

An Analysis of J.R. Commons's Changing Views on the Role of Sovereignty in the Political Economy

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ABSTRACT

This study distills the economic and current significance of John Rogers Commons's political economy. It compares descriptions of three main works that discuss “sovereignty”—namely, *A Sociological View of Sovereignty* (SVS), *Legal Foundations of Capitalism* (LFC), and *Institutional Economics* (IE); we find that the role of sovereignty in his theory changed dramatically. First, in the period from SVS (1899–1900) to LFC (1924), the behavioral principle of sovereignty changed significantly from the standpoint of natural rights, which implies the permanence of privileged customs, to the “pragmatic philosophy” of the courts. Second, in the IE manuscripts (1927–8), sovereignty is a perspective highly capable of explaining socioeconomic systems. Additional descriptions between the time of the IE manuscripts (1927–8) and that of IE (1934) emphasize the importance of the “function” of sovereignty in pragmatic investigations of economic disputes. Here, we distill the economic and current significance of IE. First, value theory (which constructs values institutionally and collectively) analyzes sovereignty and joint evaluations, and not by looking fixedly at labor value or utility. Second, sovereignty is inseparable from an analysis of economic transactions. Third, this study shows the elements of a “deliberate space” in which sovereignty and economic interests act in concert.

Keywords: J.R. Commons, sovereignty, entity, process, function

JEL Classifications: P160, P110, B000

1 Introduction

In recent times, “sovereignty” has been considered an issue of political economics. The term “sovereignty” refers to superiority or supremacy over a person or organization. Théret (1992) suggests that when we discuss markets and economic transactions, we cannot discard sovereignty or deal with it as an exogenous condition. In saying so, he focuses on the work of John Rogers Commons

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(1862–1945) and arrives at a systematic economic theory relevant to sovereignty. Commons is said to be one of the founders of American Institutionalism. He intensively discussed sovereignty in three works that can be read as principles of economics: *A Sociological View of Sovereignty* (SVS; 1899–1900), *Legal Foundations of Capitalism* (LFC; 1924), and *Institutional Economics* (IE; 1934). The third of these is his chief work, in which he undertakes a comprehensive analysis of political economy.

Despite these works being complicated and difficult to understand—as recognized even by Commons himself (IE, p. 1)—some researchers have more recently begun to reevaluate them. Dutraive and Théret (2013) point out the significance of SVS in a discussion of sovereignty as a “process” that changes as privilege and intermediate institutions control violence (see also Chavance, 2011, p. 34). Medema (1998, p. 99) points out the significance of LFC, which discusses how changing evaluations of “reasonable value” by virtue of “judicial sovereignty” has had a profound influence on economic activities. This means that sovereignty is the “central player” of economic systems (Medema, 1998, p. 112). Bazzoli (1999) is of the view that a significant contribution of IE is that it pinpoints the central issue of evolutionary analysis, as well as the decisions of arbitrators in taking collective actions.

From this overview, we notice the following two points. First, a focal point for the research is the role of sovereignty in discussions of institutional change (e.g., Biddle, 1990; Ramstad, 1990, 1993). However, the economic role of sovereignty in Commons's political economy and the current economic significance thereof have not been sufficiently examined.

Second, it is generally known that a comparison of SVS, LFC, and IE “reveals a certain amount of continuity but also the evolution of this author's [Commons's] theory” (Chasse, 1986; Dutraive and Théret, 2013, p. 2). However, what has not yet been established is the point at which the sovereignty discussion developed or the disconnections among these works. Rutherford (1983), Ramstad (1990; 1993), Théret (2001), and Kitagawa (2013, pp. 251–2) seek explanations in LFC that complement Commons's discussions of sovereignty, which reach a peak in IE. Dutraive and Théret (2013) review anew SVS, to draw out the implications of IE. Chasse (1986) and Kitagawa (2013, pp. 263–6) roughly explain changes in Commons's viewpoint from SVS to LFC and IE, while focusing on his experiences mainly between the late 1890s and early 1910s. However, it has not been considered in detail how the code of conduct of sovereign organs changes, or how sovereign organs treat customs and private concerns. In addition, it has not been clarified which points were developed in the intervals between LFC (1924), the booklet (1925), the manuscripts of IE (1927, 1928), and IE (1934). The period between LFC and IE is vitally important to Commons's view of sovereignty, because it was then that a number of key events occurred: the rise of fascism, the Great Depression (1929), and governments' handling of these problems.

To fill these research gaps, this study deconstructs the path Commons took in constructing his own political economy; it does so by focusing on discussions of sovereignty. This study primarily draws out the differences among these works by comparing descriptions of SVS, LFC, IE, and the original manuscripts, and then distilling the current economic significance of discussions of sovereignty.

This study is set out as follows. Section 2 shows how the codes of conduct of sovereignty shifted, by undertaking a comparison of SVS and LFC. Section 3 compares IE and its manuscripts, to show how the place of sovereignty as a principle in Commons's political economy has been defined. Above all, we can confirm that his perspectives as seen in the manuscripts of 1927–8 are not clear; we can do so by analyzing descriptions thought to be written by Commons thereafter. Section 4 provides concluding comments.

2 A comparison of A Sociological View of Sovereignty and Legal Foundations of Capitalism

2.1 Issues of sovereignty

Before undertaking the discussion in this section, we first confirm Commons's definition of "sovereignty," which seems to be highly polished throughout his works. We do so to obtain important perspectives. In IE, Commons says that

Sovereignty is the extraction of violence from private transactions and its monopolization by a concern we call the state.¹ But sovereignty has been looked upon as

¹This study does not target *The Economics of Collective Action* (Commons, 1950) as an object of analysis. The reason is that we cannot assess whether the exceptional description was written by Commons or the editor, K.H. Persons (Commons, 1950, "Editor's Preface"). That exceptional description is inconsistent with the definition that "sovereignty is monopolization of violence"—that is "the state" (Commons, 1950, p. 74; IE, p. 684).

By pluralism is meant, not the American scheme of federal and state sovereignty, but **the sovereignty of occupational groups over their members**, such as labor organizations, capitalistic organizations, or ecclesiastical organizations. They are, indeed, governments, since they are collective action in control of individual action through the use of sanctions. (...) Thus, we have a hierarchy of superior and subordinate governments, instead of a pluralism of equal governments (Commons, 1950, p. 75).

There are two possible reasons for the description, which recognizes these private concerns as sovereign. First, the alien content was introduced in Commons (1950) through the editing process. Compared to LFC and IE, both of which were completed by Commons's own hand, Commons (1950) was edited by Persons and occasionally amended by Commons.

Second, Commons's idea to recognize forces behind such going concerns as sovereignty, without regarding which are state or private concerns, was not expressed in LFC and IE. In fact, Dewey (1894), referred to in SVS (p. 44), views sovereignty in the same way (Dutraive and Th  ret, 2013, p. 9). "All institutions, government included, are sovereignty, the moral or social force, *organized*"

an **entity** as well as a **process**. As an **entity**, it is personified as The State, and seems to exist apart from the people. As a **process**, it is the extraction of the sanction of violence from what had been considered a private affair, and the specialization of that sanction in the hands of a hierarchy of officials guided by working rules and habitual assumptions. Sovereignty, thus, is the changing process of authorizing, prohibiting, and regulating the use of physical force in human affairs. (IE, p. 684)²

Sovereignty, thus, “is the series of transactions going on between officials and the citizens, and between officials and other officials of the same or other state” (LFC, p. 150). It is a process, as well as an entity with control over violence. Sovereignty therefore has an aspect of “entity” and an aspect of “process.”³

In this section, we compare discussions of sovereignty as found in Commons's SVS (1899–1900) and LFC (1924).

SVS considers sovereignty from two perspectives. First, it considers the extent to which an authority makes rules, and second, the extent of discretion in enforcing rules. Commons states there that

In modern constitutions it [**sovereignty**] **exists primarily in the legislature**; but the executive, who ordinarily has no will or purpose of his own and is but the instrument of the legislative will, has also limited discretion in the ordinance power, and is to that extent sovereign. (...) And **the courts**, whose work is mainly interpretative, **do actually create law, and are to that extent sovereign. The people are not sovereign** except where they directly enact the laws, as in the initiative and referendum. Popular election of officials is only an administrative and not a legislative act (...). (SVS, pp. 38–9)

With regard to issues of sovereignty, the following three points are made in SVS. First, sovereignty exists mainly in the legislature. Second, sovereignty of the courts is limited. Third, the people have no sovereignty, save for a few isolated cases.

On the other hand, LFC emphasizes supremacy of the courts—that is, “judicial sovereignty.”

The US Federal Constitution encoded the following point with regard to the relationship between officials and citizens, via amendments in 1791 and

because “the ultimate basis of order (...) is moral” (Dewey, 1894, p. 43). This may be an appealing idea, because it overlaps considerably with M. Foucault's micro-power (Foucault, 1975; Rorty, 1982, pp. 203–11). While the idea is permissible as an analogy, it lacks precision as an idea of economic theory, because it mixes the discussion of sovereignty and power (*cf.*, Dugger, 1996, p. 428).

²*Italic* font indicates a direct quotation, whereas **bold** font indicates emphasis by the author of this study. Text within squared brackets was added by the author to enhance readability. These same rules apply throughout this paper.

³There are two conflicting aspects in the discussion about how to see the state. This study does not discuss the issue, as its purpose is to reveal the process by which Commons's political economy was constructed.

1868. No official can take away the freedom or property of citizens, except in following the “due process of law.” In other words, it refers to “whatever process seems due to the demands of the times, as understood by the judges of the time being” (LFC, p. 342). Under this rule, the Supreme Court obtained the authority to reverse the decisions of federal and state legislatures and executive bodies.

(...) that court occupies the unique position of the first authoritative faculty of political economy in the world’s history, we shall begin with the court’s theory of property, liberty and value. (LFC, p. 7)

Thus, LFC clarifies that courts, as the supreme organ, should be placed at the center of any analysis. In addition, the due process of law is applied not only in relationships between officials and citizens, but also in relationships among officials. Under this framework, the citizens have positive power.

Officials have reciprocal powers, liberties, disabilities and immunities in their relations to each other, and, most important, **the will of the citizen can take advantage of these reciprocal relations in order to assert for himself a share in sovereignty and thus be able to bring the collective power to the support of what he deems to be his own rights and liberties and the corresponding duties and exposures of others. (...)** Citizens obtain not only a negative immunity from the acts of officials, as contemplated in Magna Carta, but also a **positive power** in their own hands to require officials to assist in executing their private will. (...) In this way **the citizens themselves become sovereigns and lawgivers to a limited extent**, and a reciprocal relation is set up between them and officials, partly their own subjection to officials, partly the responsibility of officials to them. (LFC, pp. 105–6)

Thus, we find that Commons’s opinion regarding the existence of the sovereignty of government instruments and the sovereignty of citizens changed. With regard to government instruments, his view changed from stressing “legislative sovereignty” in SVS to “judicial sovereignty” in LFC. With regard to citizens, whereas SVS denies the existence of sovereignty among the people, LFC, in complete contrast, shows that citizens do have sovereign power.

The reason behind this change of opinion is that from 1899 to 1924, he obtained a better understanding of the due process of law, the courts’ interpretation thereof, and precedents set by the courts. His inquiry into the principles of courts is the main reason he developed his discussion of sovereignty (IE, p. 3).

2.2 Relationships between sovereignty and customs

In each of Commons’s works, order and customs are the subjects of analysis, from the perspectives of their relationships with sovereignty and the evolution

of institutions.⁴ For example, evolution from the agricultural stage to the commercial and then the industrial stage can be summarized as follows.

Each stage [is] proceeded by **the evolution of customs and the formulation of customs into working rules by a government.** (LFC, p. 313)

In this section, we compare Commons's opinions in SVS and LFC in terms of the relationship between sovereignty and customs. In this way, we review the following two points. First, SVS argues that sovereignty and customs exclusively relate to the role of maintaining order; however, LFC argues that they complementarily relate to the process of recreating order. Second, LFC shows that sovereignty plays the role of “arbitrator”—that is, an entity that partakes in the process of “artificial selection.”

On one hand, SVS discusses the exclusive relationship between sovereignty and customs.

Custom is the only guaranty of order. Where it does not hold, there caprice governs. But **in the constitutional form of government**, upon which Austin's theory is tacitly based, **order is in some way incorporated in the very exercise of coercion itself.** (...) We are now to inquire into the process whereby **custom has disappeared as the maintainer of order, and coercion itself has become orderly.** (SVS, pp. 40–1)

SVS focuses on “the complete breakdown of custom” and “the subsequent injection of order into sovereignty” as parts of the creation process of constitutional government, based on the work of John Austin.

On the other hand, in LFC (pp. 298–9), Commons's own view derives from the contraposition of Austin's view that “law is *made* by the command of a superior to an inferior” with John C. Carter's view that “law is *found* in the customs of the people.” In short, LFC agrees with Carter, except that Carter does not mention how to distinguish “good” from “bad” customs; this is indeed a defect in his argument. A unique opinion in LFC that compensates for this shortcoming is that good and bad judgments and choices of customs depend on the discretion of officials, including judges. LFC shows that sovereignty and customs hold a complementary relationship for the purpose of securing expectations—that is, order and sovereignty play decisive roles in selecting or approving certain customs.

The binding power of custom is its security of expectations (...) And customs are not fixed from time immemorial but are continually changing and continu-

⁴A definition of institution in IE (p. 73) is “collective action in restraint, liberation, and expansion of individual action.” Organized forms of institution include sovereignty and other going concerns; unorganized forms are customs.

ally being formulated in assemblies or groups while dealing with violations and deciding disputes as they arise. Not until a government is erected above these loose assemblies, and an official class of judges, executives, law givers, or business managers, set to work to deal with violations and decide disputes, do the customs emerge as common law (...) Then it is that approved customs, found in one place, begin to be extended to similar situations found in other places. This indicates conflict, choice and survival of customs, according to the changing political, economic and cultural conditions and governments. (LFC, pp. 301–2)

Judicial sovereignty approves certain customs and screens other competing customs. Judicial sovereignty as “arbitrator”—that is, an “entity”—is a “central player” of “artificial selection” (LFC, p. 376; Medema, 1998; *cf.* Ramstad, 1993).

Compared to LFC, which discusses clearly the role of sovereignty as an aspect of an entity, in SVS, “sovereignty is a ‘process’ of genesis and transformation of social institutions, and of their modalities of control by a sovereignty whose expression varies along this process” (Dutraive and Th  ret, 2013, p. 2). This does not mean that SVS “cuts off” an aspect of an entity; rather, these works take different stands on various aspects, or have different focal points.

Based on the aforementioned comparisons, we know that Commons’s standpoint and arguments with regard to the relationship between sovereignty and customs clearly changed, given his focus on courts being the arbitrators of conflict with respect to customs. In addition, it is important to the formulation of evolution theory that he obtained the idea that “law is *found* in the customs of the people,” by undertaking an intensive examination of the history of common law. According to Commons’s autobiography (Commons, 1934b, pp. 127–8), he gave a joint lecture with Matthew S. Dudgeon, who had profound knowledge of common law history, at Wisconsin University in 1907; this experience had a significant impact on Commons’s thinking. We can thus presume that, on account of preparing this joint lecture, his knowledge of common law was either constituted or fully refined.

2.3 A source of rights

SVS discusses the genesis of sovereignty from the perspectives of “coercion,” “order,” and “rights.” Coercion as it relates to private property becomes an order and a right when property becomes an organizational form of sovereignty. From the perspective of the three “sanctions” of “physical power,” “economic power,” and “moral power,” LFC (ch. III) discusses the historical evolution of sovereignty, in which these sanctions were divided. Although their perspectives differ, SVS and LFC have common characteristics to the extent of finding that coercion is an attribute of “rights” or “justice” (LFC, p. 345; SVS,

p. 109). Yet, with respect to the authority over rights, the writings completely differ. This subsection elucidates the differences and investigates the codes of conduct and processes of thinking about sovereignty that changed between SVS and LFC.

In SVS, the authority over rights is “natural right” or “divine right.” When struggles for survival or over property are overcome by the state’s monopolization and coercion of ethical decisions, the “victor”—that is, the state—“can listen to the still small voice of right” (SVS, p. 59).

If the state, in redistributing coercion among its members, has done so, not merely in the narrow spirit of class dominion, but also in accordance with what may be called **those principles of natural or divine right** existing in the very make-up of society and the universe, then **that society will survive in competition with other societies, as being the best fitted to the plan of the world.** (SVS, pp. 103–4)

In LFC, justice as the authority of public purpose is found in the court—at the hierarchical top of which, in the United States, is the Supreme Court—because “due process of law” means “whatever process seems due to the demands of the times, as understood by the judges of the time being” (LFC, p. 342).

(...) the concept of due process of thinking, to be derived from the reasoning of the courts because they deal with actual cases as they arise and at the same time **seek to explain and justify their opinions in the public interest, is neither a concept of caprice nor of universal reason.** It is **the truly pragmatic process** of inclusion and exclusion of facts as they themselves and other judges have classified them, of investigating and valuing all of the facts through listening to arguments of interested parties. In short, due process of law is the *collective* reasoning of the past and the present (LFC, p. 352).

Thus, justice of the courts does not rest on “a concept of universal reason”—that is, natural right or divine right—but on the process itself, according to which courts reason pragmatically, define “the public interest,” and evaluate facts.

From this comparison, we can see that Commons’s codes of conduct of sovereignty changed. In SVS, sovereignty is decided according to natural or divine right. In LFC, the “pragmatic philosophy of public policy” (*cf.* IE, p. 83), represents the codes of conduct of judicial sovereignty—that is, the principles of investigation of the courts, their valuation of facts, and their choices and decisions. A right is assumed by virtue of being based on this process.

Incidentally, in Commons’s later writing (i.e., IE, 1934), he states that John Locke’s notion of “natural right” is merely an “idea” in Locke’s mind, prompted by the specific customs of his era (IE, pp. 44–5). This criticism stresses the variability of customs and the role of the courts in selecting which customs to uphold.

Hence, the sovereignty codes of conduct that decide ethics, as discussed by Commons, take a leap from the standpoint of natural rights—a concept that implies the permanence of privileged customs (SVS)—to the pragmatic philosophy of the courts, which finds laws in customs at certain times and places (LFC). This change is expected when we consider that Commons’s research background changed from one involving church and social gospel to one involving trade unions and courts (Gonce, 1998).

Thus, by comparing SVS and LFC, we show that a transformation in (or a disconnection among) the codes of conduct of sovereignty occurred between 1899 and 1924. One fundamental reason is that Commons’s notion of the supremacy of government institutions had changed from existing with the legislature, to existing with the courts.

3 A comparison of *Institutional Economics* and its manuscripts

3.1 A place of sovereignty as a principle in *Institutional Economics*

While LFC focuses on the legal foundations of economic transactions, Commons’s subsequent works clarify perspectives that have the capacity to assist in explaining and analyzing modern capitalism. His works are the **booklet**,⁵ **manuscript**,⁶ and **IE**.

We should not see LFC, the booklet, and the manuscripts as separate pieces of research. In 1922, Commons deemed the works as comprising a single production (Dorfman, 1958, p. 406; Rutherford, Samuels, and Whalen, 2008, pp. 223–4). Yet, his viewpoints as seen in descriptions of the works from 1925 to 1934 changed slightly, given the situation at the time of writing and developing his thoughts. We will discuss this in subsections 3.3 and 3.4.

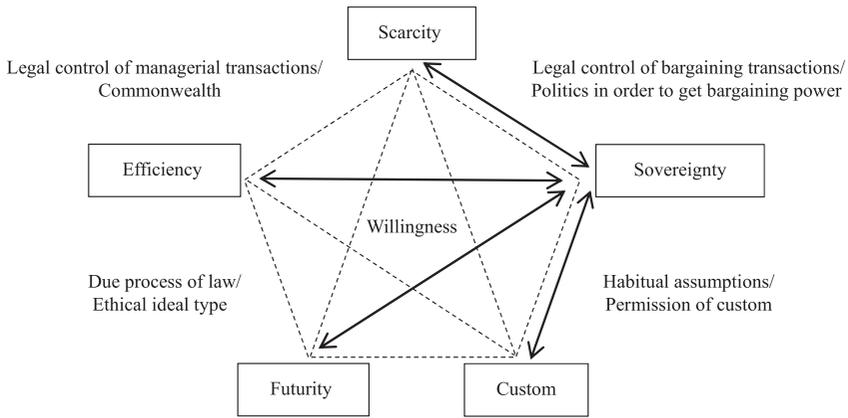
From the booklet, the five perspectives chosen for analysis by Commons are scarcity, efficiency, custom, sovereignty, and futurity. An important point is that any attempt at analysis based on any one perspective will necessarily be influenced by the dominant principles of the other four perspectives. For clarity, we explore these works from the viewpoint that, when analyzing capitalism, principles confirmed in one aspect of sovereignty will naturally influence the others.

The dominant principle composed of the five perspectives (or the five principles), according to the booklet, is “willingness.” Thus, willingness is a “whole principle” that comprises the five “part principles.” With willingness, the “char-

⁵See Commons (1925). For a brief overview and the provenance of this booklet, see Rutherford, Samuels, and Whalen (2008).

⁶See Commons (1927, 1928). For a brief overview and the provenance of the manuscript of 1927, see Uni (2013).

Figure 1. Interdependence of sovereignty as a principle, and other principles constituting willingness.



Source: Compiled by the author.

acteristic motions, distinct from the motions measured in other sciences, are the negotiations and transactions which make up a process of persuasion, coercion, command, obedience, and the accompanying exercise of human energy for purposes extending into the future” (booklet, p. 241; see also Figure 1, below). These are seen in “the changing interdependence of all its limiting and complementary principles” (IE, p. 738).

The viewpoints that Commons takes in analyzing capitalism intertwine with one another on three analytical levels—namely, “concepts,” “social relations,” and “principles.” In this subsection, we confirm the complex relationships as discussed in IE, and provide concrete discussions thereof.

When we consider social relations (2 in Table 1), sovereignty as a principle (3.d, one of the working rules) relates as a limiting or complementary factor to transactions (2.a, b, and c). For sovereignty as social relations (2.e), the principles (3.a, b, c, and d) work as factors. We may translate sovereignty as a social relation, from the perspective of sovereignty that analyzes capitalism, the decision structures of legal control, or the codes of conduct of sovereignty. First, under the following subheadings, we consider sovereignty a part principle and confirm its influence on each social relationship.

1. Sovereignty as a principle in bargaining transactions

The bargaining transaction (2.a) is an economic transaction over scarcity (3.a) when considering four people who are equal in law.⁷ An implication of the

⁷Commons’s scarcity means “proprietary scarcity.” It includes not only corporeal property but also incorporeal property (credit) and intangible property. This intangible value derives mainly from

Table 1. Classification of ideas.
1. According to the Similarity of <i>Objective Attributes</i> (concepts) <ol style="list-style-type: none"> a. Use-values (civilization values) b. Scarcity-values (demand and supply) c. Future values (present discount values) d. Human values (virtues and vices)
2. According to the Similarity of <i>Social Relations</i> (concepts) <ol style="list-style-type: none"> a. Bargaining transactions b. Managerial transactions c. Rationing transactions d. Custom (extra-legal control) e. Sovereignty (legal control)
3. According to the Similarity of <i>Cause, Effect, or Purpose</i> (principles) <ol style="list-style-type: none"> a. Scarcity (bargaining) b. Efficiency (managing) c. Futurity (forecasting, waiting, risking, and planning) d. Working rules (rationing, going concerns, custom, and sovereignty) e. Strategic and routine transactions (volitional control)
Note: Only the numbering has been amended by the author. Source: IE, p. 104.

manuscripts of 1927–8 is that these works concretely clarify the following two points in which sovereignty is involved.

The first point concerns non-payment or non-delivery, as addressed in a contract, and court-enforced payment or performance if there is unreasonable compensation for the services of either party (manuscript of 1928, r. 13, s. 32; Commons, 1932, p. 456). Sovereignty, therefore, lurks in all bargaining transactions as a “fifth party” that carries a physical force (manuscript of 1927, ch. VI, p. 28; IE, p. 242).

Sovereignty eliminates the “duration” of violence from private transactions, by imposing the use of specialist physical force in the hands of the state. In the era of legislative or judicial sovereignty, whether or not physical force is exercised stems not from whim but from certain rules. This is “due process of law,” and it gives participants in transactions the security of expectation.

The second point relates to the working rules that resolve three economic disputes—that is, “competition,” “opportunity,” and “bargaining power” (man-

artificially withholding, selling, or buying properties. It also includes “goodwill,” known as “goodwill of a business, or good credit, or good reputation” and “industrial goodwill.” Proprietary scarcity is a collective and objective value created by a joint evaluation. It differs from the “psychological scarcity” seen in utility value theory. See IE (p. 77, “Liberty and Exposure”; p. 158, “V. Adam Smith”).

uscript of 1927, ch. I, p. 26; IE, pp. 62–3). These rules have been constructed gradually by courts' dispute decisions as they arise. The focal points are shown clearly in Figure 2.

“Competition” is the rivalry between and among buyers (B, B¹) and sellers (S, S¹). “Opportunity” is the set of available alternatives seen by the other side. For example, for B, the opportunity is to pay between \$110 and \$120. “Limit of coercion” is the upper price limit asked by the sellers (\$120) and the lower price limit of goods by the buyers (\$90) (manuscript of 1928, r. 13s. 110; IE, p. 331; see Figure 3 above). From this limit, we can derive the area of injustice. The limit changed in successive periods, as it depends on decisions with respect to disputes.

In the “period of stabilization” beginning in the latter part of the 19th century (manuscript of 1928, r. 13s. 169; IE, pp. 773–88), two sovereign rules were followed that differed from the doctrine of so-called free competition. The first involved the traditional regulation of unfair high prices among sellers (regulation of S, S¹ in Figure 2) and the regulation of cut prices by buyers (regulation of B, B¹). The second involved a reasonable degree of regulation of “concerted action,” by which competition was enforced in cases of destructive competition

Figure 2. Formula of bargaining transaction.

		Economic relations			
Buyers (bid)	\$100 B	Competition (Opportunity)	B ¹	\$90	
Bargaining power (Economic power) • Moral power		Power			
Sellers (asked)	\$110 S	Opportunity (Competition)	S ¹	\$120	

Source: Compiled by the author, based on the manuscript of 1927 (ch. I, p. 15) and the manuscript of 1928 (r. 12, s. 762).

Figure 3. Limit of coercion and range of reasonableness.

Limit of Coercion	}	Extortion	• • •	\$120	Reasonable	}	\$103
		Unreasonable	• • •	\$102			\$107
		Unreasonable	• • •	\$108			
		Confiscation	• • •	\$90			

Source: Compiled by the author, based on LFC (p. 357). Prices are set to align with Figure 2 above, which is also compiled by the author.

and monopoly. These regulations depended not on free, but “**fair** competition,” and “equal opportunity.”

An additional matter important to Commons is “bargaining power.” Conclusions of transactions do not constitute an equilibrium, but rather “joint evaluations” that begin in “conflict” and go through “negotiation.” In Figure 2, on one hand, S chooses B; on the other hand, B chooses S. An element in deciding price is the relative power of economic coercion (bargaining power) and persuasion (moral power). Bargaining power is created through cooperation. Sovereignty permits this collective action, or regulates it, in order to reach “equality of bargaining power.” If a transaction is concluded only through “persuasion,” the conclusion will fall within the range of reasonableness (Figure 3). However, Commons thought it impossible to attain absolute equality of bargaining power. It is not until this due process of law and fair competition—when equality of opportunity and bargaining power are secured by sovereignty—that economic theory reaches a level where there are willing buyers and willing sellers (IE, p. 324).

From this discussion of bargaining transactions, we draw the implication that if these legal foundations were not maintained, so-called market transactions could not be performed. Legal foundations include various coercive methods by which to ensure the performance of participants, and eliminate both physical force from private transactions and unreasonable differences in economic power.

2. Sovereignty as a principle in managerial transactions

Managerial transactions (see 2.b in Table 1) relate to efficiency (3.b), which relates to the input–output ratio. We can infer from the following quotation from the manuscript of 1927 that the point at which legal control relates is the extent of authority that may be exercised by the legal superior in the transaction.

(...) while all disputes arising from managerial and judicial transactions may be brought under the head of the extent of authority which the superior as executive or judge has over the inferior (manuscript of 1927, ch. I, p. 26)

3. Sovereignty as a principle in rationing transactions

Rationing transactions (2.c) are settings of working rules (3.d). Following his manuscript of 1928, Commons clarified that “justification” for private rationing transactions is created through sovereignty (IE, p. 761). As we see later—when discussing “deliberative space” and “enabling act”—sovereignty is the foundation of transactions.

4. Scarcity and efficiency in sovereignty, as social relations

Sovereignty (2.e) attempts to control scarcity (bargaining, 3.a) or scarcity-value (price, 1.b) as externalized consequences; the same goes for efficiency (managing, 3.b) or use-value (1.a). For sovereignty, the amount of use-value is commonwealth (manuscript of 1928, r. 13s. 76); therefore, efficiency is referenced when government justifies its policy.

(...) in England and America, the courts represent the same social standpoint of the economists' theories which we have examined. It is the standpoint which, economically since Ricardo, raises the question whether the shares of the social output going to individuals or classes as the social cost of inducing individuals to contribute, are proportionate to those contributions which those individuals or classes make towards the total output; in other words, **whether private wealth is proportionate to the private contributions to the commonwealth.** (manuscript of 1928, r. 13, s. 119; this text corresponds approximately to IE, p. 339)

Thus, legal control for scarcity is justified, based on efficiency (*cf.* Uni, 2013).

5. Custom in sovereignty as social relations

As we saw in subsection 2.2, sovereignty (2.e) finds laws from the customs (3.d) of the moment (LFC, p. 41). In addition, in the arbitrator's mind, customs are internalized as "habit" (LFC, p. 349) or "habitual assumptions" (IE, p. 687). Thus, custom is both a point of reference and an assumption.

6. Futurity seen in sovereignty as social relations

Sovereignty (2.e) influences the futurity (3.c) of participants. Futurity—that is, their stable expectations—is brought about through the exercise of physical force in line with the due process of law, with the force lurking in all present transactions expected to be exercised in the future, depending on whether participants conform to the rules of economic transactions.

Additionally, futurity is a principle included in the codes of conduct of sovereignty. The term "ethical ideal type" indicates not only a "method of inquiry" in economic science, but also a "method of investigation" with respect to sovereignty. It refers to what the future "*ought to be*"—that is, an "ethical goal" that is found in existing practices and through investigation, and is agreed collectively to be workable (manuscript of 1928, r. 13, s. 32; IE, p. 743). The ethical ideal type gives members certain futurity, which is the expectation of a gain or loss imagined in the future. Thus, establishing an ethical ideal type by sovereignty is an active and deliberate attempt to create workable consensus.

In addition, the expressions "ethical ideal type" or courts' "pragmatic philosophy" imply that the setting of public purposes and the valuation of facts by sovereignty do not detract from specific assumptions inherent in an economic theory (Commons, 1934b, pp. 155–6). If the goal is to deduce from the assumptions of the theory, then real economic sense and historical process are discarded. LFC and IE are negative in relation to external goals not based in reality (IE, p. 102). This attitude differs completely from how SVS sets *a priori* goals, such as "natural right" and "divine right."

Thus, sovereignty as social relations—as an aspect of the "legal control" of principles—also relates to other aspects of social relations. Furthermore, sovereignty (principle) as a component of the whole principle, willingness, is found in "limiting or complementary interdependence" with other part principles. Because this totality constitutes "multiple causations" of part principles, "purposeful" acts of sovereignty are necessarily accompanied by "unintended

consequences” that are unmatched with or unrelated to the purpose (IE, p. 7; Biddle, 1990, p. 30). For example, when sovereignty attempts to control scarcity, sovereignty experiences the consequences of the multiple causations of principles (Ramstad, 1990, pp. 77–82). As Figure 1 shows, relationships among the principles are not of a one-way nature; rather, they are multiple and bidirectional. Changes within each principle bring changes to other principles and the whole of the principle. Therefore, these changes are ongoing (IE, p. 739), and the control of principles by sovereignty also continues in perpetuity.

It should be noted that willingness is integral to myriad transactions. Every transaction—regardless of whether it is characterized as bargaining, managerial, or rationing—is a joint evaluation that starts in conflict, and then goes through persuasion and coercion, command and obedience, and argument and pleading (IE, p. 681).⁸ It is the “joint device” of a choice of a will along with another choice of will (IE, p. 672). Sovereignty has direct effects on rational transactions as a party to the transactions and, as we have seen, indirect effects on the myriad transactions, as a physical force in line with its rules. In addition, reasonable value is integral to joint evaluation. In subsection 3.2, we confirm the place of sovereignty in the process by which reasonable value forms.

3.2 Sovereignty and reasonable value

In the manuscript of 1927, Commons defines “reasonable value” as follows.

Reasonable value, as formed in the practices of courts, juries, commissions, arbitration arrangements, and so on, is a concept of collective action in terms of money, arrived at by consensus of opinion of reasonable men, **in that they are men who conform to the dominant practices of the time** (manuscript of 1927, ch. V, p. 57).

Thus, we understand that, when constructing reasonable value, both sovereignty and custom play important roles. However, in the definition, Commons focuses on the possibility of controlling a value-formulation process; hence, in fact, the value is constructed as being integral to the interdependence of all its limiting and complementary principles—namely, scarcity, efficiency, custom, sovereignty, and futurity (booklet, p. 302, Figure 3). While sovereignty attempts to control the principles, being a limiting factor at the time, it is impossible to control completely because reasonable value is the outcome of “multiple causations.” This study emphasizes the role played by sovereignty in the value-formulation process, but ultimately recognizes it as just one of the principles. It

⁸Even managerial transactions with no bargaining between a “legal superior” and “legal inferior”—such as an employer and employee—are outcomes of the choices made by both participants. Imagine the employee’s alternatives “such as strikes, boycotts, labor turnover, sabotage” (IE, p. 672).

adopts this approach, as previous research has focused on the decisive role of sovereignty in the evolution of institutions (e.g., Biddle, 1990; Ramstad, 1990, 1993).

When we focus on sovereignty, we find that reasonable value is a synthesis denoting the integration of myriad joint evaluations—whether of bargaining, managerial, or rationing transactions—and that it rests on legal foundations. Examples include regulations and permission of sovereignty (see Figure 4 below). In other words, from the viewpoint of collective actions, “reasonableness” refers to the process itself, in which collective actions (including sovereignty) construct working rules, and then reconstruct them according to the consequences (Commons, 1934b, p. 160). Therefore, the contents of reasonableness or consequences as reasonable value depend on the institutions at a specific time and place.

Commons’s main reference for this value theory is judicial precedence. This theory has two significant features.

First, it results in a theory of social reform that differs from the exploitation theory of Veblen and Marx. While this is shown in IE (ch. X, “(I) Veblen” and “(V) Habitual Assumptions”) in an easily understood manner, the essential features are shown in the 1925 booklet and 1927–8 manuscripts.

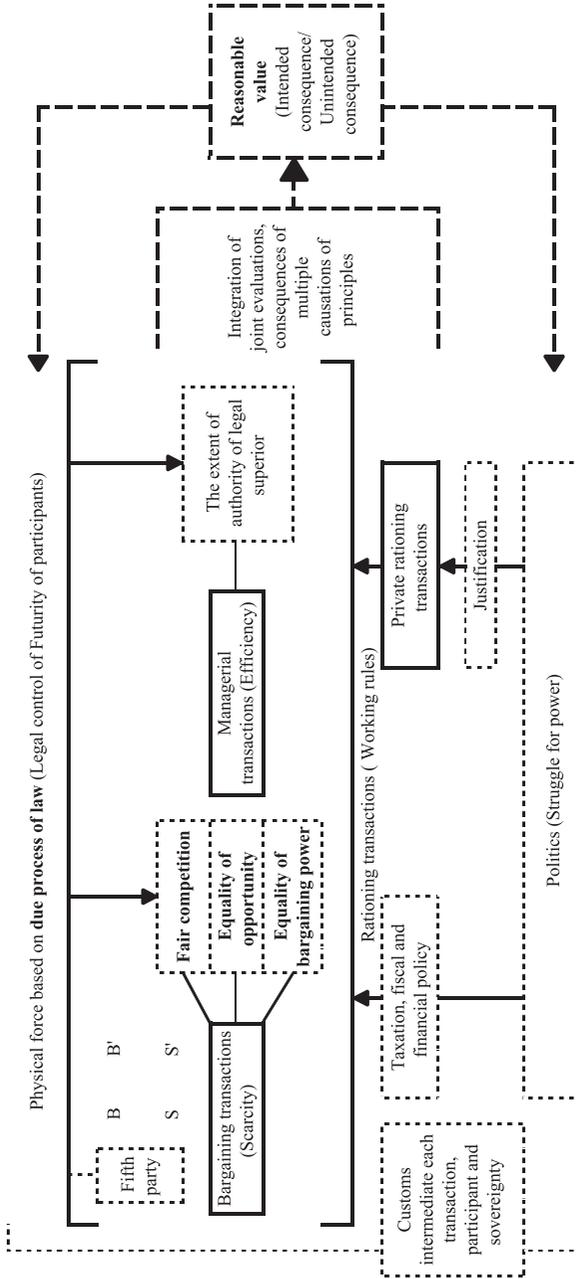
Veblen bundles intangible property as “exploitation” or “hold-up” value from communities by capitalists (IE, p. 650). This results in Veblen’s theory that businesses exploit industry and therefore create “an even greater antagonism than did Marx himself, between the labor process of increasing the nation’s material goods and the capitalistic process of withholding, holding back and putting the laborers out of employment” (IE, p. 658).

While Veblen quotes from “the testimony of industrial and financial magnates” and reaches exploitation theory, Commons quotes from judicial precedent. Thus, Commons starts to construct his theory from the very point at which conflict disappears or, is deterred temporarily, and order is thus brought about. Then, a focal point of his analysis is how to divide intangible property into “goodwill” (bargaining and moral power) and “privilege” (exploitation). A canon of this division pertains to whether it is “reasonable,” according to public purposes. Therefore, the subject matter of institutional economics is, at the level of institutions, about how the “reasonableness” of social reform should be secured institutionally by sovereignty and other collective actions.

At the level of individual will, the focal point of conflict is organizing for bargaining power. Commons stresses that each laborer and capitalist has both “workmanship instinct” and “pecuniary instinct” (IE, p. 661, pp. 672–3).⁹

⁹The reason that Veblen obtains his dichotomy of business and industry and his exploitation theory is that he attributes “the instinct of workmanship” to the personality of the laborer and “pecuniary instinct” to the personality of the capitalist. In addition, he does not refer to precedents of the courts. Commons adopts “habitual assumptions”—which consist of many aspects, including the

Figure 4. A process of creating reasonable value, from the perspective of sovereignty.



Source: Compiled by the author.

Hence, the laborer is a subject not only of managerial transactions, but also of bargaining transactions, such as wage bargaining.

Conflicts pertaining to bargaining power also pertain to the distribution of efficiency gains that are surpluses of the production process. This conflict is widely seen in Marx's *Das Kapital* (1867–94), in which the surplus value of the production process is inevitably exploited by the capitalist (*cf.* IE, pp. 614–8). However, in the reasonable value theory of Commons, collective action is a volitional variable in the distribution of the surplus value. Hence, the reasonable value theory, again, does not give rise to exploitation theory. Its focal points are the historical change of “the evolutionary collective determination of what is reasonable”—in other words, the way of shaping institutions to bring about distributional consequences that align well with public purposes, and voluntary associations to obtain bargaining power.

The second significant feature of Commons's value theory is that he constructs a theory in which values are generated collectively. The labor value theory or utility value theory starts from an intrinsic value contained in labor or individual psychology. In contrast, the reasonable value theory starts from transactions that are joint devices of the voluntary choices of two wills. A value is created as a joint evaluation in the very moment at which the participants agree. Reasonable value is the integral value generated when joint evaluations are undertaken based on a legal foundation; this means that institutional coordination by sovereignty and other collective actions is an indispensable element of reasonable value. Thus, reasonable value theory differs from value theories, in which value is given *a priori* as it focuses on the historical process in which values are generated institutionally and collectively on the legal foundation.

3.3 The aspect of process

In both the booklet (1925) and manuscripts (1927–8), sovereignty—as either a decision structure of legal control or one of the principles—is defined in relation to other principles or aspects of other structures. This subsection examines the texts thought to be written after the booklet and manuscripts, to elucidate current issues of importance.

As we saw in section 1, IE views sovereignty as having two aspects—that is, the “entity” and “process.” Between the time of the booklet and the manuscript of 1928, Commons discusses in detail the role of sovereignty as an entity in the political economy; it takes the role of an arbitrator or sovereign concern that controls legal economic transactions as the “fifth party” or “physical force.” On the other hand, in texts thought to be written after the manuscript of 1928—

“instinct” of Veblen and the “consciousness” of Marx—as a foundation of the human mind. in order to remove the dichotomy (IE, pp. 672, 699).

such as Commons (1932) and IE (ch. X, “(VII) 1. Politics”; ch. XI, “Communism, Fascism, Capitalism”), the aspect of process can be easily discerned.¹⁰

Nonetheless, in the manuscript of 1928 (ch. XIII, “II. Bargaining Power”), which was supplanted by IE (pp. 347–8), one can see a change of description that touches on the aspect of process.

Concerted bargaining power [of companies, banks, farmers’ cooperatives, trade unions], with its sanctions of economic coercion, rises to preeminence even more comprehensive and world-wide than the formerly dreaded political power with its physical duress, because it actually controls the state. The state, indeed, becomes one of the instruments of bargaining power, either by its own direct act or by its permission of concerted action. Through the use of this political instrument the struggle for bargaining power reaches its preeminence. (manuscript of 1928, r. 13, s. 20, with underlining indicating the text added to IE, pp. 347–8)

The consequences of the struggle embody working rules that have an effect on the bargaining power of economic concerns. This struggle, “internal actions,” is the conflict over the rules that are “politics,” and it is discussed in IE (pp. 749–63).

One characteristic of the discussion on the aspect of process is that economic concerns obtain power equal to or exceeding that of the power of the state (e.g., IE, pp. 751, 882, 895). As we saw in section 2.1, LFC (p. 7) focuses on the supremacy of the courts. Its focal points of analysis are the codes of conduct of judicial sovereignty—that is, the system of decision-making by the “entity.” On the other hand, IE (ch. XI) emphasizes the thinking of Bonbright and Means (1932, p. 339), who assert that “these holding companies became the culmination of banker capitalism, by quoting ‘now becoming more powerful than the government itself’” (IE, p. 882; *cf.* Commons, 1950, p. 58).

Reasons for Commons’s emphasis on sovereignty are suggested by his repeated stress on the power of economic concerns in texts written after the manuscript of 1928. It may be that he reflected on economic trends—such as the emergence of large industrial unions, the rise of holding companies, and the preeminence of the economic and credit power of banks—that were “reached in November 1929” (Commons, 1950, p. 69). In particular, his thoughts were influenced by the discussions of Berle and Means (1932) on the separation of ownership from management, and those of Bonbright and Means (1932) on the rise of holding companies (IE, p. 882; *cf.* Commons, 1950, pp. 58–9, 297–335).

¹⁰Manuscript of 1928 (ch. XIII, “IX. Rationing” and “X. Jurisdictions”). These correspond to the titles of IE (ch. X, (VII) (1) Politics (2) Rationing and (3) Jurisdictions) but are confirmed only in the table of contents; the body text had not yet been written (r. 13, s. 55, s. 146). In the table of contents of the manuscript of March 1929, we cannot confirm these titles.

Here, we try to clarify the terms “entity” and “process” from the perspective of time. The former refers to the agent of execution of sovereign power, at a certain moment; the latter refers to the issue of how the formative process of the working rule of the sovereign concern is affected by the complex and long-tail mutual dependences among political, economic, and cultural concerns—such as political parties, big businesses, and social movements—in the specific passage of time (i.e., history). The “entity” of sovereign power is a momentary consequence of the historical formative “process.” Thus, these two ideas are not separable; they are two aspects of one sovereign concern.

The significance drawn from Commons’s discussion of the aspects of the process can be summarized in the following two points. The first relates to a detailed discussion of how scarcity (bargaining) relates to sovereignty. Until the manuscript of 1928, it is stressed mainly that sovereignty as a principle approaches scarcity with social relations (bargaining transactions), in which the futurity of participants of transactions relates passively to sovereignty. On the other hand, later discussions of the aspect of process focus on economic concerns, in which participants not only “struggle for wealth” in present bargaining transactions but also “struggle for power”—that is to say, the process of rationing transactions of sovereignty in order to obtain more desirable “economic consequences” of bargaining transactions in the future (IE, pp. 760–2). In this case, participants actively approach sovereignty in order to construct more desirable future outcomes. Thus, in the whole principle that is willingness, sovereignty is the “entity” that attempts to control economic transactions reasonably (Ramstad, 1993); running in tandem is the “process” of struggle and compromise of the participants, which is itself a bundle of rationing transactions.

The second significant point relates to the indication that sovereignty is inherent in the socioeconomic system. Physical force that controls economic (bargaining) power and moral power may depend on the powers of various interest groups; therefore, a power structure that is broken down for analytical convenience is in fact a nested loop in the aspect of the process. Hence, we cannot see sovereignty as an external physical force that exists outside the socioeconomic system. In other words, physical force is a consequence of the struggles and compromises of political parties and economic concerns, as well as the prior conditions of economic transactions. Hence, sovereignty and its “politics” cannot be understood as “extrapolating” to the economic system (Théret, 1992). Rather, legal foundations used to establish economic transactions or “markets” are part of the complex totality and consist of three types of transactions—namely, bargaining, managing, and rationing.

3.4 The viewpoint of the function of investigations

Viewpoints not clearly seen in texts before the manuscript of 1928 include critical evaluations of judicial sovereignty and the “function” of sovereignty. When we compare IE (pp. 773–88, “Scarcity, Abundance, Stabilization—the

Economic Stages”) with the corresponding part of the manuscript of 1928 (r. 13, s. 193–5), we confirm the following additional descriptions, which have been underlined for emphasis. Here, Commons evaluates the courts’ recognition of injustice leading to “unequal opportunity,” which stems not only from the high prices proposed by sellers but also the reduced prices of buyers.

Thus, the Supreme Court lagged about fifteen years behind the popular and legislative change in the meaning of discrimination, and this may be figured on generally as its customary lag.

The foregoing account of the lag of the common law respecting the meaning of discrimination does not apply solely to what were known as common carriers (...)

Thus, the process of making law by deciding disputes fits laggingly the changing economic conditions and the changing ethical opinions of justice and injustice (...) The concept of goodwill, as constructed by the courts, is grounded on the principle of scarcity, for its assumption is that opportunities are limited and margins are close, and therefore, each competitor should endeavor to retain his present customers and his present proportion of the trade. This has become a part of modern “business ethics,” which holds that cut prices are not good for customers, and it is converted more or less into “unwritten” law by the common-law method of making law by deciding disputes. (manuscript of 1928, r. 13, s. 193–5; IE, pp. 787–8).

These descriptions make the following two implications. First, Commons stresses that the courts lag far behind business customs. Second, he attempts to see how private concerns configure working rules that contribute to stabilizing socioeconomic systems (*cf.* IE, pp. 902–3). While concepts that support the prevention of cut prices—such as business ethics and “live and let live” policy—were seen in the 1925 booklet and the manuscript of 1927, we cannot confirm descriptions that emphasize the lag of sovereignty behind business customs.

The reason Commons aggressively evaluates the stabilization of the economy by private concerns may be because he fervently hoped that the US economy would be a so-called golden mean between *laissez-faire* and “monopolistic competition” (IE, Ch. XI; Commons, 1950, p. 163). The period between the 1928 manuscript and the 1934 IE saw much global turbulence. For example, fascism became conspicuous; in US society, there was a sudden shift from the “Roaring Twenties” to the Great Depression (1929); and there was an increase in the power of communists and the consolidation of state intervention. In the midst of this, Commons’s urgent issue was to present a theory that served as a basis for “fair competition”—which does not descend into monopolistic competition, fascism, or communism—where sovereign and private concerns, both of which set out to stabilize various transactions, work in concert (Commons, 1950). Thus, this turbulent period necessitates the use of additional descriptions.

In summary, we see how Commons’s discussion of sovereignty shifts from the “authority” of the legislature in making cohesive rules (as seen in

SVS) to the “supremacy” of the Supreme Court of the United States as the final interpreter of constitutional law (as seen in LFC), to the “function” of sovereignty.

(...) **American courts are not so constituted, or do not have the agencies for making such extensive investigations as would be required.** Hence, some of the American legislatures and the Federal Congress have attempted to provide exactly this investigation by the creation of “commissions.” (...) They are sometimes described as quasi-judicial, or quasi-legislative bodies, but **their function is that of investigation.** (Commons, 1932, pp. 24–5; IE, pp. 717–8)

(...) far more important than other reasons for improving and retaining the legislatures is **the protection they may give to voluntary associations.** (IE, p. 901)

Thus, the legislative law is partly an **enabling act**, setting up an administrative system of collective bargaining, along with certain minimum and maximum limits. The system cannot be understood as a mere statute administered by a bureaucratic commission with appeals to the courts. It is as nearly a voluntary system of collective bargaining as the nature of our constitutional government will permit, and **it can be understood only in so far as the concerted action of voluntary private associations is understood.** (IE, p. 852)

Following the shift in Commons's viewpoint, what becomes an issue is the interface between sovereignty and voluntary private associations. The interface, known as commission, has three significant features.

First, commission can deal promptly and flexibly with economic issues that derive from the development of collective actions.

Second, it enables deliberations among economic groups, independent of party politics. It is a deliberative space of collective bargaining among groups and, in addition, is a “conciliator” (IE, p. 849). On the other hand, an “arbitrator” is a third party who decides authoritatively, such as a dictator, legislature, or court. The constitution of working rules by the deliberation between the interest groups and conciliation of the commission is “constitutional government in industry.” This “democracy” is not about majority voting or a system of proportional representation, but a “representation of organized voluntary but conflicting economic interests” (Commons, 1934b, p. 73).

Third, the commission may shape an “attainable ethical goal” by undertaking investigations and deliberations of interest. It has a function higher than that of the courts, for both the investigation of facts and the collective testing by deliberation and agreement (Commons, 1934b, p. 160).

The reason why Commons brings the commission to the fore of his political economy may be that the passage of the Wisconsin Unemployment Compensation Law in 1932 hardened Commons's convictions with regard to the manner of coordination, such as commission and deliberation (IE p. 861; Commons,

1950, p. 24).¹¹ While Commons and his pupils took timely action, a fundamental factor in gaining approval of the law was the deterioration of the Wisconsin economy (Glad, 1990, Ch. 9).¹² Thus, the descriptions of the closing sections of IE reflect the sluggish economy that the state of Wisconsin faced.

IE evaluates the commission as an instrument that accords with the ultimate purpose of traditional economics. Alluding to similarities between his theory and that of Adam Smith, Commons says that

It was indeed also the theory of Adam Smith, but Smith held that individual self-interest promoted the common wealth, or wealth of nations, as a result of guidance by divine Providence and natural law. **The theory embodied in the Wisconsin law gives to approved voluntary agreements a sovereign power to promote the commonwealth by collective action in control of individual action.** This joint collective action *is* the law. (IE, p. 860)

This law gives “a sovereign power” the means for the “enabling act” of collective bargaining. The significance of discussing today the concept of sovereignty as found in IE lies in showing the elements of “deliberative space” for the representation of economic interests (Kitagawa, 2013). In addition to sovereignty as an “investigator” and “conciliator” (Commons, 1934b, p. 73) and “deliberation,” its other important feature is found in the courts’ *ex post* judgments.

Commons stresses the “due process of law” as the means of achieving justice through reasonable value. The process involves the working rules of the Supreme Court at each moment, and the due process of thinking, in which the courts justify their decisions in line with the customs of the moment (IE, p. 63; *cf.* LFC, p. 342). While due process occupies an important place in Commons’s theory, it was a very real requirement for Commons as he worked as a maker of legislative bills in Wisconsin. Commons sought to understand the substance of the state’s laws and the court’s internal logic; he also sought to organize public hearing in which he would justify drafts. He did both of these things, so as to satisfy the courts’ *ex post* judgments (IE, p. 861; Commons, 1934b, pp. 155–6) and the need for a public hearing (Commons, 1950, p. 24).

However, commissions in today’s political economy do not satisfy enough of the elements of these commissions. For example, with regard to Japan’s council, ministries arrange a framework of discussion and handouts, and a certain level of consensus among council members is necessary at the stage of collecting a report; hence, there are concerns that conclusions may be biased (Nishikawa,

¹¹Of course, he appreciated the ways of coordination in the commission before then, and pointed out its role in developing the processes of values and institutions (Commons, 1911; LFC, pp. 357–8; Kemp, 2002).

¹²It is clear, because all of the unemployment compensation bills with which Commons had been involved in the 1920s were dead (*cf.*, Nelson, 1969; Bernstein, 1983).

2007). This implies that executive branches are not “conciliators” but “arbitrators” or “leaders.” With regard to reflections on legislative law, the binding force of the reports of councils or commissions is very weak in general; thus, they do not fulfill the element of giving “sovereign power” to the voluntary deliberation and agreement of representation of economic interests.

4 Conclusion

This study examined Commons's writing process with respect to IE, from the perspective of a discussion of sovereignty. In so doing, we clarified the following three points.

First, Commons's discussion of sovereignty transformed between the time of SVS's publication in 1899–1900 to that of LFC in 1924. The economic significance therein is that ideals separate from the real economy—such as “natural law,” which is privileged custom, and “free competition,” which is deduced from certain theoretic assumptions—changed as part of a process in which agreement was reached through the redress of justice.

Second, in Commons's booklet (1925) and manuscripts (1927–8), sovereignty is defined as a partial principle and a component of the whole principle—that is, willingness—of the political economy. In both SVS and LFC, sovereignty is the center of analysis. After these works, Commons viewed sovereignty as a perspective with a high capacity to explain a socioeconomic system as a whole, and he displayed a sharp awareness of the relationships between sovereignty and other perspectives.

Third, two viewpoints were made clear after the manuscript of 1928. Commons stressed repeatedly that the power of economic concerns had reached a point equal to or exceeding the power of the state. Additionally, in terms of evaluating sovereignty, he shifted his viewpoint from its “supremacy” to its “function” as the pragmatic investigator.

This study elucidated the current economic significance of IE. First, value theory—in which values are constructed institutionally and collectively—differs from both labor value theory and utility value theory. Reasonable value theory does not give rise to the exploitation theories expounded by Veblen and Marx, but to a positive discussion of social reform, in which the subject matter is how to secure institutional “reasonableness” through sovereignty and other collective actions.

Second, sovereignty cannot be separated from any analysis of the “market.” An economics or a value theory of economics cannot discard sovereignty, nor can it treat sovereignty as an “extrapolation state.” Sovereignty is the consequence of joint evaluations that are constructed through the “politics” of economic and political concerns, as well as through the legal foundations of joint evaluations.

Third, “deliberative space”—in which sovereignty and economic interests act in concert—was explained as “commission.” However, in today's reality, the

elements of commission are not sufficiently fulfilled, as seen by the “council” in Japan, for example. Thus, in IE, as in modern reality, references for the interface between sovereignty and economic interests remain to be determined.

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