

PREFACE

The great display of resources, considered in their far-reaching meaning, makes up the vortex of society.

In a market economy—that is, when, by definition, there is minimal state interference¹—the conduct of economic agents is ruled by a freedom as well as by an initiative sense that widely exceeds the essential needs of daily life. Multiple efforts generate wealth, either to ensure daily life needs or enrichment aims. Making use of that freedom and initiative ability, man has always, since immemorial times, made use of that originality to achieve his highest or minor aims.

The latest social and technological innovations characterize our time. Economical agents—or, in other words, the behaviour of different economical agents—tend to be strongly induced by the influence of the massive internet platforms, which on the one hand try to fulfil the consumers' various needs and on the other hand give a rise to the appearance of new models of business organization.

This way the traditional model for business connections, the rendering and labouring of services, without neglecting some interferences concerning the duties and rights of property, ceased to be, at least, at a first sight, a paradigm, emerging this way, a new first-rate kind of economic model. Some named it “collaborationist shared economy,” others still use the expression “economy uberization” (due to the name of Uber, who have been presented as an icon), and therefore everything seems to suggest the emergency of a new paradigm, as a post-modern model of economical organization that has been stirred as something devoted from what was “traditional” to the obsolete.

Going beyond any useless endeavour of a philological analysis of each of the above and referred expressions which, at least, might lead to the conclusion that such a notion would only be an *inventio* (in the Latin and rhetorical meaning), the designation “shared economy” was chosen. This choice is based on the fact that some modalities of the new economy model settle down a sharing of private property—affecting the rights and duties of private property, as well as economical relationships, settled in most cases in the so named technological communication and information through platforms or applications that allow a direct connection among the different economical agents, through which the different individuals interact in diverse qualities, sometimes opposed (for services rendered to users, traders and consumers).

Central question—will there be a non-shared or a non-collaborating economy? What situations allow the designation of a shared economy? Let us think of the case of Uber (whenever someone sends for a car with a driver through a mobile phone, with the possibility of choosing the qualities of the car, taking into account other users' valuation concerning the driver, his politeness and driving qualities) or seek some information provided by Airbnb (through which people advertise and book a short stay through the internet). In both cases—besides the obvious competition with the traditional services offered by a taxi driver or hotel groups, both bound by their activity in strict observance of legal standards—it happens that the transport service or the leasing contract for a short housing period is always against a pecuniary duty.

¹ The function of a capitalist state is fundamentally based on the protection of rights of the different agents concerning the professional sector (for instance a taxi driver's legal rights and laws).

Another example may be that of an occasional hiring of a private vehicle whenever it is not needed by its owner may render it lucrative. However, if the owner possesses several vehicles to hire, such activity will not differ from a common firm of the same branch and so he will have to fulfil all the legal formalities.

Considering the above exposition, does the difference between an economical relationships model, reckoned as conventional, and another that is said as shared depend on the number of people involved or on the complex degree of instalments? If so, the distinctive criterion would be set on an adjective difference or, if preferred, on a scale. It may be said that the difference is rather the existence of a legally established firm with a certain degree of a complex organization, that is, the production as well as the service transaction imply a clear division between working production factors and capital aiming at a wealthy generation as well as employment according to the socioeconomic point of view.

From the above statements, there are circumstances that would be better classified if generated under the informality sign. This is the case of a plumber, who laying aside fiscalization, takes on some small repairing tasks on weekends and the lady who knits pullovers to sell through a Facebook page.

The sharing notion, besides its strict legal meaning related with the possession of a certain property, leads to a moral dimension connected to a human behaviour in society. Among the probable meanings, the one that stands out is that of sharing division. There, as a maximum exponent, we find a meaning connected with that of donation.

Will this mean that if the sharing notion leads to the so-called sharing economy based on some sort of a generous offer is it inspired by self-denial? Is that an ability? If so, the term would lead to a utopian behaviour of contemporary societies; it would mean that individuals would have achieved a decisive role as well as an alliance degree on satisfying the needs of another person, in spite of their different and unfavourable conditions. This would be a society in which a political as well as an economic organization would be perfect without despising social mobility, specialized in archetypes, there would not be either scantiness, any crisis or inevitable consequences of any social cleavage. The new consumption pattern rights of sharing would be followed without any detriment to anyone or any rights of property. Sharing does not mean a gift.

If it hypothetically were a gift, it would not be despicable to evoke Mauss' theory about it. In Marcel Mauss' *Essai sur le don* (1950), the vortex of social, political, economic and even juridical diplomacy is based on a notion of a sharing system where the act of giving results from a rewarding situation, where the gift in its extensive meaning does not exist without the expectation of a reward, as spontaneous as compulsive, that contradicts the idea of a liberal and individual interest that labels the system of an economical market.

According to the same outlines as well as to the idea of sharing under the sharing cover through gifts, abjuring the economy meaning what we apprehend, seems to be divested of meaning considering that we only find it in a pre-capitalist economy or at a different level of social structure where a gift and a reward are a gift, as a symbolic benefit and its basic function is its strict relationship with the structuring of social relationships with a market of prestige for symbolic amass of funds that according to Pierre Bourdieu would carry out the function of supremacy tools.

If, in the outset of this text, the resources affectation was the nucleus of society's anxiety, it is also true that the reciprocity of exchanges does not only refer to material goods. However, as was largely underlined

after the publication of Adam Smith's work *The Wealth of Nations* in 1764, individual interest that consolidates the economical function of production, moral and the legal principles—which the law does not ignore—allows the discovery of a proximity between economical functioning and legal productions. Marnoco e Souza (1917, 64–65) underlines that “each economic relationship assumes legal patterns, all the important legal theories, mainly those concerning private ownership, have an economic content,” adding that “the peoples partly uncivilized, need a legal system to regulate their economical activity [...]. So we should not be surprised if economical theories often renew legal theories,” and concluding that “the renovation of private law is but the result of new economical theories in the old legal organism. It acknowledges that law could not help paying attention to the new assumed conditions of propriety, work, credit and circulation so that they might suit the modern societies demands.”²

We may conclude that the new market places introduced to daily life through the emergency of technological platforms have led to new consumption patterns, not yet entirely considered by the existing legislation, and have given rise to contentious situations, sometimes almost demolishing the traditional and firm-related model. Because those new consumption relationships lie outside a specific legal arrangement to exhaust the casual and negative connotation, already in moral as well as in legal terms. The question is, as we have already mentioned, a kind of *inventio* of which the essential aim is to legitimate by means of working up a model both theoretic and elucidative, an entire collection of new economic experiences that will surely be reproduced to the most different areas under a probable geometric progression as much as people's increasing adhesion to the most modern technologies offered by smartphones and tablets. If, at first, the trend may arouse some cultural as well as historical opposition, history has proved, as has happened in many other situations, that this problem will be surpassed from the moment that disposition and legal theories have been necessarily renewed.

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² “[...] cada relação económica reveste formas jurídicas, todas as grandes teorias do direito, principalmente do direito privado, têm um conteúdo económico”; “os povos, num certo grau de civilização, precisam dum sistema jurídico para regular a sua atividade económica [...]. Não deve admirar, por isso, que frequentemente sejam as teorias económicas que renovam as teorias jurídicas”; “a renovação por que está passando o direito privado, não é mais do que uma consequência das novas teorias económicas no velho organismo jurídico. Reconheceu-se que o direito não poderia deixar de atender às novas condições assumidas pela propriedade, pelo trabalho, pelo crédito e pela circulação, a fim de corresponder às exigências das sociedades modernas” (Souza, Marnoco e. 1917. *Tratado de Economia Política I*. Coimbra: F. França Amado: 64–65).