THE SHARING ECONOMY AS A MEANS TO URBAN COMMONING·

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Sharing economy and urban commons are inherently intertwined. New technologies and business models for the production and consumption of goods and services are rapidly transforming cities across the world in many ways: carsharing, ridesharing, short-term rentals, shared housing and workspaces. These not only put into question how urban transportation and tourist accommodation are planned, but also disrupt traditional local services, influence housing affordability and redesigning city spaces, thus often making existing local rules obsolete. These profound changes raise many issues. What kind of city is molded by peer-to-peer activities? Is a sharing economy the way to a commons-based urban economy? And what kind of rules are required, if any?

This paper aims at examining the delicate relationship between a sharing economy and urban commons and investigating how regulation can affect it. While part of the current debate is sometimes polarized between devotees and decriers of peer-to-peer economic activities, many observers emphasize their multifaceted effects. New technologies are potentially powerful tools for sustainable economic models based on genuine sharing and cooperation, permitting optimum use of existing resources and reinforcing social networks. However, many of these phenomena are characterized by conflicting tendencies. Elinor Ostrom's empirical findings about the design principles that can lead towards a successful common regime give a great importance to the existence of rules in accordance with local circumstances and to a participative decision process. Assuming the wide variety of peer-to-peer economic models and the significant differences from city to city, we should appreciate, on a case-by-case basis, how these practices impact on local economic growth, democratize access to goods and services, foster sustainable urban development, influence the urban environment and impact on job creation and labor conditions, and we should identify the distributive consequences on the city and its inhabitants (underserved neighborhoods, people with disabilities, low-income communities). On that note, in order to instigate a truly commons-based urban economy it is critical to identify pros and cons of these practices in a given milieu and to generate distinct strategies accordingly, resisting any temptation of "one-size-fits-all" solutions.

I. INTRODUCTION

With recent technological changes and the resulting reduction in transaction costs, an entire economic system of crowd-based firms for digitally enabled peer-to-peer activities is emerging, reshaping and in some cases supplanting long established business models. Thanks to these innovations that facilitate access over ownership, people are now able to share, rent or borrow underutilized goods and provide peer-to-peer services. It is the nascent sharing economy - "an economic model based on sharing, swapping, trading, services and products"[1] that complements and, in some cases, replaces central institutions - whether private or public bodies - for the provision of goods and services.

These changes are already having a profound impact on cities, transforming urban environments in many ways. Being the places that bring people together, cities are the ideal environment to develop strategies and activities for a new peer-to-peer economy where individuals - the so-called "peers" - get in contact with each other to share goods, skills and spaces. Most successful sharing economy firms are big players in key industries within the urban environment, particularly transportation, lodging and dining. Carsharing, ridesharing, short-term rentals, shared housing and workspaces, not only put into question how urban transportation and tourist accommodation are planned, but also disrupt traditional local services, influence housing affordability and redesign city spaces, thus making existing local rules obsolete.

A few cities across the world are at the forefront of this new trend. Commonly defined "sharing cities" - or, with a somehow overlapping terminology, "smart" or

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[1] R. Botsman, "The Sharing Economy Lacks a Shared Definition", Fast Company, 21-11-2013, http://www.fastcoexist.com/3022028/the-sharing-economy-lacks-a-shared-definition.

"sustainable" cities - these places characterize themselves as having "a more systematic approach to promoting the collaborative economy" and as adopting principles and practices that enable and encourage people and institutions (public or private) to adopt the new business models.[2]

What kind of city is molded by peer-to-peer activities? Is a sharing economy the way to a commons-based urban economy? And what kind of rules are required, if any? While a large part of the current debate seems to consider sharing economy as good *per se*, and to regard ongoing conflicts over rules as a struggle between an interested minority of traditional incumbent firms and a bunch of innovative start-ups bringing general benefits for the rest of us, many observers underline that the downsides of the sharing economy are not limited to just displacing a few old-style companies, and emphasize instead its multifaceted effects. Technologies enabling sharing practices are potentially powerful tools for building genuine sharing and cooperation, favoring the creation of a sustainable economy that permits optimum use of existing resources while reinforcing social networks. But many of those phenomena commonly identified under the umbrella of the sharing economy are now characterized by negative dominant tendencies and achieving that potential requires important changes, first of all in ownership and governance.[3]

A Declaration for a commons collaborative economy was approved in Barcelona in March 2016, that aims first to highlight the importance to distinguish several models of collaborative economy, to define a commons-oriented model within the collaborative economy, and to provide policy recommendations for the public administrations.[4]

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[2] T. Saunders, P. Baeck, "Nesta. Rethinking smart cities from the ground up", June 2015, p. 33.
[3] E. Manzini, "Design research for sustainable social innovation", in R. Michael (ed.), "Design research now", Basel-Boston-Berlin, 2007, p. 233; J. Schor, "Debating the Sharing Economy", Oct. 2014, http://www.greattransition.org/publication/debating-the-sharing-economy. Also see M. Finck, S. Ranchordas, "Sharing and the City" (March 3, 2016) in *Vanderbilt Journal of Transnational Law* (2016), forthcoming, available at SSRN: http://ssrn.com/abstract=2741575 or http://dx.doi.org/10.2139/ssrn.2741575, where the the historical, economic, and legal meaning of genuine "urban sharing" is investigated, making a distinction between genuinely collaborative initiatives that promote the sharing of underutilized assets (e.g., spare guestrooms), and non-collaborative platforms which are not driven by sustainable consumption.
[4] For the complete version, see http://procomuns.net/en/policy/. A set of recommendations has been proposed by the Barcola group (Barcelona Collaborativa) and the collaborative peer production initiatives under its umbrella, informed by the research developed by the Dimmons.net group at IN3-UOC and the P2Pvalue European Project.

Following these lines of reasoning, the aim of this article is to put the widespread one-dimensional description of a sharing economy under review and to give a more nuanced account of its challenging aspects in relation to the urban environment. As the conclusion illustrates, the effects of sharing economic practices should be assessed carefully, bearing in mind that each case is different from the next, and that diverse groups - incumbents, entrants, neighbors - have distinctive, conflicting interests. Therefore, local regulators should be considering a wide array of competing and sometimes conflicting aspects when facing these new innovative sharing practices.

In its first part, this paper highlights the limits of a pervasive description of the sharing economy as a self-sufficient economic organization with little or no need for external rules and verifies the role of cities in governing this process. In the second part, it analyzes the normative questions that local policymakers face in regulating the sharing economy and describes what kind of considerations municipal authorities should take into account to encourage the emergence of a community-oriented, context-specific, collaborative economy that truly fosters urban commons.

II. SHARE WARS

Cities have a strange fate in the sharing economy. At first, everybody seems to recognize them as laboratories for sharing practices with a central role in shaping an entirely new economy. Municipalities are deemed to have all the power they need to govern the ongoing process: they can issue local taxes, approve zoning laws, prescribe lease terms, regulate transportation and hospitality, subsidize some industries or cooperate with others to provide public services, and so on.[5]

This apparent centrality is reinforced by cities' predominant role in the constant regulatory battle taking place around the world, between heavily regulated "real economy" incumbent firms - in particular, hotel and taxi industries – and the sharing economy, largely unregulated, new entrants. Together with the courts, cities are called to regulate the sharing economy. But whereas alternatives available to the courts are limited to an all-or-nothing approach - either applying existing laws to this new economic model

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[5] See National League of Cities, "Cities. The Sharing Economy and What's Next", 2015, p. 1: "Cities play a central role in deciding which sharing economy practices are adopted and which are rejected".

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or considering old rules unfit for the case (can a ride-sharing app be qualified as a taximeter? Is short-term rental like a hotel?) - the big challenges are for the cities that are called to create *ex novo* an entire new regulatory environment for the newcomers.

While literature almost invariably assumes that cities have legal power to rule these markets, this description sounds impractical and the reality looks quite different. First of all, in many legal systems rules governing the market are not municipal, and sources of law leave little or no room for intervention by local powers. If a municipal authority can generally decide on local taxes and zoning laws and regulate some aspects of transportation and hospitality, many important features of the sharing economy are in large part subtracted to local authorities - contract and labor law, competition, data privacy protection, taxation.

Secondly, sharing firms fiercely resist regulatory efforts by local regulators, depicting undesired rules as attempts to dismantle a nascent sector with destructive consequences on countless economic opportunities and job creation, often using aggressive strategies to avoid any form of regulation that would potentially disturb their growth. Existing rules are considered either as non applicable to the sharing economy or as inefficient regulatory barriers that must be removed in order to avoid slowing the growth of new economic activities, and the creation of job opportunities.

In order to become a truly sharing city, it is suggested that municipalities redesign regulation accordingly so to allow for a disruptive entry in the market. The often conveyed fairy tale of innovation, growth and empowerment - where local governments work hand in hand with innovators to foster the development of new economic sectors, by adopting appropriate policies in a constant quest for a positive impact on the city - stands so long as cities' concerns are limited to the creation of a favorable legal environment for the growth of the new economy. But the picture changes radically when cities try to consider competing needs and to weight pros and cons of the new practices, giving space to goals other than those promoted by new sharing practices.

Sharing companies point to a new regulatory framework where market incentives and self-regulation - whether through platforms or self-regulatory organizations - are the satisfactory and almost exclusive alternatives to public regulation. And all cities are

supposed to do is embrace these changes and adopt policies to enable new activities, modifying local regulation accordingly.

Further, these companies often present themselves not as service providers, but instead as networks or marketplaces that offer an infrastructure upon which peers depend to connect to each other.[6] This is not just a neutral description of how these companies operate, since it has a profound impact on legal regulations. If we consider this account accurate, only peers are subject to legal obligations, and all platforms would be required to do is to inform their customers about duties and liabilities and warn them about responsibilities for not complying with local regulations. While municipalities are supposed to enforce regulation only against individual customers within the platform. In sum, framing the role of the platforms in this fashion, companies are deemed not to be bound by rules usually applicable to service providers (such as disability laws) distancing themselves from potential violations and making enforcement almost impractical.

III. SELF-REGULATING MARKETS

The most invoked reason to refuse regulation for the sharing economy is the non-professional status of peers operating through platforms. People who provide services or share their goods in the sharing economy are not full-time, large scale professionals (Airbnb hosts are not hoteliers, Uber drivers are not professional taxi drivers, people occasionally selling a few items on Etsy are not professional sellers). And since professionals and peers are radically different, extending rules, originally conceived for a professional provision of goods and services, to peer-to-peer exchange would determine a disparate impact at the expense of sharing firms and would erect insurmountable barriers to entry in these growing markets (e.g. imposing a duty to comply with hotel regulations for allowing people to occasionally rent a spare guest room).

A second more pervasive reason that reinforces the case for lowering professional standards for sharing firms and supports a limited intervention by rule

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[6] See Complaint for Violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the California Unruh Civil Rights Act, Cal. Civ. Code §§ 51 & 52, and the California Disabled Persons Act, Cal. Civ. Code §§ 54–54.3, *National Federation of the Blind of California v Uber Technologies, Inc*, Case No 3:14-cv-4086 (ND Cal filed Sept 9, 2014).

makers is the supposed capacity of these platforms to regulate themselves.[7] In traditional markets, regulation comes into place in all those cases when the free market dynamics fail to achieve the optimal outcome, so-called "market failures": information asymmetry, externalities, market power.

Quite the opposite, the emergence of third-party intermediaries in the sharing economy - the online platforms that mediate the exchange among peers - make the case for regulation less compelling. Thanks to digital technologies, on-line platforms are now able to monitor behaviors, exert pressure, deter and sanction misconducts, all of these with trivial or no transaction costs (e.g. deactivating an account).

Platforms can mitigate and solve many of the issues that the market faces, making the role of public intervention more and more marginal. In a growing number of cases a sharing economy can overcome market imperfections without recourse to regulation and this makes a strong argument for reconsidering the role of regulation in the market. In this scenario, the platform itself would be the ruler and the enforcer of such a self-regulatory regime since the self-correcting capacity of new markets and the non-professional status of the peers make regulation needless and inappropriate.

Having an ubiquitous control over economic agents operating through the platform, sharing companies can play an active role in correcting market failures that are traditionally addressed through regulation. In this task platforms are assisted by technologies that gather and process relevant information, often through reputation-based systems and reputation data, mitigating information asymmetries and creating strong incentives for economic agents using the platform to perform better. After all, platforms' interests are aligned with the general one - facilitating the exchange among peers and fostering a safe and efficient development of online "marketplaces" that enable sharing practices.

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[7] M. Cohen, A. Sundararajan, "Self-Regulation and Innovation in the Peer-to-Peer Sharing Economy", in 82 *U Chi L Rev Dialogue*, 116; C. Koopman, M. Mitchell, A. Thierer, "The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change", Change, Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, Va, Dec. 2014; Id., "The Sharing Economy: Issues Facing Platforms, Participants, and Regulators, Sharing Economy Workshop", Project No. P15-1200, 2, nt. 3, http://mercatus.org/sites/default/files/ Koopman-Sharing-Economy-FTC-filing.pdf; D. Baker, "The Sharing Economy Must Share a Level Playing Field", in *Cato Unbound*, 11-2-2015, http://www.cato-unbound.org/2015/02/11/dean-baker/sharing-economy-must-share-level-playing-field.

IV. INNOVATION BIAS

Not only is sharing economy deemed to be largely self-sufficient for reasons already illustrated - markets self-correct themselves with little or no need of external control. A second powerful narrative that makes the case for regulating the sharing economy a troubled one is its technological dimension, as sharing economy (and sharing cities) literature vastly use the pro-innovation claims to promote itself. Formulating an argument for innovation in public debate makes that position almost indisputable and sharing economy makes no exception: "In the context of the sharing economy, being *receptive to innovation* has become the gold standard for any city (…) No city wants to be perceived as anti-innovation".[8]

On a legal ground, this position leads to advocating for innovation-friendly rules or, more often, to asking regulators to simply stay away from innovations, so as to skip the risk of hindering it. In nascent and rapidly evolving sectors, such as most of those affected by the sharing economy, cities are still in a trial-and-error phase and this lack of a well-adjusted framework to address the many concerns derived by these new business models makes the pro-innovation attitude an almost indisputable starting point.

This pro-innovation orientation is often reinforced by a widespread attitude to recast complex urban issues "as neatly defined problems with definite, computable solutions or as transparent and self-evident processes that can be easily optimized"[9] in order to achieve efficiency and boost innovation. This understanding creates an entirely new way of conceptualizing the city as a place "with an underlying code or logic, one that can be hacked and made more efficient – or just, or sustainable, or livable – with a tweak to its algorithms or an expansion of its dataset".[10]

This mind-set is strengthened by the already mentioned ability to generate, collect and store data. Having data does not just mean having more information, but it comes with information reductionism - the illusion that everything can be reduced to objective

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[8] National League of Cities, "Cities. The Sharing Economy and What's Nexts", *supra*, note 5 p. 6; S. Ranchordas, "Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy", in *Tilburg Law School Legal Studies Research Paper Series No. 06/2015*, http://ssrn.com/abstract=2492798.

[9] E. Morozov, "To save everything click here", London, 2013, p. 5.

[10] S. Mattern, "Methodolatry and the Art of Measure", in *Places*, Nov. 2013.

information and that we can represent a given phenomenon in a objective, universal way, offering a comprehensive computational model of understanding overly complex city processes. Quick and easy solutions can be provided with the right tools and algorithms.[11] As we will see, this narrow way of understanding complex problems, including urban planning and city government, is deeply affecting the way the impact of the sharing economy on urban environment is depicted and solutions are pointed out.

5. A CRITIQUE OF THE DOMINANT VIEW

Almost invariably, discourses on sharing cities emphasize the importance of a context-specific and evidence-based approaches. However, these premises largely remain on paper, outstripped by the prevalent vision of a self-sufficient economic environment and the often implied conclusion that the only option available for the cities is to promote a sharing economy and remove normative obstacles that may hamper the development of these sharing practices.

The capacity of markets to regulate themselves and the bias for innovation and growth are the two pillars that sustain this widespread idea of a self-regulating sharing economy that fosters innovation maximizing social welfare. Taken together, these two self-reinforcing arguments push towards a free market approach to innovation and point to a sharing economy with minimal regulation, making the old regulatory playbook obsolete.

This understanding gives an impoverished description of urban environments and of potential solutions to work around. City is not only a "growth machine"[12], city government is not only an efficiency deficit to be overcome with the right technology[13] and not all problems, especially the more intricate ones, can be defined in an all-encompassing way and solved through ready-made technological solutions, while a sharing economy cannot be considered part of a broader strategy for achieving an

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[11] Cf. R. Botsman, "Why the law won't stop Uber", in *Financial Review*, 11-7-2014, http://www.afr.com/content/afr/it-pro/why-the-law-wont-stop-uber-20140710-j5vxw.html/leadership/entrepreneur/why-the-law-wont-stop-uber-20140710-j5vxw.html.

[12] H. Molotch, "The City as a Growth Machine: Toward a Political Economy of Place", 82 *Am. J. Socio.* 309 (1976)

[13] T. Saunders, P. Baeck, "Nesta. Rethinking smart cities from the ground up", *supra*, note 2, p. 30, "Efficiency is at the heart of a smart city vision".

algorithmic urban efficiency. These narratives of universally valid and uncontroversial solutions invariably suggest ahistorical, technically-driven answers to complex and culturally specific problems that overlook peculiar practices and traditions and local differences, failing to capture historical complexities.

Governing the emergence of a new economic environment is not just a matter of efficiency, price and consumer welfare and the capacity of sharing firms to mitigate market failures does not undercut the need for some degree of external control, especially if other goals are taken into account in addition to market efficiency and consumer protection. While efficiency concerns are limited to the insurgence of market failures, the role of regulation may be wider and encompass many other normative questions. We must reject this supposedly objective and non-ideological approach and try to reach a deeper understanding of the sharing economy that resists this narrative and its language of supposed neutrality and objectivity and includes its normative and political dimension, sociality and culture, in order to promote urban commons – urban resources that are "functional or essential to human well-being or flourishing".[14]

Any proposed answer cannot but be situated, contingent and contextual and must balance among different, often conflicting values – efficiency and sustainability, inclusion and competition - that are hardly frictionless and uncomplicated. Creating access to shareable goods may be a powerful way to empower people, but only after assessing the pros and cons of sharing practices and their beneficial impact on the society as a whole we can take a stand.

In order to define sharing practices as social innovation it is vital to assess economic and social benefits they bring as well as their capacity to respond to social needs in novel, creative ways, where the existence of a beneficial social change must prevail over profit. A genuine social innovation is a step to a more sustainable and inclusive environment that determines a positive social impact, with greater value for society than individual gains for enterprises and private individuals.[15] And it must be

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[14] S. Foster – C. Iaione, "The City as a Commons" (Aug. 29, 2015), in *Fordham Law Legal Studies Research Paper No. 2653084*, available at SSRN: http://ssrn.com/abstract=2653084; U. Mattei, "Beni comuni. Un manifesto", Laterza, 2011.

[15] S. Ranchordas, "Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy", *supra*, note 8, where it classifies the sharing economy as both technical and social innovation.

context and sector specific, making different allowances depending on the social and economic conditions of a specific country, city or even community.

As the well-known adagio goes, states (or cities) should not be picking the winner, but should nonetheless weight conflicting considerations and go beyond correcting market failures, taking into account fundamental rights and public policies. For these reasons, intervention is required and cities should ponder many aspects when dealing with the emerging practices of the sharing economy.

VI. SUSTAINABLE SHARING

First of all, even defining a sharing economy solely through the lenses of market dynamics and failures does not rule out the need for regulation. Platforms and self-regulatory organizations may mitigate most, but not all, market failures: not all information asymmetries are solved by new economic practices and in some cases there is still a strong need to protect customers from frauds and dangers.

Another important case for market failure, that is less likely to be addressed by self-regulatory instruments, is the peril of negative externalities. The most obvious example is the occurrence of guest-noise or the rise in the presence of strangers in a building, due to short-term stay services, that platforms may have no incentive to correct it. While advocates of the sharing economy suggest that co-op associations, condominium boards and homeowners associations may play an active role as a viable substitute to regulate short-term rentals, creating alternatives among which consumers can make their choice (e.g. between "Airbnb-friendly" or "Airbnb-free" buildings), there may still be the case that regulation is preferable to govern some of these externalities that platforms have no interest to correct and private entities, such as homeowner associations, have no power to deal with.

Further, if digital platforms can solve part of market failures addressed in the past through regulation, peer-to-peer activities may create additional problems. In many cases the new sharing services are *de facto* deregulating heavily ordered traditional services and additional requirements may be imposed to address those issues that cannot be entirely delegated to private ordering.

The emergence of a peer-to-peer economy, where private, non-professional individuals provide services to customers, may lead to safety, health, environmental and transparency concerns. While many traditional rules are surely out-of-date, others are effective regulatory responses to real and present market failures.

In response to these risks and to avoid race-to-the-bottom dangers, restrictions to market entry, fare regulation, mandatory insurance coverage, safety protocols and background checks, may be imposed. And sharing companies are to be considered as service providers, subject to legal obligations, and directly responsible for ensuring safe and reliable services.

VII. INCLUSIVE SHARING

The case for regulating the sharing economy is not just a matter of market efficiency but must also be evaluated in the light of its distributive effects. Since most of the value generated in the sharing economy is produced by the peers, it is important to understand how these new sharing practices change the distribution of wealth and distributive consequences are the primary aspect of the economic practices to be investigated.

So far, the economic and social impact of the sharing economy has not been investigated enough and evidence is mixed, making further research on the impact and social consequences of the sharing economy required. Some studies conclude that peer-to-peer activities potentially benefit the below-median-income part of the population more than the above-median-income one and that sharing firms can be used as means to redistribute income.[16]

The often offered explanation is that such firms allow citizens to avoid buying capital goods, and instead rent or borrow cars, tools and space from strangers, making

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[16] S. Fraiberger, A. Sundararajan, "Peer-to-peer Rental Market in the Sharing Economy", in 82 *U. Chi. L. Rev.* Dialogue 116 (2015); T.R. Dillahunt – A.R. Malone, "The Promise of the Sharing Economy among Disadvantaged Communities", in "Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems", 2285, 2015, http://dl.acm.org/citation.cfm?id=2702189&dl=ACM&coll=DL&CFID=538559005&CFTOKEN=56128162; R.B. Reich, "The Share-the-Scraps Economy", Feb. 2 2015, http://robertreich.org/post/109894095095; The secret to the Uber economy is wealth inequality, Quartz, 16-12-2014, http://qz.com/312537/the-secret-to-the-uber-economy-is-wealth-inequality/.

ownership of these goods no longer necessary; and give the opportunity to non-owners to affordable access goods and services. Moreover, these companies permit owners to offset purchase costs by allowing goods to be shared and borrowed in new ways, so helping economically-distressed owners.

Other analysis emphasizes that the sharing economy has, in IT-savvy and young millennials, its most fervent enthusiast fans: customers of high-tech sharing companies are often young, skilled, educated, upscale consumers. The famous and controversial Richard Florida thesis about the creative class and the supposed link between a city's prosperity and its capacity to attract skilled and well-educated people is often quoted.[17]

In this pursuit of prosperity, it is suggested that cities subsidize, instead of placing obstacles in the way of the new sharing firms as they generate public goods, thus attracting the "better kind" of people. Similar to a new stadium, the presence of "vibrant" sharing firms is supposed to foster "civic pride and joy", to signal a city is "on the map" and to overcome political opposition that would otherwise block necessary urban improvements.[18]

If access to high-speed internet, owning smartphones and computers, and being able to use them, are all pre-conditions for taking advantage of the new services, a sharing economy runs the risk of creating a potential technological hurdle that may impede or deter access to a significant part of the population, leaving these opportunities to an elite of digitally connected young citizens, while excluding the rest.[19]

As cities host very diverse groups of people regarding race, gender, ethnicity and class, and city life is the "being of together of strangers" [20], any attempt to create a community of shared aims and mutual identification is in inner contrast with this definition. The risk is fostering the creation of "purified communities"[21], instead of

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[17] R. Florida, "The Rise of the Creative Class and How It's Transforming Work, Leisure, Community and Everyday Life", New York, 2002.
[18] D.E. Rauch, D. Schleicher, "Like Uber, but for Local Governmental Policy: The Future of Local Regulation of the "Sharing Economy"", in *George Mason University Law and Economics Research Paper Series 15-01*, http://ssrn.com/abstract=2549919.
[19] G.E. Frug, "City Making. Building Communities without Building Walls", Princeton, 1999, p. 3 ff.
[20] I.M. Young, "Justice and the Politics of Difference", Princeton, 1990, p.237.
[21] R. Sennett, "The Uses of Disorder: Personal Identity and City Life", New York – London, 1992.

cultivating the interaction with unfamiliar strangers that is the primary function of a city.[22]

A related concern is that sharing platforms may discriminate among customers. While traditional services, such as taxis, are required to serve poor areas of the city, to have the car equipped to accommodate customers with disabilities, to apply the same rate based on distance regardless of the area, companies like Uber and other sharing firms are largely responsive only to market forces: they accept rides only if profitable, don't take expensive steps to accommodate customers, often limiting their operation area to the city center and leaving the unprofitable suburbs to traditional public services and loss-making sharing services to the city.

As a result, many sharing services are often unavailable to poor urban residents, people with disabilities, underserved communities. Denial of market access to disadvantaged individuals or groups is a rising concern in the sharing economy and municipalities should hold these companies responsible for failing to take reasonable steps to prevent discrimination.

It is vital for inclusive cities to grant effective, equal access, putting sharing firms under public obligation to accommodate every customer. Cities can mandate these companies to operate in poor and underserved areas and to accommodate low-income or minority communities and people with disabilities, to prescribe specific requirements to meet these needs (e.g. equipping at least part of the fleet of vehicles with ramps for people requiring special assistance) or, alternatively, to establish a funding pool for sustaining services for under-served areas and disadvantaged communities through local taxes paid by sharing firms.

Housing affordability is another distributional question for the sharing economy. In many areas, the rising short-term rentals are diminishing the availability of long-term rental houses in the market, especially affordable ones.[23]

Responding to these concerns, some cities have ruled that only owner-occupied homes can be rented out on a short term basis. In other cases, measures have been taken to provide part of a city's revenues from home-sharing to create an affordable housing

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[22] G.E. Frug, "City Making. Building Communities without Building Walls", *supra*, note 19, p. 140.

[23] M.R. Marella, "Lo spazio urbano come bene comune", in *Scienze del territorio*, 2015, p. 87.

fund. In any case, assessing changes in house affordability is an important distributional concern to measure how sharing practices are impacting cities.

If we take distributional effects seriously, regulation for the sharing economy must be provided in ways that do not create a disparate impact on different segments of city inhabitants or lead to discrimination or unequal access to products and services that are essential to the city and its inhabitants. As already underscored, growth strategies themselves may contribute to inequality[24] and it is fundamental to promote a growth that is also inclusive.

VIII. ETHICAL SHARING

In order to further sharing practices that foster urban commons, attitudes towards (non distributive) values is another potentially relevant dimension that deserves to be investigated.

A first plausible conflict between a sharing economy and values is the risk of commodification. Thanks to lowering transaction costs and the possibility of coordinating peers, the sharing economy is giving rise to the commodification of goods that were not sold on the market until the recent past.[25]

While the most successful examples of this trend - spare rooms, office spaces, tools – are not problematic, there may be more troubling cases for other assets or services, and a decision is to be taken about what a society wants to be exchanged in the open market and what should stay outside the realm of supply and demand. Do we want parking spots to be made available to the highest bidder, one who is willing to pay more for the information about their availability, or do we prefer instead that they go to those lucky enough to find them? And do we want all of a city to be an entire *de facto* commercial area due to the constant presence of "guests" at short-term rentals?

It is not just a matter of efficiency. Admittedly, technology can improve efficiency in the allocation of parking spaces with potential positive impacts on the traffic, but it

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[24] S.L. Elkin, "City and Regime in the American Republic", Chicago, 1987.
[25] M. Bauwens, "The sharing economy is a ploy for the commodification of everything", P2P Foundation, Aug. 31, 2014; M.R. Marella, "Lo spazio urbano come bene comune", *supra*, note 23, 87 ff.

may be important for a city to decide how to allocate its scarce resources, whether through money or other criteria.

A related issue is the "surge pricing" mechanisms that dominate in many markets of the sharing economy. Contrary to many regulated industries, sharing firms adjust prices for their services according to market fluctuations, in a way that allegedly helps match supply and demand (e.g. attracting drivers when demand is high).

Despite these measures proving to be highly unpopular, especially when operating in dramatic cases such as emergencies, and being abandoned or radically limited by many companies, they are still at the very center of the price mechanism in the sharing economy. As in the previously mentioned case, the risk is commodifying a growing share of municipal collective resources, selling them to the highest bidder and considering city services as simple objects of consumption, so offering a consumer-oriented vision of the city and establishing a "you-get-what-you-pay-for" environment.[26]

An additional aspect that is at stake in the sharing economy is big data, as sharing companies track peers operating through the platform, gathering a vast amount of information in order to coordinate supply and demand and to monitor and sanction conducts. This enormous ability to collect personal data, not only has obvious consequences for the personal privacy of users and customers, but raises other concerns related to the dominance exercised by on line platforms in information gathering.

These companies may leverage their users to pressure local authorities, exercising not only economic power, but also information power to obtain political influence. And cities run the risk of depending on new sharing firms to provide essential city services or to obtain relevant data (a few cities have stroked deals with sharing companies, allowing operations in exchange for data). Cities should be able to acquire relevant data from firms operating in their territory, such as information about transportation, safety, labor, and all potential public interest information, as granting transparency of companies operating in a given milieu is a central factor for assessing the impact of a sharing firm.

Finally, one of the most controversial aspects of the sharing economy is how it is changing the job market, workers protection and social safety nets. Categorizing peer-to-

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[26] G.E. Frug, "City Making. Building Communities without Building Walls", *supra,* note 19 p. 169.

peer services, provided through these logistic companies and based on external workers available on-demand, as being a sharing economy, may become problematic. Spare time, talent and unused skills - much like extra rooms or parked cars - are what is "shared" under this wide (and widely accepted) meaning of a sharing economy - a definition that can only be baffling, at least for those who think that working capacity is not a "thing".

Beyond definitions, some observers underline the new opportunities created by sharing firms for gigs and part-time jobs, to complement income for low-income residents. And flexibility is another often cited perk of the so-called gig-economy. On the opposite side, many accuse sharing firms of relying on underemployed job-seekers in order to pay very low wages, exploiting economic vulnerability in times of crisis and deepening existing inequality. Service providers employed through sharing firms are usually considered independent contractors, making peers not eligible for benefits usually reserved for employees (e.g., minimum wage, hours regulations, insurance, health benefits, retirement plans, vacations), thus shifting risk from employers to workers. The overall effect of this new marketplace for jobs – these analyses always conclude - is a massive transfer of wealth from workers to capital. Responding to these criticisms, a widely suggested strategy is favoring that local platforms be owned and governed either by municipalities, users or workers, especially in cases where there is a long tradition of worker's and user's cooperatives.

IX. PARTICIPATIVE SHARING

In order to avoid overuse or misuse of common resources, the tragedy of the commons famously describes a blunt alternative between private ordering through individual rights, that nudges private parties to fully take into account the benefits and costs of any decision, and coercive central government. No other option is considered.

With the commons movement, a third element emerged as a viable alternative: the assumption of a greater role of citizens in governing urban resources. For this reason, the sharing of public power is at the core of a community-oriented sharing economy.

Promoting urban commons through the sharing economy requires fostering active participation in decision making about sharing practices. Cities must find ways to

involve as many citizens as possible in policy making and urban planning. This participation is especially important for those segments of the population that are more directly affected by a certain course of action. Citizens should be encouraged to submit ideas and debate them, so as to complement professionals who may not be fully aware of local needs and peculiarities in devising viable solutions for specific problems in accordance with the specific context.

The involvement of citizens can be enhanced through practices and tools developed to enrich this inclusive decision making process. Local governments should adopt ways – from financial incentives to special regulatory mechanisms - to encourage and support people to cooperate together over the long run, helping them to overcome collective action problems. So it is important to find methods and procedures that help solve coordination costs - searching, bargaining and enforcing - and free-riding risks, especially for community oriented sharing practices which regard a vast number of individuals engaged in small actions with modest or insignificant payoffs for the commons.[27]

With the adoption of the so-called participatory budgets, citizens have the opportunity to take part in political decisions concerning how to spend a given percentage of city budget. More recently, crowdfunding has emerged as another way to collectively fund urban projects giving people a voice in spending decisions, sometimes with innovative solutions (e.g. by adopting "match funding schemes", where cities may decide to finance a project once citizens have raised an equivalent amount of money).

Strengthening collaboration and participation of citizens in solving city problems through sharing practices can also answer the so-called "regulatory slippage" – the decline of either enforced or voluntary compliance with the restrictions on use of a given resource by local government control and oversight, which especially emerges when the demand for a resource outstrips government's ability to exert effective control over it (e.g. when restrictions in access and use of a certain resource is unreasonable or unrealistic or for other motives).[28]

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[27] S.R. Foster, "Privatizing the City? Enabling Collective Management of the Urban Commons", in 87 *Notre Dame L. Rev.* 57 (2011).
[28] S. R. Foster, "Urban Informality as a Commons Dilemma", in 40 *U. Miami Inter-Am. L. Rev.* 261 (2009).

Furthermore, it is indispensable to choose approaches and technologies that best reach the vaster and involved audience, taking into proper account the technological skills of citizens and removing barriers to participation. Using online tools only, to let people discuss and involve citizens in policy making and spending decisions, can be effective in a compact city of tech savvy, highly educated people with digital skills, but can produce a disparate impact in places with a more diverse composition of population. Thus giving voice only to one part of the population – often the strongest – and making the suggestion coming from people and areas underserved by technologies less compelling. To avoid this risk, cities must govern these processes, making them truly inclusive and democratic. Finally, if municipalities must ensure that constituents, stakeholders and those who have a vested interest have a voice about these new sharing practices, sharing companies should be collaborative with regulators and together find the potential for capturing the innovative value that sharing practices can bring in a specific environment and creating an appropriate legal framework accordingly.

X. TOWARDS RECONCILING SHARING ECONOMY AND URBAN COMMONS

The sharing economy can be a powerful tool of economic inclusion and opportunity and developing peer-to-peer schemes to encourage people to connect with each other may have a profound positive impact on the urban environment. By allowing cities to tap into its citizens' personal abilities, connecting people to share assets, services or both, and facilitating a more efficient use of underutilized resources, a sharing economy can play an important role in making the economic system more efficient and enhancing social welfare. For these reasons cities must find ways to favor sharing practices.

On the other side, the unprecedented opportunity to create new commercial services, with little or no control by the city, may result in a massive disregard of local regulation and expose the urban environment to the risks of congestion and overconsumption, much like adding too many cows to a field with the risk of overgrazing, as in Hardin's famous open pasture case.[29] Taking all these considerations

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[29] Zoning regulations manage much of city space like commons, controlling density, height and bulk and by separating (or excluding) incompatible land uses as a way of limiting the

into account, each city must reject answers based on strict efficiency concerns and provided solely by technologies and data, usually presented as "commonsensical, pragmatic, neutral apolitical, evidence-based forms of responsive urban governance" while being "selective, crafted, flawed, normative and politically-inflected".[30] And, instead, should decide on a case-by-case basis to promote or discourage different causes of action, incentivize certain directions or limit or even prohibit directions that are deemed detrimental to society.

To be sure, this paper doesn't advocate for pervasive intervention across the board: the social and moral importance of sharing services is heterogeneous and the case for regulating ride sharing is obviously stronger than pet-sitting services.[31] Nor it is a call for favoring non-profit, neighborhood-based initiatives and community platforms at the expense of for-profit platforms and market-oriented enterprises.

What this paper intends to underscore is the pressing need to balance efficiency concerns and public policy reasons and to promote genuine practices of cooperation and sharing, thus advocating for rules that encourage an inclusive economic growth. To achieve this result, we should find ways for peers and cities to capture a fair fraction of value produced by peer exchanges. Thus impeding excessive rent extraction by intermediaries and granting equal access to services. And we should define a new regulatory toolkit that delegates governance to platforms and reallocates responsibilities, leveraging platforms' self-governing capacity, while at the same time retaining part of the process for municipal authorities.

As seen, the widespread account of sharing cities is based on two somehow contentious assumptions. The first founding myth describes powerful municipalities competing for potential residents willing to pay higher prices for more efficient markets in goods and services.[32] The second one assumes a free market with almost no need of

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impacts on the urban environment more generally and on the space inhabited by other users of the commons. Cfr. S.R. Foster, C. Iaione, "The City as a Commons", *supra*, note 14, p. 8.

[30] R. Kitchin, "Data-Driven, Networked Urbanism" (Aug. 10, 2015). Available at SSRN: http://ssrn.com/abstract=2641802.

[31] J. Schor, "Comment" in K. Sabeel Rahman, "Curbing the New Corporate Power", *Boston Review*, May 4th 2015, https://bostonreview.net/forum/k-sabeel-rahman-curbing-new-corporate-power.

[32] C.M. Tiebout, "A Pure Theory of Local Expenditures", in 64 *The Journal of Political Economy* 416 (1956).

external rules, with online platforms able to regulate themselves thanks to information gathering tools and trust enhancing mechanisms.

While both myths contain more than some truths, a more realistic account describes cities with limited powers to oversee an entire new economy that is deeply changing the urban environment and determines disparate impacts on urban environment. As Juliet Schor poses the question, whether "the sector will evolve in line with its stated progressive, green, and utopian goals, or will it devolve into business as usual" depends, at least in part, on the role of cities in shaping sharing practices in ways that promote more sustainable and fairer societies.[33] And solutions must be developed in strict accordance to neighborhood composition, economic conditions and community needs. A great importance is to be given to the existence of rules in accordance with local circumstances, as Elinor Ostrom's empirical findings about the design principles of a successful common regime clearly show.[34]

Assuming the wide variety of peer-to-peer economic models and the significant differences from city to city, we should appreciate on an individual basis how these practices impact on local economic growth, democratize access to goods and services, foster a sustainable urban development, influence the urban environment and impact on job creation and labor conditions, and should identify the distributive consequences on the city and its inhabitants (underserved neighborhood, people with disabilities, low-income communities). Further, citizens are both consumers and workers: decent earnings and low prices for services are two (potentially conflicting) concerns for a city to weigh up. Finally decisions are to be taken through a truly participative decision process, since local empowerment is possible only when local communities are able to decide which rules to adopt. On that note, in order to instigate a truly commons-based urban economy it is critical to identify pros and cons of these practices in a given milieu and to generate distinct, context-dependent, strategies accordingly, resisting any temptation of "one-size-fits-all" solutions and any singular truth based on an "ageographical city" [35] in favor of more tailored regulatory responses.

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[33] J. Schor, *Debating the Sharing Economy*, *supra*, note 3.
[34] E. Ostrom, "Governing the Commons. The Evolution of Institutions for Collective Action", Cambridge, 1990.
[35] M. Sorkin, "Variations on a Theme Park: The New American Cities and the End of the Public Space", New York, 1992, p. IX.