(2020)

Central European University

In partial fulfilment of the requirements for the degree of Master of Arts

Budapest, Hungary

PLATFORMS, POLICIES AND PROTECTIONS:

AN INSTITUTIONAL ANALYSIS OF ACTORS IN THE PLATFORM ECONOMY

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Abstract:

This thesis will attempt to analyse the strategies of various actors within the platform economy, in relation to their institutional and national contexts. The traditional employment relationship has been put into question by the platform economy, as the links between employee and employer have become blurred. This has led to the platform economy receiving a large amount of scholarly attention, but it has often been analysed without attention to the institutions which govern those relationships. This thesis attempts to fill in these scholarly gaps by analysing the cases of Austria, the United States, and the United Kingdom, using *Varieties of Capitalism* and industrial relations theory. Within each case the different actors involved in the platform economy are analysed: specifically the platforms, the regulatory framework, and those representing platform workers using a variety of complementary resources. Additionally, the specific legal context is outlined, highlighting the unique nature of labour law in each case. Ultimately, this thesis finds that in each of the cases the institutions in place govern the strategies and actions of the actors in the platform economy.

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Chapter 1 - Introduction

The platform economy has experienced an exponential rise in the past decade, with the combination of decrease in transaction costs and higher degrees of control on the part of the companies leading to the growth of platforms such as *Uber*, *Amazon* and *Airbnb* which are now household names. Due to the fact that platform workers are mostly deemed as self-employed or independent contractors, they remain outside of the regulatory framework of most countries, meaning that they are often vulnerable to unfair dismissal, whilst missing out on basic rights that most employees receive such as a minimum wage, holiday pay or health insurance (Aloisi 2016). Additionally, this has made organisation of platform workers even more precarious due to both the anonymous nature of the workers as well as the lack of a right to collectively bargain in the eyes of the law.

The unusual predicament which the platform economy has created has led to relevant actors reacting to the changing economy in novel ways in order to adapt. Governments have been attempting to bring in legislation giving protection to platform workers whilst some unions have begun to represent them (Visser 2019). The traditional relationship between employer and employee has thus been put into question in the context of the platform economy, leading to a large amount of focus being given to the topic in the academic community. This thesis aims to evaluate these actors from an institutionalist perspective, analysing **what strategies are developed by actors within institutional contexts** and **the extent to which these are determined by their institutions.**

The United States and the United Kingdom represent two cases of Liberal market economies (LMEs), determined by their low trade union densities and their company-level wage negotiations. Nevertheless, recent court cases in the US and the UK, platform workers have managed to attain employee status, giving them access to a wide range of basic rights that were not available to them as self-employed workers. It will be expected that this is due to the fact that wage bargaining cannot take place through a coordinated response, and therefore has to be carried out through the court system. Such cases have not occurred in Austria, which represents a classic case of a Coordinated market economies (CMEs), where there is a higher trade union density, employer organisations exist, and wage bargaining takes place at the industrial and sectoral level. Thus, it can be expected **that platform workers in**

CMEs do not require legal action to be taken on their behalf due to the coordinated nature of their economies. On the other hand, LMEs do not possess the coordination to settle disputes concerning protection of platform economy workers within the regulatory framework, making legal action far more common. These cases will be analysed as the independent variables within this research paper in order to assess whether these characteristics put forward by Hall and Soskice (2001) are also relevant within the platform economy. This will be used to test the hypothesis that **institutions have determined the interactions between actors in the platform economy**.

The analysis of each case will be split into an analysis of the regulatory framework, the platforms, and the unions, giving a focused analysis on the interaction between the three main actors found in industrial relations theory. These can additionally be seen as the independent variables in this analysis and remain constant for each of the nations analysed in this paper. The level of coordination between the actors will then be operationalised as dependent variables. The results of this can therefore be related back to Hall and Soskice's original framework to analyse the extent to which actors within the platform economy are determined by their institutions.

1.1 - Literature Review

Previous literature concerning the platform economy and the role of actors within the context have predominantly focused on the classification of platform workers, organisation, and the legal context. For example, Valerio De Stefano (2016) identifies two main forms of work within the platform economy: crowdwork and on-demand work. Crowdwork entails tasks taken on by a worker, mostly in the form of microtasks, whilst on-demand work involves professions such as transport, cleaning and couriering which are offered through mobile apps and in which work is carried out offline. Much scholarly research has used these distinctions to assess the levels of bargaining power across different areas of platform work; however, they have failed to situate these within a national context (Vandaele 2018). Such studies argue that bargaining power is dependent on the position a worker is in and how they can effectively organise, but do not consider the institutional constraints. Scholars such as Jelle Visser (2019) have offered a comparative approach to collective bargaining across different countries and approaches of various employee's associations, yet the analysis is largely descriptive and fails to offer reasons why the strategies of

unions or so-called ‘quasi-unions’ differs across nations (Johnston and Land-Kazlauskas 2018). This thesis will attempt to situate the strategies of actors, including unions, but within a national context. As Hancher and Moran (1989) argue, the most effective way of analysing the role of actors is within the boundaries of a nation-state.

The protection of platform workers often is made complicated by the legal framework in place and can make the standard rules surrounding employment and the relationship between worker and employee far more complicated. Depending on the country in question, the definitions surrounding classification as employee or self-employed can vary depending on how it is defined within the law itself. The line between being classed as an employee and self-employed is crucial to the understanding of this topic, as being defined as an employee grants to a worker their right to organise, collectively bargain and take collective action, as well as benefits such as minimum wage, sick pay or protection against unfair dismissal (Risak 2017).

In the context of the platform economy, a contractual relationship between employee and employer may not even exist, and even if a contract exists between platform worker and the platform this may only last for a short period of time. Martin Risak (2017) argues that this atomises the working situation of the worker, meaning that platform workers may take up a large number of employment contracts which are not protected by employment law. Aloisi (2019) argues that it is this existence of an employment relationship which is therefore key to collective bargaining rights and thus any form of protection workers may be able to attain. Efforts made by unions to reclassify independent contractors as employees has been one of the classic union responses to the platform economy, however some argue that this will not always work and not every platform worker would be convinced as to the benefits of union membership as many workers enjoy their flexibility within the job (Johnston and Land-Kazlauskas 2018; Visser 2019). Alternatives could be the assurance of basic provisions of labour and social security law, giving all platform workers the same social and fundamental organising and collective bargaining rights (Adams and Deakin 2014). This would then reduce the incentive for platforms to force workers out of the expensive employee category and into the independent contractor one. However, this still assumes some flexibility in labour law which for most countries does not exist.

Labour law itself is affected by the institutional factors determining LMEs and CMEs, with labour law itself having its roots in the 'social question' in Germany where labour issues arose as a result of industrialisation. After the Second World War, workers played a larger role in the public sphere in order to improve their situation. As Bob Hepple (2014) argues, LMEs became more de-regulatory in the 1980s as the state was downsized, which was accompanied by privatisation and the breaking of collective union power through legal restrictions. In CMEs deregulation never became as central to economic planning and the collective labour law framework mostly remained as it was.

Additionally, Martin Risak (2017) has analysed the regulatory approaches taken to protect platform workers, focusing on the relationship between user and platform and the ambiguous nature of the contractual obligations of platform workers and their employers. Such research is important in highlighting how the regulation of the platform economy is highly dependent on how platform workers are classified, as the definition of a worker can often be the deciding factor in whether they receive basic employment rights. However, as Bob Hepple (2014) argues, it is important to understand the factors which influence this labour law and the national context in which it sits. The definitions tied up with platform workers often depend on the regulatory framework in which the context is situated and therefore making blanket arguments about the classification of platform workers is fruitless unless understood within the law of nation states. Ultimately, labour legislation is the outcome of struggle between different groups, which will be considered throughout this thesis.

Previous literature has tended to focus on the platform economy as an international, almost borderless phenomenon without considering the strategies of actors within a national context. Actors are bound within their legal and institutional constraints which must be considered in order to fully understand why and how platforms, platform workers and governments act in the way they do. This thesis will hope to provide an analysis of the platform economy from an institutionalist perspective, which has been left out in previous research. During the Coronavirus pandemic, those working in the platform economy who remain outside of the regulatory framework have been the hardest hit, many left without basic protections such as minimum wages or health insurance (Moulds 2020). This highlighting of the precarity

of such workers makes this thesis all the more relevant and important for research concerning this topic.

Chapter 2 - Theory

This chapter will attempt to outline the theoretical framework in which this research question will be answered. It will first be important to conceptualise what exactly the platform economy constitutes in order to filter out the many different definitions of the term to refine this analysis. After this, *Varieties of Capitalism* (VoC) by Peter Hall and David Soskice will be analysed providing the framework for this research question. Through this it will be important to explain the distinctions between liberal market economies (LMEs) and coordinated market economies (CMEs), which are shown in the justification of case selections made. Finally, this chapter will assess the field of industrial relations in order to set out how this will be used in this research question, whilst additionally attempting to show how the field is relevant to the platform economy. Ultimately, this chapter will create the foundations of the research question and establish the boundaries in which it shall operate.

2.1 - Conceptualisation of 'Platform Economy'

When first attempting to conceptualise the platform economy, it will first be pertinent to examine the definition of platform itself. A 'platform', in the context of the platform economy, has been argued to be the 'matchmakers' of employers and employees, putting forward a framework in which participants in the economy interact with each other (Kenney and Zysman 2016). In *Modern Monopolies*, Alex Moazed (2016) defines platforms as companies which facilitate the exchange between interdependent groups, simply by means of connection. Carliss Y. Baldwin and C. Jason Woodard (2016) move up the ladder of abstraction claiming that the structure of platforms remains the same in that they constitute a system in which there exists core components with low diversity.

Although platforms can be seen in a non-digital environment, here we are concerned with the digital forms of platforms which are internet-based in their matching technologies, which can be seen as the building blocks of the platform economy (Srnicek 2017). Healy et al. (2017) argue that there is a triangular relationship present within the organisation of work for platforms, acting as digital intermediaries for organising and managing work, which is done at the request of the customers. These companies have developed proprietary applications (apps) which create the markets involved (Healy et al. 2017). This then links the customer to the provider of work, which will often supply their own capital, such as motorbikes or bicycles in the

case of food couriers or cars in the case of personal transportation. Although companies acting as a third party in the relationship between the worker and the customer is nothing novel, it is the emergence of new technologies which has led to new economic activities occurring that were not present before the relevant digital technologies existed. Digital platforms themselves are categorised into three subsections by the Productivity Commission: *matching platforms* (which will connect workers with customers), platforms which allow *analysis and sorting* (usually accomplished by publishing reviews or referrals), and platforms which add value *directly to a product* (by allowing incremental online work) (2016). Farrell and Greig (2016) argue that there exists a dichotomy between *labour platforms* and *capital platforms*. The former refers to platforms which organise the performance of productive tasks, while the latter concerns platforms which enable the sale or rent of resources. However, as Andrew Stewart and Jim Stanford (2017) argue, there exist many capital platforms which require the application of productive labour, such as room rentals via *Airbnb* which require cleaning and maintenance.

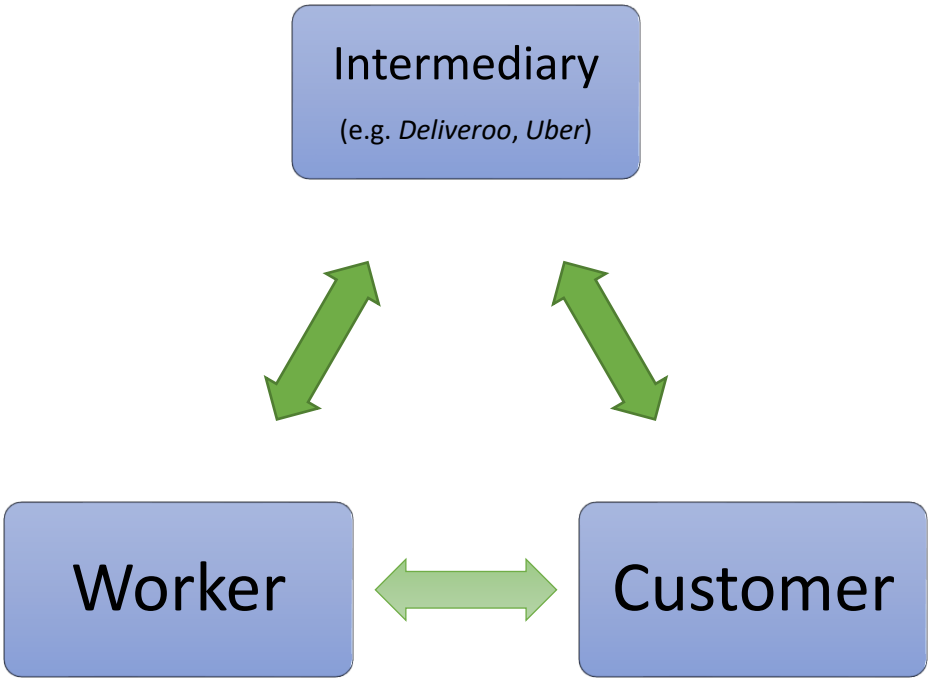

Figure 1 (Stewart and Stanford 2017)

Valerio de Stefano (2016) further delineates labour platforms into two separate forms of work, that of *crowdwork* and *on-demand work*. Crowdwork concerns work that is performed and carried out solely via online platforms which can put various workers, businesses, and consumers in contact in order to carry out so-called 'microtasks',

tasks which require judgement, creativity or decision-making beyond the level of understanding of artificial intelligence. On-demand work involves services such as transport, cleaning and running errands, as well as forms of clerical work all of which are found through mobile apps. One major distinction between the two forms of work involved are the contexts in which the two operate, with crowdwork allowing for international connectivity, for example if a customer requires a worker to create a website design, the two involved can be situated anywhere where there is an internet connection. On-demand work only matches supply and demand of activities that are executed locally, and therefore will almost always occur within a national basis (De Stefano 2016). This is important for this research question as the analysis which will take place concerns the platform economy in a national context, which means that it will be solely be using on-demand work as the scope for analysis.

Martin Risak (2017) expands on this distinction further, explaining how offline work, or as he defines it 'location-based gig work', requires the worker to come into direct contact with the user. Risak (2017) further subcategorises the location-based work into tasks given to selected individuals, such as accommodation (*Airbnb*), transportation (*Uber*), delivery (*Deliveroo*), or household services (*Taskrabbit*). These categorisations are also crucial in understanding the bargaining power of platform economy workers and the employment relationship itself between employer and employee. Kurt Vandaele (2018) shows how those working in on-demand work have much higher bargaining power than crowdworkers. Crowdworkers face fierce competition which is induced by the digital labour platforms as well as the digital management methods which use online individual ranking and reputation systems. Due to the fact that the bargaining power of crowdworkers is therefore too minimal, it will be important to analyse solely the situation of on-demand workers as they present some form of agency which can be assessed in this research question. On-demand workers still present examples of those working with 'alternative' arrangements, which can often be unstable and risky for the worker and allow for this research question to additionally assess the non-standard nature of their employment.

The actual size of the platform economy is very hard to gauge, and most empirical research into the extent of its growth has largely relied on survey data, both in the United States and in Europe (Katz and Krueger 2016; Farrell and Greig 2016; Huws et al. 2017; Hall and Krueger 2018). Data surrounding the topic is scarce making it difficult

to understand the size of the market itself, however what is clear from many of the surveys involved is that the growth of the economy is rapid. The European Commission's estimate of the current value of the platform economy to be €20 billion, which could rise to be €572 billion by 2025 (European Commission 2016). This is additionally reflected in the participation in the platform economy, where a study by Owyang and Samuel (2015) of those working in the US, the UK and Canada showed 23% of the British population had used platforms such as *Uber* or *Airbnb*, whilst a study by Huws and Joyce (2016) showed that 42% of British adults had used crowd platforms in the previous year. According to the Contingent Worker Supplement (CWS) conducted by the Bureau of Labor Statistics in the US, 10% of workers rely on alternative arrangements for their main job, however the figure for workers solely in the platform economy is unclear (BLS 2017).

Possibly the most contentious issue when it comes to the platform economy is relating to the ongoing debate as to the extent to which a platform economy worker can be classed as an employee or simply an independent contractor (Prassl and Risak 2016). The lack of security workers receive from their status as independent workers in the law has led to many pushing for the classification of such workers as employees, as it would entitle them to the same work-related benefits that employees receive. Although this problem is not confined to the platform economy, it is a problem which affects almost all platform workers and therefore is highly relevant to this research question (Goudin 2016).

2.2 - Varieties of Capitalism

Written in 2001 by Peter A. Hall and David Soskice, VoC provides the basis of the argument that there are two different forms of market economies which employ capitalist agendas: the liberal market economy (LME) and the coordinated market economy (CME). Hall and Soskice (2001) make their arguments through the framework of a mainly institutionalist approach, emphasising the roles of institutions and firms in the economies of capitalist nations. Hall and Soskice (2001) use Germany as the main case for one form, that of the CMEs, and the United States and the United Kingdom for the other. Using this as a basis, Hall and Soskice (2001:25) outline the characteristics of the two models of market economies and how they are distinct, including actors which advance their own interests within the constraints of the institutions surrounding them, with the main actors being individuals, firms,

producer groups or governments, whilst mostly being a firm-centred analysis. Instead of adhering to a thesis in which economies are scaled in terms of market liberalisation, Halls and Soskice promote a binary distinction (Hall and Thelen 2007).

With firms at the centre of the analysis, Hall and Soskice argue that firms develop distinct relationships with other economic actors in order to maximise capabilities. All of these areas outlined contribute to the forwarding of the firm itself and will ultimately lead to a prospering of the company, depending on the degrees in which these elements are operated. This paper will mainly be focusing on the industrial relations element in order to assess the roles of specific actors in the platform economy, as well as taking corporate governance into account when assessing the rules and regulations concerning platform economy companies. Furthermore, Hall and Soskice (2001) outline two different market economies which are involved with the implementation of capitalism, that of the liberal market economies (LMEs) and coordinated market economies (CMEs).

2.3 - Selection of Cases

Considering the framework put forward by Hall and Soskice (2001), it will be important for this analysis to attempt to choose prime examples of the cases involved. One important aspect of the platform economy is that the changing in the labour market itself is global, rather than acting internally. Although the agents involved are acting domestically, many of them are spread across multiple countries encompassing both LMEs and CMEs, as the “platformisation” of labour redesigns the ways in which people work internationally (Aloisi 2019). For this study, it will be important to both choose cases which are ‘classic’ cases of both CMEs and LMEs, whilst also having a distinctive and significant presence of a platform economy.

2.3.1 - Austria

Austria is described within the theory of Hall and Soskice (2001) as a classic case of a CME. Non-market mechanisms of coordination are central in the relationships between economic actors within the country. Industrial relations within the country are highly coordinated, whilst there is a high degree of cartelisation within the rules governing corporate governance (Alfonso and Mach 2010; David and Mach 2007; Katzenstein 1985). Austria has also been described as a *social* variant of the CME family, with strong trade unions and weaker business associations, whilst the state

has traditionally taken a stronger and more active role in the control of the industrial sector (Katzenstein 1985). Although the large state sector has traditionally forced the power of private business to remain small, the economic shock of the oil crisis in the late 1970s and the accession into the EU in 1995 has led to greater privatisation and liberalisation (Alfonso and Mach 2010). Nevertheless, although there has been distinct marketisation of the Austrian economy, the leading institutions in place have influenced the trajectory of change in terms of industrial relations and corporate governance, which still remains in place to this day.

The *Arbeiterkammer (AK)*, or the Chamber of Labour, represents both Austrian employees and consumers and together with the ÖGB, or the Austrian Trade Union Federation, and is involved with the representation of employees in the system of *Sozialpartnerschaft*, or social partnership, which is concerned with the regulation of wages and prices. Negotiations in Austria, as a typical CME, are conducted primarily at the industrial level. The collective agreements negotiated cover all employees of the employers by law, regardless of whether they are members of the unions involved in the negotiation.

The extent of Austria's platform economy has been measured in various studies. Huws and Joyce (2016) found that 36% of Austrians aged 18-65 had tried to find work via platforms such as *Upwork*, *Uber* and *Handy*. In an additional study, Huws et al. (2017) found Austria to have one of the highest rates of people engaging in platform work in Europe, above other CMEs such as Germany. The presence of on-demand delivery apps such as *Foodora* will be central to the analysis carried out in this research question.

2.3.2 - The United States

Hall and Soskice (2001) view the United States as the epitome of an LME, which relies almost fully on competitive markets. The US competes on the basis of low costs and major product and technological innovations. Historically, the US has been the centre of deregulated industry, accelerated with the rise of 'Reaganomics' in the 1980s and eventually the emergence of neoliberalism in the 1990s. Although the state has traditionally taken less of a role in intervention, there have been some instances of action taken by the state in order to make the labour markets more competitive, such as the anti-union measures of Ronald Reagan or the government

bailouts during the late 2000s (Gamble 1994). Much of the growth in the American economy was led by domestic demand, rather than the export-led growth strategies of CMEs such as Germany or Japan. The departure from the Keynesian-based economics of post-war USA is where the nation distinguishes itself from the path of CMEs and was used as a template for many other developed countries for stimulating the economy.

As a result of the reforms made in the 1980s under Ronald Reagan and the continuation under Bill Clinton's 'Third Way' the United States can be seen as an entrenched form of LME and a typical example. Ultimately, this has led to the weakening of the public sector unions and the number of jobs available to the manual working class.

In terms of the platform economy, the US has a modest-sized labour force involved in the sphere, with a report by Katz and Krueger (2016) finding that only 0.5% of the workforce was involved in providing services to customers through an online intermediary such as Uber. However, the US is also home to one of the fastest-growing platform economies in the world, with the number of workers receiving income from platforms doubling each month during the autumn of 2015 (Farrell and Greig 2016), whilst being home to the world's top 5 platform companies. Although the United States constitutes a prime example of an LME, whilst being known for taking a *Laissez-Faire* attitude toward regulation of platforms, recent class action on the state level has led to some forms of regulation taking place, which will be examined in this research question (Baldi 2017).

2.3.3 - The United Kingdom

Britain is described as a prime example of an LME in *Varieties of Capitalism* as it historically represents the formation of this production system. Since the 1980s the British market economy has focused economic coordination via the market mechanism through deregulation. In terms of the economy itself, although an early member of the European Community, the UK tended to oppose regulations which would erode market incentives which were the foundations of the British economic system (Vitols 2001). However, this has not always been the case as coordinated bargaining had existed to a certain extent, especially under the Labour governments from the late '60s to the late '70s, where a level of cohesion existed amongst

economic actors including trade unions. However, due to a variety of factors this coordination fell apart leading to the events of the ‘Winter of Discontent’, in which a period of mass strikes and economic stagnation ushered in an era of deregulation and breaking up of the unions under the leadership of Margaret Thatcher. Ever since, employers have put pressure on the state to constrain organised labour and centralise managerial power.

Nevertheless, there still exists a certain degree of union presence which is uncommon for many other LMEs, with union density above other examples such as the United States, Australia, and New Zealand (ILO 2020). Although trade union membership has rapidly declined since the 1980s, the shop steward still retains a certain level of power, involved in collective bargaining on the market level. However, recent legislation passed by the Conservative government in 2016 led to even stricter regulation of unions, putting restraints on picketing (Williamson 2016).

The platform economy in the UK is one of the largest, with the nation being by far the biggest market for online food delivery in Europe due to the size of the food delivery market and high degree of online penetration (Iqbal 2020). This has led to the growth of numbers in on-demand workers such as food couriers. Recently, unions such as the General, Municipal and Boilermakers Union (GMB) have moved to support workers in the platform economy, representing the first moves of traditional unions to support platform workers in the United Kingdom. The unique characteristics of the UK as an LME will be central to its analysis in this paper.

There are stark differences between the two market economies when industrial relations are considered. LMEs often have much less regulated and more flexible labour markets where unions tend to be much weaker. In LMEs, powerful unions are associated with weak competition in which production costs are driven up. Bargaining tends to be much less centralised with fewer employment protections. CMEs, on the other hand, have an interest in stronger unions as they are key to the economic process of productive strategies, with high levels of trade union density observed. There are lower levels of industrial conflict with higher levels of bargaining coordination and coverage. Ultimately, Hall and Soskice (2001) emphasise the interconnections between institutions and actors in the differences between LMEs and CMEs, whilst additionally outlining how social policy is a strong influencing factor

in shaping labour supply in that LMEs typically have a larger low-wage sector than CMEs.

2.4 - VoC and Platform Economy

When using this framework in the context of the platform economy, it will be important to emphasise the role of collective bargaining in regulating the new forms of employment. As the definition of 'employee' and 'self-employed' becomes blurred, the traditional means in which collective bargaining would take place have changed, and it will be pertinent to analyse the extent to which the actors involved have responded to this. The negotiation typically seen between employers and employees in CMEs may not operate in the same way due to the contractual restrictions of platform workers, making the centralised collective bargaining typically seen in countries such as Austria much more complicated. The highly liberalised nature of the labour market in LMEs would lead us to believe that there would be a large number of flexible workers available for work in the platform economy, whereas in CMEs the market would be expected to be smaller due to the tendency of workers to stay in the same profession. The growth in the trend of precarious working relationships as well as the weakening of collective bargaining coverage has led some academics to criticise the VoC theory as outdated in the modern world (Doellgast et al 2018).

Nevertheless, Hall and Thelen (2009) argue that by focusing on the elements driving change then one can elaborate on the framework of VoC in the modern context. Institutional change has occurred, however change in the national economies themselves have occurred alongside the change in national institutions. This is not to say that the institutions in question are completely path-dependent and static, instead that there still remains a distinction in the institutions in the context of the platform economy. Therefore, we can still expect high levels of coordination to take place amongst CMEs, as well as low levels in LMEs.

2.5 - Industrial Relations

The theory of industrial relations extends far further than simply the analysis found in VoC and is found in the form of a whole school of research analysing the relationship of employment. The theory of industrial relations relies on the relationship of three main actors: trade unions/syndicates, employees, and employers (Bayar 2017). The

school of industrial relations theory is rooted in the relationship created out of the produce of the industrial revolution, leading to free labour markets and the organisation of workers earning a wage (Kaufman 2004). Due to the lack of sufficient protection for these workers, as well as the long hours they were working combined with low wages, many workers began to engage in strikes whilst there was a large presence of turnovers. The formation and increase in membership of trade unions led to the so-called 'labour-management' conflict in which representatives of workers in unions would negotiate with bosses in order to come to an agreement over pay, security and working hours (Kaufman 1993). This was reflected in the formation of industrial relations as a theory in itself, as it was created as a problem-solving theory in order to increase the rights of workers whilst rejecting the classic Marxist interpretation of proletarian revolution as well as the *laissez-faire* approach promoted by conservatives and free-marketeers.

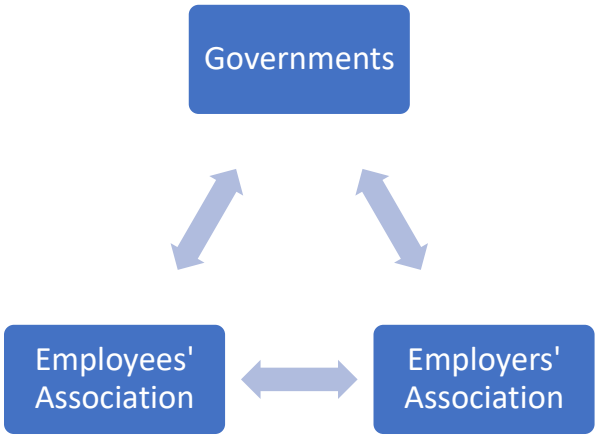

Figure 2

As the theory developed, Bruce Kaufman (2008) argues that industrial relations began to focus solely on topics such as collective bargaining, labour-management relations, and national labour policy. This has developed further to this day, and refers to the tripartite negotiation of government representatives, employee associations and employer associations. Officially, the European Commission defines industrial relations as the "collective relationships between workers, employers, and their respective representatives, including the tripartite dimension where public authorities at different levels are involved" (European Commission 2014). Nevertheless, the area of focus around trade unions and collective bargaining has been mirrored by a worldwide decrease in union membership (Visser in Hall and

Soskice 2001). Collective bargaining is still extremely relevant in certain contexts, however less so in LMEs such as the United Kingdom and the US. Strong state support for collective bargaining in countries such as Austria has meant that binding negotiations have remained stable whilst union membership has decreased, meaning that the area is still highly relevant for this analysis.

One avenue of industrial relations theory will be pertinent to consider during this research paper is that of institutional analysis. In a broader sense of the term, institutional analysis has been a long-standing area in the field of industrial relations, examining the employment relationships and the rules affecting them (Kaufman 2008). It is clear that if the cases chosen are to be compared then it is the institutions involved which should take precedence in the analysis. Although the means in which platforms operate within the labour market are sometimes ambiguous, such as the nature of employment of platform workers, many are still subject to institutional and government laws, which do indeed represent a challenge to existing institutional settlements. When one considers the traditional tripartite relationship which industrial relations theory considers, it becomes more difficult to conceptualise when the platform economy is considered. Kilhoffer et al. (2017) claim that although the way in which the platform economy operates cannot completely fit into the Industrial relations model shown in Figure 2, one can interpret the relations in a way which fits to this system.

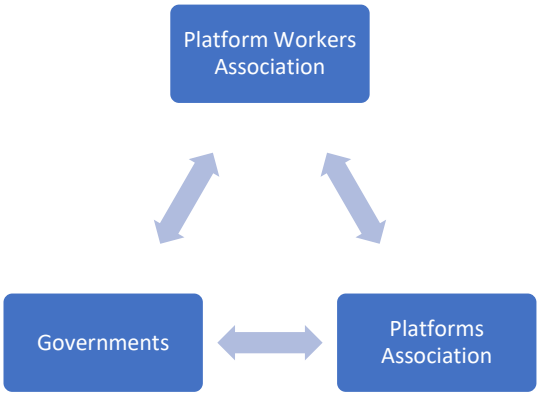

Figure 3 (Kilhoffer et al. 2017)

The use of the terms *platforms association* and *platform workers association* are rather ambiguous in the representation in Figure 3. Due to the ambiguous nature of the platform workers and platforms themselves, we still must interpret digital platforms as intermediaries between customers and service providers, as shown in

Figure 3. Additionally, the *platform workers association* must be considered in terms of the representation platform workers receive, which comes in both the form of traditional unions as well as quasi-union initiatives (Maccarrone and Tassinari 2017; Johnston and Land-Kazlauskas 2018; Vandaele 2018). Although it is not clear exactly how these organisations fit into the platform economy in terms of industrial relations, this paper will attempt to assess how they do act and whether this is dependent on the type of production system they are involved with.

Crucial to the understanding of the industrial relations regimes analysed will also be the legal context in which the actors operate. Although we can outline the actors involved in both the traditional sense of industrial relations and the revised version in the case of the platform economy, actors in different countries are still bound by the employment laws which are in place in respective countries. This is especially important in the case of the platform economy as much of the legal action which has taken place in regards to platform workers has occurred amongst the background of so-called 'regulatory gaps'; areas in which official regulation has not yet been enacted and outdated forms of regulation must be enforced (Inversi et al. 2016). Each of the countries in question have different labour laws in place which influence the means in which actors can operate. Hatcher and Morgan (1989) originally argued that any kind of economic regulation comes about through organisation, however this negates the presence of coordination and cooperation between actors, which is essential to the theory of industrial relations (Barry 2009). Hatcher and Morgan (1989) also stress the need to analyse regulation within the boundaries of the nation state as each country has its own rules by which the actors involved must apply. Thus, the regulatory framework of each country examined in the cases must be analysed in order to add understanding to the environment in which the actors operate.

2.6 - Conclusion

This chapter has shown various aspects in how this thesis will be formulated by attempting to present the main schools of theory which will be used to analyse the protection of workers in the platform economy. By analysing VoC, the cases of Austria, the United States and the United Kingdom were chosen, allowing this paper to analyse two clear examples of an LME and CME, whilst the United Kingdom presents as a case which may sit outside of the two other parties. This paper will

attempt to use industrial relations theory in order to analyse the main actors and agents involved in the platform economy and will additionally examine the extent to which the field can be updated to accommodate for the changing nature of precarious work. Ultimately, the differences in production systems between the cases chosen will be analysed in the context of the platform economy, attempting to show possible differences in the ways in which they operate.

Chapter 3 - Methodology

This chapter will provide the analysis for the methodological background of this thesis. This paper will use a qualitative, comparative case study approach. By using the theoretical framework outlined, this thesis will attempt to provide an in-depth analysis of the cases chosen in order to feasibly compare industrial relations regimes in the most effective manner. By doing so this thesis will attempt to answer the hypotheses in question and this chapter will provide a comprehensive description and justification of the methodology used. This chapter will first provide an explanation of case study analysis and the reasons as to why this method fits to the research question. Additionally, it will provide both the benefits of using cross-case analysis as well as the limitations. Finally, this chapter will briefly explain the research process of this thesis, showing how the analysis will take place as well as which sources will be used.

3.1 - Case Study analysis

One of the most consequential advocates of the use of case comparisons, Arend Lijpart (1975), argues that due to the methodological problems arising from the use of too many variables and small N, one can either increase N or decrease the number of variables. In the case of the latter, which will be used in this thesis, it is important to select a small number of highly comparable cases. In this thesis, the cases have been selected in order for the theory to be best tested in the most in-depth manner. By using only three countries to carry out the analysis, this paper will be able to sufficiently compare the different market economies outlined in VoC. By using small N, this paper will limit the number of variables, thus making the scope of the analysis feasible. Harry Eckstein (2000) describes how case studies are valuable at all stages of the theory-building process, but that they are most valuable at the stage of theory building where least value is generally attached to them, namely when those theories are tested, which will occur in the case of this research question.

Small N case study research can be limited by the qualitative nature of the analysis, as it limits the methodological logic which may be employed. This research paper will attempt to overcome this limitation by providing additional statistical data to complement the arguments made. When considering the nature of the platform economy, it is crucial to use the most up-to-date and comprehensive statistical data to back up qualitative arguments made throughout this paper.

The cases in this research paper represent two classic cases of different market economies found within the framework of the VoC theory, the United States and Austria, as well as the United Kingdom, which represents an LME but with differing characteristics to other LMEs when industrial relations are considered. By choosing three cases, the level of analysis of these independent variables will be both feasible and will allow for sufficiently in-depth analyses. This can also be seen as a limitation to the research paper itself, as too narrow a scope of analysis can lead to the results of the findings being limited. Nevertheless, the narrowed use of cases will allow for a more concise analysis than a large N, statistics-based research could achieve.

3.2 - Research Process

This thesis will attempt to answer the research question at hand by using sources which can best present the actors involved in the platform economy as well as their motives and reactions. Academic literature analysing the platform economy using pre-existing theories has been limited due to the fact that the topic is a relatively new phenomenon, therefore primary materials such as journalistic articles and online publications from the actors involved will be used, supplemented by various statistical data and scholarly research. Various union organisations such as the European Trade Union Confederation (ETUC) and supranational agencies such as the European Foundation for the Improvement of Living and Working Conditions (Eurofound) have published data and analyses concerning the protection of platform workers which shall also be used in this thesis.

Chapter 4 - Fieldwork

4.1 - Austria

4.1.1 - Industrial Relations Context

Austria represents a ‘typical’ CME in terms of industrial relations in that it has relatively high trade union density, around 27% in 2017 (Visser 2019), whilst there are overall 1.2 million trade union members in Austria overall. As Table 1 shows, although trade union density has declined, a relatively large quantity of Austrian workers are trade union members. Trade unions in Austria are organised under the umbrella organisation of the Austrian Trade Union Confederation (ÖGB) which consists of seven affiliated unions which mostly represent the various sectors. All private companies must, by law, be members of the largest employers’ organisation, the Austrian Federal Economic Chamber (WKÖ), which has the membership of 537,636 active businesses (Stadler and Allinger 2017). Any important regulation or decision-making on legislative projects on behalf of the government must be consulted with the WKÖ, mostly involving issues such as labour law, taxation, or sectoral legislation. Collective bargaining takes place at the sectoral level between trade unions and the Chamber or other sectoral employer associations, with 80% of agreements being concluded between a union within the ÖGB and the WKÖ. Other collective bargaining occurs between ‘volunteer employer organisations’ and a union affiliated to the ÖGB.

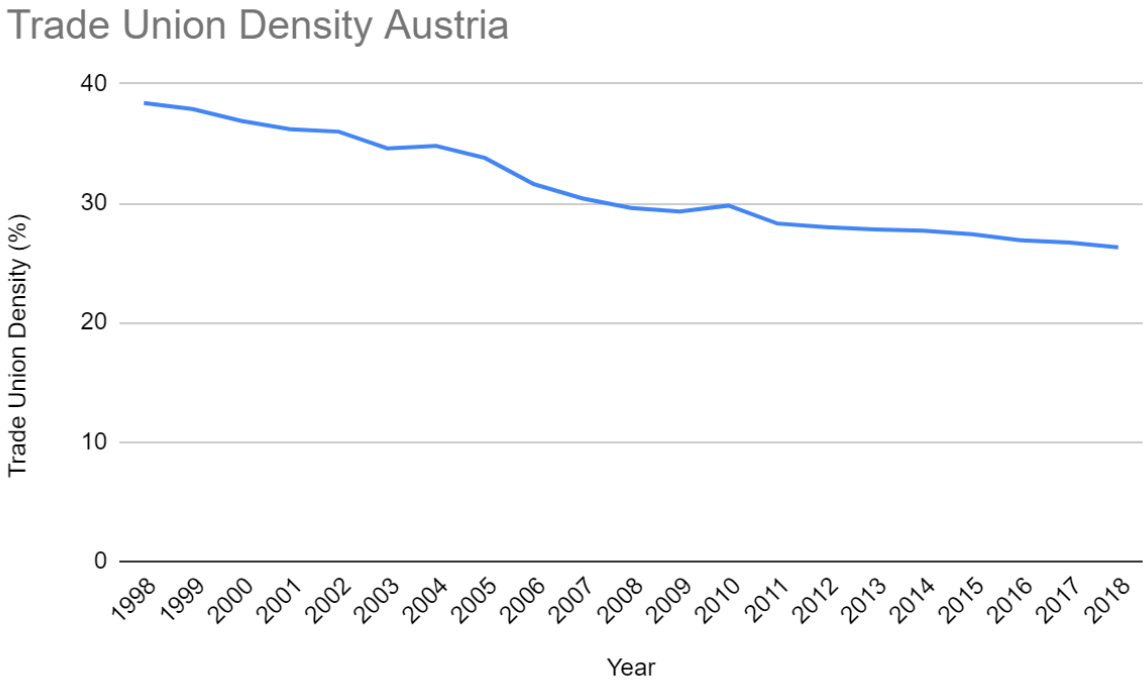

Table 1 (OECD 2020)

Wage bargaining itself is still strongly coordinated across the economy, one of the main factors in determining Austria as a CME. Collective bargaining coverage, or the quantity of workers whose wages are negotiated via collective bargaining, is very high at 98% (OECD 2020). This can be attested to the nature of Austria as a CME in that it is part of a tradition of social partnership or *Sozialpartnerschaft* which prevails across the country and into the legal framework governing industrial relations (Fulton 2020). Workers are additionally represented on two levels, by the trade unions under the umbrella of the ÖGB, and by 'works councils' which operate at a company level. Works councils are organisations representing workers at the shop-floor level and are known as a *Betriebsrat* in Austria. Works councils will usually exist in workplaces of greater than 50 employees, with the 2013 European Company Survey finding that 47% of workplaces had a works council (Stadler and Allinger 2017). Although not directly affiliated with the unions themselves, members of works councils will often also be members of unions, and will meet with the employers in order to discuss the extent to which the employer is acting in accordance with relevant legislation (Fulton 2020). Additionally, works councils will discuss and negotiate agreements with the employers over working hours, social issues, health and safety issues and many

additional factors relating to the workers themselves as well as the general company operations. Nevertheless, works councils have far less power in terms of economic issues, having only the right to be informed about future economic planning which will affect workers. In terms of striking, Austria legal law has no regulation on strikes. Striking is very rare in Austria which can be attested to its culture of *Sozialpartnerschaft*, meaning that disagreements between workers and their employers are usually handled before striking is required.

4.1.2 - Platforms

Austria's platform economy is relatively well developed when compared with its neighbours, with some studies finding Austria to have one of the highest quantities of people engaging in platform work in Europe (Huws et al. 2017). Although relatively difficult to gauge the exact quantity of individuals working in the platform economy as many of the statistics are based on surveys, what is clear is that the platforms themselves are very well established in Austria. Food delivery and personal transportation, as in many other countries, are the main platforms which are prevalent in Austria, with companies such as the food delivery service *Mjam* (formerly *Foodora*) and transportation platforms such as *Uber* and *Bolt* providing the majority of on-demand work in the country, mainly from the capital, Vienna. This is due to the high density of population within the capital, which is far larger than any other city in Austria, which allows these platforms to operate. 42% of internet users in Austria use online marketplaces at least once a week which is high compared to other European countries (Eurobarometer 2017). The number of Austrians buying online is also larger than the EU average, meaning that there is a large demand for the services platforms provide from Austrians themselves (Hölzl 2019).

Most platform companies in Austria are based abroad, often for taxation purposes. *Mjam* and *Uber* are, however, members of the Austrian Economic Chamber, meaning that the discussions between platform workers and platforms within the Chamber has occurred, rather than directly between platforms and an employer's association. Considering the fact that the platform economy is a relatively recent phenomenon and its small size in Austria, these discussions are premature. Nevertheless, for the platforms which are registered in Austria, it appears that the coordinated nature of the country's economy has determined the interactions between the main actors.

4.1.3 - Legal Context

Austrian labour law has historically distinguished between blue- and white-collar workers, with the Trade Act applying to the former and the Salaried Employees Act applying to the latter. The classification depends on the level of subordination and personal and financial dependence on an employer. Financial dependence can often be sufficient for some labour law provisions to apply; however, it is often dubious as to whether this can be applied to platform workers (Löschnigg in Daugareilh et al. 2019). The term *freie Dienstnehmer* (free employees) has been applied to those who have a basic contract or personal service and have little personal dependency, using their own tools for work such as bikes in the case of food couriers. Although some rights apply to this group, such as provisions concerning the termination of the employment contract or damages for termination without giving the due notice periods, other employment regulation such as the Act on working time, the Act on resting periods or the Holidays Act do not apply (ETUIC 2017). Additionally, bargaining rights do not apply to free employees due to the fact that there is no universal statutory minimum wage in Austria, meaning there is no specific labour protection in terms of adequate wages. *Arbeitnehmerähnliche Personen*, roughly translated as employee-like workers, and applies to free employees who are economically dependent self-employed workers. Laws such as anti-discrimination law and liability to compensation as a result of a loss or injury are available to such workers.

The ambiguous nature of the platform worker in Austrian labour law is also reflected in the ambiguous nature of the employer. Gunther Löschnigg (in Daugareilh et al. 2019) asserts that the fragmentation of the responsibilities of the employer combined with the disappearance of contractual obligations has come to the point that the term of ‘employer’ cannot even apply anymore. Workers thus find themselves in a “no-employer black hole”, which is seen as a deliberate tactic on behalf of the platforms in order to circumvent labour law. This ultimately leaves platform workers in an extremely uncertain position in Austria. Whilst platform workers may receive greater benefits than those in other countries, the precarious nature of the law in this regard has left many platform workers legally in limbo.

4.1.4 - Regulatory Framework

Various laws are in place in Austria covering the relationship between employers and individual employees, with the majority of this law originating at a federal level. As per Austria being a CME, the main goal of individual labour law is protecting employees against the disadvantages deriving from their personal dependence and unequal bargaining power (De Groen et al. 2019). Nevertheless, although 98% of collective agreements determine minimum wages in Austria, these agreements will only apply to those platform workers who are determined as employees. In terms of the employers, as has been argued by Prassl and Risak (2016), platforms themselves have an ambiguous nature when being classed as employers, and if they are failed to be classed as such, minimum wages will not be available for workers. No clear court rulings thus far have addressed the classification of platforms as employers, reflected the overall lack of jurisprudence on new forms of employment in Austria (Löschnigg in Daugareilh et al. 2019). The nature of Austria's collective bargaining means that the definitions of the parties being involved must be clear in order for basic minimum wage regulation to apply, meaning that many workers are still left without it.

In terms of social security, there exists a mandatory system which applies to those who are both classed as employees and self-employed, which is made up of insurance for pensions, workplace accidents, unemployment, and sickness (Bruckner and Krammer 2017). These laws do not directly apply to platform workers but come under the terms of free employees or employee-like persons. Nevertheless, lawsuits covering the platform economy itself have not taken place to date.

Some academic debate has occurred regarding the protection of platform workers. The *HeimAG* is a specific regulatory framework which provides the possibility of specified minimum wages to those who are self-employed working from home (De Groen et al. 2019). Martin Risak (2017) argues that this framework could be extended to platform workers if sufficient modifications are made to the existing laws. Furthermore, de Groen et al. (2019) found that the Austrian Ministry for Social Affairs (BMASGK) commissioned a draft of legislation defining 'platform work' within the Austrian context as well as containing a clear regulatory framework. The draft would define platform workers as either employees or employee-like persons, which most importantly would mean that such workers would be deemed economically

dependent, similar to the AB5 legislation brought in in the United States (Paul 2019). This would have put the emphasis on platforms to prove their workers were independent contractors. Nevertheless, this piece of legislation, although signifying an intent on behalf of the Austrian government to address the topic, never came into fruition and ultimately platform workers are still missed out in Austrian labour law. Additionally, Austrian platform workers are said to accept their status as self-employed either by means of a contract for work or by a freelance contract (Lutz and Risak 2017). Freelance contracts are common among riders for *Mjam* (formerly *Foodora*), which solely stipulates the performance of a service over a certain amount of time in exchange for payment. However, if such workers wish to be deemed as employee-like persons they must demonstrate economic dependence, which is difficult for platform workers to prove.

4.1.5 - Unions and Organisation

As previously addressed, the industrial relations in Austria relies heavily on the tripartite relationship between the representatives of employers, employees and the government. The institutions in place promote social dialogue between the various parties and is central to its classification as a CME. This also means that platforms themselves which are registered are bound by sectoral arrangements, an example being the representation of *Bolt* by the group *Personenbeförderungsgewerbe mit Personenkraftwagen* (Passenger transportation with passenger cars). The *Arbeitsverfassungsgesetz* (Labour Constitution Act) forms the legal basis for collective agreements as well as the tasks and powers of the works councils (De Groen et al. 2019). The *Betriebsvereinbarung* (works agreement) determines rights between employees and employers at the company level and is reached between the employers and the works councils.

There are no unions themselves which directly represent platform workers; however, platform workers who are deemed as employees or as free employers are members of the Chamber of Labour by law. Nevertheless, it must be emphasised that the majority of platform workers are not employees and therefore are not represented within the Chamber of Labour. Their position outside of the regulatory framework means that they are not subject to collective bargaining law meaning they cannot organise in a legally recognised manner.

One union which has moved into attempting to represent platform workers is *vida*. *Vida* represents workers in the transport and services sectors and was founded in 2006 as a merge of the Railway Workers' Union, the Commerce and Transport Union and the Hotel, Catering and Personal Services Union (Eurofound 2012). The union is the fifth-largest affiliate of the Trade Union Confederation with around 140,000 members. In 2017, food couriers working for *Foodora* founded a works council which was announced by *vida* (Kuba 2017; vida 2017). This was announced as the first of its kind in the world, representing the first works council to be founded for a platform. The goal of the works council was to negotiate agreements on working conditions between the couriers and the management as well as reducing the number of freelance contracts and increasing the number of employment contracts amongst couriers which would entitle *Foodora* couriers to rights such as paid holiday and sick leave.

Vida has also moved to create an organisation targeting persons identified as EPU (*Ein-Personen-Unternhmen*) or single-person companies. This organisation, called 'vidaFlex', offers its members benefits such as financial assistance, legal protection, and accident insurance (De Groen et al. 2019). The Austrian Chamber for Labour and the Trade Union Confederation are partners to *Faircrowd.work*, which was set up in 2017 by the German union *IG Metall* and 'collects information' about platform workers whilst acting as a form of watchdog by creating a ratings-based system for various platforms (Faircrowdwork 2017). Ultimately, however, it has been made difficult for platform workers to officially organise due to the ambiguous nature of their employers.

4.1.6 - Conclusion

Although there is evidence to show that platforms are able to perform as they do in other countries, namely by employing workers on a non-employee basis in order to avoid high labour costs, it is clear that due to the institutions in place in Austria, platform workers and their organisations have avoided the use of the courtroom in order to attain basic protections. The tradition of works councils have now been extended to platform workers, as seen in the case of *Foodora*, and traditional unions such as *vida* have moved to represent platform workers. Additionally, platforms such as *Uber* and *Mjam*, are members of Austrian Economic Chamber, meaning that disputes over wages and working conditions are resolved before either striking or

court action is required. Due to the institutions in place and strength of the unions in Austria, platform workers' associations have been able to represent platform workers. Nevertheless, there still exists gaps within the regulatory framework in representing platform workers, leaving many left out of bargaining agreements.

4.2 - United States

4.2.1 - Industrial Relations Context

The United States is classed as a liberal market economy in terms of industrial relations due to its low trade union density (10.1%) and its limited collective bargaining coverage (OECD 2020). The labour movement itself is split between craft and industrial unions, which are then organised at the national, state, or local level, representing workers in matters such as terms of employment, determining wages and advocating for benefits (Eurofound 2014). The National Labour Relations Act (NLRA) determines that the union selected as a bargaining representative then represents all of the employees under the unit whether part of the union or not. In the US, unlike in countries such as Austria, firms do not use employer organisations in order to advance their own interests.

There exist several national trade federations which are organised in order to represent the interests of workers in the US, the largest being the American Federation of Labor and Congress of Industrial Organisations (AFL-CIO). The AFL-CIO represents 11 million workers, within which the national unions themselves are organised across industry or trade and represent workers in sectors such as education, services, food and commerce workers and manufacturing. There exist no works councils such as in Austria as they are not authorised by any national or state laws. Collective bargaining agreements are negotiated at the company and sectoral level between companies and the unions. The agreements themselves are then legally binding on the company, the union and the workers and will expire under the terms of the agreement itself (Eurofound 2014).

Influenced by the research of economics and economic theory from the Chicago School, the US went through a period of deregulation which aimed to promote competitive pricing and the benefits of a free market. Industries such as transport, infrastructure and manufacturing were deregulated, whilst many unions objected (Derthick and Quirk 1985). Unions were seen as standing in the way of the economic strategy of the US administration and their power was curbed by the Reagan administration of the 1980s along with business regulations. American businesses began to develop a set of effective strategies to rid themselves of existing unions and prevent new ones from being developed, which was supported by the prevention of

the passing of any new labour laws which would aim at rebalancing the playing field to help organised labour (Rosenfeld 2014).

4.2.2 - Platforms

Many of the platforms we regard as household names, such as *Uber* or *Amazon*, were established in the United States, and found fertile ground due to low transactions costs and a flexible labour market. The strategy of such platforms is similar across the world: employing workers as self-employed, independent contractors for a small price with little or no protections such as healthcare insurance or minimum wage. By classifying their drivers as self-employed, *Uber* have avoided an increase of up to 30% in terms of labour costs (Barkan 2019). The number of individuals involved in the platform economy in the United States is substantial, with some estimates of 53 million people taking part in any capacity, around 34% of the US workforce (SIA 2019). Contingent workers are attracted by factors such as flexibility, supplemental income, and independence.

Platforms in the United States are able to set the terms of wages, working conditions and the terms of labour whilst maintaining the stance that their workers are in fact individual businesses, and that they themselves are purely go-betweens. *Uber*, for example, has maintained that they are distinct from other firms and their structures due to the decentralised nature of their operations. Nevertheless, platforms in the US still maintain a high level of control and are seen by Tomassetti (2016) as simply another step in the trend towards the separation of a company from its corporate form. The current administration in the US has supported the business model of platforms and has ruled in favour of platforms classing their workers as independent contractors as a continuation of the conservative policy agenda of the 1980s (Barkan 2019).

4.2.3 - Legal Context

The United States Department of Labor (DOL) also stresses the importance of economic dependence as key to identifying whether an individual can be classed as either an employee or independent contractor. The DOL identifies six factors in making this analysis are:

- The nature and degree of the potential employer’s control;
- The permanency of the worker’s relationship with the potential employer;

- The amount of the worker's investment in facilities, equipment, or helpers;
- The amount of skill, initiative, judgement, or foresight required for the worker's services;
- The workers opportunities for profit and loss;
- The extent of integration of the worker's services into the potential employer's business. (Pasternak 2019).

Employees are identified and distinguished by the existence of an employment contract (collective bargaining agreement) or employment-at-will. The latter can be freely terminated by either party involved in the contract as long as federal, state, or local law is not violated (ICLG 2020). Officially, the general rule as to whether an individual can be defined as an independent contractor is that if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done (IRS 2020). The Internal Revenue Service (2020) claims there are three factors in determining the degree of control and independence: Behavioural (does the company control or have the right to control what the worker does and how the worker does his/her job), financial (are the business aspects of the worker's job controlled by the payer), and the type of relationship (are there written contracts or employee-type benefits).

There is no clear set of guidelines written into US labour law which can determine a worker as either an employee or an independent contractor, simply that some factors in the relationship between worker and employer may be more relevant depending on the situation. This is as ambiguous as it sounds and has meant that platforms in the United States have been able to use this to their advantage (Van den Bergh in Daugareilh et al. 2019). In the United States workers will often resort to *class action* in which a lawsuit is filed collectively and represented by a member of that group. Ultimately, the US is both politically and culturally diverse and each state will have both different laws and a different approach to the platform phenomenon (Van den Bergh in Daughareilh et al 2019).

4.2.4 - Regulatory framework

Within US labour law there exist several tests in order to determine whether a worker is an employee or self-employed. Due to the decentralised nature of US labour law

this is highly dependent on the law at the state level. Nevertheless, many of these laws are in fact very similar, such as the *Borello* test which lists a certain number of criteria which can be used by a judge in determining the status of a worker. This includes factors such as whether the worker is involved in another occupation, whether or not they supply their own tools needed to complete the work or whether the work itself requires a particular skill (Van den Bergh in Daugareilh et al. 2019). This has been applied in cases such as the *B. Barbara Berwick v. Uber Tech.* in 2015, in which it was found that B. Berwick was in fact an employee under California labour legislation due to the fact that the platform was in control of the tools needed for work as well as the factor that drivers were paid at a rate set unilaterally by the platform. A similar ruling was found in New York, applying a 'right to control' test in which it was found that *Uber*'s technological interface was found as a substitute for traditional managerial functions (Van den Bergh in Daugareilh et al. 2019).

In 2010, plaintiff strawberry pickers in California sued their employer for unpaid wages under the Californian Labour Code, in which the definition of an employment relationship was changed and contained three new definitions: to exercise control over the hours, wages or working conditions, to suffer or permit to work, to engage, thereby creating a common law employment relationship (Foxrothschild 2019). This was used in the case of *Dynamex Operations West Inc v. Superior Court*. *Dynamex Operations Inc. Dynamex* is a nationwide courier and delivery service offered to the public and established businesses. Customers deal directly with the company and the company sets or negotiates the prices of its services (LexisNexis 2018). Drivers are paid a flat fee or percentage of the price that *Dynamex* negotiates. In the case, *Dynamex* argued that on the *Borello* test could be used in determining whether their workers were in fact employees; however, the court found that the 'suffer or permit to work' test was too vague in order to be taken literally. In order to impose stricter requirements for employee classification, a three part test, commonly known as the "ABC" test, replaced *Borello* and puts the burden of proof on the employers to show that a worker is in fact an independent contractor by having to fulfil three conditions: that the worker is free from control of the hirer in connection with the performance of the work, that the worker performs work outside of the usual course of the hiring entities business, that the worker is engaged in an independently established trade.

This was codified into Californian Labour law by the Californian Senate in 2019, making it far harder for platforms such as *Uber* and *Lyft* to classify their workers as independent contractors. Similar to other countries, employees are then able to access basic protections such as minimum wages and medical insurance. Independent contractors do not qualify for protections under the Fair Labor Standards Act, Americans with Disabilities Act, or the Civil Rights Act, which could if platform workers are now able to prove they are in fact employees. This bill, known as *AB5*, will additionally mean that platform workers could potentially form unions as under US jurisdiction, independent contractors are not covered by collective bargaining agreements and cannot officially organise. In May 2020, using the AB5 bill, California Attorney General, Xavier Becerra, was able to sue *Uber* and *Lyft*, claiming that these platforms had indeed misclassified their workers (Feiner 2020). Becerra was then joined in the lawsuit by attorneys from San Francisco, Los Angeles, and San Diego. The bill has the potential to be extended to other states in the US, which is already in use in New Jersey, Massachusetts and Connecticut and is currently under consideration in Washington (Smith 2019).

4.2.5 - Unions and Organisation

As previously addressed, independent workers in the US are not permitted to officially join trade unions and are not covered by collective bargaining agreements, leaving many platform workers outside of the regulatory framework. Due to this 'legal vacuum', a number of so-called 'quasi-unions' have sprung up in the United States: groups which cannot collectively bargain over working conditions but can put pressure on platforms to improve working conditions (Vandaele 2018; Van den Bergh in Daugareilh 2019). Organisations such as *the Freelancers Union* or *Working America* have been set up in order to offer services to platform workers such as lobbying, protests and meetings. The *Independent Uber Guild (IUG)* was set up in 2016 in New York, aiming to represent *Uber* drivers and improve relations between drivers, platforms, users, and public authorities.

Many of these groups, however, are highly experimental and cannot operate in the traditional ways in which a standard union would. Nevertheless, these groups operate within the institutional constraints in order to represent platform workers. For example, the quasi-union *Gig Workers Rising (GWR)* was set up aiming to assist platform workers by organising meetings, listening sessions, protests, and actions.

Additionally, *GWR* supported drivers organising a national day of action after the preliminary hearing during the passing of the AB5 bill, organising a 3 day caravan from Los Angeles to Sacramento, and was described as being one of the main forces behind moving the legislation forward (Paulas 2019). If, under the bill, more platform workers are deemed as employees they will be able to form official unions and quasi-unions which have previously remained outside of the regulatory framework could be classed as official unions and engage in collective bargaining. Nevertheless, it must be emphasised that even if official union recognition is open to platform workers, the constraints that still remain for traditional forms of unionism in the United States mean that the effects of union representation could still be limited.

4.2.6 - Conclusion

As in many other countries around the world, platform workers have found it difficult to attain basic forms of protection such as minimum wages or healthcare insurance due to their status as independent contractors. However, the passing of the AB5 bill is monumental in the step towards entitling platform workers in the US and represents the adaptation of platform workers' associations to the institutional constraints, as seen with the involvement of *GWR* in the passing of the bill. What is also clear is that due to the deregulated nature of the economy in the United States, platforms have been able to benefit from the lack of regulation in the sector itself, meaning that in order to gain a certain level of rights platform workers and those representing them have been forced to go through the courtroom. However, although there have been successes in the courtroom and many platform workers may see greater access to basic provisions, the falling rates in union membership and anti-union laws in place may mean that the impact of traditional union representation may still be limited.

4.3 - United Kingdom

4.3.1 - Industrial Relations Context

Although the United Kingdom is defined as a liberal market economy by Hall and Soskice (2001), it has a relatively higher trade union density than other LMEs at 23.4%, far higher than in the United States (10.1%) or Australia (13.7%), despite their both being LMEs (OECD 2020). Similar to the case of the United States, the UK went under a process of deregulation and hyper-privatisation during the 1980s and 90s, leading to dramatic declines in trade union membership. The Trades Union Congress (TUC) is the only trade confederation in the UK, of which the largest members are *Unite*, *Unison* and *General, Municipal, Boilermakers (GMB)*. Additionally, collective bargaining takes place at the company or establishment level. Unions are the main representatives in the workplace in the UK and must be recognised by the employer in order to collectively bargain (Fulton 2013). However, collective agreements are not legally binding and only 26% of workers are covered by collective bargaining (OECD 2020).

Collective bargaining mostly takes place with local union representatives and either the individual employer or an employers' association if it takes place at the industry level. Collective agreements usually run for the period of one year and will cover all aspects of pay and conditions, however recently agreements have given greater flexibility to the employers by linking increases for individual employees to a subjective assessment of their performance (Fulton 2013). Similar to the United States, the UK does not have the structure in place for works councils or any powers given to local union organisations in order to represent all employees. A workplace employment relations survey (van Wanrooy et al. 2013) found four means of representation for employees in the UK: "recognised union" representative, otherwise known as a shop steward, non-union on-site representatives, joint consultative committee (constituted by managers and employees involved in consultation), and a stand-alone non-union representative (Fulton 2013). It is unlawful for companies to victimise those who are members of trade unions, including unfair dismissal for being a trade union member.

4.3.2 - Platforms

The UK is home to the largest online food delivery market in Europe, with a total market value of £4.2 billion, five times the size of second-placed Germany (Iqbal

2020). *Deliveroo* and *UberEats* represent the largest platforms in this market, hiring a large number of workers under flexible terms of employment, complimented by the UK's flexible labour market. Additionally, the personal transportation platform, *Uber*, and the courier company *Hermes* have benefitted from the UK's liberal market economy operating across the country. Tamlin Magee (2016) argues that the strategy of platforms in the UK is to entice workers with the promise of decent pay and flexibility. When there are a sufficient number of workers involved it becomes a buyers' market and platforms are able to apply downward pressure on wages. This occurred in the case of *Deliveroo*, whose workers were previously paid at a rate of £7 an hour, with an extra pound per delivery. This was then changed to a new system in which drivers would solely receive £3.75 per delivery, which was claimed by *Deliveroo* to enable 'flexibility' and that workers would be receiving even more than before, when in reality workers would have no guaranteed income and would be competing with one another for the same delivery jobs (Magee 2016).

Ultimately, this system which has been employed by platforms in the UK has meant that the labour costs for groups such as *Deliveroo* have remained low, strengthened by the fact that many of the UK's platform workers are classed as self-employed with no access to minimum wage or sick pay. Additionally, due to many of these platform workers remaining outside of the regulatory framework, platforms have been able to victimise their workers liaising with trade unions by deactivating them from the app (Cant 2017). During the 2020 Coronavirus crisis, *Hermes*, which hires around 15,000 self-employed parcel couriers, only paid their workers £20 per day who need to self-isolate, but only to those who typically earn less than £90 per day, meaning that almost half its workers will receive nothing (Booth 2020). Due to the deregulated nature of the UK's economy, companies have been able to maximise profits, with *Hermes* making £29m and *Deliveroo* £476 million in 2018.

4.3.3 - Legal Context

The relationship between employer and employee in British labour law is, on paper, similar to that of both Austria and the United States in that it relies on the contract of employment. There are certain criteria which are necessary for a contract of service to exist which focus on the contractual obligations between employer and worker. Luke Mason (in Daughareilh et al. 2019) identifies two core additional requirements for a contract of service to be present: 'mutuality of obligation' (the obligation for the

employer to provide work and a correlative obligation on the employee to accept that work) and ‘personal obligation’ (a ‘substitution clause’ which allows the worker to send someone else to do the work, which can also be seen as incompatible with employee status). There is a binary approach to the classification of workers in the United Kingdom, that of ‘workers’ and ‘employees’. Workers have the right to the national minimum wage, paid holidays, maximum working time regulation, and protection against discrimination, whilst employees additionally enjoy protection against unfair dismissal (Countouris and De Stefano 2019).

In terms of tax and social security, there exists a binary divide between employment and self-employment, with workers who are not classed as employees being treated as self-employed. Historically, those who had been seen as operating outside of the scope of contract were automatically deemed to be independent contractors under a ‘contract of services’ which operates outside the protection of labour law (Mason in Daugareilh et al. 2019). The classification of ‘worker’ can also be seen as an intermediate category, defined by UK labour law as an individual who works under either a contract of employment or ‘any other contract whereby the individual undertakes to do or perform personally any work or services for any other party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual’ (Employment Rights Act 230a 1996). Before the emergence of the platform economy, many independent workers in professions such as journalism, graphic designers, and translation, have faced these issues before. Nevertheless, the British legal system has been known to take a ‘soft’ approach to written contracts, looking beyond the wording and considering the genuine contractual expectations of the parties involved. Thus, the social realities of contractual obligations are considered far more than in other legal contexts, leading the courtroom to be one of the most important sites of contest in terms of platform economy regulation in the United Kingdom.

4.3.4 - Regulatory Framework

UK Labour law considering the employment status of workers mostly rests upon the Employment Rights Act (ERA) of 1996 which defines an ‘employee’ in order to constitute which workers receive individual employment protections. The ERA defines an employee as ‘an individual who has entered into or works under […] a contract of employment’ (Legislation.gov.uk 1996). The focus of British labour law is

on the contractual obligations of the two parties, in which it is important to define what that contractual obligation actually is. There exists a number of factors in order to determine whether there is a contractual obligation. These include the level of business risk taken on by the worker, the level of control the employer exercises over the person's work, renumeration in exchange for work (Mason in Daugareilh et al. 2019). Additionally, there must exist 'mutuality of obligation' meaning that there must be an obligation on the employer to provide work and a correlative obligation on the employee to accept that work. There must also be a personal obligation to work, meaning that if there is a 'substitution clause' in the contract in which another worker can perform the work in their place then an employee status cannot exist.

All of these factors mean that bringing in legislation to cover the minimum rights of platform workers by applying employee status to them is extremely difficult. All of those who do not fit into these criteria are automatically defined as independent contractors, leaving them without basic minimum protections such as unemployment benefits or health insurance. Some have argued that the categorisation of those working in the platform economy as 'workers' would be beneficial as it would entitle platform workers to basic parts of employment protection such as the National Minimum Wage, protection against discrimination, working hours and annual holidays (De Stefano 2016). This is seen as a more flexible, intermediate category which would allow those representing platform workers to operate within the regulatory framework rather than attempt to define new categories of workers.

In 2018, a tribunal in Leeds found that drivers of the delivery company, *Hermes*, should be defined as 'workers' rather than self-employed, entitling them to minimum wage and holiday pay as well as the ability to reclaim unlawful deductions from their wages if they had previously been classified as self-employed (Siddique 2018). This was developed in 2019 as the GMB union came to an agreement with *Hermes* for an opt-in guaranteed earning and holiday pay scheme called 'self-employed plus' (Freedland and Dhorajiwala 2019). This represents the first deal of its kind in offering an additional and unique category for platform workers and allows couriers to individually negotiate pay rates that allow them to earn at least £8.55, around minimum wage, as well as having full representation from the GMB union. This approach has been promoted by some as an effective means of protecting platform workers (Visser 2019), whist others (Aloisi 2016; De Stefano 2016) argue that the

notion of employment does not need to be redefined but the existing regulations need to be adapted where and as needed. Nevertheless, this reflects the strategies undertaken between unions and platforms to work outside of the regulatory framework as the existing laws do not apply to platform workers.

4.3.5 - Unions and Organisation

As the UK labour law system relies upon an ideology of 'collective laissez-faire', or a form of collective regulation of the terms of employment without the intervention of the law, regulation of platform work mostly relies upon social pressure which platform workers can exert on the platforms (Mason in Daugareilh et al. 2019). Similar to the situation in the United States, many workers are not permitted to collectively organise and bargain due to their remaining outside of the regulatory framework. Thus, similar to groups such as *the Freelancers Union* in the US, quasi-unions have sprung up in order to organise industrial actions as well as assist workers wishing to bring cases before courts.

As previously addressed, *Deliveroo* changed their payment structure from an hourly rate to piecework, leaving the majority of drivers with no guaranteed income. Additionally, any couriers whose equipment was broken, meaning they could not work at all, would not be compensated or given any insurance, meaning workers have to pay for their own repairs and suffer losing wages. Couriers then proceeded to undertake a 'wildcat' strike, a strike without union authorisation as representation was not available to them due to their self-employed status (Poon 2018). The *Independent Workers' Union of Great Britain (IWGB)*, which was set up to support low wage and immigrant workers, attended the strike and opened up a new branch specifically for couriers. The IWGB can be seen as an example of a grass-root, or quasi-union, which undertook a more dynamic and cooperative model in pushing for fairer pay than traditional collective action.

Concessions were made by *Deliveroo*, guaranteeing pay for peak hours and allowing driver the option to opt-in to the new payment scheme (Magee 2016). The IWGB has since attempted to attain formal union recognition and has taken a geographic approach to organising workers in London by delineating job sites by delivery zones built into Deliveroo's app (Visser 2019). Due to the contextual limitations, it is very difficult for platform workers to officially organise and gain union support, but quasi-

unions have been effective in having a degree of workplace bargaining power due to, in the case of *Deliveroo* drivers, the disruptive capacity of on-demand workers (Vandaele 2018).

Some existing unions in the UK have moved to represent platform workers, an example being the GMB union. The union itself covers a wide range of different industrial sectors such as retail, schools, social care, and local government. In 2016 GMB assisted two *Uber* drivers who were attempting to prove their classification as 'workers' instead of self-employed in order to entitle them to a minimum wage, paid holiday and sick leave (Chakrabortty 2016). This case was challenged by GMB on behalf of the drivers at a London employment tribunal, where it was eventually found that were in fact workers, with the tribunal finding that 'the notion that *Uber* is a mosaic of 30,000 small businesses linked by a common 'platform' is to our mind faintly ridiculous' (Raychaudri 2016). As previously discussed, GMB also assisted the *Hermes* couriers in attaining the 'self-employed plus status'. Nevertheless, all action taken place by either official or non-official unions in regard to platform workers remains unofficial and outside the regulatory framework, confined to assisting workers in court matters or in unofficial striking rather than official collective action. Until either platform workers are reclassified as employees or the law is extended to include platform workers as a specific category, official industrial action and collective bargaining cannot take place.

4.3.6 - Conclusion

The UK's response to the platform economy has been characteristic of its general employment policy since the 1980s: a general acceptance of the industrial changes and selective deregulation of the labour market (Mason in Daugareilh et al. 2019). This has meant that, similar to the situation in the US, platforms in the UK have had relatively free reign in their strategies, hiring a large amount of self-employed with little regard for offering basic securities. Nevertheless, recent court actions and involvement of both union and quasi-union assistance has been relatively successful, whilst operating outside of the regulatory framework. Similar to the United States, as bargaining cannot take place between actors officially, issues regarding the protection of platform workers must be taken to the courts, where the greatest amount of progress has taken place. The larger presence of trade unions in the UK, when compared to an LME such as the US, has meant that they have played a

relatively important role in representing platform workers in the courtroom where they can have the greatest effect.

Chapter 5 - Discussion

Case	VoC	Industrial Relations	Platforms	Regulatory Framework	Unions and Organisation
Austria	CME	High trade union density; High collective bargaining coverage; Bargaining agreements mostly occur between institutional bodies	Some platforms are members of *WKÖ* and bound by sectoral agreements	Independent contractors are not covered by bargaining agreements; Self-employed do receive social security	Involvement of traditional unions; works council created in case of *Foodora* couriers
United States	LME	Low trade union density; Low collective bargaining coverage; Highly deregulated economy	Benefitted from deregulated economy; High degree of control; Large number of non-employee contractors; Not bound by collective agreements	Dependent on state law; *AB5* bill entitles many platform workers to employee status; Potential to be extended across country	Involvement of 'quasi-union' organisations; Little to no involvement from traditional unions
United Kingdom	LME	Higher trade union density than other LMEs; Low collective bargaining coverage; Highly deregulated economy	Benefitted from deregulated economy; low transaction costs due to large number of non-employee contractors	Independent contractors are not subject to any minimum rights; *Hermes* and *GMB* deal expands definition of employment, but remains outside of the	Involvement of 'quasi-union' organisations; Some involvement from traditional unions

	regulatory framework

Table 2

In each of the cases analysed, there are a variety of similarities and differences when the strategies of actors are considered, as shown in Table 2. One of the leading factors for the precarity of platform workers clearly lies in their position outside of the regulatory framework due to their classification as self-employed rather than as employees. The general proliferation of non-traditional and contingent employment relationships has been the catalyst for the exponential growth of platforms. This has offered workers the opportunity to receive an income with little to no training costs and significantly few barriers of entry into the labour market (Dokko et al. 2015). However, this has meant that for many platform workers who rely on platform work, access to basic protections such as minimum wages, health insurance or holiday pay is extremely difficult, which can be observed across all cases. With the rise of the number of individuals relying on the platform economy as their main source of income, there is the potential for large quantities of workers who remain without basic protections.

In Austria, the US, and the UK we can observe how workers have remained outside of the regulatory framework. Nevertheless, in the US and the UK it is clear that those representing platform workers have attempted to challenge and change the existing regulations to incorporate these workers. In Austria platform workers have been able to push for and gain access to rights due to institutions such as the *WKÖ* and works councils. Due to the lack of such institutions and the culture of social partnership in the US and UK, those representing platform workers have been forced to directly challenge the existing labour law, as seen in the 2018 Employment Tribunal of *Hermes* and the passing of the *AB5* bill.

The existence of ‘quasi-unions’ can be observed in the cases of the US and the UK, yet not in Austria. ‘Quasi-unions’ have been set up as many platform workers cannot attain union representation due to the regulatory constraints. These organisations can be observed to be acting outside of the regulatory framework and operate by supporting and working alongside platform workers rather than officially representing them. From this analysis, ‘quasi-unions’ appear to exist when workers cannot both

achieve rights before collective action is needed *and* when they cannot be formally represented by official trade unions. In the UK, we can observe both 'quasi' and traditional unions attempting to represent platform workers, possibly due to the larger trade union density than found in other LMEs.

5.1 - Alternative factors

Other factors can be observed when considering what the strategies of actors in the platform economy are and how they manifest themselves. Ideology is a factor which is present throughout this analysis and is closely tied with the presence of institutions. Social partnership is the result of the exchange of economic and socio-political interests in Austria and has resulted in both the implementation of an ideology of balancing the interests of workers and employers. National federations such as the *ÖGB* and the *WKÖ* are the result of the cooperation between actors and can attest to the fact that strikes amongst platform workers and court cases involving the platform economy simply do not occur. Instead, platforms such as *Mjam* and *Uber* are members of the *WKÖ*, whilst the institutions themselves have taken an active interest in assisting platform workers, as seen with the involvement of the *AK* and *ÖGB* in the *Faircrowdwork* project.

As was discussed in the case of the US, due to ideological beliefs held by the President of the US, there has been no intention to provide basic protections or employee status to platform workers as it would be seen to increase labour costs and affect effective competition (Reich 2019). However, this ideology did not start with the current administration and the promotion of the way in which the platform economy operates was championed by many Democrats who gave tax breaks to platforms and oversaw the rapid growth of the number of independent contractors working in the market during the late 2000s and 2010s (Barkan 2019). Additionally, institutions such as the National Labor Relations Board as well as the US Department of Labor have determined in their own investigations that *Uber* drivers are independent contractors (Spiggle 2019).

In the UK it is unclear of the extent to which ideology has influenced the strategies of actors in the platform economy. The former Conservative Prime Minister, Theresa May, spoke in 2017 in relation to the platform economy that it was important to make sure "all work is fair and decent" (Mason 2017). This was based on the *Taylor Review* which highlighted the difficulties associated with the protections of platform

workers. However, this did not lead to any legislative changes which deal with platform-based models of work, meaning that actors have had to operate with the existing legal framework. There is a clear ideological divide over support for new forms of platform worker organisations, with groups such as the *IWGB* gaining support from politicians on the Left of British politics, such as former Labour leader Jeremy Corbyn, John McDonnell and Andy Burnham (Hale 2014). Ultimately, the globalist and neoliberal tendencies of governments in the United Kingdom since the 1980s have given platforms in the UK the freedom to implement their business model.

Across the three cases we can observe how ideology has impacted the strategies of platform workers, with the Austrian model of social partnership encouraging dialogue between actors has meant that industrial or legal action in regard to the platform economy has not occurred. In contrast, the US and UK model of deregulation enforced by decades of neoliberal policies enforced by successive administrations has led to greater conflict between actors, meaning industrial and legal action has taken place on a far greater scale.

Chapter 6 - Conclusion

The results of this thesis show that in each of the cases analysed, the actions of those involved in the platform economy in terms of on-demand workers are highly reliant on the institutions in place. In Austria, the tradition of works councils have carried on in order to represent platform workers, whilst industrial disputes within many platforms are able to be resolved before industrial action is needed, which also explains why there have been no recorded court cases in Austria regarding the precarity of platform workers. In the United States and the United Kingdom, however, these avenues were not available to unions, meaning that other means such as court cases and quasi-unions were required in order to attain minimum protections for platform workers. One factor which remains constant throughout this thesis, which can be found in a CME such as Austria and LMEs such as the US and the UK, is that platform workers remain left out of the regulatory framework. Due to the institutional constraints, those representing platform workers have attempted to use the court system to include platform workers into the regulatory framework by proving that such workers are indeed employees. Nevertheless, this has not occurred in Austria due to the coordinated nature of the economy, meaning that actors representing platform workers do not need to sue platforms or carry out industrial action in order to gain basic protections.

This thesis provides an analysis of the platform economy from an institutionalist perspective, using theory which is often left out in literature regarding the topic. Nevertheless, this analysis was kept down to three cases, which may limit the extent to which the findings can travel. This thesis shows that institutionalism is just as relevant in the case of the platform economy as it is with different forms of economic activity and should not be disregarded in future research. If research concerning the platform economy can be extended within the scope of institutional analysis, I would expect similar findings across LMEs and CMEs.

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