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Economic Value (and Antivalue) Applied to Normative Regulations for Gig Economy

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Industry 4.0 is inexorable and has brought profound changes in the way human beings understand life in society. This terminology was coined by Schwab, in his book “The Fourth Industrial Revolution”, as a reference to the revolutionary process separated into four stages, established from the surface: of the steam engine; combustion engines; technologies, and robotics; and now, the mass internet. Therefore, in short, industry 4.0 is conceptualized as being a new phase inaugurated from a set of changes in social relations, for the market and labor economy, consequently, caused by the widespread use of technology and the internet, especially from the 2000s onwards. As a result of this phenomenon and changes, the gig economy is also inserted in this context, which can be understood as a type of work - autonomous or not - in which the worker faces an intermediary tool, usually technological, to reach the client.

By establishing an economic analysis of the Law, it is clear that the entire standardization process must - necessarily - seek to generate economic value, in a way that enables healthy market activity. Economic value is a classic Smithian concept that divides value into use (utility) and exchange (compared to other goods), for the formation of price. In brief, for a good to be economically relevant, it must be useful and scarce. Utility refers, on the one hand, to the well-being being desired, because it is useful. Scarcity, on the other hand, is about the availability of goods in the world. Applying this system, the value of the goods is initially established.

In the interests of simplification (considering the “scarce” space for debate in this essay), within a

neoliberal capitalist economy, economic value can be considered as the wealth generated by the market, whereas anti-value consists precisely of wealth losses. Economic value is not to be confused with axiological value; the economic value attributed to the commodity derives not only from the use-value of the good but from its exchange value, which is defined by its scarcity (supply) and its utility (demand), represented by the price of the commodity.

With this preliminary superficial analysis of the concepts scratched in this essay, it must perceive a problem inherent to the macroeconomic metric as a whole: what are the limits of the State's intervention in the gig economy, without this generating anti value? This is the object to be analyzed.

What has been observed empirically, in a preliminary analysis, is that the economic balance capable of optimally generating economic value - wealth - is extremely delicate: excessive State intervention on the

economy can generate anti value; the absence of state intervention in the economy can generate anti value, too. It is not too much to point out that this delicate balance was described, in economic analysis, by the deadweight theory. Thus, when facing State

intervention, it is mandatory to understand that as creating legal norms, potentially this “dead weight” will be generated.

It is observed that the “dead weight” must be limited to the minimum. The normative construction of an institute such as the gig economy can be regulated, but that does not mean that every aspect of this new expression of the market needs a limiting or restrictive normative instrument. Quite the contrary. This expression is born with a spirit of freedom alternative to the metric of the conventional employment

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relationship and even to the provision of conventional services. On the other hand, failing to regulate certain rights, especially for the workers, who are in a position of under-sufficiency, also means to depreciate the Social Democratic State of Law established in Brazil. Indeed, Nash's equilibrium and Pareto's optimum explain the delicacy of such a construction, from an analysis by game theory.

Game theory is, therefore, a tool for analyzing social dynamics from the perspective of gains and losses in terms of practical results for each person, as results from these interactions. It should be noted that game theory is not exactly a new idea; but, only in recent decades, it has been applied in areas other than economics and military strategy. Its logic is as old in humanity, as the very idea of games (entertainment) and strategy (military).

Anyhow, Neumann and Morgenstern, in 1953, were responsible for developing the current approach, strongly influenced by quantum mechanics and its uncertainty principle, and brought game theory as a proposed paradigm for solving economic cases. Payoffs are, therefore, defined based on the choices made by the players. In short, explained by this theory, everyone wants some payoff from every social interaction.

Returning to the analyzed point, what Nash predicted in his equilibria is that the players, in this social dynamic, wants the maximum gains without giving up the greater security probability in obtaining it. However, in many cases, greater security indicates potentially lesser gains, than the game would allow. Pareto, on the other hand, observes the maximum possible gains, because of a game, even though it indicates leaving aside a greater security probability of a positive result.

Transforming this into an economic-legal scenario, it overcomes its interaction in Social and Labor Rights, a theme addressed by Avanci in his doctoral thesis in 2020. The games here defined, can be observed as an interaction from relationships between Brazilian societies, whose general objective is to guarantee the best for them (as it is expected in any case). And it is up to the Science of Law, in this case, to regulate works law to optimize this relationship, to ensure that there would not be distortions and the payoffs are the best possible for everyone. Once again, returning over the problem mentioned above: excessive regulation prevents

dynamic market activity; lack of regulation creates terrible social distortions. In this view of game theory, Law can be seen as a mediator trying to achieve, at least, a Nash equilibrium aiming Pareto's optimum. A suggestion for solving this problem is to analyze the gains and losses objectively, from a utility perspective, observing the axiological values inherent to the question. Although utility, it is not a simple task, considering the number of variables. Precisely for this reason, it is not possible to impose a normative frenzy on the gig economy theme without understanding the consequences of its measures.

In conclusion, it is proposed that the creation of legal standers for the gig economy must observe its purpose of generating economic value to society and the State. For this to be possible optimized, it is suggested that the

following axioms would be observed for the normative construction: excessive intervention generates anti value, as it creates excessive obligations to the investor, generates bureaucracy and hinders the free initiative; lack of intervention generates anti value because it attacks the Democratic Social Rule of Law.

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This article is a result of the author's ascertainment and analysis, without compulsorily reflecting CEST's opinion.