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The Sharing Economy Just Got Real

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The legal problems of the sharing economy just got real. The latest lawsuits against "ride-sharing" companies Lyft and Über could be game changers. The plaintiffs are drivers who give rides to strangers for money, paying a portion of their earnings to the companies. The class action lawsuits argue that the drivers should be classified as employees of the companies. Regardless of the outcome, the lawsuits call attention to the potential harms arising from the non-sharing parts of the sharing economy. It's a good opportunity to declare that the so-called "sharing economy" needs a new business model.

The sharing economy is hard to define. In my mind, it encompasses a broad range of activities, including worker cooperatives, neighborhood car-sharing programs, housing cooperatives, community gardens, food cooperatives, and renewable energy cooperatives. These activities are tied together by a common means (harnessing the existing resources of a community) and a common end (growing the wealth of that community). The sharing economy is the response to the legacy economy where we tend to be reliant on resources from outside of our communities, and where the work we do and the purchases we make mostly generate wealth for people outside of our communities. The rich are still getting richer, and the sharing economy can reverse that.

Laws are already beginning to evolve for the sharing economy, but, for now, the sharing economy exists almost entirely in legal grey areas. Zoning, securities, public utilities, health and safety, and employment laws aren't usually barriers to feeding, housing, lending a hand, and giving a ride to our family and friends. But they are barriers when we engage in the same activities as commercial businesses, such as restaurants, hotels, or taxis. Everything happening in the sharing economy lands somewhere on a spectrum between what is regulated and what is not. I love that about the sharing economy. The fact that it defies legal classification is proof that the sharing economy is new and different. In a world where business-as-usual creates extreme inequality and ecological destruction, we desperately need something new and different.

But the "sharing economy" we usually hear about in the media is built upon a business-as-usual foundation. If the high-profile companies like Airbnb, Lyft, Über, Sidecar, and TaskRabbit are to fulfill the dream and promise of the sharing economy, they need a new business model. For now, these companies are privately owned, venture-capital funded corporations. That's a problem for both economic and legal reasons.

On one hand, these companies open economic doors. In times of high unemployment, it is comforting to know they are there. I know of people who, right now, simply couldn't make ends meet without Airbnb or TaskRabbit.

But it's dangerous to take comfort in the simple fact that these companies create new opportunities to make a living. It's a double-edged sword, because the shareholders of these companies are getting rich because good stable jobs are otherwise scarce in this economy. In that respect, the sharing economy companies could even have a disincentive to create a world where we have zero percent unemployment. Even if society achieves zero percent unemployment, companies like Lyft and Über will remain relevant and important, because ridesharing is a powerful way to reduce carbon emissions, to save money on transportation, and to reduce traffic. But I suspect that Lyft and Über are earning a lot of their money because people currently give rides to strangers with the primary motivation of making ends meet.

During times of high unemployment, our streets could become flooded with Lyft drivers. If competition among drivers grows, it won't matter much to Lyft, but it might make drivers work longer hours or drive across town for the sole purpose of giving a quick ride. To the extent that they become economically dependent on Lyft, drivers are vulnerable to working under less-than-ideal conditions.

This is the whole reason we have employment laws. The Fair Labor Standards Act was passed in order to temper the harms of situations where workers become economically dependent on employers who control working conditions and profit from the work. It's one big, dangerous combination. An employer stands to make more money if the worker is paid less, if the worker works faster, if the worker skips lunch, and so on. The current lawsuits will put a spotlight on this question: What is to stop all of that from happening with Lyft and Über?

(Side note: It's interesting, and a little ironic, that proposed regulations by the California Public Utilities Commission would allow companies like Lyft, Über, and Sidecar to avoid burdensome regulations on taxis and shuttles, but only if the companies exercise more control over drivers, including requiring special licenses and background checks. The more control the companies exercise over drivers, the more it looks like the drivers are employees. The companies should cross their fingers that they'll find a regulatory sweet spot that allows them to avoid both employment laws and taxi/shuttle regulations.)

Overall, I'm simultaneously critical of and enamored with the world the sharing economy companies are creating. The founders of these sharing economy companies are generally cool people. They are nice, they are optimistic, and they created significant economic opportunities in the midst of a very damaged economy. In that respect, they are heroes to millions of people.

But the companies made one fatal error: You can't truly remedy today's economic problems by using the same business structures that created the economic problems. Because of their current ownership structure, Airbnb, Lyft, Über, and TaskRabbit could be bought out by ever larger and more centralized companies that won't necessarily care about the well-being of people using the services, or about the overall abundance of jobs in our economy.

There is only one way to ensure that a company will make decisions in the interests of the people it serves: Put those people in control of the company. So let me introduce the T corporation. Most business-savvy people know that there are S corporations (Subchapter S of the Internal Revenue Code) and C corporations (Subchapter C), but almost no one thinks about forming a T corporation (Subchapter T). But T corporations have been around for a long time, and they have a major benefit of not paying tax if 1) they are governed democratically by the shareholders (i.e., everyone gets one vote in the election of the board, regardless of share value) and 2) the earnings of the company are distributed to the shareholders on the basis of how much they patronize (i.e. do business with) the company.

Actually, no one ever calls them "T corporations." But it might be worth calling them that, because it's basically a way of saying "cooperative" without the cultural baggage that comes with the word "cooperative." Cooperatives might otherwise make people think of hippies, natural food stores, farmers, and crowded student housing.

But, at the core of cooperatives is a very simple legal concept that turns the conventional business structure on its head. In a cooperative, money doesn't buy votes in board elections and money doesn't buy future profits. Rather, each member of the cooperative gets a vote and earns money based on the efforts they contribute. There is no single individual or group driving the company for their own profit. Many of the incentives for exploitation are simply absent in cooperatives.

If Lyft were a user-owned cooperative, it would be more apparent that Lyft operates simply to provide technology and payment processing to the users, and it will look less like drivers are working for and generating profits for Lyft. That will be a key distinction in the current lawsuits, because the appearance that drivers are working for Lyft is what prompted the lawsuits.

Simply being a cooperative won't immunize Lyft from employment-related lawsuits like this one. We have the Supreme Court's ruling in Goldberg v. Whitaker House Cooperative, Inc. to demonstrate that point, in case any readers would like to geek out by reading the case law next to the complaint filed against Lyft. But, if Lyft were a cooperative, there would be no one at the top pulling the strings for their own profit benefit. Lyft would be much less likely to devolve into an employer with the primary purpose of profiting from the labor of drivers. With users electing the board, the company would have an incentive to create economic empowerment for users and their communities, not to create economic dependence.

As a cooperative, Lyft would charge fees to users for the use of the technology, but only as much as it would need to cover operational costs. If Lyft charges more than was needed for the year, it would give users what is called a patronage dividend, which is tied to how much money each user paid to or earned for Lyft. In the end, all earnings go back to the users, and not toward the purpose of making rich people richer. The sharing economy companies could draw inspiration from REI, the recreational equipment retailer. REI is a consumer-owned cooperative, meaning that profits are distributed back to the customers on the basis of how much each customer purchased.

Whether Lyft should be a cooperative owned by drivers, riders, or both is an interesting question. That decision would likely be guided by considerations such as: Who does the company most care about benefiting? Is one stakeholder group vulnerable to harm or exploitation if another stakeholder group calls the shots? Which stakeholder group would be most likely to make decisions that benefit the whole community and remedy social problems?

If Lyft's highest priority is to revolutionize transportation and reduce carbon emissions, then I would say that both drivers and riders should control the company. Revolutionizing transportation would require the support and collaboration of everyone who moves. But if Lyft's highest priority is to create opportunities for drivers to make a living, then I think drivers should control the company. Deciding whether something should be a worker or consumer cooperative – or both – could be the subject of many future discussions and articles.

Now for the question of how to convert sharing economy companies to cooperatives. Lyft, Airbnb, TaskRabbit, and similar companies are now worth a LOT of money. But, if you think it's too late for them to convert to cooperatives, remember that the value of the company is totally dependent on the customers. People are increasingly coming to understand that cooperatives will be at the core of a more just and sustainable economy. Smart consumers might eventually boycott any privately owned sharing economy company that isn't on a path toward cooperative conversion. Losing users means losing company value.

To convert the sharing economy companies into cooperatives, each company and its shareholders could voluntarily enter into a legally binding agreement to begin the process of selling the company to its customers as a cooperative, even if it takes 10 years or more to complete the buy-out. The buy-out could happen in one of at least two ways: Users could form a cooperative corporation to slowly redeem the shares of the company, or the company could internally create a new class of shares for future co-op members. There are a variety of considerations involved in structuring the transition, and while this has mostly been done by small companies like Select Machine, it is doable even with large companies like Airbnb.

Could or would each of the 2.1 million registered users of Airbnb come up with about $120 per year to complete the buy-out of a $2.5 billion dollar company in 10 years? Maybe. The number of users is growing rapidly, which would reduce the buy-in cost for each user. And I, for one, would probably encourage everyone I know to buy in, if Airbnb took the revolutionary step of converting to a cooperative.

Cooperative conversion could be a double win for current Airbnb shareholders, who will lock in a substantial return on their investments, and play a key role in a movement toward a more just and resilient economy.

So this is a call to action for the companies, for their customers, for advocacy organizations like Peers, Collaborative Lab, and for anyone feeling hopeful about the sharing economy: Commit to a sharing economy. Commit to cooperatives. Think of these two commitments as one and the same.