

2017

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Domenic J. Martini, *International Regulatory Entrepreneurship: Uber's Battle with Regulators in France*, 19 San Diego Int'l L.J. 127 (2017)
Available at: <http://digital.sandiego.edu/ilj/vol19/iss1/6>

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International Regulatory Entrepreneurship: Uber's Battle with Regulators in France

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ABSTRACT

Uber is a regulatory entrepreneur: a company that seeks to change the law in its favor. In the United States, Uber's regulatory entrepreneurship changed the American taxi industry and the laws that regulate it. But the company's venture into France presented unique challenges. This Comment examines Uber's regulatory entrepreneurship in France and analyzes the factors that hindered Uber's quest to revolutionize the French taxi industry. It discusses the tension between Uber and the French government and the policies behind both sides' goals. It also seeks a compromise between Uber and the French regulators: one that acknowledges the issues with both Uber's aggressive business model and France's heavy government regulations.

* © 2017 J. Domenic Martini. J.D. 2018 Candidate, University of San Diego School of Law. I would like to thank Professor Jordan M. Barry for his guidance and feedback. Without it, this publication would not have been possible. I would also like to thank Professor Barry and Professor Elizabeth Pollman for allowing me to add to the literature on regulatory entrepreneurship.

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I. INTRODUCTION

Uber Technologies, Inc. (“Uber”) is a ride sharing company that connects drivers with passengers through its mobile phone application.¹ Passengers can select their current location and destination, and request that a nearby driver take them to their chosen destination.² The company is “essentially running a taxi dispatch service for the smartphone age.”³

Yet Uber’s business model is at odds with the highly-regulated taxi industry. Taxis are licensed vehicles driven by professional drivers and are extensively regulated by governments.⁴ Cities issue taxi medallions or permits that allow a taxi to operate.⁵ The number of permits is regulated,

1. UBER, <https://www.uber.com> (last visited Sept. 2, 2017) [<http://perma.cc/W6ES-P4HN>].

2. *Ride*, UBER, <https://www.uber.com/ride> (last visited Sept. 2, 2017) [<https://perma.cc/2B7E-EN9M>].

3. Jordan M. Barry & Elizabeth Pollman, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383, 385 (2017).

4. See Rebecca Elliott, *Sharing App or Regulation Hack(ney)?: Defining Uber Technologies, Inc.*, 41 IOWA J. CORP. L. 727, 732 (2016).

5. Jason Snead, *Taxicab Medallion System: Time for a Change*, HERITAGE (Dec. 10, 2015), <http://www.heritage.org/research/reports/2015/12/taxicab-medallion-systems-time-for-a-change> [<https://perma.cc/44G2-WRTZ>].

and a few medallion owners will then lease their medallions to drivers.⁶ Taxi drivers will often rent taxis from the medallion owners, and may have to pay as much as \$1.32 million if they want to buy a medallion⁷ and own their right to operate a taxi.⁸

Uber's requirements are less strict. The company only requires that drivers meet their insurance requirements and go through a background check.⁹ Uber drivers can use their own car, so long as it meets the vehicle requirements.¹⁰ This simple means of signing up, without going through the process of leasing a taxi and medallion, is an advantage Uber has over taxis. Uber's number of drivers is not fixed by the company, but rather driven by the free market, allowing Uber drivers more opportunity and freedom than taxi drivers.¹¹ This difference between regulation and non-regulation creates tension between the taxi industry and Uber, as Uber essentially runs a taxi service without having to submit to the vast regulations with which traditional taxis must comply.¹²

Uber revolutionized the way that people view taxi cab services and personal transportation.¹³ It brought cab services into the sharing economy, where services such as personal transportation and housing are shared among consumers.¹⁴ Uber focuses on affordability and convenience, two staples of the sharing economy.¹⁵ In most cities, it is cheaper to take an Uber than

6. *Id.*

7. Simon Van Zuylen-Wood, *The Struggles of New York City's Taxi King*, BLOOMBERG (Aug. 27, 2015), <http://www.bloomberg.com/features/2015-taxi-medallion-king> [<https://perma.cc/7DPD-FMMG>]; see also Amar Madhani, *Once a Sure bet, Taxi Medallions Becoming Unsellable*, USA TODAY (May 18, 2015, 9:29 AM), <http://www.usatoday.com/story/news/2015/05/17/taxi-medallion-values-decline-uber-rideshare/27314735> [<https://perma.cc/9YNV-C4GL>].

8. Van Zuylen-Wood, *supra* note 7.

9. *Uber Driver Requirements*, Alvia, <http://www.alvia.com/uber-driver-requirements> (last visited Feb. 22, 2017) [<https://perma.cc/NUA8-TY6J>].

10. *Id.*

11. Snead, *supra* note 5.

12. See Elliott, *supra* note 4.

13. See Dan Gillmor, *The Uber Revolution is Just Beginning, and No Cabbie Protest Can Stop It*, THE GUARDIAN (June 13, 2014, 1:22 PM), <https://www.theguardian.com/commentisfree/2014/jun/13/uber-cabbie-protest-sharing-economy> [<https://perma.cc/QB8T-YJ7U>].

14. See Alamea D. Bitran, Comment, *The Uber Innovations That Lyfted Our Standards Out of Thin Air[Bnb]*, *Because Now*, "There's an App for That", 8 ELON L. REV. 503, 505 (2016).

15. *Id.* at 513.

it is to take a traditional taxi.¹⁶ It is also faster to take an Uber than it is to take a taxi,¹⁷ and the software is free and easy to download on any smartphone.¹⁸ The idea of a stranger picking up a passenger may seem dangerous, but Uber is now thought to be safer than traditional taxis.¹⁹ The impact of ridesharing is apparent in many different aspects of today's economy, as even the trucking industry could be threatened by the ride sharing Uber created.²⁰

Since its founding in 2009, Uber has seen exponential growth despite battling regulators throughout every step of its expansion.²¹ Uber has an estimated worth of \$68 billion, which is more than General Motors,²² and Uber has not even made an Initial Public Offering.²³ As of 2015, 160,000 people drove for Uber in the United States, and in one month Uber added 40,000 new drivers.²⁴ This growth is fueled by Uber's 15.8 million monthly active users in the United States,²⁵ as well as its operations in more than

16. These rates depend on a number of factors. *See, e.g.,* Sara Silverstein, *These Animated Charts Tell You Everything About Uber Prices in 21 Cities*, BUSINESS INSIDER (Oct. 16, 2014, 12:47 PM), <http://www.businessinsider.com/uber-vs-taxi-pricing-by-city-2014-10> [<https://perma.cc/TMS3-3DK6>].

17. *See* Ellen Huet, *Uber, Lyft Cars Arrive Much Faster Than Taxis, Study Says*, FORBES (Sept. 8, 2014, 9:00 AM), <http://www.forbes.com/sites/ellenhuet/2014/09/08/uber-lyft-cars-arrive-faster-than-taxis/#70a615955f73> [<https://perma.cc/KY2P-EALM>].

18. *Get*, UBER, <https://get.uber.com> (last visited Sept. 6, 2017) [<https://perma.cc/QXK8-9FJJ>].

19. *See* James Cook, *Despite the Scary Rape Headlines, Uber is Probably Still the Safest Way to Order a Taxi*, BUSINESS INSIDER (Dec. 8, 2014, 7:24 AM), <http://www.businessinsider.com/despite-its-problems-uber-is-still-the-safest-way-to-order-a-taxi-2014-12> [<https://perma.cc/7EY3-UJNS>].

20. *See* Sarwant Singh, *The Disruption Uber Has Brought to the Taxi Business Is Coming to Trucking*, FORBES (Aug. 3, 2015, 5:47 PM), <http://www.forbes.com/sites/sarwantsingh/2015/08/03/uber-taxi-truck/#26c3379e41b0> [<https://perma.cc/73AQ-PE92>].

21. For purposes of this Comment, a regulator is a government agency, legislative body, commission, or any other government group whose job is oversight or passing laws that regulate an industry.

22. *See* Liyan Chen, *At \$68 Billion Valuation, Uber Will Be Bigger Than GM, Ford, And Honda*, FORBES (Dec. 4, 2015, 11:23 AM), <http://www.forbes.com/sites/liyanchen/2015/12/04/at-68-billion-valuation-uber-will-be-bigger-than-gm-ford-and-honda/#1ca4e7585858> [<https://perma.cc/CZ64-EJMM>].

23. *See* Christopher Mims, *Why Uber Might Stalk an IPO Sooner Rather Than Later*, WALL ST. J. (Aug. 7, 2016, 2:11 PM), <http://www.wsj.com/articles/why-uber-might-stalk-an-ipo-sooner-rather-than-later-1470593467>.

24. Though Uber does not release updated data for its drivers, these figures are likely much higher now. *See, e.g.,* Douglas MacMillan, *Uber Touts Its Employment Opportunities*, WALL ST. J. (Jan. 25, 2015, 6:51 PM), <http://www.wsj.com/articles/uber-touts-its-employment-opportunities-1422229862> [<https://perma.cc/8AHE-34B3>].

25. *See* Mike Sonders, *These Latest Uber Statistics Show How It's Dominating Lyft*, SURVEYMONKEY INTELLIGENCE (Aug. 26, 2016), <https://web.archive.org/web/20160926183610/https://www.surveymonkey.com/business/intelligence/uber-statistics> [<https://perma.cc/L857-FQ5H>].

60 countries and almost 300 cities across the globe.²⁶ By all measurements, Uber is a powerhouse in the start-up world.²⁷

Uber's explosive expansion does not come without its fair share of controversy. Since its inception, Uber has fought United States regulators on insurance,²⁸ employee benefits,²⁹ taxi licensing,³⁰ and many other issues.³¹ Entrenched incumbents like taxi medallion owners protest Uber because the company's ride share success is dependent on deregulating the taxi industry and upsetting the status quo that kept medallion prices high.³² Yet, Uber supporters have gone to great lengths to support Uber in its regulation battles,³³ showing just how polarizing the company's business model is.

Uber's legal issues are different from those of a typical company. Uber is a regulatory entrepreneur, as it "makes changing the law a material part

26. See Phillip Levinson, *3 Reasons Why Uber Will Win in the End*, BUS. INSIDER (Oct. 16, 2015, 3:55 PM), <http://www.businessinsider.com/why-uber-will-win-in-the-end-2015-10> [<http://perma.cc/E49H-XC7Z>].

27. See Nathan McAlone, *Here's How Uber Got its Start and Grew to Become the Most Powerful Startup in the World*, BUS. INSIDER TECH. (Sept. 13, 2015, 8:00 AM), <http://www.businessinsider.com/history-of-uber-and-its-rise-to-become-the-most-valuable-startup-in-the-world-2015-9> [<http://perma.cc/9PWY-Y2TQ>].

28. See Christina Farr, *Who's Responsible for Your Uber Driver's Health Coverage?*, NPR (Oct. 11, 2015, 6:24 AM), <http://www.npr.org/sections/health-shots/2015/10/11/447157698/who-s-responsible-for-your-uber-driver-s-health-coverage> [<https://perma.cc/P9WD-MYN9>].

29. See Kia Kokalitcheva, *Uber's Employment Fight Just Got More Complicated*, FORTUNE (Mar. 4, 2016), <http://fortune.com/2016/03/04/uber-driver-unemployment> [<http://perma.cc/TQ68-85R7>].

30. See Ryan Lawler, *A Day After Cutting a Deal with Lyft, California Regulator Reaches an Agreement with Uber as Well*, TECHCRUNCH (Jan. 31, 2013), <https://techcrunch.com/2013/01/31/a-day-after-cutting-a-deal-with-lyft-california-regulator-reaches-an-agreement-with-uber-as-well> [<https://perma.cc/D54Q-H8SX>].

31. See Harrison Weber, *As Uber Battles 13 Lawsuits, Cabbies & State Agencies Are Out for Blood*, VENTUREBEAT (May 8, 2014, 8:54 AM), <http://venturebeat.com/2014/05/08/as-uber-battles-13-lawsuits-cabbies-state-agencies-are-out-for-blood> [<https://perma.cc/6ADM-ATBQ>].

32. See Josh Barro, *Under Pressure from Uber, Taxi Medallion Prices Are Plummeting*, N.Y. TIMES: The Upshot (Nov. 27, 2014), http://www.nytimes.com/2014/11/28/upshot/under-pressure-from-uber-taxi-medallion-prices-are-plummeting.html?_r=0 [<https://perma.cc/V6QL-45HJ>].

33. See Rosalind S. Helderman, *Uber pressures regulators by mobilizing riders and hiring vast lobbying network*, WASH. POST (Dec. 13, 2014), https://www.washingtonpost.com/politics/uber-pressure-regulators-by-mobilizing-riders-and-hiring-vast-lobbying-network/2014/12/13/3f4395c6-7f2a-11e4-9f38-95a187e4c1f7_story.html [<https://perma.cc/NKY9-GSCS>].

of its business plan.”³⁴ Uber’s business does not conform to the regulatory standards set forth for other taxi services, and its ridesharing service has been battling the status quo ever since the company first entered the market. Uber intentionally takes advantage of legal gray areas, disregards cease-and-desist letters, and actively tries to lobby for deregulation by mobilizing its customers and taking part in traditional political processes.³⁵ Its regulatory entrepreneurship is necessary for its growth and survival.

Uber’s expansion into France posed a new set of challenges, as both government regulators and traditional taxi drivers sought to stifle the company’s growth.³⁶ The French government fined Uber drivers³⁷ and arrested both the Uber France CEO and the Uber Europe General Manager.³⁸ Taxi drivers and their supporters burned tires and attacked Uber drivers in protest.³⁹ Overall, compared to the United States, the legal challenges in France were tougher for Uber to overcome,⁴⁰ and the protests were more violent.⁴¹ Yet, Uber is far from giving up its fight to operate its business in France,⁴² and the battle over ride sharing in the country is not yet over.⁴³

This Comment will focus on Uber’s regulatory entrepreneurship in France and the possible solutions to the battle between Uber and the French government. First, this Comment will define and explain regulatory entrepreneurship, using Uber’s business model as an example to illustrate the

34. Barry & Pollman, *supra* note 3, at 385.

35. *Id.* at 386–87.

36. See Liz Alderman, *Uber’s French Resistance*, N.Y. TIMES (June 3, 2015) http://www.nytimes.com/2015/06/07/magazine/ubers-french-resistance.html?_r=0 [<https://perma.cc/L7QA-6YBQ>].

37. See Laure Fourquet & Mark Scott, *Uber Drivers Face Fines in Paris*, N.Y. TIMES: BITS (Feb. 22, 2015, 11:30 AM), http://bits.blogs.nytimes.com/2015/02/22/uber-drivers-face-fines-in-paris/?_r=0 [perma.cc/HB2H-4636].

38. See Romain Dillet, *Uber France Leaders Arrested for Running Illegal Taxi Company*, TECHCRUNCH (June 29, 2015), <https://techcrunch.com/2015/06/29/uber-france-leaders-arrested-for-running-illegal-taxi-company/> [perma.cc/Y5LB-Y5A9].

39. See Angelique Chrisafis, *France Hit by Day of Protest as Security Forces Fire Teargas at Taxi Strike*, THE GUARDIAN (Jan. 26, 2016, 1:14 PM), <https://www.theguardian.com/world/2016/jan/26/french-taxi-drivers-block-paris-roads-in-uber-protest> [perma.cc/5FKZ-8NAV].

40. Compare Alderman, *supra* note 36, with Johana Bhuiyan, *It’s Already Over and Uber has Won*, BUZZFEED (Feb. 20, 2015, 5:32 AM), https://www.buzzfeed.com/johanabhuiyan/its-already-over-and-uber-has-won?utm_term=.hs8mkddXvW#.tck8exxR12 [perma.cc/N7LM-E7WZ].

41. Compare Chrisafis, *supra* note 39, with Maya Rhodan, *Taxi Drivers Protest Uber and Lyft, Stop DC Traffic*, TIME (Oct. 8, 2014), <http://time.com/3482420/taxis-uber-lyft-washington-dc> [perma.cc/Z9A6-42JS].

42. France is not the only country in Europe that Uber is currently fighting. Italy, Germany, and Spain have also attempted to ban or have successfully banned Uber. See Elliot, *supra* note 4.

43. See Alexander Demasi, *Uber: Europe’s Backseat Driver for the Sharing Economy*, 7 CREIGHTON INT’L & COMP. L.J. 73 (2016).

term. Second, this Comment will analyze Uber's regulatory entrepreneurship in the United States. This analysis will include Uber's strategies, regulators' responses, and the factors that allowed Uber to succeed in the United States. Third, this Comment will analyze Uber's regulatory entrepreneurship in France by drawing distinctions between the company's regulatory entrepreneurship in the United States. Once again, Uber's strategies and regulators' responses will be examined, and the factors that led to the different outcome in France will be identified and analyzed.

Finally, this Comment will propose a solution to the battle between Uber and French regulators in the hopes that both regulators and regulatory entrepreneurs can learn from Uber's regulatory entrepreneurship in France. Regulators in France and Uber can compromise on taxi regulations to ensure that Uber can continue to operate while still complying with insurance and consumer safety laws. A full ban on Uber is unnecessary and will deter other regulatory entrepreneurs from entering France's market, which means the jobs created by these companies will not be available for French workers. Furthermore, as regulatory entrepreneurship becomes more common for companies, governments should compromise in order to obtain efficient solutions. As other United States regulatory entrepreneurs expand overseas, they will meet similar challenges and Uber's experience may be instructive in resolving these issues.

II. WHAT IS REGULATORY ENTREPRENEURSHIP?

Regulatory Entrepreneurship is a term advanced by Professors Jordan M. Barry⁴⁴ and Elizabeth Pollman.⁴⁵ The following is an analysis of this concept, which is critical to understanding this Comment's theoretical basis.

Regulatory Entrepreneurs' success depends on "the resolution of legal issues concerning a core aspect of their business."⁴⁶ Examples of legal issues include uncertainty in the current law's application, the application of new regulations, and the existence of current restrictions that hinder a companies' business.⁴⁷ Companies have always lobbied to ensure the law stays favorable to their business, but regulatory entrepreneurship is different in that companies enter a market with legal uncertainty and attempt to

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46. Barry & Pollman, *supra* note 3, at 384–85.

47. *Id.* at 392.

conform the law to their business from the outset;⁴⁸ hence, the “entrepreneurship” in regulatory entrepreneurship.

Uber is “the country’s most famous regulatory entrepreneur,” but it is not the only one.⁴⁹ Lyft, Airbnb, Tesla, FanDuel, DraftKings, and FedEx are all examples of regulatory entrepreneurs.⁵⁰ Lyft is Uber’s competitor in the rideshare industry and has the same business model as Uber.⁵¹ Airbnb challenges the hotel industry’s regulations by connecting individuals that rent their personal homes and apartments to customers in the same way that a hotel rents a room to its guest.⁵² Airbnb had to beat short-term rental regulations in jurisdictions where it operates in order to successfully run its business.⁵³ Tesla, an electric car manufacturer, could not get car dealers to sell a product contrary to their gasoline powered cars.⁵⁴ In order to get around regulations that limited car sales to car dealers, Tesla had to sell its cars directly to customers through its own store.⁵⁵ FanDuel and DraftKings both operate fantasy sports sites that are contrary to gambling laws.⁵⁶ Perhaps surprising, even FedEx is a regulatory entrepreneur.⁵⁷ FedEx competed with heavy cargo regulations and eventually succeeded in deregulating the industry.⁵⁸ These examples help to illustrate exactly what regulatory entrepreneurs are.

A. Methods of Regulatory Entrepreneurship

Regulatory entrepreneurs use four main tactics to change the law, though these are not exhaustive. First, they may break the law or take advantage of legal gray areas.⁵⁹ The idea behind this strategy is that “it is

48. *Id.*

49. *Id.* at 385.

50. *See generally id.*

51. LYFT, <https://www.lyft.com/> (last visited Aug. 3, 2017) [perma.cc/SRX8-6H5K].

52. *See generally* Emily Badger, *How Airbnb Just Changed the Housing Laws in San Francisco*, WASH. POST: WONKBLOG (Oct. 8, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/10/08/how-airbnb-just-changed-the-housing-laws-in-san-francisco> [perma.cc/AW8M-YQJ8].

53. *Id.*

54. Cliff Weathers, *How Tesla and New Car Technologies Could Make Auto Dealers Obsolete*, SALON (Oct. 11 2014, 9:00 AM), http://www.salon.com/2014/10/11/how_tesla_and_new_car_technologies_could_make_auto_dealers_obsolete_partner [perma.cc/2TCD-3R2L].

55. *Id.*

56. Walt Bogdanich et al., *Attorney General Tells DraftKings and FanDuel to Stop Taking Entries in New York*, N.Y. TIMES (Nov. 10, 2015), <https://www.nytimes.com/2015/11/11/sports/football/draftkings-fanduel-new-york-attorney-general-tells-fantasy-sites-to-stop-taking-bets-in-new-york.html> [https://perma.cc/MDP6-QF85].

57. Barry & Pollman, *supra* note 3, at 423.

58. *See generally* Jill E. Fisch, *How Do Corporations Play Politics?: The FedEx Story*, 58 VAND. L. REV. 1495 (2005).

59. Barry & Pollman, *supra* note 3, at 398.

better to enter markets and start providing services to the public, legally or otherwise, than to seek approval from regulators.”⁶⁰ Companies may “take an aggressively favorable reading of the relevant law”⁶¹ or even completely ignore cease-and-desist letters.⁶²

Second, companies attempt to grow too big for the government to ban.⁶³ This growth serves two purposes: it improves the company’s valuation and increases its political strength by increasing its number of customers.⁶⁴ Companies will often value growth over profits to increase their customer base.⁶⁵ A company’s popularity places pressure on regulators, especially elected officials, because the popular support makes regulators reluctant to upset their voters.⁶⁶

Third, regulatory entrepreneurs motivate their users to lobby on their behalf.⁶⁷ This is easier in the digital age, where companies can send emails to their customers asking them to advocate for the company.⁶⁸ Companies ask their customers to sign petitions, contact government officials, and even canvas door-to-door.⁶⁹ Since many regulatory entrepreneurs’ businesses center around smartphone applications, this mobilization can be done quickly and effectively.⁷⁰

Finally, regulatory entrepreneurs also use traditional political lobbying techniques.⁷¹ Regulatory entrepreneurs hire political operatives as board members or executives in order to prepare for political battles.⁷² In addition, companies also hire professional lobbyists to help win battles with state

60. *Id.*

61. *Id.*

62. *E.g., id.* at 399.

63. *Id.* at 400.

64. *Id.* at 401.

65. *See id.* at 401–02.

66. *See id.* at 403.

67. *Id.*

68. Helderman, *supra* note 33.

69. *See id.* *See also* Barry & Pollman, *supra* note 3, at 405.

70. *See* Conor Dougherty & Mike Isaac, *Airbnb and Uber Mobilize Vast User Base to Sway Policy*, N.Y. TIMES (Nov. 4, 2015), https://www.nytimes.com/2015/11/05/technology/airbnb-and-uber-mobilize-vast-user-base-to-sway-policy.html?_r=0 [<https://perma.cc/7SCG-WE6R>].

71. Barry & Pollman, *supra* note 3, at 406.

72. For instance, Uber hired David Plouffe, a former advisor to President Obama. *See, e.g.,* Emily Badger & Zachary A. Goldfarb, *Uber hired David Plouffe when it realized “techies” can’t do politics*, WASH. POST: WONKBLOG (Aug. 19, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/08/19/uber-hired-david-plouffe-when-it-realized-techies-cant-do-politics/?utm_term=.bd1046255ed5.

legislatures.⁷³ These techniques are distinguishable from those employed by non-regulatory entrepreneurs because regulatory entrepreneurs enter the market with plans to change the law and take these measures from the outset of their business.⁷⁴

B. Factors That Influence Regulatory Entrepreneurs' Success or Failure

Various business and legal factors affect whether regulatory entrepreneurs succeed.⁷⁵ The business factors mentioned include scalability, connectedness, and mass appeal.⁷⁶

Scalability involves whether the business is able to quickly and easily expand its user base.⁷⁷ Businesses like Uber that use software-based platforms are scalable because they can efficiently provide the same service to 1 or 1,000 consumers.⁷⁸ Regulators move slowly, and are unable to stop a regulatory entrepreneur before its consumer base is too large to regulate without backlash.⁷⁹ To take advantage of this, regulatory entrepreneurs use guerilla growth tactics; by not including customized service or capital investment, the company is able to grow quickly.⁸⁰ This enables the company to obtain sufficient support to battles regulators.⁸¹

Connectedness refers to the company's ability to interact with its consumers and mobilize them to act on its behalf.⁸² Smartphone app based platforms make this easy because these companies can quickly send emails or in-app notifications to their consumers to keep them informed on the company's business.⁸³ Users must also feel connected to the company before they will advocate on the company's behalf, and companies that obtain user information can adequately connect with these individuals by analyzing that information.⁸⁴

73. Barry & Pollman, *supra* note 3, at 406.

74. *Id.* at 407.

75. *Id.* at 410.

76. *Id.* at 411.

77. *Id.*

78. *See id.* at 416.

79. *Id.* at 411.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 416.

84. *See* Zack Guzman, *Uber Mines Rider Data to Fight NYC Political Brawl*, CNBC: TECH (June 30, 2015, 2:32 PM), <http://www.cnbc.com/2015/06/30/uber-using-rider-data-to-help-in-political-fight.html> [<https://perma.cc/NPZ2-AUFL>].

Mass appeal means creating a business that everyone wants to consume.⁸⁵ Uber and Airbnb post about the political issues that affect their respective drivers and hosts.⁸⁶ This allows the companies to gain sympathy and favorable public opinion while they work behind the scenes to change laws.⁸⁷ A company's ability to sell its product to all social and economic classes helps the company build a consumer base that wields significant political power across a variety of states and countries.⁸⁸

The legal factors, referenced above, that affect regulatory entrepreneurs' success include penalties imposed on violators and the government structure of the jurisdiction where the regulation is taking place.⁸⁹ Some penalties are relatively harmless, such as fines or citations.⁹⁰ A company may pay these penalties as they occur rather than trying to change the law.⁹¹ Such penalties are on the low end of the spectrum when it comes to deterring regulatory entrepreneurs.⁹²

The government structure is a complex factor, and depends on (1) whether the regulation is determined at a local, state, or national level, and (2) whether the public office administering the regulation is susceptible to public opinion.⁹³

The level of government that enforces the regulation can influence regulatory entrepreneurship in a variety of ways.⁹⁴ Local laws can generally be changed quicker than laws at the state or national level.⁹⁵ For regulatory entrepreneurs, this is extremely important, as their escalating growth can be affected by

85. Barry & Pollman, *supra* note 3, at 417.

86. See Darrell Etherington, *Uber to Create \$3M Legal Defense Fund for Drivers Affected by "Wrong and Unjust" Ban*, TECHCRUNCH (Jan. 29, 2017), <https://techcrunch.com/2017/01/29/uber-to-create-3m-legal-defense-fund-for-drivers-affected-by-wrong-and-unjust-ban> [<https://perma.cc/8TSP-RNPN>]; Elizabeth Dwoskin, *How a Former Clinton Aide is Rewriting Silicon Valley's Political Playbook*, WASH. POST: BUS. (Jan. 27, 2017), https://www.washingtonpost.com/business/economy/how-a-former-clinton-aide-is-rewriting-silicon-valleys-political-playbook/2017/01/24/211c4d10-d697-11e6-9f9f-5cdb4b7f8dd7_story.html?utm_term=.ad0f9c2340b7 [<https://perma.cc/LD6X-5RE9>].

87. Barry & Pollman, *supra* note 3, at 415.

88. *Id.* at 412.

89. *Id.* at 417–18.

90. Andrew J. Hawkins, *Uber Fined \$7.6 Million in California for Failure to Report Driver Data*, VERGE (Jan. 14, 2016, 5:06 PM), <http://www.theverge.com/2016/1/14/10772412/uber-fine-california-utility-driver-data> [<http://perma.cc/EM94-JJHJ>].

91. Barry & Pollman, *supra* note 3, at 417–18.

92. See *id.* at 423.

93. *Id.* at 410.

94. *Id.* at 418.

95. *Id.*

an ability to quickly change the law.⁹⁶ State laws are the next easiest to change, and laws that fall on either the local or state level are generally easier for regulatory entrepreneurs to bend to their purposes because they use up less company resources to influence.⁹⁷ The many state and local jurisdictions also allow regulatory entrepreneurs to isolate their battles to favorable locations and increase their chances of success.⁹⁸ Furthermore, many state judges are elected, which allows companies like those mentioned to influence those campaigns to ignite favorable changes in the courts.⁹⁹ This is not to say that regulatory entrepreneurs cannot win at the federal level: VCR manufacturers and FedEx have shown that change is possible even at the highest level of government.¹⁰⁰ However, the federal government has more resources to resist regulatory entrepreneurs.

An additional factor that does not quite fall into either the business or legal factors is the fact that startup companies make up the largest number of regulatory entrepreneurs.¹⁰¹ Startups are naturally innovative and their contributions to the tech and business world often make them regulatory entrepreneurs by default.¹⁰² Startups typically use guerilla growth tactics to quickly expand their user base.¹⁰³ Regulatory entrepreneurship is fraught with risk, but venture capitalists and angel investors are willing to take high risks to support startup companies.¹⁰⁴ Some companies, like Airbnb, do not even make a profit, so the investors' support is necessary to the success of the companies.¹⁰⁵

These above factors demonstrate that no single strategy will ensure a regulatory entrepreneur's success. Regulatory entrepreneurship is a complex line of business that has many moving parts and requires companies to have effective business and legal plans in order to succeed.

96. *Id.* at 417–18.

97. *Id.* at 418–19.

98. *Id.* at 419–20.

99. See generally David E. Pozen, *The Irony of Judicial Elections*, 108 COLUM. L. REV. 265 (2008).

100. *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984); see generally Fisch, *supra* note 58.

101. Uber, Lyft, Airbnb, and Tesla were all startups. See Barry & Pollman, *supra* note 3, at 424–30.

102. *Id.* at 424.

103. *Id.*

104. See Darian M. Ibrahim, *The (Not So) Puzzling Behavior of Angel Investors*, 61 VAND. L. REV. 1405 (2008).

105. See Rolfe Winkler & Douglas MacMillan, *The Secret Math of Airbnb's \$24 Billion Valuation*, WALL ST. J. (June 17, 2015, 3:15 PM), <http://www.wsj.com/articles/the-secret-math-of-airbnbs-24-billion-valuation-1434568517> [<https://perma.cc/7U8G-LCG6>].

C. Regulatory Entrepreneurship's Future

As Barry and Pollman point out, predicting the future is “a difficult prospect at best,” but trends in regulatory entrepreneurship allow educated guesses about where the industry will go and which factors will influence its success.¹⁰⁶ There are additional factors in the business and legal world that will help regulatory entrepreneurship grow.

Technology is the basis for many regulatory entrepreneurs' businesses, and as technology exponentially increases, so does the opportunity for regulatory entrepreneurship.¹⁰⁷ This coupled with laws allowing new investment will help to boost regulatory entrepreneurship in the coming years.¹⁰⁸ Regulatory entrepreneurship is now commonplace, and investors are comfortable investing in regulatory entrepreneurs.¹⁰⁹

From a political standpoint, regulatory entrepreneurs have a slight advantage given the current political atmosphere. The political gridlock that currently keeps Congress stagnate will also affect regulatory entrepreneurship by slowing federal regulators' ability to inhibit entrepreneurs, thus shifting regulatory pressure to local and state governments where regulatory entrepreneurs have the most success.¹¹⁰

Yet, regulatory entrepreneurs also face challenges. Occupational licensing—government permission to operate a business or profession—and incumbent industries threatened by regulatory entrepreneurship will often push regulators to maintain these licensing requirements.¹¹¹ This type of regulation has increased dramatically over the past sixty years, and resulted in negative effects on unemployment and product costs.¹¹²

Restrictive zoning, where the government places limits on the activities that occur in certain areas, is another challenge. For example, commercial activity cannot occur in certain residential areas, which conflict with Airbnb's business plan of allowing homeowners to rent out their rooms.¹¹³

106. Barry & Pollman, *supra* note 3, at 430.

107. *Id.* at 433–34.

108. See Press Release, U.S. Securities and Exchange Comm'n, SEC Adopts Rules to Permit Crowdfunding (Oct. 30, 2015), <https://www.sec.gov/news/pressrelease/2015-249.html>.

109. Barry & Pollman, *supra* note 3, at 430–31.

110. *Id.* at 430.

111. *Id.* at 438.

112. *Id.*

113. See Rachel Swan, *Airbnb's New Dinner Sharing Venture "Completely Illegal"* (Update), S.F. WEEKLY (June 4, 2014, 2:53 PM), <http://archives.sfweekly.com/thesnitch/>

In turn, Airbnb has fought restrictive zoning as part of their regulatory entrepreneurship.¹¹⁴

These factors are by no means all-inclusive or individually material to a regulatory entrepreneur's success, but they provide examples of what will influence regulatory entrepreneurship's success or failure. Success will depend on the company's business model and a combination of these factors. Furthermore, it is important to note that regulatory entrepreneurs seek to make a profit, and do not necessarily want to make society perfect.¹¹⁵ Instead, they want to shape society according to their interests in succeeding as a business.¹¹⁶ Popular support for a company does not mean that the change they are enacting is good for society as a whole.¹¹⁷ For example, Tesla has permission to operate its car dealerships in a number of states, but in at least one of them, the law effectively applies only to Tesla.¹¹⁸ This shows that regulatory entrepreneurs' success in changing the law will not necessarily mean effectively changing the law for everyone.¹¹⁹ Accordingly, these concerns do not always favor giving regulatory entrepreneurs vast amounts of political power.¹²⁰

A proper analysis of these factors requires looking at all of the circumstances, some of which do not yield a clear right or wrong answer. However, they are helpful in advising a solution to regulatory entrepreneurs' battles with regulators.

Now that the theory of regulatory entrepreneurship has been explained, this Comment will turn to Uber's regulatory entrepreneurship specifically. The rest of this Comment will focus on how Uber fought regulators in the United States and France, deriving from these examples the factors that made the difference in Uber's push to change the law. This Comment will then propose a solution to Uber's current legal battles in France. With more American regulatory entrepreneurs expanding into foreign countries, and foreign regulators fighting changes in the status quo, a study of Uber's

2014/06/04/airbnbs-new-dinner-sharing-venture-completely-illegal-update [http://perma.cc/J5V2-V2C4].

114. Will Coldwell, *Airbnb's Legal Troubles: What Are The Issues?*, THE GUARDIAN (July 8, 2014), <https://www.theguardian.com/travel/2014/jul/08/airbnb-legal-troubles-what-are-the-issues> [https://perma.cc/A6TR-LMUK].

115. Barry & Pollman, *supra* note 3, at 443.

116. *Id.*

117. *Id.*

118. Todd Bishop, *Tesla Wins Battle Against Auto Dealers in Washington State, but Future Rivals are Screwed*, GEEKWIRE (Feb. 18, 2014, 4:05 PM), <http://www.geekwire.com/2014/tesla-wins-battle-auto-dealers-washington-state-future-rivals-screwed> [http://perma.cc/2AB6-Z7RC].

119. Barry & Pollman, *supra* note 3, at 445–46.

120. *Id.* at 446–47.

challenges in France will be helpful to both regulatory entrepreneurs and regulators who will face similar challenges in the future.

III. UBER'S REGULATORY ENTREPRENEURSHIP IN THE UNITED STATES

Uber started when Travis Kalanick and Garrett Camp decided to challenge San Francisco's taxi problem in 2009.¹²¹ Taxis were inefficient and customers were often stranded while waiting to be picked up.¹²² Kalanick and Camp created Uber to challenge the entrenched taxi industry, and this motivation shows that even from the beginning, Uber was meant to be a regulatory entrepreneur. Uber has been extremely successful in the United States, and setting these goals from inception likely influenced its success.

In analyzing Uber's regulatory entrepreneurship in the United States, this section will examine Uber's strategy for changing the law, and regulators' responses to that strategy. The factors that influenced Uber's success will be examined and used for a comparison with Uber's expansion into France, which is examined in Part IV of this Comment.

A. Uber's Strategy for Changing the Law

Uber set out with the goal of providing an alternative to the taxi industry, an industry with heavy regulations.¹²³ To overcome this challenge, Uber needed to face not only the taxi companies and taxi drivers themselves, but also the regulatory system that supported each. Concerns over insurance, accidents, driver and vehicle quality, and costs have largely driven these heavy regulations.¹²⁴ Uber needed to address these issues and show that they could be managed by a company even without extensive government regulation.

Uber used strategies in line with the theory of regulatory entrepreneurship while expanding its business in the United States. The company ignored cease-and-desist letters, grew too big to ban, mobilized its users to take action on its behalf, and lobbied legislators through traditional political means.

121. *Uber's Founding*, UBER, <https://newsroom.uber.com/ubers-founding> (last visited Aug. 3, 2017) [<https://perma.cc/UU4Z-857Y>].

122. *Id.*

123. *Id.*

124. WHO'S DRIVING YOU?, <http://www.whosdrivingyou.org/history-repeating-itself> (last visited Aug. 3, 2017) [<http://perma.cc/6TKZ-X4RU>].

Uber is known for receiving and ignoring cease-and-desist demands from regulators attempting to halt its business.¹²⁵ In fact, there are several cities where Uber has ignored such demands.¹²⁶ Where regulations are lax or Uber will not suffer a penalty for continuing to operate, the incentive to stop services is low, especially when Uber's plan is for its customer growth to outpace regulators.

Uber set its sights on growing too big to ban.¹²⁷ The goal was to grow big enough that there would be too high a political price for regulators to stop the company.¹²⁸ To achieve this growth, Uber started drastically reducing prices, to the point where it was actually losing money on the average ride.¹²⁹ While there are debates over the sustainability of this strategy, it brought in customers who wanted affordable rides and the new demand allowed Uber to expand its business to cities all across the world.¹³⁰ Uber's response when met with regulators' threats of shutdown in San Francisco: keep expanding.¹³¹ The more that people invest in the company as riders and drivers, the more pressure that regulators feel not to attempt to shut down the business.¹³² No government entity wants to be responsible for costing people jobs.

This strategy came at a cost, as Uber has reportedly operated with massive losses.¹³³ However, the company is worth \$63 billion, so despite the losses, investors still support the business model.¹³⁴ The customers that Uber adds to its base are more valuable to the company than a profit margin.

Uber's riders have shown their worth each time Uber mobilized them to put pressure on regulators. While fighting an insurance bill in New York City, Uber gave free rides to and from city hall so that supporters could protest the bill.¹³⁵ Uber encouraged riders to contact city hall and

125. Marcus Wholsen, *Uber's Brilliant Strategy to Make Itself Too Big to Ban*, WIRED (July 8, 2014, 6:30 AM), <https://www.wired.com/2014/07/ubers-brilliant-strategy-to-make-itself-too-big-to-ban> [<https://perma.cc/4J9Y-3GTZ>].

126. See, e.g., Molly Smith, *Cease-and-Desist Order Not Keeping Uber, Lyft Drivers Off the Streets*, WREG (July 14, 2014, 2:34 PM), <http://wreg.com/2014/07/13/cease-and-desist-order-not-keeping-uber-lyft-drivers-off-the-streets> [<https://perma.cc/A4G9-SBCK>].

127. Wohlson, *supra* note 125.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. See Biz Carson, *Uber is Reportedly Losing Boatloads of Money*, BUSINESS INSIDER (June 29, 2015, 9:04 PM), <http://www.businessinsider.com/uber-reportedly-operating-at-a-470-million-loss-2015-6> [<https://perma.cc/33YU-FDL7>].

134. See Chen, *supra* note 22.

135. Giulia Olsen, *Uber Protests Loudly Outside City Hall*, N.Y. OBSERVER (Nov. 18, 2015, 4:50 PM), <http://observer.com/2015/06/uber-protests-loudly-outside-city-hall> [<https://perma.cc/2CNK-U2JK>].

express their opinions, generating 17,000–20,000 emails.¹³⁶ Uber also mobilized its users to sign petitions on its behalf.¹³⁷ Uber's messages often specifically detail which politicians to contact with a description of the bill or law at issue.¹³⁸ When users open the app in areas where a law is at issue, Uber will automatically show them this information and ask for responses.¹³⁹ The app makes it hard for users to avoid getting at least minimal details about the issues, establishes a personal connection between Uber and its users, and increases the chance that a user will participate in the action Uber seeks.¹⁴⁰

Traditional lobbying techniques are still part of Uber's arsenal. Uber has hired at least 161 lobbyists in over 50 cities and states in the United States,¹⁴¹ and in the first quarter of 2016, Uber increased its congressional lobbying spending by 191% over the first quarter of the previous year.¹⁴² The city of Portland, Oregon even fined Uber for violating lobbying rules in its attempt to lobby politicians.¹⁴³

Similar to other regulatory entrepreneurs, Uber has employed political operatives. Uber added David Plouffe, a former advisor to President Obama, as a board member and senior advisor.¹⁴⁴ Plouffe ran President Obama's 2008 campaign, and Uber essentially brought him on board to run a political campaign for Uber.¹⁴⁵ Adding Plouffe to the board shows just how political Uber's regulatory entrepreneurship has become.

136. Chris Smith, *Battlin' Bill de Blasio's Uber Fight*, N.Y. MAG. (July 22, 2015, 10:38 AM), <http://nymag.com/daily/intelligencer/2015/07/battlin-bill-de-blasios-uber-fight.html> [https://perma.cc/HMB5-SUTC].

137. Josh Dawsey, *Uber Targets Mayor de Blasio on Proposed Curbs on Growth*, WALL ST. J. (July 16, 2015, 9:22 PM), <https://www.wsj.com/articles/uber-targets-mayo-bill-de-blasio-on-proposed-curbs-on-growth-1437096154>.

138. Andrew J. Hawkins, *Uber is Using its App to Troll Local Politicians Again*, THE VERGE (Mar. 10, 2016, 12:26 PM), <https://www.theverge.com/2016/3/10/11193852/uber-florida-senate-andrew-gardiner-politician-app-troll> [https://perma.cc/KUB5-JXMQ].

139. *Id.*

140. *Id.*

141. Helderman, *supra* note 33.

142. David McCabe, *Uber Ramps Up Lobbying Spending at Start of 2016*, THE HILL (Apr. 20, 2016, 11:52 PM), <http://thehill.com/policy/technology/277090-ubers-lobbying-spending-rises-at-start-of-2016> [https://perma.cc/2S3K-8A5T].

143. Brad Schmidt, *Uber Fined \$2,000 for Violating Portland Lobbying Rules*, OREGON LIVE (Jan. 5, 2016, 11:20 AM), http://www.oregonlive.com/portland/index.ssf/2016/01/uber_fined_2000_for_violating.html [https://perma.cc/MJ9Z-KUC5].

144. Dougherty & Isaac, *supra* note 69.

145. Nancy Scola, *The Obamization of Uber*, POLITICO (Feb. 12, 2015), <http://www.politico.com/magazine/story/2015/02/obama-uber-115166> [https://perma.cc/8U4V-589Y].

Uber’s tactics combine both innovative techniques—using the mobile app to mobilize users—and traditional techniques—lobbying governments—to carry out change. The benefit of being a regulatory entrepreneur with an app-based business is that there are avenues of strategy not available to companies that do not rely on technology. The success of these strategies often depends on one another as well. For example, without a large user base, mobilization of these users would be more difficult for Uber to accomplish.

B. Regulators’ Responses

Though Uber has been successful in the United States, its strategies have been met with resistance. Government regulators and the taxi lobby fought tooth and nail to stop Uber from operating on turf usually reserved for traditional taxis. The slow nature of regulators meant that Uber had a lot of time to operate and grow its business before any real crackdown began. The penalties imposed in the United States were also not severe enough to deter Uber’s services, though Uber compromised on some of its practices.

As mentioned briefly above, many of these fights were over legislation meant to regulate Uber. When Uber entered these markets, ridesharing did not fit within the existing regulatory scheme, so Uber had room to wiggle around regulations that applied to taxis. As regulators slowly caught up, the fight focused on methods for regulating Uber.¹⁴⁶

Most of these battles went Uber’s way and many of Uber’s business policies were adopted as law. “Each government, whether municipal or state, goes through its own process to craft rules, but in the end, officials generally codify the insurance coverage, background-check policies, and inspection protocols Uber already has in place.”¹⁴⁷ Once Uber won the popular support of the voters and taxpayers, there was little keeping it from winning the legislative battles as well.¹⁴⁸ Josh Alpert, director of strategic initiatives for Portland’s mayor, said of Uber’s hold on Portland’s city council, “They kind of run this. I feel like they will just wear you down. If we end up in court, we will have to lose just based on resources.”¹⁴⁹

Uber’s battles are not just with regulators. Taxi drivers themselves have taken up the fight against Uber’s regulatory entrepreneurship. Just as Uber mobilized its users to lobby the government, taxi cab companies mobilized their drivers to protest laws favorable to Uber.¹⁵⁰ The threat of

146. Cf. Hawkins, *supra* note 90.

147. Karen Weise, *This is How Uber Takes Over a City*, BLOOMBERG (June 23, 2015, 3:06 PM), <http://www.bloomberg.com/news/features/2015-06-23/this-is-how-uber-takes-over-a-city> [<https://perma.cc/BZB3-BJ7T>].

148. *See id.*

149. *Id.*

150. Rhodan, *supra* note 41.

the taxi companies was legitimate given the industry's strong lobbying presence in many cities. For example, the New York taxi industry made massive contributions to Bill de Blasio's New York City mayoral campaign.¹⁵¹ These contributions led to accusations that the taxis owned de Blasio,¹⁵² and fueled Uber's attacks on de Blasio's regulation plans.¹⁵³ But taxi industry support was not enough to stop Uber from getting its way with regulations.¹⁵⁴ Despite these attempts to regulate Uber, the company flourished in the United States.

C. Factors That Influenced Uber's Success in the United States

Due to the complexity of Uber's business and its relationship with regulators, it is difficult to pinpoint exactly which factors led to Uber's success in the United States. However, it is possible to isolate some of the favorable circumstances which gave Uber an advantage.

Many of Uber's toughest battles were at the local or state level, as opposed to battles with the federal government. This can be critical for successful regulatory entrepreneurship, as the federal government is much harder to avoid and has more resources to regulate companies. Taxi regulations usually come from cities as opposed to states, which gives Uber an advantage by allowing the company to use its resources on smaller markets in order to force change. Uber's victories in cities like Memphis, San Francisco, and New York City show just how important battles at the smaller levels of government can be to regulatory entrepreneurship's success.

Regulators imposed penalties against Uber for noncompliance, but most of these were small fines that Uber paid for its drivers. For example, in 2016 Uber agreed to pay up to \$25 million in fines to settle a lawsuit filed

151. Michael Grynbaum, *Taxi Industry Opens Wallet for de Blasio, a Chief Ally*, N.Y. TIMES (July 17, 2012), http://www.nytimes.com/2012/07/18/nyregion/de-blasio-reaps-big-donations-from-taxi-industry-he-aided.html?_r=0.

152. Yoav Gonen, *Taxi Industry Gave de Blasio Over \$550,000 for Campaign*, N.Y. POST (May 17, 2014, 12:10 PM), <http://nypost.com/2014/05/17/taxi-industry-gave-de-blasio-over-550000-for-campaign> [<https://perma.cc/9QSG-ECUP>].

153. Fitz Tepper, *Uber Launch "De Blasio's Uber" Feature in NYC with 25-minute Wait Times*, TECHCRUNCH (July 16, 2015), <https://techcrunch.com/2015/07/16/uber-launches-de-blasios-uber-feature-in-nyc-with-25-minute-wait-times> [<https://perma.cc/NB48-QWU7>].

154. Issie Lapowsky, *Uber Wins its Battle Against NYC's Mayor-for Now*, WIRED (July 22, 2015, 5:25 PM), <https://www.wired.com/2015/07/uber-wins-battle-nyc-mayor-now> [<https://perma.cc/4QW3-6ZPM>].

by San Francisco and Los Angeles.¹⁵⁵ Uber made these penalties part of its business expenses, and the company continued to operate despite the fines.

Uber's mass appeal also helped its success. Uber's platform is convenient: a smartphone app that a user can download for free. It also provides a cheaper alternative to taxis, enticing customers who want to switch from taxis to Uber. As evidence of its mass appeal, Uber has completed over 1 billion rides since its inception.¹⁵⁶

Uber's regulatory entrepreneurship relied on a combination of innovative and traditional techniques as laws changed in the United States. These efforts have been largely successful despite regulators resisting the change at every level. At the end of the day, Uber is operating in almost every major United States city, a feat that can only support the idea that the company has succeeded.

IV. UBER'S REGULATORY ENTREPRENEURSHIP IN FRANCE

Ironically, though Kalanick and Camp came up with the idea for Uber in Paris,¹⁵⁷ which is where Uber met some of its toughest challenges from regulators. Uber expanded into Europe by starting Uber France,¹⁵⁸ which was Uber's first test of the European market. Uber France ended up proving to be very different than Uber's introduction into the United States, as the French government was more successful regulating Uber and forcing the company to concede on issues. As Uber France's CEO, Thibaud Simphal, bluntly put it, "[France] has sadly been the most resistant to Uber. We were wrong to think that it could work here like it did in the United States where markets are a little more open to change."¹⁵⁹

Uber France offers similar services to its counterpart in the United States. Uber operates its UberPOP service in France, which is comparable in price and car size to UberX in the United States.¹⁶⁰ Uber also has UberX

155. This fine was for misleading customers about safety. Uber claimed that it had the "safest rides on the road" and that its background checks were the most thorough in the industry, both of which were misleading. Elizabeth Weise, *Uber to Pay up to \$25 Million Fine*, USA TODAY (Apr. 7, 2016, 7:07 PM), <http://www.usatoday.com/story/tech/news/2016/04/07/uber-pay-up-25-million-fine/82769030> [https://perma.cc/XL3V-CYXH].

156. Kia Kokalitcheva, *Uber Completes 1 Billion Rides*, FORTUNE (Dec. 30, 2015), <http://fortune.com/2015/12/30/uber-completes-1-billion-rides> [https://perma.cc/EK5J-FJVB].

157. Travis Kalanick, *Uber's Founding*, UBER: NEWSROOM (Dec. 22, 2010), <https://newsroom.uber.com/ubers-founding> [https://perma.cc/X6S8-U4QW].

158. Alderman, *supra* note 36.

159. Sam Schechner, *Uber Plans Big Advertising Campaign in France*, WALL ST. J. (Mar. 9, 2016, 7:11 AM), <http://www.wsj.com/articles/uber-plans-big-advertising-campaign-in-france-1457462344>.

160. Alderman, *supra* note 36.

in France, but UberX functions more like UberBLACK in the United States because it requires that drivers have a limousine license and a black vehicle to drive.¹⁶¹ The important distinctions are the licensing requirements for the services. The limousine licenses are easier to get than a taxi license because the number of taxi licenses is fixed, whereas the number of limousine licenses is not.¹⁶² UberPOP allows drivers without any operational license to work for Uber, as long as the driver has a car, a driver's license, and insurance.¹⁶³ Because the service allows drivers to essentially operate a taxi service without a taxi license, UberPOP is the center of Uber's battle with regulators in France.¹⁶⁴

This section will first discuss Uber's regulatory entrepreneurship strategies in France. Then, it will analyze French regulators' responses. Finally, it will discuss the factors that allowed the government in France to have more success regulating Uber than regulators in the United States.

A. Uber's Approach in France

Uber used many of the same tactics in France that it used in the United States, and for good reason. Its regulatory entrepreneurship was largely successful in the United States because of those tactics.¹⁶⁵ However, Uber had to adjust its strategies as regulators responded to the company's business operations.

In order to foster growth, Uber operated at a loss to provide bonuses to its French drivers.¹⁶⁶ The bonuses depended on the number of rides a driver completed and their average rating for these rides.¹⁶⁷ A driver that completed 75 rides in a week made €800 in bonuses.¹⁶⁸ Based on Uber's rates and

161. *Id.*

162. Romain Dillet, *Uber, Chauffeur-Privé and Others Can't Recruit New Drivers in France for the Next Two Months*, TECHCRUNCH (Feb. 14, 2014), <https://techcrunch.com/2014/02/14/uber-chauffeur-prive-and-others-cant-recruit-new-drivers-in-france-for-the-next-two-months> [<https://perma.cc/Y7MU-8TJT>].

163. Alderman, *supra* note 36.

164. See Amar Toor, *Uber Fined 800,000 Euros Over Low-Cost Service in France*, THE VERGE (June 9, 2016, 9:26 AM), <http://www.theverge.com/2016/6/9/11893484/uber-fined-france-paris-uberpopservice> [<https://perma.cc/8R62-9SU2>].

165. See discussion *supra* Part III.

166. Romain Dillet, *Uber Wants to Take Over the French Market with Aggressive Bonus Tactics*, TECHCRUNCH (Feb. 28, 2014), <https://techcrunch.com/2014/02/28/uber-wants-to-take-over-the-french-market-by-using-dumping-tactics> [<https://perma.cc/A6UE-AKNU>].

167. *Id.*

168. Approximately \$1,100 USD. *Id.*

the percentage it keeps from the fare, Uber lost \$1,100 USD in revenue per driver per week, three times what it took in.¹⁶⁹

Uber's recruitment focused on getting limousine-licensed drivers into its ranks, as opposed to recruiting drivers with taxi licenses.¹⁷⁰ There were two reasons for this: (1) limousine licenses allowed Uber to operate legally with its UberX service, and (2) recruiting from this pool allowed Uber to pull drivers from French ridesharing competitors such as LeCab and Chauffeur-Privé.¹⁷¹ When France issued a two-month ban on recruiting new drivers, Uber instituted its bonuses to draw drivers away from competitors in an effort to deplete the available pool of drivers.¹⁷²

Uber also launched billboard campaigns across France, showing individuals from diverse professions and ethnicities enjoying themselves in the back of an Uber.¹⁷³ The campaign was an attempt to get French citizens' focus away from the negative news about Uber and back on its product.¹⁷⁴ This campaign was important to Uber's regulatory entrepreneurship as mass appeal affects whether it can achieve guerilla growth and mobilize enough political support from its users.

B. The French Government's Response

Uber's regulatory entrepreneurship contradicted the tough regulations that the French government imposed on commercial activity. "France, home of the 35-hour work week and one of the most protective regulatory regimes in Europe, sees it differently. UberPOP, with its nonchalance about regulation and its gig-economy boosterism, is radically un-French."¹⁷⁵ This contrast fueled many of the battles between Uber and France.

Fines were the most common method of cracking down on Uber drivers. Paris created a special law enforcement department, called the Boers, to stop Uber drivers and issue tickets.¹⁷⁶ Once Uber drivers were ticketed, they were told to stop driving for the company.¹⁷⁷ However, Uber paid for these tickets, and the drivers kept driving.¹⁷⁸

169. For a more detailed explanation of the mathematics, *see id.*

170. *See id.*

171. LeCab and Chauffeur-Privé run similar rideshare services to Uber, yet they also protest Uber's methods for being allegedly anti-competition. *Id.*

172. *Id.*

173. Lucinda Shen, *This is Uber's Plan to Fix it's Image in France*, FORTUNE (Mar. 10, 2016), <http://fortune.com/2016/03/10/uber-france-ad-campaign-fix> [<https://perma.cc/6F5B-D2VK>].

174. *Id.*

175. Alderman, *supra* note 36.

176. *Id.*

177. *Id.*

178. *Id.*

Regulations focused on punishing both the drivers and the company itself.¹⁷⁹ The French government tried regulations that hit specific areas of Uber's business model, such as driver recruitment and passenger pickup. The government halted issuing new limousine licenses for two months to slow Uber's growth.¹⁸⁰ It also instituted a 15-minute wait law that required drivers to wait 15-minutes from the time a ride was requested before they could pick up a passenger.¹⁸¹ The 15-minute wait law sought to drive users away from Uber by lengthening their ride time.¹⁸² Additionally, taxi unions called on the government to ban Uber's smartphone app; however, it still remains operational.¹⁸³

In 2014, France passed comprehensive national legislation that regulated Uber. Called the Thévenoud law, the law banned UberPOP and required Uber drivers to conform to many of the same regulations as taxi drivers.¹⁸⁴ Drivers could be fined up to \$17,000 and serve a year in prison for picking up passengers in an UberPOP.¹⁸⁵ Despite these penalties, Uber was undeterred. Thibaud Simphal, stated, "If a judge tomorrow says UberPop should stop, we would stop. But we don't see there's a reason to stop now."¹⁸⁶

Uber challenged the Thévenoud law in multiple courts and on different grounds. France's highest constitutional court, the Conseil Constitutionnel, held the Thévenoud law constitutional, despite Uber's challenges.¹⁸⁷

179. See *Uber Management Arrested in Government Crackdown*, THE ECONOMIST (July 6, 2015), <http://www.eiu.com/industry/article/153319599/uber-management-arrested-in-government-crackdown/2015-07-06> [<https://perma.cc/37M2-8WP5>].

180. Dillet, *supra* note 162.

181. Romain Dillet, *Council of State Suspends 15-Minute Law Against Uber, LeCab and Others in France*, TECHCRUNCH (Feb. 5, 2014), <https://techcrunch.com/2014/02/05/council-of-state-suspends-15-minute-law-against-uber-lecab-and-others-in-france> [<https://perma.cc/BB4E-M8SX>].

182. See *id.*

183. THE ECONOMIST, *supra* note 179.

184. CODE DES TRANSPORTS [C. TRAN.] [TRANSPORTATION CODE] art. L3121-24 (Fr.) (found at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029527162&dateTexte=&categorieLien=id>) [<https://perma.cc/LLS7-CGQE>].

185. Laure Forurquet & Mark Scott, *Uber Drivers Face Fines in Paris*, N.Y. TIMES: BITS (Feb. 22, 2015, 11:30 AM), <http://bits.blogs.nytimes.com/2015/02/22/uber-drivers-face-fines-in-paris> [<https://perma.cc/CN59-WVSC>].

186. *Id.*

187. Conseil constitutionnel [CC] [Constitutional Court] decision No. 2015-468/469/472 QPC, May 22, 2015 (Fr.); Nicolas Boring, *France: Constitutional Court Rules on Car-Hiring Services Legislation*, LIBRARY OF CONGRESS: GLOBAL LEGAL MONITOR (June 30, 2015), <http://www.loc.gov/law/foreign-news/article/france-constitutional-court-rules-on-car-hiring-services-legislation> [<https://perma.cc/MP4V-5LUX>].

However, Uber succeeded in another court, the Conseil d'Etat, France's highest court for administrative law, which struck down part of the law that banned Uber's app from showing car locations.¹⁸⁸ The court deemed providing the locations an "information society service," and European Union law requires notifying the European Union before a country can regulate those services.¹⁸⁹ Since France had not notified the European Union, the law violated EU law.¹⁹⁰ During the time that these cases were pending, Uber continued to operate UberPOP, showing just how bold the company's disregard for the law could be.¹⁹¹

Uber's relaxed compliance with French law ended abruptly in 2015. The French government raided Uber's Paris headquarters, held its employees for six hours and seized documents, emails, and cellphones.¹⁹² Uber protested the raid as "a disproportionate action,"¹⁹³ a choice of words that revealed just how startlingly aggressive the government raid was. In contrast, Uber's United States offices were never searched by police, and the French government's willingness to take such action highlights the differences between the countries' regulatory actions.

A few months after the police raid, Paris police arrested Thibaud Simphal and Pierre-Dimitri Gore-Coty, Uber Europe's General Manager, charging them with running an illegal taxi company and concealing digital documents.¹⁹⁴ Violent taxi protests over Uber's disregard for the ban on UberPOP and an expansion of the service into smaller French towns pressured the French government into making the arrests.¹⁹⁵ The executives faced up to five years' imprisonment and personal fines of €300,000.¹⁹⁶ Uber itself faced a fine of €1.5 million.¹⁹⁷ The possible prison sentence underlined how serious the French government considered these violations. Uber and its executives

188. Sam Schechner, *Uber Wins a Round for Its App in France*, WALL ST. J. (Mar. 9, 2016, 1:03 PM), <https://www.wsj.com/articles/uber-wins-a-round-for-its-app-in-france-1457546610>.

189. *Id.*

190. *See id.*

191. *See id.*

192. See Amar Toor, *Police Raid Uber Offices in Paris*, THE VERGE (Mar. 18, 2015, 5:52 AM), <https://www.theverge.com/2015/3/18/8240685/uber-france-office-raided-police-uberpop> [<https://perma.cc/YE4M-PVS2>].

193. Chris O'Brien, *Paris Police Raid Uber Offices as French Drivers Face Fines*, VENTUREBEAT (Mar. 18, 2015, 5:21 AM), <http://venturebeat.com/2015/03/18/paris-police-raid-uber-offices-as-french-drivers-face-fines> [<https://perma.cc/8FCU-5A9T>].

194. Dillet, *supra* note 38.

195. *See id.*

196. *Top Uber Executives on Trial in France Over 'Illegal Taxi' Charges*, GUARDIAN (Feb. 11, 2015, 7:35 PM), <https://www.theguardian.com/technology/2015/feb/11/top-uber-executives-on-trial-in-france-over-illegal-taxi-charges> [<https://perma.cc/9UWS-NF2L>].

197. *Id.*

were convicted, but did not receive prison time.¹⁹⁸ Instead, the court ordered Uber to pay €800,000, Simphal to pay €20,000, and Gore-Coty to pay €30,000.¹⁹⁹

Uber suspended its UberPOP service shortly after its executives were arrested.²⁰⁰ Uber never resumed UberPOP in France, and now only operates its UberX and UberBLACK services in accordance with the limousine and taxi licenses that the government requires. While Uber still has those regulated services, giving up UberPOP, the service that was by nature anti-regulation, was a defeat for Uber's regulatory entrepreneurship.

C. Factors That Influenced Regulators' Success in France

French regulators had more success regulating Uber and maintaining the status quo in the taxi industry than regulators in the United States. Two discernible factors allowed France to succeed where United States regulators could not. First, France's government structure as a civil law based European Union member with a Socialist regime places a higher focus on regulation than the United States does. Second, France's culture tends to tolerate riots and protests, and anti-Uber protests influenced regulators' responses and public opinion about the company, making it harder to gain a political advantage.

1. France's Government

The French government has several advantages that influenced regulators' ability to control Uber. Regulations on Uber came from the French national government, which has the resources and power necessary to issue laws controlling Uber. France's socialist structure encouraged regulation to come from the national government. Its place within the highly regulated European Union also encouraged regulation from the highest levels of government.

France is a civil law country with a socialist government, so national regulation is common in all aspects of French life. Paris struggled to contain

198. See Kali Hays, *Uber, French Execs Fined \$950k Over UberPop Service*, LAW 360 (June 9, 2016, 3:59 PM) <https://www.law360.com/technology/articles/805343/uber-french-execs-fined-905k-over-uberpop-service> [<https://perma.cc/85QC-4UQU>].

199. *Id.*

200. See Chris O'Brien, *Uber Suspends UberPOP in France, Citing Safety and Legal Concerns*, VENTUREBEAT (July 3, 2015, 3:18 AM), <http://venturebeat.com/2015/07/03/uber-suspends-uberpop-in-france-citing-safety-and-legal-concerns> [<https://perma.cc/UB9B-63P9>].

Uber, and the Paris prosecutor's office requested that the national government step in: prompting the government to raid Uber and arrest its executives.²⁰¹ As Barry and Pollman point out, Uber has the most success when it is battling smaller municipal or state governments because its resources and agility match up favorably against the slower bureaucratic process.²⁰² This regulation from the top down allowed the French government to match Uber's resources and limit its ability to sidestep the law. Uber had an easier time battling cities in the United States, where political pressure was easier to create and Uber's business resources went further against a governing body with less resources.

France is also a member of the European Union, which means that regulations at the national level may be subject to scrutiny at the transnational level. French regulations must be consistent with EU law, as the Conseil d'Etat's decision held.²⁰³ Uber is currently litigating its business model in the European Court of Justice,²⁰⁴ and if Uber is deemed a cab service by the European Court of Justice then it will fall under stricter regulations.²⁰⁵ However, if it is merely a digital service that connects riders and drivers, then it can operate with less restrictions and easily expand across Europe.²⁰⁶ The case is especially important because Uber has faced similar resistance in almost every country in Europe.²⁰⁷ Uber's entire European market may well depend on this case being decided in its favor.

The European Union has spent a few years adapting to the sharing economy or as it is called in Europe, the collaborative economy.²⁰⁸ In a staff working document, the European Commission seemed receptive to solutions that will best benefit both consumers and Uber.²⁰⁹ The report

201. Hannah Jane Parkinson, *Uber Offices Raided in Paris by French Police in 'Car-Pooling' Controversy*, THE GUARDIAN (Mar. 18, 2015), <https://www.theguardian.com/technology/2015/mar/18/uber-offices-raided-in-paris> [https://perma.cc/TT3C-TJXA].

202. Barry & Pollman, *supra* note 3, at 418–19.

203. Schechner, *supra* note 159.

204. Duncan Robinson & Madhumita Murgia, *European court takes up the question: what is Uber?*, FINANCIAL TIMES (Nov. 28, 2016), <https://www.ft.com/content/f2774c9a-b566-11e6-ba85-95d1533d9a62>.

205. *Id.*

206. Leonid Bershidsky, *EU Court Will Resolve Uber's Identity Crisis*, BLOOMBERG VIEW (Nov. 30, 2017, 4:29AM), <https://www.bloomberg.com/view/articles/2016-11-30/taxi-or-tech-eu-court-will-rule-on-uber-s-identity> [https://perma.cc/66WM-RU2C].

207. For a detailed discussion of each country and the resistance Uber is facing, see Demasi, *supra* note 43, at 76–83.

208. EUR. COMM'N, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - A EUROPEAN AGENDA FOR THE COLLABORATIVE ECONOMY, at 2 (2016), <http://www.eesc.europa.eu/resources/docs/com2016-356-final.pdf> [https://perma.cc/DS9P-ST2G].

209. *Id.*

stated that, “there is significant economic potential in the collaborative economy but also a large degree of uncertainty regarding rights and obligations.”²¹⁰ Furthermore, the report also stated that regulations that are too rigid can cause problems for European economies.²¹¹ The report discusses ridesharing with facts favorable to Uber.²¹² It notes that regulations and, in particular, licensing requirements for drivers stifle the business growth of ridesharing platforms.²¹³ The report seeks a solution that fosters economic growth driven by Uber and other ridesharing companies but tempers it with moderate regulation that ensures the worrisome areas of Uber’s competitive business model are kept in check.²¹⁴ In essence, the European Commission wants to protect all parties involved, which is a good sign for Uber in Europe considering the alternative.

Uber battled regulators at the municipal level, as it did in the United States, but it also contended with the French national government as well. This alone was enough to tilt the scale in favor of regulators. But the European Union has a say in the regulatory scheme as well, meaning Uber had an even tougher time escaping regulation. This regulatory ladder had more political power and resources to keep Uber from escaping their regulations. Uber faced no such national resistance in the United States. As a result, France was more successful in regulating Uber than jurisdictions in the United States because of its from-the-top regulatory scheme.

2. *Cultural Challenges*

Foreign culture poses interesting challenges for any company looking to expand overseas. France in particular is known for strikes, riots, and protests on a number of different issues. The taxi protests in France exerted pressure on regulators and forced the government into action. Full blown riots and violence over a company’s business model are almost unheard of in the United States, and riots of that caliber are generally over social issues such as race.

Parisian taxi drivers mobilized to fight Uber’s threat of deregulation. “Today, the city has just 17,702 taxis, only a few thousand more than it had before the Nazis invaded. Yet virtually every time the government

210. *Id.*

211. *Id.* at 4.

212. *Id.*

213. *Id.*

214. *Id.* at 16.

tries to expand the fleet, irate taxi drivers protest with a form of strike they call operation Escargot, in which cabbies inch along thoroughfares, snarling traffic all over the capital.²¹⁵ The taxi drivers blockaded highways and setup checkpoints, even going so far as to smash Uber drivers' windows and slash their tires.²¹⁶

These protests work, and are a sort of antithesis to regulatory entrepreneurship's strategy of mobilizing users. The Uber executives' arrests came directly after violent protests,²¹⁷ and tension between taxi companies and Uber led to laws like the 15-minute law²¹⁸ and the Thevenoud law.²¹⁹ The French taxi industry was essentially beating Uber at its own game in the most violent and disruptive way possible. Witness reports from the riots made Paris sound like a war zone,²²⁰ and taxi drivers even protested the regulations that they asked for because they were not enough.²²¹

Essentially, taxi drivers made Uber more than just a business or economic issue. They made the company a safety issue. But it is important to note that these safety issues were not directly because of Uber. Uber's drivers were not excessively dangerous on the road or committing criminal acts against their passengers. The danger came from taxi drivers who believed that Uber was threatening their jobs, violently protested against Uber, and wrought havoc on the streets of France.²²² Regardless of the fact that Uber was not the direct problem, these protests succeeded by inserting safety into in the conversation about regulating Uber. The French government had to take action to keep its citizens safe and maintain order. The obvious choice was regulating Uber, the foreign disruptor, rather than changing the status quo for an entrenched industry that was engrained in French culture.

Protests are common in any democratic society. However, the violence in the French taxi protests is surprising given the subject matter. The taxi drivers attacked Uber drivers for working for a company.²²³ In the United States, citizens tend to violently protest civil rights violations and social justice issues. When a corporation is involved, the protests are generally

215. Alderman, *supra* note 36.

216. *Id.*

217. *France Arrests Uber*, WALL ST. J. (June 3, 2015, 8:49 AM), <http://www.wsj.com/articles/france-arrests-uber-1435927738>.

218. Dillet, *supra* note 181.

219. O'Brien, *supra* note 200.

220. Toor, *supra* note 164.

221. Taxi drivers wanted a 30-minute rule instead of a 15-minute rule. Dillet, *supra* note 181.

222. *French Taxi Drivers Smash Cars in Strike Against Uber*, CBS NEWS (June 25, 2015, 2:39 PM), <http://www.cbsnews.com/news/french-taxi-drivers-smash-cars-in-strike-against-uber> [<http://perma.cc/98KA-YHKK>].

223. *Id.*

aimed at the corporation itself, not low-level employees.²²⁴ The idea that a protest would attack the people working for a company because of a company's business model is quite foreign to the United States. This is not to say France is a more violent country than the United States, but that the protest culture in France allowed protests over Uber to escalate to the point that they became a safety issue ultimately requiring action on the part of the government. As a result, regulation was swift when public safety became an issue.

V. PROPOSED SOLUTION

There are valid public policy reasons in favor of France regulating and de-regulating Uber. These policy interests go to the heart of consumer protection laws, anti-competition laws, and anti-trust laws. This section will analyze these competing interests before it proposes a solution to Uber's regulatory entrepreneurship in France.

Regulation is meant to protect consumers and competition, and huge technology companies like Uber wield considerable power that makes consumer advocacy and antitrust groups nervous.²²⁵ Even in the United States, there are still valid concerns about how Uber treats its competitors, drivers,²²⁶ and customers.²²⁷

Uber has used, and has been accused of using, unethical and borderline illegal tactics against its competitors. Uber allegedly launched a massive distributed denial of service ("DDoS") attack on Gett cars, one of Uber's

224. See, e.g., Rupert Neate, *SeaWorld to End Killer Whale Shows in Wake of Mounting Protests*, THE GUARDIAN (Nov. 9, 2016, 4:19 PM), <https://www.theguardian.com/us-news/2015/nov/09/seaworld-end-orca-whale-shows-san-diego> [<https://perma.cc/DF7U-DYLB>].

225. *Taming the Beasts*, THE ECONOMIST (May 28, 2016), <http://www.economist.com/news/business/21699465-european-governments-are-not-alone-wondering-how-deal-digital-giants-taming> [<https://perma.cc/KP5Z-KS8K>].

226. Uber refuses to call its drivers employees, which affects drivers' benefits. The debate is still raging, as Uber only recently granted drivers unemployment benefits after formerly working for Uber. Noam Scheiber, *Uber Drivers Ruled Eligible for Jobless Payments in New York State*, N.Y. TIMES (Oct. 12, 2016), http://www.nytimes.com/2016/10/13/business/state-rules-2-former-uber-drivers-eligible-for-jobless-payments.html?_r=2.

227. For instance, there is evidence that Uber drivers racially and sexually discriminated against minority customers. See, e.g., Andrew J. Hawkins, *Uber and Lyft Can be Just as bad as Taxis When it Comes to Racial Discrimination*, THE VERGE (Oct. 31, 2016, 2:11 PM), <http://www.theverge.com/2016/10/31/13478102/uber-lyft-race-gender-discrimination-study-findings-mit-stanford> [<https://perma.cc/2H8L-X2SG>].

rideshare rivals, in New York City.²²⁸ Uber drivers allegedly ordered and cancelled more than 100 rides from Gett, slowing down the service and preventing legitimate customers from accessing rides.²²⁹ There is even evidence that Uber's managers participated in these attacks.²³⁰

Uber's surge pricing feature, which increases fares to get more drivers on the road, has repeatedly been criticized as price fixing.²³¹ For example, on a holiday weekend in San Diego, Uber stopped new drivers from driving so fares would increase for riders.²³² Uber denied this, instead stating that it stopped new drivers from signing up the week before.²³³ The company maintained that it is merely a third party and that the market sets the price.²³⁴ However, the fact that Uber can control its supply of drivers says otherwise.

These concerns helped spark the protests throughout France and gave French regulators the political support they needed to pass laws that controlled Uber's business.²³⁵ Although Uber did not cross the ethical line as much in France as it did in the United States, its reputation preceded it. This led French taxi drivers and government regulators to worry about how far Uber would push its aggressive policies.

On the other hand, economic policy and the free market favor deregulation, particularly in France. French foreign investment is down, and its economy is struggling to create jobs for the younger generation. Competition is healthy for economic growth, and Uber's competition with taxis will help the economy grow. Also, Uber offers a partial solution that the currently regulated taxi system cannot solve.

There are numerous problematic reasons for allowing the current taxi system to remain. The French public is frustrated by the lack of innovation from the government when it comes to transportation.²³⁶ In Paris, where

228. Rip Emerson, *Black Car Competitor Accuses Uber of DDoS-Style Attack; Uber Admits Tactics Are "Too Aggressive"*, TECHCRUNCH (Jan. 24, 2014), <https://techcrunch.com/2014/01/24/black-car-competitor-accuses-uber-of-shady-conduct-ddos-style-attack-uber-expresses-regret> [<https://perma.cc/D6EM-7H2S>].

229. *Id.*

230. *Id.*

231. See Dennis Romero, *Uber's \$357 Crosstown L.A. Ride Highlights Controversial 'Surge Pricing'*, L.A. WEEKLY (Dec. 17, 2013, 2:22 PM), <http://www.laweekly.com/news/ubers-357-crosstown-la-ride-highlights-controversial-surge-pricing-4255297> [<https://perma.cc/U756-ZREW>]; Ben Popper, *Uber Kept New Drivers Off the Road to Encourage Surge Pricing and Increase Fares*, THE VERGE (Feb. 26, 2014, 10:00 AM), <http://www.theverge.com/2014/2/26/5445210/in-san-diego-uber-kept-drivers-off-the-road-to-encourage-surge> [<https://perma.cc/2F2A-FMK4>].

232. Popper, *supra* note 231.

233. *Id.*

234. *Id.*

235. See discussion *supra* Part IV.B.

236. See THE ECONOMIST, *supra* note 179.

the government directly controls taxi licenses, the number of taxis has not changed despite an increase in demand.²³⁷ This demand increase has led to scarce rides and high prices.²³⁸ Uber's platform relies on the free market, and can help to alleviate this problem by placing more cabs on the road at competitive prices.

Uber has a different role in France's economy than it does in the United States. While Uber does not have as many drivers in Paris as it has in New York City or San Francisco, 81% of the drivers in Paris do not have another form of employment.²³⁹ This is in contrast to the United States, where Uber is mostly supplemental income, and shows just how important Uber is to its drivers in France.²⁴⁰ Furthermore, Uber does not have non-compete clauses for their drivers.²⁴¹ As Uber told TechCrunch, "We don't force our drivers to work exclusively for us. They always have the choice."²⁴² Thus, drivers may drive for other rideshare companies in Europe and support the economy in that way as well.

France's broader economics also favor deregulation. France has an overall unemployment rate of 9.9%, but 25.1% of males age 15-24 are unemployed, and 22.5% of females aged 15-24 are unemployed.²⁴³ 20% of Uber drivers work more than 40 hours a week, and most drivers earn €20 an hour, which is more than double the minimum wage.²⁴⁴ Particularly in the poorer Parisian suburbs called *banlieues*, Uber is a beacon of possibility for lower class workers looking to lift themselves into better economic situations.²⁴⁵ A French bipartisan commission found that opening the taxi market to competition from rideshare platforms can create 35,000-45,000 driving jobs in Paris, and even more in the rest of the country.²⁴⁶ Paris

237. *Id.*

238. *Id.*

239. Anne-Sylvaine Chassany, *Uber: A Route out of the French Banlieues*, FINANCIAL TIMES (Mar. 3, 2016), <https://www.ft.com/content/bf3d0444-e129-11e5-9217-6ae3733a2cd1>.

240. *Id.*

241. Dillet, *supra* note 162.

242. *Id.*

243. *Unemployment, youth female (% of female labor force ages 15-24)*, THE WORLD BANK, <http://data.worldbank.org/indicator/SL.UEM.1524.FE.ZS?end=2014&start=1991&view=map> (last visited Sept. 5, 2017) [<https://perma.cc/7G3W-WF5L>].

244. Chassany, *supra* note 239.

245. *Id.*

246. *Id.*

makes up 18% of the entire French population,²⁴⁷ so these numbers are important for French economic growth.²⁴⁸

French regulators should allow Uber to continue to operate UberPOP, or an alternative service that lets drivers without a taxi or limousine license operate under Uber. France's economics favor allowing these services to continue. UberPOP can create economic opportunities for young French workers, and can help to heal the economy. As the European Commission keeps looking for efficient solutions, a compromise of this sort seems possible, at least at the transnational level. Whether France gives Uber regulatory leeway will remain to be seen.

France's outright ban on UberPOP places the company in the exact same position as the taxi industry. There is little growth opportunity when the government sets the number of licenses available to drivers. If the French government shows flexibility by allowing innovative companies to enter the country and create jobs, then more regulatory entrepreneurs may attempt to do business in France. As the situation currently stands, Uber's struggles in France send warning signs to other innovators looking to expand into France, turning away jobs for French citizens.

France is justifiably focused on its consumers given the concerns about Uber's alleged anti-competition practices. Yet, a ban on UberPOP does not protect consumers; it harms them. The taxi industry in France has an incredible amount of power, none of which is in the hands of the consumer. Taxi strikes occur often, inconveniencing the average rider. The strict government regulations on licenses essentially give the industry a monopoly on prices and services, which are used to the driver's advantage rather than for the rider's convenience. Allowing Uber to operate its UberPOP service may improve the traditional taxi industry by forcing it to reassess its customer service to compete with Uber.

Rather than cracking down on Uber, France's government should penalize taxi drivers for rioting and conducting other dangerous acts against Uber drivers. The government's safety concerns stem from the taxi industry's riots and attacks on Uber drivers, not from Uber's cab service. Uber's service is not making France less safe, but rather the French taxi industry's response to Uber is. The fact that the French government arrested Uber France's executives and placed them on trial, but did not take any action to deter taxi industry riots, is concerning. France should focus on the actual source of danger and crack down on taxi drivers looking to injure citizens.

247. *France Population*, WORLD POPULATION REVIEW, <http://worldpopulationreview.com/countries/france-population> (last visited Sept. 5, 2017) [<https://perma.cc/TL3S-NYFF>].

248. *French Unemployment Rate Falls Below 10% for the First Time Since 2012*, THE GUARDIAN (Aug. 18, 2016), <https://www.theguardian.com/world/2016/aug/18/french-unemployment-rate-falls-first-time-2012-francois-hollande> [<https://perma.cc/EQ9T-KGWF>].

Once the government quells the taxi protests, the French government and the French public may change their perspective on Uber. As a result of this shift in focus, France may view Uber as a vehicle for economic growth rather than associating the company with street violence. Damage to Uber's public image may already be done, and unless Uber is separated from the taxi protests in the minds of the French government and its citizens, deregulation remains a distant goal and France will continue to ban UberPOP.

This solution is a compromise between the two sides that seeks to satisfy the policy goals of protecting consumers, ensuring healthy competition, and fostering economic growth. Uber brings benefits to France which outweigh the concerns raised by its regulatory entrepreneurship. France can allow Uber to operate while ensuring the company does not harm its consumers or the competing taxi industry.

VI. CONCLUSION: WHY UBER'S REGULATORY ENTREPRENEURSHIP IN FRANCE MATTERS

Regulatory entrepreneurs are expanding across the world. Uber has drivers in over 50 countries,²⁴⁹ Lyft has expanded into east Asia,²⁵⁰ and Airbnb is in more than 191 countries.²⁵¹ As more regulatory entrepreneurs start up and succeed, regulatory entrepreneurship will become common throughout the world. As these disrupters expand, they will inevitably meet resistance from new jurisdictions they enter, just as they did when they began in the United States.

It is important for regulators to know how these companies will act and how regulatory entrepreneurs change the law. Ten years ago, the concept of getting into a stranger's personal car for a ride seemed, well, strange. Now however, it is commonplace to call an Uber or a Lyft. To try to guess where regulatory entrepreneurship will go in the next ten years is impossible, but regulators can learn from current companies and at least predict general strategies for regulatory entrepreneurship.

249. *Locations*, UBER NEWSROOM, <https://newsroom.uber.com/locations> (last visited Sept. 5, 2017) [<https://perma.cc/4N55-YXSK>].

250. *Cities*, LYFT, <https://www.lyft.com/cities> (last visited Sept. 5, 2017) [<https://perma.cc/69X5-JTFG>].

251. *About us*, AIRBNB, <https://www.airbnb.com/about/about-us> (last visited Sept. 5, 2017) [<https://perma.cc/Q2SF-GRRF>].

On the other side, it is important for regulatory entrepreneurs to determine factors that allowed other companies to succeed or caused them to fail while planning an expansion into a foreign country. In their quest for growth, regulatory entrepreneurs will keep expanding into these markets, and each time will meet a set of challenges similar to Uber's expansion into France. Regulatory entrepreneurs will become more adequately prepared for these expansions by recognizing which countries' political and cultural systems are the most receptive to the changes that they bring, and by understanding the factors that could hinder their entrepreneurship.

As technology pushes regulatory entrepreneurship forward, studies on regulatory entrepreneurs will become necessary to analyze the impact these companies have on society, the economy, and the law. Professors Barry and Pollman's *Regulatory Entrepreneurship* lays a framework for analyzing these companies and the regulators that oppose them. The scholarly works that will grow around their theory will help regulators and entrepreneurs to efficiently come to solutions. This Comment seeks to contribute to that literature in an international context.