

How Did Commons Understand Veblen's Concepts of Intangible Property and Good-Will?^{a)}

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I Preface

This paper clarifies John R. Commons' (1862-1942) concepts of "intangible property" and "good-will." This consideration opens the way for Commons' "the reasonable value" concept.¹⁾ As a first step, I reconsider how Commons understands Thorstein B. Veblen (1857-1929), particularly the concepts of "intangible property" and "goodwill." In other words, to understand Commons' economics as a whole, we need to solve his concept of "reasonable value." Thus, this paper reexamines the meaning of Commons' comments on Veblen to clarify his concept of "reasonable value."²⁾ I seek to clarify the concept of Commons' "reasonable value" through his comment on Veblen's economics. Therefore, I reexamine passages about "Veblen" in his *Institutional Economics*.³⁾

Commons attempted to explain his concept of "reasonable value" using Veblen's theory of "intangible property." According to Commons, "reasonable value" can be found in the decisions of the court; however, Veblen could not find them.⁴⁾ "Reasonable value" gives us the standard or

a) This paper has revised my report manuscript, "John R. Commons' View of T. Veblen: On his Intangible Property and Good-will," in the Work-Shop of "John R. Commons' Contribution to the Theory of Regulation," International Colloquium, Research & Regulation 2015, in Paris, June 12, 2015. I got valuable comment from Professor Bruno Thère, the commentator of this workshop. I wish to thank him.

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1) For recent research about of Commons, see Rutherford, Malcolm [1990]; Rutherford, Malcolm [2011]. In particular, for a more recent research trend based on Commons' economics, see Mayhew, A., *et. al.* [2014], which discusses a mini-symposium held on Commons' economics. The symposium's panelists argued over the validity of Commons.

2) One belief is that we can more easily grasp Commons' economic theory if we categorize his theory as an "institutional economics" rooted in Veblen. However, recent studies on Commons do not seem to mention Veblen. For example, see Whalen, Charles J. [2008]. However, most of researchers on Commons do not seem to mention Veblen.

3) Commons, John R. [1934], "Veblen," in "X Reasonable Value," pp.649-677.

4) Commons stated, "I had read Veblen's brilliant criticisms, beginning in 1895, on the theories of the classical, socialistic, and psychological economists, and his suggestion that an evolutionary theory of value must be constructed out of the habits and customs of social life. But he had not studied the decisions of the courts which are based on these customs and I went to work with my students digging directly out of the court decisions stretching over several hundred years the behavioristic theory of value on which they were working." Commons, J.

criterion for solving conflicts of interest.

According to Wesley C. Mitchell (1874-1948), Commons' "reasonable value" is a type of "intangible property." "To Commons, reasonable value is a theory of intangible property developed by Supreme Court of the United States since 1890."⁵⁾ Moreover, Mitchell stated that, "to him (Commons) institutional economics is an evolutionary science."⁶⁾

Before beginning to reconsider Commons, I would like to glance how institutional economists view the framework of American Capitalism to make it convenient to understand "institutional economics." and Commons' economics.

As is well known, Commons was one of the founders of America Institutional School. The other two founders were Veblen and Mitchell. Although the original concept of "institutional economics" was provided by Veblen, he called his own economics "evolutionary economics."⁷⁾ Veblen developed an economic analysis model on modern American Capitalism called the "business-industry model."⁸⁾ According to Veblen, business obtains pecuniary gain for business men; on the other hand, industry produces and provides useful goods and services for society. Business creates exchange value, whereas industry creates use value.

Mitchell also considered the American Capitalism as a dual system. One purpose of the capitalism is "making goods," and the other is "making money." According to Mitchell, money economy is consisted of these two systems.⁹⁾

Commons divides American Capitalism around the beginning of 20th Century into two parts: a "going business" and a "going plant."

Their models are called the "dichotomy" of institutional economics, as indicated in Figure 1.

A review of Commons' and Veblen's visions about American capitalism easily indicates similar elements. However each has his own vision. In this paper, we focus on the comparison between Commons and Veblen.¹⁰⁾ By considering how Commons took up Veblen, we recognize the difference between them, thus resulting in an approach to Commons' theory of "reasonable value."

R. [1924] p. vii.

5) Mitchell, W. C. [1950-b] p.331.

6) *Ibid.*, p.321. Also see, Tsukamoto, Takao [2015].

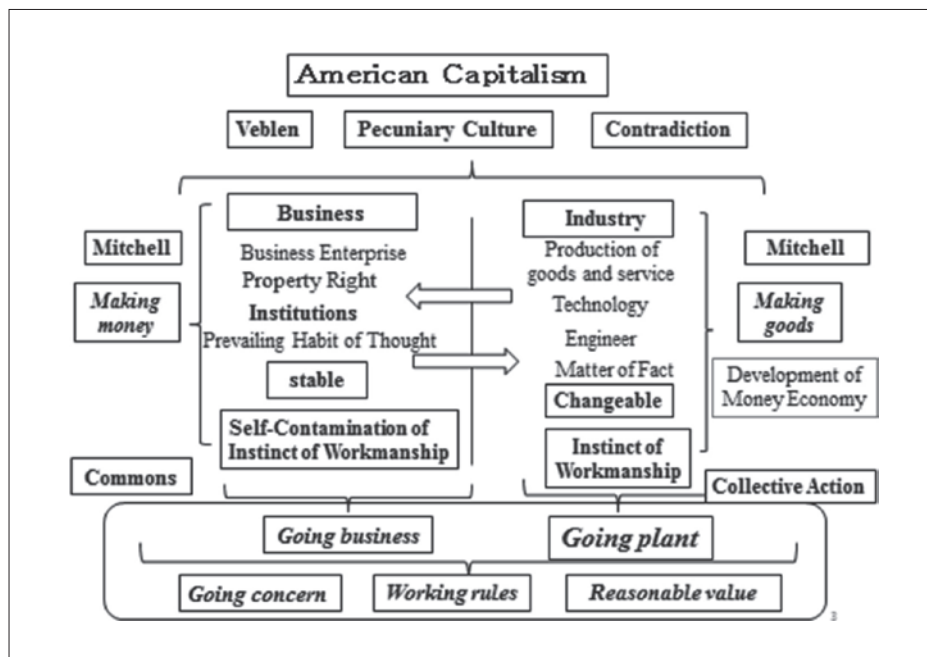
7) Veblen, T. B. [1961-b].

8) "The material framework of modern civilization is the industrial system, and the directing force which animates this framework is business enterprise. ... This modern economic organization is 'Capitalistic System' or 'Modern Industrial System,' so called. Its characteristic features, and at the same time the force by virtue of which it dominates modern culture, are the machine process and investment for profit." (Veblen, T. B. [1973] p.1; Veblen, T. B. [1975] ; Veblen, T. B., [1964].

9) Mitchell, W. C. [1950-a].

10) Mitchell stated that, "Commons is concerned to show how the institutional economics that he is developing differs from that of Veblen." Mitchell, W. C. [1969] p.722.

For how Mitchell discussed Veblen and Commons, see Toshihiro Tanaka [2012].



[Figure 1: Dichotomy of Institutional Economics]

[Source: by the author]

II Veblen and Intangible Property

1 Veblen and Court for Intangible Property

Commons attempted to explain the theory of “reasonable value” through Veblen’s concept of intangible value. An outline of his comments on Veblen is as follows. (1) Commons appreciated that Veblen developed the concept of intangible capital. (2) While the evolutionary theory of Veblen is “natural selection,” the evolutionary theory of Commons is “artificial selection,” which is able to improve more desirable institutions through court decisions. Therefore, Commons insisted on its effectiveness. (3) Commons evaluated the notion of “good-will” that was developed by Veblen. Veblen believed that the notion was excellent and effective for analyzing modern business enterprise system. (4) Veblen’s theory of the “instinct of workmanship” is a possible alternative for Commons’ “managerial transaction.” (5) Commons explained the reason for Veblen’s inability to reach the view of “reasonable value.” Thus, Commons showed that useful analytical tools under American capitalism are concepts of “collective action,” “going concern,” and “reasonable value” based on court decisions.

Commons attempted to explain his concept of “reasonable value.” This concept is closely related to the concept of “intangible property,” which Veblen first addressed in his book, *The Theory of Business Enterprise* (1904).¹¹⁾ Veblen considered that intangible property has laid the foundation for

11) Veblen, T. B. [1973].

the big business enterprise system in America. Veblen found that “intangible property” generated a “differential profit,” which was a source of wealth from capitalism but was drowned by the exploitation of society. At approximately same time, the U. S. Supreme Court made decisions regarding monopolies. Commons examined these considerations.

According to Commons, Veblen’s contribution to economic theory developed the theory of intangible property. Until then, the only property for which a price was to be paid and that was subject to ownership was tangible goods. Intangible property did not yet to be recognized.

The court began to certify recognition of intangible property with economic value through state governments, which calculated taxable amounts and evaluated the purchase price to the private sector for public.

According to Commons, since 1890, two different ways of thinking about modern intangible property have developed. One way is Veblen’s and the other way is from court decisions. In his book, *The Theory of Business Enterprise* (1904), Veblen developed his views through exploitation theory, and the courts developed their views as “reasonable value” (p.649¹²⁾).¹³⁾ Both of theories represented new concepts of capturing property as the present value of future transactions that result in a benefit or profit.

Commons explored how the court came to recognized that intangible property deserved to be paid for. He considered the case of Carnegie and U. S. Steel, and how state governments evaluated taxable amounts of railway companies and the basis of that evaluation in the court decisions. By considering such decisions, Commons determined that the process was an emerging one through which “intangible things” that were not recognized as property were beginning to gain recognition as “intangible property” with its own economic value. What was recognized as taxable consisted of the reconstruction costs, or the cost to rebuild a company’s tangible production facility, plus “something”. That “something” was “intangible property.” The court recognized that “intangible property was the whole market value of stocks and bonds based on the expected capacity of the corporation as a going concern” (p.652).

According to Commons, “Veblen rightly interpreted this intangible property as merely an exploitation or ‘hold-up’ value.” Veblen stated that the “value of intangible capital based on expected earning power was literally only a ‘pecuniary’ valuation, and not the ‘industrial’ valuation” (p. 650). This assertion by Veblen, if compared with the claims of traditional economics, becomes more apparent. In traditional economics, the value of the capital was regarded as an expense to obtain production facilities and products and was merely grasped as tangible goods. Therefore, Commons appreciated Veblen as the first economist who developed the basic notion of intangible property in

12) Subsequent to this point, if the number of pages has been written without special comments, then the page number is from Commons, J. R. [1934].

13) Commons described the differences between himself and Veblen over intangible assets as follows. “Consequently, his (Veblen’s) notion of intangible property ended in the Marxian ideas of ‘extortion and exploitation.’” Commons’ “notion of intangible property ends in the common-law notion of reasonable value.” *Ibid.*,p.4.

modern economic theory.

Commons highlighted that Veblen had his own limits, because he made no allowances for the decisions of the Supreme Court. Whereas the court's recognition of intangible assets was in line with Veblen's claim, under the rule of public purpose — requiring equality of taxation — the court made the decision that the economic value of intangible assets was evaluated as “reasonable value” on the basis of a reasonable rate of return (p.652).

Thus for the intangible property, “the Veblen conclusion reaches a theory of exploitation, the Court reaches a theory of the reasonable value. ... the court reaches it experimentally by investigation, by mistakes and corrections according to the changing personalities on the bench” (pp.653-654).

2 Pragmatism Theory and Exploitation Theory of Veblen

Commons asked why the conclusions of Veblen and the courts differed. Veblen captured “intangible property” from the point of view of “science” and eliminated its purpose. In contrast, the notion embraced by the courts was to capture “intangible property” from the standpoint of a public purpose. The courts embraced the “truth of the society” — the court's judgment is a truth for society. Then, court decisions must be in line with public purposes.

According to Commons, Veblen's conception of a science was a traditional science view in physics, and he eliminated purpose from the scope of science. The reason for his elimination is in the manner he interpreted Veblen's own pragmatism.¹⁴⁾

Veblen believed that the science was a “matter-of- fact,” and he eliminated the purpose and animism and incorporated only the notion that the scientific concept of change is continuous “process.” A causal relationship toward a final goal is teleological causality, which must be excluded. Modern science is subject to verification of this validity.¹⁵⁾ Commons argued that this statement represented the scientific theory of Veblen.

Therefore, if Veblen is correct, science will be only physics, and the “science of human nature” is not to be established.

Commons argued that Veblen's concept of human nature is rather ambiguous; if we use the concept of “transaction” and “working rules,” we can address the concept in a compact. Collective action controls the transactions in which individuals engage. We are able to develop the framework used in the analysis as working rules and going concern, which are the theory of reasonable value and the due process of law under the legal system. The courts make decisions with conflicts of interest, and rules are developed from the point of view of public interest. Veblen constructed his theory under capitalism without regulation by these legal systems, enabling Veblen's theory on

14) Commons believed that Veblen's interpretation on pragmatism was defective: “He (Veblen) does not seem to have known the pragmatism of Peirce, which dealt only with physical science, nor the Pragmatism of the courts, ... James applied it to individual psychology, and Dewey applied it to social psychology. In this field they recognized that purpose was the dominant problem of a human science.” *Ibid.*, p.654.

15) Cf., Veblen, T. B. [1961-a] pp.17, 18.

capitalism to become the theory of exploitation by the capitalist.

By studying Veblen's pragmatism theory, Commons revealed two meanings of pragmatism: meaning as a scientific view to pursuing pragmatism and meaning from adapting the pragmatism of the science of human behavior.

Commons argued as follows. If the sciences treat human behavior, then motivations with a purpose and future-oriented minds exist. Collective action that controls the individual behavior incorporated in Veblen's exploitation theory, working rules, and going concern may also be studied in line with pragmatism of as a way of science. The process that occurs derives its own decisions, is related to the semantic content of the reasonable value, pursues a course of change, and can be studied as a "matter of fact." The rules of collective action — including the customs — and going concern have been changing. Through the changing process, we see the process of economics evolving. Veblen determined that orthodox scholars could not develop an evolutionary economic theory because they have had "a faulty concept of human nature."¹⁶⁾ This false concept was presented by Jeremy Bentham.

Thus, Commons stated, "we avoid the faulty concept by making the subject-matter of economics the transactions of individuals and the going concerns of collective action" (p.656).

3 "Instinct of Workmanship" and Concept of Capital

(1) Veblen's Darwinism and the Instinct of Workmanship

According to Commons, "intangible property" and "good-will" are essential factors to develop and maintain modern capitalism. However, for the purpose of public wealth, we need to control these factors. Indeed, common-law courts have done that on the basis of "reasonable value." Veblen did not consider these decisions.

Commons investigated the nature of Veblen's Darwinism to question the validity of his own Darwinian. Previously, existing economics captured only physical goods as a substance concept. However, according to Commons, Veblen evolved the concept into physical and non-physical concepts using "instinct of workmanship."

The handling of the recent capital is appropriate to consider. In other words, the problem concerns the substance and its ownership. The concepts that Veblen treated as the "instinct of workmanship" were Commons' "managerial transaction," which lead to "customs and law." The habits and laws of managerial transactions bring order to commodity production, making this practice and law also the basis of the legal theory of "quantum merit," or the claim of providing services equivalent to a certain amount of money. The claim is based on "equity laws,"¹⁷⁾ which claims that the property

16) Veblen, T. B. [1961-b] p.73.

17) Commons explains "equity" law and "common law" as follows; "The common law was able to deal effectively only with physical things and to punish *after* the event. — equity deals with the most intangible values, for it commands directly, *before* the event, the very performance, avoidance or forbearance on which value depends. Equity looks on property as a behavior claimed of other persons; the common law looks on it as a thing owned by a person." Commons, J. R. [1924] p.234.

owner has shown that he has the right to control the actions of the others.

Veblen's "Darwinian evolution had no foreordained goal, but is a continuity of cause and effect without any trend, any final term of consummation. It is a 'blind cumulative causation' (p.657). These variabilities would be the concept of Darwinian evolution, not foreordained, and Veblen endeavored to work them out as mere process without a goal" (p.657).¹⁸⁾

However, in Darwin's theory of evolution, two types of "selection." exist: natural selection and artificial selection. Commons' "is the theory of artificial selection. Veblen's is a natural selection" (p.657).

According to Commons, Veblen raised the concept of "process." No destinations exist such as they can be ascertained. Veblen expanded the concept into an analysis of intangible assets on the basis of the concept of "process" of Darwinism. The corporeal property itself is not related to the purchasing power and the sales force. The purchasing, selling, and borrowing of intangible assets comprise the process that is expected to increase the monetary value of property rights through a loan. This is a financial nature. Thus, Veblen replaced the process of regularly creating wealth as a substance by a monetary process. Commons provided a name to this process "managerial transactions." Veblen called this process "the instinct of workmanship" (p.658).

According to Commons, Veblen thought that previous economists handled physical goods that simply had use value. They are produced and consumed, and then produced and consumed, which indicates constantly repeated production and reproduction. Using Commons' terminology, the concept corresponds to the "managerial transactions." The true factors that newly produce physical goods are knowledge, habits, and inventions, which include education, tradition, experience, and repetition of the experiment, many generations through to examine a complicated matter systematically, in detail, and thoroughly. That is the human capacity. Veblen stated that this concept is "science and technology," which is easy to understand, and is "matter-of-fact knowledge." Because society has inherited these types of knowledge, Veblen considered them "non-material equipment of industry, intangible assets of society" (p.660).

Thus, Commons attempted to unravel the relationship between the "instinct" and "custom" in Veblen's terminology.

According to Commons, Veblen's "instinct" includes the function of human volitions that engage in determinations and selections. In fact, Veblen himself insisted that his concept of instinct "is, substantially all, a matter to tradition out of the past, a legacy of habits of thought accumulated thought experience of past generations. Under the discipline of habituation this logic and apparatus of ways and means falls into conventional lines, acquires the consistency of customs and prescription, and so takes on an institutional character and force."¹⁹⁾ Thus, through customary ways of thinking and behaving, society has given them legitimacy and appropriateness, and the guiding principle of the act. Therefore, the instincts that Veblen treated are made from education rather than

18) Tsukamoto, Takao [1983]pp.165-183.

19) Veblen, T. B. [1964] p.7.

from genetic, leading Commons to insist that the “instinct” of Veblen is actually a “social custom.”

Thus, Commons argued that “the instinct of workmanship” of Veblen should be referred to as the “the custom of workmanship.” In fact, Veblen stated that the instinct of workmanship has a purpose. Commons reached the conclusion that Veblen introduced purpose into the instinct of workmanship. Hence, Veblen’s Darwinism is forced to change from “natural selection” to “artificial selection” (p.661).

(2) Veblen’s Going Concern and Capital Concepts

Veblen’s concept of going concern expands the physical capital concept to that of an evolutionary process, and the instinct of workmanship assists it. From the viewpoint of Commons, Veblen’s going concern means the going plant as a production technology.²⁰⁾

According to Commons, Veblen’s viewpoint of production indicates the managerial process, or “efficiency.” Efficiency is the concept of cause and effect, a point on which Commons agrees with Veblen. Efficiency depends on foremen and engineers who intentionally control production. Effective “capital goods” depend on this “efficiency” through the given physical production equipment.

If true, then “efficiency” indicates “purpose.” The physical capital that Veblen stated is not the amount of physical things. It is the prevalent habit of thought that leads to a process that alters the usefulness (p. 661). Capital is not intended to be a product of past labor. Capital is a going plant consisting of knowledge and experience for production.

From the viewpoint of Veblen, the property underlying the business in modern time is an investment, not a commodity. “Thus, property is the monetary capitalization of earning power, and this capitalization is modern Capital” (p.663).

Veblen regarded today as the era of the “machine process.”²¹⁾ This machine process is winding the entire nation, and the procedure is based on the systematic knowledge. Therefore, the machine process has its own meaning, that is, “the scope of the [machine] process is larger than the machine.”²²⁾ The machine process is not established by itself; instead, the entire industry holds by cooperating. Therefore, an engineer, not a capitalist is responsible for the machine process.

However, disturbances occur when adjusting the machine process. Veblen argued that business men come into the process. In the terminology of Commons, adjustments by business men are business transactions. Coordination between industries is reduced to monetary units. The interests of business men do not lie in the “plant” as industrial facility, or a production facility, but in pecuniary “assets.” For business men, “investment” indicates a pecuniary transaction.²³⁾ The aim of this

20) The going concern of Commons is a complex of a going business and a going plant. A “going business” earns a profit, or the production of exchange value. A “going plant” produces goods and service, or the production of use value.

21) Veblen, T. B., “Chapter II: The Machine Process,” in Veblen T. B. [1973] pp.5-19.

22) *Ibid.*, p.5.

23) “It is business transactions that the balance of working relations between the several industrial units is maintained, or restored, adjusted and readjusted, The relations ... are always reducible to pecuniary terms.” *Ibid.*, p.18.

transaction is a pecuniary gain as seen from the viewpoint of value and ownership.²⁴⁾ Business man “makes his gains, not by workmanship which is serviceable to the community, but by business which is not serviceable” (p.663).²⁵⁾

According to Commons, this difference arises from the difference between tangible assets and intangible assets. “Tangible assets” are “pecuniary serviceable capital goods” and produce “use value.” “Intangible assets” are “immaterial items of wealth, immaterial fact owned value, and capitalized on an appraisalment of the gain to derived from their possession” (p.663). The capitalist becomes the *de facto* owner of intangible assets simply by the fact that he owns physical production facilities of society. Capitalist ownership also includes all of the knowledge of the methods and the means based on the technology and capabilities that technicians and workmen embody. Capitalists own not only the right to use the technical capabilities of workmen “but also the right of abuse and of neglect and inhibition.”²⁶⁾

Those capitalized intangible assets are “good-will,” as called by Veblen.²⁷⁾ Good-will creates a differential business advantage; however intangible assets have only monetary value to the owner.

IV Intangible Property, Good-will and Privilege

1 Intangible Property and Good-will

According to Commons, the profits of a monopoly or big business come from “intangible property.” In that case, Commons divided this property into two parts: “privilege” and “good-will.” Profits from privilege are of no use for public wealth; however, profits from good-will are appropriate for modern capitalism. The criterion for this judgment is the “reasonable value” on which common-law courts depend.

Although Commons' argument is comparable to that of Veblen, he investigated the essential difference between tangible and intangible assets. We follow Commons' argument.

According to Commons, a tangible asset represents the capitalization of the adept production technology of the society, or capitalization of the production process. In contrast, an intangible asset is the capitalization of the pecuniary gain obtained from the adjustment or mal-adjustments between

24) “The motive of business is pecuniary gain, the method is essentially purchase and sale. The aim and usual outcome is an accumulation of wealth.” *Ibid.*, p20.

25) “The motives of the business man are pecuniary motives, inducements in the way of pecuniary gain to him or to the business enterprise with which he is identified. ... The ulterior end sought is an increase of ownership, not industrial serviceability.” *Ibid.*, p.36-37.

26) Veblen, T. B. [1961-c] p.353. Examples of “abuse” of ownership, include the right to restraint of trade, the right to deliberately stop the production, and the right to charge a fee to the full partner for the burden limit beyond a legitimate amount of money [charging what the traffic will bear]; such as rights interfere with the competition. *Ibid.*, pp.354-355.

27) Veblen stated that good-will “in the original business usage of it [good-will] meant the customary resort of clientèle to the concern so possessed of the good-will. It seems originally to have implied a kindly sentiment of trust, and esteem on part of a customer, but as the term is now used it has lost this sentimental content.” *Ibid.*, p.362.

the producer side and the market side from a slight change in supply. Intangible assets are not intended to produce wealth; they only affect the distribution of wealth. Intangible assets are a means to achieve an acquisition, a process of acquiring (p.664). If companies are not able to satisfy the current price, they withhold supply and generate profit; thus, they have the means to control the supply. Therefore, an intangible asset represents a pecuniary privilege and is, correctly, the opposite of efficient production (p.665).

Veblen called a pecuniary gain “vested interest.” Vested interest is the right to obtain something for free, with such right being subject to buying and selling in the market. Vested interest represents non-material wealth, or intangible property. It can withhold supply, or interfere with a transaction, and garish advertising. Business enterprise gave it birth. Vested interest represents salesmanship, not workmanship. Obvious unearned income that the law has recognized and income obtained for free without paying anything are vested interests (p.666).

Veblen viewed modern business men are keen to acquire money and legally secure documents, such as bank checks, stocks and bonds. Such legal certificates represent proof of ownership (testimony) and provide the ability to govern the goods and the labor in exchange processes. Therefore, legal deeds of this type represent forces that can control the supply of product. In the past, master craftsmen and merchants brought their already produced products into the market. However, modern intangible property is a legal right of claim for assets that have yet to be produced. Using the power of intangible assets based on these rights, business enterprises are able to maintain high prices for their products by restraining supply and by dictating a lower wage to suppress the demand for labor. Thus, they create a differential advantage and their expected net profits are realized. “On this account, Veblen’s intangible properties are claimants to differential marketing advantages” (p.667). Therefore, Veblen’s intangible properties do not need to set the foundation on the machine process that performs production, but solely rely on ownership only to control supply.

Commons indicated that a statement by Veblen previously described is the distinction that is similar to judgment of the Supreme Court. As the court showed, Veblen expanded proprietary rights and the definition of the capital from corporeal property to expected earnings capacity. Buying and selling this expected earnings capacity represents the contents of what Veblen called “traffic in vendible capital.” Veblen took the “traffic in vendible capital” entity as the fund that measures value with money and not with materials. The modern principle of capitalization is based on the earnings capacity of a going concern. Therefore, the core part of capitalization is “good-will,”²⁸⁾ not the expense to rebuild the plant.

The contents of “good-will” have been expanded to include various items that fit modern business. Good-will includes various items, with each of them having a common point — “intangible assets” — and “good-will” is not useful in society, but is useful for its owner (p.667).

28) Veblen explains the good-will as follows: “Good-will taken in its wider meaning comprises such things as establishes customary business relations, reputation for upright dealing, franchises and privileges, trade-marks, brands, patent rights, copyrights, exclusive use of special processes guarded by law or by secrecy, exclusive control of particular sources of materials.” Veblen, T. B. [1973] p.139.

According to Commons, Veblen thought about “proprietary rights” as follows. Proprietary rights have a new aspect in the era of big business. They have the power to withhold the supply of material, money, and property. Workmanship increases supply, but ownership prohibits and withholds supply. Therefore, the holder of proprietary rights can stop an industry at will if he uses the power of these proprietary rights. Such a holder is able to engage in settlements at his own convenience for both the producer side and the worker side. “Permission” to use the possession becomes a target for being able to buy and sell it. From the view point of the credit system, this permission is called a stock, a bond, a corporate bond, a deposit, and so on. These funds consist of the legal right to claim the expected earnings capacity of this permission, and Veblen called this a “loan credit.”²⁹⁾ Loan credit is an intangible asset recognized as “good-will” to produce a differential advantage.

This differential advantage does not produce useful things but only shifts pecuniary wealth to one from the other. Veblen developed the principle of differential advantage, which represents the power to “get something free of charge.” Commons insisted that we are able to see a portent of a managerial transaction and a bargaining transaction.

2 Privilege and Good-will

Commons insisted that the development process of the instinct of workmanship of Veblen can be reduced to the deployment process of a managerial transaction and a bargaining transaction, and over “reasonable value.”

Therefore, when the instinct of workmanship and the instinct of acquisition emerge over the withholding power at a negotiation, the difference between them is just a matter of degrees. The difference is nothing but a difference in negotiation power on the laborer side and the employer side. In this case, the differences are questions of degree and can reduce to questions of degree of reasonableness. Therefore, we handle these differences as those of a managerial transaction and a bargaining transaction over the reasonable value. Thus, “there is no good reason for separating them into two entities, the idealized instinct of workmanship and the bedeviled instinct of acquisition” (p. 673).

According to Commons, the question of “reasonableness” is a matter of the courts. Commons insisted that Veblen was not able to properly obtain an evolutionary process of intangible property. “Such an investigation reveals the evolution of his [Veblen] ‘intangible property’ which has consisted in making the distinction, not allowed by Veblen, between good-will and privilege, good-will being the reasonable exercise of the power to withhold and privilege being the unreasonable exercise of that power. It is only in the analysis of bargaining transaction that the economic foundation for this evolution can be found. It is just because this fact of evolution in the decisions of courts is not observed by Veblen that he does not arrive at a concept of reasonable value” (p. 673).

Commons appreciates the point at which Veblen paid attention to “intangible property” and

29) Veblen, T. B., “Chapter V: The Use of Loan Credit,” in *ibid.*, pp.92-132.

“intangible capital.” Furthermore, he evaluated that Veblen stimulated economics from equilibrium theory to the theory of the process, and that Veblen hit the mark. However, Commons insisted that hitting the mark was insufficient because Veblen lacked the concept of time. In other words, it is the distinction between “flow of time” and “lapse of time.”

According to Commons, “incorporeal property is waiting until a debt is paid; intangible property is the expectation that profits will be obtained from future transactions.” Indeed, both are “vendible capital as seen in the distinction between stocks and bonds, both profit and interest are inextricable interwoven in each” (p.674). In other words, intangible property represents the expectation that the expected profitable transactions will be repeated. The incorporeal property represents the “expected waiting for income to be derived from the enforcement of right and its equivalent duty” (pp.674-675).

Veblen indicated a research theme of intangible property that could be reduced to transaction, going concern, stabilization of prices, and reasonable value in term of Commons. To this point, the evaluation of the right of a property emerged as an issue. When we understand a theory of reasonable value, Veblen’s theory of exploitation is also reduced to this reasonable value. Commons concludes that “these are scientific, not in the sense of Veblen’s physical science, but in the science of human will in action” (p. 677).

This point is Commons’ main point about Veblen’s concepts of intangible property and good-will.

V Conclusion : Evolutionary Economics of Commons

We have followed the points in Commons’ argument on Veblen and seen that Commons appreciates Veblen’s notion of intangible property, and intangible capital as related to big business beginning to appear in the Americans capitalism.

The concept of intangible property is an expected interest in future time. Therefore, the concept of intangible property inevitably includes the concept of time. Commons tracked these aspects back to their origin and found them in the common-law method, which forms the process of an evolution. Thus, the economics of Commons has become an evolutionary economics.³⁰⁾

In addition, Commons examined the instinct of workmanship, which seems to be the main core of Veblen’s economics, and grasped it as “the idealized instinct of workmanship and the bedeviled instinct of workmanship” (p.673). Commons showed us that Veblen’s economics do not have a dual structure, such as “the instinct of workmanship” and “the instinct acquisition,” or “the instinct of predation,” but could be considered *a question of degree*. In terms of Veblen, we state that the key is to develop the process of the instinct of workmanship and its self-contamination.³¹⁾ Moreover,

30) Cf., Hamilton, D. [1974].

Actually, all institutional economists do not necessarily support the evolutionary approach. For example, K. W. Kapp seemed to state an objection. According to the editors of his book, “... Kapp rejected biological metaphors and did not apply the ‘evolutionary’ adjective.” Kapp, K. William [2011] p.7.

31) Veblen, T. B. [1964] pp.38-102.

Commons seemed to handle this process as a developing process of the contradictions, which means including the color of dialectics in Veblen's economics.³²⁾ To this point, the logic of Commons has a distinction on which we should focus.

However, we sometimes believe that agreeing with Commons is not easy, particularly when he begins to discuss about the "selection" of Darwinism, which refers to teleology.

For example, Commons insists that Veblen's treatment of Darwinism is the logic of natural selection, and Commons' treatment is the logic of artificial selection. If we glance over his comments, they seem to indicate the difference between them. However, Commons mentioned Veblen's logic of the instinct of workmanship and finally commented that Veblen's logic of selection is almost identical to artificial selection. Although Veblen insisted on the exclusion of teleology along with Darwinism, Commons stated that Veblen has teleology-like view because his logic of selection is similar to the instinct of workmanship. Such confusion regarding the logic of Commons seems related to a short-term process versus a long-term process along the same line.

Commons suggested that "selection" according to the instinct of workmanship that Veblen mentioned is a teleological one in the short term. However, when such a selection is subjected to a cumulative process, causing it to differ from the initial selection's "unintended results" becomes possible. This logic, which Veblen might intend, is the elimination of the teleological based on the Darwinian evolutionary process. At this point, stating that the interpretation of Commons belongs to the intention of Veblen seems difficult.

According to Commons, by relying on the precedent of the court, turning economics into the science which Veblen insisted as "matter of fact" is possible. The decisions of the courts have stacked the teleological selections to serve a public purpose. This unfolding process led to Commons' theory of "reasonable value." Veblen did not arrive at "the theory of reasonable value" because he did not pay careful attentions to the decisions of the courts.

Why did Veblen not pay attention to the decisions of the courts, as did Commons? The answer is the difference between the developing stages of the American capitalism which Veblen and Commons faced. For Veblen, the stage of American capitalism from the end of the 19th century to the early 20th century was the beginning of big business, during which time the capitalist may be viewed as having the right to do anything without being bound by law. However, the stage that Commons saw took a net of the law for monopolistic capital and regulation by the court began. The criterion of the court was "reasonable value" that met a public purpose. Correctly, the construction of "the theory of reasonable value" was an urgent problem, which is why Commons relates economics to law.

Commons built his theory of reasonable value on the basis of the situation of such times. Thus, we

32) Sasaki, Akira [1967]. Sasaki insisted that Veblen built his own economics using dialectic such as that used by Marx.

John S. Gams stated, "... Veblen's methodology is his use of something like the Hegelian dialectic." Gams, J. S. [1973] p.60.

C. f., Tsukamoto, Takao [2015] pp.21-22, 24.

must be aware that the theory of reasonable value is not unchangeable. Situations change over time, and the contents of reasonable value also change. The contents of reasonable value in itself change when adapting to an environmental change, and are intended to evolve.

Commons developed such thoughts using Veblen's intangible property theory and ideas — a truth of "Commons' comments on Veblen." A comparison with Veblen enables discussion of one standpoint of Commons. Commons' intention was not to criticize Veblen but to allow an economic progress to comply with the development of the American capitalism after Veblen. This progress represents the developing process of Commons' "a theory of the reasonable value."

Recognizing Commons as an institutional economist and his economics as evolutionary economics enables us to comprehend that his concept of "reasonable value" is evolutionary. Therefore, the development of American institutional economics after Veblen may be classified as an "evolutionary process" corresponding to changes in the quality of American capitalism. Therefore, Commons' comments on Veblen need further investigations to grasp the evolutionary process of institutional economics from Veblen to Commons.

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