

Institutions, economy and politics: the debate between Commons and North

Abstract: This article explores the relationship between old and new institutionalism through a comparison between the thinking of John R. Commons and Douglass C. North. Both scholars strongly criticize the orthodox theory. Both justify the role of institutions by referring to cognitive issues. Both emphasize power relations among people as a key concern. However, their perspectives are radically different. North focuses on the barriers to the emergence of « open-access orders » in developing countries. The existence of impersonal norms is supposed to eradicate violence in society. Accordingly, each individual or group may participate in the competition which leads to an economically efficient system. In contrast, Commons is a progressive preoccupied with the survival of capitalism. In his view, through the growth of inequalities, impersonal norms renders the system unstable. Therefore, the economy has to be bounded by rules set at the political level, to ensure that “unreasonable” coercion does not occur under the guise of liberty.

Key Words : Commons, North, cognition, violence, politics

B15, B25, B52

Introduction

Oliver E. Williamson is regarded as an emblematic figure of the "new institutional economics," an expression he coined (Williamson, 1975, 1). He often makes reference to John R. Commons, a major scholar of the "old" institutionalism (Williamson, 1975, 1985, 2000). As a result, in the academic literature, the relationship between the two types of institutionalism often involves a confrontation between these two authors, which inevitably turns around transactions and their costs (Dugger, 1983; 1993, Kirat and Bazzoli 2003, Ramstad 1996). This article aims to draw a comparison between Commons and another prominent figure of the neoinstitutionalist movement, Douglass C. North. Apparently, nothing brings these two thinkers' perspectives together. Besides, like most neoinstitutionalists, North has shown little interest in Commons. However, the comparison yields valuable insights. First, it surfaces remarkable similarities between them. Differences in their analysis of the role of institutions may even seem minor. Nonetheless, when we examine the linkages that North and Commons weave between the economic and political spheres, a gap opens up between their respective approaches. Unlike North, Commons rejects the principle of political neutrality in the economy. Unlimited competition, without state intervention, does not systematically prevent violence. This article begins with North's and Commons' designs of institutions. Both mobilize cognitive sciences and underline the uncertainty that people face in interaction situations. This common foundation underlies the basic need to "stabilize expectations." In spite of this convergence, cracks between their perspectives emerge in the meaning they confer to the place of institutions, which are the providers of this stabilization - with North being more positive than Commons (section 1). The transition from institutions to the state is immediate. Both institutionalists anchor the actions of public authorities in history. They agree that the issue of coercion is crucial, regardless of their divergence of interpretation. For North, coercion is evacuated in modern states, allowing economies to become prosperous; whereas for Commons, it always remains present (Section 2). This discordance ultimately stems from their view on the dominance of the economy. According to North, she would be the guarantor of the efficiency of the system while Commons considers that it endangers its stability, its survival (section 3).

Section 1: the role of institutions

The intellectual journeys of economists Douglass North (Ménard and Shirley, 2014 ; Rutherford, 1996) and John Commons (Chasse, 2017 ; Harter Jr. 1962) have not been linear in time. However, setting aside the time period when North was close to neoclassical economics, a common thread runs through his thought. This is even more true for Commons. In this article, I will highlight these recurrent characteristics. Their various contributions must be seen as added elements in order to consolidate this common thread in particular circumstances. In both cases, the introduction of institutions aims to address the shortcomings identified in the orthodox theory. North (1994) considers this model too narrow. It is not possible to be content with a static analysis of markets. The notion of performance, which is central

to his position, requires extending the field of investigation to institutions, from a historical perspective.¹ To this end, “transaction costs” are a revolutionary tool (North, 2000b). Commons ([1899-1900] 1965) points to the same type of theoretical inadequacy, though being less interested in economic efficiency, he rather associates institutions with his reformist agenda. His purpose is also ethical (Commons,[1934] 1964).

North unambiguously distinguishes institutions from organizations. The latter are the collective actors while institutions are defined as “the rules of the game in a society or, more formally, (...) the humanly devised constraints that shape human interaction ” (1990, 3). Yet, his justification for the existence of institutions will undergo some changes. In *Institutions, Institutional Change and Economic Performance* (1990, *IIC* hereafter), North claims that a cooperative perspective underlies institutions. He contends that scarcity and competition, on which classical economists focus, are not a good way forward. He evokes at some length game theory, especially the repeated prisoners’ dilemma, with reference to Robert Axelrod’s work. For a “win-win” strategy to emerge, minimal coordination is necessary. By overcoming the information problems faced by economic agents, institutions promote this type of result in human interactions. The persisting existence of institutions that prevent the emergence of an efficient economic system is pushing North in a new direction, that of cognitive sciences (Ménard and Shirley, 2014). Understanding why the logic of efficiency is difficult to implement becomes crucial.

In *Learning, Institutions, and Economic Performance* (2004b, *IEP*), people are described as constantly facing uncertainty. North is interested in the mental operations that lead to the acquisition of knowledge under these circumstances. Individual learning consists of classifying the signals received by the senses. People use “mental models” to accomplish this sense making. These mental models do not necessarily correspond to reality. The inconsistencies lead to new models, which are in turn subjected to environmental feedback. A process of trial and error is initiated, that entails constant corrections. Learning takes on a collective dimension through “shared mental models”. Knowledge is transmitted through various channels such as teaching or imitation. From collective knowledge to rules- institutions, the transition is immediate. The sequence consisting of reality-beliefs-institutions-politics-new reality generates “path dependency.” Normally, a social group’s institutions are adapted to the beliefs shared by its members. As a result, the relocation of institutions that have successfully stimulated the economy at some locations has often failed in other places (North, 2004a).

The contrast between *IIC* (1990) and *IEP* (2004b) is obvious and the new course is assumed. Nevertheless, an important similarity between these two publications must be underlined. North does not doubt the centrality of conflict. The struggle between social groups for the appropriation of material resources is omnipresent in his work and institutions set a framework for its expression. The market

¹ North states: “we are interested in combining what we are doing in institutional theory with traditional formal neoclassical price theory. Ultimately, what we are trying to do is not to replace neoclassical theory” (North, 2000a, 8).

embodies this competition in the economy. However, importantly, these rivalries are not consubstantial with the concept of institution. It is revealing that, at a time when North still favours the cooperative explanation, he takes the technological evolution, which he views in a politically neutral way, as an example of institutional change. Technology has a collective dimension, including from an intergenerational perspective. This is why “path dependency” is associated with “self-reinforcing mechanisms” (North, 1990). When several solutions are considered possible, the one that gets selected is not necessarily the most efficient. It also has to incorporate the weight of the past. This coordination problem is reminiscent of Thomas Schelling's (1960) search for a “focal point,” rather than of the possible conflicts of interest that inevitably arise in this context.

By limiting the range of possibilities for all individuals, institutions facilitate social interactions. In the economy, this reduction of uncertainty takes the form of private property. For North, its stabilizing function is even essential if people are to be able to project themselves sustainably and therefore effectively into economic activities (North and Weingast, 1989). This shows once again that the coercive dimension of social relations is not absent from his approach to institutions: it is the very risk of an endless struggle for ownership of goods and the threat of social disorder which justify the usefulness of private property in the first place. However, North promptly positions himself on another level. He emphasizes the incentives that property rights provide to group members, thereby sketching a three-fold institutions-commitment-incentives promise of a virtuous circle in the economy. Indeed, a logic of cooperation is alleged. Commitments become credible. A multiplicity of situations occur, wherein economic agents are likely to develop activities among themselves to the benefit of all. The time horizon is extended. The economy can finally take off.²

For his part, Commons defines institutions as “Collective Action In Control Of Individual Action” - the “control” being broken down into “restraint, liberation, and expansion of individual action” ([1934] 1990, 69,73, IE). Unlike North, he does not distinguish clearly between institutions and organizations. In fact, he incorporates organizations or “going concerns” into formal institutions governed by “working rules.” As for custom and common law, they represent informal institutions. These slight nuances in terminology do not prevent Commons from asserting with the same vehemence as North the necessity of exploring markets in their institutional environment. For instance, the place of the institution of private property is cardinal. Yet, various forms of ownership have succeeded over time: “corporeal property”, property of physical goods; “intangible property”, property of promises to pay; and then “intangible property”, property of opportunities to make profits in the future (Commons,[1924] 1959). Similarly, economic “liberty” has long been synonymous with “privilege” before it has come to be

² According to North (2004a), Western economies have performed well not because they have been able to achieve exceptional growth but because their incentive institutional environment has avoided the phases of economic decline observed elsewhere.

considered as equal opportunity to undertake economic activities. The perception of economic practices is evolving.

Commons delved into the cognitive sciences for two reasons. Proximity to the facts has always been a priority for him as a researcher. He connected this inclination to the “look-and-see method” of his mentor Richard T. Ely (Commons,[1934] 1964). Such a methodological posture had to be justified. Moreover, Commons’s institutionalist analysis was resolutely law-oriented through a jurisprudence analysis. In his view, this implied an investigation of the formation of norms as well as of the interpretation and meaning attributed to events. Consequently, the mechanisms for acquiring knowledge were for him of particular interest. Besides the introduction, the first chapter of his major work, *Institutional Economics* ([1934] 1990), led from John Locke to the institutions. The English philosopher supports inductive inference. However, the mind cannot be a simple mirror of the senses, as Commons observed. This view drove him to refer to David Hume’s position. Induction implies anteriority, contiguity and constant conjunction, i.e., the formation of a habit. In this situation, the construction of knowledge remains passive. The pragmatism current allowed Commons to bridge between the individuals’ lived experience and their beliefs, which serve to support institutions.

Rejecting any dualism between body and mind, pragmatism is a philosophy of action which attacks “formalism” and abstractionism” (White, 1973). Accordingly, knowledge does not stem from speculative considerations, nor even from associations of ideas as associationist psychologists claim. Instead, pragmatism is a kind of *via media* between a hypothetical-deductive approach and inductivism. It is the confrontation with facts that validates the veracity of beliefs. The process by which design, verification and rectification follow each other never ceases. As such, the analogy between Commons’s pragmatism and North's mental models is striking. It is symptomatic that the neo-institutionalist author not only promotes the “*pragmatic notion of mental models*” (North et al., 2004b, 76, his italics) but also relies to this end on Philip Johnson-Laird. However, the latter affirmed the existence of a strong relationship between his mental models and the “fundamental operations of reasoning” exposed by Charles S. Peirce, one of the fathers of pragmatism (Johnson-Laird, 2002).

The state of knowledge in the cognitive sciences was not the same during Commons’s and North’s eras respectively, but these elements attest that their two perspectives are close. It is noteworthy that Commons’ interest in these disciplines arose quite early. In *A Sociological View of Sovereignty* ([1899-1900] 1965, SVS), thirty-five years before *IE* ([1934] 1990), although he had not yet found his way to pragmatism³ he already explored the formation of beliefs and of mental development. In this way, Commons then goes back to the foundation of institutions, which for him are based on beliefs shared by group members. Like any living creature, people have desires. What differentiates them from animals

³ Among pragmatist thinkers who associate the truth differentially - Peirce, with its practical consequences, William James with its desirable consequences and John Dewey with its desirable consequences and John Dewey with its socially desirable consequences -, Commons prefers Dewey ([1934] 1990).

is their set of beliefs which imply self-consciousness. Scarcity of material resources leads to the need for their appropriation. Hence the institution of private property, which made it possible to coordinate individual behaviors (Commons,[1899-1900] 1965). It was expressed in ownership of women, tools, and objects of worship according to the context, since scarcity is relative.

In *IE* ([1934] 1990), the analysis of institutions is much more thorough. As in North's work, the widening of the time horizon is underlined by the "security of expectations" and the "futuraity." Due to their "habitual assumptions," individuals are able to project more easily their designs into the future. However, the link between institutions and scarcity remains the cornerstone of Commons's thought. The original coercion is never abandoned: economic relations are considered as nothing other than power relations. This is reflected in Commons's unit of analysis, the transaction. The "bargaining transaction" involves two buyers and two sellers. This unusual frame is meant to take into account the alternative available to each economic agent in order to soften the coercive power inherent in the institution of property. The right to "hold" a good is also the right to "withhold" it from someone else. One's "right" has as its counterpart another's "exposure".⁴ Unlike North's notion of "commitment" that implicitly induces mutual gain between contractors, Commons's unit of analysis is an interaction that looks more like a zero-sum than like a positive-sum game.

In fact, it is when he examines the sphere of production that Commons more readily establishes a connection between the temporality generated by institutions with the idea of economic performance. Man, Commons contends, exercises his power more easily over natural elements: through his manual work but also

"through mental labor he moves them indirectly by moving other things so that their own activities will work out results intended in wider space and future time" (Commons,[1934] 1990, 628).

Under these conditions, Commons distinguishes another category of transaction,⁵ the "managerial transaction," which is an interaction taking place under the seal of efficiency, between a manager and a subordinate. It is still a power relation albeit the intelligence of collective action and the advantages of the division of labor draw their significance from this category. Moreover, this imposed cooperation occurs outside the market, which remains governed by scarcity and coercion. Private property simply aspires to contain social antagonisms within reasonable limits.

Institutional change is predetermined neither for Commons nor for North. For the former, with respect to his Darwinism, use of the artificial selection metaphor is more meaningful (Ramstad, 1994). If a system collapse cannot be ruled out (Commons,[1899-1900] 1965,[1934] 1990), human action seems to be able to steer it in the direction Commons considers desirable. The best way to do this without falling

⁴ Commons draws inspiration from Wesley N. Hohfeld's model of legal relations. Four pairs of "legal opposites"- for example, power / disability- as well as four pairs of "legal correlatives"- among them "power / liability"- are introduced. See Luca Fiorito (2010) on this point.

⁵ To bargaining and managerial transactions, Commons adds a third type, "rationing transactions", which refer to policy issues, dealing with the distribution of benefits and costs in an organization.

into the traps of ideology or utopianism is to generalize the best practices in society. This is one of the meanings that Commons gives to the word “reasonable.”⁶ Raising the social standards must be based on what has already proved workable. As for North, as it will be shown, he has identified institutional complexes that are more favorable to business climate than others (North and Weingast, 1989). It must be remembered that it was the inability to implement them, and the reluctance to adopt them, which led North to the cognitive sciences. The belief-institution sequence became key for him (2004a, 2004b, 2009). In any case, the study of the particular organization which is called the State provides insight into the possible evolution of institutions.

Section 2: The state and coercion

To account for the positive role that the state can play in economic growth, North (2004a) relies in particular on the comparison, carried out by Avner Greif (1994), between Maghribi and Genoese traders. The former formed an intra-group social network that evinced some efficiency, but required ethnic homogeneity and a relatively small number of participants. Personal relationships and shared values ensured the smooth functioning of this association, which had a multilateral basis. The latter developed a much more broader system, characterized by greater ethnic diversity, and resting on bilateral mechanisms. The Genoese organizational structure encouraged the multiplication of exchanges. This is not only a matter of transaction costs but also of production costs, since both types of costs are correlated. To corroborate his point, North (2004a) refers to Adam Smith, according to whom the limit to productivity gains from the division of is the size of the market. Therefore, larger and more efficient trading zones require supervision of contract enforcement. A third party is necessary, since in this new context, economic agents do not know each other. The state performs this very function. Without it, these economic dynamics would be impossible.

Monitoring the compliance of agents' behavior with the rules of the economic game entails the ability to punish deviants. Indeed, the power of coercion is one of the attributes of the state's structure. However, there is no assurance that its leaders will act solely in the public interest. As North (2004a) notes, it is very tempting to use force for the benefit of one's family members, or of members of one's political faction. The strategies of setting rules that favor one's own interests to the detriment of the common good, of capturing rents, and of predation,⁷ are in fact the most widespread, not only in the history of humanity but also at the beginning of the twentieth century. North thus opposes the “limited access order” or “natural state” where personal ties are dominant, the logic of reciprocity is more important than the public interest, and the “open-access order” whereby the individual identity is defined

⁶ This term is used in three different contexts: to reflect the current best practices in the “going concerns;” to express the absence of coercion in negotiations; and in relation to price formation (Dugger, 1979). These meanings are not incompatible with each other.

In search of pioneers, exemplary economic agents, Commons even becomes a laudatory voice of Andrew Carnegie, the steel magnate, as well as of James B. Dill, the inventor of the holding company (Biddle, 1990).

⁷ For a positive theory of the predatory state, see Mehrdad Vahabi (2012).

in an impersonal manner. A simple citizen, rather than an member of some specific group, faces the State. The rule of law has to prevail (North and al., 2009). State order is a necessary but insufficient condition for economic development.

By further examining “natural states,” North distinguishes three categories: “fragile”, “basic” and “mature.” The “fragile” state is totally unstable. Groups succeed each other at the head of the state. The only rights that matters are the rights of the strongest. In “basic” states, social persons become more important than individuals. A stabilization occurs. Public law provides a framework that reduces the risk of violent clashes within the dominant coalition. The “mature” state is characterized by an even higher level of complexity: elite organizations are likely to emerge independently of the state. The evolution from one category to the next is not linear: regressions are possible and occurs occasionally depending on the political and economic environment (North and al., 2009). Despite these nuances, the common denominator in “natural states” is that violence is a component of relationships between social groups and that their institutions endorse the supremacy of the elites. The central issue North is trying to address is the transition from a “natural state” to an “open-access order.”

The most “mature” forms of the “natural state” conceal in embryonic form the features of the “open-access order:” A legal basis exists there, rendering the most arbitrary manifestations of sovereignty scandalous; payments in currency replace personal chores. Then some event can trigger the switch. The English Revolution of 1688 is a model in this respect. North highlights the impact of the political changes on the country's economic growth. Opponents' claims to the House of Stewart lead to stronger property rights, wealth protection and controlled taxation (North and Weingast, 1989). Later, North places greater emphasis on securing the right to form organizations - as evidenced by the “open-access” qualifier - as well as on the role of impersonal relationships (North and al., 2009). However, all these elements refer to the same absence of arbitrariness. It is so critical that, in order to guarantee it, the elites are even willing to extend these rights marginally to the rest of the population.⁸

An institutional matrix committed to enforcing contracts is more effective. Allowing economic agents to see themselves in the long term strengthens economic incentives. Capital markets and investment experienced a spectacular boom in England in the following centuries. These changes can be summarized as a reduction in transaction costs in a broad sense (North and Weingast, 1989). It is in this respect that the establishment of a political constitution has been a source of economic transformations. The sovereign's obligation to comply with specific rules has freed up individual initiatives. Ultimately, violent means are no longer useful to any faction that naturally serves its own interests. It is as if the State were able to fulfil the famous third party function mentioned above, using coercion where necessary to punish deviants, without misusing this power for partisan purposes. By defining impersonal

⁸ Daron Acemoglu and James A. Robinson (2005), whom North often quotes, focus on the relationship between the strategy of the ruling classes towards the people and the political regime.

social relationships and rules of law, politics has self-limited its scope of action. It is almost giving way to the economy with which it is, however, still intertwined. In short, the negative aspects of coercion were eventually neutralized, annihilated.

The problem is that this progression towards an “open-access order,” towards this configuration where the sequence institution-commitment-incentive becomes ideal, is not the most frequent. North notes the persistence of inefficient institutions (North, 2004a). According to him, the divergence between rich countries and those which cannot escape their status as developing countries reveals regrettable obstacles in the adoption of impersonal rules. The moment he acknowledges these hindrances inhibiting the emergence of a modern economy in many parts of the world, North switches to a new interpretive frame (Ménard and Shirley, 2014). By giving a central role to beliefs and ideology (North and al., 2009), he indirectly reintroduces the political dimension that had been sterilized to an extent in his previous analyses. This strong comeback gives pride of place to violence. This word even appears in the titles of his works (North and al., 2009, 2013), stressing that progress is not inevitable. That is why North is careful to talk about institutional change rather than development, and moves away from the notion of performance.⁹

North depicts a historical movement guided by the goal of improving violence control, despite these obstacles to the transformation of “mature natural states” into “open-access orders”. The ability of an entity representing no particular interest to obtain a monopoly in this matter is the final step in the process. In *SVS* ([1899-1900] 1965), whose seminal quality has been persuasively shown by Richard A. Gonce (1998), Commons describes another evolution linked to his perception of the very nature of the state. He begins by relying on Herbert Spencer’s view¹⁰ of organizations as developing according to the principles of “integration” and “differentiation.” A society of increasing size must be centralized in order to absorb more and more non-interchangeable individuals. For the survival of the group, it is essential that a centralizing agent play a coordinating role - this involves both coercion and subordination. For Commons, coercion never disappears, although its expression softens significantly over time. Thus, it is present at a level lower than political in “bargaining transactions” (Commons,[1924] 1959, [1934] 1990).

Commons devotes most of his exploration of history to England. The *Magna Carta* imposed by the barons to John Lackland in 1215 was the first attempt to contain the king's room for manoeuvre. Nevertheless, absolutism continued unabated until the 1688 revolution successfully curtailed it. The Bill of Rights provides a bulwark against sovereigns’ arbitrariness (Commons,[1899-1900] 1965). Although

⁹ For instance, “performance” occurs 66 times in *Institutions, Institutional Change and Economic Performance* (1990), compared to only 18 times in *Violence and Social Orders* (2009) - a at least twice as long.

¹⁰ Spencer's contribution is also mentioned in connection with cognitive issues (Commons[1899-1900] 1965). However, this does not prevent a disagreement between the two, already evident in *SVS* ([1899-1900] 1965) as we shall see, and which intensified later. Commons even wrote that the metaphor of natural selection “reached . . . the peak of absurdity at the hands of Herbert Spencer” ([1934] 1990, 637).

Commons and North agree on the importance of this event, they disagree on how to read it. For the new institutionalist, impersonal rules are the factor that immunized against state coercion (North et al., 2009). Commons, on the other hand, prefers to stress the collaboration that emerged between social groups on this occasion:

“the nobility, aided by the smaller proprietors, possessed these qualities in sufficient degree to constitute the House of Lords, and later the House of Commons, as partners with the king in sovereignty” (Commons, [1899-1900] 1965, 46).

The threats to the population remained significant. However, if coercion is not eradicated, a subtle balance of power can at least counteract its effects. Commons concludes that social groups must mobilize tirelessly to avoid abuses committed in the name of, or with the consent of the state.

Commons considers that, under certain conditions, all power may to be concentrated in single hands. Absolute monarchy is a possibility. North strongly opposes this idea since, in his opinion, coalitions - military, economic, religious - are the ones at the head of a state even if a sovereign embodies sovereignty (North et al., 2009). This presupposes an agreement between the dominant classes. No one is able to impose his/her position by force alone and maintain him/herself in power without assistance. North rejects Max Weber's link between the state and the monopoly of legitimate violence. For him, legitimate violence is in fact the prerogative of open-access orders and even a precondition for their emergence, while in “natural states” the contestation of power by weapons and the use of violence are entirely conceivable and have not yet been removed from the institutional matrix. The sovereign must take into account in one way or another the interests of the classes owing to which he asserts his domination over the people.

According to North, the monarch has always granted benefits to the elites in order to govern - this is immutable. The Revolution of 1688 was a founding moment, not because privileges were once again conceded, but because they were converted into inalienable rights, even if this meant extending them to the entire population. The implementation of these impersonal rights represents a decisive step towards the end of political arbitrariness (North et al., 2009). North relentlessly attacks Commons's position, which he does not reference directly, but which is in line with the Whig historiography. However, he criticizes the latter for being an a posteriori reconstruction as part of a political project which deliberately distorts reality. To argue that British democracy is the result of a compromise between groups that defended divergent interests does not comport with the way things happened, he says.¹¹ The system of “checks and balances” favored by Whig theorists cannot be the major feature of “open-access orders.” All groups and parties claim benefits for their members. Destabilization would permanently loom in the absence of meta-regulation. Rather, competition between entities is the mechanism that eliminates the chance for everybody to secure a rent.

¹¹ See Jeff Biddle (1991) on Commons's “instrumental presentism.”

For Commons, collusion between economic and political circles, which fuels corruption, makes it impossible for the state to guarantee impersonal rules (Commons, [1899-1900] 1965). His mistrust of the state led him to propose another way to reform society, that of “collective bargaining,” though later on, he came to cling to the state again (Broda, 2013). In order to find reasonable solutions to economic conflicts, social groups must have the power to cause harm to their opponents. Everyone understands that they are not in a position to impose their point of view in a coercive manner and that it is in everyone's interest to reach a compromise. That is why unions must be strong.¹² This mutual deterrence is a variation of the system of “weights and counterweights” in the economy. Coercion is still present. In this respect, Commons rejects Spencer's position, which, for modern societies, “overlooks the two elements which, following despotism, have been incorporated in sovereignty, namely order and right. These have not eliminated coercion but have changed its mode” (Commons, [1899-1900] 1900, 37). These criticisms should have been directed at North as well.

The comparison via Spencer is even more justified if we recall the historical evolution described by Spencer. The “military society” which is a personal status regime centralized and based on coercion, is eventually replaced by the “ industrial society” where cooperation is voluntary and based on contracts (Spencer, [1885-1898] 2004). There are many similarities with North's model,¹³ even if the two are not completely identical. Commons insists - against Spencer's argument - on the role of coercion in capitalist society: it is possible to obtain the obedience of an individual without his/her consent if the individual is in a state of economic fragility (Commons, [1899-1900] 1965). Thus the institutionalist author establishes a kind of continuity between military and industrial societies - hence his final opposition to Spencer, and consequently to North, both of whom describe a rupture. It is in this context that Commons comes to rely again on state action, which offers a rather wide range of instruments (Chasse, 1986). The role of judges is increasingly emphasized (Commons, [1924] 1959, [1934] 1990). They are tasked to ensure that transactions take place within a reasonable framework. Even with impersonal rules, the economy must be monitored.

Section 3: the empowerment of the economy

The *Distribution of Wealth* (Commons,[1893] 1963) set the tone. Like North, Commons initially used the tools of traditional economic theory but, in his case, it was to better show that the social question was not satisfactorily resolved by the capitalist system. According to him, the idea that supply and demand spontaneously reach an equilibrium is misleading. Production is limited with respect to the needs of the population. The impacts can be observed in the labor market. Excess labor is reflected in downward pressure on wages. Living conditions are indecent for those at the bottom of the social ladder.

¹² Commons's comment ([1924] 1959) on the 1917 Hitchman case, which legalizes “yellow-dog contracts,” is a good illustration. In the labor contract, the employer may insert a clause forbidding the employee from being a union member.

¹³ According to Spencer's eschatology (Spencer, [1879] 2012), the future will be so imbued with cooperation between people that altruism will be the norm.

Poverty indicates that there is an acute problem of wealth distribution. Commons spent much time on exploration of the misery present in deprived neighborhoods. He described the transfer of these abysmal conditions to the future generations, notably through alcoholism (Commons, 1894). External intervention is necessary to put an end to this infernal spiral. The mechanisms of the economy have to be corrected. It is impossible to be satisfied with the benefits of growth without taking into account some of its social effects. The economic dimension cannot be disconnected from the social one.

The nature of Commons's reformism has been the subject of intense debate (Chasse, 1986; Dugger, 1979; Harter Jr., 1962; Isserman, 1978). Perhaps the institutionalist economist exacerbated the confusion by calling himself a "conservative" according to "the dictionary meaning of 'conservation' applied to existing institutions of property and liberty" (Commons[1934] 1964, 169-170). If we consider that he displayed a deep distrust of utopias, we see that his desire to protect the poor and thus fight against economic inequalities may have been underestimated at times. In fact, Commons's "progressivism" (Chasse, 2017) had to weave its way between two equidistant poles: the one, an urgency to remedy this unbearable situation, and the other an attachment to individual freedoms. Its ambition "to save Capitalism by making it good" represents the meeting point between these two priorities (Commons,[1934] 1964, 143). His fear of seeing the system rejected through violence or at the ballot, and the threat of Bolshevism and Nazism that he brandishes in order to convince people to act on behalf of the indigents (Commons[1934] 1990) are part of the same logic.

For Commons ([1899-1900] 1965; [1924] 1959), even if the historical evolution of the Western world is proceeding in the right direction, it does not mean that this progression is irreversible. Through examination of court decisions and jurisprudence, Commons ([1924] 1959, [1934] 1990) retraces how the notion of general interest emerged, and how the concept of liberty became more democratic. In fact, his analysis focuses mainly on legal rules. They are the main lever for action in his reformism. Their purpose is to keep coercion within reasonable limits. The inevitable inter-personal power relations must be rather based on persuasion. Either way, it is about obtaining the obedience of others but, unlike coercion which operates through physical or material sanctions, persuasion is connected to the psyche, to argumentation and to reasoning. This implies the assent of individuals whose behavior is being modified (Commons[1899-1900] 1965). These elements are expounded on early, but their later impact on transactions is immense: it means that reducing coercive power is tantamount to forcing economic agents to resort to persuasion (Commons ([1924] 1959, [1934] 1990).

What makes Commons' interventionism so original is that it focuses on laying down the framework for economic activities.¹⁴ The contrast with the period during which he favored collective bargaining is striking. Previously, his objective had been to provide a coercive countervailing power to the groups

¹⁴ For example, Commons participated to in the drafting of several laws such as the Civil Service Law in 1905, the Public Utilities Law in of 1907, the Worker's Compensation Law in of 1911 and the Unemployment Insurance Act in of 1932.

representing the weakest in rationing transactions. As he came to position himself at the level of bargaining transactions, his purpose became to deprive the strongest individuals of their coercive power. However, Commons does not advocate a policy of massive redistribution¹⁵ to fight against inequalities. It should be noted in this regard that his analysis ends up focusing on the United States, a country where respect for property rights is very high. The interpretation of a passage from the Fourteenth Amendment to the Constitution, “nor shall any State deprive any person of life, liberty, or property, without due process of law” is the subject of serious controversy (Fine, 1956). Commons ([1934] 1964) explains that he feared that policies he wanted to introduce would be declared unconstitutional, which sometimes affected his reformism.

Had this not been a concern, however, it is not clear that Commons would have fully embraced redistribution policies because of their discretionary nature. The decision to take resources from economic agents without their consent and transfer them to others is always based on subjective grounds. As a result, it opens a Pandora's box. In contrast, a move to alter rules is specific, in the sense that it is indirect. It merely delimits the field of possibilities by guiding behavior and prohibiting practices. Moreover, as the rules apply to everyone, this type of intervention largely escapes the accusation of arbitrariness. However, Commons's well-established conviction that to correct the excesses of the capitalist system it is necessary to manipulate its rules proves, *a contrario*, the extent to which this tool is not really neutral. While the institutionalist economist is hostile to the whims of the authorities who expose economic decision-making centres to unjustified risks, he is a strong advocate of changing the latitude they have in transaction situations. The public action must unfold *ex ante* without affecting the outcome of these transactions. Even in this way, inequalities can be significantly reduced.

While Commons ([1934] 1990), afraid of a collapse, believes that capitalism must be examined through the prism of its “stabilization,” North does not consider the possibility of a setback.¹⁶ On the contrary, he is interested in the transition of countries from developing to prosperous, following the example provided by the Northern countries, which he describes as “open-access orders” (North 2004a, 2009). He has even edited a book of case studies from developing countries where poorly channeled violence creates a negative dynamic between economics and politics (North et al., 2013). The search for rent, coercion, and the instrumentalization of the state in the service of private interest coalitions echoes Commons, but the induced latent violence does not lead to the same diagnosis. For North, competition, when it operates without hindrance, makes it possible to break this deadlock. Its clear rules, known to all, prevent the emergence of long-lasting rents provided this competition is open to all economic or political groups. Economic theory explains this result, which applies both to the economic and the

¹⁵ Keynes's and Commons's theories converge more on ends than on means (Chasse, 2017; Whalen, 2008).

¹⁶ It is true that North (2004) provides the example of the New Economic Policy (NEP) during the Russian Revolution but, in the Marxist ideological context, NEP must be seen more as a hiatus in the revolutionary project rather than its end as an abandonment of the capitalist model.

political field (North et al., 2009). The circulation of information and the absence of arbitrariness are fundamental.

The driving forces of the economy are thus likely to flourish in a specific institutional environment. Openness is a guarantee of a plurality of practices and opinions by which the economy performs well - efficiency is “adaptive” rather than “allocative” (North, 1990). In this respect, North does not forget to differentiate himself from the neoclassical model:

“You do not get it by having government in absence. You get it by government and voluntary organizations together producing the structure that will create the characteristics that you want.” (North, 2000a, 7).

Self-governance of the economy is not a path that emerges naturally. There must be a consensus in the community that the satisfaction of political or economic ambitions excludes use of violence and that henceforth it requires participation in a competition open to all and supposedly objective rules. It is not inexorable to accept a constant challenge to one's advantages by renouncing old instincts to conserve or acquire them. Once all the energy is consumed by this way of asserting one's interests, the laws of economics can finally apply.

North's theory is not an update of Montesquieu's “soft trade” thesis or Adam Smith's ideas. It examines closely the underlying forces leading to the rise of “open-access orders” where market mechanisms are at their full potential. Nor does North avoid the problem of the social effects resulting from his theory. There are many upheavals in the lives of citizens. Adaptive efficiency has an undeniable cost. However, the new institutionalist, who devotes an entire section to “redistribution” in “open access regimes” (North et al., 2009), argues that the individual risks inherent in participating in economic competition have been addressed. The better protection of economic agents does not involve transfers from the rich to the poor but rather a better integration of the latter into the order. The state is not to interfere in economic activities but rather to provide goods and services that are “complementary” to the market to those who need them most.

North (2009) highlights the role of the education system as well as the place of financial and transport infrastructure for this purpose. They enhance the value of human capital and should therefore not be considered as non-repayable expenses. They end up bringing economic benefits.¹⁷ Social insurance programs are also part of this arsenal of measures that both rebalance the social field and generate economic performance in the long term. At the same time, North is a fierce opponent of the welfare state. Direct transfers to specific categories of economic agents are perceived as a resurgence of rents characterizing the “natural states” that the market is intended to eliminate. They disrupt the optimal allocation of resources. The distinction may seem tenuous, but North (2009) points unambiguously to

¹⁷ In the debate on the economic efficiency of democracy, North positions himself in an original way. He opposes Robert Barro (1996) who equates this political system with “luxury good” because of the redistribution that accompanies it and that is wasteful. Like Dani Rodrik (1997), North postulates its effectiveness but limits the forms of redistribution. It must be recalled that Acemoglu and Robinson (2005) are discussed extensively.

his target. He is pleased with the historical development in Western Europe. The social democratic parties have understood that they must ensure the tempering of their interventionist ardor. Even the Scandinavian countries, which have systematically been noticed at the forefront of social issues, have given up controlling the market and influencing its movement.

It is important to keep in mind that, while orthodox theory fails in several ways, its analysis of the functioning of markets remains relevant (North, 2000a). For this reason, North banishes fiscal and monetary policies and approves of structural policies. The redistribution policies he calls for are part of this same perspective. The meaning he attributes to redistribution is therefore extremely broad. His red line is that the competition must never be distorted. As has been said both in politics and economics, the mechanisms of competition protect against a return to violence in the “natural states.” The dynamics it creates override the objection of Mancur Olson and public choice theorists about rent-seeking (North et al., 2009). In the economy, the logic of competition requires this absence of state intervention or of arbitrary interference. Restrained, the policy focuses on the rules that define the framework for economic activities.

The political competition around these rules, which are not neutral, is ferocious. The two levels of competition really overlap. However, open-access orders “*survive, despite the continued growth in the number and the size of large well-organized interests*” (North et al., 2009, 141). In other words, North's hypothesis that dissatisfied citizens can regroup and, if there are enough of them, obtain a change in the rules of the game is not invalidated by the facts: no revolution has occurred in the countries that fall into this category. Relationships of economic coercion are absorbed by competition and the model has proven stable. Commons cannot subscribe to this binary approach - personal relationships with the possible use of violence on the one hand, competition open to all on the other. In the capitalist system, coercion does not disappear and competition does not make it more equitable. One of the main tasks of the state is to reduce the intensity of competition because, even in an open-access order, the weakest are unable to make their voices heard. The market rules are therefore not sufficient to stabilize the social order.

Conclusion

The comparison between Commons and North is not incongruous. It allows to apprehend the similarities as well as the differences between old and new institutionalism without referring to Williamson. On an analytical level, the two men affirm the necessary incorporation of institutions within historical dynamics. They also agree that the security of expectations is an elementary role assumed by the institutions. However, social interactions express a stronger cooperative potential according to North, especially in the capitalist system. The question is how societies dominated by violence have a chance to become “open-access orders” in which impersonal rules end up structuring human relationships in a manner that is beneficial to the collectivity. He dedicates most of his attention to this difficulty encountered by developing countries. For his part, despite improvements observed in terms of liberty

over the centuries, Commons argues that coercion is not eradicated. The abuses of capitalism calls into question its existence. His aim is to prevent chaos in developed countries.

In 2009, North shows his admiration for the apparently inalterable nature of “open-access orders”, with an specific emphasis on the European evolution (North et alii, 2009). Ten years later, the overall picture is quite different. Combined with the weakening of social democratic parties, the development of populist movements against a backdrop of economic inequalities raises doubts about the fate of representative democracies (Deaton, 2013 ; Piketty, 2013). From the moment when the opening of competition is more theoretical than real, when it is always the same economic agents who win, the question of the stability of the system comes back in force. If the social effects of economic competition are not corrected by political competition, the rules that set the framework for transactions must ensure that coercion is kept within reasonable limits. According to Commons, the economic dimension should not be prevailing. The current European construction is based on impersonal rules as North defines them. It aims to create a competitive and efficient economic space. For Commons, this economic empowerment would certainly have been considered with caution. Is it an additional step towards progress or social regression for employees, mainly in Western Europe - which threatens the whole project? The debate remains open at this time. . . .

References:

Acemoglu Daron et Robinson James A., 2005, *Economic Origins of Dictatorship and Democracy*, Cambridge University Press, Cambridge.

Barro Robert J., 1996, Democracy and Growth, *Journal of Economic Growth*, volume 1, p. 1-27.

Biddle Jeff, 1990, “The role of negotiational psychology in J. R. Commons’s proposed reconstruction of political economy”, *Review of Political Economy*, vol. 2, n°1, p. 1-25.

Biddle Jeff, 1991, “The Ideas of the Past as Tools for the Present: The Instrumental Presentism of John R. Commons”, *The Estate of Social Knowledge*, Anne Brown and David van Keuren (ed.), Johns Hopkins, University Press, Baltimore, p. 84–105.

Broda Philippe, 2013, “Conflict Resolution: A key to the interpretation of John R. Commons’ intellectual journey”, *Journal of Economic Issues*, volume 47, n°4, p. 855-872.

Chasse John D., 1986, “John R. Commons and the Reform State”, *Journal of Economic Issues*, volume 20, n°3, p. 759-784.

Chasse John D., 2017, *A Worker’s Economist. John R. Commons and His Legacy from Progressivism to the War on Poverty*, Routledge, New York.

Commons John R. [1893] 1963, *The Distribution of Wealth*, Kelley, New York.

Commons John R., 1894, *Social Reform and the Church*, Crowell, New York.

Commons John R., [1899-1900] 1965, *A Sociological View of the Sovereignty*, Kelley, New York.

Commons John R., [1924] 1959, *Legal Foundations of Capitalism*, The University of Wisconsin Press, Madison.

Commons John R., [1934] 1964, *Myself*, University of Wisconsin Press, Madison.

Commons John R., [1934] 1990, *Institutional Economics*, Transaction, New Brunswick.

Deaton Angus, 2013, *The Great Escape. Health, Wealth and the Origins of Inequalities*, Princeton University Press, Princeton.

Dugger William M., 1979, “The Reform Method of John R. Commons”, *Journal of Economic Issues*, vol. 13, n°2, p. 369-381.

Dugger William M., 1983, “The Transaction Cost Analysis of Oliver E. Williamson: A New Synthesis?”, *Journal of Economic Issues*, vol. 17, n°1, p. 95-114.

Dutraive Véronique, 1993, “La firme entre transaction et contrat: Williamson épigone ou dissident de la pensée institutionnaliste”, *Revue d'économie politique*, n°103, p. 83-105.

Fine Stanley, 1956, *Laissez-Faire and the General Welfare State*, University of Michigan Press, Ann Harbor.

Fiorito Luca, 2010, “John R. Commons, Wesley N. Hohfeld, and the Origins of Transactional Economics”, *History of Political Economy*, volume 42, n°2, p. 267-295.

Gonce Richard A., 1998, “The Identity and Significance of Commons’s A Sociological View of the Sovereignty”, *The founding of Institutional Economics*, Warren J. Samuels (ed.), Routledge, Londres, p. 76-95.

Greif Avner, 1994, “On the Political Foundations of the Late Medieval Commercial Revolution: Genoa During the Twelfth and Thirteenth Centuries”, *Journal of Economic History*, vol. 54, n°2, p. 271-287.

Harter Jr. Lafayette G., 1962, *John R. Commons: his assault on laissez-faire*, Oregon State University, Corvallis.

Isserman Maurice, 1976, “God bless our American institutions : The labor history of John R. Commons”, *Labor History*, vol. 17, n°3, p. 309-328.

Johnson-Laird Philip N., 2002, “Peirce, logic diagrams and the elementary operations of reasoning”, *Thinking & Reasoning*, vol. 8, n°1, p. 69-95.

Kirat Thierry and Bazzoli Laure, 2003, “A propos du réalisme en économie des institutions et ses implications sur l’analyse des fondements juridiques des transactions économiques : Commons versus Williamson”, *Economie Appliquée*, tome 56, n°3, p. 171-209.

Ménard Claude and Shirley Mary M., 2014, “The Contribution of Douglass North to New Institutional Economics”, *Institutions, Property Rights, and Economic Growth. The Legacy of Douglass North*, Sebastian Galiani and Itai Sened (ed.), Cambridge University Press, Cambridge, p. 11-29.

North Douglass C. and Weingast Barry R., 1989, “Constitutions and Commitment: The Evolution of Institutional Governing Public Choice in Seventeenth-Century England”, *The Journal of Economic History*, vol. 49, n°4, p. 803-832.

North Douglass C., 1990, *Institutions, Institutional Change and Economic Performance*, Cambridge University Press, Cambridge.

- North Douglass C. 1994, “Economic Performance Through Time”, *American Economic Review*, vol. 84, n° 3, p. 359-368.
- North Douglass C., 2000a, “Understanding institutions”, *Institutions, Contracts and Organizations. Perspectives from New Institutional Economics*, Claude Ménard (ed.), Edward Elgar Northampton, p. 7-9.
- North Douglass C., 2000b, “A revolution in economics”, *Institutions, Contracts and Organizations. Perspectives from New Institutional Economics*, Claude Ménard (ed.), Edward Elgar Northampton, p. 37-41.
- North Douglass C., 2004a, *Understanding the Process of Economic Change*, Princeton University Press, Princeton.
- North Douglass C., Mantzavinos Chrysostomos and Shariq Syed, 2004b, “Learning, Institutions, and Economic Performance Through Time”, *Perspectives on Politics*, vol. 2, n° 1, p. 75-84.
- North Douglass C., 2004a, *Understanding the Process of Economic Change*, Princeton University Press, Princeton.
- North Douglass C., Wallis John J. and Weingast Barry R., 2009, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History*, Cambridge University Press, Cambridge.
- North Douglass C., Wallis John J., Webb Steven B. and Weingast Barry R. (ed.), 2013, *In the Shadow of Violence. Politics, Economics and the Problems of Violence*, Cambridge University Press, Cambridge.
- Piketty Thomas, 2013, *Le capital au XXIe siècle*, Seuil, Paris.
- Ramstad Yngve, 1994, “On the Nature of Economic Evolution: John R. Commons and the Metaphor of Artificial Selection”, *Evolutionary and Neo-Schumpeterian Approaches to Economics*, Lars Magnusson (ed.), Kluwer Academic Publisher, Boston, p. 65-121.
- Ramstad Yngve, 1996, “Is a transaction a transaction ?”, *Journal of Economic Issues*, vol. 30, n°2, p. 413-425.
- Rodrik Dani, 1997, “Democracy and economic performance”, Unpublished, Harvard University, December.
- Rutherford Malcolm, 1996, *Institutions in Economics: The Old and the New Institutionalism*, Cambridge University Press, Cambridge.
- Schelling Thomas C., 1960, *The Strategy of Conflict*, Harvard University Press, Cambridge.
- Spencer Herbert [1879] 2012, *The Data of Ethics*, Forgotten Books, Londres.
- Spencer Herbert [1885-1898] 2004, *The Principles of Sociology*, University Press of the Pacific, volume 3.
- Vahabi Mehrdad, 2016, “A positive theory of the Predatory state”, *Public Choice*, volume 168, n°3, p. 153-175.

Whalen Charles J., 2008, "John R. Commons and John Maynard Keynes on Economic History and Policy: The 1920s and Today", *Journal of Economic Issues*, volume 42, n°1, p. 225-242.

White Morton, 1973, *Pragmatism and the American Mind*, Oxford University Press, Oxford.

Williamson Oliver E., 1975, *Markets and Hierarchies: Analysis and Antitrust Implications*, Free Press, New York.

Williamson Oliver E., 1985, *The Economic Institutions of Capitalism*, Free Press, New York.

Williamson Oliver E., 2000, "The New Institutional Economics: Taking Stock, Looking Ahead", vol. 38, n°3, p. 595-613.