A Case for Federal Ride-Sharing Regulations: How Protectionism and Inconsistent Lawmaking Stunt Uber-Led Technological Entrepreneurship

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I. OVERVIEW

The American taxi industry is underserving and overprotected.[1] "[O]utdated business models, archaic regulatory structures, and entrenched business interests . . . desperately fighting to protect the status quo" have created unnecessary barriers for an innovative solution—transportation network companies (TNCs)—to revive an industry barely clinging to life.[2]

This Comment will first provide an overview of the TNC industry and the current domestic regulations shaping its growth. An evaluation of current state statutes and local ordinances will reveal that the standard of lawmaking at present is not only unnecessarily inconsistent between

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1. *See* John E. Sununu, *Uber Isn't the Problem; Taxi Regulations Are*, BOS. GLOBE (June 23, 2014), http://www.bostonglobe.com/opinion/2014/06/22/uber-isn-problem-taxi-regulations-are/5tBvAe8rcnGFcDYDT0jx3N/story.html.

2. *Id.*

(and even within) states, but also creates both economic inefficiencies and disincentives to technological development. Throughout, an underlying thesis contends that a uniform set of federal regulations would prove more effective than the present scattered governance.

II. BACKGROUND

A. *Transportation Network Companies*

TNCs provide consumers with transportation services using online-enabled platforms (such as smartphone applications) to connect with drivers using personal vehicles—the brainchild of StumbleUpon cofounder Garrett Camp, who thought such a company might allow consumers to circumvent the "taxi problem" in San Francisco.[3] The taxi problem—poor service compounded by consumers not knowing if and when a cab will be available—led to a major market being tapped with the founding of Uber in 2009.[4] The draws of Uber and competitors, like Lyft and Sidecar, are obvious: by the companies not owning vehicles, but rather serving only to connect consumers with drivers already on the road through a smartphone application, faster pickups and easier payments are available at lower costs.[5] Uber's smartphone application provides trip price estimates, shows the nearest available vehicle and its estimated arrival time, tracks the vehicle's location after it has been ordered, provides information about the car and its driver (including a rating and contact information), allows for a cash-free payment with the requisite preloaded credit card, and provides an electronic receipt.[6]

Despite the convenience of its services, Uber (and others) continue to face resistance entering the industry, as lawmakers have been slow to pass ordinances distinguishing the no-longer nascent industry from existing alternatives.[7] The six-year-old company, now led by chief

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3. Cal. Pub. Utils. Comm'n, *Decision Adopting Rules and Regulations To Protect Public Safety While Allowing New Entrants to the Transportation Industry*, Decision 13-09-045, at 2 (Sept. 19, 2013); Travis Kalanick, *Uber's Founding*, UBER BLOG (Dec. 22, 2010), http://blog.uber.com/2010/12/22/ubers-founding.

4. *See* Kalanick, *supra* note 3.

5. *See* Laurie Segall, *Uber CEO: 'Our Growth Is Unprecedented,'* CNN MONEY (June 12, 2014, 8:32 AM), http://money.cnn.com/2014/06/12/technology/innovation/uber-ceo-travis-kalanick.

6. *Features*, UBER, https://www.uber.com/features (last visited Sept. 6, 2015).

7. *See* Douglas MacMillan, *Uber Laws: A Primer on Ridesharing Regulations*, WALL ST. J. (Jan. 29, 2015, 10:37 PM), http://blogs.wsj.com/digits/2015/01/29/uber-laws-a-primer-on-ridesharing-regulations (noting the term "transportation network company" was first seen in September 2013 when the California Public Utilities Commission passed its first TNC regulations).

executive Travis Kalanick, has battled bureaucratic protection of taxi companies to enter more than 100 U.S. cities.[8]

In response to facing competition, and "[h]aving been coddled by layers of bureaucracy for years," taxi unions have "begged their bureaucratic masters to cripple Uber,"[9] arguing that "services [like Uber] have an unfair advantage because, in most cases, they are allowed to operate free of the rules, regulations and licensing requirements of traditional taxis."[10] Many decision makers have obliged:

> [A]s economists E. Glen Weyl and Alexander White point out, one can think of local governments themselves as platform-providers. They set the rules that the taxi companies must follow, just as Uber itself regulates the prices charged by its drivers and the terms on which they offer us service. It's these two "platforms" that are in competition. Local governments want to kill off Uber because Uber threatens the political benefits of the taxi cartel.[11]

The taxi industry's response to losing market share is understandable, however, its continued adherence to an antiquated system of regulation is not. The medallion system ("a regulatory scheme in which the right to operate a taxi is thoroughly divorced from the actual work of driving one")[12] is well-known for "insulat[ing] the market from competition" and "in turn, undermin[ing] any incentive for innovation or investment in new technology."[13]

> The basic problem is that the taxi industry is intensely regulated. One goal of regulation isn't to protect consumers. It is to entrench current providers and to limit competition.
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> With respect to taxis, some states have a system that isn't altogether different from socialist-style planning. Some longstanding regulations have the purpose and effect of squelching new entrants. And in the face of

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8. Peter Diamandis, *Uber vs. the Law (My Money's on Uber)*, FORBES (Sept. 8, 2014, 2:34 PM), http://www.forbes.com/sites/peterdiamandis/2014/09/08/uber-vs-the-law-my-moneys-on-uber.

9. Sununu, *supra* note 1.

10. Luz Lazo, *Cab Companies Unite Against Uber and Other Ride-Share Services*, WASH. POST (Aug. 10, 2014), http://www.washingtonpost.com/local/trafficandcommuting/cab-companies-unite-against-uber-and-other-ride-share-services/2014/08/10/11b23d52-1e3f-11e4-82f9-2cd6fa8da5c4_story.html.

11. Eric Posner, *Why Uber Will—and Should—Be Regulated*, SLATE (Jan. 5, 2015, 2:49 PM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/01/uber_surge_pricing_federal_regulation_over_taxis_and_car_ride_services.html.

12. Jeff Horwitz & Chris Cumming, *Taken for a Ride*, SLATE (June 6, 2012, 6:30 AM), http://www.slate.com/articles/business/moneybox/2012/06/taxi_medallions_how_new_york_s_terrible_taxi_system_makes_fares_higher_and_drivers_poorer_.html.

13. Sununu, *supra* note 1.

> fresh competition, the industry has been creative and occasionally shameless.[14]

Consider that the number of medallions (permits granting the right to operate a cab) issued by New York City in 2012 dropped from the amount issued in the late 1930s.[15]

Despite the noise made by "[d]eep-pocketed medallion owners . . . hijack[ing] public policy through lobbying and legal challenges,"[16] consumer demand for TNCs has drawn attention to the "bureaucratic conspiracy" as needlessly supporting an industry grossly underserving modern consumer needs.[17] However, with "[e]ntrenched and protected" taxi interests creating hesitation in regulation and leading to variances in the resulting governance, companies like Uber continue to primarily operate in legal gray areas.[18]

B. Ride-Sharing Regulation

Despite only 17 U.S. cities and four states enacting statutes and ordinances explicitly making the service legal before the start of this year, Uber continues to grow.[19] Consumer (and more importantly, investor) support of the company has led to "aggressive global expansion" and a $50 billion valuation.[20] Despite its successes—establishing services in over 300 cities in more than 60 countries—issues of efficiency, and thus sustainability, remain.[21]

Efficiency issues are derived from discrepancies between existing regulations, independent from whether they are favorable to TNCs. Commonalities among regulations tend to address common sense concerns that transcend the provider, such as "background checks, vehicle inspections, driver training programs, and insurance policies."[22] While the company and lawmakers have generally agreed on regulations geared toward consumer safety, they have been inconsistent in addressing pricing regulations.

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14. Cass R. Sunstein, *Uber Cab App Threatens Death of Taxi Dinosaurs*, BLOOMBERG VIEW (June 10, 2013, 6:11 PM), http://www.bloombergview.com/articles/2013-06-10/uber-cab-app-threatens-death-of-taxi-dinosaurs.
15. Sununu, *supra* note 1.
16. Horwitz & Cumming, *supra* note 12.
17. Sununu, *supra*, note 1.
18. *Id.*
19. MacMillan, *supra* note 7.
20. Douglas MacMillan & Telis Demos, *Uber Valued at More than $50 Billion*, WALL ST. J., http://www.wsj.com/articles/uber-valued-at-more-than-50-billion-1428367457 (last updated July 31, 2015, 8:50 PM).
21. *Cities*, UBER, https://www.uber.com/cities (last visited Sept. 6, 2015).
22. MacMillan, *supra* note 7.

Uber's popularity is primarily contingent on providing both a more efficient service *and* a lower price; its ride-sharing service (UberX) aims to exceed the experience of traditional cabs without the expense of a black car service.[23] Taking a cab is only cheaper than using UberX in New York City traffic.[24] The undercutting understandably irks taxi companies, who have lobbied lawmakers for implementation of minimum fares despite the rides being offered by privately owned vehicles.[25]

Further, critics pinpoint the company's pricing model as cause for concern.[26] Even though the standard UberX prices generally provide a more affordable alternative to cabs, the company utilizes a "surge pricing" model.[27] The model is a pricing algorithm that "automatically detects situations of high demand and low supply and hikes the price in increments, depending on the scale of the shortage"—a function intended to draw more drivers to the road when most needed.[28] Though a simple application of supply and demand economics, some legislators see price gouging in unpredictable rates.[29]

When viewed through the lens of certain current regulations, it becomes evident that the uniform protection of consumer interests coupled with the acceptance of Uber's pricing model will not only provide a safer, more efficient transportation option, but will also incentivize innovation in overprotected and underdeveloped industries in a broader context.

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23. *See* Segall, *supra* note 5.

24. Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices in 21 Cities*, BUS. INSIDER (Oct. 16, 2014, 12:47 PM), http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10.

25. *See* Lori Aratani, *Competition from UberX, Lyft Has D.C. Taxis Crying Foul*, WASH. POST (May 11, 2014), http://www.washingtonpost.com/local/trafficandcommuting/competition-from-uberx-lyft-has-dc-taxis-crying-foul/2014/05/11/5920c866-d60a-11e3-8a78-8fe50322a72c_story.html.

26. *See Pricing the Surge: The Microeconomics of Uber's Attempt To Revolutionise Taxi Markets*, ECONOMIST (Mar. 29, 2014), http://www.economist.com/new/finance-and-economics/21599766-microeconomics-ubers-attempt-revolutionise-taxi-markets-pricing-surge.

27. *What Is Surge Pricing?*, UBER, https://help.uber.com/h/6c8065cf-5535-4a8b-9940-d292ffdce119 (last visited Sept. 6, 2015).

28. Dan Kedmey, *This Is How Uber's 'Surge Pricing' Works*, TIME (Dec. 15, 2014), http://time.com/3633469/uber-surge-pricing.

29. *See* Verena Dobnik, *NY Elected Officials Take Aim at Uber Surge Pricing*, WASH. TIMES (Jan. 12, 2015), http://www.washingtontimes.com/news/2015/jan/12/ny-officials-to-discuss-regulations-pricing-for-ub/?page=all.

III. EVALUATION OF CURRENT REGULATION

A. *Prevailing Standards*

Current safety standards in ride-sharing regulations address legitimate issues, but are inefficient and unsettling given inconsistent drafting and application.

There exists relatively little debate that the establishment of sufficient safety standards needs to be a primary aim of TNC regulation.[30] Uber currently offers a three-step background check (county, federal and multistate) and "reviews drivers' motor vehicle records throughout their time" spent with the company to ensure ongoing safe driving.[31] The screens are applied consistently across the United States and the company claims they are "'often more rigorous' than those in the traditional taxi industry."[32]

The problem, however, is that local regulators disagree on the thoroughness of Uber's rider safety standards, and implementation of scattered, conflicting state statutes and local ordinances when the company is adamant they already have "strict safety standards" in place makes it more efficient for the company to fight increased spending on safety measures (as opposed to being forced into compliance with a uniform federal policy with consumer safety, rather than politics, in mind).[33]

The current legislative *modus operandi* creates an unnecessary balancing act weighing efficient business practices against public safety—an uncomfortable (and possibly dangerous) precedent already set in Colorado (where Uber "helped persuade lawmakers to ease drivers' background checks in a bill that legalized ride-sharing companies"), Illinois (where "after a lobbying push, Gov[ernor] Pat Quinn vetoed a bill that would have forced Uber to strengthen [driver] checks"), and California (where Uber "helped kill a law that would have required drivers to undergo a background check by the state's Justice Department, as is required of taxi drivers").[34]

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30. *See, e.g.*, Cal. Pub. Utils. Comm'n, *supra* note 3; New Orleans, La., Ordinance No. 30,548 (Jan. 22, 2015), *available at* http://cityofno.granicus.com/MetaView.php?view_id=3&clip_id=2011&meta_id=276552.

31. *Safety*, UBER, https://www.uber.com/safety (last visited Sept. 6, 2015).

32. Mike Isaac, *Uber's System for Screening Drivers Draws Scrutiny*, N.Y. TIMES (Dec. 9, 2014), http://www.nytimes.com/2014/12/10/technology/ubers-system-for-screening-drivers-comes-under-scrutiny.html.

33. *Id.*

34. *Id.*

Conversely, time has leveled ambiguities in driver insurance requirements.[35] When California passed the first TNC regulations in September 2013, the ordinance required $1 million minimum commercial coverage for drivers "while they are providing . . . services."[36] The ordinance, and similar mandates (such as Colorado's enacted in June 2014, requiring $1 million coverage "for incidents involving a driver during a prearranged ride"[37]), led to scrutiny of Uber's internal policy (despite it adhering to existing law) after an Uber driver "not providing services on the Uber system"[38] struck and killed a pedestrian.[39] Uber had been insuring its "non-professional drivers" (in other words, its UberX drivers) during fares, allowing personal insurance to cover "when they're off the clock," but because of ambiguities in existing ordinances, it remained unclear as to whether commercial or personal insurance covered the "in-between moments, as when a driver is logged on awaiting new fares."[40]

The company addressed the "insurance gap" in a March 2014 policy change, announcing it would provide contingent liability coverage to drivers "not providing transportation service for hire, but [with] the Uber app open and . . . available to receive a trip request" as a supplement to personal insurance (and in addition to the existing $1 million commercial coverage during rides).[41] Though ambiguities remain (given, for example, Massachusetts law currently requires only "appropriate liability insurance"[42]), issues arising from insurance legislation have little to do with inconsistent application, given the more than adequate policy Uber adopted in line with the $1 million commercial

35. *Compare* Cal. Pub. Utils. Comm'n, *supra* note 3, at 57-58, *with* Don Jergler, *Uber Announces New Policy To Cover Gap*, INS. J. (Mar. 14, 2014), http://www.insurancejournal.com/news/national/2014/03/14/323329.htm (illustrating that ambiguities in early ordinances led to Uber later establishing a clearer insurance policy).

36. Cal. Pub. Utils. Comm'n, *supra* note 3, at 58.

37. S. 125, 69th Gen. Assemb., 2d Sess. (Colo. 2014).

38. Andrew Salzberg, *Statement on New Year's Eve Accident*, UBER BLOG (Jan. 1, 2014), http://blog.uber.com/2014/01/01/statement-on-new-years-eve-accident.

39. Bob Egelko, *Uber Settles Suit with Family over Girl's New Year's Eve Death*, SFGATE, http://www.sfgate.com/bayarea/article/Uber-settles-suit-with-family-over-girl-s-New-6385063.php (last updated July, 5, 2015, 9:37 AM)

40. Jeff Bercovici, *Uber Closes 'Insurance Gap' for Ride-Sharing Drivers*, FORBES (Mar. 14, 2014, 12:28 PM), http://www.forbes.com/sites/jeffbercovici/2014/03/14/uber-closes-insurance-gap-for-ride-sharing-drivers.

41. Jergler, *supra* note 35.

42. 540 MASS. CODE REGS. § 2.05(4 3/4)(d)(2) (1987).

coverage required by the likes of California, Colorado, and the District of Columbia.[43]

From the company's perspective, concern regarding insurance requirements lies more so with the disparity between the $1 million minimum commercial coverage figure imposed on TNCs and the requirements for taxis across the country's major urban hubs.[44] In various major cities, the maximum commercial coverage for taxis varies wildly—including caps of $20K in Washington, $60K in Baltimore, $300K in New York City and Los Angeles, and $500K in Dallas.[45] Despite seemingly preferential treatment being levied in favor of taxi companies in regard to insurance requirements, bureaucratic protection of the industry is even more evident in ride-share pricing regulations.[46]

B. Inefficient Measures

Ordinances requiring minimum ride-sharing fares are inefficient: higher prices per ride decrease the number of rides taken and thus decrease driver net income.[47] In Orlando, for example, a controversial ordinance was implemented in February 2015 forcing UberX to charge a minimum fare commensurate with "the same per-mile rate charged by traditional taxicabs."[48] The company's response to the bill noted its inefficiency: by doubling UberX fares, low-income residents are harmed and driver net income decreases as "[l]owering fares actually increases driver earnings because they're so much busier."[49]

A three-year study by Uber's New York City office provides data to support the notion that increasing minimum fares is inefficient.[50] The company contends that it is possible for UberX riders to pay less and drivers to make more because the process "is getting *much* more efficient, helping make each hour a driver spends logged into the Uber system

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43. Cal. Pub. Utils. Comm'n, *supra* note 3; D.C. B. 20-753, *Vehicle-for-Hire Innovation Amendment Act of 2014*, D.C. Code § 50-301 20-753 (2014).

44. Paul Nussbaum, *Phila. Taxis Carry Less Insurance Coverage Than Those In Other Cities*, PHILLY.COM (Nov. 28, 2014), http://articles.philly.com/2014-11-28/news/56518271_1_taxis-uber-and-lyft-insurance-coverage.

45. *Id.*

46. *See id.*; Mark Schlueb, *Uber Slams Orlando, but Some Drivers Like City's New Rules*, ORLANDO SENTINEL (Jan. 23, 2015, 7:11 PM), http://www.orlandosentinel.com/news/breaking-news/os-uber-taxi-drivers-200150123-story.html.

47. Rachel Williams, *Why Orlando's Ridesharing Bill Doesn't Work*, UBER BLOG (Jan. 14, 2015), http://blog.uber.com/OrlandoUpdate.

48. Schlueb, *supra* note 46.

49. Williams, *supra* note 47.

50. Andrew Salzberg, *Three Septembers of UberX in New York City*, UBER BLOG (Oct. 29, 2014), http://blog.uber.com/nyc-three-septembers-uberX.

more valuable than it's ever been."[51] The system's increased efficiency is best illustrated when driver time online is broken down into three components, "idle while waiting for a trip, on their way to pick up a rider, or carrying a rider to their destination," as time spent idle and en route to a rider has been significantly minimized.[52]

As shown in the study, decreased fare prices lead to increased demand for rides, increased demand for rides leads to decreased idle time, and decreased idle time leads to drivers earning fares "a much greater portion of their time" spent working.[53] The efficiency of Uber's online platform is what allows the company to charge less than traditional taxis.[54]

Just as impactful as a larger market of riders is a larger market of drivers, which reduces time spent en route to riders.[55] Another inefficient measure seen in TNC ordinances are requirements that drivers buy excessively priced permits in order to operate.[56]

For example, the controversial TNC ordinance in Orlando includes a provision requiring drivers to pay a $250 vehicle permit, and a December 2014 TNC ordinance in San Antonio required drivers to pay $160 for an annual vehicle permit, $110 for the application, and $15 for a two-year driver permit.[57] San Antonio altered its requirements in March 2015 after Uber sent a letter to its city council, in brief, explaining that creation of "unnecessary hurdles and costs for those who want to make a living using the Uber platform" would force the company to leave town.[58] The altered ordinance, however, only reworked the disputed provision on its face, shifting fees onto the company itself by implementing a fee structure based on the number of drivers the company employed in the

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51. *Id.*

52. *Id.* (footnote omitted).

53. *Id.* (explaining that this leads to an increase in average gross earnings per hour from $24.80 in 2012 to $36.16 in 2014).

54. *See* Bill Gurley, *Uber's New BHAG: UberPool*, ABOVE THE CROWD (Jan. 30, 2015), http://abovethecrowd.com/2015/01/30/ubers-new-bhag-uberpool.

55. *See* Salzberg, *supra* note 50.

56. *E.g.*, ORLANDO, FLA., CODE § 55.19 (2014).

57. Drew Joseph, *City Unveils New Proposals for Uber, Lyft*, SAN ANTONIO EXPRESS-NEWS, http://www.expressnews.com/news/local/article/City-unveils-new-proposals-for-Uber-Lyft-6112873.php?t=845c72c3b8&cmpid=twitter-premium (last updated Mar. 3, 2015, 11:32 PM); Stephen Hudak, *Uber Vows To Pay Drivers' Fines as Orlando Regulations Kick In*, ORLANDO SENTINEL (Feb. 2, 2015, 6:36 PM), http://www.orlandosentinel.com/news/breaking-news/os-uber-orlando-fight-20150202-story.html.

58. Letter from Chris Nakutis, Gen. Manager, Uber Texas, to the Honorable Rebecca J. Viagran, San Antonio City Council (Feb. 4, 2015), http://www.scribd.com/doc/254738923/Uber-Letter-to-San-Antonio-City-Council.

city.[59] True to their word, Uber stopped servicing San Antonio when the city's new ordinances took effect in April 2015.[60]

It seems abundantly obvious that such permits serve as a barrier to market entry and decrease the efficiency of TNC business models. Though the San Antonio City Council claimed such permits are needed to maintain public safety during its vote to adopt new regulations, the sentiment seems only to echo the meritless cries from the taxi industry "prais[ing] the passage" of such provisions, as it is unclear how sheer costs to drivers or the company itself in any way complement existing background checks in place.[61] Leveling the playing field should not be an excuse for implementation of inefficient regulation:

> Uber's success and popularity should inspire legislators to take a hard look at the wasteful mass of ancient taxi regulations already on the books. . . . [T]hey block access to faster, more reliable service. Some geeks in Silicon Valley have designed a far more efficient system. Those medallions, licenses, and meters are obsolete. Admit it, and act accordingly. . . . We may find comfort in the familiarity of . . . industries today, but the cost of stifling innovation with outdated regulation is measured in billions.[62]

The effects of inefficiencies generated from needless pandering to outdated industries are only compounded when such inefficient regulation is inconsistently implemented between (and within) states.

IV. RAMIFICATIONS OF INCONSISTENT REGULATION

A. *Economic Principles*

Established economic principles provide that "good regulation" should serve clearly identified policy goals, minimize costs or produce benefits that justify costs, promote innovation, and be consistent with other regulations.[63]

The policy goal in regulating TNCs is (or should be) simple: promote innovation by supporting technology-driven efficiency that creates a safe, low-cost transportation option. Despite Uber "employ[ing] digital technology to create a more efficient service and labor market, challenging an existing system that pretty much everybody

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59. Joseph, *supra* note 57.

60. Alison Griswold, *Uber Just Showed Us Its Trump Card: Leaving Town*, SLATE (Apr. 2, 2015, 4:15 PM), http://www.slate.com/blogs/moneybox/2015/04/02/uber_leaves_san_antonio_to_protest_regulations_it_wasn_t_an_empty_threat.html.

61. Joseph, *supra* note 57.

62. Sununu, *supra* note 1.

63. *OECD Guiding Principles for Regulatory Quality and Performance*, ORG. FOR ECON. COOPERATION & DEV. 3 (2005), http://www.oecd.org/fr/reformereg/34976533.pdf.

believes to be woefully intransigent and inefficient," the current state of regulation in the larger context falls far short of supporting a company that to date has "work[ed] rather magnificently" as a low-cost transportation option, according to a study by Princeton economist Alan B. Krueger.[64]

While, as the previous Part set out to illustrate, provisions such as minimum fares and excessively priced permits neither produce benefits that justify costs nor minimize costs, regulatory inconsistencies place unnecessary burdens on an innovative industry.

Regulation comes with a cost to any company, as changing behavior in reaction to government directives requires businesses to invest in certain processes.[65] As President Barack Obama wrote in a commentary supporting a more progressive regulatory system, "Our economy is not a zero-sum game. Regulations do have costs; often, as a country, we have to make tough decisions about whether those costs are necessary. But what is clear is that we can strike the right balance."[66]

Few disagree that good regulation provides proper balance between freedom of commerce and consumer protection.[67] Ineffective regulation, however, arises when the line between necessary and "redundant, inconsistent, or overlapping" is crossed, and unnecessary compliance burden and costs are created.[68] President Obama's mandate for a "21st-Century Regulatory System"—backed by Executive Order 13563 ("Improving Regulation and Regulatory Review")—targeted such issues by reminding that regulations need be adopted with the costs of cumulative regulations in mind.[69]

Such costs are being incurred by TNCs as regulations implemented to date vary widely between (and within) states, and growth is being inhibited where legislation flatly will not allow the companies to operate. Uber does not operate in Panama City Beach where legislators have

64. Michael Wolff, *Uber—Hated but Perfect*, USA TODAY (Feb. 1, 2015, 7:02 PM), http://www.usatoday.com/story/money/columnist/wolff/2015/02/01/whats-behind-the-criticism-of-uber/22521499.

65. Andrew N. Kleit, *Enforcing Time Inconsistent Government Regulations* (Fed. Trade Comm'n Bureau of Econ., Working Paper No. 161, Mar. 1988), https://www.ftc.gov/sites/default/files/documents/reports/enforcing-time-inconsistent-government-regulations/wp161.pdf.

66. Barack Obama, *Toward a 21st-Century Regulatory System*, WALL ST. J., http://www.wsj.com/articles/SB10001424052748703396604576088272112103698 (last updated Jan. 18, 2011, 12:01 AM).

67. *Id.*

68. *See* OFFICE OF INFO. & REGULATORY AFFAIRS, EXEC. OFFICE OF THE PRESIDENT, CUMULATIVE EFFECTS OF REGULATIONS (Mar. 20, 2012), https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/cumulative-effects-guidance.pdf.

69. Obama, *supra* note 66; OFFICE OF INFO. & REGULATORY AFFAIRS, *supra* note 68.

attempted to impose dated taxi regulations on ride-sharing drivers, while 100 miles east, the Tallahassee City Commission passed an ordinance "put[ting] public safety first, while expanding economic opportunity for local entrepreneurs."[70] San Antonio City Council, passed "unworkable"[71] legislation forcing Uber to end service in April 2015, while eighty miles north, Austin has implemented "smart regulations . . . that protect public safety while . . . fostering technological innovations that enhance transportation options."[72]

In instances where common sense regulations have already been established (in seventeen U.S. cities and four states, according to Uber), such inconsistencies burden not only the company (through unnecessary compliance costs created adherence to hundreds of inconsistent regulations), but also technological development.[73]

B. Technological Disincentives

Inefficient and inconsistent regulation is more troublesome in the larger context because it disincentivizes technological development.

> Technology and regulation are often posed as adversaries. Technology symbolizes markets, enterprise, and growth, while regulation represents government, bureaucracy, and limits to growth. . . .
>
> To some extent, this conflict is inevitable. Over time and across countries, institutional factors such as regulation clearly have a major influence on the rate of technological change and thus on societal prosperity [as] regulation can retard all of [economist Joseph] Schumpeter's three stages of technological change: invention, innovation, and diffusion.[74]

In coordination with President Obama's Executive Order, the Office of Science and Technology Policy released a memorandum titled "Principles for Regulation and Oversight of Emerging Technologies," which in part expressed a "fundamental desire" for regulation to maintain

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70. Sean Rossman, *City Passes Uber Ordinance*, TALLAHASSEE DEMOCRAT (July 9, 2015, 9:45 AM), http://www.tallahassee.com/story/news/2015/07/08/city-passes-uber-ordinance/29894399/; *Uber No Longer Operating In Bay County*, WJHG.COM, http://www.wjhg.com/home/headlines/Uber-No-Longer-Operating-in-Bay-County-295779101.html (last updated Mar. 10, 2015, 9:58 PM).

71. Chris Nakutis, *Uber San Antonio Statement*, UBER BLOG (Mar. 4, 2015), http://blog.uber.com/SAStatement.

72. Letter from Chris Nakutis to the Honorable Rebecca J. Viagran, *supra* note 58.

73. *Id.*; OFFICE OF INFO. & REGULATORY AFFAIRS, *supra* note 68.

74. Jonathan B. Wiener, *The Regulation of Technology, and the Technology of Regulation*, 26 TECH. SOC'Y 483, 483-84 (2004), http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1960&context=faculty_scholarship.

legitimate objectives like public safety while avoiding "unjustifiably inhibiting innovation [or] stigmatizing new technologies."[75]

Outside of the well-established TNC safety and insurance regulations in place accomplishing legitimate objectives, many provisions implemented at the state and local level seem to have the effect of inhibiting innovation and stigmatizing new technologies—even if it is not their bona fide purpose.[76] A "Competition Policy Review" conducted by the Australian government noted that "notwithstanding considerable public demand for its services[,] . . . existing [TNC] regulation is more concerned with protecting a particular business model than being flexible enough to allow innovative transport services to emerge."[77]

Though with TNCs thriving despite anticompetitive regulations there exists little concern for inhibiting innovation from a research and development standpoint, the stigmatization of innovative companies is needless as derived primarily from those arguing TNCs require additional pricing regulation.[78] Such stigmatization leads to regulations targeting, for example, Uber's surge pricing model, despite the same market mechanisms controlling prices of movie tickets, holiday gifts, and airplane tickets.[79]

The scattered implementation of prohibitory restrictions at the state and local level neither justify costs, nor promote innovation given the absence of reasonable regulatory objectives.[80] As such, given the implicit embrace of fostering growth of innovative industries in the move towards a "21st-Century" federal regulatory system, it would serve the best interest of the "vibrant entrepreneurialism . . . key to our continued

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75. Memorandum from the Office of Sci. & Tech. Policy, Exec. Office of the President, Principles for Regulation and Oversight of Emerging Technologies for the Heads of the Executive Departments & Agencies (Mar. 11, 2011), https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Principles-for-Regulation-and-Oversight-of-Emerging-Technologies-new.pdf.

76. *See* Katie Curran, *Uber Supports Policy Review's Call for Removal of Anti-Competition Regulations*, UBER BLOG (Sept. 21, 2014), http://blog.uber.com/Competition-Policy-Review.

77. *Competition Policy Review: Draft Report*, AUSTL. GOV. COMPETITION POL'Y REV. 139 (Sept. 2014), http://competitionpolicyreview.gov.au/files/2014/09/Competition-policy-review-draft-report.pdf.

78. *See* Simone Pathe, *Uber the Unfair? Are Ride-Sharing Firms Exploiting Deregulation?*, PBS (Oct. 2, 2014, 4:28 PM), http://www.pbs.org/newshour/making-sense/uber-unfair-ride-sharing-firms-exploiting-deregulation.

79. *See* Neil Irwin, *Uber's Surge Pricing Is Totally Logical and Fair. So Why Do People Hate It So Much?*, WASH. POST (Dec. 20, 2013), http://www.washingtonpost.com/blogs/wonkblog/wp/2013/12/20/ubers-surge-pricing-is-totally-logical-and-fair-so-why-do-people-hate-it-so-much.

80. *See* OFFICE OF SCI. & TECH. POLICY, *supra* note 75.

global leadership and . . . success of our people" to regulate companies like Uber at the federal level.[81]

V. CONCLUSION

With established economic principles providing that good regulation should, above all, effectively serve policy goals and promote innovation through efficiency and consistency, TNCs seem well suited for federal regulation.[82]

Regulation at present has been relatively consistent in addressing consumer safety concerns; however, ineffectiveness arises more so from measures that seem only to serve as barriers to market entry.[83] While some ordinances feign embrace of TNC services while unnecessarily increasing the cost of operation to level the playing field with traditional taxi companies, others outright prevent companies like Uber from operating.[84]

Given the general agreement that Uber has brought much needed efficiency to low-cost transportation and innovation to dynamic pricing, there exists no reason (other than legislative remissness) for common sense regulation not to already be in place nationally.[85] Instead, with such inefficient and inconsistent governance remaining in place, the only ends met are the continued bureaucratic protection of an outdated incumbent industry, "unreasonable burdens on business, [and] stifled innovation."[86]

81. Obama, *supra* note 66.

82. *Cf. OECD Guiding Principles for Regulatory Quality and Performance*, ORG. FOR ECON. COOPERATION & DEV. 3 (2005), http://www.oecd.org/fr/reformereg/34976533.pdf.

83. MacMillan, *supra* note 7.

84. *Compare* ORLANDO, FLA., CODE § 55.19 (2015) (requiring the same $250 application fee for both TNC and traditional taxi drivers), *with* Steve Quinn & Shelby Sebens, *Uber Quits Anchorage, Sued in Oregon*, HUFFINGTON POST, http://www.huffingtonpost.com/2015/03/06/uber-anchorage-oregon-lawsuit_n_6820966.html (last updated May 6, 2015) (discussing unpublished lawsuit preventing Uber from operating in Eugene, Oregon); City of Eugene v. Uber Tech., No. 161504215 (Or. Cir. May 5, 2015).

85. *See* James Surowiecki, *In Praise of Efficient Price Gouging*, MIT TECH. REV. (Aug. 19, 2014), http://www.technologyreview.com/review/529961/in-praise-of-efficient-price-gouging.

86. Diamandis, *supra* note 8; Obama, *supra* note 66.