Two Methods of Institutional Reform in the *Institutional Economics* of John R. Commons

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Abstract This chapter presents an additional method of institutional reform that John R. Commons described in *Institutional Economics* (1934a) by comparing this published version with its 1927 manuscript "Reasonable Value: A Theory of Volitional Economics" (1927). *The Legal Foundations of Capitalism* (1924) and the 1927 manuscript stress that a higher authority plays a role in institutional reform by settling disputes. In contrast, the discussion in Commons 1934a, written after the 1927 manuscript, focuses on the joint bargaining system. The essence of this system is the creation and amendment of working rules through negotiations between interest groups, joint administration of those rules, and the enabling of institutions via sovereignty. On the one hand, interest groups receive sovereign power (rule enforcement power) from government, provided they create rules that society considers reasonable. On the other hand, sovereignty enhances progressive private practices by making them part of the broader semipublic system. Sovereignty thus makes private going concerns responsible for social governance. After clarifying these two methods, this chapter further articulates them. The dynamic nature of these methods of institutional reform becomes apparent where economic, political, and ethical principles affect institutional reform. Not only do higher-level and lower-level (in terms of political, economic, cultural, and legal power) going concerns influence each other, but influence also runs in many directions and follows multiple paths. This dynamic composition artificially enhances the reasonableness of political economy.

Keywords John R. Commons • Institutional reform • Reasonable value • Judicial sovereignty • Joint bargaining • Social governance

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1 Introduction

Discussions of institutional reform are a core component of the value theory in the major work of John R. Commons, *Institutional Economics* (Commons 1934a).[1] Institutional reform is the method that realizes the three requirements of reasonable value,[2] namely, "equality of opportunity," "fair competition," and "equality of bargaining power." When we compare two sets of descriptions of institutional reform, namely, (1) the additional descriptions not included in "Reasonable Value" (Commons 1927, called the 1927 manuscript hereafter) and that appear only in *Institutional Economics* (the refined and published version of the 1927 manuscript) and (2) Commons' earlier two theoretical works, *The Legal Foundations of Capitalism* (Commons 1924) and the 1927 manuscript, we find that two different methods of institutional reform are being described. This chapter clarifies these two methods of institutional reform, the first presented in Commons (1924) and the 1927 manuscript, and the second presented in the additional description contained only in Commons (1934a).

Discussion of institutional reform in Commons (1924) and the 1927 manuscript treats judicial sovereignty as supreme. The Supreme Court of the United States is the pinnacle of the US judicial system. Economic conflicts "come before the Supreme Court of the United States" (Commons 1924, p.288) and the Supreme Court selects the best from among plural conflicting customs. Commons (1924) and the 1927 manuscript present the Supreme Court as an agent of "artificial selection" (Commons 1924, p.376). Previous studies about Commons' works have explained the method whereby institutions are reformed through a higher authority that resolves conflicts among lower-level going concerns (Medema 1998; Ramstad 1990; Ramstad 1994; Biddle 1990).

After the 1927 manuscript, Commons focused his discussion of institutional reform on the joint bargaining system (Commons 1934a, p.858),[3] whereby

[1] The term "institution" means "collective action." When it is unorganized, such a rule is described as a "custom"; when it regulates the collective action of an organized "going concern," such a rule is described as a "working rule." Commons uses the term working rules to describe rules of private going concerns, laws, judicial precedents, and even the constitution. "Working" here implies that the rules continuously change or evolve in response to changes in economic, political, and ethical conditions outside and inside the going concern. Commons sees "political economy" as the ensemble of evolving "working rules," namely, the ensemble of evolving institutions (Commons 1924, p.377).

[2] In this chapter, the term "value" expresses the broader meaning of value relating to economic, political, and ethical "principles," which include efficiency value, political power, justice, security of expectation, and freedom (Commons 1934a, pp.207, 213, 683–684). To express a narrower meaning, I use alternative terms such as "price" or "proprietary scarcity value."

[3] I chose to focus on the joint bargaining system rather than the government institution of a commission because the former term expresses the essentials of Commons' idea. Operative examples include the "advisory committee" of the Wisconsin Industrial Commission and the "interim committee" in the Wisconsin legislature. These examples are not perfectly expressed

conflicting interest groups jointly create and administer rules. The system, which became his second method of institutional reform, has the following three characteristics. First, the working rules of the system are created and amended based on negotiation among interest groups. Individual interest groups, established voluntarily, select representative(s) to participate in negotiations. Second, the rules are administered voluntarily by interest groups. Third, the workability of the system is supported by "sovereign power" given by the government. In the joint bargaining system, on the one hand, interest groups assume some of the powers of sovereign government. A transfer of sovereignty confers the interest groups with great authority on the condition they create rules that society deems reasonable. On the other hand, sovereignty can enhance "progressive" private practices, meaning those practices that are reasonable, in a wide-ranging and semipublic system. Sovereignty thus guides the groups to participate in social governance. While Chasse (1986) and Bazzoli (1999) stress that Commons considered the joint bargaining system an effective method of reforming institutions, they do not comment on why the system is effective and on what grounds Commons created a fairly detailed explanation of the system after the 1927 manuscript.[4]

An important question is why Commons detailed this second method of institutional reform in the additional descriptions that appeared only in Commons (1934a). This chapter asserts that it happened for two reasons. First, Commons tried to show the unique position and direction of the American political economy. In particular, he sought to contrast it with both totalitarian and laissez-faire directions. Second, his confidence in the workability of joint bargaining increased following the passage of the Wisconsin unemployment compensation bill in 1932.

While the two methods of institutional reform differ in whether their essence is conflict resolution by a higher-level institution or negotiation among equals, a common perspective nevertheless underlies them both. Specifically, both methods assume that multiple principles are at stake in resolving a conflict, including economic, political, and ethical principles. The economic principle involves economic laws and doctrines related to scarcity and efficiency. The political principle involves the struggle for power. The ethical principle involves common sense, freedom, equality, and fairness. The two methods of institutional reform share a common focus on these plural principles, because both methods use different ways to ensure the three requirements of reasonable value. The requirements are

by the term commission. The terms expressing the same idea are "*voluntary* representations of organized interests" (Commons 1934a, p.859) and "leading representatives of conflicting interests" (Commons 1934b, p.159).

[4]Of course, I am aware that Commons wrote rough outlines of his experiences of the formation and administration of joint bargaining systems before 1927 (e.g., Commons 1911, 1913a, 1913b). However, important questions remain, such as why he embedded fairly detailed explanation of such systems in his later comprehensive theoretical work, Commons (1934a), and why he described such systems in detail only after 1927.

ensured when the ethical principle regulates the economic and political principles. Therefore, discussion of the realization of reasonable value necessarily focuses on the composition of these three principles.

The remainder of this chapter is organized as follows. The next section (Sect. 2) confirms that the method of institutional reform described in Commons' earlier works, namely, Commons (1924) and the 1927 manuscript, involves decision-making by a superior to resolve a conflict between inferiors. Section 3 confirms that the method of institutional reform described in the additional descriptions that appeared in Commons (1934a), but not the 1927 manuscript, focuses on the joint bargaining system. Section 4 discusses the reasons that led Commons to describe a new method of institutional reform in Commons (1934a). Section 5 unites Commons' two methods of institutional reform. This integration is necessary for three reasons. First, while the two methods are undoubtedly related, Commons himself did not clarify the relationship between them. Second, the integration clarifies that economic, political, and ethical principles affect institutional reform, in multiple directions and through multiple paths. Third, the integration shows the joint bargaining system to be a place where private going concerns and government interact. Section 6 discusses the contemporary meanings of Commons' discussion of institutional reform.

2 The Method of Institutional Reform Seen in *The Legal Foundations of Capitalism* (1924) and the 1927 Manuscript

This section will discuss the method of institutional reform described in *The Legal Foundations of Capitalism* (Commons 1924) and the 1927 manuscript. This method is that whereby a superior selects one out of a group of competing institutions (customs) to decide a dispute among inferiors.

The governing system of the USA is called "judicial sovereignty." This type of sovereignty contrasts with both "executive sovereignty," where the king holds supreme power, and "legislative sovereignty," where the legislature holds supreme power (Commons 1934a, pp.684–685). The Supreme Court of the United States is authorized to determine the constitutionality of legislation, that is, the Supreme Court holds supreme power. Judicial sovereignty indicates a system where the judicial branch, especially the Supreme Court by virtue of its authority to determine the constitutionality of legislation, occupies the top of the governing system and so plays the role of selecting institutions.

Both Commons (1924) and the 1927 manuscript focus on institutional selection by the judicial branch. Because Commons (1924) describes this method of institutional reform in more depth, I will focus firstly on discussion of institutional reform in that work.

Commons (1924) describes a process of institutional reform that involves the evolution of customs and laws. Citizens and going concerns are affected both

by their own individual habits and by dominant community customs, the two of which naturally are not identical.[5] In economic disputes, each party justifies its own practice based on its own habits and customs. Therefore, the challenge is to determine which customs the community should adopt as authorized customs. The conflict between customs, passing through the lower courts, finally "come[s] before the Supreme Court of the United States" (Commons 1924, p.288). Commons (1924) stresses that "property rights" have evolved through the selection of customs by the Supreme Court. The various decisions of the Supreme Court have expanded the coverage of legal protection from the property of individuals only to also include the property of corporations and from corporeal property to intangible property. Given these legal foundations, the concept of economic value has broadened from the solely material to also include the intangible.

When discussing the evolution of customs related to value, Commons (1924) describes how higher-level going concerns decide disputes involving the customs of lower-level going concerns. The hierarchy that Commons identifies among going concerns is one of economic, political, ethical, or authorized power. Commons expresses this method of institutional reform as "artificial selection" (Commons 1924, p.376) because it involves going concerns purposefully sorting and controlling natural objects and institutions. He contrasts artificial selection with non-purposeful natural selection (*ibid.*). In some easy-to-understand examples from Commons (1934a), Commons notes that "artificial selection converts wolves into dogs, nature's poisons into medicines, eliminates the wicked microbes, and multiplies the good microbes" (Commons 1934a, p.636).

The Supreme Court occupies the pinnacle of this process of artificial selection. The objectives of the Supreme Court in selecting a custom and the logic it applies in doing so thus are important. The Supreme Court is intended to serve the "public purpose" by providing justice, which increases the commonwealth and realizes ethical principles such as providing security of expectations, freedom, and equal treatment (Commons 1924, pp.327, 345, 351, 352). The public purpose is not an a priori purpose (Commons 1924, p.321). The meaning of the public purpose has changed historically and has even been changed by the Supreme Court itself. For example, the Supreme Court has expanded the meaning of freedom from applying only to the human body, to personal property, and finally to corporate property (Commons 1924, p.325).

The Supreme Court makes decisions based on the positive and negative consequences to the public purpose (Commons 1924, p.356). Specifically, the Supreme Court, while considering the public purpose and being strongly affected by its internalized customs, classifies facts, weights them appropriately, and finally makes decisions that sort conflicting customs (Commons 1924, pp.349–351).

[5]Examples include a novel business practice, unconventional decision of a lower court, or minority opinion of the Supreme Court.

While the Supreme Court occupies the supreme position and even has the power to decide the meaning of the public purpose, it is not isolated from society because judges "seek to explain and justify their opinions in the public interest" (Commons 1924, p.352). Additionally, judges should also check their reasoning based on their internalized habits and experience. This is what we call the belief or conviction of a judge. Commons (1934a) also states that a judge's "institutionalized mind" consists of "intellect" and "habitual assumptions" (Commons 1934a, pp.697–699). Currently dominant social customs strongly affect habitual assumptions, and consequently the evolution of social customs affects the Supreme Court.

The 1927 manuscript continues to adopt the same perspective on the reform of institutions (customs) as Commons (1924), being focused on a higher-level authority deciding disputes between lower-level actors.

In the 1927 manuscript, the following four types of disputes are assumed to emerge from economic transactions:

> [. . .] all economic disputes arising from bargaining transactions may be classified under the three heads, bargaining power, value of service [that is, opportunity], and cost of service [that is, competition],[6] 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. (Commons 1927, ch.1, p.26)[7]

The "judicial transaction" (Commons 1927, ch.1, p.12) occurs after a superior decides a dispute arising from bargaining or managerial transactions. Commons explains this type of transaction as follows:

> When a decision is made by a judge or arbitrator it takes the form of a command requiring obedience, enforced by that alternative collective action which we name punishment, but which, from the standpoint of the stimulus to obey, is named the sanction. (Commons 1927, ch.1, p.25)

Judges or arbitrators are involved in bargaining transaction as a "fifth party"[8] and in managerial transaction as a third party[9] that makes transaction participants conform to working rules, which comprise the accumulations of past judicial transactions (Commons 1927, ch.1, p.28). If a participant deviates from the rules or if a conflict emerges among participants, the fifth party emerges as an arbitrator. The 1927 manuscript thus focuses only on ruling by legal superiors as a method of dispute resolution. In this same work, Commons also describes the ethical issues that courts focus on in economic disputes:

> [The reason a conflict of interests exists owes] both to the competition for access to limited opportunities and the inequalities of individuals in their exercise of power. It is an ethical regulation of the conflict through the collective operation of rules and decisions of disputes.

[6] See Kitagawa and Izawa (2016), which explains how Commons (1934a) presents "opportunity" and "competition" in the bargaining transaction.

[7] The contents of squared brackets have been added by the author to enhance readability. This also applies elsewhere throughout this paper.

[8] The other four parties consist of two sellers and two buyers.

[9] The other two parties consist of a superior and an inferior in a firm.

> And out of this regulation arises the current but changing ideals of equal opportunity, fair competition, equality of bargaining power, which constitute the combined ethical and economic problem of reasonable practices and reasonable prices. (Commons 1927, ch.6, pp.28–29)

Based on the above, this section emphasizes the following two points. First, as repeatedly noted, Commons (1924) and the 1927 manuscript discuss reform of institutions (customs) solely in terms of superiors resolving disputes among inferiors, and in the process sanctioning certain customs over others. Second, Commons (1924) and the 1927 manuscript detail the effect on institutional reform of ethical values, which are neither scarcity value nor efficiency value (Commons 1924, ch.9 "Public Purpose").[10] The Supreme Court reforms institutions according to certain ethical values, such as stronger security of expectations of economic agents, expansion of freedom, and more equal treatment. On the one hand, the description of institutional reform in the 1927 manuscript, which focuses on a superior who decides disputes, differs from the description of the joint bargaining system in the additional descriptions contained in Commons (1934a), but not the 1927 manuscript. On the other hand, both the 1927 manuscript and Commons (1934a) emphasize that values other than economic ones affect the process of institutional reforms.

3 The Method of Institutional Reform Described in *Institutional Economics* (1934a)

In this section, we look at the additional descriptions contained in Commons (1934a), but not in the 1927 manuscript, and clarify the different methods contained in these additional descriptions but not in the two earlier works (Commons 1924 and the 1927 manuscript).

In Commons (1934a, pp.840–873) "Accidents and Unemployment—Insurance and Prevention," Commons retraces the deliberation processes associated with the Wisconsin Workmen's Compensation and Accident Prevention Law of 1911 and the Wisconsin Unemployment Prevention Law[11] of 1932, as well as their administration after passage. He also describes the joint bargaining system in detail. This system is a different method of institutional reform from that described in Commons (1924) and the 1927 manuscript and involves three parties, the Wisconsin State Industrial Commission, employers' association, and trade union, quickly and jointly amending the working rules of the system[12] that relate to highly technical and conflicting

[10] How political value, or power, relates to institutional reform is described in Commons (1934a, pp.749–761, "Politics").

[11] It is also known as the unemployment insurance or unemployment compensation law.

[12] Commons sees the working rules of a going concern as an "institution" (Commons 1934a, p.69). In this case, the going concern is the joint bargaining system.

issues. Additionally, parties negotiate and compromise in the process of amending the rules to enhance the acceptability and workability of the amended rules. That is, the system aims not only to amend rules quickly but also to ensure that the parties accept the contents of the amendments and agree to jointly and actively administer the amended rules. Next, I touch on the deliberation process of the Wisconsin Workmen's Compensation and Accident Prevention Law of 1911, its administration, and the workings of the joint bargaining system.

Starting in the 1900s, large corporations began to employ safety engineers. The practice came about because it helped corporations win the support of employees in the face of trade union hostility and enhanced management-labor cooperation without increasing production and insurance costs and sometimes even with cost reductions (Commons 1934a, p.888; Commons 1950, pp.278–279; Ueno 1997). Through managing the investigation of workplace accidents in the steel industry in 1907, Commons had the opportunity to listen in detail to the practices of the safety engineers of US Steel. In 1910, Commons was asked to draft a worker compensation law by Wisconsin Governor Francis E. McGovern. In writing this draft he cooperated with the American Association for Labor Legislation and involved the trade union and Wisconsin employers in the discussion of the draft as it was compiled. The draft contained an institutional innovation by Commons in that it tied together workplace safety and worker compensation. The worker compensation system included mutual insurance with voluntary enrollment. Moreover, the draft established a system whereby workplace accidents would affect employer insurance premiums, incentivizing affiliated employers to enhance workplace safety by stimulating their profit motives. To accelerate employer efforts to enhance workplace safety, "safety experts" belonging to the industrial commission sought preventive measures that employers could implement at no additional cost and without disadvantageously affecting production. Additionally, these safety experts acted not as workplace inspectors but as continuous advisors to management, engineers, and laborers. Owing to the advice and education of these safety experts, as well as a massive campaign to improve workplace safety throughout the state, workplace fatalities decreased by 61 % over 5 years, and in some cases plant efficiency and labor-management relations also improved (Harter 1962). The challenge of accident prevention prompted Commons to create an innovative institutional design based on inducement rather than coercion.

The system Commons proposed came under the jurisdiction of the industrial commission rather than the traditional arrangement where the state legislature would create laws for execution by the administrative branch. This innovation was a response to the rapid pace of technological development and the associated specialization and sophistication of expertise (Harter 1962, p.100). Previous laws designed to control workplace dangers had clearly referenced specific safety devices, rules, and preventive measures, with the result that technological development quickly made the laws obsolete. However, quickly and effectively amending the law in response to technological development was challenging for two reasons. First, employers would oppose amendment because they feared increased production costs. Second, lawyers and lawmakers lack the varied and sophisticated expertise

required to improve safety in response to rapid technological development. The industrial commission could overcome these legislative and executive limitations because it could quickly amend the working rules of the system, possessed greater expertise, and could better coordinate conflicting interests in the amendment process.

The industrial commission comprised not only commissioners and professional researchers but also an advisory committee appointed by the commission itself. Commons described this committee as consisting of "employers, employees, physicians, engineers, architects, economists, numbering some two hundred persons in all." They investigate, find, and conclude on "health, safety, accident compensation, child labor, hours of labor" (Commons 1934a, p.717). The advisory committee drafted "all the rules and regulations," interpreted "to employers and employees the long and detailed provisions of the law, and even" encouraged "the employers of the state to come voluntarily under the law. The [Industrial] Commission itself would be, in effect, only the sanctioning authority, giving legality to the 'recommendations' of the advisory committee" (Commons 1934a, p.848). Drafts of orders of the industrial commission that had been informed by the recommendations of the committee were presented at public hearings to seek dissenting opinions. During these public hearings, stakeholders such as employers could request that the industrial commission amend these draft orders.

Commons said that the orders issued by the industrial commission as a result of this process offered the following advantages. "They were drafted by joint action of employers and employees and not by lawyers and legislatures ignorant of the technology of the industries. They could be changed, with further experience, by the same committees that had formulated them originally. Above all, they were workable and acceptable to both the employers and employees" (Commons 1934a, p.857).[13]

[13]Here Commons emphasizes the importance of the participation of *every* representative, as well as the importance of seeking a rule that is workable for *each* interest group. He does this for two reasons. First, in the history of labor movements in America, attempts by labor to unilaterally impose their policies on employers often failed. Such unilateral attempts by a single interest were a type of collective action classified as "coöperation," and clearly differed from "collective bargaining," which involved participation of representatives of interest groups (Commons 1934a, pp.756–757). A historical case of coöperation involved the radical and aggressive association of the Knights of Labor.

Second, he wanted to avoid extreme systems that imposed the policies of one interest group on others, as occurred under Communism and Fascism (Commons 1934a, p.756). In World War I and the interwar era (especially 1918–1921), the American people were skeptical of Communist and Fascist influences. Their skepticism was encapsulated in the phrase "Red Scare." In this atmosphere, radicals, socialists, and unionists were stigmatized as "communist" and hence were oppressed. Additionally, in response to the Great Depression, as part of the New Deal the USA eagerly imported elements of European totalitarianism and applied them to the social and economic order (Schivelbusch 2005). In this environment, Commons, as an institutional liberalist, must have strongly felt the need to draw a defensive line to protect the American political economy against fascism and communism.

The members of the advisory committee represented capital and labor, and "would not be chosen by the state [Industrial] Commission in bureaucratic or civil service examination fashion, but would be chosen by the organized interests themselves" (Commons 1934a, p.848).

> [Because the state officials involved in this system are appointed jointly by the conflicting interests of capital and labor, they have] the confidence of both sides. As such, the state officials act, not as compulsory 'arbitrators' coming from a superior authority, the state, but as voluntary 'conciliators,' whose business it is to bring opposing interests together on a basis of 'facts' known to be such on both sides, and thereby aiding them in drafting the 'working rules' under which, as individuals, they must severally operate. Since these rules can be changed at any time, on the basis of further investigation and experience, it is a system of continuous conciliation, without dictatorship, of continually conflicting interests. (Commons 1934a, p.849)

Given the means used to select system participants, "the system cannot be understood as a mere statute administered by a bureaucratic commission with appeals to the courts" but instead should be understood as a "voluntary system of collective bargaining" (Commons 1934a, p.852). The joint bargaining system has the character of a governing system and simultaneously of "the concerted action of voluntary private associations" (*ibid.*). In this case, the safety law designates an area of discretion for the system and serves as an enabler that makes the system workable.

By the time Commons finished writing Commons (1934a), in November 1933, shared experiences of administering this joint bargaining system over about 20 years had improved understanding among the conflicting interest groups and created shared beliefs. Mutual understanding meant that each participant recognized the motivations of others and used this knowledge to further their own aims or those of the system (Commons 1934a, pp.859–860). The motivations of the labor union were wage increases, reduction of working hours, safety, guarantee of employment, etc. Meanwhile, the motivation of firms was pursuit of profit. On the one hand, the trade union tried to attract firms to participate by offering incentives, making an effort to connect the profit motive of firms with welfare improvement. On the other hand, the employers' association tried to increase efficiency and build management-labor cooperation by offering a progressive job environment that was desirable to employees. Based on such mutual understanding and exploitation of mutual motivations, a shared belief was built. This was the belief that to enact or amend the working rules of the system, if the concerned parties would negotiate, compromise,

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Contemporary American society saw both communism and fascism as undesirable political movements. However, Milwaukee was a rare city in the USA with an active socialist movement. This was a movement not of revolutionists, but of gradualists, and they sought civic reforms like infrastructure improvement. In 1910, Emil Seidel of the Socialist Party was elected as the mayor of Milwaukee. He set up the Bureau of Economy and Efficiency in the administrative branch of the Milwaukee government. Commons became involved in the Bureau (Commons 1913b, ch.13).

and reach agreement, then they would jointly administer this working rule. This belief prevents the new rule from becoming a dead letter and ensures its continual workability and penetration.

3.1 Sovereignty in the Joint Bargaining System

By reconstructing the explanation of the joint bargaining system from the perspective of sovereignty, we clarify the role of sovereignty in the new method of institutional reform that Commons described subsequent to writing the 1927 manuscript. By focusing on the building and administration of the joint bargaining system, we identify sovereignty as having two roles.

The first role is investigation. Through investigation, sovereignty determines factual progressive business and labor customs. Progressive practices are more suited to the public purpose than prevailing practices. Examples are practices that contribute to increased efficiency, stable employment, safety improvements, and price stabilization and practices that ensure "reasonableness," such as ensuring equality of bargaining power between negotiators, fair competition, and equal opportunity. In other words, sovereignty identifies novel behaviors through investigation.

The second role is the giving of sovereign power. Through involving interest groups, sovereignty institutionalizes ideas in the joint bargaining system. Thus, sovereignty involves private groups in social governance to sustain order and realize public goals. While the core of the joint bargaining system is, as noted above, "voluntary" negotiation between interest groups, the partial transfer of sovereign power enables discretionary power and hence the workability of the system. The following quotes show two points. First, within the system a "law" or "working rule" is an agreement between interest groups reached through voluntary negotiations. Next, the purpose of sovereignty in giving part of its power to support such an agreement is to connect private collective actions to the increase of commonwealth, in other words, to increase efficiency.

> [...] the Wisconsin accident and unemployment laws are the incorporation, into the theory of sovereignty, of the *voluntary* representation of organized interests. This is in vivid contrast to the older individualistic theories that represented a sovereign as a kind of overlord speaking for the consumers, and separated from, yet laying down laws, for the unorganized producers. This older theory, whether the "rule of the majority" or the rule of an organized minority, turns out to be dictatorship.
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> But *voluntary* representation of organized interests in collective bargaining, each electing its own leaders, requires recognition, on both sides, of the motives which animate the opposite side. In the present case it means recognition of the profit motives, in the now dominant collective action of corporations; and *use* of that motive in such a way as to promote the welfare of the whole community. [...] 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; and its administration is the individual action of the employer in conformity with the working rules which have been developed by employer and employee with the coöperation of the state [Industrial] Commission.

> From this collective standpoint, reasonableness is the upper practicable limit of idealism. (Commons 1934a, pp.859–860)[14]

Thus, sovereignty as described by Commons (1934a) written after the 1927 manuscript supports negotiation between private going concerns to resolve economic conflicts, which became complex and frequent, and supports the institutionalization of agreements, in that an agreement and its administration are expected to match public purposes. By using the advisory committee to promote the organization of the workable joint bargaining system, sovereignty tries to guide private going concerns to play a social governance role.

3.2 Reasons Private Going Concerns Participate in the System

Private going concerns were willing to participate in the joint bargaining system for three reasons. First, they could obtain greater power. The legislature gives private going concerns part of its sovereign power to enable them to effectively administer the working rules that result from their negotiations. This is paraphrased using the definition of "institution" in Commons (1934a) that private going concerns expand their power by participating in higher institutions that possess sovereignty.

Second, with regard to participation in this system, sovereignty permits large-scale collective actions. For example, the National Industrial Recovery Act regime allowed industries that established codes of fair competition which could avoid the application of antitrust laws. Conformance to the codes encourages firms to plan carefully and stabilizes production, helping create certainty about the future.

Third, participation in the system can help private going concerns realize objectives such as reduction of production costs, stabilization of employment, and improvement of safety. Considering the reduction of production costs, Commons stresses the efficiency of the joint bargaining system:

> This safety campaign of two years showed to the employers that they could make *more profit* by coming under the new law than by remaining under the old individual liability laws, provided that, at the same time, they entered into the safety spirit by preventing accidents. And furthermore, it was shown that, by preventing accidents, nobody, not even the consumers by higher prices, would bear any burden in paying the benefits to workmen stipulated in the accident compensation laws. In other words, appeal was made to a new kind of "efficiency," efficiency in preventing accidents, by which costs of production could be reduced, with the result that prices need not be increased. (Commons 1934a, p.857)

For the above three reasons, private going concerns "voluntarily" committed to establish the system, then got involved in negotiations and compromises regarding the system, and finally in the administration of the system.

[14]In passages quoted from other works, text in *italics* is simply reproduced from the original, whereas text in **bold** indicates emphasis by the author of this chapter. This applies throughout this chapter.

3.3 Two Meanings of Reasonableness

As seen above, on the one hand, the method of institutional reform that is the focus of Commons (1924) and the 1927 manuscript occurs when the judicial branch artificially selects one from a set of competing institutions. On the other hand, in parallel with this method, Commons (1934a) also stresses the method whereby private going concerns start up and administer the joint bargaining system with sovereignty. According to the additional descriptions in Commons (1934a), the "reasonableness" realized by the latter method differs from the "reasonableness" realized by the former method.

> This practice, it must be conceded, does not always conform to the *customary* meaning of "reasonable" in the decisions of the courts. The courts generally go on the assumption that whatever is "ordinary" is "reasonable." With them, "customary" is *not* the *best practicable*, it is something of a *mean* between the palpably inefficient or stupid and the exceptionally capable and efficient. After repeated observations I make the guess that only 10 to 25 per cent of employers or unionists are above this meaning of custom as "ordinary," while 75 to 90 per cent are below that level. By this is meant that about 10 to 25 per cent of employers or unionists can be expected voluntarily to do more for the welfare of others than the best that can be expected from any kind of compulsion, whether by the state or by private collective action. (Commons 1934a, p.860)

Thus, while artificial selection by the judicial branch introduces ordinary reasonableness to a community, the establishment and administration of the joint bargaining system introduces to a community the reasonableness meant by "the best practicable," seen as local practice.

Before the enactment of the safety law of 1911, a "reasonable" standard of safety meant ordinary reasonableness, namely, the practice of an "ordinary" person. This standard prevented government from effectively regulating the work environment to reduce injuries because workplace safety is sufficiently specialized that an "ordinary" person cannot be expected to identify and remove workplace dangers. However, should the industrial commission order companies to comply with safety standards that are not "reasonable," the safety law of 1911 would be judged unconstitutional, because it infringes on the property of corporations without due process of law. During the drafting of the safety law of 1911, Francis H. Bird, a student of Commons, introduced an interpretive innovation that overcame this difficulty. Bird conceived that the meaning of reasonableness could be changed to make the imposition of high safety standards for corporations constitutional. That is, the meaning of reasonableness could become the highest safety standard reasonably permitted based on the nature of the industry or the employer.

> Here the statutory and common law of the state was changed by merely changing the meaning of reasonableness. Instead of "ordinary" safety, interpreted as a *mean* between the highest and lowest, "reasonable" safety now became the highest degree of accident prevention, which is actually in practice by the best firms. And, instead of many impractical statutes accruing over a period of thirty years, the meaning of safety was expanded so that investigation had to be made in the factories themselves to find what was the highest practicable limit already successfully in operation in the most "socially minded" class of establishments, for the protection of life, health, safety, comfort, decency, and moral

> well-being. Thereupon no question of unconstitutionality was raised against the orders of the Commission in these respects, because they were demonstrably "reasonable" as having been drafted by the advisory committees of employers, employees, and experts, having acquaintance with the best practicable methods and devices. (Commons 1934a, p.861)

The above quote shows how to evade an unconstitutional judgment by reinterpreting language while conforming with due process of law. Also, it shows that the joint bargaining system is the arena for competition and compromise not only among economic and political motivations, such as profit, efficiency, increased wages, and the exertion of political power, but also for ethical principles (e.g., protecting "decency" and "moral well-being"). Thus, the working rules created and amended by the joint bargaining system express the compromises of different principles, that is, the working rules reflect coordination among economic, political, and ethical principles.[15] Therefore, a reasonable action conforming to these working rules is also a mixed expression of these various principles.

4 The Importance of the Joint Bargaining System

4.1 Avoidance of Totalitarianism

To escape the Great Depression, sparked by the plunge of the New York stock market in 1929, the advanced countries separately embarked on managed recoveries (Commons 1934a, p.611). Commons added detailed explanation of the joint bargaining system to Commons (1934a) because he was concerned not only with the rise of fascism in Germany and Italy and communism in Russia but also with the managed recovery of the American political economy. In May 1933, the American political economy rushed toward totalitarianism in the name of the New Deal. Given this rapid development, Commons wanted to show how a managed recovery could hold the line against fascism and communism. According to Commons (1934a), the defense against fascism was to keep legislatures alive, which could be done by using commissions to resolve their functional failures.

[15] As already stated in this chapter, Commons did not clearly show the coordination of different principles. However, clearly he was strongly interested in principles other than economic ones, as demonstrated by his following comments about the working rule.

> [The term "working rules" indicates] their temporary and changing character conforming to the evolution of economic, political, and ethical conditions. (Commons 1934a, p.705)

> Reasonable Value is the evolutionary collective determination of what is reasonable in view of all the changing political, moral, and economic circumstances and the personalities that arise from there to the Supreme bench. (Commons 1934a, pp.683–684)

> The legislature has a dozen or more conflicting and overlapping interests. [...] But American legislatures and Congress are learning to relieve themselves of the details of administration required by the modern complexity of conflicting interests. The railroad and public utility commissions, the tax commissions, the industrial commissions, the market commissions, are created to deal with the conflicts between railroads and shippers, between employers and employees, between classes of taxpayers, between big and little competitors for business. These commissions are semi-legislative bodies, and where they are most effective it is being found that they set up representation of the conflicting economic interests as advisory committees, curiously analogous to Mussolini's Fascist Corporations but with the difference that interests are voluntary, electing their own representatives, while his are compulsory and the representatives are selected by himself.
>
> Relieved of these overwhelming details, the modern legislature is learning to restrict itself to the field where it may be effective, notwithstanding and even because it represents conflicting interests. Its effective field is general laws and general standards of administration. These general rules are matters of compromise between conflicting economic interests, and a deadlock merely postpones the compromise, while the semi-legislative administration goes on with details and execution of politics as before. (Commons 1934a, pp.900–901)

Thus, the role of the legislatures is to approve and protect the voluntary associations, and in some cases, give authority to them, while the role of the voluntary associations is to send their representatives to the advisory committee and work to resolve the complicated conflicts. It is important that the legislatures and voluntary associations remain in their separate domains, where they function effectively and coordinate with each other through commissions.

Although in Commons (1924) and the 1927 manuscript Commons stressed that the judicial branch is supreme in institutional reform, during the Great Depression he clearly developed reservations about the role of the judicial branch in economic regulation. This was revealed in his writings after 1928 and before November 1933. Comparison of passages from the subsection of Section 8 in Chapter 10 of Commons (1934a), titled "Scarcity, Abundance, Stabilization—the Economic Stages" (pp.773–788), and the corresponding passage in "Reasonable Value: A Theory of Concerted Action" (Commons 1928, r.13, pp.193–195) reveals additional passages in Commons (1934a). In these additional passages, indicated below by underlined text, Commons evaluates the courts' recognition that injustice leads to "unequal opportunity," which stems not only from sellers demanding high prices but also from buyers paying low prices.

> 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. (Commons 1928, r. 3, pp.193–195; Commons 1934a, pp.787–788)

These additional descriptions imply the following two points. First, Commons stresses that the courts lag far behind business customs. Second, he attempts to understand how private going concerns configure working rules that help stabilize socioeconomic systems (Commons 1934a, pp.902–903). While Commons (1925) and the 1927 manuscript contain concepts that support the prevention of price cuts, such as business ethics and a live-and-let-live policy, we cannot find anything on the lag of sovereignty behind business customs. With regard to the turbulent political economy, Commons is interested in whether institutional reform is efficient and fast, the timeliness of the administration of an institution, and the best means to ensure this is achieved. This is why Commons' interests depart slightly from the judicial branch and instead are directed to the joint bargaining system comprising commissions and voluntary associations.

Starting in the 1900s, the joint bargaining system diffused from Wisconsin to other states (Kitagawa and Izawa 2016) and finally reached the national level in the form of the Recovery Act regime in the first half of the New Deal policy. The Recovery Act regime established a federal institution responsible for labor conditions and other matters that had previously been dealt with via joint bargaining at the individual state level. During the "First 100 Days" of Franklin D. Roosevelt's presidency, the Agricultural Adjustment Act was passed in May, 1933, and was followed by the National Industrial Recovery Act (NIRA) in June. Especially, the Recovery Act regime based on NIRA was the core system of the New Deal in the first period. This policy supported prices and purchasing power. First, interest groups in each industry would make a "code of fair competition" consisting of, for instance, quantity rations, price rations, minimum conditions of labor, and the right to collective bargaining. The government then would authorize these groups to voluntarily enforce the code.

Commons (1934a) evaluates the final phase of the spread of the "doctrine of reasonable bargaining power" to the whole political economy.

> Labor organizations were the first to move towards this later doctrine of reasonable bargaining power by collective action, because they were the first to feel the pinch of the limited number of jobs and of the resulting discriminations and destructive competition. [... This doctrine of reasonable bargaining power expanded historically from labor organizations to public utilities, manufacturing industries, and then the banking industry.] Last of all, the Federal government, through its National Industrial Recovery Act, and its Agricultural acts, with their codes and regulations under the direction of the President, extends wholesale the doctrine of reasonableness by collective action to practically all manufacturers and agriculturists. (Commons 1928, r.13, p.82; Commons 1934a, pp.345–346, the underlined passages indicate text added in Commons 1934a)

This quote suggests that Commons hoped the Recovery Act regime would result in a managed recovery. He thought this way because he believed the Recovery Act regime would be backed by a national version of the joint bargaining system in Wisconsin. In fact, both industrial associations and trade unions were strongly

involved in the policy-making process of NIRA.[16] Moreover, November 1933, when Commons finished writing Commons (1934a), was shortly after Roosevelt launched the "blue eagle"[17] movement.[18]

However, Chapter 11 of Commons (1934a), rather than presenting effusive praise, hints at a large and dangerous social experiment:

> It may be that American capitalism is moving towards Fascism under the guise of an Economic Planning Council. (Commons 1934a, p.902)

As stated before, Commons thought the USA should adopt a joint bargaining system with the participation of "voluntarily" organized associations (Commons 1934a, p.900). He stressed that such a system could protect against associations being forced to participate in the corporatism of fascism[19] and that spontaneity must be maintained because it would defend the USA against totalitarianism.

4.2 The Passage of the Unemployment Prevention Law

Another reason that Commons detailed the joint bargaining system in the additional descriptions contained in Commons (1934a) but not in the 1927 manuscript was

[16]For example, Sect. 7 (a) of NIRA clearly states the right of employees to organize and engage in collective bargaining. However, because this section is subject to various interpretations, it has not been enforced effectively (Kihira 1993).

[17]The blue eagle movement (formally called the campaign to enact the "President's Re-employment Agreement") was a government-organized movement that required employers to install maximum working hours (40 h per week) and minimum wages (e.g., 15, 13, or 12 dollars per week, and 40 cents per hour, albeit with various conditions and exceptions). Business establishments that met these conditions could signal their compliance by using the blue eagle mark. Noncompliant businesses became targets of economic and ethical sanctions that included public boycotts (Kihira 1993, pp.228–239, 260; Shinkawa 1973, p.102).

[18]However, in the stage of the planning and administration of the codes of fair competition, the capital exercises its power in a unilateral way, in part because the National Recovery Administration insufficiently supports trade unions and consumer groups (Shinkawa 1973, pp.120–121).

[19]The corporatism of fascism can be restated as "syndicalism":

> The word "syndicalism" comes from the French, meaning simply "unionism." A union of employers or bankers is an employers' syndicate or bankers' syndicate. A trade union is a labor syndicate. But history has changed the meaning of the word syndicate. [...] In Italy it has come to mean patriotic syndicalism, organized by government to support private property and the supremacy of the dictator. (Commons 1934a, p.883)

In Italy at the time, syndicates of employers, bankers, and workers had emerged. As noted above, these syndicates differed from the associations that were participants in Commons' joint bargaining system in being "organized by government" and therefore not voluntary associations. Commons was trying to show a way to keep such syndicalism out of the USA. Other reasons Commons respectfully describes the joint bargaining system are given in Sect. 4 of this chapter.

his deep confidence in the workability of the system after having witnessed the passage[20] of the Wisconsin Unemployment Prevention Law[21] of 1932.

Commons drafted an unemployment insurance law that was submitted to the Wisconsin legislature by State Senator Henry A. Huber in 1921. This "Huber bill" applied the injuries compensation law to unemployment prevention. The bill established mutual insurance systems for individual industries, with an unemployment compensation fund being funded by monthly fees levied on employers. An "experience rating" incentivized unemployment prevention, with employers' monthly fees being tied to the number of employees laid off. While this bill was submitted to the state legislature during every term from 1920 onward, the favorable economic situation in Wisconsin at the time meant it was rejected.

The start of the Great Depression in 1929 caused a deterioration in Wisconsin's economic situation and ended the complacency of the state senate regarding unemployment. A mechanism for providing unemployment compensation such as that contained in the Huber bill thus came to be considered a pathway to business recovery.

> Taking advantage of the wide-spread horror of unemployment, never before so seriously considered either by the public or by economists, the Wisconsin law attempts to bring home this distress positively to the employers who can, in the first instance, be made responsible for it. (Commons 1934a, p.858)

Commons saw an opportunity to pass the unemployment compensation law. He entrusted the writing of the draft to Paul Raushenbush, his previous student who was a professor at the University of Wisconsin. The draft prepared by Raushenbush (with help from others) was submitted to the Wisconsin legislature in 1931 by Assemblyman Harold M. Groves, and this "Groves bill" proved more acceptable than the Huber bill. The first step was the establishment of unemployment compensation funds at the company level rather than the industry level, meaning individual employers were responsible only for the layoff of their own employees. Next, employer contribution rates were capped according to employee wages or salaries. This meant the financial burden on employers was restricted to a narrowed but fluctuating range. The Groves bill differed from the Huber bill, with the latter containing stronger mechanisms to prevent unemployment. However, the Wisconsin State Federation of Labor (WSFL) had doubts about the Groves bill because it limited employer liability and so created a different draft that included an industry level fund and that grouped together contributions of employers in the same industry. This WSFL bill was submitted in the same legislative term by State Congressman Robert A. Nixon.

The representatives of WSFL and the Wisconsin Manufacturers' Association (WMA) participated in the interim committee that the legislature entrusted to

[20]Detailed description of the passage of the unemployment compensation law can be found in Commons (1934a, pp.840–873) and Sato (2013, pp.57–88).

[21]The substance of this law is shown as an unemployment insurance or unemployment compensation law.

prepare the unemployment compensation bill. Following discussions in the interim committee, WSFL compromised with Raushenbush to realize the unemployment compensation law, and WSFL shifted its support from the Nixon bill to the Groves bill. WMA, representing employers, continued to strongly oppose all versions of an unemployment compensation bill, and this opposition was noted as part of the minority opinion in the report of the interim committee.

The special legislative term started in November 1931, and the Groves bill was resubmitted and public hearings held. Some employers now saw the bill's passage as inevitable and so tried to insert as much employer discretion into it as possible. These employers offered to compromise with Raushenbush and support the bill in exchange for the insertion into the bill of exceptions and collateral conditions. One exception was that the law should not apply to firms that had already voluntarily introduced unemployment compensation. A collateral condition was that, if 200,000[22] employees were included in voluntary plans by June 1, 1933, the law would not come into effect because voluntary measures would already have largely achieved its purpose.

> As thus amended the Manufacturers' Association, while opposed to it [the bill], finally accepted it as preferable to other proposed bills, as did also the Wisconsin State Federation of Labor, and it [the bill] was enacted into law. (Commons 1934a, p.841)

This amended Groves bill was further modified in the assembly and then enacted in January 1932. This bill departed in the following two points from the 1921 Huber bill written by Commons. First, the law did not establish industrial level funds, but rather funds at the company level. Second, the experience ratings used to determine employer payments fluctuated within a much smaller range than in the Huber bill. These departures meant the enacted law created a weaker incentive for employers to avoid layoffs than would have been the case had the Huber bill been ratified. Despite this watering down of his original bill, it is remarkable that in Commons (1934a), Commons does not criticize the law that was eventually passed. Possibly Commons evaluated the legislation not on whether his plan was finally passed, but on the effectiveness of the system of making laws based on joint bargaining among interest groups.

Commons understood the effectiveness of the joint bargaining system, deliberation in law making, and more specifically the interim committee consisting of representatives of interest groups and public hearings. Of course, from the perspective of conflict, interest groups compromise for different reasons, whether they are trade union groups uniting to ensure the passage of Raushenbush's bill or employers who see the bill's passage as inevitable but still work to weaken it as much as possible. However, according to Commons, compromise among interest groups is supported by beliefs about the joint bargaining system that were shared by state officials, employees, and employers in Wisconsin.

[22] This number was further reduced to 175,000 by the representative George Blanchard.

The first such belief is that the joint bargaining system offers a "workable" method to enact and administer rules. The second such belief is that after reaching a compromise regarding a rule, all concerned parties will commit to its administration. Different interest groups naturally acted according to their own motivations, but a compromise was ultimately reached based on shared beliefs. In other words, owing to such beliefs, both WMA and WSFL remained involved in the deliberation process and finally came to support the Groves bill, eventually agreeing to jointly administer the law.

> These three individuals [the State Industrial Commission, WMA, and WSFL] had been working together for some ten or fifteen years in administering the accident prevention law. It was practically assumed that they would work together in administering the employment-reserve and unemployment-prevention law. This assumption turned out to be correct, though not stipulated in the act. [. . . This assumption] was the realistic reasoning of practical men in the midst of conflict and doubt. These assurances could not, in the nature of the case, be written into the words of the statute. But if they [such assurances] had not been the "unwritten law" of labor administration for twenty years in Wisconsin, the law could not have been enacted. At almost every point in drafting the new law, not merely a scientist's doubtful analogy, but a practical man's personal acquaintance, directed the provisions of the new law.
>
> Thus the unemployment statute itself, [. . .] was partly an *enabling act*, with minimum standards, and it was to the expected *joint administration* of the act by the state Commission, the state Manufacturers' Association, and the State Federation of Labor that all parties looked forward. (Commons 1934a, p.848)

As stressed above, in Commons (1934a) he did not detail the differences between the enacted law of 1932 and his original draft law from the early 1920s, the reasons the original draft was changed, or his criticisms of the enacted law. Rather, Commons expressed pride in the negotiation process itself. First, a shared belief in the effectiveness of joint bargaining had taken root among interest groups in Wisconsin based on 20 years of experience in administering the injury prevention law. Second, in the case of the unemployment compensation law, which represented the first attempt to implement such a law in the USA, this joint bargaining system worked well as a method of negotiation and compromise. Given these facts, Commons placed great confidence in the system. To promote the workability of the system to readers, he wrote about it in detail, and much of the new material in Commons (1934a) dealt with this topic.

5 The Articulation of the Two Methods of Institutional Reform

As we have seen, Commons (1934a) shows the two methods of institutional reform that directly or indirectly relate to sovereignty. However, it does not show how these two methods relate to each other. This section tries to show the whole picture of institutional reform described by Commons (1934a), and so to understand the composition of social progress, and potential stresses that can change its path.

The two methods of institutional reform may be integrated by the following two approaches. The first approach emphasizes the participation of actors who are mainly from lower-level institutions and their influence on higher-level institutions. The second approach involves the implementation of a collective sanction of lower-level institutions by certain higher-level institutions.

In the first approach, Commons assumes that citizens try to do two things: capture collective power by participating in various going concerns[23] (Commons 1924, pp.105–106) and change the working rules governing the exercise of collective power. In Commons (1934a), he argues that citizens establish higher institutions through concerted actions. Examples of such institutions are agreements between corporations, employer associations, or trade unions (Commons 1934a, pp.54, 70). Conflicting interest groups construct institutions through a process called "collective bargaining" (Commons 1934a, p.759). These interest groups build such institutions voluntarily, or they are constituted with guidance from state and federal commissions. The latter set of institutions represents the joint bargaining system with both private and public characteristics. In the process of instituting such working rules, economic, political, and ethical principles are coordinated. The mixture (compromised body) of the various principles is finally expressed by the working rule.

Direct participation is not the only way to affect higher institutions, and citizens and going concerns can use two other methods. First, they can launch legal action and turn to a supreme institution with appropriate jurisdiction to justify their claim based on ethical principles. Second, citizens' collective opinion (public opinion) affects judges' "habitual assumptions," because these assumptions and the associated code of conduct are based not only on judicial precedents but also on public opinion and social customs. Based on the clarifications established in Commons (1934a), judges' habitual assumptions are driven by different principles, for example, "economic assumptions" refer to scarcity and efficiency, while "ethical assumptions" reflect universalistic ethical principles (i.e., security, freedom, equality, and fairness; Commons 1934a, p.698).

In the second approach to exercising collective sanction and inducement from certain upper institutions to lower institutions, the judicial branch weighs and evaluates various aspects of a case in accordance with its habitual assumptions. The judicial branch then rules on the case, such as on its legality, and whether it violates the constitution. As a result, one institution (custom) is selected from among competing institutions. This decision should conform to various ethical principles that differ from standard economic principles. In shifting our attention from the judicial branch to the legislature, we see that legislatures concede part

[23]Commons (1924; 1934a) implied that each citizen has "constituent power." The powers inside every citizen reflect and affect social structure. From the perspective of constituent power, Kitagawa (2013) compares Commons with Antonio Negri, noting that while Negri (1981) focuses on the constitution in the productive sphere, he cannot show concrete momentum, and nor does he show processes. On the contrary, Commons shows these as economic conflicts, negotiation, and the two methods of institutional reform.

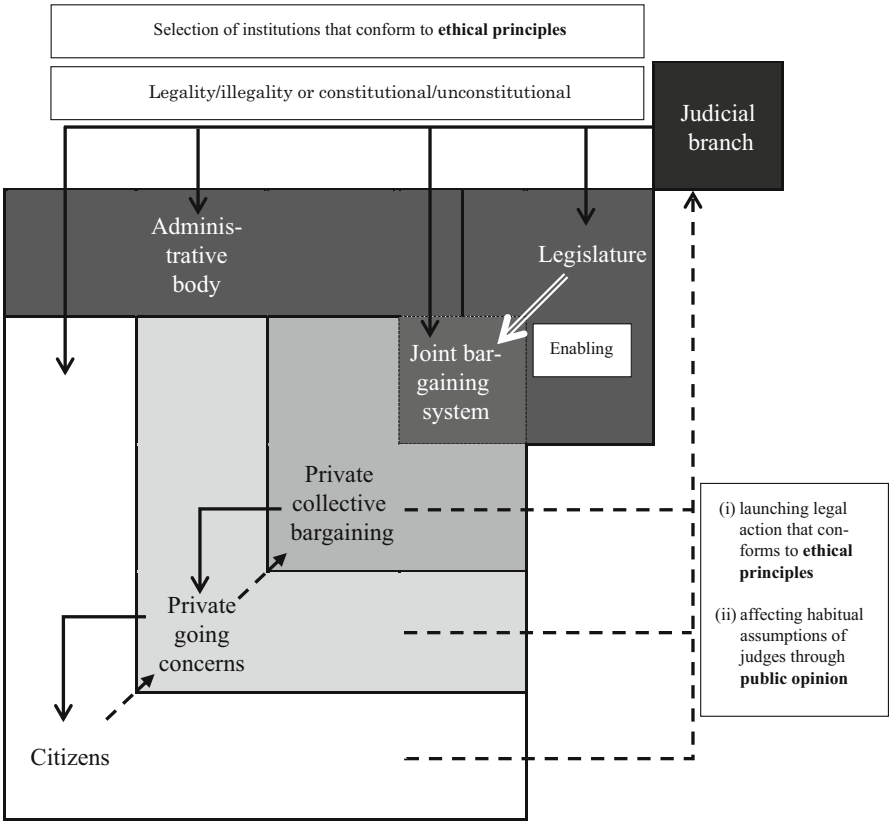

Fig. 1 Articulation of the two methods of institutional reform. *Solid arrows* indicate that a going concern self-servingly and artificially selects an institution within its jurisdiction. If the organization is a judicial branch (especially the Supreme Court), it selects the institution artificially and in conformance with certain public purposes (ethical principles). *Dashed arrows* reflect that a citizen or a going concern affects the rule-making process of an upper going concern to seize collective power for their own benefit. Economic, political, and ethical principles are coordinated and translated into working rules through participation in an upper going concern and by affecting the rule-making process (Source: Compiled by the author)

of their sovereign power to private going concerns through the arrangement of commissions (Kitagawa 2016). In doing this, legislatures allow private going concerns to contribute to social governance.

The above descriptions can be illustrated as Fig. 1. From this figure, we visually observe the following two points.

First, we observe that economic, political, and ethical principles are coordinated and translated into working rules, through a cyclical structure of participation, projections, coercions, and inducements. In this cyclical structure, the reasonableness of the political economy is gradually enhanced; in other words, the three conditions of a reasonable transaction—equal opportunity, fair competition, and equality of

bargaining power—have been and will be developed. As noted in Sect. 3.3, on the one hand, the standard of reasonableness created by the judicial branch's artificial selection means simply "ordinary," namely, conforming with customs. On the other hand, the standard of reasonableness created by the joint bargaining system means "the best practicable." This cycle of institutional reforms that develop reasonable conditions for myriad transactions is not a closed one, because the economic, political, and ethical situations evolve via complex and multiple causations, and thus institutions and agencies should continuously adapt to the changing situation (Commons 1934a, p.705).

Second, the joint bargaining system is the area of overlap between public and private activities. Institutions are constituted socially through which citizens participate in going concerns, and these going concerns become involved in collective bargaining, and participate in negotiations. In the dynamics of pluralistic and hierarchic institutions, the joint bargaining system is the area in which socially constituted private institutions assume a public character. The additional descriptions contained in Commons (1934a) but not found in the 1927 manuscript detailed the method by which the coordinated governing systems are both socially and governmentally constituted.

6 Concluding Remarks

This chapter showed that *Institutional Economics* (Commons 1934a) describes an additional method of institutional reform not discussed in "Reasonable Value" (the 1927 manuscript). In *The Legal Foundations of Capitalism* (Commons 1924) and the 1927 manuscript, it is stressed that an upper authority plays a role in institutional reforms through settling disputes among parties. In contrast, the discussion in Commons (1934a), written after the 1927 manuscript, focuses on the joint bargaining system. The essence of this system is the creation and amendment of working rules through negotiations between interest groups, administration of the rules by these groups, and empowering these groups via sovereignty. Interest groups can receive sovereign power through transfers of sovereignty. Such groups are given this power as long as they build rules that society recognizes as reasonable. However, sovereignty improves progressive private practices, which means more reasonable practices, in the broader semipublic system. Sovereignty thus makes private going concerns responsible for social governance.

After clarifying these two methods, this chapter further articulated them. Dynamic composition becomes visible where economic, political, and ethical principles affect institutional reform, not only from upper going concerns to lower ones, nor from lower going concerns to upper ones, but in both directions and via multiple paths. In this dynamic composition, the reasonableness of the political economy is artificially facilitated.

Before concluding, I remark on two implications of this discussion. First, through reviewing Commons (1924), the 1927 manuscript, and Commons (1934a),

this chapter illustrates the dynamic composition where capitalism is coordinated not only by economic principles (scarcity and efficiency) but also by political and ethical principles and shows the possibility that coordination based on these multiple principles directs capitalism to follow a more reasonable course. Commons is used as a source by Ronald H. Coase and Oliver E. Williamson, who focus solely on efficiency.[24] The later authors explain the existence of what they call "institutions," namely, firms (Williamson 1975; Coase 1988). However, if we are to make capitalism steady and sustainable (cf., Polanyi 1944; Boltanski and Chiapello 1999), multifaceted research is needed that focuses on areas where capitalism is coordinated by "multiple" principles and implies the importance in capitalism of non-economic principles, that is, political and ethical principles.

Second, government should (re)recognize that negotiation and compromise between interest groups, while reforming an institution enhances the workability of the reformed institution, and empowering institutions via sovereignty makes the bargaining system workable and acceptable. Fiscal and financial policies currently attract a lot of public interest, and both manipulate the macroeconomy, which is constructed using statistics. Although these are important methods, in modern times, when the direction of society is under pressure, government should also consider the policy challenges of supporting the construction and management of joint bargaining systems (cf., Kitagawa and Uemura 2015). This is because the joint bargaining system uses institutions that have been privately and socially built for purposes of governance. Moreover, this method involves members of a community to redefine acceptable and workable goals.

Of course, research has identified the harmful effects of the joint bargaining system, which has spread historically in the American governance system. For example, Bernstein (1955) points out that in the mature phase of a regulatory commission, when the relationship between the commission and control subjects becomes stable, the commission tends to take a stance of maintaining the status quo, which means it does not try to facilitate the competitive environment of the regulated industries. To prevent harmful effects and preserve the validity of the joint bargaining system, certain issues should be continuously reconsidered by system insiders and outsiders, and the working rules of the system should be continuously amended based on this reconsideration. Issues that require constant reconsideration, all of which Commons considered important, include whether representatives of interest groups are adequately elected, whether equality of bargaining power among interest groups is ensured, whether information is properly shared, and whether sufficient opportunity of deliberations is provided for citizens.

[24]This "efficiency" is not "efficiency" in the sense used by Commons, that is productivity per "man-hour" (quantity of products produced per man-hour), but rather refers to the minimization of transaction costs (costs of collecting information and bargaining with transactional partners). Thus, efficiency means the minimization of whole cost by choosing from between horizontal exchanges in market (entailing transaction costs) or hierarchal relationship inside a firm (entailing management costs).

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