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**“JÚLIO DE MESQUITA FILHO”**  
**Faculdade de Ciências e Letras**  
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**LABOR PROBLEMS IN THE AGE OF DIGITAL  
PLATFORMS: an Institutionalist inquiry**



ARARAQUARA – S.P.  
2022

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Tese de Doutorado apresentada ao Conselho do Programa de Pós-Graduação em Economia da Faculdade de Ciências e Letras – Unesp/Araraquara, como requisito para obtenção do título de Doutor em Economia.

**Linha de pesquisa:** Economia Institucional/HPE.

**Orientador:** Sebastião Neto Ribeiro Guedes

**Bolsa:** CAPES/DS

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2022

J56l

Jeronimo, Rodrigo Constantino

Labor Problems in the Age of Digital Platforms : an Institutional  
inquiry / Rodrigo Constantino Jeronimo. -- Araraquara, 2022

173 p. : tabs., mapas

Tese (doutorado) - Universidade Estadual Paulista (Unesp),  
Faculdade de Ciências e Letras, Araraquara

Orientador: Sebastião Neto Ribeiro Guedes

1. Economia Institucional. 2. John R. Commons. 3. Plataformas  
Digitais. 4. Uberização. 5. Motoristas. I. Título.

Sistema de geração automática de fichas catalográficas da Unesp. Biblioteca da Faculdade de  
Ciências e Letras, Araraquara. Dados fornecidos pelo autor(a).

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RODRIGO CONSTANTINO JERONIMO

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Data da defesa: 19/08/2022

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To my loving wife and best friend, Juliana

## ACKNOWLEDGMENTS

In 2020, while experiencing a writing stall, I read a book called “Write no matter what” by professor Joli Jensen (University of Tulsa), which addressed the main myths impeding academics from writing, and, to my surprise, I was a match for most of the myths. Among the many pieces of advice on how to overcome writing problems, one sticks with me until today: I should see my work through a craftsman attitude, and this dissertation is only part of a bigger learning process that will continue for as long as my career lasts.

That being said, I would like to acknowledge the masters who have guided me through this process of becoming a better researcher and academic, helping me to learn new things and to question those ideas that I had so certain in my studies. I thank Sebastião Guedes (Unesp), my advisor since 2015, who has supported me and helped me with the most interesting insights in this manuscript. Also, I give special thanks to Eric Scorsone (MSU), for kindly having me at Michigan State and for giving his time to our discussions on Commons’ work. As I have already admitted, Eric’s insights on Commons’ *Institutional Economics* have helped change and improve the way I read John R. in many ways, contributing to the first chapters of this work. I also thank Sarah Klammer (MSU) for her help and support during my time at MSU. Sarah was kind enough to discuss my project and to allow me to debate her book even before it was published. Finally, I would like to thank Manuel Ramon (UFABC) and Leandro Morais (Unesp) for their comments on my project, which have contributed to this manuscript in its final form.

Writing a doctoral dissertation amidst a sanitary crisis such as COVID-19 was one of the hardest tasks I had to deal with during my still short period as an academic, and I know that I am not alone in this feeling. Undeniably, the support of family, friends, and other inspiring figures was essential in these moments, Thus, I thank my fiancée Juliana Pisapio, my mother Eliana Constantino, Regina and Jaqueline Pisapio, my friends João Luís (Jota) Gonçalves, Manuella Spalato, Lucas Lelis, and Aline Lelis, and my brothers from ABUB and the Presbyterian Church in Arararaquara. I am blessed for having these people by my side.

I thank all the friends I made in Michigan, namely, Leo, Maiyara, Nick, Maria, Weston, Elke, Carla and family, Dennis and Althea, Tom and Stacey, and all the families from URC, whom I miss greatly. Also, I give special thanks to my cousins Miro and Tony, with whom I could spend wonderful days during the Christmas season and feel at home in New Hampshire.

Finally, this study was financed by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (CAPES) - Finance Code 001.

“On Wisconsin’s first Industrial Commission  
John R was a commissioner bold,  
But minimum wage and shorter hours  
Always made the bosses scold  
Oh No John, No John, No John, No.

So he got up an advisory committee  
Put the employers’ best men on  
Sat them next to labor leaders  
Watched the effect they had upon  
Oh No John, No John, No John, No.

When he asked if workmen’s compensation  
Should be made to cover all  
Or should it all be abandoned  
You could hear the bosses call,  
Oh No John, No John, No John, No.”

(Song by Commons’ Friday Neters on his 70<sup>th</sup> birthday in 1931)

## RESUMO

O objetivo desta tese é propor uma abordagem institucionalista aos problemas contemporâneos do mundo do trabalho em um contexto de avanço da chamada “plataformização”, em que trabalhadores se submetem à gestão algorítmica de suas atividades em ocupações intermitentes e sem vínculo empregatício, tendo as plataformas digitais como as going concerns responsáveis pela sua exploração. Ao adotar a teoria transacional de John R. Commons e sua leitura sobre os efeitos deletérios do avanço desregulado do capitalismo sobre a organização dos trabalhadores nos estágios iniciais do sistema moderno, a investigação das plataformas digitais concentra-se na análise dos conflitos de interesse entre capital e trabalho e na forma como a ação coletiva, atuando no controle do comportamento individual, atua na legitimação das práticas correntes do mundo digital. Formal ou informal, o trabalho em plataformas apresenta os elementos transacionais de barganha, gerenciamento e distribuição, ao mesmo tempo em que acentua a disparidade de poderes econômicos entre trabalhadores e os “apps”, resultando assim em transações não razoáveis, aqui consideradas como os problemas do trabalho na era digital. Buscando compreender as vicissitudes da atividade de motoristas de aplicativo, a principal atividade do gênero no Brasil, apresenta-se uma análise de microdados e entrevistas semi-estruturada com lideranças de associações de trabalhadores, permitindo, ao final, a exposição de uma periodização dessa atividade no país a partir dos principais conflitos entre trabalhadores, plataformas e o Estado. Conclui-se que, embora a organização de trabalhadores possa ser capturada por elementos ideológicos de autonomia do trabalho, e mesmo havendo barreiras à representação desse grupo heterogêneo sob efeito da crise econômica e da precarização, tais trabalhadores se organizam em face aos conflitos e atuam na busca de transações razoáveis com plataformas e o Estado no exercício de suas atividades diárias.

**Palavras – chave:** plataformas digitais; motoristas; John R. Commons; economia institucional.



## **ABSTRACT**

The objective of this dissertation is to propose an institutionalist approach to the contemporary problems in the world of labor in a context of the “platformization”, in which workers submit to the algorithmic management of their activities, in intermittent occupations and without an employment relationship, having the platforms as the going concerns responsible for their exploitation. By adopting John R. Commons' transactional theory and his reading of the deleterious effects of the unregulated advance of Big Business on the organization of workers in the early stages of modern capitalism, this investigation of digital platforms focuses on the analysis of the conflicts of interest. between capital and labor and in the way collective action, acting in the control of individual behavior, acts in the legitimation of current practices in the digital world. Whether formal or informal, platform work presents the transactional elements of bargaining, management, and rationing, while accentuating the disparity of economic powers between workers and the “apps”, thus resulting in unreasonable transactions, considered here as the labor problems in the age of digital platforms. Seeking to understand the vicissitudes of the activity of ride-hailing drivers, the main activity of its kind in Brazil, a microdata analysis and semi-structured interviews with leaders of workers' associations are presented, allowing, in the end, the exposition of the periodization of this activity in the country, based on the main conflicts between workers, platforms and the State. It is concluded that, although the organization of workers can be captured by ideological elements of autonomy, and even with barriers to the representation of this heterogeneous group that faces the effects of the economic crisis and precariousness, such workers organize themselves in the face of conflicts and act in the pursuit of reasonable transactions with platforms and the State in the exercise of their daily activities.

**Keywords:** digital platforms; ride-hailing; John R. Commons; Institutional economics.

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## INTRODUCTION

This doctoral dissertation was written during the global crisis resulting from the COVID-19 pandemic, with a virus (SARS-CoV2) spreading and mutating worldwide while killing millions of people – at least those who could be counted – a situation that placed the world in a state of crises and insecurity. With the novelty and rapid transmission of the new virus, countries worldwide had to operate strict lockdowns and impose restrictions on the circulation of their citizens, internally and abroad, avoiding new contaminations and deaths when no hospitals were ready to receive the number of patients it demanded. Thus, the decreasing flux of international commerce as well as the impossibility of keeping domestic businesses operating called national governments for active responses in providing basic income stimulus and attenuating, as possible, the critical and inevitable effects on economic and social indicators.

Accordingly, the historical trillionaire plans for recovery and aid in the U.S and the European Union provide compelling demonstrations of how this crisis has corned liberal policies in favor of State intervention by adopting anticyclical policies towards the decreasing trend in effective demand. The fact is that the crisis exposed the socio-economic conflicts that, in a sense, were known but hidden by different ideologies that sought to deny and reframe the conflicted nature of the human relations, especially the class conflict between workers and capital, in a century when meritocracy, entrepreneurship, and autonomy have become central words to describe the employment relationship and the world of labor. Thus, the natural and self-stabilizing feature of free markets faces real-life capitalism that, in its turn, has more to do with crisis and transformations, than with any idea of equilibrium.

Among the many crises, the labor market seems to suffer the effects of unregulated capitalism at least for the past thirty years, when the adoption of neoliberal policies to manage and organize labor were widespread. And, among the many forms of precarization that resulted from this, is undoubtedly the emergence of digital platforms responsible for intermediating the transactions between workers and clients in microtask services such as food delivery, car rides, and house chore<sup>1</sup>. This, as shall be discussed in this manuscript, is one of the most relevant modern arrangements in informal labor relations driven by technological advancements in the past decades. After rapidly incorporating millions of workers worldwide, the “gig economy” now calls for careful investigation of its effects on labor markets and management relations, since the nature of the contract of these workers as self-employed, as well as the particularities

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<sup>1</sup> The wide variety of activities mediated by digital platforms as well as their contradictions is presented in the documentary “GIG – A Uberização do Trabalho”.

of the labor-capital relationship in these platforms, have challenged the response of scholars and policy-makers in addressing the “digital labor problems”.

Having this ‘digital era’ as the background for our investigation, this project aims at presenting a discussion on the characteristics of a segment of the “gig economy”, namely the *ride-hailing* platforms – the “on-demand” services of low-cost car drivers requested by customers through digital apps. These companies, among which Uber takes the leading role, are, indeed, the central actors in the rise of the digital platforms (SLEE, 2017; ISAAC, 2019), a fact that is proven in the dissemination of words such as “uberization” and “app drivers” to describe the new forms of platform-based business and its workers. Consequently, we argue that, despite representing only one of the many activities present in the gig economy, the ride-hailing apps can provide important insights, as well as impose new questions in the investigation of the fields of labor relations and labor economics in modern capitalism.

To address this topic, we propose the adoption of the tradition of the School of Wisconsin, from which the American institutionalist John R. Commons was the main representant, in the perspective of the Industrial Relations, considered here as “the labor branch of American Institutional Economics” (KAUFMAN, 2008). This tradition of thought would adopt a responsive and problem-solving attitude towards the labor problems of its days, both by denying the revolutionary and liberal theories and by proposing institutional changes to the central aspects of the labor relations in their conflict with capital, namely insecurity of job and asymmetric economic powers. Thus, we aim at presenting the Commonsian approach, as well as Commons’ institutional theorizing, as promising backgrounds in an inquiry into the constitutive elements of the ride-hailing platforms and the address of the resulting labor issues.

Writing in the post-2008 crisis, Erik Reinert has proposed the relevance of Thorstein Veblen to contemporary attempts to understand the capitalist system and its crisis, defining Veblen and his work as “economics for an Age of Crisis” (REINERT, 2014). Indeed, the institutional thought on the economic phenomena presents in our view one of the most adequate bases to understand capitalism and its functioning, especially by denying the orthodox faith in the free market. However, here we seek to expand Reinert’s proposal, by bringing Commons to the hall of relevant institutionalists for the times of crisis, more specifically when we need economic investigation for an age of labor crisis under technological advancements and rising conflicts and unrests.

It is noted worth noting that this is not the first time we have approached an aspect of the labor problems through a point of view that has Commons as a central theoretical base. With our master’s thesis “A Commonsian View on Brazilian Unionism” (JERONIMO, 2019), we



have explored the author's welcoming ideas on the role of labor unions in leveling the economic powers in the relation between capital and labor. Additionally, the previous work provided a historical approach to the relationship between organized labor and the State, debating that, as Perlman (1936) argued, the "arena" of labor unions is not only formed by its relations with organized capital, but it also involves its relations to other actors, especially the State. As Brazil had experienced different government regimes over its short hundred years as a Republic, the State had adopted different attitudes toward labor unions, which, as a result, shifted the role of the different kinds of transactions (bargaining, managerial, and rationing) in the search for reasonable agreements in the establishment of new working rules governing labor relations.

Thereafter, this dissertation shares the same comprehension of our previous literature that the works of John R. Commons are, with due respect to its conceiving context, adequate for providing insights into the investigation of contemporary labor matters and emerging institutions of modern capitalism. However, this time we add to this theoretical base the ideas of a broader approach from the Wisconsin School, pointing to possible paths in addressing the labor insecurities and stressing special attention to the matter of labor management. Unions were, indeed, important elements to this tradition of thought; nevertheless, they represented one fundamental instrument capable of achieving reasonability, but it was not a final remedy to the labor problems, since, as Commons (1921c, p.1) argued, "there is no automatic method of bringing about industrial peace".

Altogether, this work has two main objectives when applying Commons' theory and the Industrial Relation insights of his followers to the case of the ride-hailing companies. Firstly, it aims at investigating the adequacy of Commons' theory on the functioning of the capitalist going concerns in the case of this digital/immaterial business. A difficulty may arise when analyzing the going concern due to an absence of material wealth of its going plant base in digital platforms. We argue, however, that even in the absence of material elements, the going plant is present in the form of managerial transactions through algorithmic management, meaning that the rule of thumb of a foreman is substituted by the rule of the algorithms, which does not imply the elimination of the productive face of the going concern. Secondly, we investigate how the high esteem of these authors for democratic practices ended up in the adoption of collective action mechanisms and industrial democracy as means of achieving reasonable values in conflict with the scarce wealth.

By choosing to debate the labor problems arising in the relationship between digital platforms and the workforce through an Original Institutionalist point of view, this dissertation thesis is inserted into a broader discussion on the increasing insecurity of labor in contemporary

world crises. As it shall be discussed in the next pages, digital platforms of labor have emerged by a sum of a varied reason that ranges from technological advances to the adoption of neoliberal policies concerning the flexibilization of labor legislation and the decreasing role of the State in protecting the workforce and actively guiding its economic policies.

In this context, we have chosen to conduct this research having Brazil as the main location to investigate how the elements of insecurity, State intervention, unionism, and management of the digital workforce are shaped and constructed in times of crisis, enhancing the platforms' growth capacity. In the past half-decade, the country has faced a series of institutional reforms which Sebastião Guedes (2022) called "regressive reformism", focusing on the flexibilization of labor laws and social security provisions. Alongside one of its most disastrous economic crises in which the national GDP dropped and unemployment rates reached historically high levels (14,4% in 2020), Brazil is also struggling with direct attacks on its democratic institutions, most of it encouraged by reactionary attitudes of the Executive branch of the Republic under the government of Jair Bolsonaro, who personifies a threatening wave against the nation's democratic institutions.

By writing this doctorate dissertation, we aim not only at investigating the interactions between workers and technology in digital labor platforms from the perspective provided by the Original Institutional Economics tradition, but also at pointing out the role of socially created institutions and labor security of expectations attributed by this tradition in the search for reasonable transactions in a world of scarcity and asymmetric economic powers. As it will be shown in the next pages, we argue that the work of institutionalist researchers from the early decades of the twentieth century are well fitted, with due consideration of the limits of these almost hundred-year approaches, to providing insights and theoretical bases to the study of the labor problems in the age of digital platforms, and to offer alternative critical contributions to the inquiry of the institutional elements sustaining these modern practices.

In addition to this introduction, this dissertation is formally divided into four chapters and a conclusion, which are described in the following paragraphs.

The first chapter, Original Institutionalism, and the Labor Problems aim at presenting the theoretical bases sustaining the analysis of the following chapters. To contextualize this tradition of economic thought, the chapter argues Commons' progressive approach as part of a deliberate response to the effects of capitalism on the labor force. By putting the OIE theory in perspective with a different reading of responsive movements against the free market, and by emphasizing the active proposal of solutions to the labor problems, we argue that the application of this Commons' constructive research is not only viable but also presents promising

instruments in the analysis of contemporary institutional arrangements in the relation between capital and labor.

Chapter 2 is concerned with the Commonsian view on the firm and the employment relationship, in which his concepts of going concerns and transactions are applied to the case of the economic process of wealth production and the functioning of the labor markets. In its structure, the chapter debates the constitutive elements of a going concern, placing the going plant and the going business in a broader perspective on the role of scarcity and efficiency in the investigations of political economy. Commons' view on artificial scarcity, and the capacity of creating wealth out of withholding production through transactions, was not, however, pessimistic, but it could achieve reasonable value only in cases where both parties in a transaction could have their interests represented. Commons' negotiational psychology in the transactions was the base to sustain that working rules can and should be altered in a collective action of finding, not the optimum solution, but the best under the set of circumstances.

Finally, Chapter 2 concludes with a discussion on competitive menace and the influences of the market changes on the organization of certain occupations, an approach that is used in the final chapter as we explore the periodization of the activities of ride-hailing drivers in Brazil.

Following the theoretical referential works of the Commonsian tradition on labor economics, Chapter 3 presents an overview of contemporary debates concerning the object of study, namely, the ride-hailing platforms and the conflicts arising from their basic transactions. With due consideration of the historical limitation of our theoretical approach, the chapter argues that, despite its attributed novelty and advanced technological instruments, the main concerns in the relation between capital and labor in digital platforms are related to the unbalance of economic power, especially related to the asymmetry of information to which the platform has access and to the adoption of neoliberal rhetoric to legitimate precariousness. The different transactions and the algorithmic decision-making processes are analyzed through the lens of Commons' different transactions, pointing out the escalation of autocratic practices of workforce management in managerial form.

Chapter 3, thus, evidences that the use of the self-employment status on the side of the workers and the "intermediary" role on the side of the platforms do not overcome the transactional elements of bargain, management, and rationing of wealth, but increases the asymmetries between the parties in the transaction. Indeed, drivers work at will under the platform's structure, however, rather than autonomy, algorithmic management substitutes the rule of science of the old Scientific Management, for the rule of the algorithm. In face of

growing precarization and unemployment, drivers see themselves in a one-sided dependence with the platform, meaning that the formers' fragility is an asset to be explored by the latter.

Finally, Chapter 4 provides a broad analysis of the emergence and establishment of the digital platforms of ride-hailing services in Brazil by investigating workers' responsive behaviors to market changes and the asymmetric power relations in their transactions with the platforms and the State. By using microdata from IBGE's National Household Sample Survey (PNAD Contínua) we present descriptive data on own-account drivers in the country, which allows us to access, though in aggregate, the general characteristics of these groups, among which gender, age, education, and remuneration are relevant elements for the investigation. The data provides the bases to understand the quantitative aspects of the growth in the number of drivers in the country in the past decade.

Aiming at expanding the debate, Chapter 4 proposes the mapping of associations in the State of São Paulo and the interview with some of their leaders, enabling us to investigate the qualitative aspects of collective organization in this occupation, as well as identify the main "labor problems" motivating the creation of these defensive going concerns. By analyzing these groups in their main transactions with the platforms and the State, the chapter also provides a periodization of the ride-hailing platforms in the country, evidencing the main conflicts that have shaped digital labor to its current form. The challenges imposed by these platforms over the labor movement may represent obstacles to achieving reasonable transactions in the labor-capital relations; however, whether in official unions or other union-like organizations, ride-hailing drivers are organizing, and their growing presence is certainly significant in the studies of contemporary labor history in the country.

We conclude with final considerations on the possibilities of the Commonsian approach to the investigation of technology-managed work in times of the spreading of digital platforms to countless occupations, highlighting the necessity of strengthening democratic mechanisms of representation amidst rising attacks against democracy around the world. It is through institutions and their control of individual action that true liberty and reasonable value can be achieved, as long as negotiation and collective representation overcome autocratic transactions. We shall now focus on the investigation of Commons' theory and its relevance for the labor problems in the age of digital platforms.

## CHAPTER 1: ORIGINAL INSTITUTIONALISM AND THE LABOR PROBLEMS

If one were to present the most famous quote from the American institutionalist John Rogers Commons that could best capture his work both as an academic and practitioner of labor policy reforms, it would certainly be “I was trying to save capitalism by making it good” (COMMONS, 1934, p.143). In fact, several interpreters of his work have highlighted this phrase, which is found in Commons’ autobiography *Myself* (1934), as representing the reformist character of his theory of Reasonable Value (RAMSTAD, 2001; GUEDES, 2019). Or, more broadly, as depicting the Original Institutionalists’ objectives and strategies of labor reform (KAUFMAN, 2005).

By “saving capitalism”, Commons explained “[...] I admired, not “capitalism”, but great capitalists, as far beyond my own abilities, but wanted to make them as good as the best instead of negligent” (COMMONS, 1934, p.143), an idea that, as will be discussed further, may also point to his method of work of setting high-quality practices as examples for other companies and standards for labor legislation. Additionally, another important quote, which appears in the subsequent paragraph, but has not attracted the same attention as the first, is: “I wanted also to make trade unions as good as the best of them that I knew” (COMMONS, 1934, p. 143). As perceived, both quotes hold similarities in a sense of improvement of a group, whether capital or labor, shifting to a stage of “as best as they could be”. However, the mention of these two different actors also points to the recognition of the part played by them in a conflictual asymmetry in economic powers in the capitalist economic transactions, and the subsequent struggle arising with this conflict.

For the purposes of this dissertation, these two quotes are taken as starting points to investigate both the context in which the work of the Wisconsin Commonsian tradition was conceived and the characteristics of this approach to solving the labor problems emerging from the conflicts between capital and labor in the early XX century. Thus, this chapter has two main objectives: firstly, it aims at providing a panorama of the context in which the tradition of labor economics from an institutional perspective came into being at the University of Wisconsin-Madison with the leading role of John Commons as part of a counter-movement against the deleterious effects of the unregulated capitalism. Secondly, the chapter highlights the main characteristics of the Industrial Relations field of responding to the labor problems, stressing the role of ‘constructive research’ as the methodological approach of this tradition of thought (CHASSE, 2017), which, summed up with the identification of the best practices in different markets, enabled the institutionalists to propose changes in labor legislation and policy.

## 1.1 The Early XX Century and the responses to Laissez-Faire

What could be menacing capitalism so that it had to be “improved” or “saved” by the reformist institutionalists? To answer that question, Commons would point both to the geopolitical unrests generated by the WWI and the Russian Revolution as risks to western liberal democracies, as well as to the capitalist system’s internal conflicts between unregulated capital and labor that could lead to the very unrest that would expose the workforce to the risks of revolutions and deterioration of life conditions (COMMONS, 1921a). Accordingly, one of Commons’ main interests in the question of labor unrest in the United States was understanding how the institutions of the early-modern capitalism of his days dealt with the vicissitudes of the labor problems which resulted from the deep and rapid economic changes of the twentieth century.

It is of utmost importance to note that labor relations in the USA had been facing drastic modifications in the industry during the first decades of the 1900s. The world itself was facing important changes with the mechanization of industry and the advancements in communication and transportation, in a period in which the world got increasingly intertwined (HOBSBAWM, 2008). As pointed out by Rayback (1966, p.192), technological changes in the American industry had a direct impact on labor, since it was able to create not only “new social habits” but also “a change in the traditional employment patterns”. In fact, Commons perceived these new patterns as new conflicts confronting institutionalized labor standards of living, demanding a careful investigation of their effects on the workforce.

One of the main deleterious effects of the unregulated capitalism of the early twentieth century would be the threat to workers imposed by the emergence of Big Business, with the trusts and other business agglomerates, and the autocratic scientific management of labor, which resulted in the reorganization of the production process (COMMONS, 1905). Indeed, the first two decades of the century experienced a growing resistance against the politics of laissez-faire, where the primacy of non-intervention policies in favor of free competition collided with the dissatisfaction with the effects of economic and technological transformations on the lives of the public. As Schumpeter (1994, p.765-766) argued, the hostility to big business in the USA, followed a broader movement in which “the economic profession of all countries were politically supporters of the counter-tendencies to liberalism rather than of the still dominating liberal ones”.

These counter-tendencies to which Schumpeter (1994) addresses the resistance responses of those threatened by the capitalist evolution, mainly the effects of unemployment, bankruptcy, and depression (SCHUMPETER, 1994, p.763-768) are then redefined as “counter-currents”, where the business interests

face movements for the “redistribution of political weights” in response to the growing unrests in labor and business. Indeed, the first decades of the twentieth century were decisive for years to come in terms of politics and in forcing a shift in economic thought to theorize the functioning of the markets and the global economy, especially in the recognition of the inadequacies of perfect competition and the policies of free-market to respond to the contradictions and conflicts of the modern industrial and financial capitalism.

Schumpeter was not the only academic to perceive the counter-currents and the fall of liberal policies at the beginning of the century, and, as matter of fact, one of the most important contributions to this debate is found in the work of Karl Polanyi’s *Great Transformation* (2001) with the concept of “double movement”, to which we shall focus our attention thoroughly in this topic. Accordingly, the institutional economist John Kenneth Galbraith presented in his *American Capitalism* (1956) the notion of “countervailing power”, from which we can find similarities with both Schumpeter and Polanyi’s interpretations of defensive movements.

In his seminal work on the effects of the market economy and its assumptions over society’s social fabric and institutional organization, Polanyi (2001) highlighted the subjugation of social life to the economic realm of self-regulated markets as the source unrest in the market system. The extreme adoption of market rationality capable of organizing the social sphere of life demanded that the very human nature of people be reduced to a tradable commodity – the disarrangement of life through the “satanic mill”. Polanyi (2001, p.136-137) described the commoditization of life and nature as follows

Such precisely was the arrangement under a market system. Man under the name of labor, nature under the name of land, were made available for sale; the use of labor power could be universally bought and sold at a price called wages, and the use of land could be negotiated for a price called rent. There was a market in labor as well as in land, and supply and demand in either was regulated by the height of wages and rents, respectively; the fiction that labor and land were produced for sale was consistently upheld. Capital invested in the various combinations of labor and land could thus flow from one branch of production to another, as was required for an automatic levelling of earnings in the various branches. But, while production could theoretically be organized in this way, the commodity fiction disregarded the fact that leaving the fate of soil and people to the market would be tantamount to annihilating them.

The pressures of liberalism in its unnatural requirements of the self-regulated market to human life would result in the social disintegrating effects that are addressed by society in protective actions that act in opposition to the very bases of a free market. For the author, no society would survive under the full adoption of the market requirements, consequently, there is a double movement serving as an organizing principle of society that, while forcing the principles of liberalism on the social life, also faces protective actions against that very principle of self-regulating markets. This represented a spontaneous response from society against the clear deleterious effects of laissez-faire, especially the commodification of labor (POLANYI,

2001, p.158), and growing friction between more liberal policies and more protection would result in the conflicts of the XX century and the emergence of fascist governments.

Galbraith (1956), in his turn, focuses on the inadequacy of the competitive market theory in understanding the modern capitalist society and the differences in economic power between its main agents. American capitalism had created oligopolies and advanced through rivalry and market strategies in opposition to the atomistic mainstream theory of perfect competition. In short, “an economy where the typical industry is shared by a few firms is awkwardly inconsistent with a theory of capitalism which requires that power to affect prices or wages or output or investment be impersonally governed by the reactions of the many” (GALBRAITH, 1956, p.48).

At the center of this shift, as discussed by Professor John K. Galbraith in his *American Capitalism* (1956), was the inadequacy of perfect competition theory to address the effects of WWI and the Crash of 1929, as well as its ubiquity in economics and policy-making processes as proposed by the early developments of the neoclassical theory following Alfred Marshall’s synthesis at the end of the nineteenth century. By ubiquity of the theory, we mean the spreading of the perfect competition approach to explaining not only the functioning of self-regulated markets, with special attention to the labor market, but also the capacity of this theory to become a habitual assumption guiding the decisions of those who are not part of the scientific community and to become a natural way of thinking about reality and responding to it. These habitual assumptions, a Commonsian, are similar to Galbraith’s “conventional wisdom” guiding human decisions on how the economy should work based on the ideas that are institutionalized by a community.

If reality evidenced the role of (few) big corporations and the concentration of economic power capable of affecting the market structure, the problem of power could no longer be addressed by denying it (GALBRAITH, 1956, p.63), and, indeed, the very adoption of the term “market economy” would be misleading in hiding capital’s economic powers (GALBRAITH, 2004). The traditional model had placed competition by countless competitors in a market as the regulatory mechanism impeding an independent firm to exercise economic power to determine prices charged to its customers. In modern capitalism of oligopolistic markets, on the contrary, it was not a competition between firms that restricted the free use of economic power, but the “countervailing powers [...] of those who are subject to it” (GALBRAITH, 1956, p.125), formed by the actors involved in these industries and promoted by the State in the search for the public interest.

This clash between the dominant economic theory and reality evidenced the downfall of liberal policies as the former failed to respond to a dynamic capitalist system that, contrary to core assumptions



of equilibrium, homogeneity, and order through a rivalless competition, grow through asymmetric economic powers and walked away from what would be deemed as a natural order with no room for conflict of interests nor inefficient allocation of the producing factors in the economy.

How the economic theory could deal with reality and respond more adequately to the contemporary conflicts within the capitalist system would be the response of the original institutionalist economists of the Commonsian tradition for whom empirical research and fieldwork investigations would play a central role in their approach to economics, especially in, but not restricted to, the investigations on the functioning of the labor markets (JOHNSON, 2019). Consequently, the next topics investigate this field of the institutional thought from Schumpeter's concept of counter-current, which highlights academics' dissatisfactions with liberal economics orthodoxy and encompasses those movements in which academics sought to give sense to Polanyi's spontaneous protective responses, and ended up in the promotion of countervailing powers by empowering workers and improving legislation.

## **1.2 The Field of Industrial Relations and Reasonable Value as Countermovement**

The Original Institutional Economics contribution in the field of labor economics can be found in the works of different authors, each with a central focus of study that, whether with interest in habits thought, formal rules, or inductive works based on data analysis, presented different approaches to the investigation of the social and economic phenomenon (RAMSTAD, 1981). There was, however, one author that stood out in creating what would be taken as the "institutionalist branch of labor economics" (CHASSE, 2017, p.2) or the other way around, the "labor branch of American Institutional Economics" (KAUFMAN, 2008). That author was John R. Commons, this new subject would be named Industrial Relations (IR), and the place in which his work flourished to be an influent background for policymaking in labor matters was the State of Wisconsin, specifically the University of Wisconsin-Madison (UW-M).

The fact that UW-M was the home of institutional labor economics is understood when considering both the political-economic context of the early XX century U.S.A and the relationship between the State of Wisconsin and the University researchers. Charles McCarthy would present this relationship as "The Wisconsin Idea" (MCCARTHY, 1912), where university researchers would play active roles in working with the government to propose changes in legislative debates. In the introduction of McCarthy's book, president Theodore Roosevelt would summarize the core of the Wisconsin Idea as follows: "the State has become literally a laboratory for wise experimental legislation, aiming to secure the social and political betterment of the people as a whole" (MACCARTHY, 1912, p.vii).

John. R. Commons' history in Madison would begin in 1904 when that university had already gained a reputation in the studies of the labor problem through economic lenses. That fact is credited to

Richard T. Ely, the very scholar responsible for bringing Commons to that institution, and whose contribution to the field of institutional economics was that of setting the bases for the construction of this heterodox approach in the U.S (GUEDES, 2019). However, as Rutherford (2006) argued, it was with the hiring of Commons that Wisconsin would truly become an institutionalist center of economic thought.

Being one of the most influential economists dedicated to the studies of the labor problems, mainly that resulting from the growing asymmetric power between capital and labor and management, such as unemployment, high turnover rates, and low wages, Commons was able to establish a tradition of thought that marked the Wisconsin School. His followers, among whom we may highlight Selig Pearlman, Witte, and Parsons, had important contributions to the field of industrial relations, especially in the inquiry of labor unions and their actions. Malcolm Rutherford's works in the history of American institutionalism (2006, 2009a, 2009b) have shown that Commons was not only the central institutional theorist in Wisconsin but that his time in the Department of Economics of that University proved to be the most prolific and relevant in the field. When describing the institutionalist vein of that school, Rutherford (2006) stressed its emphasis on empiricism and reformism, as well as on the study of labor and the connection between law and economics.

The path followed by the institutionalists when addressing the labor problems would have as core elements the institutions and the behavior of those involved in the employment relationship, stressing the role of the transactions in which those who are involved are endowed with asymmetric economic powers, in opposition to Neoclassical ideas of maximization, rationality, and perfect competition. In his effort in defining the "institutionalist research", Yngve Ramstad (1981) pointed out the fact that these authors not only denied the neoclassical theory of prices, but also shared "core beliefs" that would take the place of those from orthodoxy in terms of individual behavior, market self-equilibrium, and methodology. More precisely, Ramstad (1981, p.341) summarizes the institutional core beliefs as: "(i) individual behavior is itself the product of institutional forces and therefore cannot be treated as the fundamental building block of social theory, (ii) institutions, not impersonal market forces, engender cooperation among individuals and/or organizations that have fundamental conflicts of interest, and (iii) a satisfactory account of economic behavior must accurately reflect the way(s) that economic entities actually behave".

The fact that neoclassical theorists took labor as a factor of production that could be treated as a commodity/machine and would follow the economic laws of supply and demand was also addressed by the original institutionalists. And, in fact, as Bruce E. Kaufman, one of the main academics of the original institutional approach to labor economics, has discussed in

his prolific production on the theme (KAUFMAN, 1998, 2004, 2008, 2010, 2012) the dedication to this theme by those authors of UW-M following Commons started a whole tradition of thought, the Industrial Relations, with “different ways of conceptualizing and practicing economics” from that of the neoclassical traditions. In short, IR would be

An effort to construct a multidisciplinary and quasi-heterodox type of social labor economics based on a more realistic model of the human agent, centered not on an exchange of commodity labor inputs in competitive markets but on the exchange and use of human labor power in an employment relationship embedded in imperfect markets and hierarchical firms and surrounded by an institutional infrastructure of laws, cultures, social/ ethical norms, and historical traditions (KAUFMAN, 2010, p.82)

Most of the Wisconsin economists would be dedicated to the history labor movement in the United States, emphasizing workers’ responses to the changing environment of market conditions. Among its prolific academic productions, we may point out the publishing of *History of Labor in the United States*, a series of books in two volumes under the editing of John R. Commons and with the contribution of his students. And, as Philip Taft (1950, p.72) – who was also part of the Wisconsin School – summarized, this tradition’s “spirit” could be expressed as follows

He [Commons] and his students did not avoid generalization – such avoidance can only lead to sterile empiricism – but they sought to develop a body of theory based upon the attitudes and practices of the individuals who comprise the frame of reference. The motivations that lead to given actions or to the creation of institutions must be explained, not on the basis of some a priori assumption with regard to conduct or historical mission, but by observing the behavior of men and women as they earn a living or create institutions of defense or offense against other individuals and group.

Briefly, the work of the original institutionalists was addressing the labor problems from an alternative perspective from those proposed by the Marxist and orthodox traditions of economic thought. The latter, with more influence in the American academe, would approach the labor market and the conditions of employment, wages, and collective organizations, through the marginalist theory of prices and the core notion of general equilibrium through perfect competitive markets (CLARK, 1915). Provided that, by its historical formulation, it is a theory of social harmony, the neoclassical school emptied the traces of conflict by pointing out the notion of remuneration in terms of marginal productivity of the production factors. Thus, taken as a production factor that is combined in different proportions with capital by the skillful hand of a businessman, the debate on wages, unionism, and efficiency would be dictated in terms of perfectly competitive markets and utility-maximization notions.

There is no mention of the role of power, at least a relevant role, in the functioning of the perfect competition theory, and indeed, it is in this matter that the institutional approach to labor economics – Industrial Relations – finds its central contribution, that is, power (or the lack of it by one of the parties) is fundamental to the original institutionalists to comprehend markets (WOODBURY, 1987). How then should the labor problems be addressed considering asymmetric powers of bargaining? This question points exactly to the problem-solving attitude of the original institutionalists from a Commonsian tradition that we argue here places this school of thought as a deliberate response of academics in the field of economics to those issues that influenced the rising unrest of workers at the beginning of the century. In short, the field of Industrial Relations would be part of what has been perceived as the counter-movements to slow up or even change the direction of economic progress toward better policies protecting workers.

The use of the word “better”, though filled with value, is exactly part of the normative and reformist character of the authors from the Wisconsin school of IR. And, indeed, it is here that the concept of “reasonable value” finds its place as a reformist means of valuating practices and outcomes to achieve better conditions from transactions between different economic agents. Kenneth H. Parsons (PARSONS; COMMONS, 1942) summarizes reasonable value as

The issue of reasonableness in this theory of valuations arises in connection with the bargaining power of the participants to the transaction. Reasonableness relates essentially to the question of how much disparity of economic power is tolerable in agreements over prices. Bargaining transactions occur between parties, equal before the law, but who may have greatly unequal economic power. This economic power roots, in turn, in the power of property - coincident with the court's expanded meaning of property from a corporeal thing held for one's use, to the value of access to market - including the right to withhold from others [...] As a theory of valuation, this is a radical departure from the usual procedure in economic theory. Instead of individual valuation, we have social valuation. Instead of a theory of valuation at the limit of perfect competition, we have valuations in the zone of private power. Instead of valuations of resources in terms of the incremental values to one individual or concern, we have valuations between two individuals or concerns (PARSONS and COMMONS, 1942, p.258)

Accordingly, as Ramstad (2001) argues, Commons' theory of reasonable transactions is presented in two ways, one is descriptive, it is a perspective on market values that considers the role of human will in defining its outcomes, and it is the reasonable value. The other, the theory of Reasonable Value (in capital letters), is part of Commons' reformist approach to the capitalist system and deals with the aspects of conflict, dependence, order, and the role of institutions, as the collective actions in control, expansion, and liberation of individual actions, in reaching reasonability and improving the system. This Reasonable Value would be, as defined by Barbash (1976, p.801), “the method of arriving at a result rather than any determinate result per se”, where due process and democracy would prevail and be applied to industrial relations.

Unions would play an important part in addressing the problems of power and democracy (WOODBURY, 1987). The empowerment of labor unions was indeed one of Commons' instruments in bringing out the solutions to the labor problems by facing the imbalanced economic powers of employers and employees in their daily transactions, and it could vary depending on the different political regimes of its time (JERONIMO, 2019). Unions would then protect workers from unfair and inadequate treatment from employers (COMMONS 1921c, p.15), changes in the conditions in the market (COMMONS, 1909), and competition from outsiders, as in the old Guilds that established the working rules of the occupation, as well as the minimum standards for their product and payment rates (COMMONS, 1924, p.225) and responsible for introducing industrial democracy in the firms (KAUFMANN, 2003).

By arguing the incapability of employees in exerting coercion powers when bargaining individually with capital, it would only be through collective bargaining that these two groups could negotiate (COMMONS; ANDREWS, 1936, p.374). Shortly, when one party is "equally afraid of the other" (COMMONS, 1905, p.1) and there is a conscience of mutual dependence, reasonable transactions can occur and industrial order is achieved (BARBASH, 1989, p.47). The growing capacity of collective bargaining would create an "industrial government", representing an "outstanding contribution to capitalist society" by bringing humanity to debate in opposition to the commodity treatment of labor (PERLMAN, 1936, p.158). The fact is that, whether in formal or informal occupations, individuals tend to organize in groups that share common purposes, the *going concerns*, that is, those collective institutions where individuals transact with each other under *working rules* controlling their individual actions and guaranteeing their expectations (COMMONS, 1924, p.145-147; COMMONS, 2003, p.58-59).

However, these groups of Collective action did not remain as the central or at least the only mean of achieving reasonable value in the bargaining transactions between capital and labor throughout Commons' writings. The events of WWI and the Russian revolution also played a central role in a shift of attention in his work, where management would gradually gain importance.

### **1.3 Addressing unrest in times of revolution**

Commons' interest in the study and solution of the labor problems of his days did not follow a "one remedy for all" recipe, on the contrary, his writings and theorization would be able to encompass a broader perspective on the role of workers' collective action, employers' approach to labor management, and society's control of the working rules of the labor relations

(KAUFMAN, 1998). However, as Kaufman (2003) argued, the attention devoted to each of these agents (worker, employer, and State) as the central means in the strategy of achieving reasonable transactions and industrial peace would shift throughout the years in response to changing economic and political contexts. The phases in which Commons would have developed his work could be summarized in four stages: (i) the empowering role of unions and trade agreements (1900-1910), (ii) protective legislation through labor law and social insurance (1907-1916), (iii) personnel management and monetary stabilization (1918-1929), and (iv) the reformism of the New Deal era in response to the Depression with the adoption of phases 1 and 2 (1929-late 30s).

Accordingly, in the second series of *Trade Unionism and the Labor Problems* (1921a), Commons collected and organized a set of papers under what, he argued, were the “five principal aspects of the labor problems”, namely, the problems of the absence of labor safeguard instruments (security) and the instability of employment (labor market), and the role played by employers (labor-management), workers (labor unions), and legislation (the State) in providing solutions to these problems. At the same time that these five aspects corroborate Kaufman’s (2004) periodization above in relation to its themes, it evidences the overlapping role of each of the strategies to solve the labor problems that, despite having different attention in different periods, remain in the set of tools of the IR field from a Commonsian perspective.

Notwithstanding, an interesting fact arises with the investigation of how Commons organized the second series of TULP (1921a) in comparison to the first series from 1905 in relation to the order of its themes. Surely, one cannot rigorously compare the contents since in the very preface of the 1921 series Commons alerts his readers that the book is “a new edition, not a revised edition”, however, in the introductory note, Commons himself highlights the change of place in one of its themes, insurance, and employment, that went from last in 1905 to first in 1921 – a change that by no means is restricted to a matter of editing, but highlighted the context in which this works had been written.

If in the first phase of Commons’ work the attention to unionism and collective action played a central role in his writings, the first series of TULP (1905) should emphasize this initial theme, which is indeed what happens. From his preface, the objectives of his book are made clear: “[It] is intended to do for the study of labor unions and labor problems”. Thus, as the central theme of the book, the labor problems of security in work conditions and job maintenance, are seen in their direct effect in bringing unions into existence and action, being the driving force in the institutional changes concerning the labor problems but recognizing the role of the State and management in each of these problems. Following the topics of the 1921

series, the 1905 book would be organized in the following order: labor unions and trade agreements, labor-management (with special attention to the case of the sweatshops and no mention of scientific administration), the labor market, the law, and insecurity.

An important feature that seems to gain centrality in his bibliographical production from 1918 forward is the role of democracy, as well as an interest in progressive management approaches (COMMONS, 1950 – bibliography) that had as background the rupture provided by the Russian Revolution of 1917 and what it meant to the other nations. For instance, in a short paper published in *La Crosse Trades and Labor Council Review* in 1921, Commons described the *Basic Principles for Labor*, highlighting the important role of the capitalist business in the process of production, denying self-management from workers

I do not think that “labor” should go in for legislation looking towards public instead of private ownership nor for participation of labor on boards of directors and corporations. Experience shows that neither politics nor labor as a class can manage industry, nor assume responsibilities of management. Industry cannot be efficiently managed on the basis of popular election of the boss. Efficient managers are self-made in the struggle for profits. If this is so, then private ownership means great public power in the hands of business men. Power brings responsibility. The best legislation can do is to enforce responsibility where irresponsible business does not willingly accept it (COMMONS, 1921c)

Indeed, the reorganization of TULP IN 1921 has strong claims against the new economic system that emerged with the revolution, a fact that is made explicit in the introduction and first chapter, both Commons’ contributions to the book. Security of job then is replaced in the first chapters, for Commons diagnosis the modern labor problems as threats to capitalism for its own fault, for “Western civilization is built upon security of investments, and it is insecurity of labor that menaces it” (COMMONS, 1921b, p.ix), consequently “capitalism is threatened because it has not furnished the working people a similar security to that which it has furnished to the investors” (COMMONS, 1921c, p.8). How thus had labor been treated and how did that influence the unrest experienced in the XX century? The answer to this question resorts to his theoretical position.

In his inquiry on the nature of modern capitalism, Commons perceived that the economic transactions were not based solely on the possession of physical goods, instead, the main characteristic of the property was related to its “immaterial” aspects, that is, “any of the expected activities implied with regard to the thing owned, comprehended in the activities of acquiring, using and disposing of the thing” (COMMONS, 1924, p.16). In that way, Commons concluded that “all capital is expectancy”, in a sense that “it is the present value, not of physical

things, but of the hopes of the future aroused through confidence in the now invisible but expected transactions of the future” (COMMONS, 1924, p.25).

Considering this debate on the immaterial nature of the property, Commons derived the idea of “labor’s goodwill”, that is, every worker has the property of their own labor, but labor is to be understood not as “physical body”, but instead, it is his “willingness to use his faculties according to a purpose that has been appointed to him” – he sells his goodwill (COMMONS, 1924, p.283-288). Thus, laborers’ property was also expectation, involving opportunities and liberties, as well as duties and encumbrances. What Commons concluded from this “immaterial” economic system and labor’s goodwill was that, by neglecting labor’s security of expectation with the absence of reasonable practices in labor management, poor-structured labor laws, and fragile collective representation, “capitalism is to blame” for the labor unrests, since, as he argued, “it has not offered, as yet, to labor that security of the job which it has offered to the investors in the security of their investments” (COMMONS, 1921c, p.8).

In his *Industrial Goodwill* (1919), Commons presents two approaches to labor-management practices that, from his point of view, were incomplete methods of dealing with labor and class conflict (COMMONS, 1919, p.17). The first, what he calls the “Commodity Theory of Labor”, is the crude method of considering employees as commodities subjected to the laws of supply and demand in determining their wages (COMMONS, 1919, p.5). The second, a theory that would be central in Commons’ critics of labor management, is called the “Machinery Theory”, in which labor is taken as a machine subjected to the scientific studies of engineers, “an operation organism to be economized” (COMMONS, 1919, p.14).

The commodity theory of labor is related to the availability of the workforce as a production factor from which capital profits from the creation of use-value while it can substitute any of the workers for the masses of available commodities in the market. As a commodity, the jobs and compensations are subject to the mechanisms of supply and demand and are highly dependent upon the economic conditions of prosperity or crisis to determine their circumstances. Furthermore, there is no differentiation among workers in terms of skills and activities performed; thus, the worker as a commodity is easily replaceable by other vulnerable peers who also seek employment – such as the case of migrants at the beginning of the XX century.

In its turn, the “machinery theory” expands the practices of labor-management to the realm of efficiency in the production process, stressing the role of scientific investigation of the motion and tasks performed. There is, however, an important aspect shared by both theories in relation to the workforce: whether handled as a commodity or a machine, the human form of



the individual is emptied, and its content is shaped into a useful service of an inanimate factor of production.

The face of the machinery theory was the Scientific Management of personnel, a movement that took the lead in industrial relations in the United States in the early 1900s. Idealized by Frederick Winslow Taylor (1856-1915) in his *Principles of Scientific Management* (1911), scientific management aimed at "demonstrating that every elementary act of the worker can be reduced to a science" (TAYLOR, 1990, p.56). By applying scientific research of engineers and specialists capable of identifying and extracting the most efficient methods to increase output productivity, it was Taylor's objective to provide a "Science of management" that would transform the traditional patterns of labor-management, substituting foremen for engineers and the "rule of thumbs for science" (NYLAND, 1996, p.986-987).

Commons perceived the merits of Scientific Administration in its efficiency efforts, for, when applied successfully by engineers, "it is perhaps the most productive invention in the history of modern industry" (COMMONS, 1919, p.14). However, the scientific administration would also remove from its employees the monopoly on the knowledge of the methods of production, since from this moment everything is created and formulated by specialists so that the human work, as a machine, is used in the most efficient way possible (COMMONS, 1919, p.14). Consequently, laborers lose their capacity of bargaining, being this absence of democracy in the workplace "the very despotism that provokes revolutions, and the problem of the industry is truly the problem of management" (COMMONS, 1921c, p.x)

Three other management practices are presented in *IGW* (1919), namely Goodwill, Public Purpose, and Democracy, each of which represented the growing participation of workers in the decisions of the going business from the perspective of having their voices heard, and all *representing the acceptance of workers' subjectivity rather than a tradable commodity*. By denying the commodification of labor, Commons could develop a whole theory in which this subjectivity would impose challenges to IR, but it was the reality that demanded that people's lives be addressed as they were. Accordingly, 1921 was also the year of the publication of Commons' *Industrial Government* (1921e), an investigation of the managerial practices in eighteen different industries in the United States, which contributes to evidence of the nuances of industrial democratic practices that happen beyond the theories of labor proposed in his book in 1919.

His investigation was centered on establishments that did "better than the unions" (COMMONS, 1921d, p.265) by adopting different practices aiming at reasonable hours of labor, wages, and work conditions. And, once again, his arguments against self-management

are expressed as alien interests, when the real wants of labor could be expressed in “wages, hours, and security, without financial responsibility, but with power enough to command respect” (COMMONS, 1921d, p.266-267)

In fact, democracy is one of the main interests in the works of the early institutionalists (ADKISON, 2010), especially for those following Commons’ tradition on Industrial Relations. In a context where the world was facing the downfall of liberalism, the emergence of autocratic regimes in Europe with fascism, and the Bolshevik revolution in Russia, the field of Industrial Relations in the United States would act toward the solution of labor unrests as the focal element in sustaining its liberal democracy (KAUFMAN, 2005, 2010).

Turning back to Commons’ attempt to “save capitalism by making it good”, it should be noted that his approach to the conflicts that emerged from the advancements of big corporations and the financial capitalism of his time was essentially progressive, and despite recognizing the contradictions of capitalism in the production and distribution of wealth, he addressed the institutional reforms in labor laws and managerial practices as adequate remedies in opposition to solutions that would be characterized by a rupture of the system. Consequently, as we shall argue in the next topic, institutionalist thought can be seen as a deliberate act of academics to respond to the problems of modern capitalism. For, as it shall be seen further in this dissertation, it is fundamentally by denying the commodification of the labor force and the asymmetry of economic powers in an institutional embedded market, that the OIE approach to the labor problems from a Commonsian perspective is founded.

#### **1.4 Constructive Research as a Method for Reform**

By asserting his objective of improving capitalism and labor unions, Commons traced the source of the unrests that could menace the system back to the inadequate practices arising in the transactions between capital and labor. Accordingly, for him, the class conflict was a direct result of the dispute over the distribution of wealth among wage workers without property, and the aggressions of capital by the class of employers who owned it were distant from production (COMMONS, 1913). A specificity of his criticism would be the focus on the power asymmetry between these actors, usually sustained by law, which allowed the first to extract the most product out of the latter. Therefore, workers were deprived of leisure time by the increasing share of weekly work time; thus, affecting their capacity of engaging and dedicating time to the different social concerns where they could participate (i.e., family, school, clubs, etc.).

What Commons had perceived from this conflict when analyzing the trade agreements between employers and labor unions was that the bargaining is not restricted to the matter of wage definition, but also employee management, that is, workers and employers negotiate how foremen and bosses deal with their employees (COMMONS 1905, p.5). However, unions' methods of coercion and confrontation would not be the most adequate remedy to all industrial problems since many employers varied in terms of labor-management practices (COMMONS, 1921b; 1921c).

This difference in practices on the side of the businesses created two classes of employers (COMMONS, 1921c, p.15), one of which adopts "superior fashion" personal relations, in opposition to those against whom unions must emerge and act. Thus, recovering Commons' famous quote of making unions and employers the best as they could, superior fashion companies could become references over which labor legislation could use to establish a minimum standard for the industry (COMMONS, 1919, p.29).

Indeed, Commons' awareness of the social classes permeated his theorizing and his public defense for the improvement of labor legislation and the creation of labor protection mechanisms. Accordingly, when debating the role of the economist in class representation, Commons would argue that the "failure to recognize social classes means paternalism based on the survival of the strongest" (COMMONS, 1913, p.67), in a context in which institutions usually followed the dominant interest of the strongest classes. The same responsibility of perceiving the ideologies behind common sense was perceived by Clarence Ayres (1967), for whom the economist's choice of words also tended to hide class asymmetries. Thus, democracy and class representation were central elements in addressing institutionalized privileges.

How should the labor problems be addressed considering the different practices of businesses, the asymmetric powers, and the necessity of security of expectations for different interests of the classes composing it? In defining a method for the study of Industrial Relations, Commons named the "method of prevention" that, in opposition to compulsory arbitration and misrepresentation, would seek industrial peace not by "panaceas" or ideal formulas, but by "[investigating] the conditions which cause these industrial unrests" and "[preparing] in advance to remove the conditions which cause conflict to waken up" (COMMONS, 1921c, p.2).

Consequently, by investigation, Commons' insights were marked by a proximate relationship between the researcher and object of inquiry, or, in a Commonsian fashion, the investigator and the transactions and their different constitutive groups of interests. When defining his methods of teaching and work, it would be clear that field investigation was part of his practices, a feature that was clear in his experience before and during his time at UW-M

(COMMONS, 1934). The “dirty hands” investigation was indeed Commons’ characteristic, in opposition to the growing mathematical formality of the field.

In a curious passage presented in his autobiography, Commons describes a case in which he was appointed as one of the speakers in an action of churches of Syracuse against the mayor’s refusal to enforce the law prohibiting Sunday baseball. Backed by the religious argument of the *Sabbath* and the resting as a religious commandment, Ministerial representants debated with Labor Unions and promoters of Sunday games on May 30<sup>th</sup>, 1897 in a “mass meeting of nearly 5.000 people (...) filled with prominent business and professional citizens”, as The New York Times described. DeMotte (2012) presents the elements of this debate, pointing to churches’ attacks on the ‘desacralization’ of the Sunday and defending it as a way of protecting workers’ rights “from toil and unnecessary activity”, which, for the author, “did not go much beyond vague platitudes of fair treatment and advocacy for Sunday rest” (DeMotte, 2012, c.2).

On this matter, Commons wrote

I was too timid to speak at the meeting, but finally the minister persuaded me. I looked up one of my labor acquaintances *to take me around to all the ball grounds on that Sunday afternoon*. We found there large crowds of sober workingman with their families, with no admission fees, and with pick-up teams of players from the various industries. At the mass meeting of about 3,000 I spoke after the politician. I recited what I had seen during the day. I opposed professional baseball with admission fees on Sunday, but contended that the city should open up free parks, on the abandoned salt pans of the old town of Salina, for all kinds of athletic games for workingmen on that day. *As long as employers kept workingmen from having Saturday half-holiday, the only relief for exercise and sobriety was Sunday*. I was hissed by the audience. (Commons, 1934, p. 65, *italic added*)

Commons’ defense of workers’ time of “relief for exercise and sobriety” was not what the ministers and trustees of Syracuse University – also a confessional college – would expect and, as he further discusses, it would become one of the reasons for the discontinuation of his chair in sociology at that institution in 1899. However, this case highlights Commons’ commitment to the field investigation of labor problems, as well as the belief that the problems of industrial practices could spill out and affect these daily life costumes, such as the Sunday laws. Accordingly, workers had no other opportunity for their time of leisure and socialization in face of the usual businesses’ practices of long-hour shifts and denial of Saturday half-holiday reliefs.

This was not the first time Commons would go against the public disregard of workers’ conditions and industrial unrest. In his *Social Reform and the Church* (1894), the author emphasizes the relationship between the labor problems and the inadequate distribution of

wealth. The former would result from “insecurity of employment and a servile dependence” expanded by the latter, in a situation in which, with the precarity of workers' conditions, “life is a dreary burden of work, with no future of relief, and food is poor in quantity and quality” (Commons, 1894, p.6). The book, though filled with arguments of religious roots, expresses his defense of solving the labor problems not only in terms of basic providing (food, clothing, leisure) but also through the security of employment, asserting that “we should learn from the social sciences that the body must be saved before the soul” (Commons, 1894, p.18)

Furthermore, following the same vein of the case of Sunday baseball, Commons remembered the strike of Buffalo switchmen who had been subject to exhausting thirty-six consecutive hours of work and yet were rebuked by the ministers for anarchy. The author then argued that

Had the Church done its duty beforehand, and *made any effort to know the life of workingmen*, as Jesus did, there never would have been occasion for a strike, because *hours of labor would have been limited* to a point consistent with Christian manhood (Commons, 1894, p.39, italics added)

Indeed, “knowing the life of the workingmen” would be a central feature of Commons’ inquiry method on the labor problems as well as one of the main features of the institutionalist tradition at U-WM. As he would discuss in his *Labor and Administration* (1913, c.1), the economist should be a “utilitarian idealist”, meaning that they are “not the ‘friend of labor’ who paints an abstract workingman”, but the one “who sees them all they are”, and those who, through the establishment of ideals, can investigate and propose solutions to those problems. By discussing the Greek philosopher’s duality of idealism and utility – the time for thought and the dishonorable usefulness of work – he would state that the industrial problem was truly a question of “how to get a fair living by reasonable hours of work, leaving enough leisure for both childhood and manhood”. In this inquiry, he would focus on the collective activities of those involved in the industrial relations, be it unions, workers, or the State regulators, building what would become his contribution to the field of labor studies (CHASSSE, 2017, p.2).

Both the geopolitical and economic factors are intertwined and represented the background for the development of the institutionalist theory, but it was the close relationship between the investigator and the workers that set the tone for how the IR field would propose reforms in labor law and progressive managerial practices inside of the firms. The method of prevention, consequently, is placed in what Commons named “constructive research” (COMMONS, 1913), a “problem-solving approach” to real problems that would become the

main tool of the Wisconsin tradition in their investigations of problems and proposition of policy reform (JOHNSON, 2019).

Constructive research as an alternative investigatory style to address public needs (SELLERS, 1997, p.48), was an approach that prioritized the collection of empirical data aimed at helping public administration. Presented in *Labor and Administration* (COMMONS, 1913), Commons perceived society's call for economists to provide something practical, which however they would have failed to provide (COMMONS, 1913, p.8). Constructive research, consequently, is a "progressive science", that in data collection and investigation provides inputs for the decisions of the administration. It is empirical, "it must go out and find" its objects of study and thoroughly investigates the elements of the problems presented to it (COMMONS, 1913, p.7-13)

In his review of Commons publications from 1900 to 1920, Thomas Kemp summarizes how Commons' investigation method followed the constructive research approach

What we find in this work is a report of economic facts and events. They collectively represent an attempt to understand the set of socially negotiated rules and norms that structure economic activity. His work takes these facts as they are. There is no attempt to impose an outside order on them in the form of behavioral assumptions. Instead, in somewhat clinical terms, the data are allowed to speak for themselves. *This again is Commons' investigational method – to seek out the facts of economic organization, to organize those facts, and to present them so that society might reach better-informed solutions to economic problems* (KEMP, 2022, p. 195 – emphasis added)

The study of data and history made this school an important source of labor history in the United States. As Perlman (1951, p. 58-59) acknowledges, through its "experimentalism", Wisconsin became a "history conscious school".

Indeed, Commons' work relied upon the gathering of data, so his reformism that would characterize this generation of economists in Wisconsin evidence its commitment to real problems and thorough investigation before proposing solutions. In the case of the labor problems, most of his investigations would be directed toward the common practices among the different businesses and how they could contribute to improving the market as a whole. By "saving capitalism" by making companies as good as possible, the constructive research approach would walk with hand with the investigator's capacity to standardize its measurements (COMMONS, 1913) and identify Weberian-influenced ideal types from which one can identify the prevailing practices.

In short, Commons argues the use of an "ethical ideal-type" that holds in it the valuation of reasonability, named interchangeably with "pragmatic idealism", would consider the

“highest attainable idealism of regard for the welfare of others that is found in going concerns under existing circumstances of all kinds, at a given historical stage of development” (COMMONS, 2003b). His is an “investigation of those *above* the average” – seeking to find “good practices” from which the scientist should evaluate and judge how close it brings the transactions of its agents to achieving reasonability and latter can be used to propose minimum standards to the market.

This reasoning is clear in this excerpt from Institutional Economics (vol. 2) in the debate on the ethical ideal type in social investigations

An individual or concern that is “too good” may fail in business, and one that is “too bad” may fail because it is excluded by the then working rules of collective action. But a reasonable idealism is the highest practicable idealism, as shown, not by individual wishes, such as those of Bentham, but by investigation of those institutions that practice it, and yet survive. There are always individuals and concerns above the average, and the problem of social idealism through collective action consists in bringing the “average” and those below the “average” up to the level of those above the average.

It is this ideal type that is perceived in Commons’ *Industrial Goodwill* (1919) where the author presents alternative progressive managerial practices, such as Ford’s case, that by “bold stroke of genius [...] doubled its wages, but nevertheless increased its profits by the mere reduction of labor turnover” (COMMONS, 1919, p.18). The same is true in *Industrial Government* (1921e), where, from the case study of 18 different businesses, the author presents a wide range of types of labor management, “ranging from benevolent autocracy of Ford to the courageous democracy of Filenes” (COMMONS, 1921e, p. 338). This last book proposes is that the is not an “only solution” to the labor problems, and that, by recognizing what these problems are and addressing them by taking the business reality into consideration, that is, the limiting factors that it has to respond to daily (COMMONS, 2003b, p. 138) to assess how reasonable value can be achieved.

In conclusion, the method of constructive research and the investigation of the best practices in the labor market enabled Commons and his followers not only to identify the problems but also to propose legislative reforms (JOHNSON, 2019). By setting minimum standards of reasonable value, the creation of new legislation would be able to broaden the range of reasonable practices throughout the market (KAUFMAN, 2010), improving workers’ welfare and responding to the labor problems that emerged from the constitutive conflicts of asymmetric power transactions.

## 1.5 Final Comments

Far from peace and equilibrium, the XX century represented a period of great changes worldwide in which the violence of the World Wars, the political reconfiguration of Europe and Asia, and the increasing unrest against Big Business pushed a variety of social groups to demand changes and protections for the working people, a mass that was the most affected by the ubiquitous crisis. This was the background for the development of a heterodox approach to economics theorizing, growing in opposition to the perfectly competitive model from which marginal utility and perfect rationality were its core.

Different authors have addressed the characteristics of the reaction movements that took place at the beginning of the century against “the labor problems”, that is, the deleterious effects of the rapid transformations in the production process brought by industrial development. Polanyi’s, for instance, perceived the destructive character of the commodification of the workforce, which grew with a correspondent reaction of counter-movements that spontaneously sought to expand protective policies, even though they were in direct opposition to the bases of perfect-competitive markets. Schumpeter, on the other side, identified the change from the orthodox economic theory as an important movement among academics and economists, that saw in legislation reform the possibility of redistributing the asymmetric powers of the unregulated and ever-changing economic system. Also focusing on the inadequacies of the orthodox perfectly competitive model, Galbraith describes the role of “countervailing powers”, that controlled the power of big business by increasing the power of “the other side” – those affected by monopolist and oligopolist practices.

Although acknowledging the multifaceted characteristics of the OIE and its different authors, this chapter deliberately chose to investigate the features of the “labor branch” of this tradition of economic thought that emerged in the works of John Rogers Commons in his time at the University of Wisconsin-Madison during the first three decades of the XX century. Our main argument is that this school of thought is part of what Schumpeter perceived as “counter-movements” from academics, that in response to the precarious work conditions under big business operations and later in a reaction against revolutionary waves, gave theoretical sense to the counter-movements in opposition to the commodification of labor, by resorting to constructive research and empirical investigation as tools to identify the sources of the labor problems and propose institutional rearrangements in labor laws – reinforcing its reformist character.

So far, the chapter has drawn the lines to what serves as the theoretical bases for the following chapters, mainly clarifying what are the constitutive elements of an institutionalist approach to the labor problems by investigating the transactions between economic agents with asymmetric economic power. What can be perceived, by now, is that the OIR authors saw the employment relationship through a wide



approach where workers, employers, and the State were active actors who could, purposefully, change the working rules governing their daily transactions, aiming at the “just” and humane treatment of labor as a means of solving the labor problems and protecting liberal democracies. We shall now investigate the theoretical elements of the employment relationship and analyze the further effects of the competitive menace.

## CHAPTER 2: THE FIRM AND THE EMPLOYMENT RELATIONSHIP

In the previous chapter, we have concentrated on presenting the Institutionalist tradition of labor economics based at the University of Wisconsin-Madison under the leadership of Professor John R. Commons, acknowledging his undisputable relevance in addressing the labor problems of his days through scientific investigation and fieldwork. Commons and the tradition of labor institutionalists that followed him had a central idea guiding their method of investigating labor unrests and proposing solutions to address them: they recognized humans' capability of altering the working rules of daily transactions aiming at achieving reasonable outcomes from them, in opposition to theories that claimed natural and immutable laws in labor relations happening despite societies' particular characteristics and internal dilemmas.

By focusing on the investigation of the employment relationship, Chapter 2 is divided into two main themes. Firstly, by addressing the debate on the nature of the firm with the Commonsian concept of going concern and its elements of the production of use-value and scarcity value – the going plant and the going business respectively – we discuss the role of efficiency and scarcity under the logic of intangible and incorporeal property, in opposition to physical goods. The theme of incorporeal and intangible property, especially in the possibility of creating wealth out of the restriction of output brings forth a discussion that is common to both Commons and Veblen. However, their conclusions vary when considering the role of the businessman as part of industrial capitalism.

Accordingly, the different transactions between workers and employers participate in the economic process of hiring and applying labor to create use-values encompasses the second part of this chapter. Each of these transactions is formed by scarcity, conflict, interdependence, and order, artificially managed by the working rules of the collective action. To understand the jural relationships that emerged in the employment transactions through an institutionalist approach, we summarize the characteristics of the labor contract based on the legal relations of right, duties, liberty, and exposures as proposed by Commons (1924). Indeed, in the different degrees of interdependence between labor and capital, conflicts emerge. Consequently, conflicts and unrest evidence unreasonable practices sustained by ongoing working rules of the going concerns calling the investigator to act upon it and suggest what Kaufman (2008) called a “social-engineering” of the institutions aiming at reasonability in labor relations.

Finally, by analyzing Commons' seminal work on the evolution of the American shoemaker's industry, we stress the role of competitive menace in driving workers to react to deteriorating work conditions. The case of the American Shoemakers highlights both the

original institutionalists' historical approach to the economic phenomena and the investigation of how changes in the economic environment, in this case, the expansion of the markets, influence the transactions of the agents in that occupation. We conclude the chapter with final considerations about the first part of this dissertation.

## **2.1 The Firm and the Going Concerns**

When investigating the Commonsian approach to the business enterprise, one must account that, for Commons, the modern capitalist firm had as its main objective the “valuation of wealth, whether material [use-values] or immaterial [assets]” (GUEDES, 2019, p.164). Both types of wealth valuation would be treated under articulated and intertwined logics of what commons named the “going concerns”. Defined by Atkinson (2009, p.434) as “a social unit that organizes and controls individuals and directs them toward a common purpose”, the going concern is presented in a wide range of groups, be it a family, a business company, a union, a church, etc. These going concerns, as diverse as they may be presented, share a feature that places them as central groups for the investigation of the role of institutions in the economics phenomena, as they “limit individual discretion but provide a security of expectations because they shape customary and expected behavior” (ATKINSON, 2009, p.438)

When applied to the case of the firm, a going concern would be the grouping of both the physical process of “production and consumption of physical things” and the business process of “buying and selling, borrowing and lending, commanding and obeying, according to shop rules of working rules or laws of the land” (COMMONS, 1924, p.8). The former Commons would name “going plant”, and the latter “going business”, realms, respectively, of the internal technical production process based on efficiency for the creation of use-value and the external relations with markets, finances, and judicial matters (GUEDES, 2019, p.165-166). On the discussion of efficiency and scarcity in Commons work, we should focus our attention before discussing the internal mechanisms of the worker-employer transactions.

### *2.1.1 Debating Efficiency and Scarcity*

The duality of scarcity and efficiency in the activities of the going concern finds its roots in the very controversy between use-value and exchange-value that, while perceived by late investigators such as Marx, did not seem to represent a problem to the classical economists. For Commons, classical theorists had failed to acknowledge the proper place of collective action in

economic thought in its response to conflicts over *scarce* property. But it was towards Smith's inquiries that the author directed his main criticism, in short, against the assumptions of natural abundance and property, and the overlooking of scarcity (COMMONS, 1950, p.89)

Rather than considering scarcity, Commons perceived in Smith's theory a "pre-ordained abundance" behind the sentiments of sympathy and the propensity of barter, trucking, and exchanging which would have sustained his view on the economic phenomena and influenced his reading on the functioning of the markets, impeding him from developing further discussions of the elements of efficiency, since for efficiency to be a matter of investigation, natural and artificial scarcity should both be considered relevant elements in the economic transactions (COMMONS, 1950, p.89; COMMONS, 2003, p.161). According to Commons,

[...] This pre-ordained abundance does not fit the facts of history. Had Smith investigated the growth of the common law in England as expounded by Coke and Blackstone, and had he accepted Hume's principle of Scarcity as the explanation, in place of the current deism of beneficence and abundance, he might have discovered a different consequence of his "faculties of reason and speech." Instead of a divine instinct of mutuality of interests, planted in the breasts of individuals, he would have found that this very mutuality itself was an historic product of collective action in actually creating mutuality of interests out of conflict of interests. Instead of an unseen hand guiding the self-interest of individuals towards general welfare he would have seen the visible hand of the common-law courts, taking over the customs of the time and place, in so far as deemed good, and enforcing these good customs on refractory individuals, in conformity to Hume's "public utility." Within this institutional history of collective action controlling and at the same time liberating and expanding individual action, he would have found the reasons why, in his England of the Eighteenth Century, the human animal had reached the stage where he could say, "This is mine, that is yours; I am willing to give this for that."

Commons placed the conflict of interest for scarcity and the active role of collective action in organizing its main transactions – rather than an adjustment derived from natural predispositions to bargain, as the central elements of economic order. Once again, property is described as an artificial element created by collective action to organize the conflicts of interests based on the customary practices of that society.

It was with Malthus' theory of population and Ricardo's diminishing returns of the land that the distinctions between scarcity and efficiency could be addressed through an alternative approach than that of Smith's natural abundance (COMMONS, 2003, p.348-349). Firstly, Commons sees in Malthus' principle of population – and the differential rates of growth between food production and human natality – the clear adoption of scarcity as means of explaining humans' behavior and moral development. Malthus, he argued, broke "from the older ideas of divine beneficence and earthly abundance which descended from Locke to Quesnay and Smith" (COMMONS, 2003, p.146-247). Consequently, "that which first awakens

the mind in this divine process of moral evolution is the stimulus of wants of the body, for the mind is created only by activity [...] Thus, the divine abundance of Locke, Quesnay, and Smith becomes the divine scarcity of Malthus” (COMMONS, 2003, p. 247)

It is in David Ricardo and later in Karl Marx, however, that Commons perceives the development of a debate on the role of scarcity in the debate of use-value and exchange-value, the last being renamed as scarcity value under the Commonsian interpretation. In his investigation of an objective meaning for value, Ricardo would focus on the quantities of labor used in the production process, stressing nature’s resistance to human labor rather than its freely given abundance. For Commons, this “*labor-cost*” real value “exposed the fallacy that “nature in agriculture is productive”, also refuting this in manufacturing and transportation (COMMONS, 1936, p.263). By pointing out labor as the only productive force, Commons compares Ricardo’s perspective to that of the abundance theorists as follows

If the Physiocrats and Adam Smith were right in identifying nature with a beneficent God, then the deity furnishes wealth gratuitously to some but compels others to work for it. If Ricardo was right, then nature is the physical forces which man strives to own and control for his own purposes, and the differentials are due, not to God, but to the institution of property which gives to some owners protection against taking from them the differential advantages over marginal land to whose ownership others are relegated. What man seeks to own is not the productivity of nature but the differential resistances of nature. This was understood by Karl Marx who made rent a matter of private property and not a result of the productivity of nature (COMMONS, 2003, p.265).

From Ricardo and Marx, Commons would then trace the bases for modern Scientific Management, by understanding the role of productivity and scarcity in the process of production. Commons saw Marx’s theory as expanding Ricardo’s focus on manual labor to encompass also “mental and managerial labor”, that is, “the mental labor of past generations” in modern minds creating tools and machinery to overcome scarcity and direct the labor force (COMMONS, 2003, p.266). In conclusion to this exposition of Ricardo and Marx, Commons differentiates between two kinds of economics, which we shall continue to debate in the next topics: engineering and proprietary economics, pointing out “the two meanings of Human Ability”

Producing power is the mental, managerial, and manual ability which is power to create wealth, but bargaining power is the proprietary ability to withhold products or production pending the negotiations for transfer of ownership of wealth. The one creates use-value, the other determines scarcity-values. Each is human ability in action, and, though inseparable socially, they can be distinguished by analysis or division of labor, and measured separably (COMMONS, 2003, p.267)

A common feature between the theories of the early economists was the inability of perceiving the immaterial aspects of property by focusing exclusively on the material possession and exchange of that which one has a physical control (COMMONS, 2003, p.251). This was the mechanistic meaning of wealth that is treated as the same meaning as property (COMMONS, 1924, p.3-6). However, from the advancement in the concept of property from the possession of physical commodities to their intangible and incorporeal forms, we can get to the difference between use-value and scarcity-value that we have pointed out at the beginning of this topic as a central element in the double character of the going concern, that is, its going plant and going business dimensions. As Commons puts it in his simplified assumptions about scarcity (COMMONS, 1950, p.94-95), the creation of wealth and the managing of assets are correlative aspects of use-value and scarcity-value respectively. The duality is described as follows

“Wealth,” thus distinguished, is increased by increasing the abundance of things useful to mankind, even going so far as to reduce their exchange value to zero, like pure air, the most useful of all. The “assets” of an individual or association of individuals are increased by limiting their supply so that they will have exchange value, or bargaining power, in commanding other things in exchange, and especially, in modern life, commanding “money in exchange” (COMMONS, 2003, p.94)

Consequently, increasing abundance and new wealth are related to the creation of use-value through efficiency in direct conflict with natural scarcity – the relation of man to nature. On the other hand, immaterial property as the case of the court’s definition of property is related to the business’s ability to make money through the deliberate decisions of limiting the supply of production. – these are the expressions of the producing power and bargaining power respectively. The use-value, as the creation and use of goods, would be “measured by physical units of tons, yards, bushels”, in direct relation to quantities as a demonstration of efficiency. And scarcity-value, on the other hand, “are the prices of goods, and these are measured by the scarcity unity, the dollar” (COMMONS, 2003, p.212), it is not its usefulness that is measured in dollars, but the scarcity effects of the decision to restrict its supply.

This difference between producing power and bargaining power considering the immateriality of property that goes beyond the production of new wealth as a prerequisite for valuation of the property by acknowledging scarcity is the bases for the understanding of the going concern as the sum of going plant and the going business. For this, there are limiting and complementary factors that give sense to the going concern’s actions. This we shall discuss now.

### *2.1.2 Going Plant and Going Business: the Commonsian Transactions*

The literature in institutional economics seems to be settled in the recognition of the role played by transactions in the Commonsian framework for the study of the economic phenomena and, indeed, Commons himself managed to clarify that his was a transactional theory in which the collective action, rather than the individual, by “two or more wills giving, taking, persuading, coercing, defrauding, commanding, obeying, competing, governing, in a world of scarcity, mechanisms and rules of conduct” (COMMONS, 1924, p.7), would be the fundamental unit of investigation of how society organized itself.

By these rules of conduct, or the working rules of the going concerns, Commons denied any form of natural order or “unconscious cooperation induced by the exchange system” (RAMSTAD, 2001), evidencing the fact that individual interactions are themselves directed by collective action’s institutionalized practices. But why are institutions as the “collective action in control of individual action” (COMMONS, 2003) so fundamental to Commons’ theory? As simple as Commons’ answer may be, his denial of self-organizing order originates from his perception that individuals are endowed with different purposes and interests, and rather than a predictable behavior toward equilibrium and welfare when let to act alone, people act differently from each other. Thus, “institutions arise just because people do not act alike. They arise from the conflicts of interest”, consequently “only when individuals are compelled by concerted action of others to act alike does their similarity of action become an institution” (COMMONS, Evaluating Institutions [...], sd, p.1)

Ramstad (2001) best captured the organizing role of the working rules in the different going concerns when he argued that

In Commons’ understanding, then, working rules are indispensable to the orderly operation of a concern. By establishing the rights, duties, liabilities, and exposures of the different economic classes within each concern, working rules guide and restrain—that is, correlate the actions of its “citizens” as they attempt to secure an income and acquire commodities over which they can exercise control. Commons perceived that unless such compulsory rules are in place, ones it can be presumed will be enforced in the future, individuals will lack security of expectations and therefore be unwilling to voluntarily enter into transactions with one another. Significantly, since they spell out in a general sense how the burdens of production will fall on members of different classes and how the benefits of their joint undertaking are to be distributed among them, Commons maintained that working rules reflect an “authoritative apportioning of inducements.”

The establishment of “rights, duties, liabilities, and exposures” is also expressed in terms of “performance, avoidance, forbearance by individuals” and “Security, Conformity,

Liberty, and Exposure” defining what people “can, cannot, must, must not, may, or may not do” (COMMONS, 2003, p.70-71). They grant the security of expectation by the repetition of transactions dealing with a set of complementary and limiting factors, among which is the wide range of possible behaviors that otherwise would menace the going concern to keep its processes functioning (COMMONS, 2003, p.58)

An important distinction to be addressed is the different kinds of transactions perceived by Commons in the capitalist transactions, those are bargaining, managerial, and rationing transactions. What these three transactions have in common is the abandonment of the definition of a transaction as the mere transference of physical exchange of goods between different agents, and the recognition of intangible and incorporeal property, from which new wealth could be created and its rights distributed among individuals. Each of these is summarized by Commons (1950, p.43) as follows: Bargaining transactions would encompass the transference of property rights over corporal property and the immaterial wealth of bonds and stocks. Managerial transactions would produce wealth through command and obedience between a legal superior and a legal inferior. Rationing transactions, in their turn, would distribute wealth and property rights through collective decisions of boards and governments.

Accordingly, when looking at the daily actions of individuals, Commons highlights the role of strategic and routine transactions in describing how the mind responds to the environment surrounding daily activities. For that, the concept of habitual assumptions, the customs from the collective action that gains centrality in how one thinks and acts, is used to understand humans’ response to changes. That is, the repetition of transactions organized by the working rules of the going concern institutionalizes the minds of those subject to it, in a way that every action “is taken for granted so that they pay no attention to them except when some limiting factor emerges and goes contrary to what they were habitually expecting” (COMMONS, 2003b, p.58). Consequently, the mind works both with habitual and unexpected situations, responding to them with routine and strategic transactions. So that

In general, the habitual assumptions are fitted to the complementary factors, or routine transactions, of his environment, while the intellectual activity is concerning itself with the limiting factors or strategic transactions. If the factors are continually changing, then the intellect must be lively to control the strategic ones (Ibid., p. 58)

The complementary factors, then, are related to routine transactions, that the repetition creates the security of expectation and defines those practices that, by the habitual assumptions transferred to them by the working rules of a going concern, are deemed adequate for its daily



and customary actions. The limiting factors, on the other hand, are those that emerged from the changes in economic conditions and the environment from which the customary practices of the routine transactions may not be adequate to address. Consequently, as Rutherford (in COMMONS, 2003) argued, strategic transactions are at the center of Commons' attention to institutional change, for they highlight how, in face of changes, individuals tend to organize and respond to them, considering those practices that are reasonable to their customary working rules, and may be selected to respond to new conditions.

Going back to the going concern as a firm formed by both going plant and going business, Commons argues

It is the distinction (which we have found also to be confused by the courts), between the going plant and the going business, which, working together in the larger range of limiting and complementary factors, constitute the going concern of a single enterprise or even of a whole nation. The best going plant is one where the technological factors are rightly proportioned by managerial transactions; the best going business is one where the purchases and sales are rightly proportioned by bargaining transactions; the best going concern is one where technology and business are rightly proportioned (Commons, 2003, p.634)

As a result, all transactions occur concomitantly in the operations of the going concern in its processes of wealth valuation through production and scarcity values, in its going plant and going business respectively. Through rationing transactions, the boards of managers and trustees direct the distribution of wealth by establishing the working rules governing the transactions inside of the going concern. The managerial transactions, on the other hand, guide the production of wealth through command and control, having efficiency as its motto, controlling workers' discretionary powers towards the objectives of the going concern. With the working rules of rationing and managerial transactions, the individuals who are part of the going concern deal with complementary and limiting factors. Bargaining transactions, on the other hand, occur in the concerns' capability of restricting output thus creating scarcity-value. In the end, the question is how to "balance among the three in the process of economic activity" (COMMONS, 1950, p.44).

### *2.1.3. Going Plant as part of the Producing Organization*

As Kaufman (2010, p.92) puts it, the original industrial relations theorists took the firm as governance structures, marked not by the efficient allocation of production factors or any aspects of democracy and fairness, but by "positive transaction cost, imperfect labor markets,

and the legal power given to employers to determine unilaterally how they manage their business". The fact that the distribution of wealth and property rights results in asymmetric economic powers between the different actors involved in a transaction expands its influence on the firm's internal logic of production. As Atkinson (2009) argues, a Commonsian debate on the business enterprise must consider the role of both the organization and the artificial scarcity in promoting efficiency and, consequently, higher profits. For the author, "organization creates goodwill for the firm and can lift the firm above its competition. Encouraging firms to pursue better organization should be an objective of public policy" (ATKINSON, 2009, p.434), rather than following the path of reducing wages and working conditions.

A question that should be addressed is whether the internal organization is a matter of going plant, or it is part of the going business. Indeed, Commons' approach to the capitalist firm is related to industrial concerns in which the interaction between man-nature was evidenced in the machinery and the physical plant of the big corporation. However, as already discussed above, the author's approach to economic science was increasingly more concerned with the transactions involving the actors inside of the going concern and less with the material aspects of the going plant. Consequently, when dealing with scarcity, the labor force is the producing organization operating the going plant and its machines; thus, organization through managerial transactions is a central point of the firm. On this point, Commons (1924, p.206) argued

The plant itself is the forces of nature proportioned according to the qualities, supply and prices of each force; the producing organization is the human forces proportioned according to the supply and prices of their physical, mental and managerial faculties. The business man takes pride in his plan and in his organization. His "good organization" is a good proportioning of nature's forces. The two are inseparable. The going plant is "a dead structure" without the producing organization. The producing organization is fruitless without the going plant.

Whether in the form of an industrial concern or as a modern digital platform, as shall be the interest of our investigation in the next chapters, or with the use of its capital or the outsourcing of workers' instruments, firms would overcome scarcity through the mechanism of control in the management of their available labor force. Consequently, the going business indeed works with command and obedience by rationing transactions to define the working rules of the workplace, but the going plant is also part of the transactional structure of the concern, it is a creative relation of man to nature, but its logic is how command and obedience can overcome scarcity to produce new wealth.

By selecting the transactions as the central unit of analysis in economic relations, for they could reveal the institutions behind the different behaviors of the economic agents, it would become clear that the differences in economic and political powers possessed by each party in a transaction could have a profound effect over the capacity of having their interests represented. For the need for an investigation of the transactions, Commons (2003, p.118) summarized

In every economic transaction there is a Conflict of Interests because each participant is trying to get as much and give as little as possible. Yet nobody can live or prosper except by Dependence on what others do in managerial, bargaining, and rationing transactions. Hence, they must come to a working agreement, and, since such agreements are not always possible voluntarily, there always has been some form of collective compulsion to decide disputes. If these decisions are accepted as precedents and are conformed to as a matter of course in succeeding transactions, then the deciding authority need not intervene and does not usually intervene unless the conflict again reaches the crisis of a dispute between plaintiff and defendant. This process we name the Common-Law Method of Making Law by Deciding Disputes. To the entire process we give the name, Working Rules of Going Concerns, the purpose of which is to bring Order out of Conflict.

The failure of interest representation would lead to solely coercion-based relationships, meaning the absence of options and opportunities for one of the parties. This lack of alternatives is related to the asymmetry between bargaining powers, which, in its turn, is defined by Commons (1924) as the “power to withhold” from deciding while the terms of the transaction do not meet their interests. Consequently, we may argue, as others have already done (KAUFMAN, 2005), that the asymmetry of bargaining power and the predominance of coercion over persuasion are directly responsible for unreasonable transactions, and that the unrests in labor relations are a problem of interest representation.

The fact that Scientific administration was part of Commons' critique of the methods of labor-management that disregarded the elements of industrial democracy and reasonability is related to the author's debate on managerial transactions. Characterized by a relation of hierarchy and the negotiational behavior of command and obedience, the managerial transaction was the expression of the relations between capital and labor in the in-firm daily interactions, which, in the end, had the objective of producing wealth. The direction is given by managers and commissioners to organize the workers operating machines, establish new practices of production, the do's and do not's materialize in the internal rules, and represented the setting of working rules, not by collective representation, but by collective representation a superior legal power.

These working rules of the workplace are collectively constructed by the experience and practice of those who are directly engaged in the production process. In their daily social interactions (man to man) and material (man to nature), workers develop habits and costumes in response to their environment and the conflicts that may arise in it, with, in their turn, pass on from generation to new generations of employees. Workers who are constantly exposed to their tasks become experts, meaning that, they achieve the fundamental skills required for that activity. At the same time, those working rules designed by workers are shaped and supplemented by the company's definitions of what and how production should be conducted, rules expressed in official contracts, and codes of conduct.

As Commons argued (1924), the firm, as a going concern, is a collective will in action, which is to say that, it is not the amalgamation of all wills as if they could be reduced to a representative agent, but it is a living organism that, even though it has a clear shared objective of wealth production of goods and services, it is formed by different wills whose individuals are directed by common working rules, but still have discretionary powers by exerting their liberty and exploring opportunities. Consequently, workers and employers are both setting working rules, and exercising their will in the daily managerial transactions, but the latter has the legal right of expected obedience from the former, with the liberty of dismissing workers at will in case of disagreement with the rules of the firm.

Our central argument is, consequently, that the study of the firm using the Commonsian concept of going concern and its going plant and going business realms is, in the end, the investigation of how the individuals inside of it organize towards the purpose of wealth valuation considering their asymmetric conditions. It is a transactional perspective, summarized by Bazzoli and Dutraive (2002, p.34), "the interest of institutionalists for the firm is part of a more general analysis of the springs of the evolution of capitalism, which implies adopting a historical approach in which the crucial question is that of the articulation levels of analysis, i.e. the complex interactions between the individual and the collective".

#### *2.1.4 Veblen and Commons on Intangible Wealth*

As it has been discussed, the inadequacies of the orthodox theory in addressing the economic conflicts in the early decades of the twentieth century were the basis for the development of the OIE as a heterodox approach in the United States. Nevertheless, as it is clear in the institutionalist literature, the different "original" authors may follow different approaches to the economic phenomena that impose challenges to defining the OIE as a

cohesive school of thought and finding common denominators between the original institutionalists (RAMSTAD, 1981). In this topic, however, we briefly address a shared theme between Commons and Veblen's view on the big industry and the role played by management in handling scarcity and efficiency in the process of production of wealth. Their conclusions on this matter point out in different directions and end up in the proposal of divergent solutions to the economic problems of the industries.

The establishment of the big corporation and the monopoly of economic power in the hands of a few giant enterprises was a central debate in the first decades of the 1900s when the deleterious effects of the liberal policies of free markets were perceived as one of the main reasons for the labor problems of that time (GALBRAITH, 2004; GUEDES, 2019). Commons and Veblen, both the main OIE authors addressed this matter and criticized the organization of the modern forms of industry. There are, however, important differences between the way these two authors observed the role of the businessman in dealing with intangible capital, that is, capital that has no direct physical counterpart over which wealth is valued. It is different from incorporeal wealth - the promise of future payment of a debt that happens in the present – for it represents the opportunity of future income enabled by the property rights of the thing owned.

Commons saw in the different definitions of wealth a difference between two areas: engineering economics and institutional economics (COMMONS, 2003). The first, which is the relation of man to nature, understands wealth as “the physical attributes of use-values”, it is not a matter of ownership but production and efficiency. Institutional economics, on the other hand, “is the relation of man to man”, it investigates “the *sharing* of that output and the *inducements* that keep the concern agoing”, considering the aspects of the proprietary economy behind it (COMMONS, 2003, p.256). The engineering economy, however, does not act at will to produce maximum output, for at the same time that production increases use-value, it decreases proprietary value (COMMONS, 2003, p.256). Here is the difference between engineers and businessmen: “engineering economy increases output regardless of its money value on the markets. Business economy restricts and regulates the quantity produced in order to maintain or augment its money value.” (COMMONS, 2003, p.286)

Following the debate of intangible property, The study of industry and the role of the businessman is found in Veblen's *The Theory of the Business Enterprise* (1904) in which the capitalist system is divided into two main processes: the machine process based on the instinct of workmanship to produce goods through efficiency and seek “serviceability for the needs of mankind” (VEBLEN, 1904, p.51); and the business principles, which is the ability to make money from pecuniary transactions of buying and selling, or by wasteful expenditure seeking

to augment goodwill without the production of new wealth. One of Veblen's main points is the role of advertisements in creating monopolistic positions while not adding "serviceability of output" (VEBLEN, 1904, p.55). From Veblen's perspective, the problem of industry would be that the machine process was under the control of the businessman whose interests were in direct opposition to those of the production plant. As a result, "a persistent excess of parasitic and wasteful efforts over productive industry must bring on a decline" (VEBLEN, 1904, p.64) – the "natural decay of business enterprise.

Consequently, both Veblen and Commons would recognize the existence of intangible property and the capacity for a businessman to make money out of restricting output, this is perceived by Tsukamoto (2020) as a constitutive dichotomy between productions and business present not only in Commons and Veblen but also in Mitchell. However, while in Veblen we find a pessimistic interpretation of the frictions between the machine process and business transactions, in Commons the dichotomy between going plant and going business is part of the author's investigation of how reasonable transactions can be achieved in the going concern.

For Commons, their conclusions were different due to the source of their data in their investigation, for

Veblen obtained his case material from the testimony of financial magnates before the United States Industrial Commission of 1900, so that his notion of intangible property ended in the Marxian extortion and exploitation. But my sources were my participation in collective action, in drafting bills, and my necessary study, during these participations, of the decisions of the Supreme Court covering the period; so that my notion of intangible property ends in the common-law notion of reasonable value (COMMONS, 2003, p.4)

By placing reasonable value as the framework to assess the transactions between the production of wealth and the production of revenue through the restriction of output (scarcity-value) he meant "the joint valuations and agreements for action in situations involving genuine conflicts of interest" (PARSONS, 1942). That is, he saw in this conflict a way of achieving a middle ground instead of condemning the scarcity-value of assets as sought by businessmen. But to do so, Commons first had to present his ideas on the role of the businessmen providing to society, and this role is described by him (Commons, 2003, p.157-159) as the regulation of production.

Why would production need to be restricted? Commons' answer is related to the prices and the mobility of capital.

If the engineer, as such, goes on producing independently without regard to falling prices, the business man, who is always in control of the engineer, gives orders to restrict the output of that commodity, and turns, if he can, to the production of other commodities whose prices are not falling [...] This is indeed a service to society, *if it is well done* (COMMONS, 2003, p.258)

Consequently, efficiency and scarcity comprise all three Commonsian transactions (bargaining, managerial, and rationing) and institutional economics takes place in investigating the conflicts in the intangible and incorporeal wealth in modern capitalism. It would not be through any sort of revolution that the distinction between these two elements of production would be addressed but by reasonable value in the regulation of asymmetric powers between the agents here involved. Turning back to a quote that has already been presented in chapter one, “Industry cannot be efficiently managed on the basis of popular election of the boss. Efficient managers are self-made in the struggle for profits” (COMMONS, 1921c). The search for profits is, thus, legitimate, even though scarcity-driven practices. However, legislation and collective bargaining are means of controlling the power of these businessmen and leading to its reasonable proportioning and that was what Commons perceived as a possibility from his investigation of the court decisions.

## **2.2 Commonsian Transactions in the Employment Relationship**

With transactions meaning the interaction between different wills dealing with the scarce nature of the property and the consequent creation of rights and duties - opportunities and exposures, Commons dedicated a whole chapter of his *Legal Foundations of Capitalism* (1924) to describe the particularities of the transactions involved in the employment relationship<sup>2</sup>. For the purposes of this topic, it is important to remember that transactions operate under a set of working rules enforced by the collective action, aiming at bringing order out of conflict by the sanctions of the Sovereignty or authoritative power of the going concern. The fact that the participants of a transaction can call on the support of the collective action to enforce a behavior from the other party under the terms of the contract is an essential requirement to secure their expectations.

What would be the expected behavior present in the employment relationship? The central element in this debate is that, in the process of hiring and managing the labor force, labor is not bound to any right on the side of the employer to keep working against his will, for that would be characterized as unwilling servitude from which citizens were protected by the

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<sup>2</sup> Chapter VIII: The Wage Bargain – Industrialism.

constitutional rights<sup>3</sup>. Thus, Commons argues that the employment relationship is not to be treated as the transference of physical goods from labor (his body) to capital, but as the selling of a worker's "*willingness* to use his faculties according to a purpose that has been pointed out to him". He sells his promise to obey commands. He sells his goodwill" (Commons 1924, p.284).

The very constitutional ruling against slavery and unwilling servitude makes workers promise to obey commands a weak guarantee of their future behavior towards their employer in modern capitalism<sup>4</sup>, in the same manner, that the latter could not promise to keep the worker in his going plant. Consequently, contrary to other transactions of buying and selling, where the mutual agreement on a price lead to the creation of duties and rights enforced by the collective action over the promises made, Commons (1924, p.284-285) argues that

the free laborer is employed at will-no obligation arises on the part of the employer to keep him, and no obligation on the part of the laborer to continue at work. Under no ordinary circumstance can the laborer be enjoined from quitting work: nor the employer from dismissing him. And, under no ordinary circumstances can either obtain damages for failure to fulfill his promise. The labor contract therefore is not a contract, it is a continuing implied *renewal* of contracts at every minute and hour, based on the continuance of what is deemed, on the employer's side, to be satisfactory service, and, on the laborer's side, what is deemed to be satisfactory conditions and compensation

By acknowledging a daily renewal of the employment contract, Commons evidences the permanent conflict relationship between capital and labor, where the security of the job is not guaranteed but is related to conditions of the labor market and by the practices of labor-management conducted by the firm. What is meant by the conditions of the labor market is the exposure of the worker to the competition of his fellows who are unemployed (Ibid. 286). This is the base for the 'commodity theory of labor' (Commons 1919) and the treatment of the labor force as production factors proportioned by the ingenious hands of the businessman to maximize production. Treated as a commodity, "demand and supply determine wages [...] If labor is scarce, wages will go up. If labor is abundant, wages will go down" (Commons, 1919,

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<sup>3</sup> The 13th Amendment to the U. S. Constitution, one of the results of the Civil War, defines that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

<sup>4</sup> We cannot overlook, however, the fact that by prohibiting slavery and unwilling servitude in the country *except as a punishment for a crime*, the 13<sup>th</sup> amendment to the U.S. Constitution is deemed today to have opened the way for a 'neo-slavery' (BLACKMON, 2008), characterized by a long history of mass incarceration of the black-American population and the use of inmates' free labor in private corporations through the prison system. See more in 13<sup>th</sup>: *From slave to criminal with one amendment* (Ava Duvernay – Netflix Documentary).



p.5), strikes and pickets would not be a problem for cheap work could be found to substitute the commodity in use.

The relationship between capital and labor is described in the following **Table 1** based on Commons' (1924) description of the employment contract. In it, a worker's labor is treated under the concepts of immaterial wealth rather than his physical properties. As incorporeal property, workers' labor is expressed by their wagers and the legal right of getting paid, as opposed to the duty of paying on the side of the employer, for what one has produced in accordance with a previous agreement, whether on time spent or pieces-rate. Workers' goodwill is their property, from which they can restrict capital's access to their full capacities; it is not material, but incorporeal, based on the expectations of future transactions and directed by management. The intangible side of this relationship, on the other hand, recognizes the looseness of the employment contract in terms of the renewal of the transactions. Both workers and capital are at liberty of changing the status of their relationship by quitting or firing, with no duty on either side to keep engaging in this transaction – an encumbrance on the other part's liberty of exerting their will.

**TABLE 1 – The immaterial nature of the labor contract**

Property	Relation	Meaning	Expression
Incorporeal	Rights and Duties	Goodwill as an investment: the worker is paid in accordance with his accrual of use-value to the employers' product (by agreements or average compensation) Collective action enforces payments (duty to pay, right to get paid)	Wages
Intangible	Liberty and Exposure	None of the parties can impose encumbrances on the liberty of the other or require that the relationship continues with the aid of collective action.	Daily Contract

**Source:** Elaborated by the author based on Commons 1924.

A result of the incorporeal and intangible characteristics of the labor contract is the evident asymmetric bargaining power – the power to withhold one's property from the other – between capital and labor. For Commons, when treated as commodities and machines, these transactions are constituted by a 'unilateral dependence' (BARBASH, 1989) where the concept of individual bargaining would be erroneous (COMMONS; ANDREWS, 1936). As opposed to a competitive market where individuals would adjust their income requirements to lower levels and unemployment would not be a permanent threat to maintaining their living, there would be

a continuous state of insecurity for those who, in bigger numbers, were exposed to the liberty of the other to discontinue the daily labor contract.

The consequence of the dehumanization through the commoditization of labor was a problem to be addressed by the institutionalists following the Commonsian traditions. However, Commons did not do it by denying the commodity or the machinery theory of labor but by claiming their incompleteness and the failure of modern capitalism to recognize the role of workers' goodwill and progressive management to improve work conditions (COMMONS, 1919) and the interdependent nature of the employment relationship in labor's goodwill as part of both workers' and employers' property (COMMONS, 1924).

Consequently, the discussion goes back to investigating the industries and markets and identifying high-level practices of labor-management whose methods of organizing their managerial transactions prove to be reasonable, not only in terms of efficient production, but also in guaranteeing workers better work conditions, wages, and security of expectation, as had been the case of Ford's wage increases in the early 1910s (COMMONS, 1919). The method of constructive research and the use of ideal types to assess the past and current practices in an industry are then adopted to provide insights into reform proposals in legislation setting basic standards for industrial practices based on real experiences and pointing out new practices.

### **2.3 Competitive Menace and Precarity**

From what has been said in the previous topics, the investigation of the employment relationship's constitutive conflicts deals with an ongoing process in which the working rules of the going concern regulate the customary practices deemed as reasonable to achieving its internal purposes of production and profits. The managerial and organizational practices adopted to direct the going plant reflect the attitudes of capital towards labor, where labor's goodwill may or may not be taken into consideration. There is, however, a central discussion that must be addressed if one is to propose an analysis of labor relations and workers' response to conflicts: the changing conditions of the market and its effects on the labor force. For this matter, we shall concentrate on Commons' reading on the case of the American shoemakers (Commons, 1909), investigating how the author perceived these changes and understood their effects on labor conditions.

John R.'s account of the *American Shoemakers: 1648 to 1895* was published both in the *Quarterly Journal of Economics* (COMMONS, 1909) and in his *Labor and Administration* (1921), and its conclusions also served as inputs for his public speeches (Commons, 1916).

Constructed over historical data as the bases for its exposition, the paper represents the Commonsian-fashion approach to history as the starting point for the investigation of the industries, a fact that is also clear in his treatment of the history of the decisions of the courts of law in defining the Legal Foundations of Capitalism (1924). As Chasse (1983, p.764) argued, the paper was the “major theoretical result of his [Commons] historical research”. This high esteem for history was stressed by Perlman (1951, p.59) for whom “Professor Commons has reconstructed, after the manner of the paleontologist, the sequence of industrial stages [in the American Shoemaker]. But the material is wider than the mere economic data; it is, in fact, the whole stream of American history, notably the ideological factors”.

When writing this “whole stream of American history”, Commons thoroughly describes the expansion of the shoemakers’ markets and the effects of a wider competition over wages, work conditions, and labor organization. This investigation was of particular importance to Commons’ work in his efforts to highlight the role of institutions and the transactions between economic agents in the history of economic thought, the main objective of his *Institutional Economics: its place in political economy* (2003). Thus, before advancing in the discussion of this specific paper, it is of use for this topic to address some of the elements of the classical school that will be contrasted to Commons' work in the following pages.

The classical economists, in the figure of Adam Smith and David Ricardo, wrote their pioneer contributions to the study of economics in response to Mercantilist policies that would enforce protectionist laws for trade, granting monopolistic privileges to specific activities while restricting others to exercise free trade and access to foreign markets. Consequently, the defense of economic liberty and trade would be central elements in their critics of mercantilism (MATTOS, 2007).

It is in Smith’s *Wealth of Nations* (1952) that one of his most famous accounts of the benefits of the expansion of markets and competition to the production of wealth is described. When discussing his basic assumption of humans’ propensity to truck, barter, and exchange, Smith established the notion of division of labor as “the greatest improvement in the productive powers of labor” (SMITH, 1952, p.3). The benefits generated by divisions of labor would then be found in the: (i) increasing of worker’s dexterity and quantity of work performed; (ii) saving of time; and (iii) developing of new technology for production (Ibid., p.4-5). However, a further explanation of this propensity to exchange that would separate humans from other animals is deliberately set aside, since, as Smith’s argued, “it belongs not to our present subject of inquiry” (Ibid., p.7).

Following his exposition on the creative capacities of the division of labor, the extent of the market is then presented as the one capable of limiting, but also expanding the range of this division (Ibid., pp-8-10). By presenting the cases of the coastal nations and their early economic dominance in comparison to inland territories through a better capacity of disposing its products and accessing new markets through water transport modes, the role of market extension and expansion is set as fundamental and beneficial to achieving higher levels of labor specialization and, therefore, more production of wealth following the classical model.

Commons directly criticized Smith's chapter 2 presented in the previous paragraph and set the roots of his divergence that would also result in the different approaches to market changes between his theory and the one in the classical schools of thought. Consequently, in the same manner that Polanyi (2001) denied the propensity to truck and barter as natural elements of human relations, Commons saw in the institutions of the collective action the explanation of human behavior – consequently, no economic agent left alone would naturally develop a market through natural instincts, but it was the accepted practices of the collective action and the evolution of the notions of property that enabled its conceiving.

Symmetrically, both Classical economists and Commons would propose an exposition on the consequences of the expansion of markets over the general welfare, however, we see in the latter a complete inquiry on the effects of such expansion pointing out the menaces of competition to the work conditions in a particular industry. We now concentrate on Commons work.

In his study of the evolution of the shoemakers' industry, Commons selected the role of the expansion of markets instead of technological progress as the driving force for industrial change (COMMONS, 1916). Indeed, his interest was less in the producing capacity of the going plants and more in the shifts in bargaining power resulting from changes in the market that changed the status of interdependence between the agents involved in the transaction and could also menace labor conditions because of less bargaining power. For him, "the evolution of the industry is the evolution of bargaining power, and this is the evolution of intangible capital" (COMMONS, 1916, p.1).

By analyzing available data from eight different organizations from 1648 to 1895 in the United States, Commons was able to investigate how the changing economic conditions in growing markets shaped this industry, especially in the way the actors involved in their daily transactions were organized (COMMONS, 1916). However, as pointed out before, Commons would highlight not the role played by technological advancements in this industry, but the frictions arising out of the conflicts of interest between each economic agent involved in the

shoemaking process and the way these actors would organize to protect their economic position in face of changes. In summary,

Each of these organizations stands for a definite stage in industrial evolution from the primitive itinerant cobbler to the modern factory; each represents an *internal contention over the distribution of wealth provoked by external conditions of marketing or production*; each was productive of written documents preserving to us the *types of social organization that struggled for adaptation to the evolving economic series* (COMMONS, 1916, p. 40 – our italic)

But how did these economic changes come into being in the shoemakers' market? The underlying element behind Commons' reading is the way the expansion of the markets increased competition forcing prices and wages to decrease. Internally, the very organization in the industry of shoemakers changed to adapt to the growing demand and the pressure of lower costs in the market. Hence, Commons saw this movement in three different stages: the custom order, the retail shop, and finally the wholesale order.

Three main readings of the case of the Shoemakers are of use for the purposes of our investigation and their arguments shall be addressed in this in the following paragraphs.

The first is found in Glen Atkinson (2004), who saw in Commons' exposition of the shoemakers and the menaces of competition "a complete theory of free markets for labor". Following the reasoning of comparing Commons' American Shoemakers to the classical school exposition, Atkinson (2004, p.48) argued that "They [classical economists] failed to foresee the downside caused by the menace of the marginal producer", while "Commons found that unregulated competition would menace many workers and lead to low waged and sweatshop working conditions". In this sense, the precarity of work conditions would be a direct result of the lack of regulation and workers' protection against the deleterious effects of competition.

From our reading of the *American Shoemaker*, however, we would partially agree with Atkinson's conclusions described above. Indeed, the competition was the source of the changes in the work conditions of the shoemaker's industry, yet Commons' emphasis is more on the frictions of the expanding market with the working rules of the business and the protective response of the workers who are thrown in sweat-shop conditions than on the description of a free market. The very conditions of production and distribution were transformed, but it happened throughout a time frame of about 250 years of institutional change and collective responses. Competition is an institutional-transforming element, a place usually relegated to technological shifts.

The second contribution to the interpretation of Commons' Shoemakers is found in Guedes (2015), for whom the central point is that the changing markets resulted in a disruptive effect on labor relations, emphasizing workers' protective reaction to the deteriorating effects of competition through organizing in self-defense institutions.

By using the American Shoemaker paper to investigate the similarities between the institutionalist school of economics and the Marxist reading of history, Guedes (2015) could summarize in three points how Commons' theory differs from the orthodox approaches as follows. Firstly, the formal mathematical reasoning is substituted by empirical historical sources of information – laws, courts decisions, data on strikes, and interviews with workers were Commons sources for his writings. Secondly, he denied any self-regulatory nature of the industry, instead, historical processes and different kinds of governance structures are perceived considering the context in which they emerge. Finally, and here we reproduce Guedes' complete account, “[Commons] approaches the industry from a dynamic perspective, tracking processes evolutionary changes that produce quantitative and qualitative changes, having as axis the restructurings in labor relations brought about by changes in conditions and market dimensions” (GUEDES, 2015, p.4)

Finally, the third contribution to the interpretation is found in McIntyre and Ramstad's (2004) debate on the Sweat Systems and on how unregulated competition and the lack of labor protection led to a social distancing relationship between workers and employers deteriorating workers' basic conditions. This perspective is particularly important to highlight the changes in status between the artisan, businessman, and clients throughout the years of the evolution of the industry. By doing so, McIntyre and Ramstad present the sweatshop systems from a relational perspective where the ties between capital and labor are hidden.

In summary, these three approaches allow us to investigate how changes in markets and competition affect ongoing transactions creating conflict, what kinds of transformations occur inside of the firm and the employment relations, and how do workers react in response to the menaces of competition over wages and work conditions.

Commons' view on the evolution of the shoemaker's industries resulted in a historical description of how growing competition pressure wages and labor conditions to low levels, forcing workers to seek protection collectively through unions in response to their lack of bargaining power when acting individually. The author's reasoning over these changes in the market was based upon the changing bargaining power to define the production output, the bargaining of the price charged for production, and most of all, the conflict for the shares of the production – a transaction defining who gets what from final production.

The author's approach to the relationship between workers, capital, contractors, and clients, whether in a formal employment contract or the informal practices of sweat systems, stresses the notions of interdependence and bargaining power. That is, workers when dealt with as commodities and machines, are subject to a unilateral dependence on their superiors, and entire industries may grow over the use of this fragile workforce, whose activities are based on insecure contracts and unreasonable managerial practices – the very sources of labor's unrests.

## **2.4 Final Comments**

Chapters 1 and 2 have concentrated on presenting the institutionalist perspective on the labor problems from a Commonsian perspective which has in the transactions its ultimate unit of analysis of the economic phenomena. John R. Commons and his problem-solving pragmatic approach were placed in a context where both liberal economic policies and the theory behind them were in question amid their decline with the world wars and the rising unrest around the globe in the early twentieth century. From the Progressive Era to the New Deal, the United States experienced the creation of legislation protecting workers in their asymmetric relationship with capital enabling the strengthening of protective powers against the position of unregulated big businesses. Commons prolific work can be perceived as central in these efforts to transform ongoing institutions and to give theoretical sense to its rationing.

The idea of a self-regulated market where perfect competition and the price mechanism would organize the economic relations was one of the central principles under attack by the American institutionalists, especially Commons in his particular interest in the institutions as an organizing factor of the social and economic relations. Consequently, by stressing the role of collective action in the daily transactions of labor relations, he pointed out the inadequateness of the commodity and the machinery theory of labor as means of explaining the order in the markets. The conflicts between capital and labor and the failure of modern capitalism to address the sources of the unrest would menace the very economic system. The restoration of humane treatment of the labor force as opposed to their commoditization would cause frictions against the very logic of the perfect competition system whose ubiquity in decision-making policies impeded its questioning.

In this chapter, we have argued that Commons proposed a totalizing description of the capitalist firm, enabling its investigation from a transactional perspective in which both the product and business spheres of industry are addressed as constitutive parts of modern capitalism. In Commons, an optimistic view on the role of the businessman is presented,

following his constructive approach to ethical ideal types, among which examples like Ford evidenced the benefits of management and administration to promote production. This happens, precisely, in the context of the Russian revolution and the growing unrest against big business in the United States, calling the institutionalists and their reformism to investigate these problems and propose reasonable solutions where the asymmetric economic powers could achieve a middle ground.

By acknowledging laborers' property as incorporeal and intangible thus related to expectations and futurity, Commons perceived the class struggle as the conflict of interests for scarcity, addressed properly by the investigation of the capitalist bargaining, managerial, and rationing transactions. Accordingly, these transactions defining how wealth and the rights of property are created and distributed could evidence the working rules ordering the economic conflicts and expose rules to be changed. The approach to the labor problems would then go through the aspects affecting workers' security off expectations towards the maintenance of their position, work conditions, and wages, assessing the working rules guiding these relations.

From Commons' theory to the constructive research approach followed by his students, a genuine commitment to improving work conditions and alleviating the life of the labor force in their communities is evidenced. The American Shoemaker proves how the investigation of the markets can provide the bases to understand the effects of competition, the race to the bottom cut of costs as the menaces to the workforce, highlighting the organic responses from workers against precarity of work conditions. All of these, considering the particularities of this occupation made the Shoemakers a revolutionary category in the history of labor in the United States.

In their search for order out of conflicts of interest through institutional reform, democratic mechanisms of collective representation and progressive management are key points to understand the Commonsian institutionalist ideas. Consequently, we argue that, with due consideration of the context where this theory was conceived, the institutionalist tradition of labor economics following professor Commons can provide important insights into the investigation of modern labor arrangements in times of crisis, especially with the centrality of the work arrangements of digital platforms in the XXI century – a theme that shall be addressed in the next part of this manuscript.



### CHAPTER 3: AN ANALYSIS OF THE RIDE-HAILING PLATFORMS

Technological innovations through computational advancements in data collection and processing and broad access to the internet are expressions of the digital transformations experienced worldwide over the past decades. Undoubtedly, one of the main technological marks of this period has been the expansion of information and communication technologies (ICT), among which, the mass access to internet-connected mobile phones represented a central movement of digital inclusivity. Consequently, the widespread use of cell phones is not only transforming the traditional ways in which our social bonds are established, but it is also shaping the way our socio-economic relations are constructed. The primary elements of sociability in daily life relations, such as keeping in touch with friends and family, buying food, or even debating politics, are now inseparable from the range of possibilities that emerge with web-based platforms of commerce of goods and services, news, and social networks; all with a few touches on a screen.

Behind the ICT's great achievements is the fact that mobile phones are not restricted to basic communication tools, such as the phone call of the old domestic telephones, but it has become an instrument of immeasurable possibilities for their users. As described by Isaac (2020), the innovative actions of Apple Inc. with the creation of its smartphones (iPhone), and especially the establishment of an "App Store", managed to change the industry of software development. Whether in banking, market shopping, gaming, communicating, and so on, the world became acquainted with the 'apps' that grant access to a wide range of goods and services from local and global markets; at the same time, information and communication tools have never been so accessible and cheap, allowing one's voice to be published and followed on-line.

As a result, the ubiquity of digital apps has an influence on the way society organizes its economic processes, defining who is part of and who is out of the social life in this digital era. In other words, someone's possession of a smartphone and regular access to the internet operates as a basic condition for social acceptance, in a context where even the most basic tasks of paying bills or registering for governmental programs have migrated from in-person experiences to the impersonal apps and their algorithms. Increasingly, the requirement of a digital identity – the online profile – is part of how one may present itself online, working as a limitless extension of the "offline life" in terms of exposure and range of information. In this background, the term "digital influencer" has spread, representing people who not only managed to be part of the online life but also who could make fame out of the potential of the

social networks. With their success classified in terms of the number of followers, digital relevance accompanies the commercialization of influence, by selling lifestyles through sponsored marketing.

Accordingly, the advancements in software design also resulted in the emergence of a particular type of business represented by companies whose operational elements would be held fundamentally in online domains barely presenting physical existence in terms of an industrial going plant, where the human and material elements would share the firm's facility in the wealth-producing, creating, and distributing transactions. Among these companies are the digital labor platforms, that is, the commercial online-based businesses that have as their main source of profits the exploitation of the workforce of its users through charging fares on the services provided while making use of control instruments to manage and induce desired behaviors from them. The very definition of platforms varies as shall be discussed in the next topics; however, it can be said that there is a consensus over one of its main activities: the ride-hailing platforms (i.e Uber, 99), whose activities have set the pace of the development of platform work worldwide.

Digital platforms seek to be easy tools for daily tasks and being user-friendly brings an appealing simplicity to its users, whether workers or passengers, that popularizes its use. In the case of the passenger, one must access its "app store", download the platform's app, create an account, select both its pickup and drop-off location, choose the kind of car that best suits its necessities, and wait for the driver to arrive – being able to see the car on a live map of the region. For the driver, on the other hand, the process has additional steps where IDs, driver's licenses, criminal records, and vehicle documents are required. However, once accepted, the drivers have access to a different version of the app where they receive requests that they can accept or decline, then they follow a map to the passenger's pickup and drop-off location, and, after the ride, both drivers and clients evaluate each other's through a star rating system (1-5 stars experience).

This chapter aims at presenting an analysis of the ride-hailing platforms through a Commonsian perspective where the transactions between the platforms and their users are at the center of our investigation. By debating the particularities of the platform as a going concern and by assessing the interdependence between the agents involved in these activities, the chapter contributes to current literature in two directions: (i) it provides a Commonsian perspective to understanding digital labor that is a new theme in the field of institutional economics; (ii) it helps to unravel the complexities behind the pretense simplicity presented in

the previous paragraph by pointing out to the conflicts that are part of the labor problems in the digital age.

### **3.1 The Worker in the Digital Era**

The rapid growth of digital labor platforms cannot be solely attributed to the advances in technology and the internet, as if digital labor as it is perceived today was the natural and inevitable form of labor organization that would result from technological innovations. Accordingly, Woodcock and Graham (2020) identified three main factors that assisted the emergence of these companies, going from political shifts to technological changes and social transformations. These are found in nine important elements:

- i. Platform infrastructure (technological changes);
- ii. Digital legibility of work (technological changes);
- iii. Mass connectivity and cheap technology (technological changes);
- iv. Consumer attitudes and preferences (social changes);
- v. Gendered and racialized relationships of work (social changes);
- vi. Desire for flexibility for/from workers (social changes);
- vii. State Regulation (political shift);
- viii. Worker Power (political shift);
- ix. Globalization and outsourcing (political shift).

As the authors discuss, these three areas granted the preconditions for the gig economy to arise in its contemporary arrangements and to expand the debate beyond the mere role of technology as the one responsible factor; however, in this topic, we choose to focus on the role played by the global political shifts towards the establishment and spreading of neoliberalism as the socio-economic framework for the advancement of the digital labor relations, an element that would become the driving force of labor relations in the XXI century.

As addressed in the first part of this dissertation, special attention to industrial relations and the management of the workforce had been given by the original institutionalist tradition in labor economics. The commoditization of human labor and the efficiency-driven methods performed by the machinery treatment of their faculties were seen as menaces to the continuity of the economic system and its artificially-achieved order. As it has been discussed, from

Polanyi's (2001) perspective, the commoditization of labor, along with the other factors of production land and money, would be essential requirements for the market system now directed by profit-seeking behavior and the detachment of the economic life from the political sphere. Thus, by denying treating labor as a commodity and by deliberately treating this approach as a threat, the OIE economists theorized against the orthodoxy of their time.

Indeed, in the years following the conclusion of WWII, the world would see the abandonment of the bases for the utopic self-regulated market, with attention to the gold standard, and the adoption of protective policies towards the labor force and the companies in the capitalist system. The conceiving of the New Deal in the United States, mostly influenced by Commons and his students, represented, as argued by Galbraith (1954) not only the direct protection of society but also the enabling of countervailing powers such as the strengthening of workers' voice in their transactions with capital. However, the last quarter of the XX century experienced the downfall of what had been conceived as the welfare state, and a countermovement toward the decreasing role of the State's intervention in social and economic life gained prominence in the modern capitalist system. The emergence of this neoliberal system in the 1970s escalated with the global economic crisis in 2008, having direct effects on what would become a turbulent decade for the workforce (WOODCOCK; GRAHAM, 2020; ANTUNES, 2020)

The very part played by neoliberalism in the modern capitalist system has to be seen in its relation to the expansion of free-market policies and the arising countervailing powers. As described by Harvey (2007), "Neoliberalism is a theory of political economic practices proposing that human well-being can best be advanced by the maximization of entrepreneurial freedoms within an institutional framework characterized by private property rights, individual liberty, unencumbered markets, and free trade" (HARVEY, 2007, p.22). It should not be, however, seen as a policy for the progress of economic growth – as history has shown its limitations – but it serves to restore class power in times of crisis in the economic system.

Once again, the workers were at the center of the debates concerning the free market and the barriers to its full development towards the natural equilibrium of the market forces. As Antunes (2020, p.14) argued, "a productive restructuring" took place as a response to the capitalist crisis, in which "subcontracting" would be, among other consequences, used as means of "cutting costs and increasing productivity". Nevertheless, the very bases of the industrial system were different from those conceived by the industrial stage of the XIX and XX centuries, and competition would now be held on a global scale, influencing how labor would be treated from this point forward.

A direct consequence of the advancement of neoliberal ideology as the framework for the organization of labor since the last decades of the XX century is the role of the individual as the sole responsible for his survival and economic success in the capitalist system. Byung-Chul Han (2017) in his philosophical incursion on the elements of “the burnout society” discusses the aspects of what he calls “the performance agent”, the dominant behavior of the individual in contemporary capitalism. For the author,

The late modernity performance agent does not submit to any compulsive work. Its maxims are not obedience, law, and duty, but liberty and goodwill. From work, he hopes above all to achieve pleasure. Nor is it about following the call of another. On the contrary, he listens to himself. He must be an entrepreneur of himself. Thus, he detaches himself from the negativity of the orders of the other. But this freedom of the other not only provides emancipation and liberation. The mysterious dialectic of freedom transforms this freedom into new constraints (HAN, 2017, p.83)

With the increasing movements for the flexibilization of labor laws and the widespread use of the term “entrepreneur” to define a wide range of workers organized under informal employment contracts, these new constraints that emerged from the self-entrepreneur’s status of modern workers are related to a contradiction in the perception of freedom of the performance agent, for

In today's work and performance society, which shows traces of a coercive society, each one carries with him a field, the field of work. The specific characteristic of this field of work is that each one is at the same time detainee and guard, victim and executioner, master and slave. The one who explores is at the same time the one being explored. It is no longer possible to distinguish between executioner and victim. We optimize ourselves towards death, to better function. Functioning better is fatally interpreted as self-improvement. Self-exploration is much more efficient than strange exploration because it walks hand in hand with the feeling of freedom” (HAN, 2017, p.115)

It is exactly in the way of treating the workforce through the lens of self-exploration, entrepreneurship, and autonomy that the platform economy is placed in its contracts with workers who engage in the activities of their software. Zwick (2018) summarizes this relationship by defining “neoliberal industrial relations”, a race to the bottom in face of competition in which the misclassification of workers, the pressures over current regulatory regimes, and the employment of the economically vulnerable, would form a playbook followed strictly by the platforms that aim to cut costs at the expenses of worse work conditions.

Consequently, there are growing debates on the nature and characteristics of the organization of the labor force as a class after the neoliberal policies of the last quarter of the

XX century. Guy Standing (2014, 2016), for instance, has argued the emergence of a new class – “the precariat” – formed by individuals who, in opposition to the conditions of the industrial stage of capitalism, face uncertainty and insecurity as constitutive elements of their work relations. This view is questioned, on the other hand, by Marxist authors, such as Ricardo Antunes and Ruy Braga and their concept of “infoproletariat” (ANTUNES; BRAGA, 2009; ANTUNES, 2016), for whom, rather than a new class of a post-industrial economic system, these workers are part of the service sector, in “new segment of the non-industrial proletariat, subject to the exploitation of its work and deprived of control and management over its labor” (ANTUNES, 2016, p.25)

By no means can we infer those technological advancements are the source of the informal work of the XX century, for informality has been a chronic feature of modern capitalism, especially in the global south (ABÍLIO, 2020). However, considering the disruptive claims of the digital platforms of labor for whom the power and autonomy of the workers would be the way to surpassing the labor problems of unemployment and responding to workers’ urge for “freedom”, these platforms have given the self-employed status a base over which to grow. The entrepreneurship of the self would be considered an admirable and respectable attribute of a worker, for whom success depended only on one’s self-management efforts.

Rather than considering each worker a company of their own, we turn back to the commoditization of the labor force as has been discussed in chapters one and two of this dissertation. Those workers who are subjected to the structures of the digital era are not only available and mobile for use in the use-value producing processes of the market system, but it is also expected from them that the proportioning process of their faculties is left to their agency (if indeed this work was characterized by true autonomy), and the consequences for their actions be their liabilities, whether affecting their income, safety, and health.

Accordingly, digital platforms have in their interior a very particular ideology, which some authors have treated as “the spirit of Silicon Valley” (SLEE, 2017; ISAAC, 2018), or “Silicon Doctrine” (JIMENEZ, 2020). Expressed by an optimistic view on the role of technology in transforming “the real world” and solving its problems, the ideal of most platforms in the Valley has in its core a notion of efficiency that places the digital world in contrast to the analogical inefficiencies of a pre-internet era. Consequently, these platforms have adopted disruptive strategies, not in terms of great ruptures to common activities and production processes, but especially against the set of laws governing markets and competition, placing established institutions as obsolete obstacles when in direct contact with their interests (ZWICK, 2018; JIMENEZ, 2020)

Accordingly, the tech companies adopt discourses that bring them closer to the “utopianism” of the neoliberal policies of the XXI century, a “feature of justification and legitimization” (HARVEY, 2007) for its daily practices against labor in a world where technology gains salvific traces to human progress. In this matter, Daniel (2017) has characterized the rhetoric of the Valley as “tech talk”, having a “techno-utopian style, the aestheticization of new technology, and the valorization of perpetual revolution”, a discourse that can empower the neoliberal claims for deregulation by placing technology at the center of consumers wants.

Therefore, when discussing the aspects of technology in modern labor relations, one should not take for granted the neutrality of the digital language, that is, the algorithms used to build these digital companies. However, as it has been presented in the literature, the Silicon’s habitual assumptions are far from being restricted to the internal practices of modern technology platforms and, alongside the creation of new platforms walks the diffusion of this way of thinking through marketing mechanisms, in an attempt – usually successful – to gain public support to its activities against regulation (DUDLEY *et. al*, 2017). Interestingly enough, in chapter 4 we investigate the arguments of the Brazilian Supreme Court in the debate on the unconstitutionality of the laws prohibiting platforms, where we can perceive the presence of arguments convergent to Silicon Valley’s view of modern platform capitalism.

### **3.2 Ride-hailing Platforms: the self-employment relationship and the multi-sided market**

Due to its relative novelty and expansion during the past decade, the digital labor platforms are still a promising subject to be explored by different areas of knowledge, since, as broad as technology is seen affecting social life, these organizations impose questions on areas beyond the interests of data studies and software development, among which, we argue, labor researchers have special interests and innumerable paths to follow and explore. Thus, even though we recognize the variety of possibilities in the study of digital platforms, this dissertation will focus on the study of this going concern in its relation to workers who, on one hand, are not formal employees, and on the other hand are the source of the concern’s profit.

Among the works dedicated to the study of the labor platforms and their components, we stress the relevance of the efforts in defining and characterizing the platform in its internal mechanisms, as well as in providing macro-level frameworks in which these businesses are presented as part of other movements, such as a particular type of ‘industries’ of sharing and

‘gig-ing’ (MAFFIE, 2020a). However, as we argue in the next paragraphs, the main obstacle in the way to defining digital labor platforms in their relationship with the end-user is the very misclassification of these workers and the role of the platform.

For instance, Uber and 99, the main ride-hailing platforms in Brazil define in their Terms and Conditions:

*99:* 4.1. Services provided by 99. The Services consist of the intermediation of car rides and payment facilitation ("Intermediation"), through licensing and use of software, in which 99 is the licensor of the App, on a non-exclusive basis ("Licensing") that enables the Registered Driver/Motorcyclist Partner to locate and contact passengers interested in contracting individual paid private passenger transport service or individual public utility passenger transport ("Passenger(s)" and "Transport Service", respectively), in accordance with the availability of the Service for certain areas and regions as stated in the Application [...] 4.8. Lack of employment relationship and others. No relationship of a corporate, employment and/or economic nature is established between the partner driver/motorcyclist and 99, provided that the partner driver/motorcyclist is free to ride whenever he wants, as well as to stop using the app at any time, at its sole discretion. 99 does not have a fleet of vehicles, exclusively providing licensing and intermediation services aimed at facilitating the hiring of a transport service with a driver/motorcyclist partner registered in the application.<sup>5</sup>

*Uber:* The Services integrate a technology platform that allows Users of Uber's mobile applications or Internet websites, provided as part of the Services (each an "Application"), to request and schedule transportation services and/or logistics and/or purchase of certain goods from independent third-party providers of these services, including independent third-party transportation providers, independent third-party logistics providers, and independent third-party providers of goods, under contract with Uber or certain Uber affiliates ("Independent Partners" ). Unless otherwise agreed by Uber in a separate written agreement with you, the Services are provided for your personal, non-commercial use. YOU ACKNOWLEDGE THAT UBER IS NOT A SUPPLIER OF GOODS, DOES NOT PROVIDE TRANSPORTATION OR LOGISTICS SERVICES, OR OPERATES AS A CARRIER, AND THAT ALL SUCH TRANSPORTATION OR LOGISTICS SERVICES ARE PROVIDED BY INDEPENDENT PARTNERS, WHO ARE NOT EMPLOYEES OR REPRESENTATIVES OF UBER OR ANY OF ITS AFFILIATES. (capital letters in the original)<sup>6</sup>

<sup>5</sup> Original (Portuguese): “99: 4.1. Serviços prestados pela 99. Os Serviços consistem na intermediação de corridas e facilitação de pagamento (“Intermediação”), mediante licenciamento e uso de software, em que a 99 é a licenciante do Aplicativo, de forma não-exclusiva (“Licenciamento”) que possibilita ao Motorista/Motociclista Parceiro cadastrado localizar e contatar passageiros interessados em contratar serviço de transporte remunerado privado individual de passageiros ou transporte individual de passageiros de utilidade pública (“Passageiro(s)” e “Serviço de Transporte”, respectivamente), de acordo com a disponibilidade do Serviço para certas áreas e regiões, conforme informado no Aplicativo [...] 4.8. Inexistência de relação de trabalho, vínculo de emprego e outros. Não se estabelece entre o motorista/motociclista parceiro e a 99 qualquer vínculo de natureza societária, empregatícia e/ou econômica, sendo certo que o motorista/motociclista parceiro é livre para realizar corridas quando quiser, bem como para cessar a utilização do aplicativo a qualquer momento, ao seu livre e exclusivo critério. A 99 não possui uma frota de veículos, prestando exclusivamente os serviços de licenciamento e intermediação voltados à facilitação da contratação de serviço de transporte perante um motorista/motociclista parceiro cadastrado no aplicativo.”

<sup>6</sup> Original (Portuguese): “Uber: Os Serviços integram uma plataforma de tecnologia que permite aos(as) Usuários(as) de aplicativos móveis ou sites de Internet da Uber, fornecidos como parte dos Serviços (cada qual um “Aplicativo”), solicitar e programar serviços de transporte e/ou logística e/ou compra de certos bens com terceiros independentes provedores desses serviços, inclusive terceiros independentes fornecedores de transporte,



These two excerpts share three important elements as a contract of use between drivers and platforms. Firstly, both 99 and Uber seek to define, positively, what they are and how they work: an intermediary, or a tech platform, that intermediate the transactions between drivers and passengers through the use of an app/software of which the platforms are the licensors. Secondly, the driver who licenses the app to provide his services is defined as a partner or an independent service provider who – made clear by both companies – is by no means an employee. Finally, as a consequence of the first two definitions, the platforms restate what they are not: they are not service providers or logistic companies, with their actions restricted to the licensed use of the app.

One of the results of adopting the self-employment status to define the work of platform drivers is the absence of a formal contract to organize the terms of the transaction between these two economic agents. By formal, the employment relationship is thought of as a contract where not only the working rules of the going concern are well specified with the behavior expected from workers and platforms in their daily transactions and the terms of compensation are agreed upon, but also the guarantees provided by social norms (labor laws, unemployment security) are clear, submitting the managerial practices of the going concern under a broader perspective of minimum standards institutionalized in that society's labor structures.

Indeed, the self-employment relationship is perceived by literature as going in two complementary directions. Firstly, the very conception of the platform as a way of providing autonomy for workers who want to be their bosses is one of the main focuses of the platforms' advertisements when recruiting new drivers. Here, the platform is *an intermediary*, a technology company that provides tools for its users to interact with each other; thus, all the risks involved in the daily activities of a driver are his responsibility (i.e., car maintenance, security) as well as his ability to save for social security and the protections usually part of a formal contractual relationship. Secondly, the appealing autonomy releases the platform from any of the mentioned legal obligations toward the workforce who are part of its system. Since an important part of the gig economy's "disruptive strategy" is to rival the inadequate

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terceiros independentes fornecedores de logística e terceiros independentes fornecedores de bens, mediante contrato com a Uber ou com determinadas afiliadas da Uber ("Parceiros Independentes"). A menos que diversamente acordado pela Uber em contrato escrito celebrado em separado com você, os Serviços são disponibilizados para seu uso pessoal e não comercial. VOCÊ RECONHECE QUE A UBER NÃO É FORNECEDORA DE BENS, NÃO PRESTA SERVIÇOS DE TRANSPORTE OU LOGÍSTICA, NEM FUNCIONA COMO TRANSPORTADORA, E QUE TODOS ESSES SERVIÇOS DE TRANSPORTE OU LOGÍSTICA SÃO PRESTADOS POR PARCEIROS INDEPENDENTES, QUE NÃO SÃO EMPREGADOS(AS) E NEM REPRESENTANTES DA UBER, NEM DE QUALQUER DE SUAS AFILIADAS. (letras maiúsculas no original)".

institutions of the analogic economy, the driver-platform relationship is seen as going beyond the realm of labor laws, tensioning the threshold of society's acceptance of its practices.

This idea of digital platforms as intermediaries between its end is usually addressed with the adoption of the concept of two-sided/multi-sided markets, and, in fact, literature the has perceived that economics scholars have usually concentrated on this concept when discussing platform work (WOODCOCK; GRAHAM, 2020; MÖHLMANN, 2020). Defined as multi-sided markets, the digital platforms work as intermediaries between “two or more distinct but interdependent sets of users (whether firms or individuals) who interact through the service via the Internet” (OECD, 2019, p. 21).

In their seminal work on the notion of two-sided markets, Rochet and Tirole (2003) stress the role of network externalities achieved by the interaction of both sides of users as the defining feature of these platforms. In other words, users benefit from the presence of the other part in the same market, and the platforms become the meeting place for those who, otherwise, would not transact. For Uber to operate, it needs to attract both users willing to drive and willing to request car rides, the same happens in the case of homeowners and tourists in AirBnB. Thus, for the platform to establish itself, it is important to “get both sides on board” (ROCHET; TIROLE, 2003).

Labor platforms have acquired different forms and achieved a wide range of economic sectors (FILGUEIRAS; ANTUNES, 2020, p.38), consequently, it encompasses a variety of activities not only related to those in the interest of this study. Uber, Airbnb, Amazon Mechanical Turk, and 99 are some examples of digital labor platforms that the reader may be acquainted with, each of which represents a different service provisioning platform and attracts different kinds of users, both on the supply and demand side. Consequently, it may be helpful to adopt additional typologies to differentiate these platforms, especially the ride-hailing companies, which are our focus.

From this point forward we also adopt a *locational perspective* to characterize these different structures. Described as internet-based and location-based (ILO, 2018, GROHMANN; QIU, 2020), the locational perspective is related to location requirements for workers to perform their services. The internet-based platforms are related to activities “wherein businesses and other clients have access to a large, flexible workforce (“crowd”) who are geographically dispersed around the world to undertake short, simple and mostly clerical tasks and are remunerated on the basis of task or piece completed” (ILO, 2018). Location-based, in its turn, is related to activities where “tasks are given to selected individuals (e.g. transportation, delivery, and household services)” (ILO, 2018) who are located in particular places where these

tasks are demanded. Thus, this multi-sided architecture of different actors (platform – user – worker), can be classified in terms of location restrictions and also specific worker skills requirements (SCHMIDT, 2017).

Turning back to the common definition of multi-sided markets and their profits from the network effect of new users, it must be said that the locational perspective also matters when evaluating the activities of the platform. As pointed out by Sundararajan (2018), the role of network effects in creating value for its users is also dependent on the geographical restrictions of the activities performed on that platform, that is, Uber users (as other location-based platforms) do not benefit from the entrance of new drivers/passengers unless they are present on the same location where they live or work, which is different from the case of internet-based services where the location of the service provider and the client is not relevant for the transaction to take place. Consequently, platforms must engage in different strategies to recruit their users in a specific location, which goes beyond the mainstream notions of pricing mechanisms (VEISDAL, 2020).

As one may argue, the “multisided” feature of platforms and the mutual benefit its users get from the increasing number of users on the other side of the software is not an exclusivity of the digital platforms and can be perceived in many other markets. There is, however, an important element that highlights the particularities of these companies in the digital era: the feature of control and surveillance performed by the platforms. As Schmidt (2017, p.5) argued, the architecture of the platform economy “consists of an online marketplace that involves at least three parties”, the very platform being the one with “full access to and control over the data, processes, and rules of the platform”. Similarly, OECD’s (2017) report pointed out that, beyond network effects, additional common features between platforms are the collection and use of data, and the use of ICT. These elements of control are addressed in the next topic.

### **3.3 The Platform as a Going Concern**

As presented above, digital labor platforms usually present themselves as technology companies who serve as intermediaries between their end-users in their economic transactions – a central argument against employment-relationship claims. However, there is a “spectrum of control” (WOODCOCK; GRAHAM, 2020) working concomitantly to its intermediary actions that, if disregarded, may hide the existence of management tools operating in the platforms’ architecture and coordinating workers’ activities, as well as any other source of profits that may emerge from their transactions.

In the previous chapter, it has been presented an institutionalist approach to the capitalist firm that deals both with the creation of use-values (physical goods and services) and scarcity-value (valuation of assets) as the objectives of the firm, which has been summarized by Commons as the engineering and business economy respectively. These different directions of wealth valuation have as the core foundation the focus of incorporeal and intangible wealth rather than the simple use of the material property. Institutional economics, thus, focuses on the proprietary economics, that is, the transactions between economic agents that possess the property rights to the profitable use of what is scarce (COMMONS, 1924, p.11-21)

In the case of the firm and the relationship with the workforce, there is a producing organization, or a going plant, whose rationality is directed by managerial transactions (COMMONS, 2003). Accordingly, there is the going business, responsible for the creation of exchange values through business mechanisms of restricting output and managing scarcity. Parallel to the going plant, the going business is organized by bargaining and rationing transactions, defining the transference of property rights and distribution of wealth.

The following subtopics have as their main objective the adoption of the institutionalist concept of going concern and its constitutive realms, the going plant, and the going business, to analyze the characteristics of the ride-hailing platforms and provide a transactional framework capable of evidencing the elements of interest, interdependence, and order in these activities.

### ***3.3.1 Going plant: managerial transactions and car rides***

The going plant of a going concern is formed by the organizing processes aimed at creating new wealth through working rules of command and obedience from a legal superior to a legal inferior. Its motto is efficiency, and its results are measured quantitatively by man-hour, piece rate, and total output. A well-known example of a going plant is the use of scientific management of labor, in which labor, as a machine, is subject to motion studies, with the implicit assumption that it can be better proportioned and maximized (COMMONS, 1919). How can this aspect of a going concern be found in an activity that is performed by self-employed workers who have the autonomy of logging in and out of the platform at their will, and work alone in their vehicles providing car rides through the intermediation of digital platforms?

Our attempt to answer this question turns back to the feature of control that has been perceived by critics against the multisided approach. The absence of direct human surveillance in the forms of the early-industrial and Taylorist foreman does not imply a lack of tools capable of controlling the worker's

performance and guaranteeing their compliance with the platforms' service requirements. This point is treated, with the investigation of the role of the algorithmic management of the workforce.

The controlling mechanisms through algorithms are based on data collected from the use of ICT devices, the cellphone in the case of ride-hailing drivers, and it happens because platforms' actions are not restricted to providing a digital environment for different users to interact and transact goods and services, but they also depend on these users to behave in specific ways to achieve their business strategies (ROSEMBLAT *et al.*, 2017). That is, in its attempt to guarantee the adequate performance of the job from scattered workers who have little – if any – experience, the platforms rely on controlling mechanisms to induce adequate behaviors that, at the same time weaken the arguments of autonomy on the side of the drivers.

The increasing capacity of collecting and processing data produced by ICT'S final users in their daily activities is a central feature of the digital era. In this matter, the algorithms arise as nuclear instruments in detecting patterns, computing and analyzing data, and restricting the discretion of platform users. However, the term “algorithm” may be presented in a variety of definitions, used to describe different aspects of the functioning of the digital platforms. Karen Yeung (2017), for instance, points out that literature in the social sciences usually takes the algorithms through a broader perspective, as an

[...] adjective to describe the *sociotechnical assemblage* that includes not just algorithms but also the computational networks in which they function, the people who design and operate them, the data (and users) on which they act, and the institutions that provide these services, all connected to a broader social endeavor and constituting part of a family of authoritative systems for knowledge production (YEUNG, 2017, p.2, original italics)

Accordingly, current literature investigating the characteristic of labor platforms have concentrated its studies on the role of the algorithms in their use as management mechanisms to organize the sparse and increasing number of workers using their structures. Usually referred to as “algorithmic management” (ILO, 2018), the use of computational instruments capable of processing immensurable sources of data generated by workers and inducing the desired behavior from them is the central interest of contemporary reviews.

In his study on the instruments of organization of workers from abroad for U.S.-based corporations, Aneesh (2009) perceived the role of software programming in overcoming legal, spatiotemporal, and cultural distances between these agents. To this form of governance, as an alternative to market and bureaucracy mechanisms (terms from Williamson's NEI), Aneesh presented the idea of “algorocratic systems”, composed of “programming schemes embedded in

global software platforms that structure *possible forms of work performance* [enabling] *the monitoring of work* through the design of the work process itself.” (ANEESH, 2009, p.349, italics added). Through virtual spaces governed by programming codes, the algocratic systems would exert control over workers' discretion by restricting their capacity of working at their will. In summary

Action is controlled neither by socializing workers into regulatory demands, nor by punishing workers for their failure, but by shaping an environment in which there are only programmed alternatives to performing the work. Thus, work involves a lower focus on the knowledge of regulations and greater stress on the ability to use a software program. (Ibid., p.356)

When transported to contemporary labor platforms this “algocratic” control is expanded to mean algorithmic management, which encompasses a “diverse set of technological tools and techniques to remotely manage the workforce, relying on data collection and surveillance of workers to enable automated or semi-automated decision-making” (MAATESCU; NGUYEN, 2019). This brings to the questioning of digital labors’ banner of liberty and autonomy, for, as Filgueiras and Antunes (2020) argue, “rarely has work been so tightly controlled” as it is under algorithmic management.

The fact that algorithms are being used as controlling mechanisms is also extended to decision-making processes of contract termination – a feature based on the defense of the neutrality of the algorithm. However, as Noto La Diega (2018, p. 14) argues, algorithms are more precisely described if seen as mathematical methods which present problematic features to be used as decision-making tools, that, despite the appearance of neutral actions, usually lack transparency in their internal logic and present biases from those who have created them.

On the subject of algorithmic management, Maffie (2020a) provides a rich contribution to the characterization of labor platforms in terms of controlling mechanisms that, when summed up with the typologies presented in the previous topic, enable a detailed approach to the characteristics of the work in the gig economy. By using the Industrial Relations’ idea of work rules, Maffie was able to discuss the aspects of control in terms of different layers of discretion and autonomy allowed by platforms to its workers. The control mechanisms would be placed in a continuum of three phases: (1) creation of digital identity, (2) platform centralization, and (3) market control, where tools of exclusion from the platform, as well as centralization of payment mechanisms and two-sided match-making are examples of control. Through the use of this framework, the author could demonstrate the fundamental differences between those platforms of the ‘sharing economy’ and the typical going concerns of the ‘gig economy’ in terms of autonomy and control, placing the latter as a hierarchy rather than a market coordination business.

Ludmila Abílio (2019, 2020), one of the most prominent researchers on the subject of labor digital platforms in Brazil has treated the contradiction between autonomy and control under the concept of “subordinated self-management”, a state in which the worker assumes all the risks of their activities and are forced to manage their time and resources to make a living while dealing with and being subordinated to the unknown mechanisms of the algorithms. Consequently, workers increasing precarity in platform occupations, or the uberization of work, could be summarized as “a tendency of labor reorganization which brings new forms of control, management and subordination”, in which, “amateur labor, just-in-time traces, and algorithmic management” are the main features of these going concerns (ABÍLIO, 2019).

### 3.3.1.1 *The Star-rating system and quality*

A common feature between labor platforms as they proceed with their managerial actions over workers is the use of rating mechanisms to evaluate performance. The well-known star-rating system is usually treated based on the economic concepts of asymmetric information and signaling and their role in organizing markets. Its base is the security of expectations. This subtopic explores this controversial system of performance evaluation.

Briefly, as introduced by Akerlof (1970) in his famous “Lemons model”, the existence of asymmetric information between buyers and sellers about the products traded may lead to a complete dismantling of a market. There was essential that “counteracting institutions” were used, such as guarantees, brand names, and licensing, to diminish risks in decision-making and sustain the survival of a business. Michal Spence (1973), in his turn, discusses how agents can signalize information, such as quality and productivity, by exposing attributes that may express high-cost efforts. By discussing the example of job markets, the author examines the role of investments in education as signals that may assist employers in forming expectations regarding employees’ productivity. In this model, both parties in the transaction act as maximizers, since, on one hand, workers have to “maximize the difference between offered wages and signaling costs”, and, on the other hand, signals serve as “parameters in shifting conditional probability distributions that define an employer's beliefs” (Ibid., p. 358).

The *gig economy* is constructed upon elements that tend to intensify the insecurities of expectation related to asymmetric information in the markets. As digital platforms rely completely on online environments to perform their transactions, neither customers nor sellers may engage in direct contact until that activity is performed. There is no means for previous

evaluation of a product and service before the transaction is complete. This being put, the perception of quality depends on the information displayed on the platforms (MAVLANOVA *et al.*, 2012). As Xia *et al.* (2019) discuss, this aspect placed an important role on online “word of mouth reviews”, that is, elements from other users’ experience that may aid a prospective client in making decisions about whether to buy or contract online. This also creates space for cheating practices, such as review manipulation (KUMAR *et al.*, 2018)

Following this approach, literature concerning digital labor has explored these signals in the behavior of drivers in the conservation of their vehicles (ROSENTHAL *et al.*, 2020), as well as their capacity, as “reputation cues”, of affecting costumers’ perception of service quality (ROSENTHAL *et al.*, 2020). In the case of Crowdsourcing platforms, BENSON *et al.* (2020) have defined informal reputation systems – those where workers voluntarily cluster in parallel platforms to share information about service requesters – as “collective memories” which are capable of discouraging opportunistic actions of employers/clients who utilize the poor contract enforcement rules and the absence of structured regulations of the platforms in their favor.

Customer evaluation in digital platforms has not been free of criticism and increasing questioning of its accuracy, authenticity, and reliability (XIA *et al.*, 2019). That is the case of the practice of using fake reviews as competitive strategies against rivals by affecting clients’ behavior. In their effort to establish an approach to detect spammers, Kumar *et al.* (2018) argues that the awareness of the impact that online reviews have on businesses’ success and customers’ decisions may lead companies to adopt active practices of manipulation which may cause, consequently, “the deterioration of information quality as well as loss in the credibility of online platforms” (Kumar *et al.*, 2018, p. 352)

In Ride-hailing platforms, service evaluation occurs in a bilateral form of driver-client ratings which may happen during and after the ride takes place, and serves the platform as an outsourced monitoring tool for decision-making and sanction applying. Uber, for instance, defines its mechanism as a way of “creating and maintaining a safe and respectful environment for riders and drivers” by “ensuring that only the best drivers stay on the road” and protecting drivers from “aggressive, violent, or disrespectful riders”.

The common sense of the superiority of costumers-evaluation as means of signaling quality and reputation is exemplified in the case of the judicial courts in Brazil responding to the first legislative efforts to regulate UBER, which ruled against it by considering Estate regulation unable to eliminate asymmetries as the star-system could (RACHED FARIAS, 2017, p.830). However, as Slee (2017, p.193) argues, the reputation system cannot substitute formal



regulation, since it is a superficial tool of evaluation based on what customers perceive in short drives when compared to the thorough standards of safety defined by law.

Both Uber and 99 use the evaluation system as part of their criteria to define who is in and out of the platform. 99, for instance, states in its terms and conditions

6.1. The Driver/Biker Partner accepts that it will be evaluated by Passengers and 99 based on criteria such as quality of service, vehicle cleanliness, and ride acceptance and cancellation rates. A Driver/Motorcyclist Partner who is repeatedly poorly evaluated may have their license to use the Application cancelled.<sup>7</sup>

By asserting that deviations of standard conduct inferred by poor ratings may result in penalties, such as account suspension or deactivation, Uber and 99, makes clear that costumer-rating provide not only signals to riders and drivers concerning their prospective ride, but also works as a mean of driver's performance evaluation and data gathering for decision-making. This feature, when summed up with the randomness of the ride selection, places the platforms as the main interested party in the ratings – that is, the star-rating system is more useful to the platforms than to its clients in terms of signaling quality.

This happens because, as defined by ROSEMBLAT *et al.* (2017), these companies do not work as open market platforms where clients may choose their drivers in a list of possibilities (e.g. Airbnb); instead, they “match” riders and drivers through the internal logic of its algorithms. Therefore, when considered alongside the idea that, despite the ratings, customers usually use the services of an algorithm-selected driver, the star-rated system is not primarily restricted to the role of signaling quality to influence users' choices, but, most importantly, it is taken by the platforms as a managing mechanism of the workforce.

Consequently, rating systems have direct effects on workers' autonomy in providing their services, as they define whether the driver can stay active on the platform. Thus, some critical issues arise from the use of customer evaluations in decision-making processes. As Ludmila Abílio (2019, p.3) argues, the drivers are constantly exposed to unpredictable and subject quality standards for their services that are defined at the discretion of the users. Additionally, digital platforms are subject to personal biases that may be unrelated to the quality of the service, such as racism and other kinds of discriminatory practices (EDELMAN *et al.*, 2017). As a result, the ride-hailing platforms might be using unlawful criteria – the biased

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<sup>7</sup> Original (Portuguese): “6.1. O Motorista/Motociclista Parceiro aceita que será avaliado pelos Passageiros e pela 99 com base em critérios como a qualidade do serviço, a limpeza do veículo e as taxas de aceite e de cancelamento de corridas. O Motorista/Motociclista Parceiro que for reiteradamente mal avaliado poderá ter a sua licença de uso do Aplicativo cancelada.”

customer evaluations – even if indirectly, to terminate the driver’s account, thus bypassing instituted anti-discrimination laws (ROSEMBLAT *et al.*, 2016).

As Tom Slee (2017, p. 204) argues, the rating system is, in the end, a veil over “centralized and hierarchical disciplinary structures”, that acts in constructing a kind of “emotional labor” by controlling how workers must behave under the constant threat of poor grades and account deactivation. This fact stresses the deliberate aspects of workers’ dehumanization in these platforms, relying on the caprices of costumers with no room for errors or tolerance for the drivers' troubles and worries. The labor unrest which may result from this algorithmic management is related to unfair evaluations from clients and consequently unfair treatment from platforms (ILO 2018, p. 73).

### **3.3.2 Going business: bargaining and rationing transactions in ride-hailing apps**

Recent works in the field of institutional economics have attempted to provide an institutionalist contribution to the question of digital platforms as a capitalist firm (CAVALCANTE, 2021; BARONIAN, 2020). As Baronian (2020) argues, the platform’s role is observed to go beyond the aspects of an intermediary whose actions are limited to and aimed at enabling supply and demand, also encompassing the traditional element of labor-management and exploitation of the workforce to achieve their profit-seeking interests. For the author, whether physical or digital, platforms share with other firms the element of surplus-labor extraction, thus these platforms could be properly described as “techno-institutional centers of capital valorization” (BARONIAN, 2020, p.2).

Similarly, Cavalcante (2021) perceives a shared ground between the OIE economists and new institutionalists in the definition of the firm as “a unit of production aimed at generating profits” (CAVALCANTE, 2021, p.308). Thus, the author points to the creation of a market between peers and the property of the labor process as the sources of profit in these firms.

While these authors thought about the applicability of Commons’ typology of going plant and going business to the platforms work – and the limits of going plant – both highlighted the role of business transactions – the going business – as central instruments for profit. However, as discussed in the previous topic, the lack of physical assets when compared to the industrial firm of the 19<sup>th</sup> and 20<sup>th</sup> centuries does not reduce the role of the going plant in the process of wealth production. Consequently, a discussion on the going business realm of the platform completes the aspects of both efficiency and scarcity in this going concern.

In the previous chapter, the going business of a going plant has been presented as the business relations with markets, labor, and legislation, in which the going concern, through its economic power, aims at the valuation of its intangible assets through the control of the output. Through bargaining transactions with the workforce, the going concerns can define the terms and conditions of the services, at the same time that, through rationing transactions, it can define how incomes are distributed in its producing processes between the agents working in it.

To assess the main elements of the going business in ride-hailing platforms, it is useful to investigate what are the transactional elements of the driver-platform relationship and how they may result in labor unrest and precarity in these activities. For this, we propose the evaluation of the principles for decent platform work proposed by the Fair Work Project.

The Fair Work Project is an initiative of international researchers and experts in the field of digital labor platforms that evaluates the structure of these going concerns in terms of the promotion of decent work practices. By adopting a set of principles for the gig work, the project can investigate the most important elements of platform work and rank the platforms from higher to lower quality practices. There are five principles from which we can perceive both the going plant and the going business transactions as shown in **Table 2**:

**TABLE 2 – Gig Work Principles and the Going Concern**

<b>Principle</b>	<b>Definition</b>	<b>Transactions</b>
Fair Pay	1.1 Guarantees workers earn at least the local minimum wage after costs 1.2 Guarantees workers earn at least a local living wage after costs	Bargaining and rationing
Fair Conditions	2.1 Mitigates task-specific risks. 2.2 Provides a safety net	Managerial, bargaining, and rationing
Fair Contract	3.1 Provides clear and transparent terms and conditions. 3.2 Does not impose unfair contract terms.	Bargaining and rationing
Fair Management	4.1 Provides due process for decisions affecting workers 4.2 Provides equity in the management process.	Managerial
Fair Representation	5.1 Assures freedom of association and the expression of collective worker voice 5.2 Supports democratic governance.	Bargaining and Rationing

**Source:** Table made by the author based Fair Work Project January 1<sup>st</sup>, 2021 Principles.

When workers join the Ridehail platform through adhesion contracts, the declaration of their condition as self-employed and the promises of liberty to define when and how much they

work leads to a perception of autonomy that may not be concrete. The fact is that by adopting the idea of “bosses of their own”, platforms get rid of any legal responsibilities towards labor protection and social security of those who utilize their apps as a way of survival, while, on the other hand, they utilize sophisticated technology to exert control over these workers activities and behavior (MAATESCU; NGUYEN, 2019), which may restrict labor’s discretionary action.

However, as the table above demonstrates, the transactions between workers and platforms are not only related to managerial transactions, marked by command and obedience using algorithmic management, but also involve bargaining and rationing transactions concerning payment, contract, work, and representation conditions.

The adoption of bargaining or rationing transactions is related to the capacity of both parties to agree on the terms of their transactions with the possibility of withdrawing from deciding in case of disagreement. In the case of the workers, bargaining power is usually achieved through collective bargaining and the recognition of their goodwill to the company (COMMONS; ANDREWS, 1936). The rationing transactions, on the other hand, are those where a collective superior gets to set the working rules of the going concern, as well as the distribution of wealth to its subordinates in terms of compensation.

Consequently, if a fair representation is not adequately provided, it seems clear that the unilaterally defined terms and conditions of ride-hailing platforms emphasize rationing transactions over (if any) bargaining with their drivers/partners. Turning back to 99 and Uber’s terms of service, this digital contract is the document that those drivers who are interested in using the platforms’ software must sign before starting their activities, and it is in the terms and conditions that the going business is more clearly evidenced – we shall here focus on the definition of prices.

The following excerpts present the platforms’ policies of payment and compensation:

99. 5.2.2 [...] The price will consist of: (i) base/minimum value; plus (ii) a variable portion based on the distance and amount of time estimated for the journey. In addition, in certain situations where demand for travel greatly increases, additional dynamic adjustment may occur (“Dynamic Tuning”).

5.2.2.2. 99 reserves the right to establish, remove and/or revise the form of Pricing of the Transportation Service provided by the Driver/Biker Partner through the use of the Services at any time, in 99’s sole discretion.<sup>8</sup>

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<sup>8</sup> Original (Portuguese):” 99. 5.2.2 [...]O Preço será composto por: (i) valor base/mínimo; acrescido de (ii) parcela variável baseada na distância e quantidade de tempo estimado para o trajeto. Além disso, em certas situações em que a demanda por viagens aumentar muito, é possível a incidência de ajuste adicional dinâmico (“Ajuste Dinâmico”). 5.2.2.2. A 99 se reserva o direito de estabelecer, remover e/ou revisar a forma de Cálculo do Preço do Serviço de Transporte prestado pelo Motorista/Motociclista Parceiro por intermédio do uso dos Serviços a qualquer momento, a critério exclusivo da 99.”

*Uber*: As between you and Uber, Uber reserves the right to establish, remove and/or revise the price for all services or goods obtained through the use of the Services at any time in Uber's sole discretion.<sup>9</sup>

Both 99 and Uber are the sole parts capable of altering the tariffs of the services at their will and criteria – a rationing transaction between platforms and drivers. An important feature, nevertheless, is the amplitude that the prices of a ride can vary depending on higher or lower levels of demand (ride requests) in a certain period. Uber and 99's dynamic prices in response to demand evidence the going business' capacity of creating wealth through deliberate changes in its prices, an action legitimated by calling upon the forces of supply and demand<sup>10</sup>

Be it described in any of its names – “platform economy, sharing economy, crowdsourcing, on-demand economy, uberization, crowd work” (FILGUEIRAS; ANTUNES, 2020) – The digital platforms as going business are well defined by Grohmann and Qiu (2020) as “digital infrastructures structured by data, organized by algorithms and *governed by relations of property, with values and norms inscribed in their designs*” (emphasis added). Here we argue that these relations of property, values, and norms are part of the institutional structure, that is, the working rules operating the going concerns' plant and business, and usually overlooking labor's goodwill in the operation of these transactions.

### **3.4 The Transactional Elements of Ride-hailing platforms**

The practices of the ride-hailing platforms towards their drivers can be summarized in the five areas/principles of the Fair Work Project presented above from which we have summarized the Commonsian going concern. Common to these areas is the existence of working rules defining what one can/cannot, may/may not/, and must/must not do in the wealth-producing and wealth-valuation processes of the going concern. There can be firms committed to better practices, but there may be others that, following cost-cut behaviors and competition, menace the work conditions of their drivers and fail to acknowledge labor's goodwill over the commodity theory.

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<sup>9</sup> Original (Portuguese): “Uber: Na relação entre você e a Uber, a Uber reserva-se o direito de estabelecer, remover e/ou revisar o Preço relativo a todos os serviços ou bens obtidos por meio do uso dos Serviços a qualquer momento, a critério exclusivo da Uber.”

<sup>10</sup> The “price surge” by algorithmic decisions has resulted in controversies and criticisms, especially in the cases in which higher demand is related to adverse events, such as the surges amid the shooting in a subway in Brooklyn (NY) on April/2022 (<https://www.washingtonpost.com/nation/2022/04/13/uber-lyft-brooklyn-shooting/>)

As discussed in chapter 1, the evaluation of these working rules is part of the Commonsian search for reasonability in economic transactions, in opposition to the panacea of the self-adjusting free market providing social welfare. Indeed, the institutionalists have focused on the ways of altering laws through democratic mechanisms to achieve reasonable outcomes in the transactions. However, when the pace of the changes is defined unilaterally by the corporations, as happens in the platform jobs, the collective action in control of individual action is vilified as anti-progress and the conventional wisdom of laissez-faire hinders any attempt of regulating the technological pressures over the current acceptable practices.

This dissertation approaches the digital platforms, mainly ride-hailing, from the standpoint that, despite presenting themselves as tech companies and intermediaries between autonomous sets of users, they are directly involved with these users through daily transactions in their search for profit (managerial, bargaining, and rationing). Therefore, the structure of these “online marketplaces” also includes the platform and its interests as one of the sides of the transaction, a feature that, if overlooked, would cover critical elements of an institutional-transactional reading of the digital platforms.

Among the elements of ride-hailing services, it is of utmost importance to comprehend the part played by the self-employment status in complement to the description of platforms as intermediaries between workers and passengers to put the companies’ business model in action. For this, we discuss two approaches to this model and evidence the different conclusions from each of them to explicit the interdependence in this activity.

Firstly, if self-employed, the driver would be expected to follow a basic set of working rules in relation to the platform that would be closer to the purchasing of service/license, that is, the platform would be a tool used to intermediate the direct relationship with the passenger conditioned to the payment of a rate agreed upon in the signing of the terms and conditions when the worker signed up in the platform. The duty of payment on the side of the driver would be equivalent to the platform’s right of being paid, and this transaction would occur every time the driver decided to log on to the platform during his daily work of providing car rides. Accordingly, by selling its product (the access to the platform), the companies could expect certain behavior from the drivers controlled by working rules that, once violated, could be used to interrupt the status of their transaction with the drivers. It would be both incorporeal and intangible property, creating both rights and duties (payment) and liberties and exposures (forbearance and avoidance of a certain behavior). This is the multi-sided/intermediary approach to ride-hailing: bargaining transactions defining terms and conditions of who gets to use the software and the expected behavior for that transaction.

From the multi-sided perspective, there are some important assumptions: the platforms are sellers of ride-hailing software and their profits emerge from its use by self-employed drivers in each ride; platforms and drivers bargain with symmetric powers to withhold from engaging in the transaction (not accepting a driver/not logging into the platform); after purchasing the use of the platform (logging into the app) the drivers have to comply to a set of working rules, the negative encumbrances on their liberty of forbearance and avoidance of certain behaviors; the final products of the platforms and the drivers are distinct and marked by autonomy.

However, whether formally employed or treated as a self-employed worker, one cannot overlook the fact that the platforms' source of profits is not only in the piece-rate-like system of charging a fare on the rides provided by its drivers for the use of the software but the very availability of a driver during a day of work as well as the way he performs its activities are directly intertwined to the platforms' market power and economic success. It is in the labor goodwill, an intangible property in possession of the worker over which the profit of the platform increases manifold, whether hiring or not those who own the property rights to it.

As it has been discussed, the looseness of the term contract exemplifies the relationship between workers and capital when it acknowledged that it is labor's goodwill and not the possession of its physical body the element being transacted. In short, against the commodity theory of labor, the worker does not sell or transfer his body, rather it is his goodwill and the disposition to perform an activity if the compensation meets his requirements of reasonability. However, this is not to be read by the same rationing of perfectly competitive markets of economic agents who can afford to be out of work at lower levels of wages. Workers face unemployment as a threat to survival not only on their own but in all their households; consequently, the worker's liberty to quit is in no way compared to the employers' liberty to dismiss his services, putting the former at a constant disadvantage towards the latter.

Consequently, by considering the driver's goodwill as part of the platform's source of profits, one can reframe the transaction described above to a relationship where instead of a driver using an intermediary in his search for profits, it is the platform that makes use of labor to produce a service (car rides) and sell it to its final users – the passengers (BARONIAN, 2020; CAVALCANTE, 2021). This approach to the study of the gig economy is widespread in the literature in response to the defense of platforms as multi-sided markets and self-employment status. However, here we choose as the starting point for our critic, not the controlling mechanisms per se that would evidence the employment-like managerial relationships, but

workers' goodwill both as a fragile asset for bargaining power and as the source of profits to the platform.

Turning back to Table 1 in chapter 2, drivers' work has both incorporeal and intangible nature as property, however, the first may not be perceived as easily as the second if the goodwill is not considered a relevant part of the transaction. As discussed elsewhere, intangible property is related to a relationship between the liberty of actions and exposure to that liberty for both parties, that is, the decisions one makes have effects on the status of the relationship with the other. In the case of the labor market, both worker and capital are at liberty to end their transactions at any time, both act at will, and no encumbrance can be imposed, otherwise, it would characterize servitude. Consequently, drivers can leave the platform at their will and the platform can, as they have extensively done, interrupt the driver's account at any time. Both are at liberty to do something and exposed to the decision of the other to exercise their liberty.

However, the fact that labor's goodwill is also part of the going concern's assets and a central source of profit also sheds light on the incorporeal nature of the driver-platform relationship. Differently from intangible property, the incorporeal property creates a right and a duty as a result of the transaction between the economic agents enforced by the rules of the collective action. Once again, following Table 1, if there are no obligations to continue a transaction, thus no right or duty to keep working, the only clear set of rights and duties in the employment relationship would be the wages and compensations for the work performed.

The incorporeal property in ride-hailing activities is the payments made right after the ride takes place, it is the payment for the use of his deliberate will of exerting his capacities to perform that activity and create use-values. The refusal of payment on the side of the platform would be considered outrageous by the current rules of collective action; thus, it is a clear right for the driver to get paid as well as the duty of the platform to transfer the gains of the ride.

Wage theft, or the refusal of payment for the gig worker, is a common complaint in microtask platforms where workers may not get paid in case the client considers their work inadequate – a decision that is made without transparency or accountability (WOODCOCK and GRAHAM, 2020). However, this experience is not absent in the work of ride-hailing drivers, especially in cases where the passenger chooses to pay for the ride in cash. As one driver shared

There are people who request the app driver, and after the ride is over, they don't pay for it because they say they don't have money. The driver has to call the police and make a fuss. When I was working, I didn't even call. I wouldn't even bother. I would go home. It irritated me so much that I would go home. That was so disrespectful. Uber sometimes would pay, sometimes it wouldn't.



Furthermore, the workers' accrual of use-value to the going concern's product, the car rides, is not restricted to the final performance of driving effectively from a pickup to a drop-off location for which they get paid, but it is also related to their efforts of being available for new rides at any time, as well as to their actions of controlling their emotions, maintaining their cars clean, dressing properly, and 'behaving' during the ride to avoid inconveniences with the passengers. All these elements are usually listed as part of the quality of the service, and platforms have profited by advertising them as constitutive features of their apps; however, it is an appropriation of labor's goodwill. By acknowledging the role of goodwill, the interdependence between platforms and drivers is made clear and the intermediary approach to platforms is put into question. The following **Table 3** presents the contract between platforms and drivers

**TABLE 3 – The transactions between drivers and platforms – “the contract”**

Property	Driver	Platform	Relationship
Incorporeal	Right	Duty	Labor's goodwill accrual of use-value to the platforms' service is paid/liquidated after each ride.
Intangible	Exposure	Liberty	In their daily transactions, the driver is exposed to the liberty of the platforms to block his account.
Incorporeal	Duty	Right	The algorithmic management practices impose a positive encumbrance on the liberty of the driver – a right for the platform to require behavior from them
Intangible	Liberty	Exposure	In their daily transactions, the platforms are exposed to the liberty of the drivers to stop logging into the software.

**Source:** Table made by the author based on Commons 1924.

### 3.5 Expressions of Collective Action in the Gig Economy

After discussing the constitutive elements of the ride-hailing platforms from a transactional approach of managerial, bargaining, and rationing transactions – the parts of a going concern – we are left with a final question that shall be addressed briefly before following the case study proposed in chapter 4. Considering the competitive menaces faced by ride-hailing drivers whose work conditions tend towards precariousness both through autocratic managerial practices and asymmetric bargaining relationships with the platforms, how have workers in

ride-hailing platforms responded to the conflicts and unrest that emerge in their daily activities as app drivers?

Despite the arguments of efficiency and the undeniable relevance of the digital platforms in creating job opportunities for those who are unable to access the traditional labor markets, specialized literature is increasingly pointing out the negative effects of these platforms on the workforce. The fact is that the idea of self-value of technology as the optimum instrument for solving real-world problems has formed contradictions that place the workers, who are the base of these platforms' activities, in constant conditions of precarity, insecurity, and unrest.

When discussing the gig economy, one may suppose it to be a wearing effort to organize this diffuse labor force that works on platforms that promise autonomy, while denying any form of the employment relationship. At the same time, the advancements in the tools of data collection and the opacity of algorithmic management seem to grow as risks to workers' power of bargaining (ECKSTEIN; MAWIL, 2020). However, the question of whether these workers should or should not organize in groups of collective action aiming at improving their conditions is outdated, since they are already organizing in a variety of ways. Consequently, a more adequate question would not be *if* these workers are or should be organizing, but rather *how* they are doing it.

In their investigation of workers' reactions to emergent conflicts with the platforms, Möhlmann and Zalmanson (2017) have highlighted a central paradox between workers' autonomy and the platforms' mechanisms of control and surveillance. As the authors argue, the use of algorithmic management results in conditions of power asymmetry and low transparency that act in restricting the very notion of workers' autonomy that is used to promote these businesses.

However, this process of action restriction through algorithmic management does not happen without defensive responses from these groups who are subjected to the system's logic. Möhlmann and Zalmanson (2017) perceived that to reclaim the autonomy over their services, gig economy workers tend to engage in strategies to overcome and bypass these algorithmic mechanisms of surveillance. As examples, the authors cite workers' attempts to guess and make sense of the system's operations, as well as choosing to resist (rejecting tasks), switching platforms, or gaming the system. These responsive actions are not only working towards regaining autonomy over their activities, but they would also represent the recovery of the term "gamification" in contrast to the neoliberal use of the term to induce workers to perform and work as much as they can (WOODCOCK; JOHNSON, 2017). By coining the term "gamification-from-below, Woodcock and Johnson (2017) point to workers' "playful

resistance” to the exploitative use and capture of game instruments by the platforms; thus, subverting the way work operates.

Indeed, what is perceived in recent studies is that the very unclear and absent figure of an employer that has been substituted using algorithms has led these workers to organize, whether in official unions, associations, or online forums (JOHNSTON; LAND-KAZLAUSKAS, 2018). In these groups, drivers can discuss problems they had with clients, share tips on how to use the platform and make money, and even discuss legal regulations of their activities, resembling the actions of labor unions (MAFFIE, 2020b; ILO, 2018; MORESCHI; PEREIRA; COZMAN, 2020). In fact, by investigating the role of the digital communities in organizing workers on digital platforms, Maffie (2020b, p.21) notes that, with a new phase on the Internet where communication goes beyond the distribution of information, online forums open to the discussion have even achieved “the capacity to build bonds between workers and create a sense of collective identity”.

A common finding in the investigation of collective action between platform workers is the heterogeneity of instruments and groups that emerge from these workers in their responses to the lack of bargaining power in the transactions with the platforms. Vandaele (2018), in his investigation of the patterns of platform workers’ groups, identify the main trends under two classifications (influence from Offe and Wiesenthal), those following the “logic of membership” (worker-led platform cooperatives; grass-roots unions; union-affiliated guilds), and the “logic of influence” (longstanding unions; labor market intermediaries as quasi-unions), a categorization where members and interlocutors are the focus of their actions (VANDEALE, 2018, p.19)

### **3.6 Final Comments**

This chapter had as a central thread the misclassification of workers under the activities of digital platforms and the discussion on the typologies applied to labor platforms with special attention to the location. Accordingly, the very definition of the firm faces controversies as it is usually presented as a technology company and a multimarket (intermediary) rather than a ride-hailing company and an employer to its users. Thus, we proposed the advancement in the definition of platforms through the Commonsian concept of going concern in which the transactions between the parties involved in the activities of the platform evidence the aspects of interdependence in profits and compensations.

One possible obstacle in the characterization of the digital platforms as going concerns would be the challenge of identifying the material and business spheres of the going plant and the going business. This matter is addressed by resorting to John R.'s debate on the immaterial nature of the labor contract and the subjectiveness of labor's goodwill from which the companies profit beyond the simple accrual of use-value of the man-machine interaction. As it has been argued, the interdependence between the ride-hailing platforms and their workers is not restricted to the moment of the ride, from which a transaction occurs when the driver and platform receive the payment and their transaction is then dissolved. On the contrary, an important part of the platform's market power depends upon drivers being available (online) to attend ride-request, their driving skills, the cleanness of their vehicles, and even their behavior during the ride.

Consequently, by acknowledging labor's goodwill as one of the sources of profit for the going concern, we adopt Commons' perspective of goodwill as the true property being transacted in the labor contract in both incorporeal and intangible forms.

Indeed, dealing with labor's goodwill and profiting from it by gaining market power and establishing a brand in the competition with other platforms is part of the going business of these companies. The going business is found in the platforms' business structure, their risk-funded capacity of entering new markets and disrupting ongoing norms and activities, their strategies to recruit new drivers, and even in their price mechanisms defining the "surge tariffs" and profiting from the network effects of its software – in short, the business practices of creating wealth by handling scarcity. When considering labor's goodwill, the subjective form of the humane agent, as intangible wealth, is the complementary part played by the drivers in strengthening the firm's market power over its competitors. It is not a relation of rights and duties, but opportunities.

On the other hand, the going plant seems at first inadequate to apply to digital platforms, considering the absence of a traditional industrial plant formed by the man-machine interaction to produce new wealth. However, the nature of the going plant is the production of wealth in terms of efficiency rather than scarcity – there is the production of use-value in the services provided by these drivers who, even though are using their vehicles, are being managed towards this end.

That is the role of the adoption of algorithmic mechanisms. The attempts to nudge expected behaviors to provide adequate rides is the organizational process of proportioning drivers' actions making them work efficiently and overcoming constraints of lack of skill, inexperience, and even deliberate restriction of their working capacities. This is the going plant

of the platforms: the rule of the algorithms in place of the rule of thumb or the scientific management rule of science organizing the work process of creating use-values (car rides) through the incorporeal side of the goodwill, that is the obedience to commands that give a direction to productions and create the legal rights of being paid compensation for the work performed and the correspondent legal duty of payment on the side of the platform.

What is perceived in current literature from the conflicts arising between workers and platforms is the walk towards autocratic algorithmic management that overlooks driver's goodwill both as an asset to these platforms and as the subjective feature of the human agent. Rather than goodwill, drivers are treated as commodities whose compensation occurs only by providing rides, denying its role as part of the going business. Consequently, these conflicts have imposed challenges both over workers' power of bargaining and their security of employment in a relationship where they are not even considered employees, as well as over Legislative branches of government concerning the establishment of adequate regulation, especially on competitive practices and labor protection. Their misclassification and the incapacity to represent their interests expose a vulnerability to the menaces of competition.

This chapter has worked in two main directions: firstly, it contains the general elements of a literature review concerning the features and main debates on the field of platform work and ride-hailing services. Secondly, working in parallel to the first, it provides institutionalist insights and contributions to the debates in this field of study, mainly in terms of the definition of the firm, the tools of algorithmic management, the challenges over established laws, and the aspects of collective organization. Through its exposition, this chapter proposes the elements of an institutionalist analysis to the study of labor platforms, while it defines the main themes and circumscribes the object of this investigation that will be treated thoroughly in the case study of the Brazilian ride-hailing workers in chapter 4. Therefore, we now turn to a case study aiming at understanding the constitutive elements and contradictions of the ride-hailing platforms in their transactions with the workforce of self-employed drivers in Brazil.

## CHAPTER 4. THE RIDE-HAILING DRIVERS IN BRAZIL: A CASE STUDY

In the previous chapter, this dissertation debated the constitutive bases of platform work and addressed the main elements related to the firm and labor-management through a Commonsian perspective, shedding light on the managerial practices and the conflicts between workers and capital. From this discussion, we argued that despite the use of a self-employed status to define the platforms' workers and the adoption of the definition of intermediary to describe the company's role in the relationship between its users, managerial and surveillance mechanisms are being used in contrast to the autonomy usually defended by an optimistic view of the app-based work. Consequently, platform labor has experienced conflicts that share similarities with traditional forms of work, especially in worker's claims for transparency in decision-making processes, higher wages, and better work conditions – demands that are usually followed collectively in union-like organizations by these workers who do not always see themselves as a cohesive class.

In its turn, chapter 4 expands the debate on labor digital platforms, investigating how the socio-political-economic context of the places in which the platforms operate may shape the relative role and acceptance of these companies in that society. By using a case study of the ride-hailing platforms in Brazil, we investigate what elements of an institutional character, such as labor laws and the working rules of managerial practices, have enabled the fast-growing accommodation of the platforms in the country, placing it as one of the main markets for ride-hailing platforms.

Accordingly, while ride-hailing apps have become the main source of income for thousands of Brazilian workers, the 2020s have started under the global crisis of the COVID-19 pandemics, and, amid this sanitary calamity, the platform's business model has been put in check by growing unrests among their drivers, menacing their operations around the country. With this case study, chapter four also aims at debating the role of crisis, whether political and/or economic, both in the rise of the platforms in the second half of the 2010s and in the contemporary conflicts where the demands for app workers protection through formal regulation seem to be growing in acceptance by the public; thus, raising questions of reasonability for how the asymmetric power between workers and platforms are perceived and what practices are deemed acceptable in the digital era.

To construct our exposition, section 4.1 discusses the labor market context in XXI-century Brazil, evidencing the ubiquity of informal employment arrangements in labor contracts and the regressive trajectory of the country's economy in the past decades. Section

4.2, in its turn, places the ride-hailing platforms in this context, presenting how these companies were accommodated by the ongoing institutions, and what/how these institutions and conflicts shaped society's perception of the benefits and drawbacks of these work arrangements.

#### **4.1 XXI Century Brazil: a place for platforms to grow**

Less than a decade after the Soccer World Cup in 2014 and the Olympic Games in Rio 2016, events that marked the arrival and the establishment of the ride-hailing platforms in Brazil, *Uber Technologies Inc.*, and *99 Technology Ltd.* can be taken as the most representative companies of these on-demand ride-hailing services in the country.

Uber, which in 2017 represented approximately 54% of the share of most used apps for private transportation (EXAME, 2017), has the Brazilian territory as its second-largest market, right after the United States of America. Data collected from Uber's annual report (UBER, 2020) and the company's IPO (2019), shows that its annual revenue in the country increased from US\$236mi in 2016, two years after the beginning of its operations in Brazil, to US\$918mi in 2019, with a worldwide share of 19,81% of Uber's 111 million total users and 20% of the total drivers/deliverymen (approximately one million workers out of five).

99 Technologies, in its turn, is a Brazilian company founded in 2012 that was initially designed to intermediate the rides of licensed taxi drivers and customers, introducing in 2016 the "99pop", a service for amateur drivers that enabled the platform to compete with Uber's services. The company, which now counts 600 thousand private/taxi drivers registered on its platform and 18 million users, was acquired by China's largest ride-hailing platform *Didi Chuxing Technology Co.* in 2018 in a transaction evaluated for approximately US\$314 million.

Both Uber and 99 respond for an important share of the informal workforce and act as alternative occupations for additional earning amidst the economic crisis and high unemployment rates of recent years. But the rapid accommodation of the ride-hailing platforms in the country is also related to the structural features of the Brazilian labor market that share with platform work the reasoning of informality and precarization as both a result of neoliberal policies and as its characteristics as a developing country part of the Global South (ABÍLIO, 2020) with late-industrialization and high indexes of informality. Thus, this topic investigates the context over which platforms spread in Brazil and the aspects of informality and precarization.

The world of labor in Brazil has faced deep changes from the beginning of the twenty-first century to the present day with a series of advances and setbacks that evidence the high sensibility of the labor markets to the changes in economic growth (MANZANO; CALDEIRA, 2017, p.18). The political-economic scenario from the last decade of the XX century and the first two decades of the 2000s is of particular interest in this debate, for it demonstrates how the reorganization of the productive process in the modern form of the capitalist system imposes changes upon the institutions governing the labor relations.

The 1990s are taken here as the starting point for our investigation of the elements of work organization in Brazil in the past decades, the reason is the wide adoption of neoliberal policies in Latin America from which Brazil would be dependent at least until the first half of the 2000s under the first mandate of President Lula da Silva (BARBOSA, 2013).

For Pochmann (2020), the embracement of the neoliberal prescriptions for economic policies in Brazil as requirements of a globalized world resulted in the acceleration of the process of deindustrialization and the transition to a society of services (third sector) marked by a “massification of structural unemployment and the precariousness of occupations based in contractual instability, lack of social and labor rights and low remuneration”, with a “trend towards the concentration of jobs at the base of the social pyramid and a relative reduction in middle-class salaried jobs (POCHMANN, 2020, p.96).

The country, however, experienced an inflection point in the mid-2000s with the articulation of both favorable external conditions and progressive political agendas. After a conservative mandate from 2002 to 2005 that abdicated a strategy of complete rupture with previous macroeconomic conduction due to a highly speculative environment related to his election (OLIVA, 2010), Brazil would be benefited from the increase in exports and accumulation of foreign currency in a context of a “commodity boom” (CINTRA, 2015). But, as important as the growing exports were, the policies adopted by the Workers Party are fundamental to comprehending the articulation of economic policy and growth in this decade.

For Biancarelli (2014, p.275-279), economic growth depended on and was sustained by domestic demand and a mass consumer market, enabled, in the words of Mercadante (OLIVA, 2010), by placing “social uplift as structuring axis of growth”. Barbosa (2013) for instance, highlights the role of expansionist fiscal policies from 2005 to 2008 amid the favorable “commodities boom”, with infrastructure expenditure (pt. PAC) and basic income distribution programs favoring the internal capacities of consumption. Accordingly, the economic crisis of 2008, was responded to with anti-cyclical measures, among which are expansionist monetary and fiscal policies, credit expansion, and a new program of habitation (pt. MCMV).



Besides the increase of real wages resultant from active governmental policies, the changes in labor conditions during this period can also be seen in the continuous decrease in the rate of contract informality, which dropped from 43,6% in 2002 to 32,5% in 2012, resultant from the increase of new formal positions led by economic growth, such as civil construction, as well as a concomitant application of public policies in education and income distribution, enabling younger workers, which usually presents high rates of informality, to postpone their entrance in the labor market, which represented an improvement in living conditions (MANZANO; CALDEIRA, 2017, p.11-12)

However, this period of relative economic growth was followed by a dramatic reversal from economic prosperity to a recession and its deleterious influences on labor issues, especially with Dilma Rousseff's adoption of restrictive macroeconomic policies in a context of already diminished growth (BARBOSA, 2013). Unemployment, for instance, which had achieved its lowest rate in 2012 (6,1% of the workforce), rose to 11,8% in August 2016 (on the occasion of the impeachment decision), and continued growing to its peak of 13% in 2017.

Concomitantly, the political crisis evidenced in the impeachment of President Dilma Rousseff (Labor's Party) and the consequent adoption of neoliberal measures by the government of Michel Temer (MDB) under the banner of restoring employment and development, resulted in a new phase in the process of deconstruction of the social protection net in labor legislation (BIAVASCHI, 2016).

Indeed, this period that started in 2016 represented a series of transformations in the world of labor, a "regressive reformism" (GUEDES, 2022), in which labor laws and social legislation are substituted by neoliberal-oriented agendas of precarization. Accordingly, Fernandez (2021) provides a review of this century in Brazil and Latin America through a roller coaster analogy, in which the progressive governments of the early years give place to conservative governments and neoliberal policies – also with fascist elements (also in BRAGA, 2020).

By adopting Polanyi's double movement, Fernandez (2021) thus argues the inability of these progressive governments to provide sustainable social and political changes in Latin America in face of the recent reconfiguration and reorganization of historical-achieved improvements for the workforce. In the same manner, for Antunes and Praun (2018), "none of the structuring pillars of Brazilian misery was effectively confronted", that is, that would be no fundamental changes capable of reducing the level of informality and precarization. Thus, the impeachment and the new policies would represent a new moment with "a government capable

of implementing a set of even more destructive social and labor measures, those that bourgeois domination demands of the country in times of acute crisis (ANTUNES; PRAUN, 2018, p.27)

To comprehend what it is meant by informality in Brazil, and also to recognize the lasting effects it imposes on those who are subjected to it (CACCIAMALI; TATEI, 2017), it is necessary to acknowledge that there are different ways in which this term can be assessed in Brazil. Antunes (2016) divides it into three main categorizations: (i) the traditional informal worker, usually in the service sector, who performs occasional/unstable low-qualification and contingent tasks; (ii) secondly, workers can be defined under the informal label in cases of unregistered waged work, in which the formal contract backed by the consolidation of labor laws (pt. CLT) and its working rules of the labor relations in the country (JERONIMO, 2019) is substituted by other forms of contract; and (iii) the self-employed worker.

From the definition of informality, one may perceive its bounds to the process of precarization of the work conditions. As Antunes (2016, p.18) argues,

If one conceives informality as a rupture in the formal ties of contract and regulation of the workforce, one may conclude that, even though informality is not directly synonymous with a precarious condition, its occurrence often and intensely expresses forms of work devoid of rights, which therefore bear a clear resemblance to precariousness. Thus, the precarization of the workforce has been one of the central mechanisms used by capital engineering in order to expand the intensification of the rhythms and movements of labour and to increase its process of valorization. In doing so, such informalization helps to propel the structural precarization of labour.

Following this interdependent notion of informality and precariousness, Pochmann (2020) adopts an index of precarization as the sum of the unregistered waged workers, the self-employed, and the unwaged workers who are part of the occupied economically active population (pt. PEA)<sup>11</sup>, that is, those who are not directly protected by labor legislation. As a result, 47,9% of the occupied PEA (105.2 million workers) were engaged in precarious activities in 2018, among which 25,6% (23.8 million) were self-employed, and 19,9% (18.5 million) were unregistered waged workers (POCHMANN, 2020, p.95)

Neoliberal rationality is one of the central elements behind the plataformization of labor that, summed up to datafication, imposes control over the informal workforce (GROHMANN,

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<sup>11</sup> As described by the Brazilian Statistics Institute (pt. IBGE), the PEA encompasses “the labor potential that the productive sector can count on; the effective supply of labor in an economy. In order to calculate the PEA, the following categories are considered: Occupied population - those people over 16 years old who, in a given reference period, worked or had work but did not work (for example, people on vacation); Unoccupied population - those people who did not have work, in a given reference period, but were willing to work, and who, for that, took some effective action in the last 30 days (consulting people, newspapers, etc.)”.

2020), and the very use of technology and the Silicon Valley ideals reinforces the “obsolescence” of labor laws and social protection to deal with the future imposed by this disruptive companies<sup>12</sup>. Therefore, when considering a country in which the level of informality may reach 40% of the total occupied workforce, there is a great share of the workers in Brazil who were never part of the formal population (CLT registered). Indeed, as Grohmann and Qiu (2020) argued, “in Brazil, gig work is historically the norm, not the exception”.

This massive presence of informal workers in the share of occupied people in Brazil was used as one of the bases for the proposal of the labor reform in 2016, in which the legislation was placed as an obstacle to overcoming unemployment and economic growth. The final report produced by the committee of federal deputies responsible for proposing the Labor Reform is revealing in its terms, for those arguments of neoliberal character can be perceived.

Firstly, technology, the State, and labor rights are seen in a logic of transformation through modernity and its effects on human social and economic relations, and the frictions between “the old” and “the new” are placed as problems to be addressed

The Brazil of 1943 is not the Brazil of 2017 [...] Today, we are in the 21st century, in the era of information technologies, at a time when our cell phones carry more processing power than all of NASA when it sent the man to the moon. The social dynamics have changed, and the ways of relating, producing, and working have changed diametrically. New professions have emerged, others have disappeared, and the labor laws remain the same. Inspired by Mussolini's fascism, the CLT rules were designed for a hypertrophied, intrusive state, which had as a guideline the exacerbated tutelage of people and the invasion of their intimates.

The solution for the incompatibility of the current labor legislation and the modern arrangements of labor relations would be, thus, a supposed increase of the groups attended by labor legislation in face of public demand for more freedom of action and contract

Brazil can no longer wait [...] We have a duty, within the limits imposed on us by our Constitution, to propose legislative measures that allow people to achieve their wishes. [...] It seems very clear to us what these desires are. People yearn for freedom, yearn for employment, and wish to be entrepreneurs with security.

By claiming that the original text of the CLT was not protecting informal workers, the reform would characterize the current legislation as

an instrument of exclusion, it prefers to leave people on the fringes of modernity and legal protection than to allow hiring according to people's wishes and realities.

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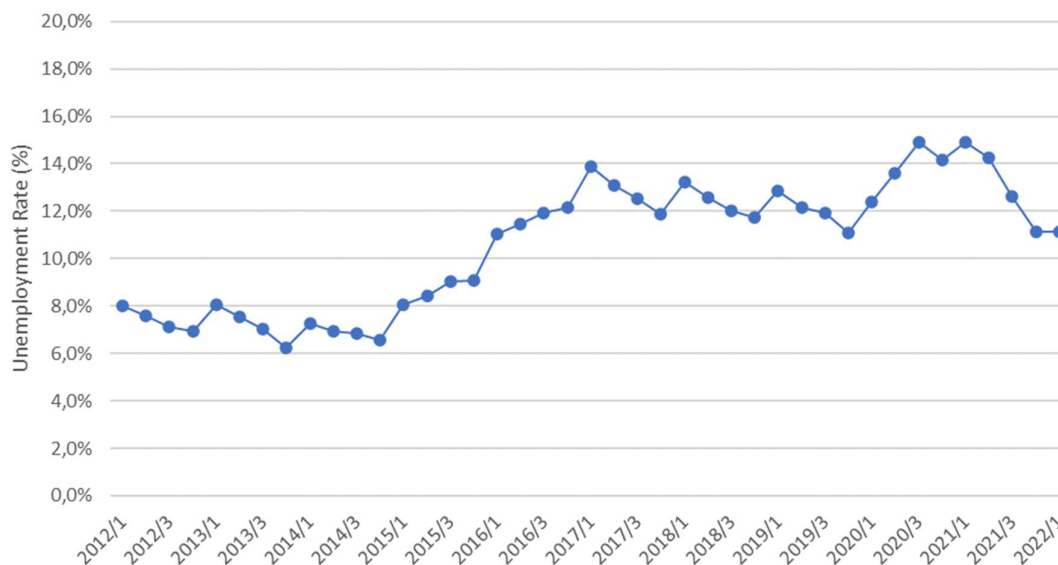
<sup>12</sup> Chapter 2, p. 3-7.

Therefore,

This labor modernization must assume the commitment not only to maintain the rights of workers who have a formal job, but also to provide the entry of those who currently do not have any rights. This imbalance must be tackled, as shielded by the mantra of job protection, what we see, most of the time, is labor legislation as a generator of injustice, stimulating unemployment and informality. We are, therefore, fully convinced that this reform will help generate more formal jobs and move the economy, without compromising the rights so hard-won by the working class.

Four years have passed since the enactment of the Labor Reform, and important results can be addressed when analyzing the effects of the new legislation on employment levels and work conditions. For instance, the promised generation of new job positions, despite its rhetoric, has not been materialized, on the contrary, what is perceived is the transference of formal waged workers to informal and self-employed status (POCHMANN, 2020). Accordingly, unemployment rates have remained above two digits since the beginning of the regressive reforms – See **Chart 1** below, having their higher peak of 13,09% in the first quarter of 2017 and their lowest rate of 11,1% in the last quarter of 2019. Indeed, one must acknowledge the recent effects of the global pandemics in the worsening of the social indexes worldwide for the early years of this third decade of the century; however, it is also worth noting that, even before March 2020 – the first month of official sanitary lockdowns – Brazil experienced increasing unemployment rates, with 12,7% in the first quarter of the year.

**CHART 1** – Quarterly Trajectory of the Unemployment Rate in Brazil (2012-2022)



**Source:** Chart created by the author based on Microdata/PNAD Contínua/IBGE Anual - (1<sup>st</sup> visit survey).

Despite not having fulfilled its objective of solving the labor problems of unemployment, there is, however, an important aspect in these arguments pro regressive reformism of labor laws that seems to have pervaded its logic and remained until the present day as part of the habitual assumptions that gives place to the establishment of the digital platforms in the country, that is, the inadequacy of the labor law and its suppression as utmost action in a neoliberal society. As Braga (2020) perceived, the opposition between social rights and employment got to the point of a dangerous denial of any form of worker's protection, in which the neoliberal logic made good use of the informal structure to place a conflict between workers that is the mark of the current government. For the author, "in the world of perpetual reproduction of informality, labor rights are interpreted as privileges rather than goals to be achieved, preserved and expanded" (BRAGA, 2020, p.2). Consequently, even among workers, the rapid advancements of regressive reforms seem to face little reaction, for, in a context of scarce positions, protective actions are weakened.

It is in this context that this chapter places itself as an investigation of how platform work has been accommodated in Brazil to a point where it has become one of the main alternatives for income, and even the main job for thousands of workers throughout the country. After having explored the elements of informality and precarity in the Brazilian labor market and stressing the regressive policies of the last decade, following Harvey (2017), as rearrangement of capital and the production process to restore class dominance by subjecting the workforce to precarious conditions of employment, we suggest that the bases for the accommodation and growth of digital platforms in Brazil were given so that it could rapidly become relevant in the study of labor relations in the country. We shall now focus specifically on the arrival and development of ride-hailing platforms.

## **4.2 Measuring the ride-hailing platforms**

The structure of labor platforms, such as Uber and 99 enables that, once the worker meets all the requirements to drive, they can have access to the app and start working at their will, be it a long-term commitment or a temporary "gig". This relationship between worker and platform challenges any attempts to assess the real numbers of ride-hailing services mediated by apps concerning the number of active workers, the density of drivers in urban centers, and even the average work hours and earnings of this occupation. For instance, UBER's blog depicts the panorama of its operations in Brazil by pointing out that, among its more than 5mi active drivers/partners worldwide and 93mi users (passengers), 1mi (20%)

and 22mi (24%) respectively are in Brazil, covering an area of more than 500 cities in the country. There is, however, little information on the general characteristics and profile of these workers.

Considering the relative novelty of this occupation, data collection represents a challenge in the inquiry of the gig economy and the full capturing of its constitutive features by current instruments of measurement (ABRAHAM et al., 2018). Also, if platforms keep this information from public access, the investigation has to rely on approximations and on general labor indicators that may demonstrate, even when aggregated with other occupations, the characteristics and the relevance of app drivers in relation to the total workforce. Therefore, the next paragraphs expose an attempt to identify and measure the ride-hailing workers in Brazil by resorting to microdata from national surveys.

One of the most important sources of data concerning the numbers of the labor market in Brazil is the Continuous National Household Sample Survey (PNAD Contínua), a quarter and annual publication conducted by the Brazilian Institute of Geography and Statistics (IBGE), which, among its information, grants access to a wide range of microdata on the national workforce and allow us to filter them according to occupations and activities. While there is no specific option of “platform drivers” for drivers to choose among the possible occupations, it is possible to get an approximate result by crossing data from two variables: occupation and activities, according to the “Classificação de Ocupações para Pesquisas Domiciliares (COD)”, and the “Classificação Nacional de Atividades Econômicas Domiciliar 2.0 (CNAE Domiciliar 2.0)”.

While the occupation of ride-hailing drivers can be assessed under code 8322 of the COD accounting for “car, taxis and pickup truck drivers” (MANZANO; KREIN 2020), more detailed data can be achieved by crossing it to code 49030 of the CNAE, which restricts the occupations of code 8322 to the activities of passenger transportation, which is the method used by GOES et al. (2021)<sup>13</sup>. By filtering codes 8322 and 49030 with the variables *V4010* (occupation) and *V4013* (activity), the resulting data will encompass those workers whose activities as passenger transportation drivers are the *primary source of income*. Likewise, when used with variables *V4041* and *V4044* the same codes retrieve data on passenger transportation drivers whose activities are their *secondary source of income*. This topic shall concentrate on the first group, but information on the second can be found in Appendix I.

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<sup>13</sup>Although our data utilizes the same codes as Goes et al. (2021) to investigate the ride-hailing workers in Brazil, our results differ in relation to the total number of workers, for, while we choose to focus on car drivers working with the transportation of passengers, Goes et al. (2021) also include motorcycle riders (code 8321). Indeed, “moto-taxis” represent important numbers in passenger transportation, however, considering that Uber and 99 only introduced the option of motorcycle rides in Nov. 2020 and Jan. 2022 respectively, focusing on car drivers may represent a clearer measure of those directly involved with the platform activities in the past decade.

The following **Table 4**, presents the total number of car, taxi, and pickup drivers who transport passengers classified by their position as employers, waged (formal and informal), own-account, and unwaged (domestic activities) workers.

**TABLE 4** – Evolution of drivers by Position and Rate of Precarization – Brazil (2014-2022)

Items	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Drivers (in thousands)</b>	<b>494,6</b>	<b>566,3</b>	<b>692,5</b>	<b>732,7</b>	<b>900,8</b>	<b>1092,4</b>	<b>1162,3</b>	<b>994,5</b>	<b>1053,1</b>
<b>Occupied (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Employers	3,2	1,9	1,7	2,0	3,2	1,4	0,9	0,7	1,0
Waged	25,5	26,5	20,6	19,5	14,8	13,3	11,1	8,2	9,3
Formal	15,1	14,9	11,8	9,6	6,0	5,7	5,3	3,6	4,4
Informal	10,4	11,6	8,8	9,9	8,8	7,6	5,9	4,6	4,9
<u>Own-account</u>	<u>71,1</u>	<u>71,4</u>	<u>77,5</u>	<u>78,3</u>	<u>81,6</u>	<u>85,2</u>	<u>87,9</u>	<u>91,1</u>	<u>89,7</u>
Unwaged	0,1	0,2	0,2	0,1	0,3	0,0	0,1	0,0	0,0
<b>Precarization</b>	<b>81,6%</b>	<b>83,2%</b>	<b>86,5%</b>	<b>88,3%</b>	<b>90,7%</b>	<b>92,8</b>	<b>93,9</b>	<b>95,7</b>	<b>94,6</b>

**Source:** Microdata/PNAD Contínua/IBGE – Table elaborated by the author based on Pochman (2020)

**Caption:** \*Precarization: share of informal, own-account, and unwaged driver in the total occupied in the activity

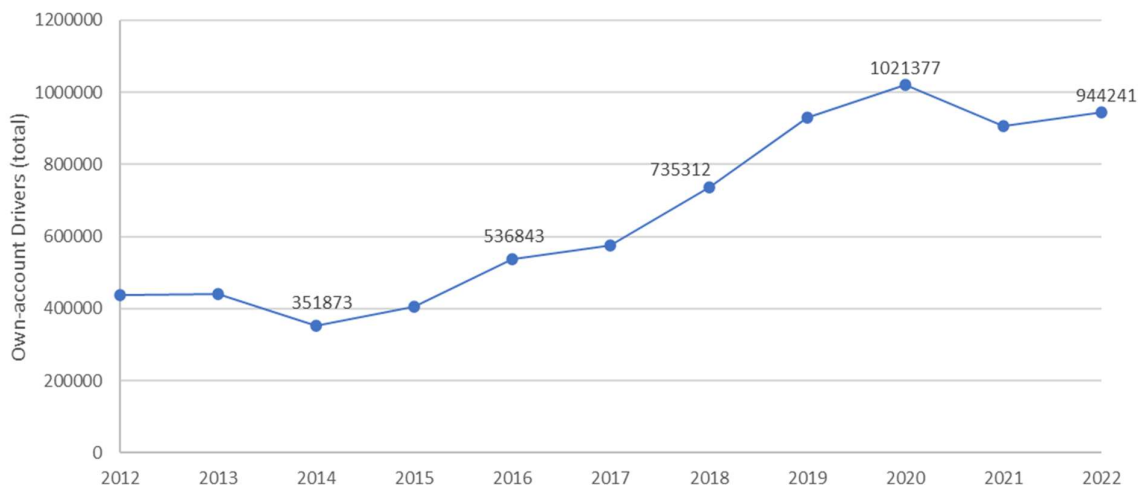
By adopting the Rate of Precarization (Pochman, 2020) which represents the share of unwaged, own-account, and informal waged workers, it is perceived that, even in 2014, the first year of the operation of Uber in Brazil, the work of drivers who transported passengers is marked by a high rate of precarization. While the number of drivers increased from 494,6 thousand in 2014 to approximately 1,053 million in 2022, a great share of these workers was incorporated by own-account activities, reaching the peak of 91,1% of the total occupied workforce in 2021, representing approximately 905 thousand drivers. At the same time, the gap between the high rates of own-account drivers and the other positions is accompanied by the declining participation of waged workers, both formal and informal in the public and private sectors, whose share reduced from one-quarter of the total occupied drivers in 2014 (123,65 thousand workers) to 9,3% (97,93 thousand workers) in 2022, a decrease of 25,75 thousand drivers in ten years, even with an absolute increase of 558,5 thousand workers in the activity on the same period.

If by crossing the occupation 8322 (car, taxi, and pickup trucks) with the activities 40309 (passenger transport) one can get general information about drivers in Brazil, the focus on own-account drivers may provide yet more specific data on ride-hailing drivers, who are the object of this research. Indeed, these drivers may describe their work in different ways, but considering the terms and conditions of the platforms and the determination that drivers are self-employed autonomous workers, the own-

account position will then be taken in the next paragraphs as the main group in which ride-hailing drivers can be found.

Focusing on the own-account drivers of passenger transportation, **Chart 2** presents the evolution in the absolute number of drivers in Brazil from the first quarter of 2012 to the first quarter of 2022.

**CHART 2** – Annual evolution in the number of people working as drivers (Own-account) – Brazil (2012-2022)



**Source:** PNAD Contínua/IBGE (1<sup>st</sup> quarter) – Elaborated by the author.

As perceived, the bottom number of drivers is found in 2014, with 351,873 people driving with the transportation of passengers, this is the year when Uber began its operations in Brazil. Between 2014 and 2016, when Uber and 99 were still adopting the new options of amateur private drivers (UberX and 99POP) beyond the services of professionals, the number of drivers had already increased 52,5% in 2016, growing to the peak of 1,021,377 workers in 2020, a 190,3% when compared to 2014. It is important to note that the decrease in the total number of drivers from 1 million to approximately 900 thousand between 2020 and 2021, occurs concomitantly to the effects of the restrictive sanitary lockdowns in response to the COVID-19 pandemics. While the data for 2020 represents exactly the last quarter before the first lockdown, 2021 already depicts the return of the economic activities in the first quarter of that year.

To assess the general characteristics and profile of these drivers, **Table 5** presents data on gender, average age, race, and level of education among those whose work as own-account drivers is their primary occupation, that is, the main source of income in the household.

From this table, it can be perceived that the almost three-fold growth in the number of drivers is also accompanied by relevant changes in their general characteristics, among which the level of education points out important class elements. For instance, considering the information on gender and age, own-



account drivers are predominantly male (+90%) with an average age ranging from 42,1 to 45,9 years. There is no significant change in these numbers between 2014 and 2022, even though in 2021 women accounted for 4,1%, approximately half of their participation in 2014, but that later increased to 5,8%, closer to the average of 6,75% of the period. Nonetheless, clearer changes can be perceived in the characteristics of race and education.

**TABLE 5** – Descriptive data on own-account drivers in their primary occupation – Brazil (2014-2022)

Variable	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Total Drivers</b>	<b>351873</b>	<b>404135</b>	<b>536843</b>	<b>574013</b>	<b>735312</b>	<b>931235</b>	<b>1021377</b>	<b>905681</b>	<b>944241</b>
<b>Gender (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Male	91,6	92,6	92,1	94,4	92,9	92,9	92,6	95,9	94,2
Female	8,4	7,4	7,9	5,6	7,1	7,1	7,4	4,1	5,8
<b>Age (<math>\bar{x}</math>)</b>	<b>44,6</b>	<b>45,8</b>	<b>45,9</b>	<b>44,1</b>	<b>43,3</b>	<b>42,5</b>	<b>42,1</b>	<b>42,4</b>	<b>42,9</b>
<b>Race (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
White	49,3	47,2	46,5	47	45,9	44,1	46	47,3	41,4
Black	6,6	6,9	7,4	7,1	8,6	10,4	10,4	9,5	15,6
Yellow	-	0,5	0,6	0,1	0,7	0,5	0,3	0,4	0,8
Mixed	43,8	45,2	45,4	45,8	44,8	44,5	43,1	42,6	41,8
Indigenous	0,2	0,3	-	-	-	0,5	0,2	0,2	0,4
<b>Education (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
None – Less than 1 year	1,4	1,4	1,1	1,4	1,1	0,8	0,5	1,2	0,9
Elem. (incomplete)	29,1	27,5	24,3	23,4	19	17,1	14,7	13	14,4
Elem. (complete)	16,5	13,4	15,1	10,1	8,3	8	7,3	11,7	8,8
High School (incomplete)	5,8	7,9	5,6	5,4	7	5,9	6,9	7,1	5,7
High School (complete)	40,5	41,5	42,8	45,9	44,5	49,1	49,2	47,6	50,1
Higher Ed. (incomplete)	3,1	2,8	3,9	5,1	8	8,8	8,6	8,5	7,3
Higher Ed. (complete)	3,6	5,5	7,3	8,8	12,2	10,2	12,7	10,9	12,7

**Source:** PNAD Contínua/IBGE – Elaborate by the author.

When looking at race, drivers who declared to be white accounted for 49,3% of the total own-account workers in passenger transportation, followed by 43,8% of the mixed (pt. pardo) and 6,6% of black workers in 2014. However, the passing of the decade and growth of workers brought with it increasing participation of black workers (15,6%), followed by the decrease in participation of whites (41,1%) and in mixed in less degree (41,8%) in 2022. While the share of black workers increased during the decade, also the participation of yellow (Asian) and indigenous workers increased, growing in absolute

numbers between 2015 (the first year with data for both races) and 2022 from 2.020 Asians and 1.212 indigenous drivers to 7553 Asians and 3776 indigenous, an increase of 273,9% and 211,5% respectively.

Nevertheless, it is in the level of education that more critical changes in the share of drivers seem to appear between 2014 and 2022. Considering that, in Brazil, one can have a driving permit at the age of 18 and with the requirement of being literate, that is, without the need of proving formal education, and, that Uber and 99 additional requirements are only the minimum age of 21 and the characteristics of the vehicle without any mention of education, one would not take this occupation as being formed by higher levels of education, or by more skilled and educated human capital. However, if we consider High School to represent the median between lower/basic and higher levels of education, the data evidences a shift from a higher share of lower educated drivers to higher levels by the end of the decade, especially among those with complete undergraduate courses. Thus, if in 2014 about 46,3% of workers were in high school levels, 47% had elementary education or less, and 6,7 had higher degrees; in 2022, these shares would change to 55,8%, 24,1%, and 20% respectively.

As a result, higher levels of education have grown in importance among the total of drivers occupied in the transportation of passengers from 2014 to 2022. Those who have completed high school, the last level of the basic education in Brazil, grew from 40,5% to 50,1%, reaching approximately 473 thousand workers. Those with incomplete higher degrees (undergraduate courses), which accounted for 3,1% in 2014, were 7,3% in 2022, having achieved the peak of 8,8% in 2019. Finally, those who had completed higher education (undergraduate level) increased their relative participation 3,5 times the 3,6% of 2014, reaching 12,7% of the total own-account drivers in 2022, the same share as in 2020. In conclusion, despite low entrance requirements in terms of education for this occupation, drivers in 2022 have completed higher levels of education, a fact that may be related to the incapacity of formal and high-skilled activities to create new job positions and absorb these professionals in a context of economic crisis, high unemployment rates, and growing precarization.

Following the trend of precarization, **Table 6** presents the differences in the averages of weekly hours of work and gross income between the total occupied workforce and the own-account drivers.

From the data on the time spent weekly in all occupations, the average work time of the Brazilian occupied workforce orbits around an average of 39,9 hours weekly during the decade, while own-account drivers worked an average of 46,3 hours weekly from 2014 to 2022, representing an average of 6,4 hours more than the total occupied workforce. In terms of nominal gross income, on the other hand, it is perceived a decrease from 2017 to 2021 in the monthly income of drivers when compared to the total workforce, for, while these workers earned 9,8% more than the total occupied average in 2014, this difference dropped to a 10,6% lower remuneration in 2022 for the drivers. Consequently, while working

more hours during the week, own-account drivers were remunerated relatively less in terms of monthly gross income than the average of the occupied workforce.

**TABLE 6** – Average weekly work hours of own-account drivers and monthly gross income (nominal) in relation to the total occupied workforce– Brazil (2012-2020)

Reference	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Weekly Hours</b>	-	-	-	-	-	-	-	-	-
Occupied Workers	40,6	40,2	39,8	39,8	39,7	39,7	39,8	39,8	39,9
Drivers	47,7	48,7	45,5	45,4	45,4	45,8	46,7	46,2	45,3
Difference	7,1	8,5	5,7	5,6	5,7	6,1	6,9	6,4	5,4
	17,5%	21,1%	14,3%	14,1%	14,4%	15,4%	17,3%	16,1%	13,5%
<b>Monthly Income (R\$)</b>	-	-	-	-	-	-	-	-	-
Total Occupied Workers	1652	1775	1899	2023	2095	2201	2310	2447	2485
Drivers	1814	1967	2078	1957	1927	1923	2066	1911	2221
Difference	162	192	179	-66	-168	-278	-244	-536	-264
	9,8%	10,8%	9,4%	(3,3%)	(8%)	(12,6%)	(10,6%)	(21,9%)	(10,6%)

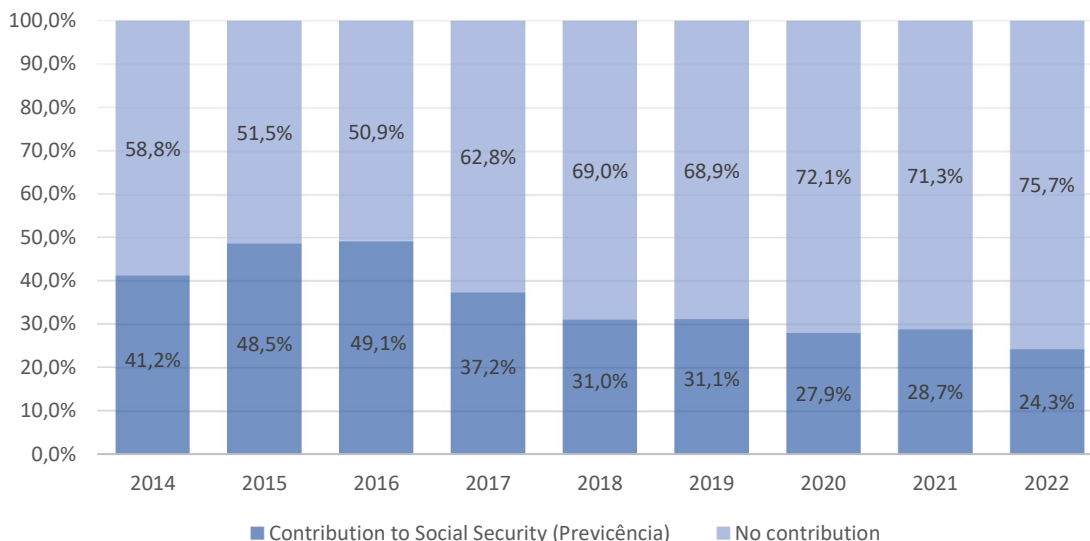
**Source:** Microdata/PNAD Contínua/IBGE (1<sup>st</sup> quarter) – Table elaborated by the author.

Being an own-account worker in Brazil implies, through IBGE's definition<sup>14</sup>, working in your own enterprise, exploring an economic activity alone or with a partner, without having an employee and counting, or not, with the help of an unpaid worker. As a result, the responsibility of paying for social security, which is one of the basic requirements of a formal contract of waged work, is relegated to the workers' will or ability to contribute with the monthly rate, that will grant income for future retirement or even additional benefits, such as sick pay and compensation for accidents. In Brazil, the contributions to social security are directed to the National Social Security Institute (INSS), with aliquots that range from 7,5% to 14% for ranges of remuneration, having the minimum wage as the benchmark for the lowest rate.

The information in **Chart 3** indicates that until 2016, almost half of all own-account drivers contributed to social security from their monthly income, however, with the increasing entrance of new workers observed from 2015 to the end of the decade, there was a decreasing tendency in the contributions, falling to less than one-quarter of all own-account drivers in 2022. This data contributes to the investigation of the precarization rates among drivers of passenger transportation, for it evidences that besides working longer hours and getting paid lower remunerations, these workers also face increasing insecurity while exposed to risks, for, in case of interruption in their capacity to work, about 75,7% would have to resort to their own savings to provide for their households.

<sup>14</sup> IBGE – Manual de entrevista. Available at: [https://biblioteca.ibge.gov.br/visualizacao/instrumentos\\_de\\_coleta/doc1050.pdf](https://biblioteca.ibge.gov.br/visualizacao/instrumentos_de_coleta/doc1050.pdf)

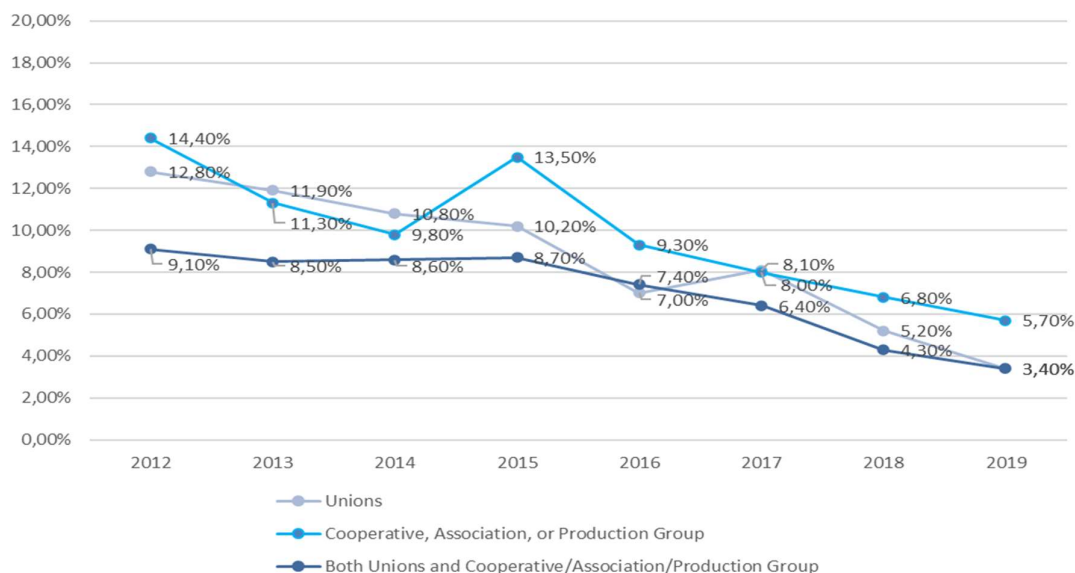
**CHART 3 – Share of Own account drivers who contribute to Social Security (INSS)**



Source: PNAD Contínua/IBGE (1<sup>st</sup> quarter) – Elaborated by the author.

One final piece of data that serves us to comprehend the vicissitudes of ride-hailing occupations during the past decade in this context of high unemployment rates, high hours of work, low income, and the absence of a security net represented by the contribution to social security (INSS) is the presence of and membership in unions or other groups of collective action among the own-account drivers, which is shown in **Chart 4**.

**CHART 4 – Membership in Unions and/or Cooperatives, Associations, and Production Groups between Automobile, Taxi, and Pickup Truck drivers – Brazil (2012-2019)**

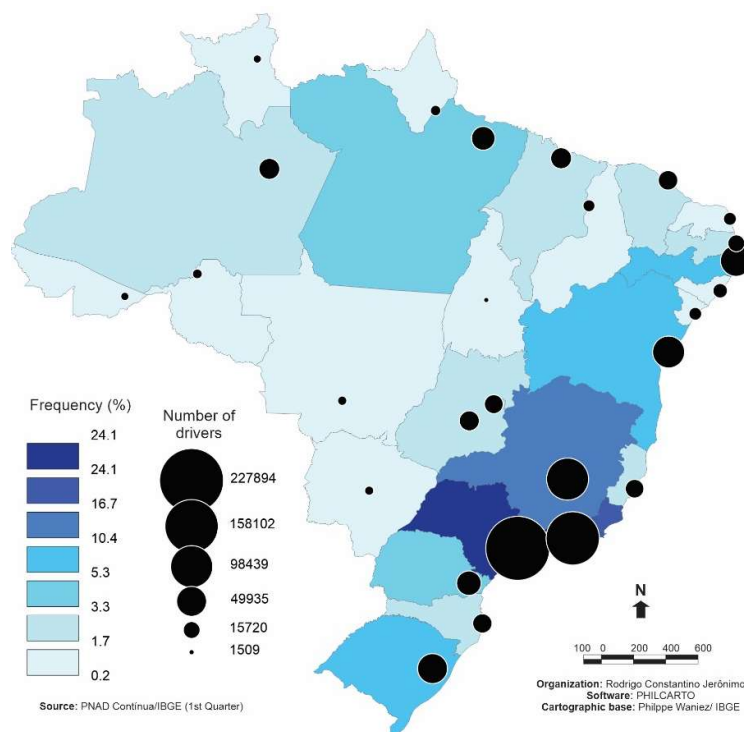


Source: Chart created by the author based on Microdata/PNAD Contínua/IBGE Anual - (1<sup>st</sup> visit survey).

From Chart 4 it is perceived that at the same time the elements of precarization increase in the occupation of own-account drivers there is a clear decrease in the share of workers who are unionized or part of a cooperative/association/production group, that, otherwise, would be capable of representing their interests. This data is presented in the annual survey of PNAD Contínua and is available from 2012 to 2019, the most recent publication. In it, the rate of unionization drops from 12,8% to 3,4% in the period, also followed by a decrease of those who are both unionized and part of other collective groups from 9,1% to 3,4%. Interestingly, the share of those who are members exclusively of cooperatives and associations is higher than in unions in six of the eight years investigated, but they also follow the decreasing trend, going from 14,4% in 2012 to 5,7% in 2019. This means that in 2019, only 12,5% of all own account drivers were part of a group of collective action, while 84,5% were not part of any group.

Finally, Map 1 provides a panorama of the territorial distribution of the own-account drivers in primary occupations, providing insights into the geographic characteristics of this occupation in Brazil.

**Map 1** – Frequency of Own-account Drivers engaged in passenger transport activities by State – 2022 (Primary Occupation).



As shown in Map 1, own-account drivers are mainly concentrated in the Southeast Region, with São Paulo, Rio de Janeiro, and Minas Gerais representing 51,3% of the total occupied workforce in this activity. When ranked by States, São Paulo is first accounting for almost one-quarter (24,1%) of the

number of drivers in the country, followed by Rio de Janeiro (16,7%), Minas Gerais (10,4), Bahia (6%), and Pernambuco (5,7%). Consequently, there is a heterogenous distribution of drivers in Brazil, with the higher numbers coinciding with those States with the biggest economies (São Paulo, Rio de Janeiro, and Minas Gerais respectively), and population (São Paulo, Minas, and Rio de Janeiro).

After having concentrated on the investigation of those workers whose activity as drivers represented the primary source of income, that is, their main activity, it is worth mentioning the characteristics of those who have this activity only as their secondary occupations, something that may represent the true meaning of “gig” in the gig economy, the additional income to complement one’s main earnings. Data on these drivers is presented in Appendix I. While not negligible, the number of own-account drivers as their secondary occupation accounted for 44436 workers in 2022, which would be the equivalent of 4,7% when compared to the numbers of those working only as a primary occupation, or 4,4% of the 1mi drivers and partners Uber claims to have in Brazil

It is in descriptive data on the profile of these workers that important elements for comparison are presented. Firstly, while the gender remains mainly male, there are higher variations in the share of man/woman between 2014 and 2022, with women achieving 26,3% of the share of total drivers in 2021. Accordingly, drivers in secondary occupations are mostly white, black, and mixed, but these vary greatly during the period observed, a fact that is also demonstrated with the 4,2% of indigenous drivers in 2022. Finally, following the changes in levels of education perceived in drivers of primary occupation, drivers of secondary occupation had a drastic change starting in 2017, that from this point forwards achieved an increasing share of workers with complete high school level and above. For instance, in 2022 76,6% had high school and above, among which 26,1% had completed higher education courses (undergraduate).

To conclude this topic, while own-account drivers in secondary occupations accounted for 97,7% of the total drivers of passenger transportation with a rate of precarization reaching 99,7% in 2022, in their primary occupation, whatever that might be, these workers had a rate of precarization of 51,62% in that year when 27% of them had formal contracts (CLT) in their main occupations. This last data may, indeed, point out the fact that even formal workers with a general level of precarization lower than that of drivers in primary occupations may resort to these activities in a secondary “gig”, being exposed to precarity.

#### **4.3 Forewords to a case study: the use of semi-structured interview**

Beyond the assessment of the activities of ride-hailing platforms in Brazil through the analysis of microdata, especially by acknowledging its limits to provide objective responses to the questions of who these workers are and how do their daily activities shape their experience with the platforms, it is essential

to complement our investigation with the adoption of empirical research capable of expanding our comprehensions on the matters related to these activities. Thus, for the purposes of providing a clear perspective on the characteristics and evolution of the ride-hailing activities in the country, we shall also resort to the method of semi-structured interviews, a dialogical method of assessing respondent's motives and perspectives as part of a certain group, event, or activity, considering their "experience and interpretation of reality" (BLEE; TAYLOR, 2002).

Rather than using a questionnaire with closed questions, the interview is a "sensitive and people-oriented" approach, that permits "interviewees to construct their own accounts of their experiences by describing and explaining their lives in their own words." (VALENTINE, 2005, p.111). However, the very term "semi-structured" stressed the need for a plan guiding the choice of a group of interest, the main themes, follow-up questions to deepen the explanation of a certain topic, and a clear interview guide (KALLIO et. al, 2016; VALENTINE, 2005), with the researcher's acute ability to recognize new themes from these answers and expanding the scope of the main themes when a new tread of thought is perceived.

To define the individuals for the conduction of semi-structured interviews, we have resorted to the constructive research method of the OIE school from a Commonsian perspective in which the going concerns, that is the groups of collective action, take a central place in the investigation of the economic transactions. In essence, as discussed in the first chapter, the authors from the original institutionalist tradition gave special attention to the role of labor unions in responding to changing market conditions and addressing the issue of power asymmetry between capital and labor (COMMONS, 1909; KAUFMAN, 2005). Accordingly, understanding the history of the labor movement was a central aspect of their approach to the rapidly changing capitalism and its contradictions. Selig Perlman, for instance, stated that "the individual workman leaves no historical records, but the labor movement does" (PERLMAN, 1951, p.58), consequently, the investigation of the labor movements and their leaders would be a central source of data for the Wisconsin school on the history of labor in the United States.

Thus, rather than interviewing those workers whose activities are restricted to providing rides, we propose the use of three interviews with leaders and representants of unions and associations of drivers who not only had the experience as drivers but would be able to offer a broader perspective on the vicissitudes of this activity in Brazil. Knowledgeable, different kinds of platform occupations may have different instruments of collective actions (WOODCOCK; GRAHAM, 2020), and different patterns of going concerns may be perceived in the same activities with official unions or union-like characteristics (VANDAELE, 2018). However, describing the different kinds of going concerns is not our main objective in this study, though it may be present in the discussion, but to investigate and expose the main factors that have

driven these workers to organize, as well as their perspectives on how legislation and their relationship with the platforms and the State have shaped how they organize.

Therefore, by adopting the semi-structured interview, the analysis of the ride-hailing platforms in Brazil and their effects on the workforce and the labor problems in the digital era through an institutionalist approach goes beyond the description of its controlling elements and is enriched by the inquiry on how workers, when facing conflicts with the opaque system of the platforms, respond and seek for changes in their work conditions and the working rules governing their daily actions. Furthermore, the going concerns with which workers' organizations must deal are not restricted to organized capital, but their transactions with the State are also central aspects of how they may organize and act with the other concerns (COMMONS; ANDREWS, 1936; PERLMAN, 1936; JERONIMO, 2017).

The main objective of the semi-structured interview adopted in this study may be summarized as identifying the characteristics and constitutive conflicts of the ride-hailing platforms in Brazil, seeking to understand: (i) the changes in this sector since their arrival in the country; (ii) the perception of the influences of the political-economic context on their working conditions; (iii) motivations and obstacles to the collective organization; (iv) ways of organizing; (v) their forms of political representation. Accordingly, five main themes are addressed as starting points for questions:

1. Experience as a driver and as a leader.
2. The arrival of ride-hailing platforms in Brazil and main changes.
3. Conflicts and the emergence of going concerns of collective action.
4. Representation in Legislature and Against the Platforms.
5. The effects of the global pandemics (COVID-19)

Thus, following these main themes, the investigation is capable of mapping and analyzing the groups of collective action, meaning the assessment of promising paths to a more detailed debate as we intend to present in the following topics. The complete questionnaire is presented in Appendix II.

In general, the interviews concentrated on the investigation of the associations in São Paulo (State), which, as shown on Map 1, had 25% of the total own-account drivers in the country in 2022. After mapping the main unions and associations in the State by searching for their online presence in the main social networks (i.e., Facebook and Instagram) and by the suggestion of association leaders, 15 groups were identified as active in 2021 (Appendix III).



Of these groups, 10 had been contacted before the pandemics, of which 6 were willing to participate in the interviews. However, with the effects of the pandemic, several groups were found inactive at the beginning of 2022; thus, this research had the final contribution of 4 interviews, that were used alongside the quantitative data from Topic 4.2 and the identification of the main legal marks in the activities of ride-hailing digital platforms in Brazil, to present a panorama of the arrival, accommodation, and transformations of this activity in the country.

The interviews were conducted between February/2022 and June/2022/2022, with an average length of 1h35min. Among them, three were conducted online through the Platform Google-Meets, and one was held in person at the association's main office. The answers to the questions proposed during the interview have been transcribed and some excerpts have been fully reproduced in the following topics with due consideration of confidentiality, so names and cities have been avoided. Thus, these leaders have been named as Interviewees 1, 2, 3, and 4, three of them had undergraduate degrees (2, 3, and 4), and all four were male, with ages from 40 to 52 years old. Among those with undergraduate degrees, 1 had been a public server (4), and the other two (2 and 3) were autonomous self-employed before entering ride-hailing platforms. Two of them had had experiences with their own businesses (2 and 4). The leader with high school level (1) had been employed in the private sector as an outsourced service provider.

Finally, all their insights and contributions have been used in the construction of the periodization of the activity of ride-hailing apps (Topic 4.4) and the final debate of this chapter (4.5), from which, we investigate the main conflicts, the transactional aspects, and the challenges of own-account drivers to deal with the platform's managerial mechanisms while subject to the neoliberal ideal of autonomy to define their activities. Once again, these interviews serve as qualitative complements to the qualitative data from the previous topic, granting a panorama of these activities in the country that aims at going beyond the debate if these workers "should organize", to understand the context for the existing forms of organization.

#### **4.4 Labor Problems in Ride-hailing Platforms: a case study**

The arrival and establishment of ride-hailing platforms in Brazil, 99 (2012) and UBER (2014), occurred concomitantly to the deepening of the political-economic crisis that resulted in historical levels of unemployment and in a growing aversion against the progressive governments of the past fourteen

years, a movement that ended up in the far-right government of J. M. Bolsonaro (2019-2022). The devastating effects of the economic crisis on the workforce worked in the direction of accelerating the decomposition of a share of the working class whose jobs had remained under the protection of the Fordist industrial era, but who now were forced into precarity with the advancement of the neoliberal responses to the global crisis accentuated in 2008 (BRAGA, 2017).

The fact that the share of workers with higher education degrees increased in the activities of self-employed drivers<sup>15</sup> points out this tendency of decomposition of high skilled highlyers that became notorious in media platforms in the first years of the ride-hailing platforms, with special attention to the symbolic figure of the engineers<sup>16</sup>. By symbolic, we mean the clear contrast between the boom of engineering projects that accompanied the finding of massive reservoirs of petroleum in the pre-salt layers of the Brazilian sea coast, as well as the promising growth in the civil construction sector with governmental projects of infrastructure in the first decade of the century, and the following period of austerity, reduction in infrastructure investments, and the concentration of new job positions in the service sector of low-income informal activities. The underemployment of skilled workers would then be a growing tendency of the rising unemployment of the 2010s.

It is not our objective, however, to focus on the case of engineers and their transference from employment contracts to own-account activities in ride-hailing platforms, but this case is mentioned to highlight how these platforms may have represented a promise of a haven for unemployed workers in a context of economic crises and rising unemployment. Much of the ride-hailing platforms' appeal to this vulnerable public is related to the promises of autonomy to work whenever one desires and the rapid money after each ride provided. For instance, on the occasion of the celebration of its seven years in Brazil, UBER summarized its impacts on the country as follows

In addition to changing habits, the urban mobility service presented a new option for generating income, which can be activated in an easy and very functional way. Several studies point out that the arrival of Uber created a new economic ecosystem in Brazil, with impacts both on the mobility of cities and the labor market. *In Brazil alone, around 68 billion reais were passed on to partners from 2014 to 2020. The flexibility of schedule and accessibility in entry barriers allowed millions of Brazilians to find a new form of income driving with apps as a complementary activity or primary activity* (UBER, 2021 – emphasis in the original – our translation)

In the following subtopics, we propose a periodization of the arrival and development of the ride-hailing platforms in Brazil in which we place the institutional changes for its accommodation, the pressures

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<sup>15</sup> Topic 4.2.

<sup>16</sup> The incorporation of engineers and other professionals with higher degrees was heralded as both the precarization of these workers and an alternative in times of crisis (see references: BBC; Correio 24 horas; Folha; Estadão)

for regulations, and the transactions between workers, platforms, the State, and clients in the center of a conflict between society's conception of the platforms as alternatives for unemployment on one side and, on the other side, the perception of their actions as autocratic going concerns exploring labor's goodwill to succeed. By using testimonies from workers and by analyzing the public perception of reasonable practices through the legislation and the decision of the Supreme Court, we seek to investigate how this activity, embedded in neoliberal rhetoric, has been perceived and incorporated by the workers, arguing that the platforms have benefited from the frailty and vulnerability of the working class for whom informality is the rule. Accordingly, we point out the contradictions between neoliberal rationality and the search for mechanisms of protection among these workers, which may limit the range of their collective action.

#### **4.4.1 First Phase: Prohibition and the tacit support**

“Although the value of new technologies for the improvement of services is undeniable, their use cannot be allowed when in complete disagreement with the current law” (...) “regarding the use of apps to offer paid transportation in private cars, we emphasize that this is a private activity for taxi drivers” (...) “Thus, in order to protect the system and professionals in the sector, both defined and recognized by law, we present this proposal to avoid the proliferation of services that may put users at risk and create new subterfuges for the performance of professionals and clandestine vehicles” (JUSTIFICATIVA – PL 0349/2014)

The excerpt presented above is part of the justification for the Bill 0349/2014 of the city of São Paulo, which aimed at prohibiting the activities of ride-hailing platforms in its territory, both because of its unregulated character and in favor of the activities of taxi drivers, who had the rights to provide the service of paid transport of passengers. It is by this tread of prohibitions and their resulting laws that the first period of the platforms in Brazil and its main conflicts can be defined: the legislative attempts to regulate the activity, mostly its prohibition, and the growing resistance of taxi drivers, represented by their unions and associations.

Among the attempts of regulation aimed at prohibiting the activities of digital platforms, two legal frameworks deserve attention, namely, Law 16.279/2015 from São Paulo (SP), which derived from the Bill 0349/2014, and Law 10.553/2016 from Fortaleza (CE)<sup>17</sup>. Although they were not the only responses of municipal legislative branches to the newly-arrived activities of transport platforms during the first years of companies such as Uber in the country, the centrality of the two norms lies in the fact that, despite being revoked shortly after their sanction,

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<sup>17</sup> A complete list of Legal actions leading to the decision of Brazilian Federal Supreme Court on the unconstitutionality of prohibiting laws for Ride-hailing Digital Platforms is presented in APPENDIX IV.

they were the stage for the judgment of the Action Against the Violation of Constitutional Fundamental Right (pt. ADPF) by the Brazilian Supreme Court in 2017, which resulted in the decision of unconstitutionality of municipal laws prohibiting ride-hailing platforms.

Sanctioned on October 8, 2015, under the administration of Fernando Haddad (Workers' Party) in São Paulo, Municipal Law 16.279/2015 provided for the prohibition of the use of individual paid transport apps in the capital of the State. In its text, the norm defined values related to fines, as well as the apprehension of the vehicles caught in the execution of these services, until then restricted to taxis by the current municipal legislation (Law No. 7.329/1969). The law of the capital of Ceará, in turn, presented few details in its final text signed by Mayor Roberto Claudio (Democratic Labor Party) on the arguments for the ban, complying with the notion of “individual public transport of passengers without proper legal permission” to seal both registered and unregistered drivers in ride-hailing platforms. The permission would have as a legality parameter the Municipal Law No. 4,164, of May 3, 1973, which restricted the individual transport of passengers to serve the public on municipal roads to taxi corporations.

Worth mentioning is Article 4 of law 16.279, which established that “The Executive Branch shall *promote studies for the improvement of individual passenger transport legislation and the compatibility of new services and technologies* with the model provided for in Law No. 7.329 from July 11, 1969” (our italics). By citing such improvement, the law itself defines new writing for the 1969 original text, by creating article 39-A on the “provision of a tool to assess the driver, the vehicle and the general quality of the service provided”, which may provide inputs for applying penalties on poorly rated drivers.

Thus, although acting on the prohibition of transport platforms, the legislation already pointed to elements of contact between municipal institutions and the logic of operation of the digital platforms, whether in the establishment of a system similar to star ratings or by pointing to the need to adapt the laws to a technological context.

While the laws for the prohibition of digital platforms were debated by municipal legislative branches around the country, also growing unrest between taxi and app drivers took place in the urban centers, not rarely escalating to physical violence and assaults against app drivers and their vehicles. It was in this bellicose context that the digital platforms expanded their services in the first years of their arrival in the country, marked by hostility with a class already established, the taxi drivers, and by the fines and vehicle apprehensions in cities where their activities were deemed as clandestine.

How come, then, that these platforms could manage to grow despite such belligerent circumstances? To investigate possible answers to these questions, we shall resort to the results of the semi-structured interviews with the leaders of associations.

As described by Interviewee 1 (47-year-old, male, driver for 6 years), among the main reasons for the creation of his association, was the growing violence against drivers:

I started working in apps 6 years ago, right here, because I'm from the city, and in that time, we went through some issues. It was no different in the other cities, but here there was a witch-hunt because the platforms arrived, and you know it, right? The taxi drivers didn't like it and we lived with reprisals and violence. So, we couldn't stop at some places. The taxis were violent, and the City Hall didn't understand very well the thing about working with apps. When you don't know what's going on, then you act violently. When you act out of a lack of intelligence, you act with unintelligence; it is violence. Even the City Hall carried out inspections at train stations, and bus stations, to apprehend drivers and charge them for illegal transport. So, I got the end of this period and from then on, we started to feel the need to have an institution that represented us so that we could fight and raise some questions at the City Hall and defend our class that was being persecuted.<sup>18</sup>

As it can be perceived by the period described above, the conflicts between the app and taxi drivers were not restricted to the early years of 2014 and 2015, remaining, though to less degrees, until the new decade. By this testimony, both taxi drivers and municipal governments are seen as hostile forces to the establishment of the platforms and the activities of their drivers throughout the cities in the national territory. These workers are seen adopting strategies to protect their interests, mainly the right to drive in certain areas, through collective action efforts.

The reason for drivers to remain in this activity, even amidst hostility, is described by interviewee 1 as being related to their remuneration, for “nós ainda ganhávamos bem, se hoje fosse acontecer esses conflitos com taxis, seja com quem for, muitos motoristas não ficariam, porque hoje não vale a pena você se expor, antes valia a pena”.

Following the role played by the higher payments earned by drivers in the early years of the apps in Brazil, Interviewee 2 (52, male, driver for 5 years) recognizes it as a strategy of the platforms to gain new markets. For him,

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<sup>18</sup> Original (Portuguese): “Eu comecei a fazer aplicativo há 6 anos mais ou menos, aqui mesmo, porque sou da cidade, e aí nesse tempo a gente passou por algumas questões. Não foi diferente nos outros municípios que estavam começando, mas aqui teve um caça às bruxas, porque a plataformas chegaram aqui e aí já viu, né? Os taxistas não gostaram e ainda nós vivíamos com represálias e violência. Então nós não podíamos parar em alguns locais. Eram os taxis praticando a violência e era também a Prefeitura que não entendia muito bem aquela coisa de você trabalhar no app. Quando você não sabe o que tá acontecendo, aí você age com violência. Quando você age pela falta da inteligência, você age com desinteligência, é a coisa da violência. Até a prefeitura fazia fiscalizações aqui nas estações de trem, rodoviárias, para apreender motoristas e autuar como transporte ilegal. Então eu peguei o finalzinho dessa parte e a gente a partir daí começou a sentir a necessidade de ter uma instituição que nos representasse, pra gente poder estar lutando e colocando aí algumas questões da Prefeitura e poder defender a nossa classe que estava sendo perseguida.”

In fact, Uber and 99, until a while ago, were start-ups that aggregated other technology start-ups, with investments of high-risk capital funds, so it practically started paying to enter the market; it paid for its entry into the market. When it managed to dominate the market, it sold all the tech start-ups and went public. From the moment it entered the Stock Market, it could not have a negative result. Every year Uber ends with profits. Does it do that throwing this value on the customer? No, because it doesn't want to lose its clients. Uber plays the game of the numbers and takes it away from the driver.<sup>19</sup>

By his arguments, this leader seems to be aware of Uber's use of venture capital to finance its entrance into new territories, allowing the sustainment of financial losses in the provision of subsidies and promotions that will allow it to spread (SLEE, 2017, p, 127). Indeed, Uber's economic market position financed by venture capital was directed both to customer's prices and drivers' benefits (ISAAC, 2019), and once established, it acted in restoring its tariffs and promotions, resulting in a dramatic reduction in the earnings of their drivers.

While earnings remained high, Interviewee 1 summarized the relationship between drivers and platforms as follows

In the beginning, our gains were bigger. So, the relationship between the platforms and the driver was harmonious. You earned well, worked well, so much so that their motto was "be your own owner, your own boss, work in your spare time", in fact we worked two, three, five hours what we earn today working fifteen hours.<sup>20</sup>

By harmonic, we can argue an important feature of the main conflicts in the first phase of ride-hailing apps, while lawsuits from drivers against the platforms were already occurring, yet the main actions appeared as a co-joint interest between driver and platforms to legitimize their activities in the country. It was mainly a conflict between drivers/platforms and current legislation. However, in this first period of the platforms in Brazil, the interest of app drivers and their strength to demand changes in the treatment they had been experiencing in their cities required that stronger and broader interest be summed up to their claims, here the role of public

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<sup>19</sup> Original (Portuguese): "A Uber, na realidade, e a 99, até um tempo atrás, eram start-ups que agragavam outras start-ups de tecnologia, com investimentos de fundo capital de alto risco, então ela praticamente começou a pagar para entrar no mercado; ela bancou com a entrada dela no mercado. Quando ela conseguiu dominar o mercado, ela vendeu todas as start-ups de tecnologia e entrou para a bolsa de valores. A partir do momento que ela entrou na bolsa, não pode fechar no negativo. Todo ano fecha no positivo, ela vai fazer isso, jogar esse valor para o cliente? Não, porque ela não quer perder os clientes dela. Ela joga o jogo de números e tira isso do motorista."

<sup>20</sup> Original (Portuguese): "No começo, os nossos ganhos eram maiores. Então, entre as plataformas e motorista, a relação era harmônica. Você ganhava bem, chegava bem, tanto que o lema era "seja seu próprio dono, seu próprio chefe, trabalhe nas horas vagas", de fato a gente trabalhava duas, três, cinco horas o que a gente ganha hoje trabalhando quinze."

opinion represented an important asset to the platforms, for they represented a political force against prohibition and regulation attempts.

The articulation of public interest as the base for the legitimization of the platforms was recognized by Isaac (2020) as a “guerilla tactic”, which was characterized by the entrance into new territory without having a permit and expanding rapidly before regulators tried to impede its activities, so when any attempts to regulate it began, it was already too popular to be changed (ISAAC, 2020, p.117-118). Accordingly, Interviewee 1 continues to describe what for him represented the main contributions of platforms to his city

I told you about violence, but then the population began to understand our category better. So there was this phase of the introduction of the apps that was conflicting. And then it started softening because the population began to understand it better. Taxis shot themselves in the foot when complaining about our category. They were already doing something wrong, right? But the population began to understand, to get informed (...) here in the city, in the past, people either had a car to go out or took the bus, if it got late and there were no more buses, either you had a car or you had to pay taxis. So much so that there was no business here at night, so after the platforms arrived, businesses started to grow, so this is a niche, it started to open several niches, which is the consumption of fuel, maintenance, rubber, and people started to go out more. Today people go out, you can call Uber, it's 5 reais, 10 reais, so today, due to individual mobility transport apps, the population even spends more, and they end up spending more.<sup>21</sup>

Indeed, the public opinion appeared to grow in favor of the platforms for the services provided locally by the drivers, especially with the early benefits pointing to “quality”, among which was the formal dress code and the water bottles provided to passengers. However, the platforms themselves were responsible for the greatest marketing strategies to attract favorable public opinion to its interests and consequent dissatisfaction against regulatory attempts – a fact that is made clear in the campaign against the Bill 5587/2016 in the Federal Chamber of Deputies, to which we shall focus our attention now.

Bill 5587/2016, proposed by Deputy Carlos Zaratini (Workers Party), was received with optimism by unions and associations of taxi drivers as a means of addressing “the predatory

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<sup>21</sup> Original (Portuguese): “Eu te falei da violência, mas depois a população foi entendendo melhor a nossa categoria. Então teve essa fase da introdução dos aplicativos que foi que foi conflitante. E aí depois veio meio que amenizando, porque a população foi entendendo melhor. Os taxis deram um tiro no pé de reclamar muito da nossa categoria. Eles já vinham fazendo coisa errada, né? Mas a população foi entendendo, foi se informando (...) aqui na cidade, antigamente, ou as pessoas aqui tinham carro pra sair ou ônibus, se chegasse um horário, não tem mais ônibus, ou você tem carro ou tinha que pagar taxis. Tanto que aqui não tinha comércio a noite, então depois que chegaram as plataformas, começou a movimentar o comércio, então isso é um nicho, começou a abrir vários nichos, que é o consumo de combustível, manutenção, borracha, o pessoal começou a sair mais. Hoje o pessoal sai, pode muito bem chamar o Uber, é 5 reais, 10 reais, então hoje, devido ao transporte de mobilidade individual, a população gasta mais até, acaba gastando mais.”

and unfair competition that has emerged in recent times”. The bill proposed a change in Law 12.587/2012, the law of urban mobility, to regulate the private paid transport of individual passengers, recognizing the new platforms, but restricting their use of taxis. In in, the paid individual transport of passengers would be exclusively an activity of taxi drivers, prohibiting the use of private vehicles to achieve economic gains. The bill passed through substantial changes in its final text, so, on the occasion of its approval by the Chamber of Deputies, it had been reduced to the addition of two new articles to the original law, 11A, and 11B, defining that Cities and the Federal District would have jurisdiction to regulate and supervise this services, as well as defining the basic criteria for drivers to work: (i) driving permit, (ii) the maximum age of the vehicle, (iii) municipal permits, and (iv) proof of vehicle licensing in the city where the services would be provided.

The political process behind Bill 5587/2016 is described by Interviewee 3, who was an active member of the debates in the Senate after the Bill had been approved by the Chamber of Deputies

Initially, the project was a compilation adapted from several lawsuits filed by the taxi driver unions in São Paulo and Rio de Janeiro, with great political mobilization. So much so that it went quickly to the first vote and approval in the plenary, being sent to the Senate under the number PLC 28.<sup>22</sup>

In response to the processing of the bill in the Federal Senate, the platform started a massive digital campaign aimed at mobilizing public opinion about the effects of what the platform called the “Retrocesso Law”. Making use of the reach of social networks with the use of hashtags capable of measuring engagement in publications on the topic (#leidoretrocesso), the platform encouraged political representatives and members of civil society, users or not of its services, to exert pressure on the senators for rejecting the bill. This rhetoric reaction echoes the actions of the digital platforms as disruptive innovators, as an argument that would mean “political opportunity to exploit rules that were framed in another age and to bypass established forums by making direct appeals for public support” (DUDLEY et. al, 2017, p. 3)

The public mobilization campaign was built from communication tools endowed with rhetoric and visual symbols aimed at forming a consensus in opposition to the bill. For instance, Uber launched a national campaign broadcasting a video on the platform's official website and

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<sup>22</sup> Original (Portuguese): “Inicialmente o projeto era um compilado adaptado de diversas ações judiciais dos sindicatos de taxistas de São Paulo e Rio de Janeiro, com grande mobilização política. Tanto que foi rapidamente para primeira votação e aprovação em plenário, sendo remetida ao Senado com a numeração PLC 28.”



on open television network in October 2017, in which a sequence of images of people using "gags" that reads "PLC 28/ 2017 Law of Retrogression" follows the script below

[Narrator] At any time the Federal Senate will vote on a law without thinking about how it harms your life. In practice, this decision will end urban mobility apps like UBER. Only one voice is being heard and it's not yours. The losers are more than 17 million people like you, who will return to the past, as well as the 500,000 partner drivers who depend on this income to live. We support regulation that respects your rights. [Testimonial 1]: I have the right to choose how I walk around my city, man. [Testimonial 2]: They didn't ask me. They didn't ask the drivers. [Testimonial 3]: Now that UBER has arrived here in my city, do you want to ban it? [Testimonial 4]: Will there be more competition? [Testimonial 5]: Who is gaining from it? [Testimonial 6]: They asked who? [Testimonial 7]: UBER is my financial independence. [Testimonial 8]: The station is too far from my house, I really need UBER. [Statement 9]: Regulations I already have in my city, what they want is to prohibit them. [Narrator]: Go to [leidoretrocesso.com](http://leidoretrocesso.com) and say no to PLC 28. The time is now. (Our Transcript)

The strategy of capturing public support was based on the argument that, in addition to a restriction on the platform, such regulation would go against the public interest and individual freedom, going against millions of Brazilian users and preventing competition and income generation for its partner drivers. By using arguments dear to the growing number of unemployed workers engaged in informal activities, in addition to occurring at a historical moment of political crisis with growing pressure to reduce the State's role in economic conduction, the mobilization ensured the popular rejection of PL, a fact that was evidenced in the online public consultation carried out by the Federal Senate in which 262,113 people voted against its approval compared to 44,857 who supported it.

It was the rhetorical force of the campaign, that tried to point to the regulation as "harmful" both to drivers and passengers, that platforms reinforced the perspective of the superiority of technology against the "anti-progress" laws and antiquate vested interests. It was with the succeeding decision of the Supreme Court that the work of ride-hailing drivers in digital platforms would get to a new phase, the accommodation and interest representation, in opposition to the attempts of prohibition in the first phase.

#### **4.4.2 Second Phase: Accommodation and Rising Conflicts**

To introduce the characteristics of the second phase of digital platforms of ride-hailing services in Brazil, we shall concentrate on the results of the political processing of Bill 5587/2016 in the Senate, under the PLC 28, and its final form in the Law 13,640/2018. Engaging the public opinion with the campaign against the PLC 28/2017 was not the only tool

of ride-hailing platforms against the regulation. Indeed, *Interviewee 3* describes the organization of drivers and platforms as follows

Due to the celerity that the project presented [in the Chamber of Deputies], Uber and 99 with their respective government relations departments (RELGOV) each prepared an action plan including drivers in the debate in addition to the media campaign against the project. So, the first insertion of drivers in the process of the bill took place when it was being processed in the Senate. Articulated and politicized drivers and influencers were chosen to compose the team that would walk around the offices talking to parliamentarians and senators explaining the real situation. Obviously, all received detailed explanations from the companies, but the way of approaching the parliamentarians, and the arguments used, each driver developed their own. This work presented a good result since the items considered impeding and harmful to drivers ended up being changed in the Senate in 6 amendments, sending the project back to the Chamber for a new vote.<sup>23</sup>

Finally, after returning to the Chamber of Deputies, the PLC 28/2017 was approved as the Law 13.640/2018, amid the manifestation of more than 500 drivers in Brasilia, being sanctioned by President Temer on March 26, 2018, with two important changes from the text originally sent to Senate. While keeping the points: (i) driving permit and (ii) the maximum age of the vehicle, the points (iii) municipal permits and (iv) proof of vehicle licensing in the city where the services would be provided were substituted by the proof of licensing without the obligation to be made in a specific city and by the proof of criminal records. For *Interviewee 3*, “the once harmful PL turned into an adequate PL, but still far from being fair”.<sup>24</sup>

The sanctioning of Law 13.640/2018 would represent an important legal mark by its effects in regulating the services of private individual transport in digital applications, recognizing the new technologies in the transport sector. However, there is a central aspect of this law that should not be overlooked in our investigation, namely, the growing importance of the municipal legislative branches in the regulation and supervision of these activities.

By recognizing that the capacity of the working class to represent its interests when facing the organized capital is dependent on its collective organized power to produce scarcity through the restriction of the output of workers, the municipal jurisdiction projects threats to

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<sup>23</sup> Original (Portuguese): “Devido a esta celeridade que o projeto apresentou [na Câmara dos Deputados], a Uber e 99 com seus respectivos departamentos de relações governamentais (RELGOV) cada uma elaborou um plano de ação inserindo os motoristas no debate além da campanha midiática contra o projeto. Então a primeira inserção dos motoristas no processo do projeto de lei se deu quando tramitava no Senado. Motoristas articulados e politizados e influenciadores foram escolhidos para comporem o time que andaria pelos gabinetes conversando com parlamentares e senadores explicando a real situação. Obviamente todos receberam explicações detalhadas por parte das empresas, mas a forma de abordagem do parlamentar e os argumentos usados cada um desenvolveu o seu. Este trabalho apresentou um bom resultado, uma vez que os itens considerados impeditivos e prejudiciais aos motoristas acabaram sendo alterados no senado em 6 emendas, remetendo o projeto de volta a Câmara para nova votação.”

<sup>24</sup> Original (Portuguese): “o PL prejudicial se transformou em um PL adequado, mas ainda longe de ser justo”.

collective action. Due to the fragmented distribution of the workforce in the country, urbane centers with a higher density of workers may have better bargaining capacities than smaller cities and states, resulting in heterogenous regulations throughout the country. And, as perceived in the previous topic (4.2), the increasing number of own-account drivers was also accompanied by the decreasing rate of membership in unions and associations, representing the fragility of this class to demand changes in their work conditions, especially when the common sense towards this activity tends to highlight its superiority to regulated occupations.

Consequently, this subtopic argues that, after the regulation of law 13.640, there will be important shifts in the attitudes of workers in response to their transactions with the platforms and the public. With the Federal Law giving directions to the regulation of these activities, workers have then centered their attention on municipal demands that are less related to being allowed to work or not and are now directed to local conflicts that affect the work conditions in that territory. Accordingly, the supposed harmonic relationship between drivers and platforms in the first phase, finds its limits amidst declining tariffs and increasing maintenance costs for drivers, at the same time that the unrests against algorithmic management are clearer in the complaints of these workers.

Firstly, when looking at the focus on the municipal sphere, *Interviewees 1, 2, and 4*, the local unrests related to the city rather than to conflicts with taxi drivers and prohibitions also appear as the reasons for their constitution. For instance, Interviewee 1 narrates his city's attempt to regulate the activity by requiring platforms to be registered in municipal offices of inspection and, by that, that they should pay a fee for each car logged into their app in the city. Without the platform's compliance with this rule, drivers began to be fined. Accordingly, municipal law, with the political influence of other classes such as taxis, that for Interviewee 1 represented the main responsible forces against platforms, would also impose higher restrictions on the activities of ride-hailing drivers. Thus, his association would also grow in an attempt to create political pressure in municipal chambers.

Interviewee 1 narrates

The law was enacted in November, then in February it expired and no company was accredited, there were inspections, drivers were fined, companies were fined, some citizens [...] the Association was not yet formed, but it was in the process of creation that takes time, right? Then it lasted, as the election year was already approaching, the politicians were stalling, pushing ahead, they didn't want to know, we kept looking. And until the law came in, like that, this whole process was paralyzed, there was no inspection, and the companies weren't inspected either, there was no assessment, and

we kind of fell into the lull. Then with the new mayor, he called me to talk and said he would redo the law. So, this is where we are today, this is our scenario.<sup>25</sup>

### In the case of *Interviewee 2*

Our association was created during the regulation of transport here in the city [2018]. Unfortunately, there were several obstacles that would hinder the driver from working. That's where the need to have an association came from: to fight. After the association fought, the regulation was calm, good (...) during the process of regulation, we ran after laws, brought people from other cities, we met in hotels, driver's chipping in to bring these guys. I would pick them up to help us here.<sup>26</sup>

Among their main victories in the regulation, *Interviewee 2* cites the cancellation of the tariff for the municipal permit, while he stresses their inability to change the toxicological test requirements, even with the dissatisfaction of some of their associates.

Interviewee 4, in his turn, presents the origins of his association as follows

I saw the need to create an association, because these people that I met halfway to gas stations, in those three months that I worked to get to know what this activity was like, really had no leadership (...) the municipal secretariat of transit has an urban mobility council and for that council comes a Federal budget directly for the cities. So we know that a lot of money comes to this council and that it is destined to urban mobility in the city. It's all for bike lanes, horizontal and vertical signage, asphalt condition, and so on. We created the association, first to demand improvements in vertical and horizontal signage, secondly, to cover the holes in the city, and thirdly, so that this money destined directly from the federal government to the city's urban mobility council would also be reversed for the basic needs of app drivers, mainly in the condition of the asphalt, because we lose, there are a lot of drivers losing tires, losing shock absorbers, this all greatly impacts the driver's financial life at the end of the month. So, what were our demands at the beginning? Improvements to asphalt, signage, parking, stops, and parking of drivers in the Central area without paying the city tariff. Another thing: the boarding and arrivals area on a central shopping street here in the city. We needed a pick-up and drop-off point at two points on this street

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<sup>25</sup> Original (Portuguese): “A lei foi sancionada em novembro, em fevereiro venceu e nenhuma empresa se credenciou, teve a fiscalização, motoristas foram autuados, empresas foram autuadas, uns cidadãos aí que não lembro o nome, no caso, Associação ainda não era formada, mas estava no processo de realização que demora né? Aí ela perdurou, como já estavam chegando o ano de eleição, os políticos foram enrolando, jogando pra frente, não quiseram saber, a gente ficou procurando. E até que a lei entrou tipo assim esse processo todo ficou paralisado, não tinha fiscalização e as empresas também não eram fiscalizadas, não havia autuação, e meio que a gente caiu na calma. Aí mudou o prefeito, ele me chamou para conversar e disse que vai refazer a lei, então nós estamos aí hoje, esse é o nosso cenário.”

<sup>26</sup> Original (Portuguese): “A nossa associação surgiu quando teve a regulamentação do transporte aqui no município [2018]. Infelizmente, estava tendo vários estraves que iam atrapalhar o motorista de trabalhar. Foi daí que surgiu a necessidade de ter uma associação: brigar. Depois que a associação brigou, a regulamentação ficou tranquila, de boa (...) quando estava tendo a regulamentação, a gente corria atrás de leis, trazia pessoal de fora, reunião no hotel, caixinha de motorista pra trazer o cara. Eu ia buscar os caras pra ajudar a gente aqui.”

and close to the central integration terminal here in the city. So, this was one of the first claims that we identified and that we fought to make this happen.<sup>27</sup>

The organization against municipal policies that were considered unreasonable by the drivers, such as the requirement of baby seats in Interviewee 1' city, as well as payment for permits in the case of Interviewee 2, are also accompanied by shared agendas, such as demands for parking spots, resting facilities, and security measures, which is evidenced by Interviewee 4. In general, the testimonies highlight the importance of having a good relationship with the municipal governments and their representatives.

Interviewee 4, for instance, narrates

The association is very strong today. It has direct contact with the municipal traffic department, we have direct contact with the city mayor, we talk, arrange a meeting, we are heard, we give opinions on some things, we suggest a lot of things when it comes to mobility in urban area in the municipality, and this is the role of the association, right? And on the other hand, the traffic secretary and the councilors help us a lot, we have a lot of space in the city to talk about it.<sup>28</sup>

While Interviewee 2 argued its political relevance by saying

We have so much influence in the city hall that when something is going to happen, someone already lets us know. The councilor himself. All the councilors have come here to meet us (...) We are non-partisan, we don't have a party, we don't have a flag, we don't have anything. Here we walk with our own legs. The support we want from them is this: "Oh, cool, congratulations, you are doing very well".<sup>29</sup>

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<sup>27</sup> Original (Portuguese): "E vi a necessidade de criar uma associação, porque esse pessoal que eu encontrava no meio do caminho dos postos de gasolina, nesses três meses que eu trabalhei para conhecer como é que era essa atividade, realmente não tinha liderança (...) a secretaria de trânsito tem um conselho de mobilidade urbana e para esse conselho vem uma verba Federal direto para as cidades. Então nós sabemos que vem uma grana muito alta para esse conselho e que é destinada a mobilidade urbana no município. É tudo que é ciclovia, sinalização horizontal e vertical, condição do asfalto, por aí vai. A gente criou a associação primeiro para reivindicar melhorias na sinalização vertical e horizontal, segundo buracos na cidade, terceiro para que essa verba destinada direto do governo federal ao conselho de mobilidade urbana do município seja revertida também para as necessidades básicas dos motoristas de aplicativos, principalmente na condição do asfalto, porque a gente perde, é muito motorista perdendo pneu, perdendo amortecedor, isso tudo impacta muito a vida financeira do motorista no final do mês. Então, quais eram as nossas demandas no início? Melhorias do asfalto, sinalização, estacionamento, paradas e estacionamento de motoristas na área Central sem pagar a tal da zona azul. Outra coisa: área de embarque e desembarque numa rua do comércio central aqui da cidade. Nós precisávamos de um ponto de embarque e desembarque em dois pontos dessa rua e próximo ao terminal central de integração daqui da cidade. Então essa foi uma das reivindicações de pronto que a gente identificou e que a gente lutou para que isso acontecesse."

<sup>28</sup> Original (Portuguese): "A associação hoje tá muito forte. Ela tem contato direto com a secretaria de trânsito do município, nós temos contato direto com o prefeito do município, a gente conversa, marca reunião, nós somos atendidos, a gente opina em algumas coisas, a gente sugere bastante coisas quando se trata de mobilidade urbana no município, e essa é a função da associação, né? E por outro lado, a secretaria de trânsito e os vereadores nos ajudam bastante, nós temos muito espaço aí na cidade para conversar sobre isso."

<sup>29</sup> Original (Portuguese): "A gente tem tanta influência na prefeitura que quando vai ter alguma coisa, alguém já me avisa. O próprio vereador. Todos os vereadores já vieram aqui conhecer a gente(...) A gente é apartidário, não

Their political articulation, however, seems to find its limits when the interests of the drivers may represent a threat to the political position of the representatives if considered unpopular measures to the public as users. Interestingly, Interviewee 1, at the same time that recognized the role of public opinion to help drivers in the first phase of the platforms, acknowledges that, as clients, the public has opposing interests from the drivers – lower prices vs. higher tariffs. Consequently, explaining a certain pessimism in demanding improvements in the drivers’ conditions from a municipal representative, he argues

Today it's not worth it anymore, and this representation that we make with the public power is because, in fact, it's like I said, if you get a councilor today, if he's not from our class, it's very difficult for him to defend ours category. Unless there are a lot of drivers in that area. I'll give you an example: when you get a councilor or a politician who fights for our category, he will make a representation that burdens the passenger, because today our big problem is the cost, it's the value we have, so he will represent us, let's say, with an increase of 20 reais per minimum race. Who will pay those 20 reais? It's not a platform. It is the population. He's going to have to face the population, often the same people who put him there. So, you have to consider this scenario.<sup>30</sup>

Indeed, the dissatisfaction resultant from the decreasing rates and the deterioration of the workers’ basic conditions, will be central to the next phase, where the economic crisis, especially with the pandemics, will drive workers to new directions, such as Cooperatives, or aiming at electing representatives in state and federal chambers.

Finally, when considering the conflicts between workers and platforms, the associations present a focus on filling lawsuits against the platforms in judicial courts, with account deactivations and prices representing the main unrest. As Interviewer 4 named it, the labor unrests are essentially against “the platforms’ philosophy”, which are the managerial practices and the contractual relationship between the drivers and the apps.

Interviewer 4 narrates his association’s first protest as follows

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tem partido, não tem bandeira, não tem nada. Aqui a gente anda com as próprias pernas. O apoio que a gente quer deles é esse: “ô, legal, parabéns, vocês estão muito bem”.

<sup>30</sup> Original (Portuguese): “Hoje não vale mais a pena, e essa representação que nós fazemos aí junto ao poder Público é porque, na verdade, é como eu falei, se você pegar hoje um vereador, se ele não for da nossa classe, muito difícil ele defender a nossa categoria. A não ser que tenha muitos motoristas naquela região. Vou te dar um exemplo: quando você pega um vereador ou um político que luta pela nossa categoria, ele vai fazer uma representação que onere o passageiro, porque hoje o nosso grande problema é o custo, é o valor que a gente tem, então ele vai nos representar, digamos, com um aumento aí de 20 reais por corrida mínima. Quem é que vai pagar esses 20 reais? Não é plataforma. Quem vai pagar é a população. Ele vai ter que enfrentar a população, muitas vezes a mesma população que colocou lá. Então tem que avaliar muito esse cenário.”

When we had our first manifestation, we were following up there in conversations with other associations in the country and we decided to hold a strike in protest against Uber's work philosophy in Brazil, and as I have the ability to make documents, I made it official at the City Hall, at the Traffic Department and at the military police and municipal guard saying that we were going to go on a strike.<sup>31</sup>

When asked about the meaning of what he named “the platform's philosophy”, he firstly highlights the incentives for longer work hours

The driver sets some goals so he can work during the day and hit the goal, right? Sometimes the app's philosophy doesn't help him to hit those goals. Because it is of the app's interest that he drives more and that it serves more people, so that it has more space in the city, State and country, right? What does it do? It's got this kind of platform algorithm, and if you refuse a ride, it'll throw you at the end of the line. I'll give you an example: you and I, we got to work. If you don't cancel any rides, more requests will always come to you; if I cancel a ride within an hour, 10 rides come to you, if I cancel a ride within the same period, 5 rides come to me. So the app takes longer to send me new rides. So, I take longer to hit the goal, and for me to hit the goal, I have to spend more time driving online. This takes a physical and emotional distress, and it can lead to a serious accident or even death. This is one of the philosophies that we refute and that we fight to change.<sup>32</sup>

Interviewee 2, on the other hand, highlights workers' lack of autonomy translated into the inability to choose between rides, even in cases when passengers are in dangerous neighborhoods, and also the algorithms' surveillance of “dishonest practices”, which may result in the platforms' arbitrary blockages and deactivations

There's something called, I think it's Complete, a 99 promotion: "give 30 rides for so many hours then you'll win X prize" and if you ask your wife to call when there are few races to complete it, this is characterized as fraud, right? But this driver, man, unfortunately for him, he was there in a neighborhood in the city. He still had half an hour to go, he could do any ride, and he accepted one on cash without seeing the person's name because in 99 the photo does not appear, nothing appears. By the time he arrived, it was his brother-in-law's house. This driver's wife asked her brother to go somewhere and coincidentally he took it. 99 did not understand and said he was

<sup>31</sup> Original (Portuguese): “Nós fizemos a primeira manifestação, nós estávamos acompanhando aí em conversas com outras associações do país e a gente decidiu fazer uma paralisação em protesto contra a filosofia de trabalho da empresa Uber no Brasil, e como eu tenho facilidade de fazer documentos, oficializei na prefeitura, na Secretaria de trânsito e na polícia militar e guarda municipal dizendo que nós iríamos fazer uma paralisação.”

<sup>32</sup> Original (Portuguese): “O motorista estabelece algumas metas para que ele possa trabalhar durante o dia e bater a meta, certo? Às vezes a filosofia do aplicativo não ajuda ele a bater essas metas. Porque é interessante para o aplicativo que ele faça mais corridas e ele atenda mais público, para que ela tenha mais espaço na cidade, no estado e no país, né? O que que ela faz? Ela tem um tal do algoritmo das plataformas e, se você recusar uma corrida, ela te joga no final, ela tira alguns. Vou te dar um exemplo: eu e você, nós começamos a trabalhar. Se você não cancelar nenhuma corrida, sempre vai vir corrida mais para você; se eu cancelar uma corrida, no período de uma hora vem 10 corridas para você, se eu cancelar uma corrida nesse mesmo período, vem cinco corridas para mim. Então ela demora mais tempo de me mandar corrida. Então, eu demoro mais a bater a meta, e para eu bater a meta, tenho que ficar mais tempo rodando certo online. Isso tem um desgaste físico, emocional, e isso pode acarretar um acidente grave ou até mesmo morte. Essa é uma das filosofias que a gente refuta, que a gente luta e que a gente briga para que mude.”

trying to rig the system. Even with 30 minutes left for him to do several more rides, the platform blocked this poor guy. But this guy has a car loan to pay, he has his bills, he depends on that money. Then he came here today. I will probably have to go to court. A driver has just sent me a compliment thanking me that the sentence came out today, he won a lawsuit against 99 with a lawyer that I referred to him. So far, look... he was super happy. [shows me his cell phone and reads] “Good afternoon, I want to thank you for referring the lawyer. Yesterday he called me saying that I won the case against 99”. These are people who were unfairly blocked from the platform.<sup>33</sup>

All interviewees point out the unrest caused by the tariff policies and the increasing costs for drivers. Interviewee 1 argues

It [the platform] is very inhuman for an app driver. Uber sometimes manages to get 47, sorry, 55-60% of the driver's fare, man. This is surreal. This is a new model of slavery, and we are fighting to end it. The platform's pricing policy wears out a lot of drivers, that's why we always say, we need knowledge, financial planning and a strategy to minimize losses, you know? So that we can hit the goal.<sup>34</sup>

Accordingly, it is in the changing remuneration of drivers that Interviewer 3 sees the greatest rupture between drivers and platforms, for

As of October 2018, Uber changed its form of payment, 25% of the ride, starting to pay the driver a fixed amount per KM and minute, thus unlinking the amount charged to the passenger and that received by the driver. This fixing of remuneration values allowed Uber to increase its profit margin, fixing the costs they had with drivers. Starting to charge passengers, but not necessarily paying the driver better.<sup>35</sup>

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<sup>33</sup> Original (Portuguese): “Tem um negócio que chama, acho que é Completa, uma promoção da 99 “faça 30 corridas durante tantas horas aí você vai ganhar X de prêmio” e se você pede para sua esposa chamar faltando poucas corridas para integrar, isso se caracteriza fraude, né? Mas só que esse motorista, cara, por infelicidade dele, ele estava lá em um bairro da cidade. Faltava meia hora ainda para ele terminar, ele poderia fazer qualquer corrida, e ele aceitou uma corrida no dinheiro sem ver o nome da pessoa, porque a 99 não aparece foto, não aparece nada. Na hora que ele chegou, era a casa do cunhado dele. A esposa desse motorista pediu para o irmão para ir em algum lugar e coincidência ele pegou. A 99 não entendeu e disse que ele estava tentando fraudar o sistema. Mesmo faltando 30 minutos para ele fazer várias outras corridas ainda, a plataforma bloqueou esse coitado. Só que esse cara tem financiamento de carro para pagar, tem as contas dele, depende desse valor. E veio aqui hoje. Provavelmente vou ter que entrar judicialmente. Um motorista acabou de me mandar um elogio agora aqui agradecendo que hoje saiu a sentença, le ganhou um processo contra a 99 do advogado que eu encaminhei para ele. Tá até aqui, ó... ficou super contente. [me mostra o celular e lê] “Boa tarde, quero agradecer você pela indicação do advogado. Ontem ele me ligou dizendo que ganhei o processo contra a 99”. Essas são pessoas que foram bloqueadas da plataforma injustamente.”

<sup>34</sup> Original (Portuguese): “Ela [a plataforma] é muito desumana por motorista de aplicativo. A Uber consegue às vezes ficar com 47, desculpa, com 55 a 60% do valor da corrida do motorista, cara. Isso é surreal. Isso é um novo modelo de escravidão, e a gente está lutando para que isso acabe. A política de preço da plataforma desgasta muito motorista, é por isso que a gente sempre fala, nós precisamos de conhecimento, planejamento financeiro e estratégia para minimizar o prejuízo, entendeu? Para que a gente possa bater a meta.”

<sup>35</sup> Original (Portuguese): “A partir de outubro de 2018 a Uber alterou a sua forma de pagamento, 25% da corrida, passando a remunerar o motorista um valor fixo por KM e minuto, desvinculando assim o valor cobrado do passageiro e o recebido pelo motorista. Essa fixação dos valores remuneratórios permitiu que a Uber ampliasse sua margem de ganhos, fixando os custos que tinham com os motoristas. Passando a cobrar dos passageiros, mas não necessariamente pagando melhor o motorista.”



It is in the response to the higher costs of their activities that an important practice emerges among these drivers. While all interviewees list as their benefits the partnership with car-wash companies, health providers, and gas stations, Interviewees 2 and 4 cite their role as advisors to their members in terms of calculating their costs and analyzing the advantageous thresholds for their activities. In summary, the use of a spreadsheet in which data such as gas consumption, gas prices, car age, and taxes are taken into account to help driver calculate their costs and comprehend what rides are profitable for their reality.

Interviewee 2 stresses the importance of “knowing how to work”, an ability, in its turn, that is dependent upon the driver’s awareness of his costs

Regarding driver’s dissatisfaction, we started to calculate, because the old drivers, who had been working wrong, started to run out of money to change the car's oil, change the tire, they just didn't have money, the car broke the engine, I didn't have the money to pay, I had to donate to the groups. Then you start to understand that there is a deficit of something there. It's wrong! That's where we started to mark-up the associates' cars at the time and we went on: “look, your cost is x per km, but the platform is giving you so much. If you run short on this platform, it won't be worth it. Sometimes you are a little far away to pick up that person and they will drive only one km, so if you add what you have driven plus what you have done, the cost they are paying you was, (it is until today 3,75), does not pay the price of fuel.”<sup>36</sup>

Similarly, Interviewee 4 summarizes his moto on the requirements for drivers as knowledge, financial planning, and strategy. He argues

There are drivers who don't even know what that means. The old driver, older guy, we sit with him, explain that he's paying to work, because we get the kilometer he's driven, his car's consumption of fuel and how much he earned on the day . We prove to him that he was tied. He worked all day to get even. So, we explain to him that he needs to have some strategies, he needs to understand about financial planning, how many kilometers his car does, how much he spends per kilometer on his car. For example: my car does 10 km per liters of gasoline. Gasoline is R\$7, then insurance comes, tires come, maintenance comes, we have a spreadsheet here for drivers and we put in the data. Drivers call me here and say: “look, my car is a 1.0 car, with ethanol and gasoline I spend this much, I pay this much in IPVA, I spend this much on maintenance per year, I have private insurance for my car, which is this much”. We put everything in a spreadsheet and tell him, look at your km so that you leave with 0 km on the speedometer at home, you have to make 56 cents per kilometer driven, either with a passenger or without a passenger, this is your fuel cost, and so we go on

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<sup>36</sup> Original (Portuguese): “Em relação a insatisfação dos motoristas, a gente começou a fazer conta, porque os motoristas velhos, que vinham trabalhando errado, começaram a ficar sem dinheiro para trocar o óleo do carro, trocar pneu, simplesmente não tinha dinheiro, o carro quebrava o motor, não tinha dinheiro para pagar, tinha que fazer vaquinha nos grupos. Aí você começa a entender que tem um déficit de alguma coisa aí. Tá errado! Foi onde a gente começou a fazer o mark-up dos carros dos associados na época e passamos: “olha, teu custo é x por km, mas a plataforma tá te dando tanto. Se você fizer corrida curta por essa plataforma, não vai te valer a pena. Às vezes você está um pouco distante para buscar essa pessoa e ela vai andar um km só, então se você juntar o que você se deslocou mais o que você fez, o custo que ela está te pagando que era,(é até hoje 3,75), não paga o preço do combustível”.

explaining to him. Most vehicles here I always see the average km run by driver is 1 and 80 from 80 upwards, if he takes a race of 1.80, he is not losing. Okay, but there are drivers who have to make R\$ 2 per km, because his car consumes more, you know? So insurance is higher, the tire is more expensive. It is the financial planning that we need to understand and the strategy is the locations, in the places in the city where there is more movement, where it is not, what time it is, when it is, these sort of things.<sup>37</sup>

In summary, drivers and associations need to seek mechanisms that allow their permanence in the activity, for, as long as there is a lack of bargaining with the platforms to define their rates, the self-adaption to rising costs and lower remuneration defines who fits in the changing conditions of the market. Thus, while the first phase of the platforms was related to platforms and drivers entering the market and responding to conflicting interests, the second phase, which may overlap the first, concerns the accommodation of these activities in their respective cities, which is accompanied by the rising importance of political representation in the municipal legislative chambers, as well as the developing of benefits and mechanisms to support their members in the performance of their daily activities.

#### **4.4.3 Third Phase: Fuel Crisis, Pandemics, and New Directions**

Data from Map 1 (Topic 4.1) presented the climbing numbers of the unemployment rate in Brazil, which reached a peak of 14,9% in the third quarter of 2021 and the first quarter of 2022. The rising unemployment evidences the effects of the economic crisis that, while beginning in the early years of the past decade, has been made more acute with the global sanitary crisis of the COVID-19 pandemics. Therefore, while the first two phases of the digital platforms in Brazil must be seen in a context of rising unemployment that made hundreds of thousands of workers migrate to own-account occupations as

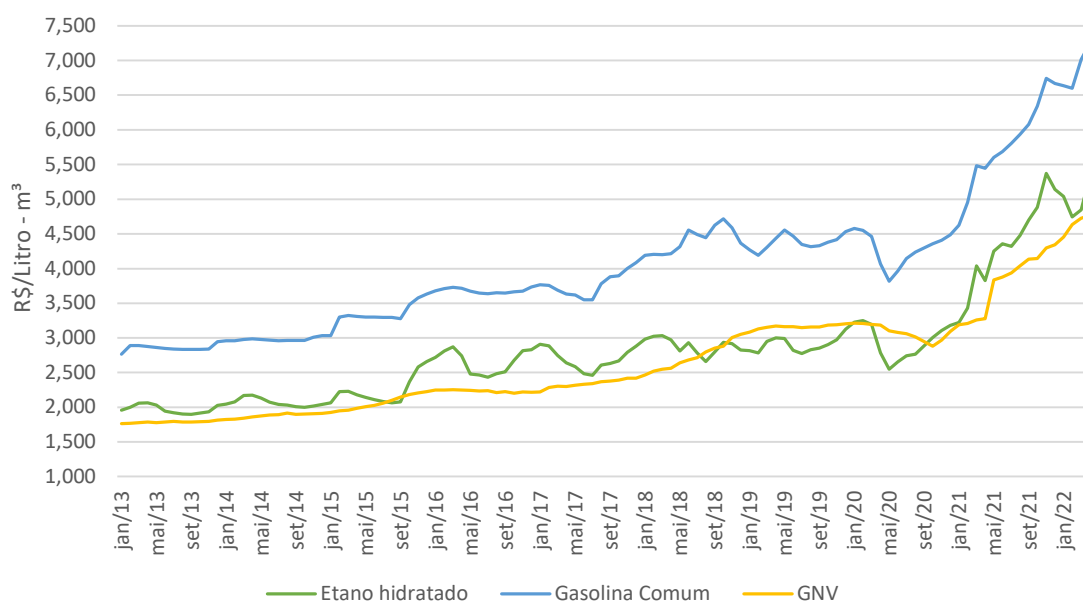
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<sup>37</sup> Original (Portuguese): “Tem motorista que ele não sabe nem o que quer dizer isso. O motorista antigo, senhores mais velhos, a gente se senta com ele, explica para ele que ele tá pagando para trabalhar, porque a gente pega o quilômetro dele rodado, o consumo que o carro dele faz de combustível e o quanto ele ganhou no dia. A gente prova para ele que ele ficou empatado. Ele trabalhou o dia inteiro para ficar empatado. Então a gente explica para ele que ele precisa ter algumas estratégias, ele precisa entender sobre o planejamento financeiro, quantos quilômetro o carro dele faz, o quanto que ele gasta por quilômetro no carro dele. Por exemplo: meu carro faz 10 km com litros de gasolina. A gasolina tá R\$ 7, aí vem seguro, vem pneu, vem manutenção, a gente tem uma planilha aqui para os motoristas e a gente coloca os dados. Os motoristas ligam para mim aqui falam: “olha meu carro é um carro 1.0, com álcool e com gasolina eu gasto tanto, pago tanto de IPVA, eu gasto tanto de manutenção por ano, tenho seguro particular do meu carro que é tanto”. A gente coloca tudo numa planilha e fala para ele, olha o seu km para você sair com 0 km no velocímetro em casa, você tem que fazer 56 centavos por quilômetro rodado ou com passageiro ou sem passageiro, isso é seu custo com combustível, e assim a gente vai explicando para ele. A maioria dos veículos aqui eu sempre vejo a média do km rodado por motorista é de 1 e 80 de 80 para cima, se ele pegar uma corrida de 1,80, ele não tá perdendo. Tá, mas tem motoristas que tem que fazer R\$ 2 por km, porque o carro dele consome mais, entendeu? Então seguro é maior, o pneu é mais caro. É o planejamento financeiro que a gente precisa entender e a estratégia são os locais, nos locais da cidade onde dá mais movimento, onde não dá, que hora que dá, quando dá, essas coisas.”

drivers, with an important increased share of those with formal education, the years of the global pandemics, starting in the second quarter of 2020 represent both the worsening of the economic crisis and the growing political unrests with the inability of Bolsonaro's administration to respond to its effects.

By focusing on the economic aspects with a direct effect on the activities of platform ride-hailing drivers, Chart 5 evidences the increasing tendency in the prices of the main fuels (gas, ethanol, and compressed natural gas), with special attention to the multiplying rates starting in 2020. This increase in the main component of the costs of ride-hailing activities helps understand the current crisis in platforms.

**Chart 5** - Historical series of the evolution of fuel prices – Brazil (jan/2013 – apr/2022)



**Source:** Chart elaborate by the author based on: Sistema de Levantamento de Preços da Agência Nacional do Petróleo, Gás Natural e Biocombustíveis – ANP, Relatório Mensal, jan/2013 – abr/2022.

Considering the last prices available in April 2022, ethanol, gas, and compressed natural gas costed, on average, R\$5.33, R\$7.24, and R\$4.76 respectively. In April 2020, one month after the first measures of social lockdown were globally adopted, the averages prices were R\$2.78, R\$4.07, and R\$3.18, representing a percentual increase in the final period of 91,72% for ethanol, 77,88% for gas, and 49,68% for compressed gas. Indeed, fuel represents an important role in the increasing rate of inflation, however, as perceived, no significant adjustments have been perceived in the remuneration of own-account drivers in this period.

The conditions of these workers amidst the worsening economic crises are best captured in Interviewee 1's account of the conditions of workers

Today, our cost is at 50% or even more. This impairs the quality of life, causes stress. If you think that you earn 100 reais and 50 is a cost, maybe you will overlook maintenance and food. But if you think that if you work 15 hours, 7.5 is just a cost, it's the same thing as working 8 hours and having to wake up 4 hours earlier and get home 4 hours later, half the work is cost. How do we see the crisis? Between you starving at home, and getting your car and working 15 hours and 7 hours for you to earn your money, I still prefer I see it, but because of my background. It's better than starving yourself. The guy has a car, the cost he has can be 60%; if he works 10 hours, 6 hours is just to pay for fuel. He goes, because it's better than starving. He may even resist for a moment, but the moment the bills start to arrive: "Oh, I'm going to work!". So, this situation today with the drivers: not being able to get a replacement in the market many times until he is fired makes him behave this way or subject himself to it. There's no way, he'll work 10 or 15 hours, it's going to have a high cost, but he'll go, because it's better than starving. You need to pay the car, the rent. That's why our institutions, associations and leaders exist, to intermediate.<sup>38</sup>

The rising costs and the necessity to continue working result in the inability to organize workers in strikes to demand better conditions and tariffs

These stoppages that you have today are not very effective, you can't stop, because companies pay X per kilometer and X per minute, but what is the parameter? We don't have a parameter yet, we don't have a structure, we don't have an app driver's legislation. For example, there is legislation for taxis, there is legislation for public transport, but not for transport by app, but a law that regulates individual transport. So, we don't have parameters, so we're still on the rise, right? Maybe from these elections now with some deputies entering there and representing our category. Maybe we can change something, but today it's difficult. Then I go back to customs, in the past, even because of the current situation in Brazil, between going hungry and having a cost of 60%, you go to the cost, get in the car, and go to work. That's when you need demand from the institutions, which is what we're doing, trying to get into politics and looking for improvements.<sup>39</sup>

<sup>38</sup> Original (Portuguese): "Hoje, nosso custo está em 50% ou até mais. Isso prejudica a qualidade de vida, causa stress. Se pensar que você ganha 100 reais e 50 é de custo, talvez você releve a manutenção e a alimentação. Mas se você pensar que se você trabalha 15 horas, 7,5 é só de custo, é a mesma coisa que você trabalhar 8 e ter que acordar 4 horas antes e chegar 4 depois em casa, metade do trabalho é custo. Como a gente vê a crise? Entre você passar fome em casa, e pegar seu carro e trabalhar 15 horas e 7 horas pra você ganhar o seu dinheiro, eu prefiro ainda trabalhar e ter 7 horas de ganho. É assim que eu vejo, mas devido ao meu histórico. É melhor do que passar fome. O cara tem um carro, o custo que ele tem pode ser de 60%; se ele trabalha 10 horas, 6 horas é só para pagar o combustível. Ele vai, porque é melhor do que passar fome. Ele pode até resistir em um momento, mas no momento em que começar a chegar as contas: "ah, quero que se dane, eu vou trabalhar!". Então essa situação hoje da gente do motorista: não conseguir uma recolocação no mercado muitas vezes até ele ser demitido faz com que ele se comporte dessa forma ou se sujeite a isso. Não tem jeito, ele vai trabalhar 10 ou 15 horas, vai ter um custo elevado, mas ele vai, porque é melhor que passar fome. Precisa pagar o carro, o aluguel. Pra isso que existem as nossas instituições, associações e lideranças. Pra fazer a intermediação."

<sup>39</sup> Original (Portuguese): "Essas paralisações que têm hoje são pouco efetivas, não dá pra parar, até porque as empresas pagam X por quilômetro e x por minuto, mas qual é o parâmetro? Não se tem um parâmetro ainda, não se tem estrutura, não se tem uma legislação do motorista por aplicativo, o que tem uma lei. Por exemplo, tem uma legislação para o taxi, tem uma legislação para transporte público, mas não para transporte por app, mas uma lei que regulamenta o transporte individual. Então, nós não temos parâmetros, então nós estamos ainda em ascensão, né? Talvez dessas eleições agora com alguns deputados entrando lá e representando a nossa categoria. Talvez nós consigamos mudar alguma coisa, mas hoje é difícil. Ai volto nos costumes, no passado, até pela situação atual no Brasil, entre passar fome e ter um custo de 60%, você vai para o custo, pega o carro e vai trabalhar. Ai que precisa cobrar das instituições, que é o que estamos fazendo, tentando entrar na política e buscando melhorias."

Following the same vein, Interviewee 4 comments on unemployment as the main reason why workers start driving today, despite the rising costs

Unemployment is the main cause, because there are friends who were fired from some metallurgical companies and Uber becomes the first option for many. Many are still looking for knowledge, looking for someone who works in this activity to give some tips, others come to the association and we guide them, but it's unemployment, this federal government policy is throwing a lot of people into informality, a lot of people. Just to give you an idea, the turnover is very high in this activity, if we are going to meet at the gas station, there is no one else we know and there is a completely different crowd (...) and we will talk to them. these people, people accept any ride. We explain to him: “man, do the math, not for me, it doesn't matter to me”. It's just that they think that the more work and rides, the more they earn, and this creates a certain difficulty for older drivers to survive (...) Those who come in and get everything, in six, seven months end up breaking. Sometimes they break, but the turnover is very high, so a lot of people break.<sup>40</sup>

The crisis with the rising prices of fuel resulted in higher cancellation rates from drivers, who saw themselves obliged to choose which rides to accept. This shortage in the availability of drivers is still an ongoing matter that has gained the attention of popular media and society with the question: why is it so difficult to get an Uber?. Interviewee 2 links this problem to workers' capacity of calculating their costs, as he argues

There were lots of ride-refusals on the part of drivers, a lot of cancellations of rides, which is what is having several complaints in PROCON today. It is for this reason, the driver wants to work, if there is a ride for him, he wants to do it, but he analyzes: “well, but I'm going to take a loss here”, he will cancel. It's what's happening. It's just that the platforms don't understand that. They were punishing drivers for that and it's bad. So we try to solve these obstacles through justice, we've already talked in every way possible with Uber and 99, naming names, and until today there were only promises and nothing was done<sup>41</sup>

<sup>40</sup> Original (Portuguese): “O desemprego é a principal causa, porque tem amigos que foram mandados embora de algumas empresas metalúrgicas e a Uber vira a primeira opção de muitos. Muitos ainda procuram o conhecimento, procuram buscar alguém que trabalha nessa atividade para dar algumas dicas, outros vem até a associação a gente orienta, mas é o desemprego, essa política do governo federal, ela tá jogando muita gente na informalidade, muita gente. Só para você ter uma ideia, a rotatividade é muito grande nessa atividade, se a gente vai encontrar no posto de gasolina, não tem mais ninguém que a gente conhece e tem uma galera completamente diferente (...) e a gente vai conversar com esse pessoal, o pessoal aceita qualquer corrida. A gente explica para ele: “cara, faça a conta, não para mim, não interessa para mim”. É que eles acham que quanto mais trabalho e mais corrida, mais eles ganham, e isso vai criando uma certa dificuldade para os motoristas mais antigos de sobreviver (...) Aqueles que entram e vai pegando tudo, em seis, sete meses ele quebra. As vezes ele quebra, só que a rotatividade é muito grande, então quebra uma galera e vai quebrando.”

<sup>41</sup> Original (Portuguese): “Começou a ter grande recusa por parte dos motoristas, muito cancelamento de corridas, que é o que tá tendo várias queixas no PROCON hoje. É por esse motivo, o motorista quer trabalhar, se cai uma corrida para ele, ele quer fazer, só que ele analisa: “pô, mas vou tomar prejuízo aqui”, ele vai cancelar. É o que tá acontecendo. Só que as plataformas não entendem isso. Estavam punindo os motoristas por isso e é ruim. Então a gente tenta resolver esses entraves via justiça, a gente já conversou de tudo quanto é maneira com a Uber e a 99, dando nome aos bois, e até hoje foram só promessas e nada foi feito.”

With the global sanitary crisis of the COVID-19 pandemics, the reduction in passenger circulation and the restrictions in commerce had important effects on the work of the ride-hailing workers on digital platforms. In their study on the work of couriers, Abílio et. al (2020) perceived that the main effects were related to the decrease in remunerations amidst increasing hours of work, and lower bonuses offered by the platforms. Also, Manzano and Krein (2020), perceive that remuneration is close to the national minimum wage, even though most work more than forty hours weekly. Concerning remuneration, Lapa (2021) highlights the absence of correlation between hours of work and remuneration during the peak of the pandemics, meaning that, longer hours of dedication did not result in better remuneration for platform workers in Brazil. The decreasing remuneration and the insecurity of the job during this time were reflected in the share of drivers who had to resort to governmental emergency aid, an average of 64,5% between May and November 2020 (LAPA, 2021).

Despite the dramatic circumstances imposed by the pandemics, drivers could not afford to stop working, as argued by Interviewee 1 as he describes

I stayed at home for two days. I started to do the math and saw that the deal was not going to work out. So I kept driving and I'm driving to this day, I never stopped. I took some precautions. Until today with the glass open, hand sanitizer, but I never stopped.<sup>42</sup>

Indeed, adopting protective sanitary measures, such as hand sanitizers, keeping car windows open, and not allowing passengers to use the front seat, were common practices among drivers, and they also represented the official guidelines in the main ride-hailing platforms. But in terms of the activities of the association, this period was marked by actions aimed at assisting workers with basic aid, such as Interviewees 2' campaign to raise food donations, for, according to him, drivers were struggling with starvation. Accordingly, Interviewee 4 also organized food campaigns in his city, but additionally, he argued that his association had as its main activity helping drivers fill out the application forms for aid from the platforms.

The financial aid provided by the platforms such as Uber and 99 supported those drivers who had been contaminated with COVID and were part of those groups at risk of developing worse conditions. While under quarantine, these workers had their accounts suspended/blocked, so they could follow the restrictions until the end of their recovery period. The aid services were suspended with the beginning of the governmental provisions of the emergency aid.

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<sup>42</sup> Original (Portuguese): “Fiquei um dia só dois dias em casa. Eu comecei a fazer contas e vi que negócio não ia dar certo. Então eu continuei rodando e tô rodando até hoje, nunca parei. Tomei alguns cuidados. Até hoje com o vidro aberto, álcool em gel, mas nunca parei.”

Additionally, aiming at increasing demand for ride-hailing services, Uber and 99 adopted their “promo” and “poupa” ride options, providing cheaper riders for their passengers. These controversial options were received with dissatisfaction among drivers nationwide, for they represented even lower payments from the platform. As a result, manifestations against them spread around the country, a movement in which Interviewee 4 had participated actively with his association. Followed by increasing rates of cancellation in Uber Promo and 99 Poupa, the platforms ended up canceling these options.

Amid the deteriorating work conditions of platform ride-hailing drivers in times of economic crisis and rising basic prices, two main responses are perceived among the reports of each driver: political representation and the adoption of driver-administered platforms, from which the migration from associations to cooperatives represent a relevant change in the characteristics of these groups of collective action.

While political representation, especially in the Federal legislative branches represents a promising path for substantial changes and more policy-relevant debates, the main characteristics of those drivers with political plans to elect their own representatives go beyond the scope of our investigation. However, important insights into this debate can be perceived from the interviews. Interviewee 3, for instance, argues that driver strive to gain political strength for, in most cases, there is a distrust among them directed to those who are leaders: “[após as mobilizações contra a PL 28] houve uma onda entre os motoristas de queimarem qualquer um que quisesse ser político, e esse sentimento ainda perdura no meio”.<sup>43</sup> Interestingly, this distrust and quasi-hostility against leaders are reported in the experiences of all interviewees. Interviewee 2, for instance, narrates

Lack of union. App drivers are very disunited. They said I was going to be a politician. They're screwed, because I hate it, I'll never be, I don't want to be, I don't like to be. It might be one day, who knows? But I do not want. I don't like it. Then leaders here in the city who wanted to be councilors thought I was going to be and kept getting into me, inventing a bunch of lies. They said I had a scheme with the bus company. Heaven's sake. That only divides the drivers, it doesn't add strength, it loses strength.<sup>44</sup>

Interviewee 1 follows the same idea as he argues

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<sup>43</sup> Original (Portuguese): “[após as mobilizações contra a PL 28] houve uma onda entre os motoristas de queimarem qualquer um que quisesse ser político, e esse sentimento ainda perdura no meio”.

<sup>44</sup> Original (Portuguese): “Falta de união. Motorista de app é muito desunido. Falavam que eu ia ser político. Se ferraram, porque eu detesto, nunca vou ser, não quero ser, não gosto de ser. Pode ser um dia, quem sabe? Mas eu não quero. Não gosto. Aí lideranças aqui da cidade que queriam ser vereadores achavam que eu ia ser e ficava metendo o pau em mim, inventando um monte de mentira. Falava que eu tinha esquema com empresa de ônibus. Cara do céu. Isso daí só divide os motoristas, não agrega força, perde força.”

I never regretted it. But representing a category that doesn't want you to, not today, today we have a little more notoriety, people know more about our work, but a while ago, you represented a category that doesn't want to be represented and it still revolts against you. Man, but there were some leaders that didn't like me because they heard about I don't know what. Not today, I talk to everyone, people know me. But at first it was horrible.<sup>45</sup>

Leaders such as Interviewee 1 seem optimistic about the possibilities of political representation that the 2022 elections may represent to the representation of driver's interest, such as finally achieving the regulation of the occupation, not only of the activity. However, as discussed above, workers' representation at the federal levels still seems diffuse, an aspect that we argue is also a direct result of the scattered groups at municipal levels.

Nevertheless, another important trend has gained notoriety in recent years among associations nationwide, that is the adoption of driver-administered platforms, in which associations, after purchasing the use of the software, in many ways similar to the structure of Uber and 99, the associations can administer registrations, rides, define tariffs, and hold the main decisions (i.e., account deactivations) that otherwise, would be under the responsibility of the platforms. Among the leaders interviewed for our research, Interviewee 2 had migrated to a cooperative, though the association remained active in the political arena, and had adopted its own platform in the city.

In his account, Interviewee 2 seems pessimistic about political representation as he argues

It never worked, man. We have manifested at Uber's door in SP, it never worked, it's not now that it will. What gives result is as we did, public hearing, bringing the public power to summon them to participate. I gave up on going that route. That's why I went to the cooperative side, not only I, but several already set up cooperatives and perceive this.<sup>46</sup>

Less than 6 months after having purchased the driver-administered platform with the apportion between its drivers and having created the cooperative, Interviewee 2 summarizes its basic financial characteristics. Of its revenue, 12% covers taxes and 3% is directed to app

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<sup>45</sup> Original (Portuguese): “Me arrepender, eu nunca me arrependi. Mas representar uma categoria que não quer, não hoje, hoje a gente tem um pouco mais notoriedade, o pessoal conhece mais o nosso trabalho, mas há um tempo atrás, você representar uma categoria que não quer ser representada e ainda incide contra você. Cara, mas tinha algumas lideranças que os caras não gostavam de mim porque ouviu falar não sei o que. Hoje não, falo com todo mundo, o pessoal me conhece. Mas no começo foi horrível.”

<sup>46</sup> Original (Portuguese): “Nunca deu certo, cara. A Uber, nós fizemos manifestação na porta da Uber em SP, nunca deu resultado, não é agora que vai dar. Resultado dá como nós fizemos, audiência pública, trazer o poder público pra intimar eles participar. Eu desisti de ir por esse caminho. Por isso que eu parti para o lado de cooperativa, não só eu como vários já montaram cooperativas e enxergaram isso.”



maintenance (payment for the use of the software). Indeed, these workers have gained more autonomy, for, with the control over their own platform they can approve or ban drivers and clients, they even have created groups of conciliation to arbitrate conflicts between its users. However, it is in the possibility of having higher gains from the net income of the platform that Interviewee 2 sees its main advantages

As soon as a ride is over [on traditional platforms], another one calls. The guy stays there in that slavery inside the car, he can't stretch his legs. When you work in the cooperative, you can work, have a request, it will take about 10 minutes, you can have a coffee, discuss an idea with a friend of yours, you don't have to get tired and sweaty in the car. There will be another call, but instead of doing 25-30 rides on Uber, if you do 10 on co-op, you'll earn the same thing as if you had done it on Uber. And you will work 7-8 hours, you will be able to earn a real profit for you, you will not be exploited, you will be able to go home and live with your children.<sup>47</sup>

Thus, the main contribution of having cooperative platforms would be to regain the advantageous conditions that seem to have been the case of digital ride-hailing platforms in the first phase described in this topic, in which higher gains, though sustained with Uber's increasing financial losses, summed to the novelty of this occupation, granted an advantageous alternative for income. Interviewee two concludes with the main differences between the work of the association and the cooperative: “a associação faz esse trabalho, trabalho social que a gente fala [benefícios no município], e a cooperativa trabalha mais para trazer dignidade para o motorista mesmo. Para ter um lucro decente”.<sup>48</sup>

The optimism with cooperatives and platforms, however, is seen with caution among other leaders, especially because of the promises of higher payments. Interviewee 4, for instance, sees the owning of a platform as “o futuro da mobilidade urbana no município eu acredito que esse é o caminho ideal para que os motoristas de aplicativo ganhe um pouco mais e trabalhe um pouco menos”, but he also warns: “a gente precisa tomar muito cuidado quando a gente se fala sobre cooperativa porque todo motorista tem um sonho de ficar com o máximo possível do valor da corrida. Mas as coisas nós entendemos que não funciona também assim

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<sup>47</sup> Original (Portuguese): “Mal terminou uma corrida [em plataformas tradicionais], já chama na outra. O cara fica ali naquela escravidão dentro do carro, não consegue esticar as pernas. Você trabalhando na cooperativa, você pode trabalhar, ter uma chamada, vai demorar uns 10min, pode tomar um café, bater uma ideia com um amigo seu, você não precisa ficar cansado e toda suado no carro. Vai ter outra chamada, só que ao invés de você fazer 25-30 corridas na Uber, se você fizer 10 da cooperativa, você vai ganhar a mesma coisa do que se você se matar na Uber. E você vai trabalhar 7-8 horas, você vai conseguir ganhar um lucro verdadeiro para você, você não será explorado, vai conseguir ir pra casa e conviver com os seus filhos.”

<sup>48</sup> Original (Portuguese): “a associação faz esse trabalho, trabalho social que a gente fala [benefícios no município], e a cooperativa trabalha mais para trazer dignidade para o motorista mesmo. Para ter um lucro decente”.

dessa forma” (...) nós precisamos buscar um ponto de equilíbrio. Isso tem que ser tem que ser discutido,<sup>49</sup> a position that i also adopted by Interviewee 1.

Further investigation on the activities of cooperatives needs to be conducted to analyze the possibilities of driver-administered platforms to address these workers’ main unrests, such as account deactivation and the algorithmic management that not only intermediates the rides but also imposes opaque mechanisms of surveillance and performance requirements. Nevertheless, this last phase, with the increasing presence of cooperatives, points out a new direction in the trajectory of these activities in Brazil, evidencing how the changes in the market of ride-hailing rides may transform its constitutive organizational elements.

#### **4.4 Brazilian Ride-hailing drivers: commentaries on the evolution of the occupation**

On May 8th, 2019, the Brazilian Supreme Court judged unconstitutional the attempts to prohibit the activities of ride-hailing digital platforms by municipal laws. On its bases, the decision was a response to Law 10.553/2016 from Fortaleza (CE), and to São Paulo’s appeal against the judicial court of the State that had declared Law 16.279/2015 unconstitutional. By deciding that no municipal law could prohibit the activities of digital platforms or impose heavier duties from those described in Law 13.640, this mark in the regulation of platforms was heralded by Uber as a victory, for it “guarantees to partner drivers their constitutional right to carry out the activity and generate income, as well as guaranteeing users the right to choose how they want to move around the cities”.

Interestingly, the votes of the Supreme Court judges to the acts of prohibition took two directions: the response of free initiative and the benefits and quality of the services provided by platform workers. For instance, during his vote as the judge-rapporteur in the process, minister Luiz Fux, highlights the opportunity of the court to

Define the limits of regulatory power in relation to the competitive environment and the exercise of professions, providing legal security not only for disruptive innovations arising from the brand new “sharing economy”, but also for the private sector in the most diverse market sectors.

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<sup>49</sup> Original (Portuguese): “o futuro da mobilidade urbana no município eu acredito que esse é o caminho ideal para que os motorista de aplicativo ganhe um pouco mais e trabalha um pouco menos”, but he also warns: “a gente precisa tomar muito cuidado quando a gente se fala sobre cooperativa porque todo Motorista tem um sonho de ficar com o máximo possível do valor da corrida. Mas as coisas nós entendemos que não funciona também assim dessa forma” (...) nós precisamos buscar um ponto de equilíbrio. Isso tem que ser tem que ser discutido.”

Judge Fux's arguments followed the reasoning of the constitutional model as a means of restricting arbitrary interventions of the State in the market economy. Considering that the State cannot restrict new competitors to protect the vested interest of traditional occupations (regulatory capture), it is then necessary to define which of the powers of the Federation are responsible for supervising an activity. Accordingly, the minister responds to the claims that regulation could produce social benefits by restricting the entrance of new competitors, an argument that for him would not survive empirical evidence, a fact that would also be unconstitutional, going against the principles of equality, professional freedom, and free initiative in the case of competition.

To conclude his vote, supreme court judge Fux described the effects of regulation on clients and consumers – choosing the economic theory of market failure as the bases for his argument. For him, “Technology has allowed the reduction of information asymmetries between consumers and suppliers to a level never reached by regulators”. Consequently,

Defying the classic explanation for taxi licensing, passenger transport apps can not only provide everything that traditional regulation has always promised consumers but go even further: (i) they allow the user to follow the route to prevent the driver from taking the longer route unnecessarily; (ii) prevents tampering with taximeters; (iii) allows the evaluation of users, for the benefit of drivers; (iv) shares with consumers reviews of other users; (v) provides safety to passengers; and (vi) allows the sharing of rides between different users, making the service cheaper and making the transport system as a whole more efficient (...) Technology, therefore, solved, definitively, the problems classically understood as “market failures” that used to justify regulatory intervention.

The optimism of the Supreme Court was followed by the votes of the other magistrates who followed the rapporteur vote unanimously. Judge Luís Robert Barroso, for instance, highlights the “social impacts of innovation in the life of a country”, for which Schumpeter's destructive creation is used as the bases for the argument that, “the best way for the state to deal with these innovations and, eventually, with the creative destruction of the old order is not to impede progress, but to try to produce the possible conciliatory paths”. Judge Alexandre de Moraes, on his turn, saw the activities of digital platforms as “social needs being met by the initiative of individuals, in the exercise of their freedom to undertake in a market economy. The eventual submission of this reality to a regime of authorization or permission by the Public Administration would empty its economic usefulness”.

The unanimous vote of the Supreme Court supporting the unconstitutionality of prohibitions and setting the Federal law as the limit and benchmark for municipal regulations followed, as observed, a positive perspective on the activities of digital platforms in the country.

The vested interests of traditional occupations (i.e. taxis) were deemed regulatory capture, and, sustained by studies, such as the reports (ESTEVEZ, 2015; MACEDO, 2018) from members of the Administrative Council for Economic Defense (CADE), digital platforms were not seen as a threat to competition, but an advance in the market of transportation in urban centers.

While restricted to debate the merits of the process, the limits of municipal regulation, the votes, and arguments of the ministers in the Supreme Court concentrated on presenting the benefits of competition, especially for customers, with no mention of the effects of these disruptive businesses on the work conditions of their workers. Interestingly, the six points defended by judge Fux when he exposes the benefits of digital platforms, coincide with many of the sources of unrest among drivers. For instance, (i) algorithmic management creates predetermined routes, impeding workers from avoiding dangerous locations, (ii) prices are defined unilaterally by the platforms, and workers are not aware of the full price paid by the customers to the platforms, with increasing complaints of misleading information; (iii) star-rating evaluation imposes subjective criteria on workers performance, leading to insecurity in the job position; (iv) while passengers and drivers can see the ratings, they cannot choose with whom they interact in the ride; (v) no evaluation of the mechanical conditions of the vehicle are required; (vi) passengers try to overload the car capacity.

Consequently, the activity of platform ride-hailing drivers is surrounded by a common sense of the superiority of technology over traditional analogic services, which overlooks the conflicts and unrests of the workers who submit to the platform's managerial practices. As argued in Han (2017), Daniel (2017), and Antunes (2020), the neoliberal rationality of the XXI century elects both technology and self-entrepreneurism as the bases to enforce this common sense. In short, the debates on the work conditions of app drivers find resistance to be addressed, for it is defined as an occupation at the will of own-account drivers who use the digital environment of the platform to perform their business – omitting the role of algorithmic management and the elaborate working rules of collective control that they represent (MAFFIE, 2020b). This condition exposes drivers to contradictions in the way they see themselves as a class and as self-employed “entrepreneurs”. As an example, Interviewee 3 argued

For me, the biggest challenge for drivers today is to become collectively aware of the effectiveness that representation can provide, but mainly to acquire knowledge of how to manage themselves professionally and financially..<sup>50</sup>

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<sup>50</sup> Original (Portuguese): “Para mim, o maior desafio hoje dos motoristas é tomarem consciência coletiva da eficácia que uma representatividade pode proporcionar, mas principalmente adquirir o conhecimento de como se administrar profissionalmente e financeiramente.”

In this account, the leader discusses the necessity of workers to organize, aiming at the political representation of their interests as a class. At the same time, however, he considers the driver's responsibility to learn how to "self-manage" his activities and finances. Self-management, just as "knowing how to work" (Interviewee 2), and "strategies" (Interviewee 4), follow what Ludmila Abílio (2019, 2020) calls the "subordinated self-management", amid the struggle of these workers to make sense of their activities and survive.

Following Souza's (2020) argument that, in the interview of social groups, individuals tend to seek the legitimation of their conditions by hiding elements of fragility through the rhetoric of affirmation. An important aspect of legitimization for app drivers is the reinstatement of their autonomy as a desirable condition, even though it may represent the absence of the legal safeguards directed to formal occupations. This conflict is perceived in Interviewee 2

The driver does not want to be CLT [formal contract]. He wants to be recognized, of course, today you can pay the INSS [social security] as a self-employed person, but he wants to be recognized as a category to be able to collect his rights, yes, but he does not want to have an employment relationship with anyone, because he wants to have his own work autonomy. But today, even though you think "hey, work whenever you want", do you know how many hours the poor driver has been working lately to take some money home? From 12 to 14 hours a day, sitting in a car, driving 300-400km within a city. That's cowardice. The guy earns 300 reais, discounts fuel, 100 reais left, he thinks he's taking 100 reais home. But then you start to put it like this: his car will increase its kilometers, when he tries to sell the car, no one will pay anything. If he considered the depreciation of the vehicle, IPVA, oil change, tire, and others, even the food he takes in the afternoon on the street, the coffee, he is actually taking a loss home. Do you know how much platforms take on average from the driver? They say 25%, that is a lie! 40%. Then you get fuel, it sums up to 50%. What's left for the guy? There's nothing left. Its math. There is nothing else one can do.<sup>51</sup>

In general, it is perceived that the advancement in the commodification of the workforce in digital platforms has in the neoliberal rhetoric of self-entrepreneurs an ally in the legitimation of the conditions of precarity. However, even though this activity may be legitimated by legislation and popular opinion, the commodification of the workforce, summed to opaque

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<sup>51</sup> Original (Portuguese): "O motorista não quer ser CLT. Ele quer ser reconhecido, lógico, hoje você pode pagar como autônomo o INSS, mas ele quer ser reconhecido como categoria para poder recolher os direitos dele sim, mas não quer ter vínculo trabalhista com ninguém, porque ele quer ter autonomia de trabalho dele. Só que hoje, apesar de você pensar "pô, trabalha a hora que quer", sabe quantas horas um coitado de um motorista anda trabalhando ultimamente para levar um pouco de dinheiro para casa? De 12 a 14h por dia, sentado em um carro, rodando 300-400km dentro de uma cidade. Isso daí é covardia. O cara chega para ganhar 300 reais, desconta combustível, sobra 100 reais, ele acha que tá levando 100 reais para casa dele. Só que aí você começa a pôr assim: o carro dele vai estourar de km, quando for vender o carro, ninguém vai pagar nada. Se ele jogasse a depreciação do veículo, IPVA, troca de óleo, pneu, e outra, até a alimentação do lanche que ele toma a tarde na rua, o cafezinho, ele tá levando prejuízo para casa na realidade. Sabe quanto as plataformas tiram em média do motorista? Eles falam 25%, mentira! 40%. Aí você pega combustível, dá quase 50%. Sobra o que para o cara? Não sobra nada. É matemática. Não tem o que fazer."

algorithmic management and unilaterally defined remunerations, result in frictions and conflicts among those who have the apps as their main source of living, that result in the shifts observed in the previous topic on the phases of platforms work in Brazil.

Indeed, technology played a central role in starting the occupation of ride-hailing drivers in digital platforms in a context of economic crisis and rising unemployment rates, yet the transformations and unrests in this activity in its short history of less than one decade were not technological, but transactional, representing the conflicts between workers, platforms, and the State, in which the endowment of rights through the definition of the working rules governing each of these transactions was at the center of the conflicts and labor unrests.

The periodization proposed in the previous topic had followed the Commonsian investigation on the evolution of industries (COMMONS, 1909; 1916), but with an important difference: while in the case of the American Shoemaker the role of State, in the case of the legislation, is not debated – a fact that is also explained by the context of the US colonial stage – e beginning, accommodation, and transformation in the activities of ride-hailing platforms in Brazil as in direct relation with the attempts of regulation, both in response to the conflicts with taxis and recently with the restrictions in municipal territories. Finally, this discussion can be summarized in Table 7, describing the phases and the main conflicts in each of them.

**TABLE 7** – The Stages of Ride-hailing Digital Platforms in Brazil.

Stage	Conflicts	Attitudes Towards Ride-hailing Drivers	Characteristics of the Stage
Stage 1	Drivers and Platforms vs. Taxis and Cities	Violence and Prohibition	Public support Higher remuneration Laws prohibiting platforms Growth in the number of workers
Stage 2	Drivers and Platforms vs. Cities	Mix of Supportive and Restrictive Municipal Regulations	Public support, but against higher tariffs Lower remuneration Representation in municipal sphere Supreme Court decision
Stage 3	Driver vs. Platforms	Unilaterally defined practices	Public unrest with cancellations Drivers unrest with remuneration Cooperatives and driver-administered apps

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Driver vs. the State	Mobilization for regulation of the occupation
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**Source:** Table elaborated by the author.

From Stage 1, the main conflicts are related to the resistance against platforms from taxi drivers and city councils, by responding with prohibition and violence, workers had to resort to collective action to guarantee their right to work, having with them the support of the public, high remuneration, and the increasing number of drivers in a context of high unemployment. In this stage, there is a tacit partnership between driver and platforms, and workers have the support of the platforms' disruptive strategies to continue working. Stage 2, in its turn, follows the Federal Regulation of Law 13.64/2018 that, among other things, declared unconstitutional the attempts of prohibiting platforms, as well as reinforced the limits of municipal regulations. In this phase, drivers and platforms still had conflicts against municipal laws, but now drivers' demands were directed to better work conditions and security, in conflict against both the State and the platforms in their unilaterally defined practices of price and managerial transactions. Finally, Stage 3 occurs amidst increasing inflation rates and fuel prices, which results in lower profits for drivers. With the platform's inadequate responses to these problems, drivers resort to the cancellation of rides, as well as to self-developed methods of cost reduction.

In this final stage, a new trend emerges among associations: the creation of cooperatives and the adoption of driver-managed apps, with which they can have control over the prices charged from costumers, as well as restrict the number of drivers to those who are official members; thus, controlling the supply of labor and restoring drivers' bargaining power. Viewed with optimism among workers, the effects of cooperatives and new platforms are still to be explored, especially when considering that cooperatives deal mainly in municipal territories, which isolates these workers from broader changes in their occupation, and that, through a Commonsian perspective (1921e) self-managed workers may also have limits in their activities.

#### **4.5 Final Comments**

In the context of increasing unemployment rates and deteriorating work conditions as experienced in Brazil in the past half-decade, the fact that workers would face low entry barriers

in digital platforms represented a valid alternative for earning additional income. However, there are central contradictions in the drivers' status of workers amidst an institutional setting that contributes to the advancement of the platforms works in the direction of regressive movements in terms of labor protection laws and employment security. The vulnerability of these workers has been highlighted during the period of the COVID-19 pandemic and the current economic crisis, where not only ride-hailing drivers, but other 'gig' workers have sought alternatives to the deteriorating conditions in platform work, advocating for better working conditions and protective policies, such as organizing in cooperative of planning to elect representatives in state and national chambers.

Labor legislation, in its turn, has also faced challenges in dealing with conflicts emerging from the worker-platform relations. In Brazil, this new labor arrangement lives in the results of the recent labor reform of 2017, the global expansion of the neoliberal ideology concerning labor relations, and the so-called encumbrances of labor legislation to economic prosperity (ANTUNES, 2018). Two initial insights can be seen in legislation: due to the unrecognized relation of employment, workers must settle their conflicts with platforms in civil courts; and arguments of individual liberty are common to sustain decisions in favor of platforms when suspending accounts.

The expansion of the Ridehail platforms has been undoubtedly favored by the socio-economic panorama in Brazil since the mid-2010s. The aggravation of the economic crisis and the high unemployment rates were not solved by the neoliberal prescription of flexibilization in labor laws and informal labor returned to the level of the beginning of the century. By receiving part of this workforce under its organization and management, Ridehail platforms appropriate social vulnerability (ABÍLIO, 2019), transacting with unpowered individuals whose survival depends on their tasks, as precarious as they are.

Aiming at providing a case study on the activities of ride-hailing drivers in Brazil, this chapter was formally organized into four sections. First, topic 4.1 addressed the characteristics of informality in Brazil, highlighting that, though promoted in greater extension by digital platforms, informality is a constitutive characteristic of the Brazilian labor market. Topic 4.2 presents rich information on the characteristics of own-account ride-hailing drivers in Brazil, evidencing aspects of demographic composition, as well as the changing characteristics of these workers throughout the decade. Topic 4.3, in its turn, complemented the data from the quantitative analysis by providing the accounts of association leaders, which enabled the periodization of the ride-haling platforms in Brazil. Topic 4.4 concluded with a debate on the neoliberal rationality behind the activities of workers, whose contradicting status as workers and self-employed "entrepreneurs" results in tensions in their transactions with the platforms and the State.



Considering the role played by workers, employers, and the State in defining and conducting the working rules of the occupation, workers respond to conflict with capital by adopting defense mechanisms, being collective organizations, and unionization the main instruments when there is a lack of democracy in the workplace and poor managerial practices. The associations investigated in this chapter then point to the characteristics of collective action among ride-hailing workers, and their responses to changing market conditions.

## CONCLUSION

The topics presented in this dissertation have based the discussions for our main objective, namely, the proposal of an institutionalist approach to the contemporary debates on labor economics in face of the challenges imposed by technology-mediated contracts in digital platforms. By adopting the old Industrial Relations' term "Labor Problems" to investigate the unrests between workers and capital arising in the performance of activity – whether under formal or informal contracts – this manuscript has resorted to the contributions of Wisconsin institutionalist John R. Commons as the theoretical base for the investigation.

John R. and his followers, taken here as the labor tradition of the original institutionalists, had a central interest in responding to the deleterious effects of the unregulated growth of the capitalist system over the lives of the workforce, in a context in which the liberal formulas and conceptions of self-adjusting markets faced their decline and alternative structures of social organization emerged. Indeed, Commons' denial of the "faith" in the market system and its capacity for self-organization towards harmony and equilibrium marks his contribution to a heterodox debate on how do and how can different, and usually antagonist, interests achieve order out of conflict. His response, rather than electing the will of an all-sufficient maximizing being, stresses the role of the institutions, the collective action in control of individual action, as the organizing factor of the economic phenomena. Thus, the individual is the institutionalized mind who is part of a variety of organizations, the going concerns, and in each of them is subjected to different sets of rules, regulations, and customary practices – the working rules – that direct the reasonable practices in the interactions among its participants.

These working rules are enforced collectively by different kinds of power to impose sanctions (moral, physical, or economic) which, in their case, depends upon the kind of organization being investigated. There are, consequently, different degrees of power to which individuals act with corresponding performances expected by the collective action of the organized group. Recognizing that different going concerns are formed by different degrees of power, whether moral, economic, or physical, is also the bases for acknowledging that the working rules may represent one party's interest to detriment of the other, leading to unilaterally defined practices that may become the very sources of unrests, autocratic control, and precarization of living conditions. Thus, in response to laissez-faire, Commons would propose an attempt to regulate the capitalist system through constructive research and democratic structures of representation, both in civil society and in industrial relations as a means of addressing the labor problems of his days and of seeking reasonable transactions.

Therefore, Commons study of the labor market and the transactions of hiring, firing, managing, creating, and distributing new wealth using labor is not one of maximization of factors of production, neither it considers the free market as a natural organism capable of proportioning, optimally, the scarce resources in maximizing behavior. On the contrary, the labor markets are formed by conflicting interests and transactions oriented by socially established working rules in which the notions of property, liberty, and wealth define whose rights counts and the correlative duties imposed on the other parties. Persuasion, coercion, customary practices, and habitual assumptions are all defining parts of how individuals behave in their search for making a living in a world of natural and artificial scarcity.

As opposed to Veblen's attack on the businessman sabotage by perceiving the ability of industrial capitalism to make money out of the restriction of output, Commons defined his fellow institutionalist as a critic against unilateral collective actions, that is, the absence of correlative powers capable of bargaining the terms of production. For Commons, in the same manner, that the interests of the organized capital act towards the withholding of output, workers' interest is not that of the maximum use of their labor faculties, but the reasonable use of their time and abilities summed to good remuneration. Consequently, attempts to increase labor's output, such as proposed by Taylor's scientific administration, acted in commodifying worker's human character; thus, collective action and workplace democracy were means of achieving agreements between capital and labor as they go about creating and distributing wealth in their daily transactions, especially when recognizing the constant menaces of competition over the work conditions of the labor force.

This theoretical framework of how transactions take place in the wide range of economic going concerns in the capitalist system grows in relevance in the twenty-first century as the widespread policies oriented by neoliberal agendas take place in the "age of digital platforms". As presented in chapter 3, the very use of digital structures to intermediate and organize the sparse group of "own-account" workers that first appeared as a means of achieving autonomy and a liberal conception of entrepreneurship, became the rule for organizing countless activities, going from ride-hailing, food-delivery, and private classes. This phenomenon gained prominence as "uberization", borrowing the name of Uber, the disruptive ride-hailing company that has set the pace for the expansion of labor digital platforms.

Benefiting from its ideological notion of the superiority of technology against the obsolete practices of the analogical era, this habitual assumption of the twenty-first century questions the capacity of collective actions in the role of the sovereign power of the State to regulate the activities of the online platforms. Uber has been able to enter different countries

and gain public support, despite its disregard for established working rules. From the arguments of the Brazilian Supreme court deciding that digital platforms could not be prohibited, one can perceive that no mention of the work conditions of platform workers is considered. Consequently, the unilaterally defined practices of the platforms towards their drivers, their autocratic mechanisms of management, the insecurity of the job, and the poor working conditions of low income and longest hours of work are overlooked.

It is the precarity of the work conditions that emerge from the “intermediary and self-employed” relationship, and the denial of the employment status, that we have selected as the labor problems in the age of digital platforms. Indeed, one must be cautious when using Commons and his writings to investigate the elements of such modern unrests. Therefore, this dissertation chose to investigate a case study of the collective action of ride-hailing drivers in Brazil considering what we have presented in this conclusion as the central elements and a transactions approach to the labor problems, mainly, the different actors involved in the transactions, the changing conditions of the market and of the occupation that may represent a corresponding reaction from the parties, but most of all, how these groups have chosen to respond to this changes, considering their conditions and economic power to engage in a transaction with each other seeking reasonability and better work conditions.

If in a Commonsian fashion the history of labor is the history of its collective action, Chapter 4 attempted to provide, through the analysis of both microdata and interviews with leaders of ride-hailing associations, a panorama and a periodization of this activity in Brazil, highlighting the articulation of economic crisis and chronic labor precarity as the grounds for the incorporation, expansion, and development of the digital platforms in the country. The richness of the microdata rests in the fact that it enables the reader to access the demographic characteristics of the workers who are engaged in ride-hailing activities as own-account drivers. Cautiously, we acknowledge that these data are approximations of the reality considering that this occupation has to be filtered among others who also work transporting passengers, but who are not in fact in digital platforms, but following the methodology from the literature review, it can be considered adequate for the objectives of this manuscript.

As presented, the rising absolute number of drivers in this activity, as relevant as it alone can already be, was accompanied by relative changes in the composition of those engaged in these activities. For instance, data on gender, age, and race presented that drivers are mostly men, with an average age of 40, and white, while those who are black and mixed also grew in relevance throughout the last decade. More revealing data is presented in the level of education among drivers. While those with complete high school levels remain the majority, there is a

shift in the relevance of drivers with higher education (undergraduate). Indeed, following what had been perceived by the media in the early years of the ride-hailing platforms in Brazil, being a driver turned out to be the main activity of those with higher education when facing unemployment. It also reveals, however, the inability of the labor market to incorporate qualified employers in a context of economic crisis, with the flexibilization of the labor laws representing the growing insecurity and precarization of labor, pointing out class resentment among those who, though qualified, are underemployed.

Accordingly, the data on remuneration and hours worker highlights that, while working longer shifts considering the average of the total employed workforce, ride-hailing drivers receive significantly less in gross income. Likewise, although required by federal law to contribute to social security, the number of workers with active contributions had a relevant decline between 2015 and 2022. With higher precarity in work conditions and low protection from social security, the scenario turns more dramatic as the rate of unionization drops continually during the decade, meaning the incapacity to achieve, by collective action, real gains for these workers as they go by their activities. This quantitative data is better understood when analyzing the context in which the ride-hailing platforms grew in the country; thus, the case study provided a qualification on the meaning of what microdata had shown.

In Chapter 3 we evaluated the transactions between drivers and platforms as being one of unilateral defined working rules, from which bargaining, managerial, and rationing transactions are defined in accordance with the platform's interests. This relationship is that of no responsibility of one party to the other; with no barriers to the entrance of new drivers and in a context of growing unemployment rates, the going concern of ride-hailing apps can keep its practices the way they are, with no pressures for improvement. Considering this, the interviews with leaders of associations, summed to the mapping of the main legal marks on the activities of ride-hailing platforms in Brazil allowed us to investigate how come, in such unprotected occupation, workers organize and how did the transformations in the legal structure affect their actions in representing driver's interests.

Finally, Chapter 4 contributed with a periodization of the activities of ride-hailing drivers in Brazil, from which three phases could be identified, in some cases happening concomitantly, with an emphasis on the attitudes of the state towards the platforms, the public support, the platforms, and the workers. In short, platform drivers have not been recognized as a part of a formal occupation, but the activities of these platforms were deemed legal, through competition perspectives, by the Brazilian Supreme Court in 2018. However, the struggles of the platform drivers seem to have shifted continuously since the arrival of the platforms in the

country and the current conflicts. For instance, in the first phase drivers worked alongside platforms to keep working in face of grievances with taxi drivers and laws prohibiting their work. As public support grew and platforms' market power increased, Federal Legislation defined the metrics for regulation and elected the city legislative branches as the responsibility for regulating the activities; thus, workers migrated to a political representation in their city at the expense of a national representation. At the same time, the unrest against the platforms' practices such as prices and algorithmic management increased. Thus, the third phase represents unrest against the price mechanism of ride-hailing platforms, with a growing number of associations migrating to self-owned platforms seeking to increase their gains and regain autonomy from the platform, as well as with the political organization of some groups to elect their own representatives in the national elections of 2022.

In conclusion, though it has provided important insights into the work of ride-hailing platform drivers, this study has also opened new paths of investigation that point out to interesting debates not restricted to those of the institutionalist approach. For instance, the newly organized cooperatives seem to work in two directions: in the first approach, they try to give the drivers the control that is now in the hands of the platforms while promising higher gains; however, in a sense, they keep operating in the logic of how the platforms operate today, with an attempt to give meaning to a form of managing the labor force that is growing to other fields marked by precarization and meritocratic habitual assumptions that tend to mask real conflicts of underemployed workers. Following this trend, higher educated drivers who are underemployed may experience what Braga (2020) argued as a class resentment from those who are legally unprotected and those "privileged" formal workers. Meritocracy, entrepreneurship, and autonomy are all concepts used to legitimate these workers' activities, even though they may not feel the way they describe themselves. Here, Veblen's vicarious consumptions in servile activities may come at hand to explore the resentment of this class in decomposition. Further investigations are planned on how the courts judge "digital property".

Finally, the institutionalist agenda in the investigation of the labor problems in the digital era has much to develop in the next years, thus this manuscript represented an attempt to contribute to an ongoing debate in the field. However, in a broader sense, in times of increasing questioning of the democratic institutions by fascist-like governments around the globe, it is of utmost importance to recover the theme of democracy as it was the basis for the development of the Original Institutional tradition. Despite their contradictions, ride-hailing drivers are organizing. Thus, how one can make platforms seat at the table to bargain for better conditions is a matter of Institutional Economics and constructive research.

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## APPENDIX I – Data on own-account drivers as a secondary occupation

In Chapter 4, topic 4.2 “Measuring the ride-hailing platforms”, the data described had focused on the workers whose activities as drivers for passenger transportation represented their primary occupation by using the codes 8322 and 49030 in the variables V4010 and V4014 of the PNAD Contínua. In its turn, Appendix I briefly presents data on drivers for whom the occupation and activity of passenger transportation is the secondary source of income, in other words, for those who have it as an additional source of income for their households.

Following a symmetric exposition compared to chapter 4, **Table 8** presents the evolution in the number of drivers as a secondary occupation decomposed by position (employers, waged, own-account, and unwaged workers) and the annual rate of precarization among these workers.

**TABLE 8** – Evolution of drivers (secondary) by Position and Rate of Precarization – Brazil (2014-2022)

Items	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Drivers</b>	<b>17342</b>	<b>23228</b>	<b>13410</b>	<b>30750</b>	<b>51680</b>	<b>76128</b>	<b>64724</b>	<b>43650</b>	<b>45383</b>
<b>Occupied (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Employers	3,3	-	6,2	-	4,7	3,4	2,0	-	0,3
Waged	28,9	14,8	20,9	17,9	11,1	14,2	4,7	7,8	1,8
Formal	3,9	0,7	3,1	4,5	0,8	1,1	0,2	-	-
Informal	25,0	14,1	17,9	13,3	10,3	13,1	4,5	7,8	1,8
<u>Own-account</u>	<u>65,8</u>	<u>85,2</u>	<u>72,8</u>	<u>82,1</u>	<u>84,2</u>	<u>82,4</u>	<u>93,3</u>	<u>92,2</u>	<u>97,9</u>
Unwaged	2,0	-	-	-	-	-	-	-	-
<b>Precarization</b>	<b>92,8%</b>	<b>99,3%</b>	<b>90,7%</b>	<b>95,5%</b>	<b>94,5%</b>	<b>95,4%</b>	<b>97,8%</b>	<b>100%</b>	<b>99,7%</b>

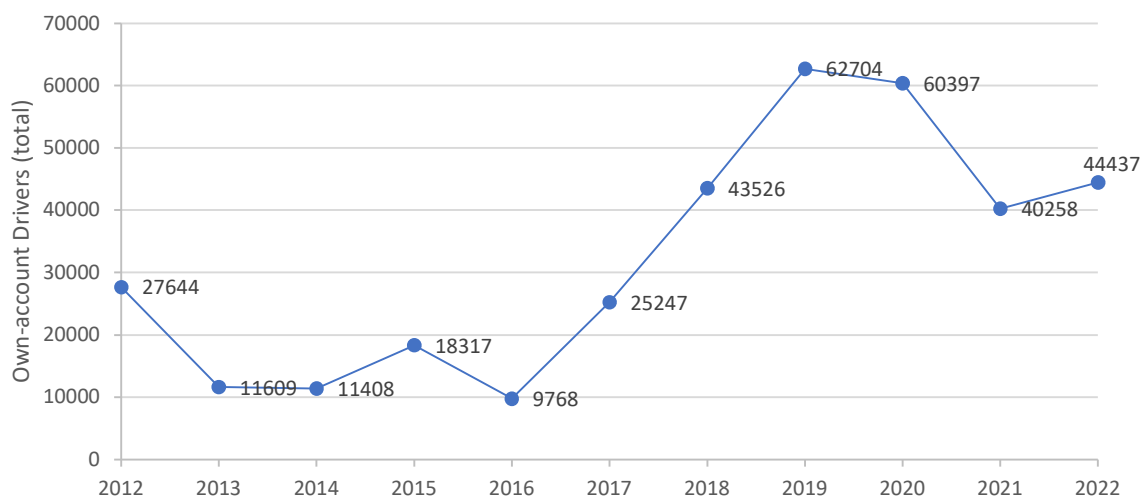
**Source:** Microdata/PNAD Contínua/IBGE – Table elaborated by the author based on Pochman (2020)

**Caption:** \*Precarization: share of informal, own-account, and unwaged driver in the total occupied in the activity

Similar to the information presented in Chapter 4 with the position of drivers in primary occupation, the workers who drive in passenger transportation as a secondary source of income are also concentrated in waged and own-account positions. However, in the case of this second group, there is a sharp decline in waged workers that reached the bottom rate of 1,8% in 2022, a decline that occurs concomitantly to the climbing rates of own account drivers that responder for 97,9% of all drivers in the same year. Notably, informal contracts represented a major share among waged workers, being the sole form of waged positions in 2021-22; consequently, even with the absence of unwaged positions, the rate of precarization represented high rates during all periods (>92,8%), virtually achieving 100% in these years.

Considering that own-account positions represented almost the whole group of drivers, **Chart 6** presents the annual evolution in the number of these workers, which also evidences the trajectory of the occupation presented in the previous table. From it, one can perceive that from 2013 to 2016, the number of own-account drivers is leveled off at around 10 to 18 thousand workers; however, from 2016 to 2019 this number grows steeply, reaching 62704 thousand drivers, an increase of approximately 542% when compared to the number of 2016. If one considers that in the case of drivers in the primary occupation the difference between 2016 and 2019 was +73,5%, the secondary occupations show greater and substantial changes in the period.

**CHART 6** – Annual evolution in the number of people working as own-account drivers (secondary) – Brazil (2012-2022)



**Source:** PNAD Contínua/IBGE (1<sup>st</sup> quarter) – Elaborated by the author.

Before analyzing the descriptive data on the demographic characteristics of the own-account drivers as done in chapter 4, **Table 8** allow us to assess the position occupied by these drivers (secondary) in their primary occupations. In other words, this data presents the position of the drivers in their “origin” or main source of income, before the entrance into the secondary occupation or additional “gig”.

From **Table 9**, most of the workers are allocated to waged and own-account activities. There is, interestingly, a significant share engaged in formal contracts, representing an average of 56,8% of the total throughout the period. When compared to Table 1 above, when most of the waged workers are informal, and more than 80% become own-account workers, we can perceive that the occupation in the secondary gig represents workers’ simultaneous

subordination to both formal and precarious occupations. A fact that is clear in the differences between the precarization rates of Table 1 and Table 2.

**TABLE 9** – Position and Rate of Precarization of own-account drivers (secondary) in their primary occupations – Brazil (2014-2022)

Items	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Drivers</b>	<b>11408</b>	<b>18317</b>	<b>9768</b>	<b>25247</b>	<b>43526</b>	<b>62704</b>	<b>60397</b>	<b>40258</b>	<b>44437</b>
<b>Occupied (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Employers	4,4	9,8	2,5	13,8	3,6	8,1	3,6	-	4,7
Waged	69,7	64,1	69,6	51,7	72,2	67,7	71,8	70,4	57,1
Formal	53,8	55,5	69,6	35,4	65,2	60,5	63,3	65,8	43,7
Informal	15,9	8,6	-	16,3	7,0	7,2	8,6	4,6	13,4
<u>Own-account</u>	25,8	26,1	27,9	34,5	24,2	23,8	24,6	29,6	38,2
Unwaged	-	-	-	-	-	-	-	-	-
<b>Precarization</b>	<b>41,78%</b>	<b>34,66%</b>	<b>27,91%</b>	<b>50,83%</b>	<b>31,16%</b>	<b>31,32%</b>	<b>33,15%</b>	<b>34,22%</b>	<b>51,62%</b>

**Source:** Microdata/PNAD Contínua/IBGE – Table elaborated by the author based on Pochman (2020)

**Caption:** \*Precarization: share of informal, own-account, and unwaged driver in the total occupied in the activity

Indeed, own-account workers represent the majority of occupied drivers in secondary activities, and it is exactly in this group that we find the most adequate data to access the approximate information on workers who are engaged in ride-hailing platforms. **Table 10** presents demographic information on these workers from 2014 to 2022, the period in which Uber and 99 started their operations and incorporated amateur drivers in their ride options.

As was the case for drivers in primary occupations, own-account drivers in secondary occupations are mainly male, however, the share of female workers fluctuates in higher ranges achieving two digits in at least three years, even reaching one-quarter of the total in 2021. Similarly, white, black, and mixed are the most common races among drivers, with a relevant decrease in the first group accompanied by a growth in black and indigenous workers. Also, drivers in secondary occupations are relatively younger than those working in primary occupations, with an average of 40,6 years old against 43,7 respectively.

Concerning the levels of formal education, the data for secondary occupation workers suggest deeper changes from those perceived in the group of primary occupation drivers, but following the same trend of increasing formal instruction with more educated human capital. For instance, considering the shares in 2016, which is steadier than the high rate of incomplete Elementary levels, 54,6% of drivers had incomplete High School level or less, and 45,4% had completed their high school or above, with complete higher education representing 14,6% of

the total. In 2022, however, the scenario had shifted towards the concentration of workers with high school or above, 76,9%, while less-educated groups represented 23,1%. Not only did more educated groups reach about three-quarters of the total workers, but also those with complete higher education degrees (undergraduate) constituted 25,6% of the total occupied drivers. Consequently, it is perceived that these workers may be underemployed, considering the low entrance requirement in this activity in terms of formal education.

**Table 10** – Descriptive data on own-account drivers in their secondary occupation – Brazil (2014-2022)

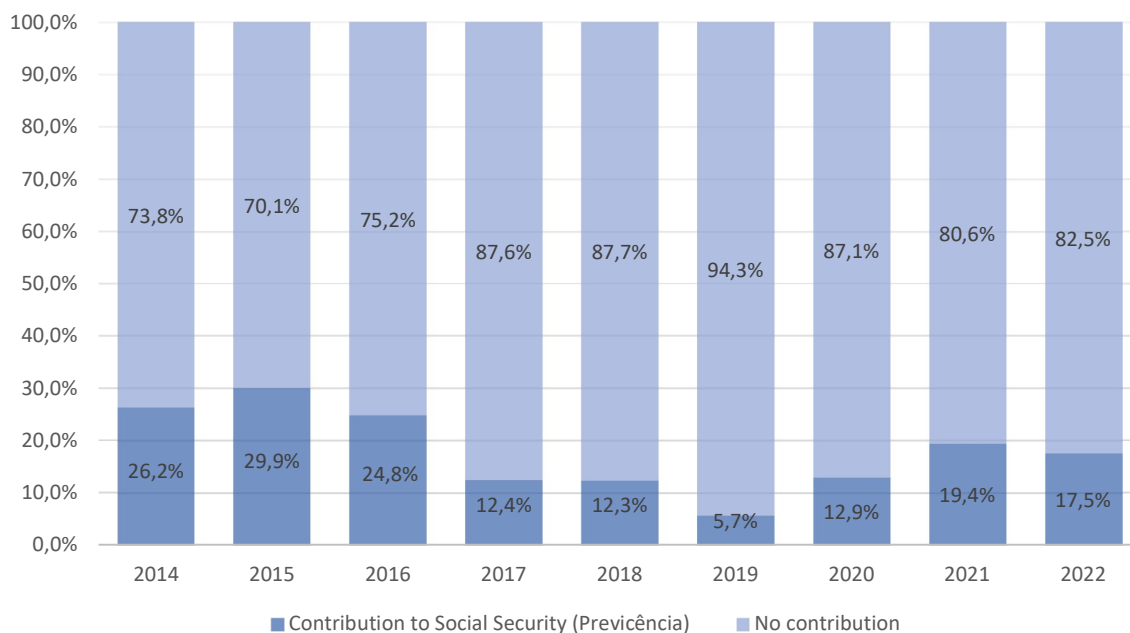
Variable	2014	2015	2016	2017	2018	2019	2020	2021	2022
<b>Total Drivers</b>	<b>11408</b>	<b>18317</b>	<b>9768</b>	<b>25247</b>	<b>43526</b>	<b>62704</b>	<b>60397</b>	<b>40258</b>	<b>44437</b>
<b>Gender (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
Male	84,4	95,5	93,2	91,2	87,7	90,8	93,6	73,7	95,9
Female	15,6	4,5	6,8	8,8	12,3	9,2	6,4	26,3	4,1
<b>Age (<math>\bar{x}</math>)</b>	<b>43,5</b>	<b>45,2</b>	<b>41,8</b>	<b>40,4</b>	<b>38,6</b>	<b>38,1</b>	<b>38,8</b>	<b>39,4</b>	<b>40</b>
<b>Race (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
White	40,1	32,3	64,7	53,6	36,7	52,7	42,5	46,8	36,5
Black	11,8	13,3	5,2	5,0	9,4	12,1	18,7	12,8	16,6
Yellow	0	0	0,0	0,0	0,8	0,0	0,0	0,0	0,0
Mixed	48,1	52,7	30,1	41,4	53,1	35,2	38,3	40,3	42,6
Indigenous	0	1,7	0	0,0	0,0	0,0	0,5	0,0	4,2
<b>Education (%)</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>
None – Less than 1 year	0,0	0,0	0,6	2,0	0,8	0,5	1,3	0,9	0
Elem. (incomplete)	27,7	55,7	29,0	15,3	7,8	6,0	10,4	7,3	6,1
Elem. (complete)	3,9	16,8	13,8	9,7	6,1	5,3	2,5	15,9	5,5
High School (incomplete)	1,5	4,3	11,2	2,3	6,1	4,6	2,4	12,9	11,7
High School (complete)	42,9	12,6	30,7	42,4	45,6	44,7	56,6	32,7	43,4
Higher Ed. (incomplete)	21,0	5,9	0	3,1	13,8	19,1	10,6	5,6	7,3
Higher Ed. (complete)	3,1	4,6	14,6	25,2	19,9	19,7	16,3	24,8	26,1

**Source:** PNAD Contínua/IBGE – Elaborate by the author.

Finally, **Chart 6** presents the share of own-account drivers in a secondary occupation that contributes to social security (INSS). While from 2014 to 2016 the share of contributors remained at an average of 26,9%, from 2017 to 2022 this share did not pass 20%, gravitating around 13,4% in average. Considering that among these workers about 57% on average had formal contracts in their primary occupations, it is understandable that a lower share of them

would contribute to social security in a complementary position. However, there is still an important share of informal and own-account drivers who do not contribute to social security, which exposes them to precarity and insecurity when performing their daily activities.

**Chart 7** – Share of Own account drivers who contribute to Social Security (Secondary occupation)



**Source:** PNAD Contínua/IBGE (1<sup>st</sup> quarter) – Elaborated by the author.



## APPENDIX II – Guide for Semi-structured interview

### Guia de Entrevista Semiestruturada

**Tema:** A evolução dos serviços de transporte por aplicativo no Estado de São Paulo a partir das experiências das lideranças de motoristas de app.

**Objetivos:** Identificar as características e os conflitos constitutivos do trabalho de motoristas de app no Brasil, buscando compreender: (1) as mudanças deste setor desde a sua chegada ao Brasil; (2) a percepção sobre as influências do contexto político-econômico sobre as suas condições de trabalho; (3) as motivações e obstáculos para a organização coletiva; (4) as formas de organização e inclusão de novos membros; (5) as suas formas de representação política.

**Método:** Entrevista semiestruturada de informante-chave e história oral. Em que se espera, além de apresentar o perfil dos entrevistados, compreender as principais modificações no setor de transporte por aplicativos a partir do relato de lideranças (experiência além da atividade) sobre a sua percepção e de seus grupos sobre o trabalho dos motoristas de aplicativo.

#### Temas-chave:

1. A experiência da liderança na atividade de motorista;
2. A presença dos aplicativos no Brasil;
3. A criação de grupos de representação/proteção de motoristas;
4. Formas de organização e representação de interesses dos trabalhadores;
5. A evolução do setor e as mudanças na ação coletiva de trabalhadores;
6. Os efeitos da pandemia da COVID-19

#### Questões:

TABLE 11 - Legal actions leading to the decision of Brazilian Federal

Designação dos Blocos	Objetivos Específicos	Questões
I - Legitimação da entrevista	<ul style="list-style-type: none"> <li>- Explicitar os fundamentos e os objetivos da pesquisa;</li> <li>- Motivar o entrevistado;</li> <li>- Garantir a confidencialidade;</li> <li>- Solicitar autorização para o registro de áudio da entrevista.</li> </ul>	<ul style="list-style-type: none"> <li>- Informar, em linhas gerais sobre o Trabalho de Investigação;</li> <li>- Indicar os objetivos da entrevista;</li> <li>- Pedir ajuda ao entrevistado, o seu contributo é imprescindível para o êxito do trabalho;</li> <li>- Assegurar o carácter confidencial das informações prestadas;</li> <li>- Pedir autorização para gravar a entrevista;</li> <li>- Agradecer a colaboração.</li> </ul>

<p><b>II – Informações sobre o entrevistado</b></p>	<ul style="list-style-type: none"> <li>- Acessar os dados biográficos do entrevistado;</li> <li>- Identificar as motivações para a entrada no ramo do transporte de apps;</li> <li>- Explicitar a visão do entrevistado sobre as vantagens/desvantagens do trabalho em apps.</li> </ul>	<ul style="list-style-type: none"> <li>- Descreva a sua história profissional até a entrada no transporte por apps;</li> <li>- Quais fatores o/a levaram a trabalhar como motorista de app?</li> <li>- Como o seu trabalho hoje se diferencia das suas ocupações anteriores?</li> <li>- Você teve experiência com associações/sindicatos de trabalhadores em suas ocupações anteriores?</li> </ul>
<p><b>III – Os apps de transporte no Brasil</b></p>	<ul style="list-style-type: none"> <li>- Conhecer a visão do entrevistado sobre as atividades da plataforma;</li> <li>- Identificar as relações cotidianas entre trabalhadores, plataformas e clientes;</li> <li>- Identificar os principais conflitos entre os agentes envolvidos no transporte de apps.</li> </ul>	<ul style="list-style-type: none"> <li>- Por que os apps de transporte se tornaram tão populares no Brasil? Quais fatores atraem os motoristas para essa atividade?</li> <li>- Como você descreveria a relação entre os motoristas e as plataformas no dia a dia do trabalho em apps?</li> <li>- Como você descreveria a relação entre os motoristas e os clientes no dia a dia do trabalho em apps?</li> <li>- Quais são os conflitos mais comuns entre plataformas, trabalhadores e clientes?</li> <li>- Como esses conflitos são resolvidos? Há diálogo direto com a plataforma?</li> </ul>

<p><b>IV – A formação de grupos de trabalhadores</b></p>	<ul style="list-style-type: none"> <li>- Identificar os fatores geradores dos grupos de proteção e representação dos trabalhadores de app;</li> <li>- Conhecer a sua relação com as plataformas e o poder público;</li> <li>- Expandir a compreensão corrente sobre as frentes de atuação desses grupos;</li> <li>- Identificar os desafios para recrutamento e manutenção de membros.</li> </ul>	<ul style="list-style-type: none"> <li>- Descreva a história da sua associação/sindicato/cooperativa;</li> <li>- Quais foram as motivações para a criação desse grupo?</li> <li>- Como vocês se organizam estruturalmente?</li> <li>- Quais são as principais frentes de atuação desse grupo?</li> <li>- Quais são os principais instrumentos de defesa dos trabalhadores hoje?</li> <li>- Como é a sua relação com as plataformas e com o poder público na resolução de conflitos?</li> <li>- Quais são as formas de ingresso de novos membros e os principais desafios desse processo?</li> </ul>
<p><b>IV – A Evolução e a Crise</b></p>	<ul style="list-style-type: none"> <li>- Conhecer as principais mudanças no trabalho por app desde a sua chegada ao Brasil;</li> <li>- Identificar os principais conflitos da história desse setor;</li> <li>- Investigar as formas de mobilização e readequação dos grupos frente à aos conflitos;</li> <li>- Analisar a percepção dos trabalhadores sobre o papel das crises políticas e econômicas sobre o seu trabalho.</li> </ul>	<ul style="list-style-type: none"> <li>- Quais foram as principais mudanças nos apps e na sua atividade como motorista desde que você ingressou nesse trabalho?</li> <li>- Quais foram os principais conflitos e manifestações da história da sua organização?</li> <li>- Como ocorreu a mobilização dos trabalhadores?</li> <li>- Em algum momento, o seu grupo mudou a forma de organização interna e as estratégias de representação dos trabalhadores?</li> <li>- Como as crises políticas-econômicas afetaram/influenciaram o trabalho dos motoristas e das associações?</li> </ul>

<p><b>V – A Pandemia</b></p>	<ul style="list-style-type: none"> <li>- Analisar os efeitos da pandemia sobre o trabalho de motoristas de app;</li> <li>- Identificar os aspectos da relação entre trabalhadores, plataformas e poder público;</li> <li>- Perceber as modificações geradas sobre a atuação das associações.</li> </ul>	<ul style="list-style-type: none"> <li>- Quais foram os efeitos da pandemia no trabalho dos motoristas de app?</li> <li>- De que forma essa crise modificou a atuação das associações?</li> <li>- Como foi a relação entre motoristas, plataformas e poder público durante esse tempo?</li> <li>- Quais foram os principais conflitos observados no trabalho em apps e como foram resolvidos?</li> <li>- Como o aumento de combustíveis tem afetado o trabalho? Qual é a atuação das associações nesse contexto?</li> </ul>
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**Source:** Elaborated by the author.

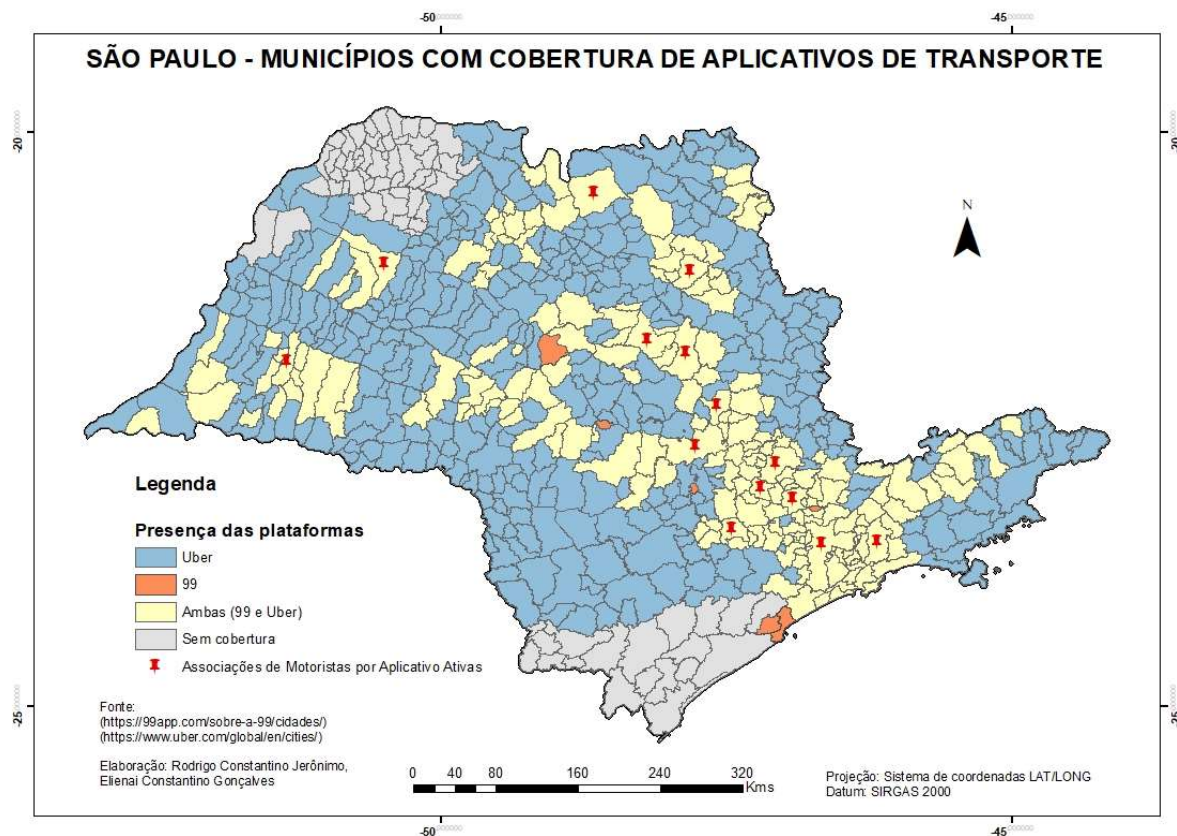
### APPENDIX III – Unions and Associations of ride-hailing drivers in São Paulo (State)

**TABLE 12** – Unions and Associations of ride-hailing drivers in São Paulo (State)

OID	Name	Since	Region
<b>Atapp</b>	Associação dos Motoristas por Aplicativo de Araçatuba e Região	2018	Araçatuba
<b>Coomappa</b>	Cooperativa de Transporte para Motoristas de Aplicativos em Araraquara	2021	Araraquara
<b>AMAPB</b>	Associação de Motoristas de Aplicativos de Barretos	2020	Barretos
<b>Amacre</b>	Associação de Motoristas de Aplicativos de Campinas e Região	2018	Campinas
<b>AIMAPP</b>	Associação Indaiatubana dos Motoristas de Aplicativos Privados	2019	Indaiatuba
<b>AMAJUR</b>	Associação de Motoristas por Aplicativos de Jundiaí e Região	2018	Jundiaí
<b>Amarati</b>	Associação de Motoristas por Aplicativos da Região do Alto Tietê	2018	Alto Tietê
<b>AMAP</b>	Associação de Motoristas de Aplicativos de Piracicaba	2019	Piracicaba
<b>Amoesp</b>	Associação dos Motoristas de Aplicativo do Oeste Paulista	2020	Oeste Paulista
<b>Comarp</b>	Cooperativa de Motoristas por Aplicativos da Região Metropolitana de Ribeirão Preto	2018	Ribeirão Preto
<b>ARMAPA</b>	Associação Rioclarense dos Motoristas Autônomos Por Aplicativos	2020	Rio Claro
<b>AMASC</b>	Associação de Motoristas de Aplicativos de São Carlos e Região	2019	São Carlos
<b>AMASP</b>	Associação de Motoristas de Aplicativos de São Paulo	2017	São Paulo
<b>Stattesp</b>	Sindicato dos Trabalhadores com Aplicativos de Transportes Terrestres	2018	São Paulo
<b>ASMAPP</b>	Associação de Sorocaba e Região dos Motoristas por Aplicativo Privado	2019	Sorocaba

Source: Elaborated by the author.

**Map 2** – UBER and 99 Coverage Area in the State of São Paulo and Distribution of Unions and Associations of Drivers (data from April/2021)



## APPENDIX IV – Main Legal Actions concerning Ride-hailing Platforms

**TABLE 13** - Legal actions leading to the decision of the Brazilian Federal Supreme Court on the unconstitutionality of prohibiting laws for Ride-hailing Digital Platforms

Actions	Date	Entity	Description
Law nº 12.587	03 jan. 2012	Federal Govt.	Established the guidelines of the National Urban Mobility Policy.
Municipal Law nº 16.279	8 oct. 2015	City of São Paulo	Prohibited the use of private cars registered in ride-hailing platforms for paid individual passenger transportation in the City of São Paulo-SP
ADIN nº 2216901-06.2015.8.26.0000	11 nov. 2015	TJ-SP	Direct action of unconstitutionality filed by the National Confederation of Services (CSN) against the Municipal Law nº 16.279 in the City of São Paulo.
Decision	05 oct. 2016	TJ-SP	The State Court of Justice declared the Municipal Law nº 16.279/2015 unconstitutional
Municipal Law nº 10.553	23 dec. 2016	City of Fortaleza	Prohibited the use of private cars, registered or not in ride-hailing platforms, for paid individual passenger transportation in the City of Fortaleza-CE.
ADPF 449	7 apr. 2017	STF	Action against the violation of a constitutional fundamental right filed by the National Directory of the Social Liberal Party (PSL), requesting that the prohibitions described in the Municipal Law of Fortaleza nº 10.553/2016 were declared unconstitutional.
RE 1054110	9 jun. 2017	STF	Extraordinary Appeal filed by the City of São Paulo with general repercussion brought against the judgment of the State Court of Justice (TJ-SP) that declared the unconstitutionality of municipal law 16.279/2015
Law nº 13.640	26 mar. 2018	Federal Govt.	Amended Law nº 12,587, of January 3, 2012, to regulate the activities of paid individual passenger transportation.
Decisions	8 may 2019	STF	The court declared unconstitutional, in totum, the Municipal Law nº. 10.553/2016 (ADPF 449) The court dismissed the Extraordinary Appeal (RE 1054110)
Fixation of Thesis for Effects of General Repercussion	09 may 2019	STF	The court, by majority, fixed a thesis of general repercussion declaring (i) the unconstitutionality of prohibitions or restrictions on the activities of individual private transportation by drivers registered in ride-hailing platforms (ii) the requirement that, in the exercise of its jurisdiction, the cities and the Federal District (DF) obey the parameters set by the federal legislator.

**Source:** table created by the author based on official registers from the Brazilian Federal Supreme Court (STF) and from Municipal and Federal official journals (Diário Oficial da União – DOU, Diário Oficial da Cidade de São Paulo, and Diário Oficial do Município de Fortaleza).

Caption: STF – Brazilian Federal Supreme Court; TJ-SP – Court of Justice (State of São Paulo);