the more restrictive policies and regulations adopted by New York City (NYC) and some European cities that have tried to respond to the expansion of both home-sharing and ride-sharing platforms.

1. Restrictive Regulation and Policy in New York City

In light of the emergence of housing platforms, the NYC Council prioritized the enforcement of local regulations to stop illegal hotels.²⁴⁵ While one in five apartments located in the trendiest neighborhoods is on Airbnb,²⁴⁶ recent host listings released by the platform revealed that more than half of all listings could be illegal.²⁴⁷ Many hosts have more than one listing, suggesting that Airbnb is helping the operation of commercial businesses without complying with hotel regulations. According to a recent study, 37 percent of the revenue generated through Airbnb rentals belongs to 6 percent of hosts.²⁴⁸ In New York

245. *NYC to Spend \$10 Million in Crackdown of Illegal Hotels, Airbnb*, NBC NEW YORK (November 16, 2015), <http://www.nbcnewyork.com/news/local/New-York-City-Illegal-Hotel-Crackdown-Spending-Airbnb-350547651.html> [<https://perma.cc/GL2T-E6YK>] (archived Oct. 13, 2016).

246. Jennifer Fermino, *Airbnb Taking Up 1 out of 5 Vacant Apartments in Popular New York City Zip Codes*, N.Y. DAILY NEWS (July 29, 2015), <http://www.nydailynews.com/news/politics/airbnb-takes-1-5-apartments-popular-nyc-zip-codes-article-1.2307521> (subscription required) [<https://perma.cc/4P3N-DLWA>] (archived Oct. 13, 2016) (“the 20 most popular Airbnb neighborhoods — in Manhattan, Brooklyn and Long Island City, Queens — have lost 10% of their available housing units to Airbnb, according to the study.”).

247. The initial judicial controversy regarding a subpoena imposed on Airbnb with reference to the Attorney General’s request to produce a list of all Airbnb hosts renting their apartments in NYC. See *Airbnb, Inc. v. Schneiderman*, 44 Misc. 3d 351, 358, 360 (N.Y. Sup. Ct. 2014).

248. See NEW YORK STATE OFFICE OF THE ATT’Y GEN., *AIRBNB IN THE CITY 2* (October 2014), <http://www.ag.ny.gov/pdfs/Airbnb%20report.pdf> [<https://perma.cc/D7SN-VZ5F>] (Oct. 13, 2016) (analyzing quantitative data on Airbnb rentals in NYC from January 2010 to June 2014); see also Maya Kosoff, *New York Attorney General: Nearly 3 out of 4 NYC Airbnb Rentals Are Illegal*, BUS. INSIDER (October 16, 2014), <http://www.businessinsider.com/new-york-attorney-general-nearly-3-out-of-4-nyc-airbnb-rentals-are-illegal-2014-10> (accessed January 29, 2016) (“around 6% of Airbnb

City, vacation rental is regulated by a complex patchwork of state and local rules, including the New York State Multiple Dwelling Law and the New York Administrative Code—which requires business licensing in some cases—the New York City Zoning Regulations, rent control rules, and hotel room occupancy tax.²⁴⁹ For example, a “private room” rental for fewer than thirty days is legal only when a permanent resident is present during the stay.²⁵⁰ This restriction aims to prevent the usurpation of platforms by professionals and provide evidence of the “genuine sharing” of spare rooms. The payment of local taxes has been one of the central issues opposing Airbnb in New York City.²⁵¹ While Airbnb claims to be willing to collect hotel room occupancy taxes, local authorities have so far refused to accept it, arguing that the platform is not a hotel, but that it enables individuals to run illegal hotels.²⁵² Over the past few years, numerous fines have been applied to hosts for not complying with local regulations.²⁵³

2. Restrictive Approaches in European Cities to Home-Sharing

Barcelona is pursuing one of the most prohibitive approaches towards home-sharing in light of the elevated numbers of tourists. Since the city is currently developing multiple policies in order to become a sharing city, its position toward Airbnb may appear to be paradoxical at first blush.²⁵⁴ But, in order to limit tourism and to prevent locals from being priced out of property, the city has clamped

hosts in New York City accounted for a disproportionate share of revenue: 37%, or \$168 million.”).

249. See generally NEW YORK STATE ATT’Y GEN., *supra* note 248.

250. *Id.* at 8.

251. See Roberta A. Kaplan & Michael L. Nadler, *Airbnb: A Case Study In Occupancy Regulation and Taxation*, 82 U. CHI. L. REV. DIALOGUE 103, 109 (2015) (“Taxation and housing laws are at the forefront of the regulatory and legal issues that Airbnb faces, as aptly demonstrated by recent challenges to Airbnb’s operations in New York City.”).

252. See, e.g., NEW YORK CITY DEPARTMENT OF FINANCE, LETTER RESPONDING TO REQUEST FOR RULING REGARDING NEW YORK CITY HOTEL ROOM OCCUPANCY TAX *5 (Aug. 21, 2013), http://www1.nyc.gov/assets/finance/downloads/pdf/redacted-letter-rulings/hotel/lr13_4939.pdf [<https://perma.cc/5YC4-DD7A>] (archived Oct. 13, 2016) (“Under the facts presented, the Company is neither a hotel operator nor a room remarketer. The Company is not a person operating a hotel in New York City.”).

253. The most recent development in this context involves a 2015 bill that shifts the burden of these fines to the homeowners, see for example Donna Tan, *NY Official: Airbnb Stay Illegal; Host Fined \$2,400*, CNET (May. 20, 2013), <http://www.cnet.com/news/ny-official-airbnb-stay-illegal-host-fined-2400/> [<https://perma.cc/729S-ZA97>] (archived Oct. 13, 2016) (“The case started in September when Warren rented his condo to a woman for a three-day stay.”).

254. Matthew Claudel, Alice Birolo, and Carlo Ratti, *Government Role in Governing a Smart city*, in SMART CITIES AS DEMOCRATIC ECOLOGIES 23, 28 (Daniel Araya ed., 2016).

down on Airbnb for breaching Catalonian property rental rules.²⁵⁵ However, Barcelona is not the only European city trying to limit the phenomenon. In Berlin, Airbnb has been facing restrictions since 2013, when the state (*Land*) passed a law that prohibits any use of residential space for purposes other than residence. The *Zweckentfremdungsverbotsgesetz*,²⁵⁶ aimed at keeping rents in Berlin affordable, limits the possibility of subletting rooms for a profit.²⁵⁷ The legislation hence seeks to prevent housing shortages and price surge.²⁵⁸ It does so by prohibiting the subletting of more than 50 percent of the overall surface of the home, which has the effect of outlawing the subletting of entire homes or apartments while tolerating the subletting of individual rooms.²⁵⁹ Those desiring to sublet an entire apartment must seek the preliminary approval of the local district office (*Bezirksamt*).²⁶⁰ On April 30, 2016, the transitory period envisaged by the regulatory framework expired.²⁶¹ As a consequence, the number of listings on the platform has dropped by 40 percent within a month.²⁶² This can be understood in light of the strict fines that Berlin imposes on hosts (but not guests) if they do not comply with this legislative framework.²⁶³ This restrictive approach to home-sharing has also been visible at the judicial level. To illustrate, a Berlin court decided in 2015 that renters that sublet without the owner's prior authorization can be evicted without prior notice in accordance with national legislation.²⁶⁴

255. Raphael Minder & Mark Scott, *Sharing Economy Faces Patchwork of Guidelines in European Countries*, N.Y. TIMES (Sept. 21, 2014), <http://www.nytimes.com/2014/09/22/technology/sharing-economy-faces-patchwork-of-guidelines-in-european-countries.html> (subscription required) [<https://perma.cc/W8KJ-2SP9>] (archived Oct. 13, 2016). While Barcelona sticks to its policy, Catalonia is considering to allow individuals to sublet rooms to tourist (a maximum of two rooms per property, during a maximum of four months a year) where they agree to levy a tourist tax.

256. Gesetz über das Verbot der Zweckentfremdung von Wohnraum vom 29. November 2013, GVBl. Berlin, S. 626 [hereinafter Berlin Law]. Individuals that previously offered their spaces for tourist accommodation however benefit from a two-year transitory period.

257. *Id.* at ¶ 2 (1) 2.

258. Susanne Ziegert & Harald Czycholl, *Berlin Schickt Fahnder Gegen Airbnb-Anbieter*, DIE WELT (October 28, 2014), <http://www.welt.de/finanzen/immobilien/article133740538/Berlin-schickt-Fahnder-gegen-AirBnB-Anbieter.html> [<https://perma.cc/WN6G-9BAB>] (archived Oct. 13, 2016).

259. Berlin Law, *supra* note 256, at ¶ 2(1)(5)

260. *Id.* at ¶ (3).

261. Feargus O'Sullivan, *Berlin is Banning Most Vacation Apartment Rentals*, CITYLAB (April. 28, 2016), <http://www.citylab.com/housing/2016/04/airbnb-rentals-berlin-vacation-apartment-law/480381/> [<https://perma.cc/2T'Z2-SRFH>] (archived Oct. 13, 2016) (discussing a two-year grace period for compliance before the enforcement of the law).

262. *Id.*

263. Berlin Law, *supra* note 256, at ¶ 7 (1) (4).

264. Az.: 67T 29/15. Paragraph 540 of the BGB prohibits the subletting of housing space without prior authorization of the owner.

Elsewhere in Germany, municipal regulators have adopted similar approaches. Hamburg amended its 1982 housing legislation in 2013 to allow the renting of housing space via popular platforms such as Airbnb, Wimdu, or 9flats for primary residences without a prior license, but requires a prior license for secondary homes.²⁶⁵ The *Wohnraumschutzgesetz* provides that a maximum of 50 percent of the flat's total surface can be sublet.²⁶⁶ Munich recently issued a bylaw prohibiting the recurrent use of housing space for nonresidential purposes, such as commercial use, but also commercially-operated bed-and-breakfasts.²⁶⁷ It does, however, tolerate the occasional subletting of housing to visitors.²⁶⁸ Munich plans on policing this strictly and has recently hired a number of individuals specifically to take action against the operation of illegal bed-and-breakfasts.²⁶⁹ The commonality among the various local schemes in Germany again highlights that cities are willing to accommodate true sharing, but insist on adding safeguards to ensure that platforms are not used to circumvent existing rules on hotels and commercial practices.

3. Restrictive Regulation of Ride-Sharing Platforms

This Subsection refers to the controversial regulation of short-distance ride-sharing, which typically falls within the realm of local powers. The platform's business model has clashed in the last few years with the traditional local regulations of taxicab services.²⁷⁰ Before providing an overview on this debate, it is worth mentioning that the relatively unconstrained power of cities to regulate these platforms might undergo some changes in the European Union. In the European

265. Gesetz über den Schutz und die Erhaltung von Wohnraum vom 8. März 1982, HmbGVBl. 1982, S. 47.

266. *Id.* at paragraph 9.

267. Paragraph 14 of the Satzung der Landeshauptstadt München über das Verbot der Zweckentfremdung von Wohnraum (ZeS) vom 12. Dezember 2013.

268. *Id.* at paragraph 4(3).

269. Bernd Kastner, *Behörden sollen härter gegen illegale Vermietung vorgehen*, SUDDEUTSCHE ZEITUNG (May 5, 2015), <http://www.sueddeutsche.de/muenchen/zweckentfremdung-von-wohnungen-behoerden-sollen-haerter-gegen-illegale-vermietung-vorgehen-1.2465859> (subscription required) [<https://perma.cc/URP4-K6R3>] (archived Oct. 13, 2016) (reporting that Frankfurt's policy only tolerates home-sharing on an occasional basis.) See also Timo Kotoswki, *Wenn deutsche Städte gegen Airbnb aufrüsten*, FRANKFURTER ALLGEMEINE ZEITUNG (Oct. 31, 2014), <http://www.faz.net/aktuell/wirtschaft/netzwirtschaft/deutsche-staedte-kaempfen-gegen-die-vermittlungsboerse-airbnb-13239634.html> (subscription required) [<https://perma.cc/3T2R-9K2R>] (archived Oct. 13, 2016) (reporting that Frankfurt does not take action against private individuals that sporadically sublet their housing space).

270. See Hannah A. Posen, *Ridesharing in the Sharing Economy: Should Regulators Impose Uber Regulations on Uber?*, 101 IOWA L. REV. 405, 424 (2015). ("The difficulty facing cities is how to respond to Uber's expansion across the country and find a way for Uber to operate legally under their regulatory framework. Uber has cooperated with cities and, while Uber does not claim to be above the law, it also recognizes that Uber cars are not taxis and should not be regulated as such.")

Union, the national regulation of multiple services (e.g., hospitality services) must observe EU law, including the Treaty on the Functioning of the European Union and the terms laid down by the Services Directive, which aims to facilitate the provision of cross-border services and the consolidation of the internal market.²⁷¹ However, local transportation services are explicitly excluded from the scope of the Directive.²⁷² Thus far, this has meant that Member States can restrict the operation of ride-sharing platforms that are regarded as transportation intermediaries. This assumption is not as clear as it seems at first sight because digital platforms do not offer any direct services. Rather, they only provide mediation, which in some cases might turn them into mere digital intermediaries.

At the time of writing, two recent developments appear to have the potential to shed some light on these issues. First, on June 2, 2016, the European Commission published the Communication “A European agenda for the collaborative economy,” which provides guidance on how existing EU law should be applied to the sector.²⁷³ The Communication provides information on the liability of sharing-economy platforms and tax questions that were rather clear but, more importantly for this Article, it also underlines that cities implementing very restrictive policies might need to rethink their approaches when less restrictive instruments are available.

Second, the results of a public consultation on the collaborative economy that took place at the end of 2015 were also recently published.²⁷⁴ This consultation has revealed that consumers have a strong interest in the sharing economy and are aware both of its benefits as well as its potential risks. Consumers moreover agreed that platforms should become more transparent. A third important development in this sector is forthcoming: the decision of the Court of Justice of the European Union on two preliminary rulings involving the qualification of Uber as a transportation service or as an information society service.²⁷⁵

271. Council Directive 2006/123, 2006 O.J. (L 376/36) (EC).

272. *Id.* at 21 (“Transport services, including urban transport, taxis and ambulances as well as port services, should be excluded from the scope of this Directive.”).

273. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Council and the Committee of the Regions: A European agenda for the collaborative economy*, COM (2016) 184 final (Feb. 6, 2016).

274. *Id.*

275. See Case C-434/15, *Asociación Profesional Élite Taxi vs. Uber Systems Spain S.L.* 2015 E.C.R.; Case C-526/15, *Uber Belgium BVBA v Taxi Radio Bruxellois NV* 2015 E.C.R. In these cases Uber challenges the national restrictions imposed by local regulators arguing that it is not a regular transportation service and claiming that such restrictions are incompatible with Articles 28 and 56 of the Treaty on the Functioning of the European Union. See Damien Geradin, *Uber and the Rule of Law: Should Spontaneous Liberalization be Applauded or Criticized?* COMPETITION POL’Y INT’L 11 (2015). In the United States, see also Rebecca Elaine Elliott, *Sharing App or Regulation Hack(ney)?: Defining Uber Technologies, Inc.*, 41 J. OF CORP. L. 727 (2016).

As mentioned earlier, Uber and Lyft are not true sharing ventures in the narrow sense of the term *sharing economy* as employed in this Article, since the collaborative element between peers is often absent in this type of ride-sharing. Regulatory responses to these platforms are nonetheless briefly considered, as they shed light on the challenges urban regulators face.

Large U.S. cities have adopted different stances towards Uber and Lyft. In NYC, all Uber drivers must obtain a Taxi and Limousine Commission license.²⁷⁶ NYC is currently revising its policy, considering whether to limit the number of licenses.²⁷⁷ The California Public Utilities (CPU) legalized the services of Uber and Lyft in 2013, qualifying them as transport network companies (TNC) and imposing a number of requirements, including a TNC permit, criminal background checks, and insurance.²⁷⁸ In 2015, the CPU, however, started investigating Uber's pilot program to lease vehicles to its drivers.²⁷⁹ There is evidence that many Uber drivers do not share their own car but rather lease vehicles from an Uber subsidiary, which means that the platform is not engaging in sharing practices capable of being regulated with a light-handed TNC permit.²⁸⁰ In 2016, the government revisited its regulations and now requires stricter vehicle inspections and the visibility of identifying logos, but postponed further decisions on the leasing programs.²⁸¹

In Europe, cities have been critical of Uber. Uber's entry into the German market was complicated by federal transport legislation under

276. Rebecca Harsberger, *Yellow Taxis Launch \$1 Million Campaign to Lure Back Drivers, Passengers from Uber and Lyft*, AM NEW YORK (Dec. 14, 2015), <http://www.amny.com/transit/yellow-taxis-launch-1-million-campaign-to-lure-back-drivers-passengers-from-uber-lyft-1.11228657> [<https://perma.cc/MC7F-HYBB>] (archived Oct. 13, 2016).

277. *See New York City Relaxes on Uber Regulation—for Now*, DEUTSCHE WELLE (July 23, 2015), <http://www.dw.com/en/new-york-city-relaxes-on-uber-regulation-for-now/a-18602936> [<https://perma.cc/8HKJ-EJAY>] (archived Oct. 13, 2016) (“The City Council had been set to vote Thursday on a law that would have limited the number of Uber vehicles allowed to compete with taxis in New York, capping the company's growth at 1 percent.”).

278. Cal. Pub. Util. Commission, Decision 13-09-045, (2013), <http://docs.cpuc.ca.gov/publisheddocs/published/g000/m077/k192/77192335.pdf> [<https://perma.cc/ZZ9W-AUPJ>] (archived Oct. 13, 2016) (reporting the proposed regulations for transportation network companies).

279. Cal. Pub. Util. Commission, Decision 16-04-041, (2016), <http://docs.cpuc.ca.gov/publisheddocs/published/g000/m160/k131/160131038.pdf> [<https://perma.cc/N76A-XM3T>] (archived Oct. 13, 2016) [hereinafter Decision 16-04-041] (reporting the proposed regulations for transportation network companies).

280. The California TNC permit does not authorize the use of vehicles other than those privately owned by the driver. *See* Heather Somerville, *California Public Utilities Commission probes Uber's car-leasing program*, LA DAILY NEWS (Aug. 12, 2015), <http://www.dailynews.com/business/20150812/california-public-utilities-commission-probes-ubers-car-leasing-program> [<https://perma.cc/LYX8-ULHW>] (archived Oct. 13, 2016) (“Uber has set up a subsidiary, Xchange Leasing, to lease cars directly to drivers.”).

281. Decision 16-04-041, *supra* note 279.

which Uber's business model is illegal.²⁸² As a result, Uber has largely retreated from Germany. The federal *Personenbeförderungsgesetz* (PBefG) requires those transporting individuals for remuneration to be licensed.²⁸³ In 2015, a Frankfurt court confirmed the incompatibility of Uber's services with the law.²⁸⁴ Courts elsewhere in Germany have reached the same conclusion.²⁸⁵

Violent clashes between Uber drivers and taxi drivers in Paris have been documented extensively in the press.²⁸⁶ Uber's controversial presence in France has led the national legislature to issue a law aimed exclusively at rendering Uber's business model illegal.²⁸⁷ Article L.3120 of the French Transportation Code states that, unless a driver has a taxi license, that driver is prohibited from transporting passengers for remuneration. This law also includes sanctions (including imprisonment) for platforms facilitating unlicensed transportation. A number of subnational authorities (the *préfectures*) have issued bans on the basis of this law.

In London, the controversy surrounding Uber is ongoing. London black cab and minicab drivers have long pressured Transport for London (TfL) to ban Uber.²⁸⁸ TfL brought a court action against Uber, arguing that it should be classified as a taxi company and be subject to the applicable taxi regulations.²⁸⁹ This argument was rejected on the basis that the Uber app could not be classified as a taximeter—a privilege that only the heavily regulated black-cab drivers can use.²⁹⁰ As a result, there is no clear legal basis under which Uber can be

282. *Personenbeförderungsgesetz* (1961) BGBl. 1961 I S. 241.

283. Paras 2 and 46 of the law provide that all operators using cars to transport individuals for profit are subject to the law and must comply with its inherent conditions.

284. Mark Scott & Melissa Eddy, *German Court Bans Uber Service Nationwide*, N.Y. TIMES (Sep. 2, 2014), <http://mobile.nytimes.com/blogs/bits/2014/09/02/uber-banned-across-germany-by-frankfurt-court/> [<https://perma.cc/TE6C-TA3J>] (archived Oct. 13, 2016) (discussing the German court's decision to ban Uber nationwide).

285. Oberverwaltungsgericht Berlin-Brandenburg, 1. Senat, Vollzug des Personenbeförderungsgesetzes bei Rechtsgrundlage ausserhalb des PBefG; Rechtswierdigkeit der Geschäftsmodelle UberPOP und UberBLACK, OVG 1 S 96.14 (10.04.2015). Hamburgisches Oberverwaltungsgericht 3. Senat, Beschluss vom 24.09.2014, 3 Bs 175/14.

286. See Sam Schechner, *Uber Meets Its Match in France*, WALL ST. J. (Sept. 18, 2015), <http://www.wsj.com/articles/uber-meets-its-match-in-france-1442592333> (subscription required) [<https://perma.cc/LTA6-U53A>] (archived Oct. 13, 2016) ("The violent strike surprised government officials. Taxi drivers blocked access to both of Paris's airports, overturned Uber cars and burned tires on the city's ring road.")

287. See Loi 2014-366, *supra* note 241.

288. Other than the traditional black cabs, London allows the licensing of private hire vehicles (PHVs), which was introduced by the Private Hire Vehicles (London) Act 1998. PHVs are regulated outside of London under the Local Government (Miscellaneous Provisions) Act 1976.

289. *Transport for London v. Uber London Ltd, Licensed Taxi Drivers Association, Licensed Private Hire Car Association*, (2015) 1 EWHC 2918 (Gr. Bri.).

290. *Id.* at 17. ("The driver's Smartphone with the Driver's App is not a device for calculating fares by itself or in conjunction with Server 2, and even if it were, the vehicle is not equipped with it.")

banned, but TfL continues to campaign against the platform, be it through advertisements depicting Uber rides as a danger to personal safety or other means.²⁹¹ Nonetheless, Uber has been able to expand its activities in London over the past months.²⁹²

C. *Interim Conclusion*

Cities have approached sharing-economy practices differently, even within the same country. While some cities in the United States and Europe impose minimal to no regulatory requirements on sharing platforms, others have actively tried to suspend unlicensed sharing practices. The common elements have been the restriction of the number of days, the requirement to pay local taxes and be sufficiently insured, and the tendency to refuse flexible regulations for commercial practices that involve little sharing and facilitate tax evasion and the professional use of platforms (e.g., multiple listings on Airbnb or hotel listings on sharing-economy platforms). These rules generally seek to encourage genuine sharing initiatives, while discouraging those operating a business and desiring to circumvent applicable rules.

The main regulatory challenges encountered by sharing practices stem from the fact that they are subject to longstanding and sometimes outdated rules that were fashioned before the revival of sharing.²⁹³ While regulation is necessary to protect the public interest (e.g., food and fire safety and public health), it is also worth asking whether there are less restrictive approaches to the regulation of the sharing economy. Up until this stage, the debate on the regulation of the sharing economy had assumed the existence of an either-or option: legalize or ban.²⁹⁴ The following Part argues that there are alternatives to this approach that can be put into practice by both permissive and restrictive local regulators.

291. See *If Your Minicab's Not Booked, It's Just a Stranger's Car*, TRANSPORT FOR LONDON (Nov. 26, 2010), <https://tfl.gov.uk/info-for/media/press-releases/2010/november/if-your-minicabs-not-booked-its-just-a-strangers-car--new-campaign-warns-londoners-of-unbooked-minicab-danger> [<https://perma.cc/EU4R-9A44>] (archived Oct. 13, 2016) (“TfL and its policing partners are committed to improving the safety and security of cabs and are stepping up enforcement activity against unbooked minicabs in the lead up to Christmas.”).

292. Peter Campell, *Uber doubles taxi-booking zone in London*, FINANCIAL TIMES (May 31, 2016 7:19 PM), <http://www.ft.com/cms/s/0/69a7b950-264f-11e6-8b18-91555f2f4fde.html> [<https://perma.cc/X2X4-8JRB>] (archived Oct. 13, 2016).

293. See UK HOUSE OF COMMONS, *supra* note 12, at 2.3 (“Legislation governing the licensing of the taxi trade dates back centuries.”).

294. See Rauch & Schleicher, *supra* note 55, at 905 (“To date, discussion of these local ‘sharing wars’ has embraced an unstated assumption: if the sharing firms survive the current fight, their future will be mostly free from government regulation.”).

V. EXPERIMENTAL AND COLLABORATIVE REGULATION

With the emergence of sharing-economy platforms, cities are faced with a phenomenon previously unknown in that form. On the one hand, urban sharing is intrinsic to cities, and even inevitable, given the high costs and underutilization of infrastructure, goods, and many services. On the other hand, sharing with strangers has a myriad of risks and concerns that local regulations first encountered and tried to prevent following the Industrial Revolution: the unregistered lease of property, overcrowding and the insalubrity of urban housing, traffic congestion, and lack of compliance with road, food, and fire safety standards.

While local regulation was drafted in the name of the public interest, sharing-economy platforms and their intrinsic benefits (e.g., sustainable consumption) are forcing regulators to rethink what the public interest means in the digital age and how to update this notion. Many local regulations appear to be outdated.²⁹⁵ In most cases, they date back to a time when trust among strangers was very limited, property ownership was sacred, there were no digital reputational mechanisms, no internet connection, and no on-demand economy. Many ride-sharing regulations emerged to respond, for example, to the unlicensed taxicabs that emerged during the Great Depression, causing traffic congestion.²⁹⁶ This historical background explains why local governments focused on the regulation of competition and market failures. However, much has changed in the last few decades, and, as Part II described, the need for restrictive regulation might be antagonistic to the values of collaboration and trust promoted by the sharing economy. This does not mean that the sharing economy should remain unregulated. Regulators are thus at crossroads because they are criticized by some for not offering specific measures to these digital platforms and by others for risking the enactment of hasty regulations.²⁹⁷

295. See Brhmie Balam, *Towards a Fairer Sharing Economy*, RSA (Nov. 12, 2015), <https://www.thersa.org/discover/publications-and-articles/rsa-blogs/2015/11/towards-a-fairer-sharing-economy/> [<https://perma.cc/YB38-T3Y9>] (archived Oct. 13, 2016) (the challenges sharing enterprises face are “not challenges that can be easily solved through relying on our legal and political institutions, both of which have failed to keep pace with the progress of the sector”).

296. See Andrew T. Bond, *An App for That: Local Government and the Rise of the Sharing Economy*, 90 NOTRE DAME L. REV. ONLINE 77, 79–82 (2015) (analyzing the emergence of taxi regulations in the nineteenth and twentieth centuries in New York at a time when transportation options were limited.).

297. See generally, e.g., Caleb Holloway, *Uber Unsettled: How Existing Taxicab Regulations Fail To Address Transportation Network Companies and Why Local Regulators Should Embrace Uber, Lyft, and Comparable Innovators*, 16 WAKE FOREST J. BUS. & INTELL. PROP. L. 20 (2015) (describing how lawmakers fail to properly regulate TNC's).

Considering the diversity of sharing-economy practices, the benefits and risks of most initiatives appear to be difficult to grasp. In the eyes of a layman, almost any on-demand practice could be qualified as a sharing-economy practice. In addition, the sharing economy raises concerns that traverse a number of different areas of law, including consumer protection, labor law, privacy and cybersecurity, and food safety.²⁹⁸ The literature has therefore attempted to advance new and old perspectives to regulate the sharing economy at different levels. Some scholars compare these complexities, as well as the negative externalities produced by sharing-economy platforms, to other fields of law, such as environmental law and the regulation of professions and occupations.²⁹⁹ Sarah Light, for example, has questioned the competence of local actors to regulate the sharing economy since many of these practices have potential cross-border effects.³⁰⁰ Therefore, as with environmental law, the implementation of self-regulation, including the adoption of codes of conduct, has been advocated. Other scholars have argued that the regulation of the sharing economy should be analyzed through the lens of the power imbalance between platforms and peers: instead of relying on platforms to self-regulate, this task should be reallocated to associations of peers (e.g., Airbnb users) who, similarly to labor unions, would design and contractually enforce safety standards.³⁰¹ These different approaches have, however, one element in common: the scholars agree on the need to introduce an alternative approach to the traditional command-and-control regulations to encourage experimentation.³⁰² This Article addresses this consensus by arguing that, under these uncertain circumstances, and with the need to promote the development of innovative sharing

298. See, e.g., Christoph Busch, Hans Schulte-Nölke, Aneta Wiewiorowska-Domagalska & Fryderyk Zoll, *The Rise of the Platforms Economy: A New Challenge for EU Consumer Law?*, 1 EUCML 3 (2016) (discussing how the sharing economy raises concerns in consumer law and how the European Union should adjust its laws accordingly).

299. See Raymond H. Brescia, *Regulating the Sharing Economy: New and Old Insights into an Oversight Regime for the Peer-to-Peer Economy*, 95 NEBRASKA L. REV. (forthcoming 2016); Sarah Light, *Precautionary Federalism and the Sharing Economy*, 66 EMORY L. J. (forthcoming 2016) (adopting a federalist perspective in the context of the regulation of the sharing economy).

300. See Light, *supra* note 299, at 18–19 (discussing spillover effects and externalities outside jurisdictions).

301. See Rashmi Dyal-Chand, *Regulating Sharing: The Sharing Economy as an Alternative Capitalist System*, 90 TULANE L. REV. 241, 288–92 (2015) (arguing that regulations surrounding sharing networks should balance the needs and rights of all participants).

302. See Brescia, *supra* note 299, at 6, 34, 66–68 (discussing the case of experimentation in the regulation of the legal profession and its parallel with the sharing economy); see also Light, *supra* note 299, at 4, 51 (referring to the need for state experimentation).

platforms, experimental and collaborative regulation might offer the answers local regulators are looking for.³⁰³

Experimental regulation is temporary regulation that derogates from existing regulation in order to test the effects of new dispositions. It can provide cities with three valuable tools to move forward in the regulation of sharing-economy practices: information, caution, and time. First, by testing new regulations on experimental terms, cities can gather information on their effects. Thus far, the short- and long-term significance and impact of sharing practices remains underexplored.³⁰⁴ Empirical evidence is lacking and the real impact of the sharing economy is still difficult to predict.³⁰⁵ In addition, sharing practices take place in different sectors, playing out differently depending on factors unique to those areas. Second, experimentalism allows for caution because cities can start with a temporary and tentative approach to regulation and implement it in a few districts before adopting a final legal framework. Third, experimental regulations buy cities time: they provide temporary solutions, responding to the conflicting interests of different parties, but also promise new ones based on the evidence collected during the experimental period. In addition, these regulations enable cities to learn about what works in regulating the sharing economy and what does not.³⁰⁶

Collaborative practices require different approaches because they are not based on the consumer-professional model that underlies the traditional economic paradigm. This does not mean that all sharing-economy practices should be allowed to bloom without constraints. Rather, their intrinsic connection with cities requires a close collaboration between private and public actors. This Part addresses different ways platforms and cities can negotiate regulation and establish public-private partnerships in order to promote sharing initiatives.

303. See Sofia Ranchordás, *Innovation Experimentalism in the Sharing Economy*, 19 LEWIS & CLARK L. REV. 87, 907–24 (2016) (arguing “that the enactment of temporary rules with an experimental character could be beneficial when regulators are confronted with high uncertainty”).

304. Predictions regarding the effects of the sharing economy admittedly vary, some going as far as to predict that the sharing economy marks beginning of the end of capitalism. See, e.g., Paul Mason, *The End of Capitalism Has Begun*, GUARDIAN (July 17, 2015), <http://www.theguardian.com/books/2015/jul/17/postcapitalism-end-of-capitalism-begun> [https://perma.cc/GN3X-Z4HU] (archived Sept. 26, 2016).

305. See Cohen & Munoz, *supra* note 70, at 96 (“[E]mpirical evidence is lacking to ascertain the sharing economy’s current impact, let alone future potential.”).

306. See Miller, *supra* note 167, at 153. (“Regulators need to take the time to understand the complexity of the changes wrought by the technology to existing and new markets in order to respond effectively.”).

A. *Experimental Regulation*

Experimental regulation is particularly well-suited to new and controversial phenomena.³⁰⁷ Inspired by the longstanding idea of “states-as-laboratories,”³⁰⁸ experimentalism conveys the idea of temporality, trial-and-error, and evidence-based lawmaking. Regulators “experiment” by enacting temporary rules or policies (e.g., authorizing home-sharing for a specific period in contravention of existing rules on hotel regulations and short-term leases), observing their effects, and then deciding whether to convert them into permanent rules or adopt new rules.³⁰⁹

1. Experimentalism and the Platform Economy

In the last five years, multiple state agencies and cities have decided to turn to experimentalism to regulate complex innovative phenomena within the platform economy, including sharing initiatives. An example can be found in Portland, Oregon. In 2015, the city authorized Uber and Lyft to operate on experimental terms by adopting a pilot policy that allowed these platforms to operate temporarily, but required them to comply with a number of rules, including the provision of access to disabled users.³¹⁰ This pilot, which ran for six months, was aimed at collecting information about the opportunities and risks for consumers and other stakeholders and later recommending permanent rules.³¹¹ After this period, permanent rules

307. The experimentalist approach to policy and rulemaking was developed mainly by Charles Sabel together with scholars such as Jonathan Zeitlin and Michael Dorf. See generally Ronald J. Gilson, Charles F. Sabel & Robert E. Scott, *Contract and Innovation: The Limited Role of Generalist Courts in the Evolution of Novel Contractual Forms*, 88 N.Y.U. L. REV. 170, 176–77 (2013); Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53, 78 (2011); Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998).

308. See *New State Ice Co. v Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“There must be power in the States and the nation to remould, through experimentation, our economic practices and institutions to meet changing social and economic needs. . . . It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”).

309. See generally SOFIA RANCHORDAS, *CONSTITUTIONAL SUNSETS AND EXPERIMENTAL LEGISLATION: A COMPARATIVE PERSPECTIVE* 17–77 (2014) (discussing experimental legislation).

310. Shelby Sebens, *Uber Returning to Portland Under City-Approved Regulations*, REUTERS (Apr. 22, 2015), <http://www.reuters.com/article/us-usa-oregon-uber-idUSKBN0ND0CR20150422> [<https://perma.cc/6DCH-BY75>] (archived Sept. 26, 2016).

311. Laura Rillos, *Portland Extends Pilot Program for Uber and Lyft Service to October*, FOX NEWS (Aug. 21, 2015), <http://www.kptv.com/story/29847036/portland-extends-pilot-program-for-uber-and-lyft-service-to-october> [<https://perma.cc/42EX-QUZG>] (archived Sept. 26, 2016).

on ride-sharing were enacted but, based on the available evidence, Uber and Lyft were denied privileged treatment and were required to comply with regulations similar to those for the taxi companies.³¹² While the results of this experiment might not have been favorable to Uber and Lyft, the willingness to run a pilot test or adopt experimental rules reveals the city's openness to evidence-based lawmaking. In the United States, other cities have also engaged in experimental rulemaking in an attempt to test new rules for this innovative and evolving sector.³¹³

This Article argues that experimental regulations can be useful not only for the regulation of controversial ride-sharing platforms like Uber but also for genuine sharing practices. This approach has gathered support on both sides of the Atlantic. The European Commission announced in 2015 that it would provide guidelines on the collaborative economy to national regulators in an attempt to harmonize the different practices adopted by European cities. However, considering the complex and evolving nature of sharing-economy practices, the Commission suggested the need to "pilot innovative regulatory approaches to verify the feasibility and sustainability of innovative solutions."³¹⁴ This subsection explains that these experiments have emerged in particular in the context of cities that are trying to promote the sharing of underused facilities and assets, either by investing in networks that allow them to become sharing cities or by inviting citizens to participate in the governance of commons on an experimental basis.

The following Subsections explain, first, the methodological background of experimental regulations and, second, how cities can test different policies in order to become sharing cities and promote the governance of urban commons.

312. *Permitting Requirements Private For-Hire Transportation Program*, PORTLAND BUREAU OF TRANSPORTATION, <https://www.portlandoregon.gov/transportation/article/582114> (last visited Oct. 13, 2016) [<https://perma.cc/F2R3-49NR>] (archived Sept. 24, 2016).

313. See Andy Reid, *Uber Gets Temporary Deal to Stay in Palm Beach County*, SUN SENTINEL (Mar. 10, 2015), <http://www.sun-sentinel.com/local/palm-beach/fl-uber-deal-decision-palm-20150310-story.html> [<https://perma.cc/2R7S-JSC8>] (archived Sept. 26, 2016) (explaining that Palm Beach County allowed Uber to operate temporarily while local authorities gathered more information about its effects).

314. The Commission states that forthcoming guidance on the sharing economy aims to "ensure that national law does not hinder the development of the collaborative economy in an unjustified manner." *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Upgrading the Single Market: More Opportunities for People and Business*, at 4, COM (2015), 550 final (Oct. 28, 2015), <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-550-EN-F1-1.PDF> [<https://perma.cc/PL5V-K8A6>] (archived Sept. 26, 2016).

2. Methodological Approach to Experimental Regulations

Experimental regulations are “part of a process . . . that allows the legislator to gather more information regarding either the nature of a new problem, product or service or new legal dispositions translating a new approach to an existing situation.”³¹⁵ Experimental regulation is particularly useful in rapidly changing sectors and in complex fields where the forecasting of the effects of new regulations is particularly intricate.³¹⁶

Experimental regulations and policies offer three main advantages. First, they allow local regulators to enact flexible regulations and deviate from existing rules to test alternatives. The regulation of sharing-economy platforms could in fact benefit from a more flexible and experimental approach that would balance the risks and opportunities faced by innovative platforms, service providers, and consumers.

Second, experimental regulations and policies are limited both in time and scope of application: they expire at the end of a certain period and are, in many cases, only applicable to determined groups of individuals and not others. While group A (control group) must comply with previously existing rules, group B, the sample group, is subject to the new regulations. The results obtained in the two groups are compared to assess the effectiveness of the regulation. These limitations mean that the potential risks are circumscribed both to the group to which the new rules are applicable and to a limited period of time.

Third, experimental regulations allow local regulators to learn, that is, to gather information on complex and innovative sectors about which little is known (e.g., how the reputational mechanisms offered by sharing platforms work and whether they provide sufficient information to users), to try new regulatory approaches (e.g., a simplified authorization process for the registration of home-sharing practices), and to verify whether they address potential concerns (e.g., risk of non-existing houses offered on platforms). Once sufficient information has been gathered, local regulators can fine-tune already existing policy instruments, rethink their maintenance, and/or draft new regulations that serve the public interest by responding to the evidence gathered during the experimental period.³¹⁷ Cities are the

315. RANCHORDÁS, *supra* note 309, at 218.

316. See also Wolfgang Beck & Claudia Schürmeier, *Die kommunalrechtliche Experimentierklausel als Reforminstrument*, LANDES- UND KOMMUNALVERWALTUNG 448 (2004); Rupert Stettner, *Verfassungsbindungen des experimentierenden Gesetzgebers*, NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT 806 (1989).

317. See David M. Trubek & James S. Moshier, *New Governance, Employment Policy, and the European Social Model*, in GOVERNING WORK AND WELFARE IN A NEW ECONOMY: EUR. AND AM. EXPERIMENTS 33, 46 (Jonathan Zeitlin & David M. Trubek eds., 2003) (referring mainly to the work of Peter Hall on social learning).

perfect laboratories for experimental regulation: officials are close to the platform users and aware of local problems and potential, and the risks of failure can be limited to a short period of time and a small part of the city.³¹⁸ This educational potential of experimental policies and regulations is particularly relevant in the sharing-economy context because, due to the fast-growing and disruptive character of this sector, little research has been carried out.³¹⁹ To illustrate, empirical evidence on its current impact and future trajectory is lacking.³²⁰

Experimental regulation is far from free of legal or public policy concerns. It imposes higher evaluation burdens on regulators and creates inequality among citizens since, as mentioned earlier, experiments require distinction between the citizens placed in the sample and control groups, creating uncertainty for the involved agents.³²¹ In addition, the learning effect of experimental regulations is only fully achieved if cities can incorporate the evidence gathered into new policies and regulations.³²² This implies however that cities have to be inflexible to special interest groups and their claims. In the context of the sharing economy, the wars of interests between sharing platforms and incumbents have greatly determined the regulatory debate.³²³ The collection of evidence, the need to draft evidence-based policy and rulemaking, and the city's ambition to promote sustainable sharing can, however, strengthen the city's sharing policies.³²⁴

The connection between experimentalism and the promotion of the local sharing economy has been visible since Amsterdam announced "its support for sharing policies and experimentation" to promote the city's sharing potential.³²⁵ The initiative "Amsterdam Sharing City" brings together multiple sharing-economy ambassadors to support sustainable, social cohesion and sharing-economy initiatives.³²⁶ In this context, the municipality of Amsterdam announced a new action plan and the implementation of a number of pilot programs to promote sharing-economy initiatives that would

318. See Dorf & Sabel, *supra* note 307, at 314–22 (discussing the division of the jurisdiction on subunits for the purposes of putting in practice experiments).

319. Cohen & Munoz, *supra* note 70, at 88.

320. *Id.* at 96.

321. RANCHORDÁS, *supra* note 309, at 205–08.

322. See, e.g., Joseph Landau, *Bureaucratic Administration and Immigration Law*, 65 DUKE L. J. 1173, 1235–38 (2016) (considering the learning dynamics of experimentation and the challenges of bureaucracy).

323. Rauch & Schleicher, *supra* note 55, at 926–37.

324. See, e.g., RAY PAWSON, *EVIDENCE-BASED POLICY: A REALIST PERSPECTIVE* (2006); Jeffrey Rachlinski, *Evidence-Based Law*, 96 CORNELL L. REV. 901 (2010); Ian Sanderson, *Evaluation, Policy Learning and Evidence-Based Policy Making*, 80 PUB. ADMIN. 1 (2002).

325. McLAREN & AGYEMAN, *supra* note 76, at 250.

326. Harmen van Sprang, *Amsterdam Europe's First "Sharing City"*, COLLABORATIVE CONSUMPTION (Feb. 4, 2015), <http://www.collaborativeconsumption.com/2015/02/04/amsterdam-europes-first-sharing-city/> [<https://perma.cc/PZ48-XXFZ>] (archived Sept. 26, 2016).

advance the sustainable use of public facilities and underused goods.³²⁷ An example is shared-parking for bicycles.³²⁸ This position has been incentivized by the Dutch government, which has recently referred to the need to experiment and rethink legislation and regulation on sharing-economy platforms that does not lag behind innovation.³²⁹ In the home-sharing sector, Amsterdam adopted an experimental policy in 2014, establishing a temporary collaboration agreement with Airbnb for one year. This tendency to experiment with regulations and policies has also been visible outside Europe, for example, in Ontario, where a four-part pilot project resulting from the collaboration between the province and Airbnb was launched in February 2016 to provide more information to Airbnb hosts and remind them of their tax obligations.³³⁰

The experimentation trend has been closely connected with, and instrumentalized by the development across the globe of the so-called sharing cities.

3. Sharing Cities

This Article's analysis has highlighted a number of urban initiatives to regulate the sharing economy through experimental or collaborative means. Some cities have gone further, however, and have not just regulated isolated manifestations of collaborative consumption but are proceeding to a more radical step in transforming themselves into sharing cities. In some cases, the promotion of the city's sharing potential started with experimental regulations or pilot projects. This Subsection starts by discussing the sharing-economy pilot projects implemented in Manchester and Leeds and then explores the meaning and implications of the concept *sharing city*.

The British government recently defended the idea of developing sharing cities. In 2015 and 2016, £700,000 was invested into two sharing-city pilots, which test a number of sharing-economy

327. Gemeente Amsterdam [Municipality of Amsterdam], NIEUWE ECONOMIE: DEELECONOMIE [THE NEW ECONOMY: SHARING ECONOMY] (2015), <https://www.amsterdam.nl/bestuur-organisatie/volg-beleid/innovatie-0/nieuwe-economie-1/> (last visited Mar. 1, 2016) [<https://perma.cc/E3MP-XHPU>] (archived Nov. 1, 2016).

328. GEMEENTE AMSTERDAM, STAD EN BALANS [The City in Equilibrium] (2015), https://www.amsterdam.nl/publish/pages/739542/stad_in_balans.pdf [<https://perma.cc/H2GA-QYKQ>] (archived Oct. 13, 2016) (in Dutch) (describing bike-sharing pilots).

329. Brief van de Minister van Economische Zaken [Letter from the Minister for Economic Affairs], *Innovatiebeleid* [Innovation Policy] The Hague, July 20, 2015, Tweede Kamer der Staten-Generaal, vergaderjaar 2014–2015, 33 009, nr. 10 (in Dutch) (explaining the minister's vision on innovation policy and mentioning that economic and policy studies are being currently conducted on the regulation of the sharing economy).

330. Ministry of Finance, *Ontario Partners with Airbnb on New Pilot Project*, ONTARIO PROVINCE – NEWSROOM (Feb. 19, 2016), <https://news.ontario.ca/mof/en/2016/02/ontario-partners-with-airbnb-on-new-pilot-project.html> [<https://perma.cc/CP3S-TNRV>] (archived Sept. 26, 2016).

initiatives.³³¹ Manchester and Leeds are currently implementing pilot programs, experimenting with home- and ride-sharing and with social and health care collaborative programs.³³² These pilots will have implications for sharing by both public and private actors. These sharing-city pilots explore the possibility of “replacing local council car fleets with car club membership; opening up more parking bays to car club parking; [and] considering new street parking for car clubs.”³³³ In addition, these cities are encouraged to initiate legislation that will make it easier for individuals to sublet spare rooms and, for nonresidential properties, to rent out parking spaces.³³⁴ This experiment has implications for the labor market, since the JobCentre Plus staff will signpost job-seekers to sharing-economy opportunities and, in collaboration with Start Up Loans, promote job opportunities through task-sharing platforms.³³⁵

The Leeds City Region will be used for a pilot on ride-sharing and digital platforms to improve the efficiency of local transport. These experiments will be supported by new smartphone apps designed for a fully integrated transport system based on mobility accounts. These applications can be used for buses, trains, car clubs, taxis, and bike services. Leeds will also extend the pilot project to the creation of other online platforms to promote the use of untapped local resources, ranging from unused warehouses to equipment such as lawnmowers.³³⁶

331. *The Budget 2015: Digital Developments Across Tech Nation*, TECHCITY (Mar. 18, 2015), <http://www.techcityuk.com/blog/2015/03/budget-2015/> [<https://perma.cc/F55W-3VY6>] (archived Oct. 13, 2016) (noting an “ambitious package of support for the sharing economy including: £700k for ‘sharing city’ pilots in Manchester and Leeds”).

332. Helen Goulden, *8 Steps Toward a Sharing City*, NESTA (May 17, 2015), <http://www.nesta.org.uk/blog/8-steps-toward-sharing-city#sthash.0ndPHTpj.dpuf> [<https://perma.cc/8Q62-LAQ3>] (archived Sept. 26, 2016).

333. Jack Tang, *Why the UK Is the Home of the Sharing Economy*, DIRECTOR (Oct. 9, 2015), <http://www.director.co.uk/11933-2-why-the-uk-is-the-home-of-the-sharing-economy/> [<https://perma.cc/NV27-Q9PY>] (archived Sept. 26, 2016) (quoting INDEPENDENT REVIEW OF THE SHARING ECONOMY: GOVERNMENT RESPONSE 3 (2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414111/bis-15-172-government-response-to-the-independent-review-of-the-sharing-economy.pdf [<https://perma.cc/U8WP-N5PW>] (archived Oct. 13, 2016)).

334. Sam Sheard, *Budget 2015: Government reveals initiatives to help UK spearhead sharing economy*, TECHWORLD (Mar. 18, 2015), <http://www.techworld.com/news/startups/budget-2015-government-reveals-initiatives-help-uk-spearhead-sharing-economy-3604703/> [<https://perma.cc/BS7C-2FMV>] (archived Sept. 26, 2016).

335. Annie Kane, *Government Backs Sharing Economy in Budget 2015*, RESOURCE (Mar. 18, 2015), <http://resource.co/article/government-backs-sharing-economy-budget-2015-9938> [<https://perma.cc/LJC5-VFUT>] (archived Sept. 26, 2016).

336. UK DEP'T FOR BUSINESS, INNOVATION & SKILLS, INDEPENDENT REVIEW OF THE SHARING ECONOMY: GOVERNMENT RESPONSE 4 (2015), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414111/bis-15-172-government-response-to-the-independent-review-of-the-sharing-economy.pdf [<https://perma.cc/6NNM-BX3U>] (archived Sept. 26, 2016).

The Manchester pilot scheme is focused on social policies and aims to “map community assets as well as their utilization.”³³⁷ This pilot develops hubs and micro-enterprises, new technologies in healthcare (e.g., mobile health applications), social policies, and volunteering. Manchester also applies sharing-economy services to health and social care, developing community assets and then utilizing technology to better connect residents to these services via community hubs.³³⁸ Leeds moreover experiments with regard to public transport policies, combining a range of alternatives to traditional transport. These include apps for local car clubs and bike-sharing alongside buses, trains, and taxis. Furthermore, local authorities are exploring a council-run platform to allow residents to share equipment, like vans or lawnmowers, and skills.³³⁹

Manchester and Leeds aim to promote sharing at different levels and this appears to be a common goal of many cities that aspire to become sharing cities. In a sharing city, collaborative practices are not merely tolerated, rather, sharing is a definitional feature of urban space. The adoption of this ethos bears the promise of radically transforming the manner in which cities self-identify and operate. As cities embrace collaborative consumption and re-discover their original and intrinsic nature as spaces of sharing, they brand themselves as sharing cities.

The world’s foremost sharing city is Seoul. By way of the 2012 Metropolitan Government Act for Promoting Sharing, the Korean capital formalized its commitment to become a genuine sharing city.³⁴⁰ The initiative’s key aim is to facilitate collaborative consumption. This has been done through the opening of public buildings to citizens for events and meetings, start-up incubators, financial support for sharing initiatives, a school launching a program to allow entrepreneurs to better understand the sharing economy and assist them in creating sharing businesses, a program to match young people with idle rooms in seniors’ houses, car-sharing, bartering for goods and services, an open data plaza, and lending libraries for all things, such as tools. It has been suggested that “[t]he city’s density, its tech-enabled citizenry, and world-class infrastructure can support Seoul’s plan to become a global leader of the sharing movement.”³⁴¹ A key element in the Korean shared-city enterprise is the focus on citizen involvement, as

337. *Id.*

338. *Id.*

339. *Id.*

340. Seoul Metropolitan Government Act No. 5396 (Dec. 31, 2012).

341. Cat Johnson, *Sharing City Seoul: A Model for the World*, SHAREABLE (June 3, 2014), <http://www.shareable.net/blog/sharing-city-seoul-a-model-for-the-world> [<https://perma.cc/CA7D-5KMN>] (archived Sept. 26, 2016).

policies are made in close cooperation with citizens, both through meetings and through online consultations.³⁴²

While it originated in Asia, the concept of a sharing city is attracting transnational prominence. Sharing cities actively and directly steer the sharing paradigm. To further this transnationally, a network of cities emerged. The Shared Cities Network was launched in fall 2013 by fifty cities. Member cities include Santa Cruz, Rochester, Boston, Chicago, and St. Louis.³⁴³ Fifteen mayors of U.S. cities have also signed a Shareable City Resolution, in which they undertake efforts to encourage a better understanding of the sharing economy and its benefits, create local task forces to assess and review existing regulation and its impact on sharing practices, and play an active role in making publicly owned assets available for use by the general public.³⁴⁴

Sharing cities are expected to counter the negative effects of urbanization and enable a more sustainable and “smart” way of life. They have been labeled as “hip” cities, with the potential to attract residents that can further develop the city.³⁴⁵ The driving forces behind sharing cities vary. In some cases, political leadership is pushing for their development, as in Seoul; in other cases, grass-roots activity has coalesced to form a movement, as in Amsterdam.³⁴⁶ No parameters have yet been established to identify what makes a sharing city, so they are self-identifying at this moment in time. Similarly, only time will tell what the success and durability of such initiatives will be. It is worth noting, however, that the fast spread of these initiatives attests to their popularity. Some cities have created *sharing districts*, which “are geographic areas where leading-edge anchor institutions and companies cluster and connect with start-ups, business incubators, and accelerators. They are also physically compact, transit-accessible, technically-wired, and offer mixed use housing, office, and retail.”³⁴⁷

342. See Park Won-Soon, *In Seoul, The Citizens Are The Mayor*, 74 PUB. ADMIN. REV. 442 (2014).

343. *Sharing Cities Network*, SHAREABLE, <http://www.shareable.net/sharing-cities> (last visited Mar. 1, 2016) [<https://perma.cc/TRH9-7TQW>] (archived Sept. 26, 2016).

344. *Shareable Cities Resolution: Passed*, COLLABORATIVE CONSUMPTION (June 26, 2013), <http://www.collaborativeconsumption.com/2013/06/26/shareable-cities-resolution-passed/> [<https://perma.cc/5L7V-35K9>] (archived Sept. 26, 2016).

345. See Rauch & Schleicher, *supra* note 55, at 909–10.

346. Goulden, *supra* note 332.

347. See generally BRUCE KATZ & JULIE WAGNER, *BROOKINGS, THE RISE OF INNOVATION DISTRICTS: A NEW GEOGRAPHY OF INNOVATION IN AMERICA* (2014).

4. Experimenting with the Commons

A number of European cities, most prominently Bologna, are currently experimenting with the concept of urban commons.³⁴⁸ Building on Garrett Hardin's tragic view of the commons,³⁴⁹ the literature has highlighted that a tragedy of the city commons (e.g., the depletion of urban facilities like a playground) arises where urban space is inappropriately regulated.³⁵⁰ Such a tragic outcome can be avoided where citizens collaborate. Sheila Foster and Christian Iaione have shown that cities have a number of urban common-pool resources, such as community improvement, neighborhood park groups, and community gardens.³⁵¹

The governance of the commons by citizens entails collaboration between private and public actors in the management of a resource, without privatizing it.³⁵² This implies rethinking the distribution and the sharing of finite urban resources among a variety of users and uses.³⁵³ By promoting the sharing of resources and asking citizens to take responsibility for urban facilities, even if at an experimental level, the tragedy of the commons can be prevented as citizens experience assets as common goods.³⁵⁴ The theoretical framework underlying this idea is inspired by Elinor Ostrom's work, which highlights that local communities can autonomously decide and enforce rules for sharing and managing common-pool resources.³⁵⁵ This happens through the development and maintenance of self-governing institutions, stressing the value of shared governance.³⁵⁶

The conception of the city as a commons has been put to practice in a series of experimental governance initiatives in Italy. These initiatives are rooted in Article 118(4) of the Italian Constitution and the principle of "horizontal subsidiarity," which encourages the

348. See generally CHRISTIAN BORCH & MARTIN KORNBURGER, URBAN COMMONS: RETHINKING THE CITY (2015); MARY DELLENBROUGH, MARKUS KIP ET AL., URBAN COMMONS: MOVING BEYOND MARKET AND STATE (2015); Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL'Y REV. 281 (2016); see also Bradley C. Karkkainen, *Yoning: A Reply to the Critics*, 10 J. LAND USE & ENVT'L. L. 45, 68-69 (1994) (theorizing a concept of the "neighborhood commons" as a set of local tangible and intangible resources that local residents share).

349. Hardin, *supra* note 160, at 1244.

350. See Foster & Iaione, *supra* note 348, at 298 ("The tragedy of many city commons arises as a result of weakly or poorly regulated space.").

351. *Id.* at 289.

352. *Id.* at 295.

353. See *id.* at 295-96.

354. *Id.* at 289.

355. See generally ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990).

356. *Id.* at 24-26.

cooperation between local authorities and citizens in governance matters.³⁵⁷ The most developed project can be found in Bologna.

Bologna designed a regulatory framework that foresees the collaboration between active citizens and the city regarding common urban goods or assets.³⁵⁸ In accordance with section 4(2) of the Bologna Regulation, citizens are encouraged to carry out socially innovative interventions of care and regeneration of urban commons, and, to this end, about one hundred collaboration agreements have been concluded between the municipality and citizens.³⁵⁹ In return for their services, citizens receive relief or exemptions from levies and local taxes.³⁶⁰ The regulation underlying this scheme is of an experimental nature, as the scheme, at least initially, only runs for a one-year period.³⁶¹

Other Italian cities are engaging in similar experiments. A pilot has been adopted in Mantova for the creation of public-private citizen partnerships centered on the principles of “living together (collaborative services), growing together (co-ventures), and producing together (co-production).”³⁶² Also, Battipaglia is implementing a pilot that aims to regenerate the local commons.³⁶³ Rome has created a “hub of the commons,” which links informatics with the governance of the commons and provides co-working spaces and areas for co-designing and co-production by citizens together with civil servants, small- and medium-sized companies, and associations.³⁶⁴

These various initiatives illustrate the possibility of experimenting with the reestablishment of sharing in cities, beyond mere consumption patterns towards shared management of urban space. Citizens’ involvement can be understood as a step towards

357. See Gian Franco Cartei & Vincenzo Ferraro, *Reform of the Fifth Title of the Italian Constitution: A Step Towards a Federal System?*, 8 EUROPEAN PUB. L. 445, 452 (2002).

358. Foster & Iaione, *supra* note 348, at 347.

359. Regulation on the Collaboration Among Citizens and the City for the Care and Regeneration of Urban Commons § 4(2) May 2014 (It.) <http://www.labgov.it/wp-content/uploads/sites/9/Bologna-Regulation-on-collaboration-between-citizens-and-the-city-for-the-cure-and-regeneration-of-urban-commons1.pdf> [<https://perma.cc/676Q-VWXQ>] (archived Sept. 26, 2016).

360. *Id.* at § 20; see also *id.* at § 24(1) (“The City contributes, within the limits of available resources, to cover the costs incurred for carrying out the actions of cure or regeneration of urban commons.”).

361. *Id.* at § 35(2) (“The provisions of this Regulation are subject to an experimentation period of one year.”); see also *id.* at § 35(3) (“During the experimentation period the City verifies, with the involvement/cooperation of active citizens” and considers whether corrective actions are necessary).

362. *Mantova Lab*, LAB-GOV., <http://www.labgov.it/governancelabs/mantovalab/> (last visited Oct. 13, 2016) [<https://perma.cc/9BZV-D66D>] (archived Sept. 26, 2016).

363. *Battipaglia Lab*, LAB-GOV., <http://www.labgov.it/governancelabs/battipaglia-lab/> (last visited Oct. 13, 2016) [<https://perma.cc/R4Q3-7LGC>] (archived Sept. 26, 2016).

364. *Hub of the Commons*, LAB-GOV., <http://www.labgov.it/governancelabs/hubofthecommons/> (last visited Oct. 13, 2016) [<https://perma.cc/JV8J-HT2Z>] (archived Sept. 26, 2016).

David Harvey's "right to the city," according to which residents not only have "a right of access to what the property speculators and state planners define, but also an active right to shape it."³⁶⁵

B. Collaborative Rulemaking and Governance

More recently, local regulators in different European and U.S. cities and platforms have started a constructive dialogue to discuss the terms under which the sharing economy should be regulated. As a result of this dialogue, Amsterdam and Airbnb, for example, agreed to cooperate in the collection of local taxes. By negotiating with city officials, these actors try to strike the balance between the need to safeguard the public interest and the need to draft rules that do not stifle the benefits offered by the sharing economy. The concepts of "negotiated rulemaking" or, according to the literature, "negotiated co-regulation," reflect some of the regulatory initiatives that consist of mixed and shared responsibilities between the government and the platforms.³⁶⁶

Negotiated rulemaking is far from a new instrument.³⁶⁷ Rather, in the United States, negotiated rulemaking was introduced in the 1980s and has been used since then as a consensus-gathering mechanism that allows regulators and stakeholders affected by a future regulation to discuss its content.³⁶⁸ For example, in the context of environmental law and endangered species, collaborative rulemaking emerged on an experimental basis to foster participation.³⁶⁹ The process of negotiating regulatory solutions allows sharing ventures to explain their purpose and operation to local decision makers who may have insufficient knowledge in this regard.

This Article argues that the regulation of the sharing economy should be, in some cases, negotiated, or result from the dialogue between public and private actors. Negotiated rulemaking is by no

365. David Harvey, *A Right to the City*, 27 INT. J. OF URBAN AND REG. RES. 939, 941 (2003).

366. Cannon & Chung, *see supra* note 90, at 54.

367. *See, e.g.*, Jody Freeman, *Collaborative Governance in the Administrative State*, 45 U.C.L.A. L. REV. 1 (1997); Philip J. Harter, *Negotiating Regulation: A Cure for Malaise*, 71 GEO. L.J. 1 (1982) (discussing the regulatory negotiations).

368. *See, e.g.*, Jeffrey S. Lubbers, *Achieving Policymaking Consensus: The (Unfortunate) Waning of Negotiated Rulemaking*, 49 S. TEXAS L. REV. 987, 988 (2008); Henry H. Perritt Jr., *Negotiated Rulemaking and Administrative Law*, 38 ADMIN L. REV. 471 (1986) (arguing that negotiated rulemaking is an alternative to adversarial administrative procedures which permits affected interests to retain greater control over the content of agency rules).

369. *See* Alejandro E. Camacho, *Can Regulation Evolve? Lessons from a Study in Misadaptive Management*, 55 UCLA. L. REV. 293, 302-03 (2007) (discussing the San Bruno integration plan which resulted from an experimental collaborative arrangement which engaged federal, state, and local officials, landowners, conservation organizations and developers in a multi-lateral negotiation process); Henry H. Perritt Jr., *Negotiated Rulemaking in Practice*, 5 J. POL'Y ANALYSIS AND MGMT. 482 (1986).

means an equivalent of self-regulatory or co-regulatory processes in which the agencies trust platforms with the achievement of certain goals. Rather, negotiated rulemaking implies the active discussion of the regulations to be adopted by local authorities.

Contrary to negotiated rulemaking, self-regulation and co-regulation are instruments mainly defined by private actors. The position this Article takes is therefore different from the one others have taken with regard to self-regulation, a voluntary or government-imposed form of private regulation.³⁷⁰ Molly Cohen and Arun Sundararajan have argued in favor of self-regulation, as they believe the need for the allocation of regulatory responsibility in the sharing economy should be fulfilled by parties other than the government.³⁷¹ While this last statement is not incompatible with the argument here, private actors should not be responsible for safeguarding the public interest; instead, they should be invited to discuss their position with the local government when their interests might be affected.³⁷²

Co-regulation is a mechanism of private regulation that is located between pure forms of self-regulation and state regulation.³⁷³ In the concept of negotiated co-regulation, the negotiation element adds an enhanced collaborative element and a stronger public dimension to the instrument of co-regulation. Like self-regulation, co-regulation can also fail due to the incentives gap, that is, self-interested businesses might not be interested in the promotion of the public interest.³⁷⁴ *Co-regulation* is “the mechanism whereby a legislative act entrusts the attainment of the objectives defined by the legislative authority to parties which are recognized in the field (such as economic operators, the social partners, non-governmental organisations, or associations).”³⁷⁵ Both self-regulation and co-regulation shift more regulatory responsibility to private parties.

Collaboration with platforms is capable of resulting in higher levels of transparency, accountability, and willingness to comply with negotiated regulations.³⁷⁶ Negotiated co-regulation could implicate the

370. See Cohen & Sundararajan, *supra* note 17, at 116–17.

371. *Id.* at 116.

372. *Cf. id.* at 117 (arguing that private actors should be responsible for self-regulating and should only resort to governmental regulation in cases where the interests of third party platforms are not aligned with the common good).

373. See LINDA SENDEN ET. AL., MAPPING SELF- AND CO-REGULATION APPROACHES IN THE EU CONTEXT: EXPLORATIVE STUDY FOR THE EUROPEAN COMMISSION, DG CONNECT 35–38 (2015), https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/dae-library/mapping_self-and_co-regulation_in_the_eu_context_0.pdf [<https://perma.cc/JB4A-XXSE>] (archived Sept. 26, 2016).

374. Edward J. Balleisen & Marc Eisner, *The Promise and Pitfalls of Co-Regulation: How Governments Can Draw on Private Governance for Public Purpose*, in NEW PERSPECTIVES ON REGULATION 127 (David Moss & John Cisternino eds., 2009).

375. European Parliament, Council and the Commission, Interinstitutional Agreement on Better Lawmaking, 2003 OJ (C 321) 18.

376. Cannon & Chung, *supra* note 90, at 59.

limited delegation of certain public tasks, such as the implementation of certain regulations (e.g., tax collection and withholding by the platform). This is already being put in practice in Amsterdam, where, as mentioned above, Airbnb is collecting local taxes for the municipality.

Another form of collaborative governance has emerged in the form of *sui generis* public-private partnerships. Airbnb has currently established partnerships with cities around the world by signing memoranda of understanding, for example with Amsterdam and Milan.³⁷⁷ Much can be gained from the cooperation between cities and home-sharing platforms in the context of mega-events. For example, the city of Rio de Janeiro and Airbnb concluded an agreement with reference to the provision of rooms for the duration of the 2016 Olympic games.³⁷⁸

The challenge posed by the sharing economy “involves a reinvention of regulation by joining citizens and sharing producers as partners in flexible approaches to sharing risks and rewards of integrating these enterprises into our communities.”³⁷⁹ This has been encouraged in many places. Collaborative rulemaking is encouraged by the UK Royal Society for the encouragement of Arts, Manufactures and Commerce, which supports what it refers to as “shared regulation,” a redistribution of regulatory responsibilities to parties other than government, and encourages “greater participation from platform users (consumers and workers), community organisers, legal and administrative professionals, investors and designers.”³⁸⁰

VI. CONCLUSION

In the digital age, the promotion of sustainability and social innovation and the improvement of social networks have become an important goal of local governments.³⁸¹ The sharing economy responds to these objectives by developing collaborative networks and

377. Marco Bertacche, *Milan Embraces Airbnb, Uber and Bike Sharing for Its World Expo*, SKIFT (Apr. 2, 2015), <http://skift.com/2015/04/02/milan-embraces-airbnb-uber-and-bike-sharing-for-its-world-expo/> [<https://perma.cc/8RDJ-3RZ2>] (archived Sept. 26, 2016).

378. Stephen Eisenhammer, *Airbnb Goes Mainstream with Rio Olympic Contract*, REUTERS (Mar. 27, 2015), <http://www.reuters.com/article/us-olympics-airbnb-rio-idUSKBNOMN2HK20150327> [<https://perma.cc/QDW7-3SNQ>] (archived Sept. 26, 2016).

379. Widener, *supra* note 142, at 119.

380. BRHMIE BALARAM, UK ROYAL SOC'Y FOR THE ENCOURAGEMENT OF ARTS & COM., *FAIR SHARE: RECLAIMING POWER IN THE SHARING ECONOMY* 6–7 (2016).

381. See European Commission, *Collective Awareness Platforms for Europe and Social Innovation, Digital Agenda for Europe*, (last updated Mar. 15, 2016), <https://ec.europa.eu/digital-agenda/en/collective-awareness-platforms-sustainability-and-social-innovation> [<https://perma.cc/NX52-43JB>] (archived Sept. 26, 2016) (“The initiative ‘Collective Awareness Platforms for Sustainability and Social Innovation’ (CAPS) aims at designing and piloting online platforms creating awareness of sustainability problems and offering collaborative solutions based on networks. . .”).

mechanisms that rely on the maximization of underused assets.³⁸² In this context, cities are devoting increasing attention to sharing-economy digital platforms. They are the primary beneficiaries of the positive effects of the sharing economy, but they are also the most affected by its negative externalities (e.g., traffic congestion or changed neighborhood dynamics). In addition, cities are generally competent to regulate private transportation, urban planning, hotels, and other forms of tourist accommodation, as well as the restaurant sector.³⁸³ However, thus far, the sharing economy has posed several challenges to local governments: overwhelmed by the controversies of platforms like Uber or Airbnb, many cities have forgotten that restricting unlicensed sharing might deprive their residents not only of the benefits of the sharing economy (lower prices, greater choice, and convenience) but also of the intrinsic sharing potential of urban agglomerations.³⁸⁴ For centuries, individuals have migrated to cities to have access to these elements. In 2016, they still do, but they are now confronted with rising housing prices, traffic congestion, and fewer employment opportunities. Sharing underused assets and spaces might address some of these typical urban problems.

As technology elevates sharing to a new dimension, helping the development of sharing networks in increasingly larger urban communities, cities should embrace their role as facilitators of the sharing economy and guardians of the public interest. This Article suggests a new framework that combines both roles in the context of the sharing economy. While before individuals would only share a “cup of sugar” with their next-door neighbor, technology now allows them to share much more and open their kitchens to both passing strangers and other city inhabitants. Local public bodies can ensure that sharing practices continue to occur, while establishing minimum guarantees to protect individuals from potential hazards. However, there is no “one size fits all” framework when it comes to the regulation of the sharing economy at local level.³⁸⁵ Given the evolving nature of digital platforms, and the fact that city officials still know little about their advantages and risks, cities should experiment with new policies and regulations that give sharing practices a chance. These experiments should be limited in time and space in order to circumscribe potential risks. In addition, cities should collaborate with platforms in order to negotiate the content of proposed regulations for sharing practices. This dialogue and search for consensus will increase the transparency and compliance potential, allowing stakeholders and cities to find

382. See generally BENKLER, *supra* note 43.

383. See *id.*

384. See *id.*

385. NICOLE DUPUIS & BROOKS RAINWATER, NATIONAL LEAGUE OF CITIES, THE SHARING ECONOMY: AN ANALYSIS OF CURRENT SENTIMENT SURROUNDING HOMESHARING AND RIDESHARING 2 (2015).

solutions that reflect shared views on how to maximize the use of urban facilities and assets. Through such regulation, cities shape collaborative consumption and its related services. Yet cities not only shape the sharing economy but also allow themselves to be shaped thereby.
