

A Two-stage Social Contract Informed by the Capability Approach as the Normative Framework of an Extended and Alternative Model of Corporate Governance for the Digital Economy

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1. Introduction

During the last two decades, one major technological transformation has impacted how jobs and industries are organized in modern societies, i.e., the adoption of digital platforms to distribute work, match demand and supply, and facilitate horizontal exchanges of goods and services among peers. However, despite the original ideals of economic democratization connected with the advent of the first “sharing platforms,” this view was soon betrayed by the affirmation of the VC-backed monopolistic giants of Silicon Valley that outcompeted the incumbents and colonized digital markets. Nevertheless, the current status quo, i.e., the so-called “platform capitalism” regime, is now not only questioned by techno-activists but also by governments and civil society actors in general because of the abuses of power and negative externalities it produces, leading to the experimentation of alternative governance models for the digital economy. Particularly notable, from this perspective, is the case of the global movement known as “platform cooperativism,” started by the New School’s professor Trebor Scholz and then spread around the world with the goal of showing how all the relevant stakeholders could be involved in a cooperative form of governance for digital platforms. The contribution that I want to provide with this paper is to develop for the first time (to the best of my knowledge) a normative justification of this extended governance model. Therefore, in the first section, I will trace the history of the equilibrium selection path in the digital economy, reconstructing the different steps that brought to the birth of the

platform cooperativism idea. Then, I will present my normative justification of this governance structure relying on a particular version of the constitutional contractarian theory that informs the hypothetical social contract through the lens of the Senian notion of capability. Lastly, I will also describe a real-life example of platform co-op to provide a concrete exemplification of how this normative framework can effectively work in practice, i.e., CoopCycle. The conclusion follows.

2. The Digital Economy Equilibrium Selection Path

Since the outset of the Internet in the US and up to many years later, there was not a clear idea of what governance structure could be most desirable to select for it, both in economic and ethical terms, because neither a purely commercial Internet nor its complete federal control were universally considered two convincing options (particularly after its diffusion around the world). Starting from Masahiko Aoki's game-theoretical interpretation of institutions as a "self-sustaining system of shared beliefs about a salient way in which the game is repeatedly played" (2001: 10), we can thus intend that time as characterized by the absence of a stable institutional equilibrium and by the contrapositions of, at least, three different possible mental frames regarding the Internet (on the notion of mental frames, see: Bacharach, 2006; Cecchini Manara, & Sacconi, 2019; Denzau, & North, 1994). In addition to the two options already presented, there was indeed a third option: framing the Internet as a shared infrastructure (Frischmann, 2005, 2012), i.e., a large-scale physical and logical resource made by humans for social use and consumption and on which different applications can run, freely accessible by anyone without exclusions and from which anyone could benefit if empowered by shared norms tailored to avoid fights over the resource itself and the consequent risk of congestion (see Ribot, & Peluso, 2003) rather than a commodity privately or publicly ownable.

Accordingly, the central idea of this last option was that all the relevant stakeholders should be entitled to develop together a series of institutions suitable for governing this common-pool resource as a *commons*, i.e., a managerial and institutional form of economic organization based on the freedom of accessing and collectively managing the CPR itself (Ostrom, 1990). Depending on if the focus is put on the back-end of the Internet, and therefore on the technological infrastructure that is necessary for it to function properly, or the front-end, i.e., on the applications and services that run on it and are provided through the Internet itself (such as instant communication applications and knowledge sharing web sites), some examples of common-based peer-production digital systems born in those years that can be cited are the FLOSS (Free/Libre/Open-Source Software), e.g., Linux, and the Wikipedia encyclopedia (Benkler, 2006; Fuster Morell, 2014; Hess, 2008; Kostakis, & Bauwens, 2014; Silberman, 2016).

While the battle between the three different frames was still in place, without any of them being capable of creating the mutual expectations and shared mental models necessary to propose itself as a stable and unique point of equilibrium (see Bicchieri, 2005), an important innovation appeared in the digital economy, i.e., the birth of the so-called “sharing economy.” Mainly characterized by non-profit platforms such as BlaBlaCar and Couchsurfing and the first for-profit ones such as Uber and Airbnb, the sharing economy was presented at that time by its proponents as a reaction to the diffused poverty and precariousness generated by the global financial crisis of 2008 based on the idea of sharing idle assets among peers thanks to the opportunities offered by the recent invention of the smartphone in order to counteract overconsumption and extreme market inequalities (Botsman, & Rogers, 2010; Schor, & Cansoy, 2019). More specifically, sharing platforms claimed that their purpose was to question the rigid distinction between markets and firms, disintermediate transactions by directly matching providers and customers, and democratize

the entire economic system, letting peers self-organize themselves and reappropriate the value they produce with their (digital) exchanges.

However, soon, several venture capitalists entered the board of directors of the leading for-profit tech companies of the time, determining their triumph over the non-profit ones and exogenously shifting the focal point of the equilibrium selection process (on focal points and equilibrium selection, see: Aoki, 2010; Sugden, 1995) by creating the space for the gradual imposition of the frame based on the private appropriation of the Internet. More specifically, they imposed themselves and their capacity to unilaterally set the rules for sharing markets by using the same narrative about the birth of a new sharing culture but adopting it as a simple marketing expedient. Indeed, opposite to this narrative, for some interpreters what Silicon Valley's Big Techs were instead really doing at that point was simply selling new products and services via digital means (Ravenelle, 2017) and mimicking traditional corporations' hierarchical organizational structure and abusive behavior (see Anderson, 2017; Sacconi, 1999) while externalizing their entrepreneurial risk to supposed autonomous service providers actually treated as employees but without guaranteeing them the proper safeguards that should be associated with the employment contract (Bieber, & Moggia, 2021; Frenken, & Fuenfschilling, 2021). This new institutional system, founded on the private enclosure of the Internet and legally sanctioned private monopolies (Lehdonvirta, 2022; Pistor, 2019), was thus dubbed "platform capitalism" or "neoliberalism on steroids" by its critics (Murillo, Buckland, & Val, 2017; Srnicek, 2017). In the following years, the platform capitalism was therefore accused, paradoxically, of re-actualizing and exacerbating the very same problems that the sharing economy wanted to address in its beginnings, such as bad working conditions, low-paid jobs, employee misclassification, data extraction, anti-competitive behavior, and algorithmic surveillance (Davis, 2022; De Stefano, 2015; Marciano, Nicita, & Ramello, 2020; West, 2019; Woodcock, & Graham, 2020; Zuboff, 2019).

Nevertheless, now, transnational protests (Lehdnovirta, 2022), new pieces of regulation, such as the recent EU Proposed Directive on Platform Work, and court decisions seeking to constrain the activities of digital platforms, such as the 2017 sentence of the European Court of Justice which first framed Uber as a transport company with the responsibility to hire its drivers instead of as a simple technological market-matching system facilitating the encounter of demand and supply (European Court of Justice, 2017), show that not even the current version of the platform capitalism is actually accepted as an institutional equilibrium yet and that there is space (and arguably need) for further advancing the digital economy equilibrium selection process in a more democratic way. In this direction, for example, are going also the Web inventor's idea of a "Contract for the Web" (Berners-Lee, 2019) and the growing discussion about the application of multi-stakeholder and networked governance systems to solve some of the issues related to the problem of how to govern the Internet (see Benkler, 2006; Powell, 1990; van Eeten, & Mueller, 2012).

Accordingly, one of the attempts that have been recently made and popularized for developing an alternative governance model to platform capitalism, tackling the negative outcomes determined by the privatization of the Internet, and revitalizing the original ideals of economic democratization and *commons*-like management of the digital economy is the so-called "platform cooperativism" (Scholz, 2014). The idea is simple and represents probably the most natural structure of governance that platforms can adopt for mobilizing all the relevant stakeholders and effectively governing the Internet as a *commons* (Nicoli, & Paltrinieri, 2019; Papadimitropoulos, 2021; Scholz, 2023; Zygmuntowski, 2018). Quoting Scholz himself: "It is about cloning or creatively altering the technological heart of the sharing economy" (2017: 174) while implementing the traditional cooperative principles of democratic governance and shared ownership. The purpose of this model is thus basically, if analyzed through the lens of the evolutionary reconstruction proposed above, to reappropriate

the Internet and the private platforms that have colonized it by trying to impose its interpretation as a shared infrastructure freely accessible by anyone to the benefit of anyone else.

Nevertheless, the imposition of this new idea would also require, as I already showed, a proper shift of the focal point and the creation of the proper space for stabilizing this frame. I believe we can argue that such a shift was exogenously offered recently by the Covid-19 pandemic. Indeed, during the last three years, everyone experienced how some of the services provided by digital platforms have almost become essential services akin to public utilities or quasi-public goods such as the transport system or the electricity and water supply systems (see, Sitaraman, *forthcoming*) – notably, the latter are precisely some of the sectors where forms of governance as a *commons* have proved to be historically more effective. In light of this, many are looking always more suspiciously at the de-facto monopolies that digital platforms have built over the provision of these services and are reconsidering the current institutional architecture of the Internet. Let's think indeed, for a second, about the platforms that allowed to teach remotely during the pick of the pandemic when schools were closed, or how politicians used social media platforms to inform their fellow citizens about new measures for reducing the spread of the virus, or, again, how food-delivery workers brought food and essential medicines to the elderly who couldn't leave home because of the high risk of infection, etc.

Saying that, I do not want to claim that the cooperative model is the perfect and only solution for all the problems of the digital economy (see Muldoon, 2022). Its traditional weaknesses, such as the risk of free riding and the problem of scaling, are well-known. However, it is at the same time indisputable how a clear “cooperative advantage,” following the famous definition provided by the cooperative scholar Richard Spear (2000), is precisely the capacity of consumer, worker, and multi-stakeholder cooperatives to operate

countercyclically and providing quasi-public services in time of crisis and when market failures emerge, particularly at the municipal level and by partnering directly with public institutions. With this brief reconstruction of the Internet equilibrium selection path in mind, I will now try to provide my normative justification in favor of the cooperative governance of digital platforms.

3. Normative Justification of the Platform Cooperative Governance Structure: A Two-tier Social Contract Informed by the Capability Approach

Adopting the perspective of the new institutional economic analysis of the firm based on the assessment of corporate governance structures according to how they minimize transaction costs for the different stakeholders (Coase, 1937; Grossman & Hart, 1986; Hansmann, 1996; Hart, 1995; Hart & Moore, 1990; Williamson, 1985), Aoki defined corporate governance as “the structure of rights and responsibilities” bargained between all the parties “with a stake in the firm,” i.e., those who make a specific investment or suffer any form of externality (2000: 11).¹ The normative interest of this interpretation, which I will also adopt in the paper, is the fact that, assuming that all the stakeholders are rational and equally free agents and drawing lessons from the stakeholder theory (Freeman et al, 2010), it has made possible to develop a hypothetical and multi-stakeholder “social contract of the firm” with the scope of using the universalizable and prescriptive meaning of the social contract idea as an equilibrium selection device aiming to frame corporate social responsibility as an “extended” governance structure based on a fair division of rights and liberties (i.e., corporate entitlements) between stakeholder themselves. Moreover, in the same fashion, it has also allowed to justify the establishment of a series of fiduciary duties of the management towards both internal and external stakeholders in order to operationalize this extended governance structure (Sacconi,

¹ This definition thus comprises both the distribution of property rights over the firm (i.e., the ownership dimension) and the actual management of the firm itself (i.e., the control dimension).

2000, 2006, 2011 a, b). In this way, abuses of authority related to the unilateral appropriation of the surplus created by the combination of stakeholders' multiple specific investments by the hands of those who have residual control rights can be avoided (Sacconi, 1999)² – a point that, as we have seen, is particularly relevant for digital platforms due to their tendency of externalizing the entrepreneurial risk to independent contractors who are not formally integrated into the firm and thus do not participate in the distribution of rights and liberties (while more subtle forms of abuses are experienced even by customers who are expropriated of their personal data without being paid). The normative argument I will present in this section will follow this specific strain of the constitutional contractarian theory applied to the firm domain.³

Anyway, the social contract theory has been extensively referenced in other different forms within the business ethics literature (see Bishop, 2008; Donaldson, & Dunfee, 1995, 1999; Hsieh, 2015). It is thus quite common to take it as a normative framework for justifying democratic governance structures for firms such as, e.g., socially responsible corporations, the German co-determination model, multi-stakeholder social enterprises, or different kinds of cooperatives. In addition, this debate is somehow linked to another important debate in business ethics related to the opportunity of expanding John Rawls' (1971) conception of the basic structure of society in order to include corporate institutions and link two different levels of the theory of justice (i.e., justice at the social and at the firm level) to justify the application of social justice principles to firms (Arnold, 2013; Berkey, 2021; Blanc, 2106;

² Something that has already been proven to be important not just for ethical but also economic reasons because of the inefficient outcomes that can be determined by stakeholders' underinvestment due to the fear of losing their specific investments.

³ Note that this argument works only if we accept a kind of mixed-motives rationality and thus stay at the intersection of the two main philosophical traditions adopting the social contract way of reasoning, i.e., the contractualist (classically characterized by philosophers such as Rousseau, Kant, Rawls, and Scanlon) and the contractarian one (characterized, among others, by Hobbes, Harsanyi, Buchanan, Hampton, and Gauthier), and try to interpolate them. One good example can be found, in this sense, in Ken Binmore's game theoretical interpretation of John Rawls' theory of justice (1997).

Blanc, & Al-Amoudi, 2013; Fia, & Sacconi, 2019; Heath, Moriarty, & Norman, 2015; Mansell, 2013; Nèron, 2015; Norman, 2105; Singer; 2015).

What I want to claim first is that, in light of the Internet interpretation as a shared infrastructure essential for providing some quasi-public services that I have proposed in the previous section, it is especially true for those particular kinds of corporate institutions that are digital platforms that they should be included in the basic structure of society. Indeed, from a Rawlsian viewpoint, a shared infrastructure must be intended as a social primary good, i.e., a social means opened to many possible ends that all the relevant stakeholders should be able to freely access and use in order to achieve those goals that they have reason to value and create benefits both from themselves and their fellows like in a “comedy of the commons” scenario (Frischmann, 2005, 2012; Sacconi, 2015).⁴ Consequently, if we adopt a social contract way of reasoning, we could make two different hypothesis. First, the hypothetical contractors would make an agreement on a fair division of rights and liberties over the common-pool resource. Second, as anticipated, it is reasonable to argue that they could also agree that the governance structure for digital platforms most compatible with this *commons*-oriented interpretation of the Internet would be that of platform cooperatives.

Let’s now make another step in the normative argument in order to justify the preference for platform cooperatives. Since the hypothetical contract we are dealing with is going to affect stakeholders’ well-being by distributing rights and liberties over a social primary good that is essential to achieve certain essential functionings (like the ones I have described in the previous section in relation to the pandemic scenario), we also need a

⁴ The concept of the “comedy of the commons” was coined by Carol Rose (1986) as a response to Garret Hardin’s (1968) famous “tragedy of the commons.” What the former argues is that, in some cases, leaving resources open to public access, instead of generating waste and inefficient underutilization, may determine positive externalities for the affected communities and the emergence of spontaneous self-regulation.

wellbeing-theory for informing the contract itself and accounting not only for the ex-ante distribution of rights and liberties but also for the effective possibility of ex-post converting these rights and liberties into valuable functionings thanks to the day-by-day operations of digital platforms sustaining the free exercise of individual agency by the hands of the platform stakeholders. If we do not do that, the risk is indeed that the latter would not be capable of concretely exercising the rights and liberties they have democratically bargained and thus that another of the frames we presented before could prevail in the long run endangering the achievement of their essential functionings. Relying on recent developments in the strain of the social contract literature related to the field of corporate governance, the capability approach appears to be the best candidate for operating as the informational basis we are looking for (Fia, & Sacconi, 2019; Fia, Sacconi, & Vatiéro, 2021).⁵

By definition, in fact, capabilities are effective freedoms to achieve doing and beings that people have reason to value within a certain institutional domain, i.e., valuable functionings (Robeyns, 2017). Moreover, the notion of capability has a Janus-faced character that facilitates its implementation to a contractarian framework, viz., there are two components in this notion: a fundamental entitlement component (Nussbaum, 2003) and the positive skill, or individual agency, necessary for translating the fundamental entitlement into a valuable functioning (Sen, 1985). In addition, consistently with what I have required for the informational basis of the contract, the capability approach has also traditionally put a great focus on the notion of social conversion factors, acknowledging how institutions are decisive

⁵ Note that has been the same Sen (2009), even if he would never define himself as a contractarian, to claim for an expansion of the “idea of justice” beyond the domain of the “theory of justice,” opening the path for an extension of the basic structure of society to accommodate other social institutions that can be assessed through the lens of the richer metric of justice represented by the capability approach. Despite he has never considered the case of economic institutions, there is now an increasing literature applying the capability approach to the work and employment domain (e.g., Bonvin, 2012; Bueno, 2022; Leßmann, & Bonvin, 2011; McGranahan, 2020; Weidel, 2018; Westerman-Behaylo, Van Buren, & Berman, 2016; Zimmerman, 2012). None of these works, however, analyze corporate governance through the lens of the capability approach.

elements in the individual process of conversion of entitlements and resources into functionings.

To make sense of this unusual application of the capability approach to the social contract tradition through the notion of shared infrastructure (see Nussbaum, 2003 for a criticism of the social contract way of thinking, even if Nussbaum, 2011 herself has endorsed a sort of Rawlsian overlapping consensus for the selection of her list of central human capabilities), a further step in the normative argument is to read capabilities through Wesley N. Hohfeld's (1917) deontic taxonomy of jural positions and relations, opportunely revisited through John R. Commons' (1924) institutional legal theory (see, on this point, Fiorito, & Vatiello, 2011; Sumner, 1987). The purpose of this third step is to ground the very same notion of capability, with its dual sense, in an economic analysis of law in order to justify its application to corporate institutions (a path that has already been opened by previous applications of the capability approach to international human rights, constitutional, and labor law, e.g., Burchardt, & Vizard, 2011; Burchi, De Muro, & Kollar, 2014; Gonzalez-Canton, Boulos, & Sanchez-Garrido, 2019; Langille, 2019; Sen, 2005). Indeed, in Hohfeld's language, an individual entitlement is a "privilege" or a "liberty," i.e., the absence of a duty to do or not to do something to others, and is protected by a positive "claim-right" or a "power," i.e., the substantive right to be in the condition of freely developing the skills necessary to exercise this privilege (see again Fia, & Sacconi, 2019). On this basis, as we have acknowledged in the previous section, it can be argued that the current privatization of the Internet deprives stakeholders' capabilities by negating their entitlements to freely access platforms and their power to use them to achieve functionings. Instead, a democratically bargained extended model of governance, such as the cooperative one, would be coherent with the idea that platforms are means open to many possible ends that stakeholders can pursue in a mutually beneficial way if they are granted fairly distributed entitlements over

platforms themselves and sustained in the individual conversion of these entitlements into valuable functionings.

Coming now to the issue of actually designing this capability-informed social contract, my normative proposal is, in opposition to earlier applications of constitutional contractarianism to the sharing economy that justify the current unilateral rule-setting power of digital platforms through an ordo-liberal interpretation of James Buchanan's (1975) version of the theory (Hielscher et al., 2022), to apply the same Buchanan's categories of constitutional and post-constitutional contracts through the lens of the so-called Integrative Social Contract Theory (ISCT) (Donaldson, & Dunfee, 1995, 1999) with the purpose of designing a more ethical two-stage agreement. More specifically, at the macro-constitutional stage, the hypothetical social contract would be modelled as an impartial and impersonal bargaining game played beyond a Rawlsian veil of ignorance (see, Binmore 2005) during which the hypothetical contractors agree on a set of "hypernorms" establishing a fair distribution of entitlements over the Internet, i.e., a bundle of powers and property rights compatible with its governance as a *commons* (see Ribot, & Peluso, 2003; Schlager, & Ostrom, 1992).⁶ At the same time, this macro-social contract would also leave some "moral free space" to the relevant stakeholders about the decision of how to post-constitutionally specify these entitlements for the different applications running on the Internet and what governance structure to select for these applications in order to make the entitlements substantial on a case-by-case basis (see Sacconi, 2006). Therefore, at the post-constitutional stage of the contract, all the relevant stakeholders have to jointly decide every time, acting as a team, their preferred micro-organizational form for new platforms within the constraints

⁶ Note that, from the perspective we are proposing here, this constitutional contract, entering the basic structure of society, is at the same time embedded into the broader constitutional contract determining the distribution of entitlements related to the other major institutions of society (i.e., the distribution of entitlements over the Internet cannot betray, for example, the principles of constitutional law). This idea can be expressed through the notion of institutional complementarities (Aoki, 2001, 2010).

fixed at the constitutional stage, akin to the way of reasoning of team-production theories of corporate law (Blair, & Stout, 1999).⁷ According to what I said before, platform cooperatives seem to be a good candidate for this scope in many sectors because of their high compatibility with the interpretation of the Internet as shared infrastructure.

Up to now, we have just moved within the *ex-ante* dimension of the general establishment and contextual specification of the different stakeholders' entitlements over digital platforms. However, in order not to make a normative theory of economic institutions utopian (Nagel, 1986), we must also account for what happens *ex-post* (Gauthier, 1986), i.e., when it's the platforms' management responsibility to organize their day-by-day operations in such a way that stakeholders can be effectively capable to exercise their individual agency and convert their entitlements into actual functionings and to solve potential conflicts that could arise in this process of conversion (Fia, Sacconi, & Vatiello, 2021). Using the notion of capability as the informational basis of the social contract helps us to illuminate even these issues. Indeed, on the one hand, corporate institutions can be intended as social conversion factors that, according to how are concretely organized and managed and to what ownership structure characterizes them, can act both in a capability-enhancing and capability-reducing way (see Bueno, 2022). In this regard, some capability-enhancing scholars have given a clear preference for employee-owned and democratic businesses such as cooperatives (McGranahan, 2020). On the other hand, assuming that in the real world we will be forced to accept some trade-offs, an intriguing perspective is the "sufficientarian" criterion that Elizabeth Anderson (1999) proposes to manage trade-offs between capabilities. Namely, all the stakeholders must be granted at least the sufficient level of functionings that is necessary

⁷ The compliance issue, i.e., the problematization of the conditions under which stakeholders will conform to the content of the contract, is not the object of this paper. For this point, we refer to the reading of Degli Antoni et al. (2022), Grimalda, & Sacconi (2005), Sacconi (2007, 1011c), and Sacconi, & Faillo (2010).

to provide to all of them the possibility to continuously participate as equals in a system of cooperative production, leaving what happens next to their individual agency. Otherwise, the ex-post operationalization of the agreement would risk betraying the principles of the agreement itself and thus cooperation could not be sustained as a strategy in the long run, opening the path for abusive corporate behavior and the loss of stakeholders' republican freedoms (see Anderson, 2017; Sacconi, 1999).⁸

Finally, in order to provide also some economic motivations for justifying the governance model of platform co-ops together with the normative ones reported here, we can acknowledge how economic models have been developed recently to prove the competitive advantage of platform cooperatives in certain contexts (Belloc, 2019). More specifically, when the platform size is big enough not to be impeded by the cost of capital but not so big as to create coordination problems, such as at the municipal level of service provision (Frenken, 2017; Muldoon, 2022), these results show how platform cooperatives may prove: greater efficiency, related to lower transaction costs due to homogenous stakeholders' interests; greater trust and hence mutual commitment; higher productivity, due to the easiest peer-monitoring effort that is required at that level; and stronger incentives to introduce quality improvements since the value produced by platform co-ops is equally distributed between stakeholders themselves instead than privately appropriated.

4. The Case of CoopCycle

What I want to do now in this section is to present the case study of a real platform co-op as an empirical benchmark to assess the normative solution that I proposed in the previous one. This case is the French platform CoopCycle, founded in 2017 and rapidly expanded in different countries and regions (now they have 72 couriers' collectives as members: 60 in

⁸ The same Philip Pettit (2001) points out the similarities between the concept of republican freedom and the notion of capability.

Europe, 9 in North America, 2 in South America, and 1 in Australia). What makes CoopCycle interesting from our point of view is that it is, at the same time, both an open-source bike logistics digital infrastructure created by an “umbrella” cooperative of algorithmic developers and a federation of smaller bike delivery co-ops specialized in “last mile” deliveries that have spread all over the world through the customization of the infrastructure in different local context, e.g., Mensakas in Barcelona (Kasparian, 2022).

According to the website⁹, the goals of the projects are basically three: “To foster solidarity between coops, to reduce their costs thanks to services pooling and to create a common force to advocate courier’s rights.” These goals are achieved thanks to the creation of a software, the CoopCycle software, that is governed as a *commons* and thus freely accessible by all the members of the federation that are also involved as collectives in advocative actions in favor of the rights of all the couriers (see Vercher-Chaptal, 2021). Apart from cooperative collectives and individual couriers, other important stakeholders are then restaurant owners and individual consumers who can respectively choose to support a responsible delivery service by using one of the cooperatives of the federation to deliver their food or consume food from restaurants that adopt CoopCycle (knowing that in turn they would not be charge with predatory fees and their data will not be extracted without consent). Finally, public institutions can also support the project through specific types of public-private partnerships for the delivery of certain essential goods and services. Interestingly, all these members can finally contribute to the financing of CoopCycle and be included in its multi-stakeholder and democratic federative governance structure (Acosta Alvarado, Aufrère, & Srnec, 2021).

⁹ <https://coopcycle.org/en/federation/> (accessed 21/09/2023).

Adopting the lens of our normative framework of a two-stage social contract informed by the capability approach, we could thus say that the hypothetical contractors, at the constitutional level, agree on the interpretation of the Internet as a shared infrastructure and on the fair division of rights and liberties over it. Subsequently, at the post-constitutional level, these constitutionally bargained entitlements are embedded in the governance structure of the umbrella cooperative CoopCycle and inspire the creation of an open-source software customizable locally by a network of affiliated but autonomous food-delivery cooperatives from all over the world. Finally, these cooperatives can ex-post decide to exercise their entitlements of freely accessing and using the software by joining the federation and converting these entitlements into valuable functionings by implementing this software and creating a local node. In doing so, they are sustained by a whole set of norms (i.e., the norms that characterize the governance model of CoopCycle) that act as an institutional conversion factor, in particular the Copyleft license of the software itself.

More specifically, the implementation of the software is open if cooperatives meet two conditions: 1) opposite to commercial platforms, they must grant to their couriers the safeguards of the employment status and not extract users' data; 2) they must fit with the definition of social economy actors of the European Union. Only in this way, the platform can really become a capability-enhancing institution (see again Bueno, 2022) because the typical problem of cooperatives, i.e., free riding (Bunders, & Akkerman, 2022), and a "tragedy of the commons outcome," based on the congestion of the CPR, will be avoided. On the contrary, a "comedy of the common" can be produced. Namely, 1) individual cooperative associations that join the network will benefit from the possibility of pooling the software in order to overcome the technological challenge, i.e., the huge cost of the software infrastructure (see Borkin, 2019 on the challenges of platform cooperatives), and thus compete more easily with the incumbents by sharing the technological investment; 2)

couriers will benefit from being granted with the typical employment protections and customers from remaining in control of their data; 3) and both of these groups will benefit at the same time the other members of the federations by helping to further improve the software thanks to its local customization and by advocating together for the rights of all the stakeholders.

5. Conclusion

To sum up, the paper started with a reconstruction of what has been, according to my interpretation, the equilibrium selection process of the digital economy that brought to the affirmation of the present Big Tech monopolies and the consequent privatization of the Internet. However, I have also shown how the current situation of sharing markets cannot be considered a stabilized institutional equilibrium since many pieces of legislation have been recently approved in different contexts and some alternative models have been proposed to tackle the negative outcomes produced by VC-backed platforms. I have thus decided to focus on the multi-stakeholder organizational model known as platform cooperativism and tried to bridge an existing gap in the business ethics literature, i.e., the lack of contributions treating the topic of platform cooperatives through a normative lens, by developing an original normative justification of this governance structure relying on a particular new branch of the constitutional contractarian theory that proposes to inform the social contract through the lens of the notion of capability. By elaborating on Buchanan's notion of constitutional and post-constitutional contracts read through Thomas Donaldson and Thomas Dunfee's ISCT, I have thus designed a two-stage social contract informed by the capability approach as the normative framework of this extended and alternative governance model for the digital economy. Finally, I have analyzed the case study of the cooperative platform CoopCycle as an empirical benchmark to assess my normative argument.

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