

Régulation and John R. Commons’ “Reasonable Values”

Kota KITAGAWA and Masako FUTAMURA¹⁾

Abstract

In his classic book on *régulation* theory, Aglietta (1976, p. 109) references J. R. Commons’ book on labor history in the United States. Théret (2002; 2008) also uses Commons’ work as a foundation for the theoretical development of *régulation* theory. The purpose of this study is not to retrospectively review Commons as a source of *régulation* theory but to enrich and reinterpret the core concept of *régulation* theory, that is, *régulation*. We draw four main themes from Commons’ main work, *Institutional Economics* (1934): 1) *régulation* as a dynamic concept containing both the past and future; 2) *régulation* expressed through private and collective actions in the present; 3) the ethical role of “Commonsian *régulationists*” (Théret, 2008), which we call “investigators,” in their field; and 4) the riskiness of investigators identifying or categorizing themselves as micro-, mezzo-, or macro-economists.

Keywords: Commonsian *régulationist*, willingness, time, ethical ideal type, investigators

1. Introduction

In *Régulation et crises du capitalisme*, Michel Aglietta (1976) introduces the concept of *régulation* based on the experience of the United States. *Régulation* is presented as an alternative to the concept of “equilibrium” in the political economy. In his monograph, Aglietta (1976, p. 109) references the *History of Labour in the United States* (1932), written by an originator of American institutionalism, John R. Commons (1862-1945). Bruno Théret (2002, 2008) uses these theoretical works as a foundation for the theoretical

1) Faculty of Economics, Kansai University, Osaka, Japan; Faculty of Business Management, Osaka Sangyo University, Osaka, Japan.

Acknowledgments: This paper was supported by the JSPS KAKENHI, grant numbers JP20K01490, JP21K13268, and JP21K01418. This paper is based on a presentation at the Conference on Regulation Theory in September 2022, organized by Nicholas Sowell. I appreciate his work in organizing this valuable conference. I am also grateful for the advice from a Japanese “Commonsian *régulationists*,” Takayuki Nakahara.

development of Régulation Theory (RT). Théret describes himself as a “Commonsian *régulationist*.” However, with few recent exceptions (Bodet and Lamarche, 2020; Dervillé, 2021), empirical works by *régulationists* have failed to consider or apply Commons’s and Théret’s ideas.

This study aims to enrich the concept or perspective of *regulation* rather than conduct a retrospective review of J. R. Commons as a minor source of RT. Specifically, this study develops a more helpful concept of *régulation* for new-generation *régulationists* who give weight to meso-level research. Concretely, this study will draw on the unique idea of “*régulation* expressed in a collective action” from Commons’ *Institutional Economics*, from which the following four points are derived. First, when we analyze the “economic *régulation*” of a group or a society, we should treat it as inseparable from “social *régulation*.” Second, it is better to see *régulation* as a dynamic concept in the present, containing both the past and future. Third, while there are various *régulationist* forms, Commons (1934, p. 97) suggests that they are to be investigators who play an ethical role. Fourth, it is risky for *régulationists* to limit themselves to being micro-, mezzo-, or macro-economists.

This study consists of five sections. In the next section, we discuss a case of institutional (re)formation described in Commons’ masterpiece *Institutional Economics* (IE) (1934) to introduce his key concepts and unique method. The third and fourth sections explain these key concepts and methods. These sections also discuss his concepts of “willingness” and “reasonable value,” which refer to a common good in society. These are similar to RT’s concept of the “social *régulation*” of a going concern as a whole. In the fifth section, we draw implications for RT from Commons’ concepts and method. Although Commons’ key concepts (willingness and reasonable value) are similar to RT’s core concept of social *régulation*, Commons’ key concepts imply a collective constitution of ethics. This is a point that RT does not sufficiently recognize. When we focus on the collective constitution of ethics, we should amend how we think about “time,” as it relates to *régulation* of a society and the *régulationist* stance on how to interact with investigation objects (e.g., a group or society). This amended Commonsian RT is an approach to collective or public ethics of an investigation object. Moreover, Commonsian RT is a method by which a *régulationist* can contribute to the reconstitution of the *régulation* of a society. Thus, this paper will demonstrate a roadmap that the *régulationist* introduce ethics into both their research

outcomes and their research objects.

2. Case of institutional formation described in Commons' *Institutional Economics*

In this section, we introduce the case of institutional formation described in IE (1934) to understand Commons' unique method and key concepts. The case is the formation of the Wisconsin Workmen's Compensation and Accident Prevention Law of 1911 and the Wisconsin Unemployment Prevention Law of 1932.

In the 1900s, before Commons was asked by the governor of Wisconsin to draft the safety law, he investigated the hub of the steel industry, Pittsburg, in which the US Steel Corporation, the company with the largest asset value at the time, was based (Kellogg, 1914). Big businesses and progressive firms had begun to introduce fairer and more systematic management practices (relying on rules instead of the arbitrary decisions of foremen). These firms began to employ safety experts, form private workers' compensation institutions, and introduce employee representation systems. The motivation behind these changes was threefold. First, big firms sought to avoid strong criticism resulting from labor suppression, which would turn public opinion against them. Second, they hoped to acquire "goodwill" and "loyalty" from their employees and increase their willingness to work. Third, they wanted to remove labor unions from the workplace. Big firms sought to achieve the same values (fairness, participation, safety, health, and the stability and security of future income and jobs) that organizers of the labor unions wanted. Commons expresses this as "beat them to it" (1934, p. 888) and occasionally witnessed that "a belligerent socialist or trade unionist converted into an ardent propagandist of capitalism by this uplift along the hierarchy of American corporationism" (1934, p. 889).

Thus, Commons understood that an ambiguous "willingness," both progressive and inclusive willingness, had formed in these big firms. Commons observed a progressive accident compensation mechanism of a private institution developed within the big firms, and after being inspired by it, he drafted the Wisconsin safety law. However, he encountered a large wall preventing these types of socioeconomic laws, which the courts ruled as unconstitutional. The courts ruled that establishing a minimum wage and restricting labor hours were unconstitutional because they were an "unreasonable" restriction on the freedom of property of employers. Therefore, when progressive

reformers made laws that required employers to introduce safe management practices, they had to justify such laws as “reasonable” methods for realizing safety improvement (a public purpose) that required a reasonable degree of restriction on the employers. For the reformers, the problem was how to define the term “reasonable.”

At the time, the meaning of a “reasonable” restriction admitted by common law required employers to employ safety measures that were seen as customary by “ordinary” persons. Therefore, if reformers wanted to enact a progressive law requiring employers to introduce safety measures that went beyond the ordinary level, courts would see it as an unreasonable restriction and judge it as unconstitutional.

After a student of Commons mined materials, such as judicial precedents, from the Wisconsin parliamentary library, he discovered a precedent that allowed for the reasonable restriction of freedom of property “to the extent that the nature of the employment or place of employment ‘will *reasonably* permit’” (Commons, 1934, p. 861). Commons and his associates interpreted “the extent that the nature of the employment or place of employment ‘will *reasonably* permit’” as “the highest degree of accident prevention, which is actually in practice by the best firms” (Commons, 1934, p. 861). Additionally, they saw “the extent that the nature of the employment or place of employment ‘will *reasonably* permit’” as a degree set by an agreement between involved parties, that is, between laborer and employer.

Thus, Commons and his associates innovatively reinterpreted the words of the discovered precedent. They attempted to avoid criticism from the courts by highlighting the consistency between their newly drafted safety law (present) and the innovatively reinterpreted precedent (past). In other words, they excavated the once-forgotten past collective decision and used it to justify the present social reform.

The accident compensation law drafted by Commons stated that the State Industrial Commission, which mainly consisted of labor and management representatives, would administrate the insurance institution. This was intended to satisfy the plural values (safety, efficiency, profit, and participation) held by the institution. After the law was enacted in 1911, a collective spirit called the “safety spirit” was formed through the institution’s administration by the representatives of laborers and employers, which were given authority by a sovereign body (Wisconsin State). In terms of this study, this demonstrates the formation of willingness into “public action” (cooperative action by the

sovereign body and involved groups).

Commons and Commission's safety experts launched education and advertisement campaigns statewide to improve public opinion concerning safety improvement. Additionally, they organized various negotiation bodies and conventions in workplaces, districts, and statewide to promote voluntary awareness and the creation of agreements on more progressive safety rules between laborers and employers. Thus, multi-layered deliberation institutions were formed. Through deliberations, laborers and employers could understand each other's motivations and try to persuade each other by connecting their claims with the other party's motivation. Employers tried to persuade laborers to accept the values of profit realization and efficiency improvement. Laborers tried to persuade employers not only to increase wages and restrict labor hours but also to accept the values of participation, fairness, and stability of income, employment, and livelihood. These values led to work motivation. Through deliberations, a willingness between laborers and employers was formed. This is the collective spirit in which both laborers and employers would voluntarily cooperate with a rule once they had agreed upon it. It is called "safety spirit," "industrial goodwill," or "industrial democracy."

As noted above, under the Compensation Law, the Commission, which mainly consisted of labor and management representatives, administrated the insurance institution. The Commission discovered progressive safety practices within a firm through its statewide investigation. Then, referencing these progressive practices, the representatives agreed to perform "the best practicable" practice (Commons called "the best practicable" practice agreed to by the involved parties the "ethical ideal type"). The Commission corded and enforced the practice as a new rule to which employers were required to conform statewide. However, the room was left for the courts to (ex-post) judge whether the rule was reasonable.

Thus, based on an observed progressive practice and the consensus formation between representatives, the safety level of employers statewide increased. That is to say, ethics at the social level was continuously reconstituted through investigations and consensus formations between interest groups.

As noted above, this willingness had been established through public action for two decades, and it became a foundation (or common good) for further progressive lawmaking (the unemployment compensation law in 1932). Laborers and employers in the state came

to share the expectation that three parties (labor, employers, and the state) would voluntarily cooperate to enforce an institution once they had agreed to it, even if laborers and employers intensively conflicted over the pros and cons of the drafts of the unemployment compensation law. This reciprocal expectation became the “unwritten law” of the way the statute will be interpreted” (Commons, 1934, p. 848). Thus, the willingness formed through two decades of public action became social-level common good that supported the written law.

In the negotiation process of the unemployment compensation law, some drafts were presented by interest groups. Commons referred to the “social philosophy” of the United States to criticize other drafts (compulsive law) and justify his own draft (voluntary enrollment law). He said that the draft (the compulsive law) that requires employers statewide to enroll in the insurance institution matches the European social philosophy, in which “the whole capitalistic system of private property is responsible” for workplace accidents and unemployment. However, it did not match the American social philosophy. That is, the draft in which each employer can voluntarily enroll in an institution matches the American social philosophy of “individual initiative” and individual responsibility. However, this does not mean individualism but “ideas of *regulated* but *voluntary* individual responsibility” (Commons, 1934, p. 852).

Finally, the voluntary enrollment law was enacted. The American social philosophy, which Théret (2002) calls the “symbol system,” “discourse,” or “ideology,” became the foundation for justifying the law.

Thus, to mobilize a broad range of interest groups as possible to public action, Commons tried to bridge the “past” ethic and the unrealized but practicable “future” ethic in the “present” reform by using the word “reasonable” seen in the precedent, the social philosophy, and novel institutions (administrative commission and insurance system).

3. Reasonable value

Considering the above case, we will explore how collective action and the common good (willingness and reasonable value) are discussed in IE.

3.1 Collective action and time

IE sees “collective action” as an analytical “object” (Commons, 1934, p. 521) and discusses

conflict and control/repression of plural values expressed in the action, institutional coordination, and causations of the values. Group members are restrained by conditions (e.g., customs and properties) that have been constituted from the past to the present, and they act in a coordinated way in the present to realize desirable future outcomes for the group (1934, p. 642).

Thus, collective action in the present moving point contains the past and future. More specifically, the relationship between collective action and time is sorted as follows.

3.1.1 From past to present

Collective action is restrained by physical, legal, and ethical conditions created from the past to the present. Additionally, as seen in the case in Section 2, the group can reinterpret these conditions to realize a new ethical goal. Therefore, the past not only restrains present action but also expands the possibilities of the present action.

3.1.2 From future to present

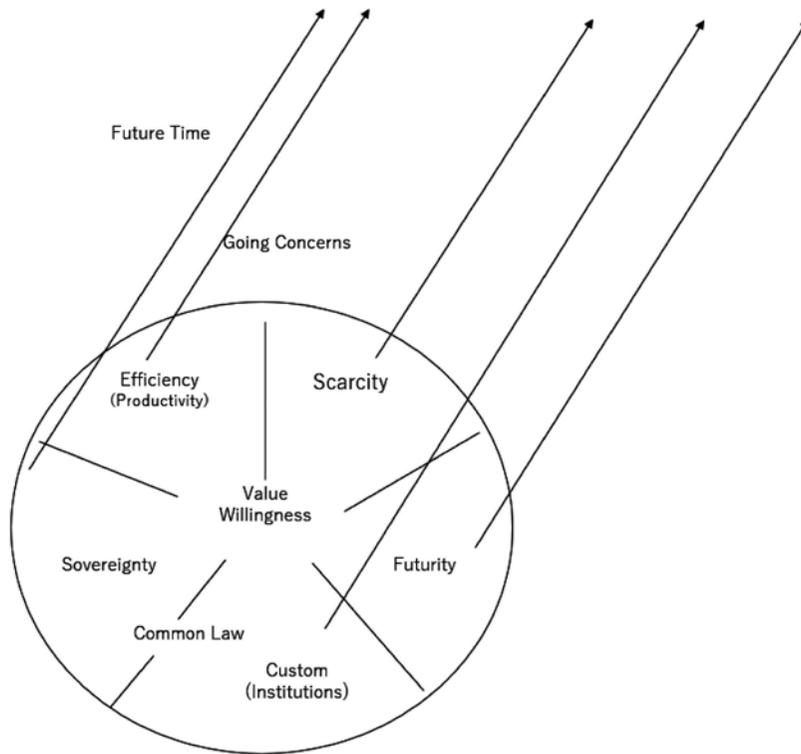
A collective action in the present is guided by a common good that members of the group share. As we saw in the case in Section 2, a group can reconstitute the common good through investigation and consensus formation. IE calls "the upper practicable limit of idealism," constituted through investigation and consensus formation, the "ethical ideal type" (Commons, 1934, p. 860). The collectively (re-)constituted ethical ideal type becomes new guidance for the present action. Thus, the future not only restrains the present action but expands the possibilities of the present action.

3.2 Willingness

"Willingness" of a group is a whole principle where values ("scarcity," "efficiency," and other values) of the group, customs and private rules, laws, and other forces have been coordinated and integrated. This whole principle motivates and guides the group to perform certain collective actions (Commons, 1934, p. 643). Willingness in the present also contains the past and future, as illustrated in Figure 1, where willingness contains "futuraity" and "future time."

For Commons, the concept of "willingness" implies the various significances and effects impacting a going concern. We sort out the following three points based on Commons

Figure 1. Principle of willingness integrating the five principles



Source: Made by the author based on Commons (1925, p. 121, Figure III)

(1934) and Commons (1925, pp. 121-125).

First, the “weighing” of various values shared in a going concern (Commons, 1934, p. 717) is the common good to which members of the going concern refer for collaboration. The value consists of and is coordinated by institutions, and it represents a common good shared by the members of a concern. The members negotiate (justify, blame, and plead) with each other by referencing the common good. They do so because they want to continue their collaboration and gain future collaborative outcomes and/or agreements among the broader membership to stabilize a newly agreed upon institution (rule). The common good consists of more than just the goods embodied in the material and immaterial facilities of the group (Commons, 1934, p. 660); that is, it also includes commonwealth and historically constituted custom. The common good also contains the collective future created by consensus formation, that is, the “ethical ideal type.” Therefore, it is not just a “conservative” reference frame forcing the members to conform to the past. Rather, it is the unrealized but acceptable and workable ideal of the going concern in the

future.

Second, willingness is the cohesion force of the group expressed as a collective power (i.e., physical, economic, and moral sanctions). Concretely, this power is exercised through collective blame or banishment of a member in violation of the common good (Théret, 2002).

The third point is prices, other values, and practices, which are realized through collaborations (*trans*-actions) among members that do not seem to violate the working rules of the group.

3.3 Coordination of plural willingness

Each group has a particular willingness, for instance, a particular approach to weighing values (particular common goods). This is because, according to Commons, each group or going concern (e.g., family, firm, other association, or nation) is "a functioning whole" (Commons, 1934, p. 634, 637). Commons see the "society" as the political economy of going concerns. It is a whole consisting of wholes. Groups transact (collaborate) with others in society. In this way, various heterogenous willingnesses encounter each other. Sometimes they can peacefully reach mutual dependence; sometimes, they conflict with each other. This conflict is authoritatively managed by a higher group and ultimately arbitrated by a sovereign body via the law. In the collective action between the sovereign body and the conflicting groups (referred to in this study as "public action"), the conflict between the willingnesses is resolved through lawmaking by the legislature, arbitration and conciliation by the administrative body, and judgment by the courts. What is implied in such laws is that common goods reached through social compromise of values are seen as fair, acceptable, and workable by groups in society. This is a willingness at the social level. Commons calls this willingness reached through public action (in his case, actions at the state or federal level) "reasonable value."

3.4 Reasonable value and *régulation*

The concept of willingness in IE is similar to the concept of *régulation* in RT, more precisely, social *régulation* (*régulation social*) (Uni and Nakahara, 2017; Lahille, 2020). *Régulation* means, inspired by the thoughts of Georges Canguilhem, the institutionalized compromise, and the relationship that coordinates "a plurality of behaviors and their

effects or products, which are, at first, foreign to one another because of their diversity or succession” to competitively contribute to the reproduction of a whole society (Boyer, 1986, p. 26). As noted above, each group is not only a part of the whole society but a whole in and of itself. Therefore, there is particular *régulation* at each level (the collective and public levels). Willingness in public action (i.e., the reasonable values discussed in IE) is similar to the *régulation* at the public level discussed in RT. Both concepts (principles) include every circumstance of conflict, mutual dependence, and order because, even if a whole society is in the circumstance of order, this circumstance is one where conflict is temporarily repressed. At such a time, while groups are mutually dependent, some groups’ willingness is repressed. Therefore, there is always underlying conflict or the potential for conflict.

While willingness and *régulation* resemble each other, they are not entirely synonymous. This is because RT does not focus as strongly on the (re)constitution of coordination, which is emphasized as “a theory of social progress” in the Commons’ IE (the theory of reasonable value) (Commons, 1934, p. 874). However, the Commons’ theory of reasonable value focuses on collective and active reconstitutions of common goods by investigation and deliberation. These reconstitutions are divided into the evolution of law over “ordinally” reasonableness and consensus formation over reasonableness, meaning the “practical upper limit.”

3.4.1 Evolution of law

Customs (ethics) and laws that have been formed in the past constrain present actions. However, their interpretations are always ambiguous because the economic and technical situations embedded in a group are specific and changing. They are also ambiguous because group members can reference plural and multi-layered willingnesses (i.e., various common goods) when they interpret customs and laws. Various interpretations of customs and laws lead to opportunities for novel private action. Novel actions gradually diffuse and sometimes become new customs. These sometimes conflict with existing customs. This conflict is resolved temporarily by sovereign bodies, for instance, a court decision. Lower courts sometimes show novel interpretations of past precedents when they resolve conflicts between customs. This means that, in courts, the past is creatively mobilized to justify novel decisions. After such novel decisions have been accumulated, the Supreme

Court will finally authorize the novel custom as new "ordinally" reasonableness.

3.4.2 Consensus of the ethical ideal type

Through investigations, "the best practice" of the progressive minority is discovered. It then becomes the focal point of deliberation. "The best practicable," that is, an ethical ideal type, is agreed upon by representatives of members of a group. After which, members would perform or comply with the ethical ideal type. The ethical ideal type is a consensual "hypothesis." Therefore, it is "tested" through a collective action guided by the ethical ideal type. If the "effects" of the collective action are not aligned with the ethical goal of the group, the ethical ideal type is renegotiated and reconstituted.

Thus, the past custom and future ethical ideal type are not only expressed in present collective action but also constrain and/or expand the present collective action. This study intends to extend the concept of *régulation* to one that includes the reconstitution of a collective future that is agreed upon in the present. In this way, the concept of *régulation* departs from one that is confirmed post hoc through the analysis of *régulationists* and becomes a concept that is (being) reconstituted in the present as the agreed future that guides present collective action. By understanding *régulation* as such, we can make room for *régulationists* to be involved in the process of reconstructing *régulation*, as we will describe in the following section.

3.5 Plural and hierarchical willingness expressed in a collective action

As noted in Section 3.3, a society consists of coordinated wholes (plural willingnesses). We can easily understand that these willingnesses are hierarchical because there are upper/lower groups and a sovereign body in society. However, the hierarchy of willingnesses where the top is the reasonable value is not a simple hierarchy of various common goods because willingness in the upper level of collective action (the top of which is reasonable value) and the law do not necessarily include willingnesses of lower levels of actions. For instance, in the case described in Section 2, the "reasonable values" formed by public actions in Wisconsin were more progressive than the "reasonable values" implied by Federal law and precedents.

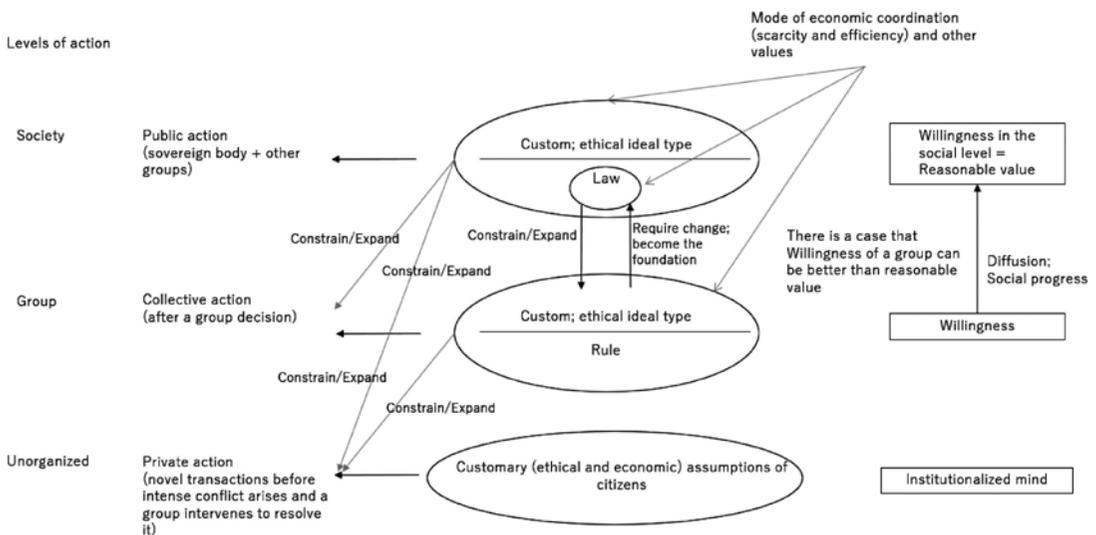
Law and willingness are often nested. From the standpoint of public purpose, the law (e.g., a common law regarding workplace accidents) sometimes imposes a new "ordinally"

level action on groups and their members that has embraced old customs. In this case, the law is superior to the ethic implied in the old custom. In contrast, in the case of the 1932 unemployment compensation law, the statute law made no sense. Therefore, its meaning and the way it was administered were defined by a social ethic created through public action in Wisconsin. In this case, the ethic was superior to the law.

Mutual dependence and/or conflict of plural willingnesses can also lead to the creation of novel private and collective actions. In addition, changes in willingness (i.e., changes in how values are weighed) brought about by referencing another willingness are driven by mutual dependence and/or conflict between the first willingness and the other willingness. In the case in Section 2, progressive companies tried to eliminate the attractiveness of labor unions by adopting the willingness of the labor unions in their territory. Against the novel private or collective action, the labor unions criticized an employee representative system within the companies by referencing industrial democracy, that is, the upper ethic: democracy must not be locked within the territories of capitalists.

Thus, in a society, there are nested layers between heterogenous willingnesses and between law and ethics, as shown in Figure 2. The plurality and hierarchy of willingnesses not only become the foundation of transactions with others in the various levels of actions but also become a source of novelty and creativity in transactions. This is because actors

Figure 2. Plural and layered willingnesses



Source: Author, with creative reference to Thérét (2002)

can refer to plural willingnesses and interpret them. The plural willingnesses not only constrain them but can also mobilize them to justify their own argument, pleading, decision, and enforcement.

4. Investigators

From the case in Section 2, Commons derived the reasonable value of the United States, that is, its public-level ethic and the institutional forms needed to realize it. This value favors individual initiative, guided and expanded by collective actions. The institutional forms for realizing it comprise a sovereign body and voluntarily organized interest groups.

Congress and courts secure the freedom of association. Voluntarily organized groups (associations) send voluntarily elected representatives to an administrative commission. This institution is created to realize industrial democracy at the public action level. The administrative commission is also an institution that can democratically coordinate conflicts between plural and hierarchical willingnesses (ways of weighing profit, efficiency, individual initiative, collective coercive power, and welfare—including safety, health, and security) at the public level of action. The method of coordination is to investigate progressive practice within its jurisdiction and then make an ethical ideal type (new willingness) by referencing observed progressive practices. The administrative commission is given not only administrative authority but also quasi-legislative and quasi-judicial authority by the sovereign power (the law of congress). The commission tries to realize the ethical ideal types by using these authorities. However, whether the decisions and enforcement by the administrative commission are reasonable or not is post hoc judged by courts. Commons thought that "individuality" or "personality" and society mutually develop through collective actions by authorities and groups.

Commons then criticized fascism and socialism from the standpoint of the ethical criterion—that is, reasonable value—of the United States and the institutional forms that are needed to realize it. In these regimes, congress was abolished, and therefore, the freedom of association was lost. Moreover, the courts were abolished, and hence, the separation of the powers of government was lost. Thus, the autocracy at the top of the administrative body was established. The administrative body organized compulsory "corporations" of interest groups. In terms of IE, these replaced bargaining- and voluntary rationing transactions at the collective and public levels with managerial transactions.

Fascism and socialism enclose ethical negotiations into autocratic managerial transactions (hierarchy). Commons disapproved of such regimes because they did not fit American social philosophy, which uses individual initiative controlled by collective actions.

Moreover, Commons also derided the current situation of the United States from the standpoint of the ethical criterion (reasonable value) derived from the case we discussed in Section 2. In the final chapter of IE, he seems to implicitly criticize the institutions that enclose the systems for coordinating and realizing values (for instance, the employee representative and insurance systems) into the territory of capitalists. Contrastingly, his description of the administrative commission that had been rapidly spreading among the States seemed to express his expectation and hope that the institutions for keeping democracy and liberalism alive were diffusing across the United States (Commons 1934, p. 900).

From his discussions of society, we can infer that institutional economists play the role of “investigators.” In IE, the term “investigation” not only means an investigation of progressive, ordinary, and inferior practices of the groups seen within the jurisdiction, creation, and analysis of statistics, but it also refers to “inquiry” as a collective process focused by American pragmatism. The process follows a spiral development pattern: The first step is creating a consensual ethical ideal type through abduction, deduction, and induction and deliberation of the groups. The second step is testing the effects and usefulness of the ideal type by enforcing and complying with the ideal type. The third step is reinvestigation and renegotiation to agree upon a new ethical ideal type if the old one is not sufficiently effective at realizing the public purpose. Thus, investigators in IE go back and forth when building a theory or model, conducting empirical research, and describing actual situations. Investigators in IE also communicate with their investigation objects; that is, members of a group or a society. The Investigators can incorporate these interactions into their theories, models, and empirical research into conscious communication with group members. For instance, institutional economists can show their research outcomes to their research objects to promote collective reflection (particularly consensus formation regarding the coordination of values). In this way, they become investigators. In the following, we more concretely derive the role and place of institutional economists as investigators based on Commons’ critical discussion of society.

The role of investigators is, first, to clarify the willingness or reasonable value of an

observed group and its members as expressed in collective action. They also clarify the institutional forms that stabilize the coordination of the value. The investigators focus on institutional forms related to institutionalizing the (complicated) relationship of the economic, sovereign (law), and ethical forces. It is better to find institutional forms that are strongly involved in the institutionalization of relationships among these three forces rather than to set ad hoc institutional forms beforehand (for instance, the five institutional forms categorized in Boyer 1986).

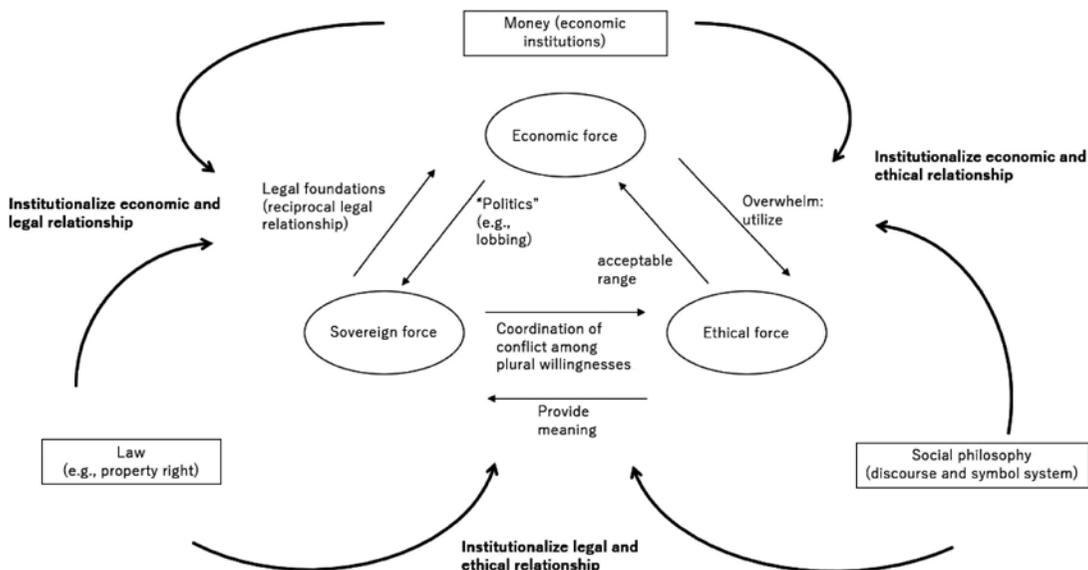
There is a hierarchy in these three forces. For instance, an economic force sometimes overwhelms an ethical force. However, in many cases, the relationships among the forces are more complicated. For instance, while a legal force constrains an economic force, the economic force strongly affects lawmaking through lobbying. While an economic force sometimes overwhelms an ethical force, the economic power is beaten by ethical force (public opinion). In the case discussed in Section 2, Commons said,

Big business is really more sensitive because it does not have the votes. The unexpected outcome has been that labor legislation and public opinion are more easily enforced on big business than they are on little business. The United States Steel Corporation defeated the eight-hour strike and then announced the installation of the eight-hour day on the terrified petition of politicians. The General Electric Company installs unemployment insurance without waiting to be coerced by legislation. Other corporations have preceded or are following the General Electric. (Commons, 1934, p. 888)

While the law sometimes constrains the other two forces, as illustrated in Figure 3, foundation, meaning, and effectivity are backed up by customs and ethics. Customary assumptions of courts (sovereign power) change according to customs and public opinion, that is, ethical forces. The practices of progressive firms (collective ethics) in Section 2 and the agreement formed by representatives in the administrative commission reached by referencing progressive practices went beyond the level required by the legislature and courts.

The relationships among sovereign, economic, and ethical forces are complicatedly institutionalized by law, economic institutions, and social philosophy and lead to political powers. Investigators "constitutively" draw the institutional forms of the coordination relating the values and forces by identifying the entangled institutionalization of the

Figure 3. Relationships among the three forces



Source: Author

relationships among the forces. By clarifying the expression of these forces and their institutionalized coordination, investigators can find the following: a lower willingness of a group or volition of its members is repressed institutionally, for instance, by a deceptive customary reason. However, when a conflict among plural willingnesses is institutionally repressed, it actually smolders. Investigators would find these issues because full harmony among the interests of group members never happens. As such, investigators would clarify the immorality of a group or the unreasonableness of a society based on the ethical criterion they derived by investigating the group from the inside. This allows investigators to infer the future of the group or the society as it “ought to be” (Commons, 1934, p. 745). It should be stressed that new ethical ideal types must be constituted through negotiation between the involved parties (members and the investigator). This is because if an ethical ideal is provided without agreement from the members, it is difficult to motivate them to take voluntary action.

5. Suggestions for *régulation* theory

This section derives suggestions for RT from IE based on what we observed in the previous sections. First, separating economic coordination, what this study calls “economic

régulation,” from political and social coordination is problematic. Political coordination refers to struggles and compromises created by the conflicting interest groups' exercise of power (a mix of the three forces). Social coordination means, for instance, coordination of family problems, coordination of law, and discourse coordination (dynamism). Coordination in every area, moreover, is expressed as whole *régulation*, what this study calls “social *régulation*” in every collective action; whole *régulation* constrains the action or is actively mobilized by the action. If we concentrate too much on building a model to analyze economic *régulation*, separated from social *régulation*, and then use statistics to demonstrate its analytical efficacy, it becomes difficult for investigators to understand the role of social *régulation*. Likewise, suppose we forget that this method is a formal analytical method. In that case, investigators will have difficulty understanding that social *régulation* is a constituent of the collective action of the investigation object. Moreover, suppose we forget that the investigators are involved in the collective reconstruction of the social *régulation*. Then, it becomes difficult for investigators to play a role in improving collective action. This section will express this idea in detail.

5.1 Separated analysis of economic *régulation*

The classic and leading method of formalizing (Boyer, 2015) and analysis is as follows. *Régulationists* set medial and categorizing analytical concepts that formalize the whole *régulation*. For instance, “political area/constitutional order” are assumed to constrain the “five institutional forms” in the economic area. These institutional forms lead to a regularity of coordination, which RT calls an “accumulation regime,” guided by the “mode of *régulation*.” In the model, these concepts (elements) are connected in causations. In a graphic and visual model, the causations are shown as arrows. In most cases, these elements are mutually related, or they draw a circle (loop) as a whole model of concepts. When *régulationists* conduct empirical research, some elements, especially political ones, are taken as a given, which Lahille (2020) saw as a problem. Statistical data and case studies test the adequacy of the model.

An individual analyst might subtly modify medial concepts and models in the analytical process. However, such modifications would not substantially deviate from those created, accepted, or agreed upon by leading RT researchers. This implies that the medial concepts and model already contain ad hoc ethical criteria that the school has already agreed upon

before the investigation. Naturally, an ethical suggestion shown in an analytical conclusion is not based on a specific ethical criterion shown in the investigation object. Instead, it becomes a mere derivation of the ethical criterion implicitly or explicitly agreed to by the school.

This method, often seen in RT, is useful for macroeconomists who prefer to model economic *régulation* and its mathematical formalizing and then test its adequacy using statistics. Indeed, these research outcomes (e.g., Amable, 2003) had great scholarly and social impacts until the first half of the 2000s.

5.2 Social *régulation* constituted in a collective action

However, as we can understand from the case in Section 2, a collective action expresses not only *régulation* within the group but also other *regulations* at other levels of action. Moreover, the collective action is constrained by these *régulations*, and/or these *régulations* are actively mobilized in the collective action. That is, the *régulation* of the group and the whole *régulation* at other levels of action are reconstituted *in* the collective action. Collective action at the industry level is also a place where *régulations* at various levels of action are reconstituted. As we noted above, *régulation* is a coordination system between persons and objects, and its consequence in collective action is expressed as quantified representatives, for instance, a price and quantity of goods and services. However, *régulation* also contains political compromises between forces, and *régulation* mediated by the social philosophy and law are constituted in the social area. Indeed, these constrain collective action, and we could see them as given. However, we should not forget that group members reflectively and creatively mobilize social philosophy, collective ethics, and law into their collective action. That is to say, not only economic *régulation* but also social and political constructs, such as law, discourse, and power (which are mediations of political, economic, and social areas) constitute the collective action and are reconstituted in the collective action.

We can see examples of this in the case in Section 2. The first is the movement to improve production activities' safety in Wisconsin workplaces. The Industrial Commission (the representation system placed in the junction of "economic power" and "sovereign power") and related educational bodies promoted the movement through education and advertising to laborers and their families (it means infiltration of the discourse into the

social area). The Commission's safety experts also provided advice to employers and foremen. The collective spirit created and shared through the movements, progressive practices, and other labor-management deliberations was embodied and expressed in collective actions in workplaces (the economic area), for instance, the emergence of various forms of safety committees within firms and invention and notice of catchphrases (discourse) to enhance safety in workplaces. Safety (the shared value) was realized as the compromised value of profit, productivity, and safety in the gradually changed production activity. Then, the accumulation of experiences of safety improvement agreements and their joint administration between labor and employer within firms (collective actions in the economic area) translate the discourse (the ideology expressed as "Safety First" and "Safety Gospel"). Labor and Employer recognized that they would be able to form a consensus and collaborate on the issue; that is, the safety improvements and the committees of consensus forming and collaborating would provide a learning experience of industrial democracy in workplaces. Then, the discourse and the method for realizing it (a safety organization in a firm) has been converted as the starting point or the core for establishing the continuing joint bargaining system in workplaces not only for the issue of safety but also for comprehensive issues of industrial relations, e.g., wage, labor time, welfare (Ueno 2015). That is, led by the accumulation of the experience of the collective actions in the economic area, the discourse (one of "the social") and the method of safety improvement was converted into the discourse and the method for managing comprehensive issues of industrial democracy. When we take a larger view, the constitution of discourse and the transformation of the collective action in the economic area (production activity) occurred simultaneously and integrally in the concerted collective actions at the firms (workplaces), district, and state levels. After that, representatives of laborers and employers created a progressive institution (the unemployment compensation law) based on the "goodwill" cultivated through these collective actions at various levels. The goodwill functioned as the joint expectation to secure labor-employer joint administration and implementation of the draft once they reached a consensus. Here, not only economic *régulation*, that is, institutionalized incentives (based on wage and profit motivations), but also "industrial goodwill" of laborers, employers, and the Commission's safety experts constituted and reconstituted production activity. In addition, such tripartite collective confidence, that is, social custom

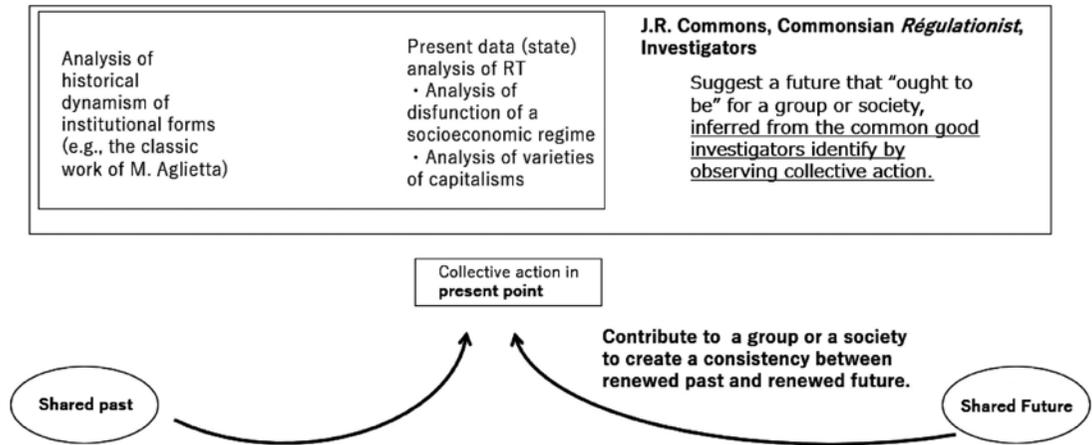
(*régulations* by the non-economic factor), was referred to in the negotiation between organized interests. Moreover, drafters and supporters of the unemployment compensation bill who appealed to interests, citizens, and congresspeople justified the validity of its nature (not as a compulsory law but a voluntary enrollment law) not only by avoiding court rulings of unconstitutionality but also by promoting the “individual initiative” of American social philosophy. Thus, public and collective actions (and even private transactions) express plural and layered *régulations* and are constrained by the *régulations* and mobilize the *régulations*. The case demonstrates that discourse and law constrain and/or expand a current collective action and/or are reconstituted through a current collective action as an inseparable part of *régulations* in the economic area rather than the given condition of a model. This perspective would lead to ethical suggestions that are effective for the observed group and society, as we will see below.

5.3 Way of thinking about time

Régulations reflect the reciprocity of past customs in the present, including reproduction of *régulation*, creative reinterpretation of past customs, or deliberative reconstruction of an ethical ideal type. In the traditional RT, time is not considered, for instance, in the static analysis of the varieties of capitalisms, or it is considered as flowing in a straight line from past to future. This implies that *régulation* is formed historically (from past to present) and becomes an institutional condition of present actions.

However, as we saw in Section 3, *régulations* are not only constructed in the past and constrain (coordinate) present action. They are also deliberately reconstituted as a shared future agreed upon within a group or a society, and they guide present collective action. To capture this characteristic of *régulations*, it is better for us to see *régulations* as ones that work in (the collective action in) the present point containing both past and future. The reason this paper simultaneously focuses not only on the future constituted by the collective action but also on the past constituted by it (Chanteau2017; 2022, Lamarche et al.2021, p. 25-26) is as follows. A society or group will attempt to reconstruct a custom or ethical ideal type to treat internal conflicts and problems. In this case, the members do not only consider their shared future. They try to create consistency between the past and the future in the present. That is why a future ethical type that deviates from the creative reconstruction of past collective experiences cannot be justified. Therefore, it cannot be an

Figure 4. Commonsian régulationist approach to collective action in the present time



Source: Author

effective means of motivating members into collective action in the present.

5.4 Roles of *régulationists* as investigators

Here, we can see the role of *régulationists* as investigators. To state the conclusion first, investigators should not take the privileged stance of an ethical authority who stands outside of the community. Instead, they should support their group or society in creating new consistency from the past to the future. This study asserts that young *régulationists* who see the importance of qualitative research should play this role.

Investigators should examine the plural and layered *régulations* reconstituted in present collective action. This means that investigators make an ethical criterion within the field that they will use to analyze the field. The ethical criterion should not be decided before investigators meet the group members. Instead, it should be understood as an ethical aspect of *régulations* expressed in the collective action of the investigation objects. Of course, an investigator is not a “blank sheet of paper,” and therefore, an ethical criterion agreed upon by the school becomes the investigation’s motivation and perspective. However, the investigator should be aware that this perspective is not the dogma of the school, and it should be reexamined and recreated throughout the investigation.

Investigators must investigate institutional forms to understand the institutionalization of *régulations*. However, this does not mean that investigators should sort observed institutions into ad hoc categories such as the “five institutional forms.” Rather, they should

find, set, or draw institutional forms that strongly relate to their investigation's purpose. As we noted above, the grand purpose of an investigation is to verbalize willingnesses (*régulations*) seen in the group and sort out ethics and immorality. The purpose is then to contribute to recreating the ethical ideal type of the group. Therefore, investigators should clarify the institutionalized relationships between the sovereign, economic, and ethical forces seen in the observed group. That is why investigators might come to understand a group's economic and ethical problems in proportion as they understand these relationships. The ethical problems do not mean injustice and immorality from the standpoint of RT but rather from the standpoint of members of the observed group. Immoralities are, for instance, practices that avoid or erode the group's ethics; these are also practices that weaken mutual dependence and order by repressing particular members and values.

In actuality, members would have already been aware or vaguely aware of the ethical problem. Investigators help them to become more aware of the problem by providing the outcomes of their investigations and analyses. Moreover, when members try to reconstruct their ethical ideal type to resolve the problem, investigators can assist them by verbalizing the present and the future ethical ideal type. Additionally, they can excavate the group's past experiences and remind members of a collectively forgotten experience, thus contributing to creating consistency between the "renewed past" and "renewed future."

Thus, investigators should contribute (even if only slightly) to the reconstitution of willingness or the social *régulation* throughout their investigations. When investigators are aware of this role, they understand that they are not observers who stand *outside* of the observed group but strangers who *relate* (even if only slightly) to the collective action of the observed group. Through investigators' eyes, behaviors, utterances, documents, articles, and books, the members will become aware of their own economic and ethical problems and reflect on them.

As noted in Section 2, in a deliberative reconstruction of a *régulation*, the symbol system, law, working rule, and custom are ambiguous. They are open to the present reconstitution by the members. Investigators need to understand this and make the members aware of the possibilities and opportunities for change in the group. Therefore, the role of the investigator is to contribute to collective reflection and consensus formation over the reconstruction of the whole *régulation* in the present collective action. This is not

congruent with selecting only economic *régulation* as the target for consideration and therefore taking other elements of social *régulation*, such as discourse, custom, and law, as the given. To reiterate, there are two reasons for this. First, if investigators do not consider the whole *régulation* (including law and discourse) as reconstituted in collective action, they cannot assume that the members will have the ability and opportunity to change. Moreover, investigators cannot tell members about such possibilities, and they cannot assume that the members have collective agency or the ability to find possibilities for change and then reconstitute their ethical ideal type. Second, if investigators do not consider the whole *régulation* (including law and discourse), it is difficult for them to be involved in the communicative process of the reconstruction of the *régulation*. In particular, young *régulationists* who try to analyze *régulation* at the industrial level through qualitative research should not see social *régulation* as a given. Instead, they should see it as a *régulation* that is expressed in the collective action and constrains the action and/or is mobilized by the action. This will allow these investigators to play the role of Commonsian *régulationists*.

Of course, this study does *not* intend to highly evaluate field workers and sociological investigators and downgrade and exclude the historical approach, formalization (modeling), or analysis based on statistics. This study asserts that *régulationists* should contribute to collective reflection in the present to bridge the renewed past and renewed future. Needless to say, to take this challenge, considerations of the historical materials of a group or society and a metric understanding of past and present situations are necessary.

5.5 Riskiness of categorizing micro/ mezzo/ macro level analysis

The “meso” (a sector, a territory, and a profession) analysis that has been rapidly established in the *régulation* school in recent years (Bodet and Lamarche 2020; Lamarche et al. 2021) has an affinity for IE. However, this section will note three risks of meso analysis from IE.

As noted by Lamarche et al. (2021, p. 42), a “meso” does not mean given and established territory but a territory that has been and will be reconstituted by transactions that are partly uninformed by common issues, interests, and concerns of actors and/or a research object constituted by an issue, an interest and a concern of an analyst (*régulationist*). While Commons does not take the categorization of micro/meso/macro but sees “whole”

political economy as the assemblage of plural and hierarchical “parts,” that is, going concerns or collective actions (Théret, 2002), Commons thought that a going concern and its territory is, indeed, organized as partly autonomous territory by issues and interests of members of the going concern and to the extent that transactions of the members affect and research object that constituted by an issue, an interest and a concern of an analyst. In each part, there is specific willingness, that is, the *régulation* of a part that cannot be perfectly reduced into and contained to another going concern. The affinity of the meso analysis of *régulationists* for the Commons perspective can also be confirmed by the description that Lamarche et al. (2021, pp. 16, 42) wrote as follows: “in line with the pragmatist philosophy, [··· we] deploy an abductive and exploratory approach”.

However, this paper notes two risks of meso analysis. First, even if an analyst sets a territory as a “meso” and researches it, a collective action relates to the whole and other parts. As we see in Sections 2 and 5-2, in a particular collective action in a firm, group, or industry, all *régulations* at other action levels are expressed in the collective action and constrain the action and/or are mobilized in action. In collective actions at the micro and mezzo levels, social *régulation* at the macro level is not a given condition, but it is reconstituted in the collective actions in this manner. If we use the term micro/meso/macro, a collective action relates to all of them, mobilizes them, and is affected by them. Thus, a collective action relates to the whole, as especially Chanteau’s (2022) “symbolic institutionalism” speaks of it, while the dialectic relation between meso and macro presented by Lamarche et al. (2021) implies it. Suppose a *régulationist* self-identifies as a micro or mezzo investigator or analyst. In this case, the identity could lead them to treat social *régulation* at the macro level as the given condition, which would be undesirable. The investigator should see a group and its collective action not only as “a part” but also as “a whole” (Commons 1934, pp. 620-621) containing its own *régulation* and relating the *régulation* of the whole political economy.

Second, understanding a socio-economy through a micro-mezzo-macro “loop” might not align with Commonsian *régulationists* because, in each collective or public action, the specific ethic of the group, interests of the group, and ethic of a sovereign body are reconstituted, as are other lower and upper ethics. These are simultaneous events (phenomena) rather than causation implied in Boyer, in which a change at the micro level causes a change at the mezzo level, which causes a macro change, which causes a micro

change... (Boyer, 2015, for instance, chapter IX pp. 239-279, and p. 317, Figure 42). Of course, readers can easily understand the "loop" of causations in which the analyst (author) dissolves elements, analyzes each of them, and then causally connects the elements post hoc. However, this "loop" way of thinking cannot grasp the ongoing events (phenomena) in which events in various levels of action sway members, and they mobilize selectively or compositely them into the action as we see such a case in Sections 2 and 5-2. The IE way of thinking better grasps such ongoing events in the field: there is a level of action (actions of a family, school, firm, industry association, or public action) on which the investigator focuses, but each is "a whole" that relates the whole *régulation*.

Bibliography

- Aglietta, M. (1976) *Régulation et crises du capitalisme: l'expérience des États-Unis*, Nouv. ed. augm. d'un avant-propos, Paris, Calmann-Lévy.
- Amable, B. (2003) *The Diversity of Modern Capitalism*, Oxford, Oxford University Press.
- Boyer, R. (1986), *La théorie de la régulation: Une analyse critique*, Paris, La Découverte.
- Bodet, C. and Lamarche, T. (2020), "Des coopératives de travail du XIXe siècle aux CAE et aux Scic: Les coopératives comme espace méso critique," *RECMA*, No. 358, pp. 72-86
- Boyer, R. (2015), *Économie politique des capitalismes: Théorie de la régulation et des crises*, Paris, La Découverte.
- Chanteau J.-P. (2017), Théorie de la régulation, régulations, "régulationnistes": Éléments de méthodes et conditions d'une communauté épistémique, *Cahiers d'économie Politique*, No. 72, pp. 69-113.
- Chanteau J.-P. (2022) "Do organizations have a purpose? The symbolic constructivism test," in M. Godwyn (ed.), *Research Handbook on the Sociology of Organizations*, Cheltenham: Edward- Elgar, pp. 86-106.
- Commons, J.R. (1925), "Reasonable Value," Madison, Edwards Brothers.
- Commons, J.R. (1934), *Institutional Economics: Its Place in Political Economy*, New York, Macmillan.
- Dervillé, M. (2021), "Libéralisation des marchés laitiers et transformation des régimes de concurrence: Mutualisation sectorielle sous pression et statut des éleveurs en question," *Revue de la régulation. Capitalisme, institutions, pouvoirs*, No. 30.
- Kellogg P.U. ed. (1914), *The Pittsburgh District: Civic Frontage*, The Pittsburg Survey Findings in Six Volumes, New York: Survey Associates.
- Lamarche, T., Grouiez, P., Nieddu, M., Chanteau, J.-P., Labrousse, A., Michel, S. and Vercueil, J. (2021), "Saisir les processus méso. Une approche régulationniste," *Économie appliquée*, 2021, No. 1, p. 13-49.
- Lahille, É. (2020), "Capitalisme(s) et Politique: Pour un institutionnalisme critique centré sur la régulation et le travail politiques des acteurs" *Revue de la régulation. Capitalisme, institutions, pouvoirs*, No. 28. URL: <https://journals.openedition.org/regulation/18081>
- Théret, B. (2002), "Saisir les faits économiques: Une lecture structuraliste génétique de la méthode Commons," *Recherches & Régulation Working Papers*, HPE 2002-1.
- Théret, B. (2008), "L'argent de la mondialisation: En quoi pose-t-il des problèmes éthiques? Un point de

vue régulationniste commonsien,” *Sociétés politiques comparées*, no 10. URL: <https://fasopo.org/node/30>

- Ueno, T. (2015), “The Rise and Fall of the Human Engineering Movement: The Development of Personnel Management in the United States, 1911-1920 (Part 1),” *Shogaku Ronsyu* (Annals of Economic Society of Fukushima University) Vol. 83 No. 4, pp. 93-117 (in Japanese)..
- Uni, H. and Nakahara, T. (2017), “The theoretical connection between John R. Commons and regulation and convention theories,” Uni H. (ed.), *Contemporary Meanings of John R. Commons's Institutional Economics*, Singapore, Springer, p. 141-163.