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John R. Commons and the Foundations of Institutional Economics

Geoffrey M. Hodgson

The purpose of this essay is to evaluate the attempts of John Rogers Commons (1862–1945) to provide the "old" tradition of American institutional economics with a systematic theoretical foundation.[1] Although there are several other evaluations of Commons' work, the present essay reaches some novel conclusions. And although some of the other evaluations have also been largely methodological in content, the present essay chooses some themes that have not been developed to the same extent elsewhere.[2] The main issues involved in the present appraisal are (a) Commons' neglect of the instinct-habit psychology of William James and others; (b) his failure to appreciate the philosophical and other insights of Darwinism; and (c) his failure to give sufficient emphasis to extra-legal institutions, extra-legal self-organization, or spontaneous orders that do not involve legal rules. In at least some of these respects, the work of Commons contrasts significantly with that of Thorstein Veblen and others.

Despite any such limitations in his work, it is clear that Commons was one of the most influential economists of the twentieth century. John Maynard Keynes (1931, 303–4) was attracted by some of his ideas (Skidelsky 1992, 229; Hodgson 2001, 216). In addition, two Nobel laureates in economics, Gunnar Myrdal (1978, 771) and Herbert Simon (1979, 499), have claimed to be significantly influenced by Commons (Forest and Mehier 2001). Finally, Oliver Williamson (1975, 3, 254; 1985, 3–5) has repeatedly singled out Commons as an "old" institutionalist whose work is especially close to the "new" institutional economics.

Both as a theorist and as a practitioner, Commons was also highly involved in the legal and institutional realities of his day. As well as writing his famous *Legal Foundations of Capitalism*, Commons led teams of researchers that produced extensive historical studies of American industrial and labor relations (Commons 1924; Commons *et al.*

The author is a Research Professor in the Business School, University of Hertfordshire, Hatfield, U.K.

1910, 11; 1918, 35). Commons probably did more than anyone else to establish the importance of legal matters for economics, and with several others he intensified the interface between economics and law. For Commons, these applied studies were a major source of theoretical inspiration and a medium for theoretical development. In practical terms, he helped to draft a whole series of bills on labor and industrial matters for the state of Wisconsin. In the first half of the twentieth century, no one had a more sensitive finger on the institutional and juridical pulse of American capitalism than Commons.

Nevertheless, even a present-day Commons follower such as Yngve Ramstad has written on Commons' "puzzling inconsequentiality as an economic theorist" (1995). Kenneth Boulding described Commons' work as a "tangled jungle of profound insights, culled by an essentially nontheoretical mind from a life rich with experiences of economic realities" (1957, 8). If we were to characterize Commons' work in no more than twenty words it would be difficult to improve on Boulding's statement. This is not to say that Commons' work is atheoretical or anti-theoretical.[3] But Commons did not have the stature of a major theorist such as Alfred Marshall or Karl Marx. Furthermore, he did not have the aptitude for careful definitions or logical chains of reasoning. As Neil Chamberlain argued of Commons, "[i]t would be stretching a point . . . to speak of him as a theorist. If he is intent on conceptualization, he shows little interest in—perhaps even some aversion to—knitting those concepts into a system of thought" (1963, 87). Similarly, Viktor Vanberg has noted that Commons' arguments were hampered by his "idiosyncratic terminology and unsystematic style of reasoning" (1989, 343). It is in these senses that Commons' work was "essentially nontheoretical." This helps to account for the fact that Commons' attempt to provide a theoretical foundation for institutional economics was ultimately a failure.

In 1918, John Maurice Clark, Walton Hamilton, Wesley Mitchell, and others—with the support of Veblen—launched the movement that they described as "institutional economics" (Hamilton 1919). Commons himself played no significant part in this launch. Remarkably, Commons was not regarded as part of the American institutionalist movement until the appearance of his *Legal Foundations* in 1924. In his extensive review, Mitchell saw Commons' book as belonging "to the institutional type of economics, the type represented in Germany by Sombart, in England by Mr. and Mrs. Webb, in America by Veblen," and others (1924, 253). It was not until after Veblen's death in 1929 that Commons began to identify himself explicitly with the institutionalist movement (Rutherford 2000, 2001). In his *Institutional Economics* (1934a), Commons made his first comprehensive attempt to provide a systematic theoretical foundation for institutionalism.

Personal contact between Commons and Veblen had been sparse and relatively inconsequential.[4] There are only a few references to Veblen in Commons' works. Significantly, in one of the few passages where Commons discussed Veblen at length, it is where Commons (1934a, 649–77) judged Veblen's approach as inadequate for his the-

ory of "reasonable value." For Commons, practical or evaluative issues came first. Commons was concerned with providing institutionalism with a theory that was an operational guide for economic policy and legislation. In part, these attempts build upon earlier works on "sociological" theory by Commons in the 1897–1900 period (Commons 1897, 1899–1900), as well as on his *Legal Foundations*. However, there are significant differences between Commons' earlier and later works.

This essay does not address every aspect of Commons' theoretical work. Among the important omissions here are his theory of transactions, his theory of ideal types, and his theory of reasonable value.[5] Instead, the priority here is to focus on the most fundamental philosophical and theoretical aspects of his work, involving questions of causality, agency, and social structure. Some of Commons' greatest strengths were in regard to practical matters of institutional intervention, and these are not necessarily undermined by his theoretical or philosophical failings. By focusing on Commons as a philosopher and theorist we are addressing the weakest part of his legacy. But because of Commons' crucial role in the development of the theoretical foundations of institutional economics, some audit in this area is appropriate. And because his weakest zone is the sole object of criticism here, no summary claim is made about the deficiencies or merits of Commons' work as a whole.

Throughout this essay, comparison is made between Commons and Veblen. There are theoretical similarities between their works, most obviously in their shared focus on institutions and their mutual denial of the "natural" character of any prevailing social order. The aim here is not to show that Veblen was a perfect theorist. Indeed, the works of Veblen are less systematic and sometimes less well structured than those of Commons. It should also be pointed out that even the early institutional economics of the 1920s was far from entirely Veblenian. Instead, the point of the comparison between Veblen and Commons is to show that, despite his manifest limitations, Veblen had a deeper understanding of theoretical and philosophical tenets that could serve as a possible foundation for institutional economics. Commons faced the options of either improving upon these theoretical and philosophical presuppositions or replacing them by something superior. The argument here is that Commons achieved neither.

The primary purpose of this essay is to evaluate Commons' theoretical legacy for institutionalism. The first section situates Commons' efforts in the intellectual context of the 1920s and 1930s. In this period, the original, Veblenian foundations of American institutional economics (including pragmatist philosophy and instinct-habit psychology) were coming under severe attack. This section very briefly summarizes these changes. The next section turns directly to Commons and shows how he failed to incorporate insights from instinct-habit psychology and lacked an adequate causal explanation of human motivation. The third section discusses Commons' limited appreciation of Darwinism, including his attempt to substitute "artificial" for "natural" selection in the social sphere. Finally, the fourth section addresses his treatment of social institutions and legal structures.

The Collapsing Pillars of Veblenian Institutionalism

There are common themes that run through all "old" institutionalist writing, from Veblen to the present day. Among these, perhaps the most prominent is the recognition that, for the purposes of economic analysis, individual purposes and preferences are to some degree socially formed (Hodgson 2000). Commons recognized this, too. He saw institutions "shaping each individual" (1965, 3). Commons likewise made it clear that "the individual with whom we are dealing is the Institutionalized Mind" (1934a, 73–4). By this broad criterion, he was fully in this institutionalist tradition.

However, within this tradition, what makes the work of Veblen unique and outstanding in this respect is his attention to the causal processes and psychological mechanisms by which an individual is molded by his or her circumstances (Rutherford 1984; Hodgson 2003, 2004). For Veblen, the key scientific tools for examining these causal processes were found particularly in the pragmatist philosophy and instinct-habit psychology of William James, William McDougall, and others. James was part of the American pragmatist tradition including Charles Sanders Peirce, John Dewey, and George Herbert Mead.

Veblen provided the unsystematized elements of a theoretical core for institutional economics as it emerged as a movement after World War I. This was a broad and diverse movement, and not all of its members subscribed to such fundamental philosophical or psychological presuppositions. But, at the time, no prominent institutionalist advanced a rival or alternative set of core ideas.

However, for reasons discussed at greater length elsewhere (Stocking 1968; Cravens 1978; Degler 1991; Hodgson 1999), in the early twentieth century movements in Western psychology and social science began to undermine the notion that there was any biological or instinct-based determination of human behavior. Darwinian evolutionary theory suggested to many that the individual is programmed by genes or instincts over which he or she has no control. This misinterpretation remains, despite the fact that it has been widely criticized. Nevertheless, such misconceptions helped to bring about the marginalization of instinct-habit psychology and Darwinian evolutionary theory in the social sciences.

As early as 1909, the president of the American Psychological Association, Charles Judd, attacked the very idea of instinct and the works of James and McDougall. Several leading psychologists argued that instinct provided no explanation that could be verified by experiment. In an increasingly positivistic intellectual climate, the flimsiness of the empirical evidence and the manifest difficulties of experimental verification provided seemingly damning accusations against instinct-based theories of human nature. By the early 1920s, even the existence of a sexual instinct in humans and other organisms had come under attack. It was argued that all behavior was not a manifestation of heredity factors but a direct result of environmental conditioning or stimulation (Degler 1991, 157–9).

John Watson established behaviorist psychology in 1913, arguing on the basis of animal experiments that conditioning was primary and instinct a secondary concept. He emphasized environmental influences over behavior. Eventually, behaviorists attacked allegedly "unscientific" notions such as consciousness and introspection. Such ideas could not be grounded experimentally; accordingly it was argued that they had to be dismissed from science. Behaviorists concentrated instead on empirically manifest behavior. This tied in with a growing general adherence to positivism amongst social and natural scientists. The reliance upon measurement and experiment in behaviorist psychology gave it an aura of positivistic and dispassionate objectivity (Lewin 1996).

In announcing the movement for "institutional economics," Walton Hamilton criticized economists that had "overlooked the part that instinct and impulse play in impelling . . . economic activity" (1919, 318). But within a short period this Veblenian viewpoint was itself under attack. With the ascent of behaviorism in the 1920s, the idea of instinctive behavior in human beings was sidelined. Just thirty years after the heyday of James, the concept of instinct had virtually disappeared from American psychology. By the late 1930s, the related pragmatist concept of habit had also followed instinct into virtual oblivion, in psychology and the social sciences (Camic 1986; Degler 1991). The first—psychological—pillar of Veblenian institutionalism had crumbled.

Another thing that changed substantially from about 1880 to 1920 was the prevailing conception of science. Since the foundation of positivism by Auguste Comte in the 1830s, it had grown in popularity and had been given a further impetus by Ernst Mach and others in the 1890s. Positivism evolved and took many forms. But in general positivists see experience and experiment as the source of knowledge and regard all metaphysical discussion as a diversion from science. By the 1920s, Watson's followers in psychology were embracing versions of positivism and disregarding everything as unscientific that could not be directly measured and tested by experiment. Generally, a positivistic and technocratic drift among the social sciences displaced the pragmatist philosophy of Peirce, James, Mead, and Dewey and gave behaviorist psychology a renewed impetus. The second—philosophical–pillar was thus toppled by an increasing commitment to positivism in the social sciences.

A third pillar of Veblenian institutionalism involved the commitment to a Darwinian mode of thinking. This had also been highly influential for Peirce, James, and Dewey. The Darwinian outlook involves a recognition of ubiquitous variety and novelty in both natural and social evolution. From this viewpoint, complex systems characterized by variety and inheritance are subject to general processes of Darwinian selection. Furthermore, Veblen understood Darwinism as involving an ontological commitment to explanation in terms of chains of cause and effect (1919, 37, 61, 77, 176–7, 191–2, 238, 240, 436). He understood that "in the Darwinian scheme of thought, the continuity sought in and imputed to the facts is a continuity of cause and effect" (1907, 304).

Accordingly, for Veblen (1909, 625), Darwinism meant that explanations in terms of human intentions could be "admitted only provisionally and as a proximate factor in

that analysis." Intentions are real, but they too have to be explained in causal terms. Unlike Aristotle or Descartes, Darwin did not accept that human intention was a separate category of causality. Intention itself had to be explicable in causal terms, involving exchanges of matter or energy, like all other causes. Crucially, the dualistic and anthropocentric outlooks of Aristotle or Descartes are inconsistent with any commitment to the notion that the human species is itself a product of evolution and natural selection.

However, until the 1940s, Darwinism itself remained highly controversial, even within biology. Above all, the breaking of the links between biology and the Anglophone social sciences in the early part of the twentieth century meant that Darwinism became an unpopular theme for social scientists. Even among institutional economists there was little enthusiasm for Veblen's Darwinism. The underlying philosophical commitments to Darwinism were lost. The third—Darwinian—pillar of Veblenian institutionalism collapsed.

Overall, the devastating effect of these shifts in psychology, philosophy, and the social sciences, and the consequent collapse of the three pillars of Veblenian institutionalism, was that American institutionalism was severely traumatized from the point of its announcement as a movement in 1918 and during its heyday in the 1920s and 1930s. Its manifest influence and success on the American scene obscured the theoretical and methodological problems at the foundation of institutionalism. Nevertheless, these problems made it increasingly difficult for American institutionalism to withstand the assault from the rising neoclassical and formalistic economics that emerged forcefully in the 1940s.

We can see signs of this shift and changes of thinking in the writings of other leading institutionalists. Veblen's student Mitchell eventually lost confidence in both Darwinism and instinct-habit psychology as foundations for institutionalism: "The Darwinian viewpoint is due to be superseded in men's minds: the instinct-habit psychology will yield to some other conception of human nature" (1937, 312). As the institutional economist Allan Gruchy explained approvingly, and with an apparent genuflection to positivism: "Mitchell did not follow Veblen in emphasizing the instinctive basis of human behavior, because instincts cannot be objectively analyzed" (1972, 43). Much earlier, Clarence Ayres rejected instinct-habit psychology and described the "prolific and varied instinct literature" as "largely self-refuting" (1921, 561). According to Ayres, "When instincts fall out, institutions get their due." Rashly eschewing much of Darwinism as well, Ayres wrote, "[S]ince the opening of this century . . . all of Darwin's 'particular views' have gone down wind: variation, survival of the fittest, natural selection, sexual selection, and all the rest. Darwin is very nearly, if not quite, as outmoded today as Lamarck" (1932, 95).[6]

Dewey (1922, 104), a philosopher who inspired many institutionalists, also expressed some reluctance in using the term "instinct" and switched to the word "impulse" instead. Generally, in the 1920s and 1930s, leading American institutionalists rejected instinct-habit psychology and key elements of Darwinism. Institutionalists dropped the Veblenian research program of building a "post-Darwinian" economics.

When Ayres emerged as the de facto leader of American institutionalism after 1945, what were seen as the embarrassing elements of its Veblenian legacy had already been abandoned. For instance, Ayres (1958, 25) saw "the very notion of instincts is now scientifically obsolete." Although Ayres was right to point out that Veblen failed to define instinct adequately, instinct psychology remained foundational to Veblen's position (1899, 1914).

The post-Veblen generations of American institutionalists absorbed much of the aura of positivism and the growing emphasis on culture as the principal if not exclusive determinant of human behavior. In some form, of course, the concept of culture was prominent in institutionalism from the beginning. Hence the increasing emphasis on the role of culture by Anglophone social scientists did not itself embarrass or undermine institutionalism. However, institutionalism was affected by the concomitant separation of social science from biology.

In anthropology, Franz Boas had been largely responsible for developing the concept of culture in its modern sense (Stocking 1968). He reasonably insisted that nurture was at least as important as nature. The treatment of culture by Veblen was similar, likewise admitting a role for both cultural and genetic inheritance. However, by the 1920s, Boas's influential followers—such as Alfred Kroeber and Margaret Mead—were pressing the view that culture alone determined human attributes and behavior, without any influence from human biology. With its former and Veblenian conceptions undermined, the intellectual context in which the shift to culture took place made the further development of a systematic and original institutional theory more difficult.

Commons' work on the theoretical foundations of institutionalism was in this highly difficult context. The limitations of his work must be understood alongside the huge intellectual shifts of his time.

Commons, Psychology, and Pragmatism

On the whole, and in marked contrast to the writings of Veblen, there are very few references in Commons' works to the instinct-habit psychology of James or McDougall. Essentially, where Commons generally differed from the instinct-habit psychologists was in his emphasis on the primacy of belief for action. By contrast, Peirce, James, and McDougall saw habit as foundational and constitutive for both action and belief. In this sense, they wrote of "habitual beliefs." In contrast to instinct-habit psychology, Commons generally saw beliefs—as separate from habits and instincts—as the ultimate drivers of human activity. This same volitional emphasis persisted in his later works.

Commons candidly admitted that he "never studied psychology" except with a professor at Oberlin College who ridiculed some of his ideas (1934b, 20). Alexa Albert and Ramstad have asserted that "Commons regrettably failed to make his psychological assumptions explicit" (1997, 881). However, in some respects, Commons' attitudes to

the pragmatist and behaviorist schools of psychology are apparent from a few key passages in his works.

One passage in Commons' *Legal Foundations* betrays much about his position. He wrote, "Science deals with probabilities and superficialities," rather than underlying causal mechanisms (1924, 82). Here he embraced an interpretation of science that was consistent with positivism. He then inferred approvingly that "the behaviorist defines the will as what the will does" and "passes over to others" the question of what determines and triggers the will. Here Commons showed that his psychological presuppositions were behaviorist in some respects. He endorsed the behaviorist abandonment of any attempt to explain what lies behind human motivation. However, in contrast to behaviorism, Commons emphasized the importance of volition or will.

In the first journal article in which Commons clearly proclaimed himself as an institutionalist, he wrote, "If institutional economics is volitional it requires an institutional psychology to accompany it. This is the psychology of transactions, which may properly be named negotiational psychology" (1931, 655). He then noted without qualm that "negotiational psychology" is "a behavioristic psychology." On one page (1934a, 637) Commons approvingly quoted Judd, the leading and aforementioned critic of the psychology of James and McDougall. In two places in the same work (95, 640), Commons mentioned Watson. Commons objected to the treatment of "the individual in a purely individualist fashion" by behaviorists such as Watson, but he did not object to the behaviorist attack on instinct-habit psychology (640). He gave the impression that behaviorist psychology was partly consistent with his own view but insufficient for his purposes. Commons followed Mitchell and Ayres in adopting some aspects of behaviorism and in abandoning instinct-habit psychology.

But in contrast to both behaviorism and pragmatism, Commons erected human volition as if an independent causal category. Commons called for "a science of the human will" and denied that the will is largely capricious or undetermined (1950, 36). He argued that a "capricious and lawless" will would be "incapable of the uniformities required by science" (1934a, 741). However, he did not take us much further in explaining the nature and origin of human will. He rejected a "capricious and undetermined" human will but did not spell out how the will was determined (739). He merely hinted at a vague process of social conditioning and opened the door for a "negotiational" and behaviorist psychology. It is evident that Commons saw institutions and customs as affecting human wills. But there is no clear explanation of the causal processes involved. Are human volitions somehow constructed by institutions or simply channeled and constrained by them? On such questions, Commons was unclear. Above all, there was no systematic theory of the causal origins of human will itself. Commons emphasized volition but gave it no explanatory foundation.

We can examine Commons' attitude further by tracing his understanding and use of key terms such as *instinct, habit,* and *custom.* These also give us some clues concerning his reading of pragmatist philosophy and psychology.

Commons occasionally mentioned instinct in his earlier works, but he made little of it. He noted with skepticism that a "definition of instinct as a born-disposition that is both variable and adaptive" permits the author "to combine the instincts in whatever arrangement seems called for by his illustrations" (1919, 313–4). Behaviorists voiced similar complaints against instinct-habit psychology. Subsequently, the concept of instinct largely disappeared from Commons' discourse. Commons never embraced instinct-habit psychology, and he removed the word *instinct* from his writing as soon as it became widely unpopular. The influence of the instinct-habit psychology of James and McDougall on his work was negligible. Commons did accept that some human capacities are inherited, but he gave the concept of instinct no part in the further formation of habits or behavior.

In contrast, the idea of custom is found in his early and his later works. One of his extensive discussions of the concept was in his *Legal Foundations* (Commons 1924, 298–306). Commons saw *custom* as a pattern of similar and enduring behavior in a social group. Ten years later, in his *Institutional Economics*, the concept of custom was prominent. There he wrote that "[c]ustom is repetition" and of the "compulsion of custom" (1934a, 155, 701). But this simply underlined his theoretical confusion between behavior and underlying causes and his failure to consider how customs impinge causally upon individual wills. Typically, Commons defined custom as follows: "Custom is such similarity of behavior as may be expected to continue almost unchanged in the future" (1950, 110).

Commons repeatedly asserted that customs play a role in molding individual behavior. He wrote, "The binding power of custom is its security of expectations" (1924, 301). Here he implied that repeated behavior within a group leads each individual to form stable expectations concerning the future. Somehow this also leads individuals to be bound to the behavior of the majority. In the same volume, he also mentioned habit, but he did not emphasize any causal connections between habits and customs (1924, 300, 349).

Dewey had written, "But to a larger extent customs persist because individuals form their personal habits under conditions set by prior customs" (1922, 58). In other words, customs affect habits and these ingrained habits help customs to persist. Belatedly taking part of this on board, Commons saw customs as group behaviors "which impose conformity of habitual assumptions upon individuals" (1934a, 155). He thus adopted Dewey's idea that there is a causal link from customs to individual habits.

However, Commons did not complete the circle of causation and show, in turn, how habits help "customs persist." Dewey himself pointed to a circular and durable process, through which the imitation and constraint of custom lead individuals to adopt concordant patterns of behavior (1922). These behaviors give rise to individual habits. These habits help to sustain the same behavioral patterns across the group. These, in turn, become customs, thus completing the circle of causation.

Commons was unable to complete the Deweyian circle of causation because he mangled Dewey's concept of habit. To explain this, let us turn to this third key concept and its role in Commons' thought. While the idea of habit first appears in his *Legal Foundations,* it plays a brief and minor part. Commons there defined *habits* as "the sub-conscious setting of body, nerves and brain on the basis of past experience and ready to set off in accustomed directions when touched by stimulus from outside" (1924, 349). He then approvingly quoted Dewey: "Habit is energy organized in certain channels" (Dewey 1922, 76). What is interesting about the brief and sporadic mention of habit in *Legal Foundations* is that there the concept is defined as a propensity or disposition, rather than repeated behavior. Dewey himself insisted repeatedly that *habit* should be defined in such dispositional terms:

> The essence of habit is an acquired predisposition to *ways* or modes of response, not to particular acts except as, under special conditions, these express a way of behaving. Habit means special sensitiveness or accessibility to certain classes of stimuli, standing predilections and aversions, rather than bare recurrence of specific acts. (1922, 42)

Dewey made it clear that habits are potentialities and predilections, rather than repeated acts. The pragmatists and instinct-habit psychologists saw habits as bundles of potentialities and dispositions, to be potentially triggered by small or large intentions, perceptions or events. Habits are "means, waiting, like tools in a box, to be used by conscious resolve" (Dewey, 1922, 25).

Veblen, along with pragmatist philosophers and instinct-habit psychologists such as Dewey and James, adopted this non-behaviorist meaning of habit as an acquired propensity or disposition, which may or may not be actually expressed in behavior. The same conception of habit has been widely repeated elsewhere, and in recent years (Camic 1986; Margolis 1994; Murphy 1994). According to this well-established conception, habit does not mean behavior. Habit is not itself a recurrent or repeated act. Repeated behavior is important in establishing a habit. But habit (or propensity) and behavior (or effect) are not the same.

Many thinkers have difficulty accepting the idea of habit as a disposition. They prefer to define habit as behavior. A source of the problem is a reluctance to remove reason and belief from the driving seat of human action. If habits affect behavior, then it is wrongly feared that reason and belief will be dethroned. The concern is that volition would be replaced by mechanism. However, reasons and beliefs themselves depend upon habits of thought. Habits act as filters of experience and the foundations of intuition and interpretation. In pragmatist thought, habit is the grounding of both reflective and non-reflective behavior. This does not make belief, reason, or will any less important or real.

Note that the issue of the nature and primacy of habit is quite separate from the issue of the acceptance or otherwise of unintended, non-deliberative, or unconsciously motivated behavior. In a few passages, in both early and later works, Commons

accepted the possibility of unconsciously motivated behavior (1899, 348, 354; 1934a, 698). But Commons did not embrace the Veblenian view that all action and decision is necessarily grounded on habit. Instead of habit, Commons gave universal emphasis to will.

When Commons attempted to systematize institutionalism in the 1930s, he briefly engaged more deeply with pragmatism, particularly in the version developed by Peirce. Commons once explained to Kenneth Parsons (1985, 189) how he had been inspired by Peirce's famous essay, "How to Make Our Ideas Clear" (1878). But it seems that this inspiration came relatively late in Commons' life. There is no reference to Peirce in *Legal Foundations.* In contrast, Commons' *Institutional Economics* contains lengthy references to Peirce and how he dissolved the antinomies of rationalism and empiricism, making "Habit and Custom, instead of intellect and sensations, the foundation of all science" (Commons 1934a, 150). We may conjecture that Commons read Dewey 1922 shortly after its publication and read Peirce's 1878 essay sometime between 1924 and 1934, while he was writing his *Institutional Economics*. Commons may have also read other works by Peirce, but there is no significant mention of this philosopher until after 1924. Furthermore, Commons' assimilation of these pragmatist ideas was partial and incomplete.[7]

Despite his belated engagement with pragmatism, Commons wanted beliefs and volitions, instead of habits, to retain primacy in the explanation of behavior. Accordingly, as soon as Commons stressed the idea of habit, he switched from a dispositional to a behaviorist conception of that term. Commons thus wrote repeatedly, "Habit . . . the mere repetition of acts . . . Habit is repetition by one person. . . . Habit is a repetition of acts" (1934a, 45, 155, 740). Hence, for Commons in 1934, *habit* meant repeated behavior or effect, rather than an acquired individual disposition, or propensity. With this definition, the concept of habit itself serves little analytical purpose other than to point to repeated behavioral patterns. This faulty, behaviorist conception of habit contrasted with the more satisfactory notion of James, Veblen, and Dewey.

The closest that Commons got to James, Veblen, and Dewey on this issue in his *Institutional Economics* was to write in some places of "habitual assumptions" that are "taken for granted" and may thus underlie behavior (1934a, 155, 697–702). Such "habitual assumptions" have some superficial resemblance to Veblen's "habits of thought." But for Veblen "habits of thought" were "mental attitudes and aptitudes" that involve some "mental adaptation" and which make "up the character of any individual" (1899, 191–2, 289). In contrast, for Commons "habitual assumptions" were related to the "experiences, feelings, and expectations of an individual" (1934a, 155). While Veblen wrote of mental capacities or propensities, Commons wrote more frequently of mental sensations or effects.

As noted above, Commons' concept of custom was also specified in terms of behavior rather than propensities. Commons described the difference between habit and custom as follows: "Habit is repetition by one person. Custom is repetition by the

continuing group of changing persons" (1934a, 155).[8] Also as noted above, he saw a causal link from custom to habit: customary "forces" alone somehow build up habits. Commons wrote that "custom is . . . the social habit which creates the individual habit. We do not start as isolated individuals. . . . We start and continue by repetition, routine, monotony—in short by custom" (1934a, 45).

It is reasonable to argue that customary practices have an effect on individuals and may lead to acquired individual habits. But it is also essential to point to the psychological means and social mechanisms involved in this process. An individual, placed in a complex social world of many rules and customs, requires a set of concepts to make sense of this world and his or her priorities. Furthermore, the individual requires knowledge of a language to converse with others and to understand meanings. A behaviorist psychologist would argue that all this could be developed in the individual through the repeated mechanism of stimulus and response. It is now well established in psychology that this behaviorist mechanism is highly inadequate, at least for the acquisition of language and the cognition of social rules (Cosmides and Tooby 1994; Degler 1991; Pinker 1994; Plotkin 1994). For these modern psychologists, and for early pragmatists such as James, the acquisition of habit is often triggered by human instincts as well as by institutional and customary constraints. Accordingly, the earlier outlook of the instinct-habit psychologists has now been rehabilitated. Although custom is important, custom alone cannot provide the individual with behavioral predispositions and with a set of concepts and meanings to deal with the world. The individual requires a set of instinctive triggers to act in specific ways so that elemental habits of action and interpretation can be built up and so that customs and institutions can do their work.

Commons seemed to suggest, in a positivist and behaviorist manner, that the mind is a *tabula rasa* on which customs can make their marks. However, learning is more an active, interpretative process of problem-formulation and problem solving rather than the imprinting of information or custom. Prior suppositions and conjectures are necessary to start the learning process. These are programmed into our being, either as instincts or habits. Crucially, in a context where behaviorist psychology and positivism were in the ascendant, Commons failed to appreciate the valuable legacy of the instinct-habit psychologists. Inclining instead toward behaviorism, he lacked an adequate explanation of psychological motivation or volition.

Let us take stock of this part of the argument. Not only did Commons fail to examine the crucial causal links between custom and habit, and habit and instinct, but also his concept of habit was itself defective. He emphasized volition but did not see the origin and evolution of these volitions upon substrates of triggering instincts and acquired habits. He never satisfactorily explained, even in principle, the causes of human wills or beliefs.

While reading his *Institutional Economics,* we should not be misled by the repeated citation of Pierce and the plentiful mentions of habit and custom. Commons embraced a version of pragmatism and a conspicuous concept of habit no earlier than the 1930s. It

is only in his *Institutional Economics* that the notion of habit acquires prominence. However, his use of this pragmatist intellectual apparatus is bowdlerized and idiosyncratic. Notably, after the 1934 fanfare, the concept of habit drops out of the limelight. In his posthumously published *Economics of Collective Action,* both the concept of habit and references to pragmatism play insignificant roles.

In Commons' written output through time, the three concepts of instinct, custom, and habit and the doctrine of pragmatism as a whole have different citation frequencies and different citation profiles. First, in contrast to Veblen, instinct played an insignificant role throughout the work of Commons. Second, custom had a contrasting and higher citation profile, appearing in both his early and later works. Third, habit entered tentatively in the 1920s. When it made its full appearance in the 1930s, its definition was changed, in line with Commons' wholly volitional conception of action. But his behaviorist conception of habit played no significant theoretical role other than as an individual analogue of social custom. Subsequently, habit quickly disappeared from prominence in his work. Concerning pragmatism, James was cited rarely and Dewey occasionally, but Peirce made a sudden and prominent impact in his *Institutional Economics*. He too then virtually disappeared from view, being absent from the quite extensive index of the *Economics of Collective Action*.

On the whole, Commons' attempts to provide institutionalism with a psychological foundation were equivocal and inadequate. Commons was belatedly inspired by pragmatism, but this influence was partial and incompletely sustained. He was also influenced by behaviorism, despite his emphasis on volition.

Commons and Darwinism

The question of Darwinism involves several related but different issues, of both a theoretical and an ontological nature (Hodgson 2002b). I address first the issue of "natural" versus "artificial" selection. Veblen called unreservedly for a theory of the "natural selection of institutions" (1899, 188). In contrast, Commons declared, "The term 'natural selection' is a misnomer, as Darwin himself perceived. It means merely survival. 'Selection' proper involves intention, and belongs to human reason. Selection by man we call artificial" (1897, 90). Commons persisted in his view that economic evolution involved "artificial selection" rather than "natural selection" (1934a, 45, 120, 636–8, 657–8, 713; Ramstad 1994; Bazzoli 2000). In some passages, Commons saw artificial and natural selection as coexisting in human society: "Social selection is partly natural and partly artificial" (1897, 95). Elsewhere Commons saw one as replacing the other: "Economic phenomena . . . are the result of artificial selection and not of natural selection" (1924, 376).

As Commons was aware, it was Darwin himself who established a distinction between "natural" and "artificial" selection. However, contrary to the impression given by Commons and others, Darwin rarely used the term "artificial" selection (1859). He

wrote of selection "applied methodically" by humans to domesticated animals. This was primarily to convince his readers that descent with modification was possible and thereby to introduce the concept of natural selection. Emphatically, Darwin did not suggest that "artificial" and "natural" selection were mutually exclusive. Instead, examples of the former were used to support the idea of the latter. As Darwin's friend George Romanes wrote in explaining Darwin's theory, "[i]n a word, the proved capabilities of artificial selection furnish, in its best conceivable form, what is called an argument *a fortiori* in favour of natural selection" (1893, 296).

Generally, Commons did not endorse the theoretical role that Veblen had given to Darwinism in the social domain. For instance, Commons referred to "the natural selection stage of blind evolution that followed Darwin, whose distinguished exponent in economics is Veblen" (1924, 376). He regarded this version of evolution as unacceptable in social theory because it "attempted to get rid of the human will and to explain economic phenomena as the working out of natural forces." In contrast with "blind" natural selection, Commons upheld, "But volitional theory takes exactly the opposite point of view. Economic phenomena, as we know them, are the result of artificial selection and not of natural selection" (1924, 376). Here Commons denied that social evolution is "Darwinian" because he saw Darwinism as involving the "blind" forces of *natural* selection. Ten years later, in one isolated passage, he had modified his position slightly and admitted some limited scope for the application of Darwinian ideas. He noted that

> transactions, since the principle of scarcity runs through them, have curious analogies to the factors which Darwin discovered in organisms. Custom, the repetition of transactions, is analogous to heredity; the duplication and multiplication of transactions arise from pressure of population; their variability is evident, and out of the variabilities come changes in custom and survival. But here the survival is the "artificial selection" of good customs and punishment of bad customs. (1934a, 638)

In this exceptional passage Commons admitted Darwinian selection as a possible analogy in the social sphere but only if it were translated into the terms of "artificial selection." Commons did not sustain or develop this view that Darwinism could serve as a qualified analogy in social science, but his emphasis on the concept of artificial selection was a constant theme throughout his academic career.[9]

According to Darwin, "artificial," or "methodological," selection occurs when a human breeder selects strains of a plant or animal, on the basis of its attributes, for further propagation. The essential characteristic of artificial selection is that humans manipulate the process or environment of selection. The "artificiality" of the selection process stems principally from the fact that it is under the control of a human agent. But it is a misunderstanding to see artificial selection as an *alternative* to natural selection. After all, the human plant or animal breeder who is doing the selection is also a product of natural evolution. There is nothing that especially privileges humans above other animals in this respect. Other animals make selections too. Ants collect live aphids. A tiger

selects its prey. A cow eats the tastiest grass. Accordingly, the distinction between social and natural evolution is not so dramatic in this respect as some have supposed.

Furthermore, even when "artificial selection" does take place, that is not the end of the story. Different institutions or societies, in which artificial selection is involved, sometimes compete against each other. Hence some additional processes of evolutionary selection may be involved. In no way can artificial selection replace or demote a broader concept of evolutionary selection in human society.

Contrary to Laure Bazzoli in her attempt to vindicate Commons, natural selection does not necessarily involve "a given environment, a process which is outside the control of organisms" (2000, 68). First, there are plentiful acknowledgements in the writings of Darwin and other evolutionary biologists of changing environments of selection, including climatic and other changes. Second, animals often change their environment, as well as merely adapting to it (Lewontin 2000). This phenomenon is associated with thousands of species. Most ants and birds build nests, spiders build webs to snare other insects, and beavers build dams to capture fish. A degree of deliberation and cunning may be involved in the construction of some of these environmental niches. Admittedly, the degree of conscious deliberation that is involved may be much less than in some human activities, but the difference is consistent with the evolution of one species from another.

There is also evidence of a proto-culture among some animals. For example, a group of macaque monkeys discovered techniques such as washing potatoes in salt water and using water to separate grain from sand. Other macaque groups observed and then copied these behaviors (Degler 1991, 344–6). However, there is some dispute as to the degree as to which such cases involve genuine learning by imitation or merely stimulus enhancement. But at some stage genuine culture must have emerged among our ancestors. Derek Freeman (1983) analyzed the evolution of cultural capacities from animals through to humans. Whenever it developed, the capacity to produce and absorb cultural adaptations is itself a result of natural selection, because that emergent capacity enhanced reproductive success.

Crucially, the criteria that the human uses in selecting specimens for "artificial" selection are also the outcomes of processes of cognitive development and cultural evolution. Human preferences are themselves a product of (social, cultural, and biological) evolution. A prominent institutional economist took up this important point very early. In criticizing Commons, Morris Copeland (1936, 343–4) pointed out that Commons' "artificial selection" of institutions depended on the prior "natural selection" of the guiding ethical or other principles that were used in the selecting process. Copeland's valid point was that the evolution of the criteria used in any "artificial" selection must also be explained. Copeland thus identified the same weakness in Commons' theory that is identified above: Commons lacked even a rudimentary theory of what causes human motivation, action, or choice. Hence Commons could not explain the causal mechanisms behind the "artificial" selections made by the breeder of animals or plants.

For Commons, any backward-in-time, sequential explanation of effect and cause comes to an abrupt stop when it comes to the human will.[10]

In a useful critical discussion of artificial selection, Daniel Dennett (1995, 316) imagined an Earth set up as a "theme park" by some unseen aliens, who populated it with life and occasionally tinkered with its evolution. As another example, in the science fiction comedy by Douglas Adams—*The Hitch Hiker's Guide to the Galaxy*—it was proposed that humans are the third most intelligent species on Earth, after the white mice and the dolphins. The white mice performed a complex experiment on humans, while just pretending that the humans were performing experiments on them. In these imaginary cases, who is artificially selecting whom? As Dennett reported, "all the biologists I have queried on this point have agreed with me that there are no sure marks of natural, as opposed to artificial, selection" (1995, 317). Most conceptions of "artificial selection" artificially and anthropocentrically presume that humans are choosing agents, but other species are not. The truth is that all reasonably intelligent species are making real choices. These selections may be "artificial," but "natural selection" governs the whole.

It may be true that humans are the most intelligent species on Earth and that they have the greatest capacity for conscious prefiguration, deliberation, and choice about alternatives. We imagine possibilities of choice and action in advance. But these capacities exist to some extent in other species. As Darwin himself wrote, "A little dose . . . of judgement or reason often comes into play, even in animals very low in the scale of nature" (1859, 208). In another work, Darwin again insisted that "animals possess some power of reasoning. Animals may constantly be seen to pause, deliberate and resolve" (1871, vol. 1, 46). To assume that no trace of judgment or reason occurs with other species would be to raise a difficult question: when and how in evolutionary time were these special cognitive and volitional privileges bestowed upon humans? To avoid a religious or mystical answer, we have to assume that these cognitive attributes themselves evolved through time and existed to some degree in pre-human species.

An important point emerges here. As Dewey (1910, 15), Ernst Mayr (1988, 1992), and Dennett (1995) explained, it is part and parcel of Darwin's underlying philosophy that all intention has itself to be explained by a causal process. This causal explanation has to show how intentions are formed in the psyche and how the capacity to form intentions itself evolved. As Dennett reported, Darwin turned the traditional doctrine of intentionality upside down: "intentionality doesn't come from on high; it percolates from below, from the initially mindless and pointless algorithmic processes that gradually acquire meaning and intelligence as they develop" (1995, 205).

Darwinism holds that there can be no "uncaused cause." Everything must be subject to a causal explanation in scientific terms. Natural selection is such a causal explanation, admitting neither teleology nor goal in nature. This is a key part of Darwin's ontological outlook, to which we shall again return below. Accordingly, Commons was wrong to suggest that Darwinian theories of evolution exclude volitional behavior. On the contrary, Darwin insisted that calculations and intentions had to be explained. Rare

among social scientists, Veblen understood this point very well. For Veblen, intention or "sufficient reason" had itself to be explained in terms of cause and effect:

> The modern scheme of knowledge, on the whole, rests, for its definitive ground, on the relation of cause and effect; the relation of sufficient reason [or intention] being admitted only provisionally and as a proximate factor in that analysis, always with the unambiguous reservation that the analysis must ultimately come to rest in terms of cause and effect. (1909, 625)

While the "element of discriminating forethought . . . distinguishes human conduct from brute behavior," this element must itself be explained. Veblen then pointed out that "economics has had the misfortune" to allow explanations in terms of intentions to supplant causal explanations as "the sole ultimate ground of theoretical formulation." Regrettably, and partly because Darwinism is still not widely understood, this "misfortune" still affects much of the social sciences today. It is still widely taken for granted that the existence of a human intention is sufficient to explain human action, without probing the causes behind intentions themselves.

Commons misunderstood Veblen on this point. Contrary to Commons (1924, 376), Veblen did not attempt "to get rid of the human will" in his explanation of economic phenomena.[11] Such pronouncements are very difficult to reconcile with statements by Veblen, such as the following: "Economic action is teleological, in the sense that men always and everywhere seek to do something" (Veblen, 1898, 391). "As a matter of selective necessity, man is an agent. He is, in his own apprehension, a centre of unfolding impulsive activity—'teleological' activity. He is an agent seeking in every act the accomplishment of some concrete, objective, impersonal end" (1899, 15).

Veblen saw human purposeful behavior as built upon inherited instincts, as well as acquired habits. Yet in the principal work where he elaborated this idea, he repeatedly insisted that this would include teleology and purpose (1914, 3–6, 31, 334). What Veblen proposed was that intention or "sufficient reason" had itself to be ultimately explained in terms of cause and effect. Veblen admitted human will but also tried to explain the causal and evolutionary mechanisms that lay behind it. For Veblen, while the "element of discriminating forethought . . . distinguishes human conduct from brute behavior," this element must itself be explained (1909, 625–6).[12]

Commons abandoned any discussion of the determination of the human will by proclaiming, "Whether we hold to 'determinism' or 'indeterminism,' does not matter for economic purposes" (1924, 82). Hence we pass "over to others the question of whether the will is predetermined." In contrast, Veblen understood Darwinism as involving an intrinsic commitment to causal explanations. For Veblen and Darwin alike, this commitment applied equally and forcibly to both the natural and the social spheres. Darwinism involves the idea that all outcomes are determined by some cause.

Note, however, that this does *not* imply an adherence to other forms of determinism, such as "predictability determinism" ("any event can be rationally predicted") or "regularity determinism" ("given *A*, *B* must occur").[13] There is nothing in Darwinism

that involves any commitment to the last two versions of determinism. These two versions of determinism are logically independent of the commitment to causal explanations. If outcomes are determined this does not necessarily mean that they can be predicted. Neither does determination necessarily mean event regularities. Predictability determinism and regularity determinism are quite different from the idea that every event is determined or caused (Bunge 1959; Bhaskar 1975).

Commons, Individuals, and Institutions

To examine part of Commons' position on institutions we shall gauge the validity or invalidity of three propositions:

1. Commons' notions of "collective action" and "collective will" involved the notion that institutions have a will of their own that transcends the wills of individuals.
2. Commons ignored the unintended outcomes of human interaction, including undesigned institutions.
3. Commons emphasized legal, rather than extra-legal, institutions. He gave less attention to institutions—including some self-organizing institutions and spontaneous orders—that do not involve legal rules.

I shall explain below that I believe that one of these propositions is true and the two others are false. In various guises, propositions 1 and 2 appear in works by Mancur Olson (1965), David Seckler (1975, 126–30), Andrew Schotter (1981, 3), and Richard Langlois (1986, 4n.; 1989, 285–7). Passages found in these works criticize the concepts of "collective action" and "collective will" for their alleged attribution of intentions to institutions. Other passages criticize Commons for ignoring unintended consequences. However, several authors have shown that these criticisms are misguided (Biddle 1990b; Lawson 1996; Ramstad 1990; Rutherford 1983; Vanberg 1989). Commons did not say that organizations or collectives have distinct wills of their own, other than those resulting from the combined wills of individuals. In fact, Commons saw the comparison of society with an organism, with a social will of its own, as a "false analogy" (1934a, 96, 119). Also, Commons did not assume that all institutions are the result of conscious design. He acknowledged unplanned outcomes and unintended consequences. Chamberlain (1963, 71–2) summarized Commons' position very well:

> When Commons speaks of collective action, then, he is not referring simply to the activities of organizations such as business firms and labor unions, trade associations and government agencies. . . . [I]n addition to collective action of the organized variety Commons includes unorganized custom, the laws of the state and the common law of the courts, the total bundle of patterns of conduct which a society sanctions or compels of its

> members. Even when an individual engages in a simple exchange with another individual, he acts within a framework of collective law and custom, so that collective action has in fact structured the relationship. Social custom and law are in fact the product of these interactions. People are not simply adapters to a code of property law, or conformers to a body of customs affecting the scarcity value of property ownership. In the process of dealing with each other, bargaining, negotiating, transacting, compromising, they bend and mold the customs, modify the judicial gloss on the law, help to create the very customs which affect their economic relationships. Collective action thus controls the individual; but the individual has some power (especially in concerted effort with others) to modify the nature of collective control.

In sum, as Jeff Biddle (1990b, 31) remarked: "It is difficult to believe that someone who has read Commons could think that Commons did not appreciate the involuntary or unplanned effects of human action." Hence propositions 1 and 2 are both false. And hence Commons not only accepted the possibility of unconsciously motivated *behavior*, as noted above, but also he accepted the possibility of unintended *outcomes* of human action.

Having rejected 1 and 2, let us move on to consider proposition 3. It is argued, in contrast, that this proposition is true. Note that proposition 3 does admit the possibility of unintended consequences. Proposition 3 does *not* say that Commons believed that all institutional phenomena are intended. But it is here that we find a limitation of Commons' thinking in this area. He wrote, "Social institutions . . . are based on the coercive sanctions intrinsic in private property, which is the social expression of self-consciousness and the origin of social institutions. Herein social organization is fundamentally different from physical or biological organization" (Commons 1899, 170). "Social organization is psychic, and consists of those coercive sanctions which subordinate individuals to a single will" (1900, 89).

Commons here excluded institutions that involve neither private property nor laws, such the institution of language. In part this may be a matter of the definition of an institution, but it also betrays a persistent relative neglect by Commons of powerful social structures that work through mechanisms other than (common or statute) law. Although the above two quotations are from some of Commons' early essays—and must thereby be treated with due caution—this same neglect is manifest in all of Commons' works. While Commons does accept the importance of informal rules, whenever he wrote of "institutions" he generally referred to structures involving laws.

Some of the most celebrated theoretical discussions of social institutions address phenomena of the self-organized type. Language is often regarded as such an institution (Searle 1995). Instead of describing it as an institution, Commons referred to "the custom of language" (1934a, 73). Incidentally, this is problematic because of his behaviorist conception of custom as "repetition by the continuing group" (155). Language is much

more than repeated sounds or behavior in a group. It is a complex of referents and meanings, with a syntactic structure that, incidentally, is not typically understood fully by its users. Language is not behavior; even when conversation ceases the linguistic dispositions, vocabularies, and syntactic structures remain.

Did Commons get close to acknowledging the notion of extra-legal, self-organization or spontaneous order in his discussions of the role of common law? He clearly argued that formal laws are often expressions of pre-existing, informal, and undesigned social arrangements or customs (1924, 298–301; 1934a, 239–43). But (rightly in my view) he did not depict common law as a purely spontaneous order. He saw it as a stabilizing and regulatory mechanism, as a legal extension and reinforcement of custom itself. In contrast to the writings of several libertarian and Marxian social theorists, Commons (rightly) did not treat the law as a mere epiphenomenon of social reality (Hodgson 2001, 2002a). For him, the law was constitutive. In particular, as Commons fully recognized, common law itself requires frequent legal interpretation, choice, and judgment. It never works in an entirely spontaneous fashion, entirely outside powerful legal institutions. The outcome was that Commons had a superior understanding of the nature of law, which (rightly) disqualified it as a purely spontaneous mechanism. But he failed to consider adequately spontaneous orders outside the law.

Consider Commons on working rules in going concerns. In society, many rules are of an extra-legal character and many are not even written down. In one passage Commons considered the long-term "evolution" of working rules, including the example of the evolution of the rules of language "accepted in common by those who enter and remain with the group" (1924, 136). This might be interpreted as an acceptance of the possibility of an extra-legal spontaneous order. However, his use of the term "evolution" undermines this, because of his repeated statements that evolution in society involves deliberate, "artificial selection." At best, there is no more than an undeveloped hint of the possibility of a spontaneous order here. This negative conclusion is further reinforced by another passage, where Commons wrote of "a working rule of a going concern, laid down by an authority" (1924, 332). Symptomatically, when Commons here considered rules that are not necessarily laws, he simultaneously considered an enforcing authority. And quickly, a few sentences later, the discussion shifted from working rules in general to working rules that are regulated by laws. Just as Commons required social evolution to work through "artificial selection" by some legislator or other authority, his discussions of the emergence of social rules depict them as typically orchestrated by a powerful person or group.

In sum, Commons underestimated the possibility of emergent orders in society that, like self-organization in nature, do not emerge by means of juridical rules but simply through the (coercive or otherwise) interactions of agents. Some institutions may thus evolve without the use of laws. Carl Menger described these undesigned structures as "organic" institutions (1871). For example, a convention might emerge where people traveled on one side of the road rather than the other, or a monetary unit might emerge

as a widespread medium of exchange. These are familiar examples of coordination equilibria that may emerge without an overall coordinator or a legal apparatus.

It is these cases of coordination equilibria that are most important for our argument here. Coordination rules (language, rules of the road) can differ from other rules involving normative constraints (legal or moral rules). A coordination equilibrium can be self-enforcing, because not only does each player lack any incentive to change strategy but each player wishes that other players keep to their strategy as well (Schotter 1981, 22–3; Schultz 2001, 64–6). Writers in the spontaneous order tradition—from David Hume and Adam Smith through Carl Menger to Friedrich Hayek—often conflated these two types of rule. They often neglected social interactions where enforcement is neither spontaneous nor endogenous and thus requires normative constraints (Vanberg 1994, 65). In contrast, Commons stressed problems of enforcement but gave little attention to coordination equilibria or rules.

Nevertheless, all so-called "organic" institutions necessarily involve relative disincentives or "sanctions," in the broad sense in which Commons used the term (1899, 21–22, 170; 1900, 89; 1934a, 713). In Commons' sense there are clear "sanctions" against the mispronunciation of language or driving on the wrong side of the road, even if the law is not involved. It is by means of perceived penalties or incentives that "organic" institutions may emerge. Commons was right to emphasize that all institutions involve sanctions or coercion. But by neglecting extra-legal self-organization and "organic" institutions he diminished the scope and impact of his valid argument. Accordingly, he failed to distinguish between those sanctions or constraints that are consistent with mutual self-interest and those that have to be (additionally or in contrast) enforced by normative rules.

Hence it is quite misleading to see all institutions as the outcome of subordination to a "single will"—as Commons put it (1899, 8; 1900, 89)—whether this "single will" be of an individual or of a unanimous group. "Organic" institutional outcomes and spontaneous orders are not only undesigned but they also do not necessarily involve legal rules. They emerge as a result of individuals pursuing their own purposes, by the mutual benefits of coordination and by sanctions or constraints inherent in the evolving structure. Such patterned outcomes can emerge with automata and insects, as well as with humans. Hence in some respects they are similar to examples of self-organization in nature (Prigogine and Stengers 1984; Kauffman 1993). Throughout his writings, Commons downplayed the phenomenon of self-organization in society.

According to Commons' discussion of the *Methodenstreit* (1934a, 720 ff.), Menger was said to have "eliminated all conformity to custom" from economic science. The idea of a spontaneous or "organic" order was central to Menger's attack in the *Methodenstreit.* This would suggest that Commons misunderstood Menger's idea of a spontaneous or "organic" order as excluding any conformity to custom. Menger may have paid insufficient attention to custom, but he did not eliminate it. Obversely, when Commons stressed custom he did not admit the kind of undesigned order explored by Menger.

In a symptomatic passage where he discussed Smith's idea of the "invisible hand" (1923, 110), Commons considered the possibility that an individual might act "to augment the prosperity of the nation though he did not intend to do so." But in the very next sentence he dismissed this as "a theory of divine providence." This passage also suggests that Commons did not acknowledge or fully understand the possibility of self-organization or spontaneous orders. In contrast, throughout his works, Commons promoted a conception of institutions as necessarily depending on a legal framework and some kind of supreme legal authority. He ignored such potentially spontaneous phenomena as coordination equilibria.

Typically, Commons considered how specific customs, rules, and interpretations have evolved. He described how sometimes different customs or interpretations may come into conflict. He then cited cases of how the U.S. Supreme Court has adjudicated on such matters, and the consequences for economic organization and activity. In such cases, the Supreme Court may intend the outcome. In other cases another legal authority makes a decision: "Somebody must choose between customs. Whoever chooses is the lawgiver" (Commons 1924, 300). The choice was described as "artificial selection." For Commons, then, outcomes were typically represented by one will or more. As Allan Gruchy wrote on Commons' work: "Individual wills are congealed into a form of collective voliency or will-to-action" (1972, 41).

Commons' notion of a social structure was predominantly legal in character. This legal facet is important for many institutions, especially in societies under the rule of law (Hodgson 2002a). But it is not true for all institutions, in either the present or the past. Typically, Commons saw institutions as the structured organization of individual wills acting in an evolving legal apparatus, where often a hegemonic group of individual wills coerce many others into obedience. He did not consider the possibility of extra-legal self-organization and neglected what Menger called "organic" institutions, where structures emerge without a global controller or single regulatory authority. His volitional economics placed an emphasis on individual volitions, either singly or in groups. For Commons, then, the key question is how one will is able to subordinate others. At this point he stressed legal frameworks of institutions and rules.

Another lacuna identified above in his thought is relevant here. Commons believed in the institutionalized mind, but he had no developed theory of how the individual mind was institutionalized. Concerning the behavioral functions of institutions, Commons clearly and repeatedly saw institutions as enabling and "liberating" for individuals and groups, as well as constraining (1931, 648, 651; 1950, 21). This is valid and important. But concerning their psychological consequences, there is no developed explanation of the ways in which the individual mind is "institutionalized," as Commons put it (1934a, 73, 638, 698). In this explanatory absence, the temptation for Commons was to place emphasis on legal coercion and constraint.

By contrast, early American sociologists such as Edward Ross (1901) and, especially, Lester Ward (1903) wrote of "the spontaneous development of society." Similarly, Charles Ellwood (1912) adopted a distinction between a "spontaneous," or

"natural," order on one hand and a "social order" on the other. He saw a "spontaneous" order as underpinned by instinct, habit, custom, and tradition. In contrast, a "social order" was said to involve consciously formulated regulations and institutions, designed to ensure the conformity of the individual to the behavior of the group. This distinction between designed and spontaneous social institutions was available in the early literature in American social science but seems to have evaded Commons. Commons was clearly aware of Ward and other sociologists but did not seem to be especially attracted by their concept of spontaneous order (1899, 168–70).

Veblen (1899, 1919) had a theory of how institutions worked deeply on individual minds and intentions. Although he too did not have a developed notion of self-organization, he saw institutions as shared habits rather than behavior that was always and necessarily under the guidance of a single authority. Following the pragmatist philosophers and instinct-habit psychologists, Veblen saw habits as foundational for thought and action. The capacity for reason and action depends on the prior acquisition of appropriate habits. Habits are acquired dispositions that make thought and action possible. In turn, actions take place in institutional and cultural contexts that channel behaviors in specific directions. These new or developing behaviors give rise to new habits, providing a mechanism by which individual preferences and purposes can be molded by institutional circumstances. Volitions are not taken as given for the purposes of institutional analysis. This Veblenian argument depends on the conception of habits as dispositions rather than behavior. It further depends on the argument that habits are essential for thought and action. Commons embraced none of this.

Conclusion

Taken as a whole, Commons' contribution to institutional economics is highly significant and important. He also should be given credit for attempting to provide institutional economics with the systematic theory that was not bequeathed by Veblen, Mitchell, or any other American institutionalist. He was also concerned about making this type of theory a viable tool for policy. But his attempt at theoretical construction was a failure. Commons neither developed a Veblenian approach nor developed an adequate alternative to it. A successful development of a Veblenian approach was made much more difficult by the shift in prevailing academic opinion away from instinct-habit psychology and Darwinian modes of thinking. In addition, the rise of positivism and behaviorism created adverse conditions for the development of institutionalism along Veblenian lines.

Commons' response to these circumstances was an abandonment of instinct-habit psychology and an admission of some aspects of behaviorism. But he lacked any adequate theory of what causes human motivation. However, this deficit was less visible after about 1930 because the social sciences as a whole were rapidly severing their links with both psychology and biology. Economists such as Lionel Robbins helped to trans-

form economics into the science of choice, eschewing any explanation of how preferences were determined (1932). Leading sociologists such as Talcott Parsons helped to turn sociology into a science of society where the psychological and biological aspects of human agency were neglected (1937). Commons' volitional economics relied on the wills of agents that had no explicit explanation in psychological, biological, or other terms.

Despite Veblen's celebration of a "post-Darwinian" economics, Commons failed to incorporate the insights and attitudes of Darwinism. He did not appreciate that "artificial selection" was no more than a special case of "natural selection" and not an alternative to it. Unlike Veblen, Commons did not accept the Darwinian injunction to search for explanations of all phenomena, including of the human will itself.

Sometime between 1924 and 1934, Commons read some works of Peirce and began to stress the concept of habit. However, *Institutional Economics* represents a forceful but incomplete, brief, and unsustained attempt to incorporate pragmatism. Its conception of habit is a mangled, behaviorist transmutation of the Veblenian and pragmatist legacies. In these and other works, there is an inadequate treatment of the spontaneous and self-organizing aspects of institutions. For institutional economics this was a tragic failure. But it was also the case that, by the 1930s, American academia would not have been in the intellectual mood to accept an approach based on pragmatist philosophy, instinct-habit psychology, or Darwinian principles.

In America in the 1930s, the influence and momentum of institutionalism were themselves sufficient to ensure its prominence and survival for at least two more decades. Enduring movements in economics require theoretical foundations, but they are not popularized by theory alone. An existing momentum is sustainable for a while, especially if it involves a similar policy vision and shared icons of belief. Institutionalism as a whole was concerned with the problem of "social control" and had its enduring theoretical icons, especially those emphasizing the importance of culture and institutions. These helped to keep institutionalism alive.

But in the absence of a viable theoretical system of the measure of Marx's *Capital*, John Stuart Mill's *Principles,* Léon Walras' *Elements,* or Marshall's *Principles,* it was inevitable that institutionalism would eventually be pushed aside by the emerging formalistic version of neoclassical theory. In the late 1930s and early 1940s, a younger generation of neoclassical economists—including John Hicks, Alvin Hansen, and Paul Samuelson—synthesized Walrasian general equilibrium theory with a formalized version of Keynesian macroeconomics. Where Commons failed to provide an adequate theoretical system, Samuelson and others triumphed. In the circumstances, it would have been very difficult for Commons or any other institutionalist to succeed. As early as 1934 the writing for institutionalism was already on the wall.

Notes

1. The author is very grateful to Glen Atkinson, Laure Bazzoli, Jeff Biddle, Véronoque Dutraive, Clive Lawson, Yngve Ramstad, Malcolm Rutherford, Warren Samuels, and anonymous referees for critical and helpful comments on earlier versions of this essay. The third section makes use of some material from Hodgson 2002b.
2. Other general evaluations include Bazzoli 1999, Bazzoli and Dutraive 1999, Biddle 1990a and 1990b, Chamberlain 1963, Harter 1962, Lawson 1994 and 1996, Leathers 1989, Parsons 1985, Ramstad 1986 and 1990, Rutherford 1983, Van de Ven 1993, and Vanberg 1989 and 1997.
3. Malcolm Rutherford (2001, 180–2) provided a useful list of interwar theoretical contributions of American institutional economics as a whole, thus rebutting the erroneous but widespread depiction as "atheoretical," or "against theory."
4. In a letter to Joseph Dorfman May 24, 1932, John R. Commons wrote, "I have no personal relationship with Mr. Veblen except casual visits with him. My conversations with him have been very short and rather incidental to other things. I first met him about twenty years ago in Chicago, but we did not discuss anything of material interest" (Dorfman Collection).
5. Commons' theory of ideal types is discussed in Hodgson 2001.
6. Later Clarence Ayres (1961, esp. 71–4) was less dismissive of Darwinism.
7. In contrast, Alexa Albert and Yngve Ramstad have argued (1997, 1998) that Commons' ideas were "congruent" with Dewey 1922 and also "concordant" with the work of another pragmatist, George Herbert Mead (1934). In response it must first be noted that the overwhelming majority of textual references cited in support of these propositions are to *Institutional Economics*, which is admitted here as the high-water mark of Commons' incomplete and imperfect engagement with pragmatism. However, in contrast to Albert and Ramstad, some differences between Commons and John Dewey have been exposed here. As for the alleged concordance with Mead, Albert and Ramstad (1998, 3) themselves admitted that "Commons was evidently unaware of Mead's work in the areas of philosophy and social psychology." Personally, I find the Albert and Ramstad essays (1997, 1998) more an exercise in wishful imputation than a grounded exegesis of what Commons actually wrote and thought.
8. Here Commons was possibly influenced by William Sumner (1906, 3), who wrote of "habit in the individual and custom in the group."
9. Biddle (1990b, 38–9) argued that Commons' view on artificial selection was influenced by Lester Frank Ward, who emphasized human purpose in his attack on laissez-faire versions of Social Darwinism. However, I detect little evidence of the influence of Ward on Commons' work. For instance, Ward clearly elaborated the concepts of "creative synthesis" and "synergy" (1903). To these were attached insights very similar to those elaborated in the terminology of emergent properties. But these terms are missing, and the insights are absent or underdeveloped in Commons' work. Furthermore, unlike Commons, Ward saw language as an institution and recognized it as a member of a substantial class of institutions that are largely spontaneous in origin. In contrast, as noted below, Commons neglected institutions that were spontaneous and did not involve laws.
10. It should also be pointed out that while Thorstein Veblen saw the need for a theoretical explanation of the criteria of selection, he did not provide a detailed and adequate theoretical account of these selection processes.
11. Similarly, Richard Langlois (1986, 4) wrongly alleged that Veblen "wished to rid economics of any sort of human intelligence and purpose."
12. Rutherford (1998, 475–6) wrote that Veblen "sought an evolutionary theory that was free from teleology and ran in purely causal terms." He saw institutional change "as a result of a causal process that did not rely on intentionality." In my view this is incorrect. Instead, Veblen fully incorporated intentions and purposeful behavior in his theoretical vision but saw these too as ultimately explicable in causal terms. In philosophical terms, Veblen rejected

the untenable ontological dualism that still pervades much of social science. For an excellent critique of dualism see Bunge 1980.

13. Quotes from Popper 1982, 1, and Blanshard 1958, 20, respectively, with emphasis removed in the former case.

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