



Geoffrey Upton

He is an assistant professor of political science and the pre-law adviser at Seton Hall University in South Orange, New Jersey.

Mr. Upton received his Ph.D. in Political Science from the University of California, Berkeley, in December 2017. He also has a J.D. from Harvard Law School. His research investigates questions of democratic politics, capitalism and technology, focusing on how emerging economic arrangements affect democratic institutions and principles of liberalism. To these subjects Mr.

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Sharing Economy Platforms and Equality

by: Geoffrey Upton

In 2015, Rachel Botsman noted the existence of a problem that had come to plague sharing platforms such as Airbnb and Uber in the preceding years: that they enable some users to discriminate against others on the basis of race, among other factors. The “big question” facing the sharing economy, she said, was “how do these profiles not start a whole new era of discrimination?” The sharing economy was at risk of being not a “system of empowerment to many people,” but a “system of discrimination” instead. Evidence suggests that sharing economy platforms allow individuals, whether intentionally or not, to engage in discriminatory practices that would be illegal in traditional economic enterprises such as hotels and taxicabs.

A number of academic studies have demonstrated the prevalence of such discrimination and pointed to certain design features of the leading platforms as partly to blame. Would-be renters on Airbnb can see photos and read profiles of prospective hosts before requesting a stay, intended as a means of building trust and of “humanizing a physically distant person on the other side of an Internet transaction”—but one with the unintended consequence of unleashing prejudice. One study found that non-black Airbnb hosts in New York City charged approximately 12 percent more than black hosts for the equivalent rental, holding all other variables about the rentals constant to the extent possible. A more recent study by the same authors similarly found that using distinctively African-American names compared with distinctively white names made them 8 percent less likely to be able to obtain lodgings via Airbnb. Press reports have raised awareness of racial discrimination on Airbnb. For example, in May 2016, an African-American man sued the company, claiming his request for lodging in Philadelphia was rejected when using his real profile but accepted when he set up two fake profiles as white men. Thereafter stories of discrimination against African-Americans using Airbnb proliferated, with anecdotes shared on Twitter using the hashtag #AirbnbWhileBlack.



15th image in Google for
“Airbnb belong anywhere”

Beyond race, another problematic area for sharing platforms, particularly ride-sharing platforms like Uber, has been the accommodation of (and thus non-discrimination against) the disabled. In 2014, the National Federation of the Blind and a blind rider sued the company in federal court under the Americans with Disabilities Act, alleging that Uber drivers in more than 30 cases nationwide refused to pick up passengers with guide dogs, or if they did, mistreated them, in one case locking a guide dog in the trunk for the duration of the ride. In at least some sectors where discrimination has been largely eradicated, then, the

sharing economy threatens to be a step back, even if hosts or drivers acting in a discriminatory manner are not aware of doing so.

Current U.S. law, however, makes it difficult to hold either individuals or sharing platforms responsible for discrimination. The question of how to address discrimination in the sharing economy is complex because the economic formations are new and evolving and there is a wide variety of platforms using different interfaces and technologies, and because it involves the perennial trade-off between rights to association and expression on the one hand,

and equality on the other—particularly given the sharing economy’s ambiguous status between public and private. But instead of permitting acts of discrimination in the home, prejudice in the commercial sharing economy ought to be legally combatted both by eliminating these exemptions and by amending federal law in three other ways to ensure platforms are doing all they can to reduce acts of prejudice, so that the platforms themselves cannot escape liability for discrimination.

First, Airbnb ought to be classified as a real estate broker, since brokers are liable for

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discrimination, even if individual property owners are exempt. Second, the Communications Decency Act (CDA) of 1996, which shields online platforms from liability for user-generated content, including “users” violations of anti-discrimination laws,” should be held inapplicable to sharing platforms.

If such steps were taken, more socially and politically productive encounters would be likely to take place. Sharing economy companies conceive of themselves, or at least publicly portray themselves, as “mere platforms” through which parties—independent contractors and



Third, a new exemption to the CDA, creating a “private right of action against the discriminatory practices of online real estate businesses” like Airbnb, also should be enacted. Such a right could be crafted to hold platforms to account for not taking steps to reduce the likelihood of discrimination, including when due to implicit bias. Proposals that Congress target discrimination in the sharing economy by imposing data disclosure requirements on platform companies are also appealing, as is their suggestion that platform design itself be legislated—though such legislation would need to be carefully crafted so as to survive legal challenge.

customers—meet and transact. In this way, they are distinct from, say, hotel chains that exert direct control over their staff and properties. But sharing platforms are also clearly more than neutral interfaces with no influence on how users interact. Companies have taken steps on their own to address these shortcomings, but they should be legally accountable for ensuring that they are actively reducing the chances of discriminatory behavior, including when such behavior is rooted in implicit bias. By taking the recommended steps and amending the applicable legal framework, Congress and the courts would also be acknowledging that it is in society’s interest to have people from all backgrounds encounter each other.