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John R. Commons and Convention Theory around the transformations of the employment relationship

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Abstract

This text explores how John R. Commons' Institutional Economics (IE) and Economics of Convention (EC) frame basic concepts to understand institutional evolution and how they draw and analyze the historical evolution on employment relationships. It presents three issues to compare them: the double meanings of common goods, endogenous changes in institutions, the intermediaries promoting the changes. Both approaches on historical changes of employment relationship are compared. In particular, EC has developed works showing how legal intermediaries promote individualization of employment relationship in modern France (section 3-1). Especially, this approach argues linkage between employment relationship fragmentation and financial dynamics. After, with assistance from the issues of EC, the IE approach of intermediaries is clarified by enhancing the collective dimension of employment relationship in the interwar era of the U.S. Commons saw a link between employment and financial dynamics in his policy proposal. In conclusion, the text confirms the convergence of the IE and the EC toward an institutional change approach. This will be seen not only in their basic issues but also in, more fundamentally, their presumption of socio-economists' pragmatic position and thus their research program. This current trend can be expressed as their convergence toward the theory of social inquiry into reasonable values.

Keywords

Economics of Convention, Institutional Economics, Common Goods, Intermediaries, American Pragmatism.

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development of our paper.

1. Introduction

We explore how John R. Commons' Institutional Economics: IE (an original institutionalist approach in the United States in interwar era) and Economics of Convention: EC (a modern institutionalist approach in France) frame basic concepts to understand institutional evolution and how they draw and analyze the historical evolution on employment relationships. While there will be seen primitive and vague conceptions in IE, we demonstrate the convergences between IE and EC. While prior studies (Bessy and Favereau 2003; Uni and Nakahara 2017) have already addressed the relevance of EC, the version of prior to 2000s, and IE, since the 2010s, EC has elaborated a theory of institutional change and its driver (Diaz-Bone 2015). Bessy (2015) explains a substantive transformation of coordination as a change in the dominant convention by the politics of the relevant actors. It is "endogenous dynamics of law," that will discuss in our section 2-2. As implied by Nicolas Dodier's pioneer work (1989) and developed by Bessy (2015) and Larquier and Rieucan (2019), EC argues that the most notable actors among them are market and legal "intermediaries". These legal experts (lawyers, arbitrators, mediators, intra-firm lawyers, professional associations) encourage individualization of industrial relations without major changes in labor law. The individualization of the employment relationship has developed as part of companies' expropriation of the value created based on "common goods" in double meanings: shared assets and value systems (Bessy and Margairaz eds. 2021). EC argues preservation of the common goods, specifically the maintenance of collective learning capability. Thus, in recent years, EC has developed research on the corporations' expropriation of common goods that the intermediaries encourage and that had led to the endogenous institutional changes, especially in the issue of employment relationship.

We know Commons wrote numerous papers in the 1910s and early 1920s that referred to safety and personnel management professionals (Commons 1919a; 1919b; Commons 1921; Kitagawa 2024a) while they are not explicitly incorporated into his masterpiece (Commons 1934). Thus, in light of developments in EC since the 2010s, this study clarifies characteristics and programs of IE and EC as institutional change approach on employment relationship.

In the next section, we will present three issues to compare them: the double meanings of common goods (section 2-1), endogenous changes in institutions (section 2-2), the intermediaries promoting the changes (section 2-3). In section 3, we will compare both

approaches on historical changes of employment relationship. In section 3-1, we will see how EC indicates that the legal intermediaries promote individualization of employment relationship in modern France. Especially, this approach argues linkage between employment relationship fragmentation and financial dynamics. In section 3-2, we will clarify IE approach to intermediaries that enhanced a collective dimension of employment relationship in the interwar era of the U.S. We will stress that Commons saw a link between employment and financial dynamics in his policy proposal. In conclusion, we will confirm the convergence of the IE and the EC toward an institutional change approach. This will be seen not only in their basic issues but also in, more fundamentally, their presumption of socio-economists's pragmatic position and thus their research program. We will express the current trend as their convergence toward the theory of social inquiry into reasonable values.

2. Examination of basic conceptions of EC and IE

2-1. Double meaning of common goods

The assumption that makes EC apart from neoclassical economics, economics of transaction cost (ETC) and most of modern schools of institutional economics is the plurality of goods and the reflection capability of actors (Eymard-Duvernay 2004; Uni and Nakahara 2017). EC's classical works strategically adopted methodological individualism to demonstrate that interaction cannot take place without "convention." Convention means an informal, spontaneous, arbitrary intersubjective agreement that gives institutions meaning and usage. Interaction come into effect when actors refer common but plural goods. It means that collective dimensions of local and macro institutions in which they are embedded, infiltrate the micro dimension between the actors. As extracted and typified by Boltanski and Thévenot (2006), there is not one but plural goods referred to by the actors. Interaction is disturbed when conflict on the goods, that is, struggle of justification, occurs. When a conflict over goods emerges from an interaction there occurs consensus building among actors, conciliation involving non-authoritative third party, or mandatory arbitration by a higher authority. At this point, a struggle between critique and justification over the common goods arises. A whole goods coordinated by the consensus building and the superior's decision (that contribute to the realization of the interaction) are called "convention."

Bessy and Margairaz (2021) bring this perspective into the current issue of "commons." They see convention as an element of commons and replace the term commons with the

term “common goods.” They give this the term a double meaning. The first is an accumulated common asset. The second is a shared value system, that is, convention. Thus, common goods are changed by the struggle of critics and justification over the common goods. In other words, common goods are not only those that are already pooled, but also those that are reinterpreted and reformulated by collective action. This perspective makes it possible to approach current issues such as the revitalization of local communities through the reinterpretation of past legacies and the deliberative formation of shared future goals (Boltanski and Esquerre 2017).

We can clarify a perspective of IE in the points of the reflection capability, critics and the struggle of justification over goods, and the double meaning of common goods. J.R. Commons notice that the nature of economic action that economists should analyze is “transaction,” that is, interaction in EC, where conflict between actors occurs who have little choice but to be mutual dependence. In other words, he made the subject of economics the reformulation of institutions in economic interactions when doubt arises from condition of belief. When disputes in transactions lead to deliberations, conciliations arbitrations, or judicial decisions, the involved parties begin processes of critics and justification that refer to the common good (Commons 1934, p. 682; Uni and Nakahara 2017). As can be seen in the severe labor disputes and the criticism in public opinion to monopolies in his time, sometimes economic and political powers is not enough to suppress the conflict and public complaint. In such cases, ethical arguments must be accompanied by justification over goods. Considering such cases, Commons presupposes the plurality of goods and the reflection capability of actors. When a conflict resolution process has fulfilled certain conditions, Commons called it a “due” process. Also, in the macro level of States and Federation, the agreed goals, institutions, interactions that meet these goals and institutions, and the values that arise from the interactions are evaluated as “reasonable.” The specific conditions are that, in court, involved parties are given the right of notice and hearing, all facts concerning the dispute are investigated, and the facts are appropriately weighted according to public purpose. In the deliberation between organized interests, in addition to the due conditions in the court, sufficiently broad interests are called to the deliberation and discuss an issue thoroughly.

While actors in IE are “passionate and stupid,” they always and already have been situated and therefore conventionalized, that is, “institutionalized,” and gotten a particular reason as “institutionalized mind.” In addition, the assumption of the actors’ reflectivity capabilities is also a key factor in the deliberation. This is because

understanding goods believed by the other interests through inquiry, using the other's goods to achieve the one's own motive, and reflecting on the weighting of one's own goods from the facts and consequences of the accepted actions are the preconditions for the realization of deliberation.

In IE, EC's term of "convention" corresponds to the "habitual and customary assumptions" of members of a "going concern" (Commons 1934, p. 698; Uni and Nakahara 2017); or their "willingness" to cooperate each other (Commons 1934, p. 858; Kitagawa 2022). The latter term emphasizes the future desirable goal that deliberately formed and referred by the members who collectively act at the present. Just as, in EC, a unique convention is assumed for each community, and a distinction is made between a local convention and a convention consisting of plural "cités" in the macro level (Thévenot 2005), so, in the IE, each going concern has its own willingness. A willingness in the macro dimension is called "reasonableness" or "reasonable value" if it meets the above mentioned due conditions.

It is well known that IE, by starting its analysis from transaction, discussed a changing quality of relationship of parties involved (employer-employee and their service/goods-customer) of a going concerns, its capitalization, and evolution and varieties of methods of the capitalization legally authorized (Commons 1924, pp. 195-203; 1934; Uni 2024).

Although IE appears to discussed common goods in the first sense (shared asset) in its terms of "corporeal" "incorporeal" and "intangible" assets of "going concern," it covers common goods in the second sense (shared value system) that shows vaguely and implicitly, for instance, in his term of "practicable idealism" (Commons 1934, p. 742) and his stress of the value of labor-management "cooperation."

2-2. Endogenous changes in law

EC distinguishes between conventions and institutions. A convention, on the one hand, is supported by formal rules, symbols, and devices for solving coordination problems, and on the other hand, give them meaning and usage; EC define institution as "rule of game," referring to D. North's (1990) simple definition (Bessy and Favereau 2003). Institutions are used as artificial resources to coordinate the actions of the parties involved in solving the coordination problem. The distinction between convention and institutions allows for a straightforward account of endogenous institutional change. Didry (2012) and Bessy (2015) explained that even when labor laws do not change radically, a transformation of "individualization" of employment relationship occurs due

to gradual changes in convention caused by heterogenous and opportunistic actions of the parties involved.

The heterogeneity and variation of the actions of diverse actors and the goods expressed in the actions is due to their reflection capability.

The reflection capability can lead to opportunistic action that departs from certain regime of justice, i.e., convention, or it can lead to critics with reference to the plural goods. The rearrangement will follow a political negotiation in which exercises of political and economic power and ethical activities (justification and critics) are mixed. When a convention is reestablished, it temporarily brings about (some degree of) uniformity in the interactions of the actors.

IE discusses endogenous changes in working rules, under the term “common law method.” The same reasons for heterogeneity and change in the interactions of the actors assumed in the EC give rise to conflicting variations in interactions with referring to institutions in the actions of the various actors. This transformation leads to justifications and critics with reference to the plural goods, in his terms, “practical common sense” and “consensual idealism” (Commons 1934, pp. 717, 743). In judicial disputes, various facts, opinions and interests are weighted according to the public purposes. It brings about a novel “meaning” of the disputed rule. Through the disputes, novel decisions gradually accumulate as precedents. The customary assumptions, in other words, practical common sense, of the judges gradually change in response to changes in socioeconomic conditions, changes in public opinion, the accumulation of novel opinions, and changes in the membership of the court. At this point of authoritative decision, the variables of interactions are reduced in certain degree under the newly given meaning of the rule and uniformity (in some degree) of interactions is recovered. In this endogenous transformation of the rules, the term “written law” of IE (Commons 1934, p. 707) corresponds to the term “institution” (rule of game) of EC, and the customary assumption and practical common sense corresponds to the “convention.”

Thus, the IE, in its primitive form, anticipated EC’s approach to institutional change (Bessy and Favereau 2003).

2-3. Intermediaries

Intermediaries are third parties that do not fit into the traditional categories of state and market, individual and society, producer and consumer, and employer and employee, but coordinate them (e.g., Larquier and Tuchsirer 2017; Larquier and Rieucan 2019;

Bessy and Schrör 2024). EC focuses on the intermediaries who exercise valuing power, e.g., distributors, matchmakers, consultants, and evaluators. They intervene “between the so called ‘supply’ and ‘demand,’ and whose actions have some effects on the economic or symbolic value of a product or an organization” (Bessy and Chauvin 2013, p. 84).

EC has recently focused on the analysis of intermediaries because, as discussed in the next section, this focus is essential to discussing “financialization,” more precisely, the individualization of employment relationships enhanced by financialization. In EC’s approach to institutional change, intermediaries have two effects on the social economy. The first is to further enhance changes in interaction and conventions through cross-referencing. The second is to diffuse common formulas and ideal types to their client firms, thereby bringing about uniformity of interactions.

However, as economic relations become more legal, the activities of market intermediaries include a legal dimension, leading them to offer contracts that comply with (legal) obligations. In this way, they also become legal intermediaries and contribute to the definition of law. This legal dimension is all the more remarkable in that, as in Commons, bargaining transactions are not about the exchange of goods or services but about property rights over these things.

3. Approach of EC and IE to the transformation of employment relationship driven by intermediaries

3-1. Linkage between the individualization of employment and the financialization in modern France

EC defends an endogenous conception of law, which can be deployed in regard of different scales of time so as to apprehend the pragmatic-historical nexus of law and conventions (Diaz-Bone 2015). Empirically, this orientation has led to the study of “intermediaries of the law” and, in the first place, to the study of state agents such as labor inspectors. The pioneering work is the paper by Nicolas Dodier (1989) on the imperative of safety in the workplace, based on the analysis of negotiations between labor inspectors, company managers and staff representatives. The result, on the part of the inspectors, is an activity of “accommodation” aimed at making observation of an infraction or non-compliance with the rules as an element of negotiation in the search for improvement with a view to preventing the occurrence of new accidents. They are in

a position of an “intermediary” aiming at the diffusion of a legal rule, comparable to that of salespersons promoting a new product or technical process (Bessy and Didry 2023).

Recently, to reveal the individualization of employment relationships in France led by the endogenous change of laws, Bessy (2024) examines legal intermediaries in a domain of the Intellectual Property (IP) rights, especially patent, in which the strategic uses of law are as important as the huge monetary sums that are at stake. Recently, patents become symbols displaying the value of corporate performance in the security markets. Such decontextualization of patents has been processed by the legal intermediaries. Large IP law firms incorporate a valuation model of patents, that is, a “device,” into their client corporations, embodied in their Information Technology systems. Corporate management decisions on employment and security market will increasingly depend on this valuation system. The legal intermediaries involved in the diffusion of new conventions by equipping the devices with their clients. Bessy named the convention “financialization.”

The legal intermediaries ultimately played the role of “institutional entrepreneurs” (i.e., entrepreneurs of (re)creation of institutions) in the financialization of capitalism. Domestic and EU patent markets where each intermediary tries to acquire its market dominance has been created institutionally by “competition-cooperation” among the intermediaries. The intermediaries in EU major economies promoted cooperatively the creation of institutions in EU level (creation and development of the unified European patent law, collective patent grant procedure of member states, unified European opposition procedure). Then, Bessy (2024) links the financialization with the individualization of employment by investigating conciliation proposals of the national conciliation body on patent discontent (National Commission for Employee Inventions: CNIS). The analysis of the proposals shows increasing linkage between reward to employees-inventors and economic value in the context of corporate patent strategy enhanced by “financialization” driven by the legal intermediaries. However, only some Responsible-level employees in R&D are eligible to receive evaluation and compensation on a patent. The linkage could lead to greater inequality among the workers, the “individualization” of industrial relations, and then, greater discontent.

What institutional devices can prevent the downgrade of collective learning and the common goods? EC proposes expanding the mechanism of the joint conciliation commission (CNIS) to the whole issue of appropriating employees’ knowledge. It provides institutional opportunities for reflective weighing of the various conventions to

partially recover coordination failures.

3-2. Cooperation between J.R. Commons, Wisconsin Industrial Commission, and the Intermediaries

While EC draws contemporary individualization of employment relationships in endogenous dynamics of French labor law, we will confirm that Commons witnessed an institutional evolution aimed at strengthening the collective dimension of the employment relationship enhanced by intermediaries in the United States at the early twenty century.

Commons witnessed emergence, competition and cooperation of heterogeneous movements of “labor specialists — nurses, safety experts, health experts, welfare workers, scientific managers, educators, employment managers, service workers” to institutionally establish their profession to increase their social, industrial, and intra-firm status (Commons 1919a, pp. 152, 160-161).

The most influential movement is the safety movement of the “safety experts” (Commons 1916). In various professional association established in the 1900s and early 1910s, the most influential one was the National Safety Council (Commons 1916) because the safety experts developed “safety committees” in companies that worked as an institutional device of mutual understanding of labor and management. The experts accidentally found that it had collateral effects, that is, willingness of labor to “cooperate” with managers (Fitch 1911; Price 1913; 1914) and increase “efficiency.”

The safety movement gave the new goods to the safety laws in the States (Commons 1934, p. 856).

The safety experts entered into the “employment management movement” with their original institutional device: a conciliatory personnel department plus an employee representation system with the safety committee as the starting point for labor-management understanding (Young 1919; Price 1920). Such safety-origin intermediaries took the lead in the internal politics within the employment management movement in the late 1910s (National Safety News 1920; Price 1920; Ueno 2015: 2016). The institutional devices of the safety-origin intermediaries took root in large corporations in the 1920s (Slichter 1929, p. 397). They promoted transformation of the employee-management relationship from one under “driving” suppressing labor complaints by threat of dismissal, to one under “goodwill.” The movement fostered the corporate welfare capitalism, not organized as industrial collective bargaining

(Commons 1934, pp. 888-890).

Then, we will confirm that Commons not only observed the politics of the intermediaries but also involved in it. A reason the safety experts were influential in the personnel management movements is that the Administrative Commissions in the States supported the safety-origin intermediaries. Wisconsin Industrial Commission organized open conferences on employment issues held every year in 1918-1921. Commons took a role of a chairman and a speaker.

However, he thought the personnel management movement could not smoothly progress without other institutional support in the broader context of fluctuation of economy. He proposes following two proposals of “stabilization policies.” First is a policy to control bank credit and therefore stabilize general prices by FRB (Kitagawa 2022; Takahashi 2024). Second is the enactment of unemployment insurance law to induce managers to stabilize employment. He addressed the devices before the conference of the intermediaries one of which is named “National Association of Employment Manager” (Commons 1919b). Thus, Commons himself is an heterogenous intermediary at that time proposing “reasonable stabilization” program.

4. Conclusion

In this text we have presented a number of similarities between the two approaches. Two particular concerns deserve to be highlighted when we refer the current theoretical and empirical development of EC.

The first similar concern is the (legal) intermediaries as a driving force of institutional evolution. Not only in the EC approach but also IE approach, we confirmed that the intermediaries drive the endogenous change of laws, the reformation of internal and external relationships (in IE’s term, bargaining, managerial and rationing transactions) of corporations, and establishment of new values, that is, common goods in the second meaning. Thus, this paper points to a convergence of approaches to institutional evolution.

The second similar concern is the nexus of the employment relations and the finance. EC explains the political dynamics of the individualization of employment relations and the distributive inequality as part of the financialization driven by the patent intermediaries. In other words, sustainable development of progressive institutions contributing to stabilize employment relations has need of the financial stabilization. For Commons, as an influential intermediary of reasonable stabilization program, it is

attainable by the accidentally discovered policy of FRB along the public purpose of the general prices stabilization.

The EC-IE convergence is seen in not only such basic perspectives but also, more fundamentally, their situated position into social inquiry of recreating coordination from conflict. Commons took his position as an economist who passes on solutions to the actors, rather than as an expert standing above the actors and proposing very general policy measures (). This American pragmatist perspective resonating C.S. Peirce, W. James and J. Dewey led him to develop a theory of action in context, breaking with the representation of an isolated homo economicus developing action plans in a purely self-referential manner. Authors such as E. Chatel and D. Rivaud-Danset (2006) have demonstrated the value of this pragmatist approach to the economics of conventions, which is pursuing this increasingly important path (Bessy and Didry 2023). The shared pragmatic position of EC-IE can be called social inquiry toward reasonable values.

EC-IE convergence into the theory of social inquiry leads to commonality of their research program to institutional development, investigational methods, and the value both committed. The common program is, first, to reveal unfairness and inequality driven by and covered up by common goods (tangible and intangible assets and value system), second, to find a moment and a clue in that a justice is realized, and third, to suggest institutions that facilitate the realization of equity. The institutions contain ones contributing to conserve and development of the common goods. EC proposes expanding the mechanism of the joint conciliation commission from the labor-management conflict on IPR to the whole issue of appropriating employees' knowledge. EC suggests that they are administered by the "voluntarily" constituted "joint" commissions containing representatives of organized labor (Bessy 2024). This conciliation body is an intermediary between positive law and practices within the company. It is similar to the French *Conseil des prud'hommes* (industrial tribunal) in that it aims to preserve the continuity of the employment relationship due to the presence of non-professional judges, the speed of the decisions and the fact that the parties are not obliged to make a complaint. It is consistent with IE's vision of industrial democracy (Kitagawa 2024b). EC and IE share the fundamental value of industrial democracy that would foster goodwill of the involved parties in a community, that is, the second meaning of common goods.

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