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Polycentric Governance and Challenges of the 21st Century

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Title: Normative Considerations in Institutional Change Analysis

Abstract

There are two facets to consider in analysis of institutional choice: analysis of the change itself or of the impact it may have. Impact analysis refers to the comparison of consequences of each institutional option whereas change analysis is assessing the various political or collective systems for choosing among institutions. Building on the authors' recent work applying Wesley Hohfeld to institutional economics, this paper examines a normative perspective on change analysis. We consider John R. Commons' process of Reasonable Value as it might be used today. Through careful review of Commons' work, we consider criteria for achieving RV today, and briefly explore one example of Reasonable Value at work in the case of platform or "gig" workers.

Introduction

Democracy, in all of its various guises, remains perhaps the preeminent form of collective decision making in the 21st century. However, that preeminence has certainly been challenged in the last two decades. The first decade of the 21st century experienced a so-called ‘War on Terror’ that included elements of a surveillance state. Afterwards, the global recession challenged the legitimacy of the global financial system and its links to democracy. More recently, the global pandemic and increasing experience with extreme weather and climate change have commentators asking whether democratic systems are up to the challenge. Finally, the rise of autocrats in Europe and elsewhere and the January 6th events at the U.S. Capitol raises serious questions about the prospect for democracy in the 21st century. All of these events have raised questions about the way forward as countries and local communities seek to engage in some form of collective decision making to address the many challenges of the world. Given this background, some commentators have raised the question of whether a democratic system can address these existential issues such as climate change or even an enduring global pandemic. Others have raised the question of whether a change or reform to the democratic decision-making process rather than getting rid of democracy is the answer.

Institutional economists have addressed the issue of collective decision-making processes. The basis for this approach is the concept of the “institution” as the key driver that shapes and directs social and economic behavior in human communities¹. For our purposes, we adopt the definition by John R. Commons that “An institution is collective action in control, liberation, and expansion of individual action.” (Commons, pg. 21, 1934). The first key point is that an institution is a set of rules that are set by some form of collective decision-making process in a community, are external to any single human decision maker and importantly are potentially enforced by some form of collective sanction if not followed. The other key point is that the rules that bind one party will liberate another; thus the inherent nature of interdependence in the establishment of institutions. Commons definition and approach to

¹ We are well aware of the many different definitions and debates about the concept of institution including entire books that have been written on the subject. For our purposes, we have selected the Commons definition with all of its advantages and disadvantages

institutions is not limited to democratic forms of decision making per se but it was in this context that he most broadly considered its application.

Scholars such as A. Alan Schmid have argued there are two basic forms of analysis when undertaking institutional analysis (Schmid, 2004; 1987; Klammer & Scorsone 2022). The first form is called impact analysis. In this approach, the analyst assesses institutions as independent variables that cause changes in some economic or social performance variable. The information generated in this process is likely to be used as input into the political decision-making process. A normative approach to this type of information would be an assessment, based on some set of criteria, of which institutional alternative is better than others in terms of meeting the specified criteria and points to “which way forward”.

The other type of analysis is referred to as institutional change analysis. The institution(s) become the dependent variable in this case. The analyst assesses the type of variables (they could be political, social or technological in nature) that cause a change in the institutional makeup of a community or society. The normative approach in this case would be to determine which sociopolitical structures or alternatives would lead to a preferred institutional choice. This type of analysis is akin, in some regards, to what James Buchanan has called constitutional economics (Buchanan & Samuels, 1975).

This paper specifically focuses on the political economy contributions of original institutional economist (OIE) scholar John R. Commons, as expressed in his theory of reasonable value. We will examine both his ideas and the potential for that set of ideas to provide a guide for collective decision making in the 21st century. Reasonable value falls among the normative approaches to institutional change analysis. Specifically, Commons laid out both a conceptual framework and very specific mechanisms for how the government should act to create the “right” set of decisions. In this case, the right set of decisions refers to the creation or change in institutional structures that guide the economy. These new or restructured institutions, if they follow Commons’ mechanism, shall be reasonable in nature. Commons’ theory of reasonable value is a specific set of processes for reaching collective decisions that are deemed to be “reasonable” whereas decisions reached by another process would be inherently

“unreasonable”. The first part of the paper will provide a brief explanation of Commons’ ideas and how they compare to modern theories and concepts from normative political theory especially those of deliberative democracy. This comparison allows us to build a more complete understanding of the underpinning and application of Commons conception of reasonable value. The second part of the paper focuses on a specific application of new attempts at reasonable value in the 21st century platform economy. The overall theme is to explore the concept of reasonable value, especially as understood in the Hohfeldian language of juristic relations, and how it will help society or communities in deciding which way forward.

Democracy

If we are to understand Commons and how his theory of a collective decision-making approach—known as reasonable value—fits into modern approaches to democratic decision making, a starting point or baseline understanding of the democratic form of government is needed. There has been extensive argument in political science about democracy and how it can be defined to the point of some scholars even claiming it cannot be defined (Merkel, 2018). A commonly used definition by John May was that democracy was a system of governance that is “...necessary correspondence between acts of governance and the wishes with respect to those acts of the persons who are affected.” (May, 1979, pg. 1). Here we see the focus on accurate representation. The political scientist Robert Dahl argued somewhat earlier in 1956 that democracy has five ideal criteria including: 1) equality in voting, 2) effective participation, 3) enlightened understanding, 4) agenda control and 5) inclusion of all adults (cite Dahl). This view includes not just democratic representation but expands it to the idea of equal and effective representation.

A more recent definition is from the *Journal of Democracy*. Schmitter and Karl (1991) write, “modern political democracy is a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representative” (Schmitter and Karl, 1991, pg. 76). The main theme seems to be that democracy is a relationship between those in government

and their citizens. The nature of that relationship is one where the ruled choose their rulers with some degree of coherent matching between the two and with equal voice and that there are mechanisms for feedback and accountability for decisions that are made.

Within the general field of the philosophy of democracy, there have been several challenges or threads to how a democracy should work. The first challenge came in the 1960's from a theory of participatory democracy. This may be referred to as the action-centric theory of politics. The action-centric school of thought shifts focus to getting citizens fully engaged in the political process beyond voting and not just worrying about representation. Typical actions from this strand of thought might be an emphasis on direct democracy, transparency, open meetings and other reforms. Marc Tool writes in his book *The Discretionary Economy* that, "the government is to be an instrument...extolled is the discretionary individual as a participant in creating community." (Tool, 1979, pg. 202). He then further states that participatory democracy, "rests on the demonstrable contention that people are educable, are capable of effective participation, and are able to judge the adequacy of adjustments made in response to real problems" (Tool, 1979, pg. 208). Voting and representation are still present, but now the focus shifts to people taking action and being active participants in government besides voting.

More recently, since the 1990's, there has been an emerging school of thought known as deliberative democracy. This talk-centric theory has a focus on the nature of public reasoning and the arguments being made as well as the specific forums in which that discussion and debate occurs. The key theme in talk-centric theory is arguing as opposed to bargaining where the participants in the process must reason together and resolve conflicts through better argumentation. This means that, unlike in the bargaining model, participants don't have fixed beliefs but are willing to make changes to their position based on the better arguments of the other side. Warntjen (2010) describes deliberative democracy:

"deliberation establishes through truth-seeking discourse what 'the right thing to do' would be. Actors engaging in deliberation argue about the facts of the case and about which norms are applicable and what they prescribe (Risse 2000: 7). They try to reach a

'reasoned consensus' (Risse 2000: 9) and might change their interests and identities in the process. The power of political clout or bargaining advantages is replaced by the power of the better argument in this mode of decision-making." (Warntjen, 2010).

It can be stated then that there are perhaps three strands in the discussion democratic political theory: 1) vote centric, 2) action centric and 3) talk centric. The action and talk centric models are newer approaches to democratic theory and don't necessarily do away with voting but try to enhance it via other mechanisms which they claim will increase the legitimacy and effectiveness of the democratic process. Therefore, it is useful to conceptually keep these as distinct approaches to democratic theory and decision making while recognizing that in reality, they are not so separate or mutually exclusive. As Tool (1979) wrote, democracy in all of its forms is ultimately, "that those who receive the incidence of decisions shall themselves have discretion over such decisions. Democracy means the popular determination of public and social policy; the locus of discretion resides permanently....with the whole community" (Tool. 1979, pg. 205). Commons theory of reasonable value has its foundation in these democratic principles as we will explore here.

John R. Commons Reasonable Value and Democratic Decision Making

Many authors have written about the general idea that underlies Commons's theory of reasonable value. A quick search of Google scholar reveals that there were only a few dozen references to Commons and reasonable value in the 1950's and 1960's and most of those were quite critical; it was in the period of the 1990's and thereafter the references and citations went into the hundreds by decade. In 1986, Yngve Ramstad wrote that "...Commons's scientific activities were directed primarily to the task of obtaining knowledge about transactions and their determinants for the purpose of altering specific working rules in such a manner that outcomes would become more "reasonable"." (Ramstad, 1986, pg. 1076). Building from Commons, Atkinson and Reed (1990) argued that "institutional adjustment must be reasonable; that is, it must be negotiated among the participants in a situation" (Atkinson and Reed, 1990, pg. 1100). As Ramstad further explained, "Truly "Reasonable," in short, implies: as resulting from bargaining between parties with equal physical and economic power" (Ramstad, 2001, pg. 266). Through the lens of these authors, we can already see the similarity between Commons ideas and democratic decision-making theory.² There is a negotiation process between the participants in the situation that has a degree of equality and lack of coercion or violence. We can further use Commons' own writing to help clarify the importance of reasonable value and how it applies in the 21st century.

.John R. Commons began introducing the idea of reasonableness in his labor writing as early as the 1910's. Commons, with his student Francis Bird, worked out that for a labor law to be successful and constitutional, the courts had to view it as a "reasonable classification". This meant that it could not be viewed as a law that protected a certain class against others but had to be viewed as ensuring due process protection for individual workers of a certain category. Commons writes that, "it is by recognizing this inequality of bargaining power, coupled with a public purpose, that the courts pass over, in any particular case, from the theory of class

² The rediscovery of Commons' reasonable value may be a partial validation of Yngve Ramstad's claim that Commons should be counted as one of the great theorists of economic value. Ramstad wrote in 2001 that, "a strong case can be made that John R. Commons theory of Reasonable Value entitles him to be ranked among the great economic theorists" (Ramstad, 2001, pg. 253)

justification to the theory of reasonable classification.” (Andrews and Commons, 1916, pg., 29). Commons would later expand the idea of reasonableness and reasonable value from labor law into a more general theory of economic value.

From this foundation, the starting point for reasonable value is institutions or working rules. Commons defined institutions or working rules as “collective action in restraint, liberation, and expansion of individual action” (Commons, 1934, pg. 73). Commons began relying heavily on Wesley Hohfeld, Yale Law school professor, and his language of jural relations and analytical jurisprudence. Hohfeld had laid out these ideas in several articles in the Yale Law Review in the mid 1910’s (see Hohfeld 1913 & 1917). In his most important books, *The Legal Foundations of Capitalism and Institutional Economics*, he cites and uses extensively the Hohfeldian concepts of correlative jural relations.

In short, Hohfeldian jural relations lay out the necessity of the interdependence between economic agents both on a one-on-one basis and between one party and the rest of the world. The analyst, using a Hohfeldian approach, must always identify both sides of a situation. Commons writes that, “he “can” or “cannot” because the collective will or will not come to his aid. He “must” or “must not” because collective action will compel him. He “may” because collective action will permit him and protect him. He “may not” because collective action will prevent him” (Commons, 1931, pg.650). These phrases reflect the Hohfeldian jural language of rights, duties, liberties and privileges. They provide context and direction to Commons’ ideas of working rules or institutions as the guiding force in the economy. They point to the key role played by collective action in commons thinking whether it is by the state, corporation, church or family. And importantly, the action of the subject of these sentences also implies another party (ies) on the other side who are subject to some action or the forbearance of action by the subject.

In their daily transactions, the economic agents operate under a set of working rules that define the extent of their actions but most importantly what they can expect from each other’s behavior. Thus, the working rules of collective action act in the way of creating security of expectations between economic agents in face of their asymmetric economic powers and

conflicting interests, and, in fact, the very term of working rule is used interchangeably with the term order (Commons, 1934, pg. 6). Present behavior is driven by the agents' expectations towards the future behavior of other individuals, hence the succession of expected behaviors through the repetition of customs is one of the bases for economic order. However, the achievement of an orderly state among economic participants, after addressing a specific conflict, would not mean that the actors present in that transaction had achieved an optimum result but that, given their asymmetric economic powers, the use or not of coercion, and the working rules allowed practices, they achieved an agreement over that matter. This agreement by all of the economic actors in a given situation or setting was crucial to the notion of reasonable value.

Accordingly, these customs and working rules are altered in response to changing economic conditions and to new conflicts of interest (Commons, 1934, pg. 45). By his analogy using terms borrowed from the evolutionary theory in biology, Commons would define the process of solving conflicts and social organization as "artificial selection" of reasonable practices, that, in its turn would be the "human will in action" selecting "good customs" and "punishing bad customs" aiming at an adequate response to addressing the conflicts of interest (Commons, 1934. Pg. 638). As conditions change, whether it be material, technological or in human affairs, reasonable value is reset through collective decision-making processes.

Commons' own words help us best understand what is meant by the achievement of a state of reasonable value. He stated that **reasonable value** "was 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" and then further wrote that, "a reasonable idealism is by investigation of those institutions that practice it, and yet survive." (Commons, 1934, pg. 93-94). Commons also wrote that reasonable value, "contains a large amount of stupidity, passion and mistakes" and finally that, "it is not what I think, but what we think ought to and can be obtained as a going concern." (Commons, 1934, pg. 33 and pg. 94).

There are several important ideas that we learn from Commons about reasonable value from these quotes. Reasonable value is a process that does have an end goal in mind, albeit an end goal that will vary across going concerns. The end goal is the creation of order and security of expectations amongst economic actors. Commons wrote of this goal that, “it is not justice, nor even unhappiness, that is fundamental, it is security, even the security of injustice and poverty”³ (Commons, 1934, pg. 56). Commons’ end goal does not focus on measured consequences (as in the neoclassical measures of economic efficiency), but rather on the process to achieve the establishment of a set of working rules. This is emphasized by his point regarding the achievement of a “we” versus “I” understanding. A consensual ending is the focus, but that ending point is done with a view towards the establishment or change in institutions or working rules.

The role of institutions or working rules in setting the stage for security and order in transactions and society is another critical theme (Chasse, 1986; Van de Ven, 1993). Indeed, from his book *Institutional Economics* (1934, pg. 109) Commons set transactions as the unit of study for political economy resolving it “not only into conflict of interests, but also into mutual dependence and collective efforts to bring order out of conflicts”. By acknowledging the conflicts over scarcity, not only material but also of property rights over those things owned, the study of the working rules guiding the transactions responsible for creating, distributing, and transferring wealth and their property rights gained centrality in Commons’ investigation and understanding of how society can get to a state of order. It is from this place of order that decisions can be made. In this way Commons’ Reasonable Value was a process— but it was a process with a clear end goal in mind: some notion of “reasonableness” or a reasonable outcome as might emerge to create order in the interactions of human beings.

Commons also felt it was crucial that the state (i.e., government) had a monopoly on the use of physical violence and its importance as a key factor in reasonable value (Chasse, 1986,

³ One can argue whether this is a correct interpretation of people's feelings or whether it is even a normative principle we should hold. One implication may be to privilege the status quo of existing working rules to maintain security as opposed to changing those rules to hinder security. However, this does not seem like the right interpretation given that Commons felt that the working class had to be engaged in making collective decisions.

2022; Van de Ven 1993; Parsons, 1942). It appears this was both a description of the world but also a criterion which was critical to Commons project of reasonable value. If actors other than the state had access to violence, it would disrupt the ability of human beings to act and interact together and make economic progress. As Chasse writes in his interpretation of Commons, “violence, therefore, must be harnessed and made protective so that persuasion as an incentive may be encouraged.” (Chasse, 1986). The events following World War I, mainly the Russian revolution and the rise of the fascist regimes in Europe, likely played an important role along with labor strikes and violence in the way Commons perceived the effects of violence and inadequate business practices on the economy and the creation of reasonableness.

Another key point to reasonable value is that it is based on a comparative analysis that uses the set of existing working rules among similar going concerns to set reasonable value. This may infer a degree of conservativeness when considering possible new working rules or institutional adjustments. Commons clearly wanted to avoid technical experts or outsiders from a going concern imposing their own views of new possibilities without the full engagement and learning from insiders⁴. It is also clear that investigation or research is required to uncover what these best practices are going to be. There is also a sense that those going concerns that exist and function must be the ones investigated. There is also some clarity that these reasonable practices will vary across historical time.

One of the great innovations in Commons thinking, which he partially derives from his discussion of Macleod, is the idea of futurity or that our present behavior is driven towards the view of the future. Commons writes that, “The shift from past or present to futurity requires also a shift in the method of reasoning from the deductive method of a single or efficient cause ...to a comparative method of seeking similarities and differences” (Commons, 1950, pg. 153). Commons goes on to argue about the difficulty of seeking cause and effect in economics and some of the problems of physical analogies being used by economists. He then states that, “the

⁴ This just reinforces the fact that Commons was not in any way a believer in a technocratic approach to collective decision making where experts impose their views on the economic system. He did believe that social control was a reality but, in his model, social control originates from the going concern participants in those various transactions

courts state it in terms of the “proportioning of factors” according to their due weight of each, that is the due value of each which is in turn their meaning of reasonable value” (Commons, 1950, pg. 155). These standards of reasonable value are, in effect, a policy of outlawing both extremes of monopoly and cutthroat competition. This emphasizes that Commons was seeking a middle path whereby capitalism could succeed but ensure that there was a fair degree of distribution of resources between economic agents and classes. As he writes otherwise, we face, “the history of swings between anarchical gangsterism of destructive values and the dictatorship of monopolistic values” (Commons, 1950, pg., 164). It should be emphasized here again that Commons did not believe that the distributional outcome could be imposed via coercion but had to emerge from a robust and fair collective decision-making process that created working rules.

It is said that an important feature in the original institutionalist literature is the high esteem of authors and scholars for democracy and democratic decision making (Adkisson, 2010). Likewise, Commons maintained the attitude towards “saving capitalism” and his focus was aimed at the maintenance of the western liberal democracies as opposed to authoritarian alternatives. The conclusions of Commons’ Industrial Government (1921a) reveal his optimistic view of a “self-cure” in capitalism as a defense from what he considered to be “panaceas” (Commons 1921b), for, once the labor problems were acknowledged as problems of security of the job, the ‘will’ of the managers could direct their transactions aiming at preventing the rise of unrests (Commons, 1921a, 269). Writing in 1919 in his book Industrial Goodwill, Commons reflected on the fact that both the French and Russian revolutions were based on ideological extremes. Neither extreme could work because it relied on the idea that human beings were perfectible in the right system. In the context of World War 1 and the setting of wartime grain prices, Commons wrote, “the war has forced us to adopt ideas of democracy suited to this imperfect world.”(Commons, 1919, pg. 39). We see an important glimpse into Commons thinking where he writes that “for the organized interests to fix it themselves under expert advice of the nation’s food administrators and his statisticians was the practical democratic way of doing it. It was the procedure of appealing to the harmony of interest of both classes for the public good”. (Commons, 1919, pg., 41). Commons contrasts his preferred approach with one

where: 1) Congress simply sets the price, 2) government bureaucracy simply sets the price or 3) an oligarchy of farmers sets the price. Commons fully embraced a collective democratic approach to ensuring that reasonable value was achieved in the legislative, executive and judicial branches of government along with the newly emerging fourth branch of government and the administrative commission.

Mechanisms for Achieving Common's Reasonable Value

While the principles are a useful starting point, Commons provided further details and an explanation for how reasonable value works, is achieved and how it should be organized. Commons wrote extensively about specific reforms and processes that needed to be in place for the various branches of government including the so-called fourth branch of government. One of the first places that Commons writes extensively about the fourth branch of government is the Industrial commission and his minority report with Florence Harriman.

Commons believed the foundations for his reasonable process was a combination of properly allocated power and authority between legislative bodies and administrative commissions. In the language of Hohfeld, the jural relations or rights and duties as well as privileges and exposures had to be allocated to ensure a balancing of interests. On the legislative front, Commons believed and wrote throughout his entire career of the importance of proportional representation in legislative bodies. Commons started his journey towards reasonable value with the policy reform known as proportional representation (Commons, 1907). Essentially, he argued that territorial legislative representation was a flawed system that led to poor policies and even worse outcomes (cite here). Commons paints a very negative outlook of territorially legislative bodies in his early book "Social Reform and the Church" writing, "the legislature is the weak point in democratic government. To become a member of a legislature is understood in many states to be an invitation for bribes." (Commons, 1894, pg. 155)

Proportional representation was a concept, not unique to Commons, that each social or community interest should be part of the legislative decision-making system based on their numbers in society. Commons emphasized that political reform was the stepping stone to social reform. The current system seemed unable to address all of the problems and ills in the world according to Commons and a major change was needed or social unrest and chaos would continue. Commons writes that “the state seems too coercive because it does not represent all of the people; it is not yet a perfect organ for expressing their wishes” (Commons, 1907, pg. 228). He further writes that, “out of the proper and just balancing of all of these interests and doctrines and their proportional realization in social structures, proceeds that “moving equilibrium”, which is the life of society” (Commons, 1907, pg. 229).

There is a bigger picture aspect to Commons discussion of proportional representation. Even though Commons seemed to lose some hope in a proportionally balanced legislative body over time, we see his emphasis on finding a collective decision-making system that allows each interest to be expressed within a specific forum to balance each other out. Commons wants to continue to emphasize that cooperation— not state coercion— is the way forward as he writes that, “social invention will proceed not by the coercive arm of the state, but by mutual concession.” (Commons, 1907, pg. 230)⁵.

In coordination with a proportionally organized legislative body, Commons also felt that administrative commissions were a second key component for collective decision making. Commons had initial experience with commissions with his work in the U.S. Industrial commission and the Wisconsin Industrial Commission. These commissions as constructed at the time allowed equal participation in the collective decision-making process, including equal representation of employers and employees. This process would allow the participants to work out their differences and define the working rules or institutions that all would agree to follow. Commons believed that legislatures were faulty in this regard because they faced too much

⁵ This is an important point especially in the light of the charge that the original institutionalists were all about social control and top-down government control. In fact, Commons strongly argued that state or government coercion by itself would not work unless embedded in the culture and he favored groups and interests working out their own solutions over government bureaucrats and experts.

internal conflict and could not carefully consider the facts or evidence. At the same time, Commons believed that courts were also flawed because of the limits of their evidentiary rules. As Commons wrote in 1913, “the commission is a body of men compelled by their duties to give weight to social and economic facts that otherwise do not get before the court” (Commons, 1913, pg. 401).

In the 1915 Final Report of the United State Commission on Industrial Relations, Commons, who was a commissioner, wrote a minority report with Florence Harriman that outlined in detail a proposal for the industrial commission's approach. Commons and Harriman felt it was crucial to separate the policymaking process from the administrative process. The Federal Department of Labor would be in charge of advising the President and Congress on high level policy making and setting the overall labor agenda. They acknowledged that this was the arena of hard fought political battles. However, Commons and Harriman went on to argue that once the policy making process was done that an administrative process should take over and implement the law.

Commons and Harriman modeled their proposal for the prototype Industrial commission after similar commissions such as the Federal Trade Commission, Interstate Commerce Commission and Federal Reserve Board. The argument was that the most important role was that of “making investigations of facts and conditions and then issuing orders based on such investigations” (Industrial Commission, 1915, pg. 344). Later they stated that, “the points of harmony can only be discovered by investigation, and the investigation must be cooperative between employers and employees, else neither side will have confidence in the results.” (Industrial Commission, 1915, pg. 344). In essence, the employers and employees agreed to be bound to a of Hohfeldian rights and duties as established by these commissions. In some cases, the right-duty structure may favor the employer and in other cases the employee, but in either case, the structure of institutions had been agreed to by representatives of the respective parties and in Commons terminology would be deemed legitimate and reasonable.

John Dennis Chasse has argued that the Commons approach was very specific and would likely not match many of the government commissions that exist today. Chasse wrote that the Commons approach was based on a model, “with its staff insulated from politics by civil service status and its policies established by an advisory board composed of interest group representatives” (Chasse, 1986, pg. 765). He also points out that Commons recommended that the members of the commission itself be chosen to reflect the various interest groups. Any commission decision could be appealed to the courts only on certain grounds. It is unclear how many of the current federal or state government commissions would follow this approach. In almost every case, the commission members are appointed by some combination of the chief executive and the legislative bodies.

Another part of the commission process as advocated by Commons involved the Industrial Commission submitting their findings and proposed decisions to the Representative Advisory Council (RAC) for review and criticism but crucially not for a veto or approval process. The RAC would be made of equal representation of employers and unions. Despite claims to the contrary, Commons was not a strong believer in a technocratic form of government or collective decision making. As he writes, ‘it was found that the most successful work in safety and sanitation during the past ten years had not been in charge of technical engineers but had been in charge of shopmen and even claim agents’ (Commons, 1913, pg. 405). Commons instead believed that experts or technocrats were crucial to assisting those in a decision-making capacity with facts and information and cause and effect relationships. As Commons and Harriman wrote in their minority report for the Industrial Commission, “the employer and employee members of the RAC should be strictly responsible and representative to the organizations represented.” The RAC could hire experts, such as engineers or scientists but these would be people on the RAC who were accountable to their respective bodies, not experts and the experts would not be making decisions.

In addition to the administrative commission, Commons continued to support a model of proportional backed legislative bodies that created and supported administrative commissions to address the many economic conflicts that would lead to reasonable value in the

economy. As he wrote, “To the effect that if all interests to be affected by the law are permitted freely to confer through their recognized spokesperson, then the resulting findings of fact on which they reach agreement will be reasonable and the orders issued in conformity thereto will be reasonable commands of the state to its citizens” (Commons, 1934, pg. 70). Commons strongly believed that state backed coercion could only be effective in the long run if the people believed it had been sought through reasonable means. That said, he believed that the legislative body should set general principles on the rules and regulations on the economy that are then implemented and enforced by administrative commissions. In his terms, this would be a process in which all sides in conflict or dispute had been heard and represented proportional to their numbers.

Applying Reasonable Value in the 21st century: Reasonable Value in the case of platform workers (comparative analysis)

The Commons approach has several aspects to it including a set of general principles and a fairly detailed set of guidelines and recommendations as to how those principles should be implemented. In providing the specific implementation recommendations around administrative commissions and constructive research, however, Commons did not identify or explore how and whether his ideas would apply in other settings. As we have already explained, his ideas were almost exclusively focused on the problems of capital-labor conflict although he clearly recognized how conflict occurred between other entities in the economy. Further complicating any application of a Commonsonian reasonable value in the 21st century is the reality that democracy, a central concept for the institutionalist tradition, is at the center of modern debates in politics, and agreements and middle grounds seem unattainable. Nevertheless, in this section we describe the cases of platform or “gig” workers as an example of how reasonable value theory is being applied in the 21st century to address instances of human interdependence.

In a Commonsonian fashion, one of the central debates in the search for reasonable value in the 21st century would be the study of the modern arrangements in labor contracts

and the investigation of the contemporary “labor problems”. Though the labor conflicts may differ between countries, those arising from the emerging transactions between capital and labor intermediated by new communication technologies seem to be a shared trend worldwide. In this section we discuss reasonable value in modern labor markets in the case of platform workers (aka. members of the gig economy), debating the limitations and possibilities for the adoption of Commons’ reasonable value approach in terms of collective representation, comparative analysis, and institutional change aiming at improving worker’s conditions.

The presence of platform work as a new arrangement in labor relations has grown in the past two decades as a result of socio-political economic shifts amidst the rapid growth rates of technological change when communication tools became accessible to millions of people through the internet and mobile devices. The ubiquity of these platforms is seen more clearly in ride-hailing, food delivery, and house task apps, but they are also present in freelance webpages and microtasks platforms, expanding the concept not only to geographically tethered work but also to cloud/internet-based activities (Graham and Woodcock 2020, ILO 2018). Especially as digital platforms have grown to become the main source of income for millions of workers worldwide, and the gig economy is more and more a relevant economic sector.

The debate concerning the role of these platforms in the transactions between its users, usually called partners in the case of the worker, is, in fact, one of the main sources of unrest in these activities. Usually defined as technology companies that operate as multi-sided markets in which their final users, representing the supply and demand of a product and service, can interact (OECD 2019), digital platforms have denied any attempt to recognize workers through employment contracts and to comply with labor legislation that would result from doing so (Mateescu and Nguyen, 2019). Their workers, who may or may not have come to the platforms attracted by the promises of autonomy, are then pictured as self-employed and responsible for their own activities as they perform their services. What this means in terms of the legal relations, or bundle of rights and duties, present for workers and other interdependent parties, remains highly variable across geographies and platforms, further highlighting the role of formal and informal institutional arrangements. Each legal system processes the issue

differently, further highlighting the value of utilizing some kind of theory for institutional analysis, such as Commons' reasonable value and his use of Hohfeldian legal analysis to describe changes in legal relations across different institutional arrangements.

Despite the relative novelty of platform work, literature in the fields of the social sciences and industrial relations has perceived the growing contradictions between the promise of autonomous labor and the actual platform control, and between the claims of the superiority of digital intermediated work over the traditional arrangements of the labor contract. Maffie (2020a) for instance, questions the idea of autonomy and argues that there are different degrees of control between platforms, and those of the gig economy would present the highest levels of control and surveillance. In the same manner, Graham and Woodcock (2020) discuss that while digital platforms do intermediate the transactions, they do so by employing instruments of control over the workers through algorithmic management of the huge amount of data collected.

The use of algorithmic management through behavioral nudges, real-time surveillance, and rating systems are all part of the controlling mechanism adopted by these platforms to make workers adopt expected behavior even when they are not fully aware of the extent of such measures (Möhlmann and Zalmanson 2017, Maatescu and Nguyen, 2019). In general, the gig economy is marked by "contingent jobs, independent contracting that happens through, via, and on digital platforms, contingent (casual), variable hours, little security, payment on a piece-work basis, and lack of options for career development, independent contracting" (Woodcock and Graham 2020, p. 15), and all of these features have contributed to unrest among workers and the need to further investigate its effects. By controlling the work environment and worker's discretion, algorithmic management reduces the part played by experience in performing different activities (Aneesh 2009), reduces workers' access to data and their capacity of organizing collectively (Eckstein and Mawiiil, 2020), ending up in the precarious situation of workers' "subordinate self-management" (Abilio 2019) where the promises of autonomy and the reality of control collide.

Most of the regulation attempts towards the activities of digital platforms have ranged from prohibition to the enforcement of basic labor standards, such as the recognition of the employment relationship, such as the case of Uber's banishment in Germany in 2019, and the Rider's Law in Spain, 2021, recognizing delivery riders as platforms' employees. Such classifications determine what rights workers have, most notably whether they can unionize and what other possible forms of recourse they have for making their preferences known. In many cases in the U.S. and U.K., Uber has identified drivers as independent contractors who therefore lack many of the rights afforded to other worker classes under U.S. and U.K. law, resulting in severely crippled bargaining power for drivers as a group. Both the U.K. and the State of California have since passed law requiring the reclassification of Uber Drivers (see Klammer and Scorsone, 2022, Chapter 5). However, the multinational presence of digital platforms and the variety of institutional structures that they face fosters the continued absence of a broader approach towards the improvement of labor conditions under platform work. New regulation in the platform economy rarely involves public debates where the affected parties engage in the transaction of the determination of their working rules. Platforms usually resist these attempts, arguing their disruptive character in opposition to obsolete laws. Workers, on the other hand, are atomized by the algorithmic management, having to rely on online forums and associations to seek improvements in their activities, while the habitual assumption of self-management restricts their capacity for demanding further improvements.

In the face of these characteristics, it may seem challenging to propose the analysis of the gig economy using a talk-centric democratic constructed approach such as that of Commons' reasonable value. Firstly, platform workers are, in many cases, working under the status of self-employed, and, while some of them may stay for longer periods, others are only temporary, restricting their capacity for long-term commitments to the activity. Secondly, the sparse distribution in the urban centers and online may atomize these workers, whose activities lack partnership with others, reducing the activity of the worker-platform relationship. Thirdly, by not operating in the same physical space (i.e., not having the old industrial plant), workers'

collective action is fragmented, relying on union-like associations and online forums, whose capacity of representing workers is limited.

However, whether formal employees or not, platform workers are organizing (Maffie, 2020b; Johnston, H., and Land-Kazlauskas, 2018), and this unrest, emerging from the conflicts of its users who are subjected to the software's working rules (terms and conditions and algorithmic management), highlights the applicability of Commons' reasonable value approach to this issue. With the limitations imposed for representation, broader initiatives to investigate the labor problems in the various kinds of platforms with the co-joint participation of experts, workers, and platforms, are desired approaches as one seeks reasonable outcomes from problem-solving institutional changes. In this sense, one initiative stands out in the studies of the gig economy. The Fairwork project, which is based at Oxford Internet institute and Berlin Social Science Center with the collaboration of an international network of universities seeks, "to highlight best and worst labour practices in the platform economy", and aims to show that "better, and fairer, jobs are possible in the platform economy" (Fairwork Project, 2022). This initiative serves as one potential example of a process geared toward attaining some form of reasonable value at work in this space.

In summary, as a result of investigations with workers, platforms, academics, and policymakers, the members of the Fairwork project were able to establish five principles of good practices for the gig economy, which are related to fair pay (minimum wage standards), fair conditions (task-specific risks and worker's safety), fair contracts (transparency and fair terms), fair management (due process and equity), and fair representation (freedom of association and democratic governance). With these principles in hand, the project has a benchmark with which it can assess different platforms in terms of better practices and rank them in reports for different countries. For instance, Argentina's 2022 report had six platforms evaluated, with five of them scoring 0 out of 10 in the fair principles and one scoring 4. Austria, in its turn, had six platforms in its 2022 report, with three of them scoring more than 4 points, with Lieferando (food delivery) scoring 8. From these reports, the investigator perceives that the

same platforms may score differently in different countries (Uber scores 0 in Argentina and 2 in Austria), evidencing the heterogeneous practices towards fair work worldwide.

Thus, as in Commons' search for reasonable value, the comparative analysis of the good and bad practices in the platform economy, may result in changes in their working rules, which are central in the control and condition of worker's activities. By adopting a methodology of "Continuous Worker-guided Evolution", or the changing and adaptation of the principles from a continuous debate and analysis with individual workers and their representatives, Fairwork's approach highlights the auxiliary role of the experts to those involved in the platform transactions, not by becoming the central actor, but by identifying the problems and the main demands and constructing reasonable ideals that may guide better practices and policies for platforms, workers, consumers, and governments. The role of the expert in this process would be very similar in theme at least to the role played by the expert in Commons concept of an industrial commission.

The experience of Fairwork shows that even though the practices of the platform economy may atomize its agents and prevent them from achieving reasonable transactions collectively, this area is not out of reach for investigations aiming at improving workers' conditions by reasonable practices. Based on workers' daily experience, their perception of the causes of unrest, and finally on addressing of ongoing rules and practices that impede improvements, the project may help channel diffuse attempts to regulate and improve the gig economy into a more cohesive effort to identify what practices are most desirable, providing standards from which the public and policy makers may derive their impressions and proposals for these activities going forward.

Conclusion

John R. Commons developed his notion of reasonable value as a unique approach to guiding the development and implementation of economic policy making and institutional change. Reasonable value, unlike other normative criteria developed in economics, is focused

on the process of how a decision is made as opposed to the outcome of the decision. The process in this case is embedded in the overall framework of democracy and is based on the balanced representation of interests in any given problem situation. Commons mostly applied the idea to labor-capital interactions, but it could be used in other situations. The language of Wesley Hohfeld provides a needed structural framework to explore these concepts of reasonable value (Klammer and Scorsone, 2022).

Commons' reasonable value is based on a talk-centric model of democracy. The parties must meet in a forum and debate and provide reasons for their position and come to a joint conclusion of how to proceed. In this process, every side has an opportunity to use their voice and express their values and preferences. Commons felt that this form of mutual coercion was far more likely to be successful than a top-down form of coercion. Commons developed his ideas from many years of experience doing field research and participating in actual collective decision making.

The 21st century presents the human community with many great challenges from climate change to pandemics and economic inequality and crisis. Technical and scientific advances will be an important part of the move towards addressing these crises. However, arguably more important than these technical advances, the human community must advance in our understanding and use of collective decision-making processes.

The examples of the platform economy provide some guidance regarding reasonable value in the 21st century. The Fairwork project is one attempt that is trying to create a degree of reasonable value in the platform economy. Whether it or similar experiments will succeed will only be determined in the future. One point that is perhaps clearer is that these experiments are needed to ensure that collective decision making processes retain democratic principles lest people decide to use more authoritarian approaches.

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