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# Intermediary Institutions and the Sharing Economy

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*In* Regulating Sharing: The Sharing Economy as an Alternative Capitalist System, *Professor Rashmi Dyal-Chand challenges the assumption–implicit in the fast-growing legal literature on the "sharing economy"–that companies in this sector operate in the manner of traditional firms. Framing the sharing economy as a "nascent form of a coordinated market economy," Dyal-Chand calls for regulation rooted in a deeper understanding of the institutions–both the technological platforms most commonly associated with the sharing economy (Uber, Airbnb, TaskRabbit, and their ilk) and a burgeoning collection of more organic and democratic organizations—that shape this economy.*

*This short Response focuses on the potential of this second category of institutions to achieve a more equitable distribution of the economic benefits of the sharing economy. While I agree that much can be gained from a more critical reflection on the nature of the institutions that shape the sharing economy, I harbor skepticism regarding the current vitality and future potential of these alternative institutions. I first explore how intermediary institutions might strengthen the position of workers in the sharing economy. I then express a few hesitations regarding the prospects of intermediary institutions to adequately counterbalance the technological platforms that dominate the sharing economy. Finally, I offer suggestions for how, by drawing on discussions of the role of institutions in other areas of legal doctrine; an "institutional turn" in thinking about the sharing economy might inform both legal scholarship and regulation.*



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## I. INTRODUCTION

It has become a well-worn truism that little, if any, actual sharing occurs in the "sharing economy." Uber drivers do not share the backseat of their cars and transport people for free. Nor do Airbnb hosts open up their spare bedrooms to strangers with no expectation of monetary compensation. Gratuitous sharing, or even bartering for that matter, does not mark the exchange of goods and services between buyers and sellers matched through these and other platforms. Nonetheless, according to Professor Rashmi Dyal-Chand, an important form of sharing undergirds this new sector of the economy, giving it a distinct form, while in the process wielding the potential to restructure the relationships at the core of traditional understandings of a capitalist economy.

In *Regulating Sharing: The Sharing Economy as an Alternative Capitalist System*, Dyal-Chand shifts the prevailing narrative of the sharing economy by calling for a recognition of the distinct form of capitalism that she contends this new economy represents. Framing the sharing economy as a "nascent form of a coordinated market economy," of the type prevalent in certain European countries, she calls for regulation rooted in a deeper understanding of the institutions that shape this economy.[1] It is through their participation in these institutions—both the technological platforms most commonly associated with the sharing economy (Uber, Airbnb, TaskRabbit, and their ilk) and a burgeoning collection of more organic and democratic organizations—that sharing-economy workers share the resources, infrastructure, and information vital to their own economic activity. In this way, the sharing economy reflects, albeit imperfectly, a version of a coordinated market economy.

A better understanding of the nature and operation of these institutions, Dyal-Chand argues, will yield improved policy responses and regulatory approaches to the sharing economy. In coordinated market economies, such as Germany's and France's, institutions such as labor unions and business associations play a role in facilitating collaboration and monitoring and in imposing sanctions in certain instances. The technological platforms of the sharing economy, such as Uber, Airbnb, and TaskRabbit, play an analogous role. These platforms provide key functions that, in their absence, would need to be performed within an individual business. These include "the

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

sharing of critical business resources, the monitoring of network participants, and the sanctioning of such participants."[2] But as Dyal-Chand acknowledges, these sharing networks are not precise equivalents of the institutions that shape a coordinated market economy. Among other differences, there is a significant power imbalance in the sharing economy between technological platforms and individual workers. It is partly through the regulation of these institutions as intermediaries that this power imbalance can be remedied.

*Regulating Sharing* makes a number of important contributions to a fast-growing legal literature confronting the regulatory questions posed by the sharing economy. Legal scholars have begun to address emerging issues in the fields of taxation,[3] employment and labor law,[4] and local government law and policy.[5] Dyal-Chand's article poses an important challenge to the assumption implicit in this work that sharing-economy companies operate in the manner of traditional firms. Unlike integrated firms, these companies frequently do not own key assets or internalize core functions. Instead, the networks that comprise the sharing economy are held together by a diverse set of both formal and informal institutions. These include, in addition to the well-known technological platforms that link sellers and buyers of good and services, a set of less visible (and arguably less clearly defined) alternative institutions through which resources and information are shared.

In the discussion that follows, I focus on the potential of this second category of institutions to achieve a more equitable distribution of the economic benefits of the sharing economy. I agree that there is much to be gained from more critical reflection on the nature of the institutions that shape the sharing economy—both the technological

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2. *Id.* at 281.

3. *See* Shu-Yi Oei & Diane M. Ring, *Can Sharing Be Taxed?*, 93 WASH. U. L. REV. (forthcoming 2016); Jordan M. Barry & Paul L. Caron, *Tax Regulation, Transportation Innovation, and the Sharing Economy*, 82 U. CHI. L. REV. DIALOGUE 69 (2015), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Barry_Caron_Dialogue.pdf.

4. *See* Brishen Rogers, *The Social Costs of Uber*, 82 U. CHI. L. REV. DIALOGUE 85 (2015), https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/uploads/Dialogue/Rogers_Dialogue.pdf.

5. *See* Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. (forthcoming 2016); Stephen R. Miller, *First Principles for Regulating the Sharing Economy*, 53 HARV. J. ON LEGIS. 147 (2016); Daniel E. Rauch & David Schleicher, *Like Uber, but for Local Government Law: The Future of Local Regulation of the Sharing Economy*, 76 OHIO ST. L.J. 901 (2015).

platforms and the more organic informal institutions developing among individual sharing-economy workers. Nonetheless, I harbor some skepticism regarding the current vitality and future potential of these alternative institutions and the extent to which the sharing economy truly represents the distinct form of capitalism Dyal-Chand describes, either in its current instantiation or in its likely permutations.

In this short Response, I first explore how intermediary institutions might strengthen the position of workers in the sharing economy. I then express a few hesitations regarding the prospects of intermediary institutions to adequately counterbalance the technological platforms that dominate the sharing economy. Finally, I offer suggestions on how, by drawing on discussions of the role of institutions in other areas of legal doctrine; an "institutional turn" in thinking about the sharing economy might inform both legal scholarship and regulation.

## II. THROUGH INSTITUTIONS TO INDIVIDUAL WORKERS

Questions of distribution are at the core of many critiques of the sharing economy. Do platforms appropriate too much of the economic benefit of the sharing economy at the expense of individual participants, such as Uber drivers? According to Dyal-Chand, a Coasian understanding of sharing networks, such as Uber, "may assume (and therefore promote) more power for the developer of the Uber app than (at least some of) the participants in Uber's network originally intended."[6] This is a subtle, but immensely important, point. It implies that even regulation purportedly concerned with protecting individual participants in the sharing economy may unintentionally miss the opportunity to foster (or simply enable) more systemic changes that would render sharing markets more democratic.[7] This observation gives rise to a policy prescription that the Article returns to at a number of points: the need to foster more robust nonplatform institutions that enable greater coordination and collaboration among sharing-economy workers and that, ideally, serve to counterbalance the technological platforms.

How might this approach differ from focusing intervention directly on workers? Consider in this regard a recent paper by Seth Harris and Alan Krueger. Harris and Krueger suggest that the "online

6. Dyal-Chand, *supra* note 1, at 270-71.

7. Dyal-Chand succinctly frames the challenge: "The regulatory tendency toward hierarchy and formality may well be operating to suppress organic efforts to develop alternative distributional structures." *Id.* at 271.

gig economy"—the segment of the broader sharing economy through which workers are matched with customers for the provision of personal tasks—has created new work relationships that "do not fit easily into the existing legal definitions of 'employee' and 'independent contractor' status."[8] Although they do not invoke the "varieties of capitalism" framework, Harris and Krueger's proposal echoes components of Dyal-Chand's analysis.[9]

Harris and Krueger propose a new legal category, which they term "independent workers," for individuals who work with an intermediary that matches them to customers. On their account, the relationship between these independent workers and the intermediary has some elements of an arms-length relationship akin to an independent contractor, as well as some attributes of a traditional employer-employee relationship. While Harris and Krueger propose a new legal category somewhere between the traditional classifications of "employee" and "independent contractor," Dyal-Chand suggests that a qualitatively different relationship exists. On her account, policy makers have ignored the true nature of sharing-economy companies and the fact that individuals who provide goods and services through the sharing economy—by renting rooms in their homes or the backseats in their cars—are "microentrepreneurs operating tiny, often part-time, businesses."[10] This should not lead to a conclusion that Airbnb and Uber have no responsibility to consumers or service providers, but rather it is "reasonable to conclude that these companies should not have all the responsibilities associated with our traditional understanding [of an employer]."[11]

At first blush, this sounds akin to the arguments sharing-economy platforms frequently fall back upon to avoid unfavorable regulations: individual providers of services are not employees and platforms merely facilitate exchanges and thus bear few responsibilities to workers or customers. But there is a deeper point here. To the extent that a more democratic sharing economy depends in part upon efforts

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8. Seth D. Harris & Alan B. Krueger, *A Proposal for Modernizing Labor Laws for Twenty-First-Century Work: The "Independent Worker,"* HAMILTON PROJECT 2 (Dec. 2015), http://www.hamiltonproject.org/assets/files/modernizing_labor_laws_for_twenty_first_century_work_krueger_harris.pdf. This definition excludes Airbnb, as well as intermediaries that facilitate the sale of goods.

9. *See* Dyal-Chand, *supra* note 1, at 274 ("The behavior of market participants in the sharing economy is so qualitatively different that it does not comfortably fit the rules of American capitalism.").

10. *Id.* at 246.

11. *Id.* at 265.

to confer greater power to individual participants through new intermediary institutions, those institutions and the individual participants must also assume greater responsibility. In some sense, this is a microcosm of Dyal-Chand's broader argument: an institutional analysis of the sharing economy calls for imposing regulations and responsibility at the level at which power is wielded.[12] This will be a context-sensitive analysis. And in some cases, it will call for regulators—if they see sharing-economy workers as independent businesses within a broader coordinated economy—to foster the development of "additional sharing institutions that could better distribute power and resources within the network."[13]

For this to occur, sharing-economy companies will need to share power, and responsibility, with the microentrepreneurs with whom they purport to be collaborating.[14] It is not clear, however, if and how such sharing will occur. Sharing-economy companies do not seem particularly willing to relinquish power, nor have regulators forced them to do so in any substantial way. Contrary to the assertion that sharing-economy businesses "share information critical to their market participation, rather than proprietarily leveraging it against each other in a competition for market dominance,"[15] all indications are that platforms jealously guard their proprietary data in part due to the competitive advantage it confers and in hopes of driving competitor platforms out of the market. Uber, whose CEO "has been routinely described as a callous and ruthless capitalist," provides a particularly vivid example of this.[16]

Relatedly, the microentrepreneurs at the core of the sharing economy—Uber drivers, Airbnb hosts, and TaskRabbit "taskers"—are not necessarily in a position to demand greater power and responsibility. Many participants in this economy do not see themselves as small business owners. Some may be attracted to the platforms because, unlike a small business, the start-up costs are minimal. They may drive for Uber for extra cash after work or rent their apartment out when they are out of town to subsidize their rent.

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12. *Id.* at 295 (suggesting that decisions on who should ensure customer safety may be answered differently based upon the "power balance within the network").

13. *Id.* at 288.

14. *Id.* at 292-93.

15. *Id.* at 248-49.

16. Max Chafkin, *What Makes Uber Run*, FAST COMPANY (Sept. 8, 2015, 6:30 AM), http://www.fastcompany.com/3050250/what-makes-uber-run (quoting an entrepreneur who "has suggested that everyone in the tech industry is 'worried about the sheer expression of capitalistic force that the company represents'").

These individuals, for whom sharing-economy participation supplements other income sources, thus may not wish to invest the time in developing additional intermediary institutions, a point I address in the next Part.

## III. WHAT WILL THE FUTURE REALLY BRING?

Dyal-Chand suggests that the "sharing economy is at a crossroads in its development" and that it is likely to take one of two sharply divergent courses, either leading to a "technology-based attenuation of the firm to the point where employees are essentially eliminated from the firm's structure" or becoming a robust mechanism "for redistributing resources, market participation, and ultimately wealth to a broader range of individuals."[17] I agree that achieving the latter will depend upon a more robust role for new forms of intermediary institutions. However, while I would welcome such developments, there are a few reasons why I am less confident they will occur.

First, at least in the ride-share space, sharing-economy firms are already seeking to eliminate the need not just for individuals classified as employees, but also for human beings in any capacity. Both Uber and Lyft are pursuing efforts to develop autonomous cars that would eliminate the need for drivers.[18] While this may be years or decades away, it suggests a future in which Uber and Lyft internalize the provision of services and the requisite resources, in the manner of a traditional Coasian firm.

The picture is further complicated by the entry of traditional firms into the sharing-economy space. General Motors recently announced an investment in Lyft related to the development of a network of on-demand, self-driving cars and short-term car-rental hubs.[19] More broadly, existing corporations are seeking to alter their business models in response to what the sharing economy reveals about changing consumer preferences and to make use of underutilized assets.[20] Admittedly, varieties of capitalism theory has

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17. Dyal-Chand, *supra* note 1, at 292.

18. *See* Mike Isaac, *General Motors, Gazing at Future, Invests $500 Million in Lyft*, N.Y. TIMES (Jan. 4, 2016), http://www.nytimes.com/2016/01/05/technology/gm-invests-in-lyft.html?_r=0; Mike Ramsey & Douglas MacMillan, *Carnegie Mellon Reels After Uber Lures Away Researchers*, WALL STREET J. (May 31, 2015, 11:03 AM), http://www.wsj.com/articles/is-uber-a-friend-or-foe-of-carnegie-mellon-in-robotics-1433084582.

19. Isaac, *supra* note 18.

20. A recent report by PricewaterhouseCoopers suggests ways that incumbent corporations can respond to the sharing economy. *See The Sharing Economy*, PWC (2015),

embraced the view that "businesses and institutions within one form of a national economy can adopt features of the other."[21] However, these larger trends provide reasons to question whether the coordinated market economy Dyal-Chand describes will coexist with a liberal market economy or whether the latter will subsume the sharing economy, with platforms looking and operating increasingly like traditional firms.

Second, the presence and significance of informal associations within the sharing economy, which supplement the technological platforms, may be overstated. Dyal-Chand identifies how Uber drivers, Airbnb hosts, and taskers share information and resources through alternative websites, Facebook pages, and other online forums.[22] Yet to date there is no evidence that these forums have provided any robust counterbalance to the platforms. Moreover, while it is interesting to consider whether the forums—in the Airbnb context, for example—might develop into a "system for establishing basic standards of hosting conduct, as well as a forum for developing expectations about safety, quality, and other critical features of property rental,"[23] it is not evident how either consumers or regulators would benefit from such a development. Is it certain that a network of Airbnb hosts would ensure better or more trustworthy standards than are currently achieved through the rating of hosts by guests on the Airbnb platform?[24] How would a regulator choose among rival forums and identify the true "voice" of Airbnb hosts within a given jurisdiction?

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https://www.pwc.com/us/en/technology/publications/assets/pwc-consumer-intelligence-series-the-sharing-economy.pdf.

21. Dyal-Chand, *supra* note 1, at 278.

22. *See id.* at 282 ("Moreover, in a number of these networks, the technological platform is supplemented by additional, informal associations in which Uber drivers, Airbnb hosts, and TaskRabbit taskers can exchange information using Facebook pages and alternative websites."); *see also id.* at 289 (discussing the use of a Facebook page by taskers for a discussion regarding the terms of service).

23. *Id.* at 298.

24. There is also the possibility that more robust nonplatform intermediaries will advocate for worthwhile reforms to existing ratings systems. For example, Seattle's App-Based Drivers Association (ABDA), which effectively pushed for a local ordinance allowing ride-share drivers to form unions, seeks to revise Uber's "flawed rating system," which it contends unfairly punishes drivers. *Issues*, APP-BASED DRIVERS ASS'N, http://www.abdaseattle.org/issues (last visited Apr. 20, 2016) ("[Drivers] can be permanently deactivated if [their ratings] fall below a 4.4. . . . Customers, on the other hand, can continue to request rides from Uber even if their rating is below 2, and drivers must pick them up or else run the risk of deactivation."); *see* Nick Wingfield & Mike Isaac, *Seattle Will Allow Uber and Lyft Drivers To Form Unions*, N.Y. TIMES (Dec. 14, 2015), http://www.nytimes.com/2015/12/15/technology/seattle-clears-the-way-for-uber-drivers-to-form-a-union.html.

More promising is the suggestion that regulators might become aware of such forums and enlist their members to develop advisory boards tasked with helping shape new regulations. While this is likely to enhance democratic deliberation over new standards, it is not clear that such a role would itself lead to the creation of a dynamic intermediary akin to those in a coordinated market economy. Much of the sharing that has occurred to date among sharing-economy participants outside the platforms themselves is simply the sharing of information, such as discussions of tax law and employment status among Uber drivers.[25] Admittedly, however, there is reason to believe that sharing the challenges of working as microentrepreneurs, personally responsible for compliance with complicated tax laws, will eventually give rise to efforts among forum participants to mobilize and challenge unfavorable Uber policies or to lobby for regulations more favorable not just to the operation of Uber generally, but also to individual Uber drivers.[26]

Moreover, Uber's very recent settlement of two major class-action lawsuits—in which drivers challenged their classification as independent contractors, rather than employees—may open door to a more formal and robust role for such intermediaries.[27] Drivers in the two states where the litigation arose, California and Massachusetts, will remain classified as independent contractors, but in addition to a financial settlement, Uber made concessions that include helping to create and fund new "drivers associations." These associations will meet quarterly with Uber to discuss issues of concern to drivers.[28] In

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25. In a forthcoming article, Shu-Yi Oei and Diane Ring examine how Uber drivers use online forums, including Reddit and UberPeople.net, to learn from one another about tax laws and to seek answers to specific questions. *See* Shu-Yi Oei & Diane M. Ring, *The Tax Lives of Uber Drivers: Evidence from Internet Discussion Forums* (Bos. Coll. Law Sch. Legal Studies Research Paper Series, Research Paper No. 391, 2016).

26. For example, the Alliance for Neighborhood Prosperity, a group of short-term rental hosts in New Orleans, provides paying members with, among other services, access to databases of approved professionals, use of a membership seal on rental listings, and "peer to peer best practices consultation." ALLIANCE FOR NEIGHBORHOOD PROSPERITY, http://alliancenola.org/ (last visited Apr. 20, 2016). In addition to providing access to shared resources and collaborative information, the group advocates new regulations to avoid problems they attribute in part to antiquated and poorly enforced existing regulations. Robert McClendon, *The Answer to Short-Term Rental Problems Is To Legalize and Regulate, Group Says*, NOLA.COM, http://www.nola.com/politics/index.ssf/2014/06/the_answer_to_short-term_renta.html (last updated June 4, 2014, 2:44 AM).

27. *See* Mike Isaac & Noam Scheiber, *Uber Settles Cases with Concessions, but Drivers Stay Freelancers*, N.Y. TIMES (Apr. 21, 2016), http://www.nytimes.com/2016/04/22/technology/uber-settles-cases-with-concessions-but-drivers-stay-freelancers.html.

28. Travis Kalanick, *Growing and Growing Up*, UBER (Apr. 21, 2016), https://newsroom.uber.com/growing-and-growing-up/ (last visited May 4, 2016). A press release from

addition, an Uber press release announcing the settlement revealed that the company has been piloting an appeals process for deactivated drivers that includes a peer-review component through which other drivers hear appeals from termination decisions.[29] These developments reflect to some degree Dyal-Chand's suggestion that intermediary institutions might play a more significant role in establishing (or in the case of a review panel, enforcing) basic standards and expectations regarding conduct.

Third, to the extent that sharing platforms are truly operating as intermediaries between consumers and providers who exercise independent control over important aspects of the service they provide, Dyal-Chand calls for regulators to develop extra protections that will enable ride-share drivers and their ilk "to operate as independent microbusinesses."[30] She suggests that regulatory support for small businesses—in the form of tax incentives, special forms of business entities, and preferences for such businesses in government contracting—might provide a useful model. There are reasons for caution here, however. First, it is not clear that Uber drivers and Airbnb hosts see themselves as microbusinesses and wish to assume the responsibilities that such a status would entail.[31] Dyal-Chand acknowledges key differences, noting that unlike the traditional American image of an entrepreneur that "leverag[es] her business and personal assets as a means of developing new products or services," those who sell goods and services via sharing platforms rely on those platforms to share the provision of key business functions, reducing start-up costs and making it easier to compete against established

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the law firm representing the Uber drivers provides some additional detail on these associations: "The formation of the driver association—while not an officially recognized union—can play a role similar to a union, to bring drivers' grievances and concerns to Uber management, who will meet with the association's leaders on a quarterly basis to engage in good faith discussions about issues of concerns to drivers." Shannon Liss-Riordan & Adelaide Pagano, *Breaking News—Uber Will Pay $100 Million To Settle Independent Contractor Misclassification Claims*, UBERLAWSUIT.COM, http://uberlawsuit.com/Breaking%20news%20-%20Uber%20will%20pay%20$100%20million%20to%20settle%20independent%20contractor%20misclassification%20claims.pdf (last visited May 4, 2016).

29. Kalanick, *supra* note 28. According to a press release from the plaintiffs' attorneys, pursuant to the settlement, "Uber will institute appeal panels (made up of highly rated drivers) so that drivers who believe they have been unjustly terminated may bring their concerns to a panel of their peers." Liss-Riordan & Pagano, *supra* note 28.

30. Dyal-Chand, *supra* note 1, at 294.

31. Ring and Oei note that many of the Uber drivers who participate in online discussion forums, when discussing the microbusiness nature of being an Uber driver, stated that this is not their traditional image of themselves. *See* Oei & Ring, *supra* note 25, at 40-42 (noting that forum users expressed various preferences for being classified as either "independent contractors" or "employees").

incumbents.[32] Implicit in this assessment, however, is a conception of sharing-economy microbusinesses as less risky endeavors than traditional small-business start-ups. Given this lower risk, coupled with the fact that sharing-economy microbusinesses—such as driving full-time for Uber or renting out property on Airbnb—are much less likely than traditional small businesses to generate new jobs or provide significant innovation, it is not as clear that the justifications that drive government support for small businesses apply with equal force to these microbusinesses. Nor is it evident that there would be sufficient political will. This may simply call for developing a more robust narrative that, building on Dyal-Chand's work, makes a strong case for how, amid a rapid change in the nature of the economy generally, support for these new forms of even smaller small businesses is called for.

## IV. AN INSTITUTIONAL TURN?

This discussion of intermediary institutions within the sharing economy and their potential role in fostering greater protections for individual participants bears an intriguing semblance to a recent turn in First Amendment scholarship towards greater recognition of the role of what have been termed "First Amendment institutions." Scholars including Paul Horwitz, Fred Schauer, and Richard Garnett, among others, have emphasized the need for careful reflection on the distinct institutions through which individuals exercise First Amendment rights, the concomitant need to give effect to these distinctions in legal doctrine, the potential of these institutions for self-regulation, and the "infrastructural" role these institutions play in fostering and creating opportunities for the exercise of certain rights.[33]

This institutional turn in First Amendment scholarship bears interesting similarities to Dyal-Chand's call for regulation better attuned to the distinct attributes of the diverse intermediary institutions that shape the sharing economy. Both suggest the need for a more contextually sensitive approach to regulation. There is also an intriguing parallel between the contention that intermediary institutions are necessary for the exercise of individual First

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32. Dyal-Chand, *supra* note 1, at 253.

33. *See, e.g.*, PAUL HORWITZ, FIRST AMENDMENT INSTITUTIONS (2012); Frederick Schauer, Comment, *Principles, Institutions, and the First Amendment*, 112 HARV. L. REV. 84 (1998); Richard W. Garnett, *The Freedom of the Church: (Toward) An Exposition, Translation, and Defense*, *in* THE RISE OF CORPORATE RELIGIOUS LIBERTY 39, 45-46 (Micah Schwartzman et al. eds., 2016).

Amendment rights and the argument that absent careful attention to (and perhaps government support for) intermediary institutions, individual workers are unlikely to be adequately protected in a burgeoning sharing economy in which technological platforms wield outsized power.[34] First Amendment institutions provide not only a space within which rights are exercised, but also resources that enable this exercise. Sharing-economy institutions can provide more tangible resources that are equally critical for microbusinesses to flourish.

In both cases, the intermediary institutions mediate the government's role as regulator and serve as a vehicle for democratic deliberation and participation. Rather than leading to complete dependence on self-regulation by institutions, an institutional turn can instead inform a movement towards a more "bottom-up" development of law. As Horwitz notes, drawing on the concept of "new governance," this can lead to "a more collaborative model, in which institutions with a stake in particular legal and social problems partner with regulators to come up with solutions."[35] This sounds akin to Dyal-Chand's call to draw on self-regulation and informal contracting within sharing networks as "the basis for setting an industry standard that is acceptable to regulators and consumers."[36]

My point here is simply to note that a focus on the institutions that structure the sharing economy has parallels in other areas of legal doctrine and to suggest that the institutional turn in other areas of scholarship may yield additional insights for thinking about sharing-economy institutions and creatively regulating them in a way that allows this sector to flourish on its own terms.

Two potential implications come to mind. First, if institutions are to play a significant role in the regulation of the sharing economy, one must then ask whether a particular level of government is best suited to regulate and collaborate with these sharing-economy institutions. If these intermediary institutions take the form of more organic organizations of individual workers and if greater attention to such institutions reveals the need for more context-specific and bottom-up regulation, then there is significant reason to think that local

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34. *See* Dyal-Chand, *supra* note 1, at 274 ("Meanwhile, examples from other places in the world reveal that this qualitatively different kind of capitalist behavior can lead to tremendous success and wealth if the market participants have the right legal and institutional infrastructure to support and regulate them.").

35. HORWITZ, *supra* note 33, at 73.

36. Dyal-Chand, *supra* note 1, at 291.

governments would be the most appropriate regulators.[37] Second, upon reading Dyal-Chand's piece and reflecting on the broader legal literature on the sharing economy, I am compelled to wonder whether discussions of the sharing economy focus too much attention on Uber and Airbnb. As the dominant companies in this space in terms of market share and public perception, they have shaped how we look at and understand this economy and the platforms that dominate it. Both Dyal-Chand's article and my own Response expend considerable time discussing their structure and operation. Yet in many ways, they are the sharing-economy companies, especially in the case of Uber, most like traditional firms, a point that Dyal-Chand convincingly makes.[38] Perhaps greater attention to the institutions of the sharing economy will not only lead to a clearer understanding of the nature of this economic sector, but also will foster substantive changes and the development of new manifestations of the sharing economy. This might lead to a future in which sharing-economy platforms truly act as intermediaries, rather than as the loci of power within whatever economic transactions they are facilitating.[39]

## V. CONCLUSION

Professor Dyal-Chand's article complicates the prevailing understanding of the sharing economy and pushes regulators to critically consider the nature of the varied institutions at its core. Despite my skepticism regarding the presence and vitality of alternative intermediary institutions, I agree that they offer the most promising mechanism for adjusting the distribution of power within the sharing economy and providing workers with the resources necessary to develop thriving microbusinesses. While more work needs to be done on articulating government policies that would adequately support these institutions and enable them to play this role,

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37. In a forthcoming piece, Nestor Davidson and I explore more generally the benefits of a distributed regulation of the sharing economy. *See* Davidson & Infranca, *supra* note 5 (manuscript at 27-33) (on file with author).

38. *See* Dyal-Chand, *supra* note 1, at 301-02.

39. *See* Sarah Kessler, *The "Sharing Economy" Is Dead, and We Killed It*, FAST COMPANY (Sept. 14, 2015, 6:06 AM), http://www.fastcompany.com/3050775/the-sharing-economy-is-dead-and-we-killed-it (discussing MyNeighbor, a platform for renting and borrowing items and services from neighbors). MyNeighbor currently does not charge for the service of linking service providers with customers. *See Frequently Asked Questions*, MYNEIGHBOR, https://myneighbor.com/faqs/ (select the "What does it cost to use MyNeighbor?" hyperlink) (last visited Apr. 20, 2016).

Dyal-Chand's excellent article makes a convincing case for the value of an institutional turn in our thinking about the sharing economy.