

What the Sharing Economy and Environmental Law Have In Common

Author : Eric Biber

Tagged as : [Environmental Law](#)

Date : January 13, 2017

Kellen Zale, *When Everything is Small: The Regulatory Challenge of Scale in the Sharing Economy*, **San Diego L. Rev.** (forthcoming 2016), available at [SSRN](#).

There has been a lot of literature about the so-called “sharing” economy lately, in particular focusing on the conflicts over whether and how that economy will fit within the existing regulatory systems at the local, state, and federal levels. And at first blush, the question of whether Uber drivers should be regulated as taxis or not doesn’t seem to have much of a connection with the standard concerns of environmental law—particularly the regulation of large industrial sources of pollution.

But as [Kellen Zale’s](#) excellent [article](#) points out, the problems that the sharing economy poses to existing regulatory systems are ones that we have seen before, and ones that we will see again. Zale notes that the sharing economy poses regulatory challenges precisely because of its scale of a large number of small activities—thousands and thousands of individual drivers working for Uber or Lyft, or of homeowners renting through Air BnB. Large numbers of individually small activities are incredibly difficult to regulate effectively, and that regulation can impose substantial social costs. As a result, the law has traditionally exempted many small scale actions from regulation. On the other hand, the accumulation of all of these individually small actions can impose significant harms on neighbors, communities, and the environment. For instance, the congestion and noise impacts of large numbers of Air BnB rentals have been a source of major complaint in some tourist communities. Zale also identifies how the sharing economy is but one example of this phenomenon—a growth of the impacts from individually small activities to the point at which regulation is required—and discusses how it can be discerned in a range of areas, including landlord-tenant law.

I particularly enjoyed Zale’s efforts to identify solutions to the challenges posed by the sharing economy—options including co-regulation (in which the private industry is part of enforcement efforts in cooperation with the government), the use of private standards, and simple fee structures. While Zale certainly does not exhaust the range of possible options, her efforts are an important starting point for developing policy responses.

While Zale’s work focuses on the sharing economy, I think the issues she identifies, the questions she asks, and the policy ideas she develops will be important for environmental law far beyond the sharing economy. The future of the next century will be increasingly a story of rising human pressures on our planet as a result of the accumulation of billions of individual decisions about how to use resources and what lifestyles to live. In major urban areas in the United States, much current air pollution is the result of activities as small as filling gasoline tanks in cars, painting houses, dry cleaning clothes, and burning wood in fireplaces. Some of these challenges can be covered by upstream regulation (e.g., reformulating paints to reduce emissions, more efficient gas tanks). Others will require more direct intervention in individual activities (e.g., enforcing requirements on separating recycling materials from trash, restricting the use of fireplaces). Ensuring that these regulations will be politically palatable and fair in the burdens they impose on individuals will require the development of many creative solutions along the lines Zale develops. I am glad she has helped start that conversation.

Cite as: Eric Biber, *What the Sharing Economy and Environmental Law Have In Common*, JOTWELL (January 13,

2017) (reviewing Kellen Zale, *When Everything is Small: The Regulatory Challenge of Scale in the Sharing Economy*, **San Diego L. Rev.** (forthcoming 2016), available at SSRN), <http://lex.jotwell.com/what-the-sharing-economy-and-environmental-law-have-in-common/>.