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Two Models of the Relationship between Money and Sovereignty: An Interpretation Based on J. R. Commons' Institutionalism

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Abstract: This article presents a theoretical analysis of monetary sovereignty based on John Rogers Commons' main texts. Commons wrote extensively on money and sovereignty but did not provide an explicit analysis of their relationship. Through the reconstruction and interpretation of his work, we propose two models of the relationship between money and sovereignty. In the first model, monetary sovereignty is owned by the private banks and is potentially in competition with political sovereignty. In the second model, money can be viewed as an agent of political sovereignty, which shares some similarities with the status of law, as an institution of the sovereignty characteristic of the modern state.

Keywords: monetary sovereignty, political sovereignty, J.R. Commons' economics

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The European financial crisis highlights the relationship between weak political institutions and powerful financial organizations, the latter sometimes appearing to be the real seat of sovereign authority. This illustrates the need to question the relationship between political and monetary sovereignty. In order to gain theoretical insight into this relationship, we refer to the theoretical works of John Rogers Commons (1862-1945), who was a witness to, and analyst of a time already marked by the economic importance and political power of the financial sector. On one hand, the author contributed substantial developments to the study of the evolution of forms of sovereignty and of the genesis of modern rules of law (Commons, 1899-1900). On the other hand, Commons' critical and constructive contribution to institutional economics accords a major place to money, which he considers to be one of the central institutions of capitalism (Commons, [1934] 1990).

However, Commons does not explicitly link money to sovereignty; his theories of money and sovereignty being mainly separated. Nevertheless, we believe that they are implicitly linked in his main works and, in this paper, we attempt to make these relations explicit. For Commons, the history of societies can be resumed to a process of mediation of social violence, at the origin of which coercion and bonds of indebtedness “from which anybody cannot be released” prevail. We demonstrate that law and money hold a similar status in this process of pacification, as they support “one man's capacity of influencing the acts of another, by means not of his own strength but of the opinion or the force of society” (Holland, quoted by Commons, SVS IV, 546)¹. Law and money therefore constitute two attributes of sovereignty in the modern state. Commons’ analysis also makes it possible to consider money itself as a possible seat of sovereignty and a potential competitor to the State.

In the first section of this paper, we discuss Commons’ political concept of sovereignty. For Commons, “sovereignty is the authority to settle disputes between transactors, thereby creating order not singular or absolute, but multiple and relative” (Dugger, 1996, 427). Furthermore, sovereignty whose shape changes over time is described as a process of genesis and transformation of social institutions and of their modalities of control. The modern form of sovereignty that results from this process is manifested in law and in legal institutions. In the second section of the paper, we present the concept of money developed by Commons. Our interpretation leads us to believe that, for Commons, money is an institution that directly participates in the development of modern sovereignty. Thus, money can be considered a component of government in society, whose power is another form of sovereignty, as is judiciary power. However, in its contemporary form of banking and credit relationships, the monetary institution and its working rules can be influenced by cohesive groups affiliated with the banking and financial system, possibly in opposition with political sovereignty.

J. R. Commons’ Concept of Political Sovereignty

The first section intends to explain the meaning and content of Commons’ concept of sovereignty. While it may be less well-known than his approach to institutions, this concept of sovereignty enables us precisely to better understand his theory of institutions, in particular the linkage between economic, political and ethical dimensions. It is important to reconstruct his approach of sovereignty, as it developed and evolved throughout the author’s works. In order to do

¹ Hereinafter we will refer to *A Sociological View of Sovereignty* as SVS I, II, III ..., to *Institutional Economics* as IE and to *Legal Foundations of Capitalism* as LFC.

so, we focus on three particular works which contributed to political sociology, SVS (1899-1900), to the legal foundations of capitalism, LFC (1924), and to political economy, IE (1934), respectively. We then put forward an interpretation of his concept of sovereignty from two angles: 1) the links between sovereignty and the evolution of historical forms of human institutions and, 2) the relationship between sovereignty and economic power and law.

Sovereignty and Institutions: A Historico-Genetic Process

In a series of articles entitled *A Sociological View of Sovereignty*, Commons undertakes a vast retrospective study which describes the emergence and evolution of fundamental social institutions – from a hypothetical beginning of humanity through to the creation of the State and modern “constitutional sovereignty”. Referring, at this point, to institutions as “definite modes according to which persons deal with one another...(the) relationship of the individual to society” (SVS I, 4), the institutions examined in SVS are “great matrix institutions”: the family, the church, property and the State.

Commons proposes a simplified schema of this process involving four successive phases: tribal, feudal, absolutist and constitutional. Tribal societies are characterized by a form of organization in which the basic functions, which will later be carried on by the Church, family, State, property and economy, are not yet separated. Sovereignty is undifferentiated: the chief of the clan is simultaneously political chief, religious chief, chief of war, owner of people and goods in the name of the group and he gets his power through the level of coercion that he is capable of exerting on the members of the group. Gradually, as the size of societies increases, demographic and economic constraints lead groups towards conquest and exogamy. Institutions become more specialized and differentiated and each one develops its area of sovereignty. Thus patriarchal coercion still prevails but is tempered by the external force of custom and regulated by religion. The feudal phase corresponds to the beginning of economic development based essentially on agriculture and increasingly on commerce. Demographic constraints involve a gradual awareness of the scarcity of resources and of the advantages of appropriating them. Commons connects the origin of private property to the beginning of individual consciousness. Different forms of sovereignty then overlap and operate through coercion based on physical force, the aim of which is the ownership of land and men (slaves and serfs). Competition for appropriation leads to conflicts of sovereignty between feudal lords and the monarch. Political anarchy gradually makes way for an absolutist phase of the unification of sovereignty, through the centralization of property and control

of feudal coercion. This phase is later described as a process of “extraction of violence from private transactions and its monopolization by a concern we call the state” (IE, 694). Private coercion by feudal authorities, by chiefs of families and by other institutions (religious) is then monopolized by the monarch, who also embodies all ownership. Sovereignty is thus unified in the figure of the sovereign king. That being said, absolutism is only an intermediary phase between feudal traditions and the rules of law of the modern era (Atkinson, 1998, 39). The constitutional phase that follows establishes a framework for the exercise of sovereignty through the social control of state coercion.

With the development of the market economy and the economic power obtained by some groups, the State then recognizes the political and economic rights of some organized groups and gives them back some sovereign prerogatives. For Commons, “the state is the coercive institution of society controlled by those classes that have acquired partnership in determining the sovereign will” (SVS III, 363). He furthermore suggests that the balance of force between organized groups and government bodies – who mutually control each other – results in the introduction of “law and order” (SVS V, 683). The constitutional phase is therefore a kind of endpoint in the evolution of sovereignty, which is brought about by increasingly inclusive and democratic political regimes. The overall process can be summarized as such:

“Human beings evolved into existence and at first lived in an original homogeneous, indefinite social mass. Then differentiation begins. The different social parts become organised and definite. A universal law of monopoly and centralisation enforced by necessity and the struggle for existence takes hold. Then monopoly and centralisation give way to decentralisation, socialisation and democratisation may occur” (Gonce, 1998, 82).

What notion of sovereignty can be drawn from this evolution of social relations as described by Commons, governed firstly by coercion and progressing to “law and order”? Although Commons does not provide a precise definition of sovereignty, he refers to “beliefs and desires” and the idea of “moral perfection”, in order to describe the very foundations of sovereignty (SVS IV, 544-545). Notably, without making explicit its content, Commons makes reference to a text by J. Dewey, which we believe more accurately reflects his notion of sovereignty as “the moral or social force *organized*” (Dewey, 1884, 43)². In this text Dewey notably differentiates between sovereign and sovereignty and from this perspective, the government is seen as an *organ* of sovereignty in

²The complete quotation is: “Sovereignty the working will of society is indefinite or a more or less shapeless wish, except as it finds expression in organized institutions, of which government is one. It is to say, in other words, that all institutions, government included are sovereignty, the moral or social force, *organized*” (Dewey, 1894, 43).

which social forces crystallized over time, but is not sovereignty itself. Sovereignty is manifested in the development of legal institutions essential to the social order. He explains that, “It is by and through the activities of these institutions, infinitively more than through the direct action of government, that the order of society is maintained,” and furthermore, “sovereignty exists as a definite actuality only as it realized in institutions which act as its effective organs” (Dewey, 1884, 49).

It seems that Commons supports this view that sovereignty is both the will and physical strength (which Commons refers to as coercion) and the will and ethical strength of society (which he refers to as opinion) incarnated in legitimate institutions. Like Dewey, he does not subscribe to the generally simplified notion of sovereignty as conceived by J. Austin, in which sovereignty resides in the sovereign and is expressed in his command (SVS I). The legitimacy of the State, as a sovereign body in possession of the monopoly of physical strength, is only instrumental or functional. This legitimacy is dependent upon the State’s ability to control and regulate conflict; which guarantees the continuation of society. Commons, then, considers that sovereignty resides in society rather than the State³.

However Commons, like Dewey, does not subscribe to the Rousseauist notion that the foundations of sovereignty are in the people, defined as a generally indefinite will which excludes any determined form of exercise. What is important for both authors is that the will and the social strength be *organized*, not necessarily in the form of formalized organizations but more generally through collective action. It is in IE that Commons finally defines the institution as, “collective action in restraint, liberation and expansion of individual action” (I.E, 13); collective action being the general and dynamic principle which both constitutes and allows evolution of organizations and institutions. And he specifies that, “if we endeavor to find a universal principle, common to all behavior known as institutional, we may define an institution as Collective Action in Control of Individual Action. Collective action ranges all the way from unorganized Custom to the many organized Going Concerns, such as the family, the corporation, the holding company, the trade association, the trade union, the Federal Reserve System, the group of affiliated interests, the State. The principle common to all of them is more or less control of individual action by collective action” (IE, 69-70).

We therefore find, at the heart of Commons’ concept of sovereignty, notions of moral and

3 “The state (is) itself a much less dominant coercive and arbitrary power than ... conceived ... For it (society) interjects between the state and the individual a complex of habits, practices, opinions, promises and customs which are both a substitute for state action and a highly intractable force which even the most powerful state cannot override...and further, that these fundamental social relations of rights, duties, liberties, and exposures, are grounded, not on the state, but in the daily habits, practices and customs of the people” (Commons 1925, 336).

social (ethical) strength and the concept of the institution as collective action, which particularly appears in his description of the constitutional phase of government – where power is a compromise between social classes and where “order itself is possible only on condition of a common belief animating separate classes and all classes”⁴.

Sovereignty, Property and Law

Commons identifies property as another form of coercion which is related to sovereignty and regulated by law in the phase of the modern state. Indeed, demographic development was accompanied by a form of power linked to the possession of scarce resources, which is at the genesis of the institution of property.

“Private property in land could not be thought of until land came to be scarce and its possession a condition of survival. So with private property in men, women, children and tools. It is increased density of population that brings into consciousness the element of scarcity in the several fields of human activity one after the other, and upon this consciousness private appropriation is built at once, thus setting the foundation for social institutions” (SVS I, 13).

Thus alongside political power based on physical strength, an economic power based on property was developed. Commons affirms that sovereignty and property are “two complementary forms of the total coercion exercised in society” (SVS II, 81). For Commons, property plays the social role of “withholding from other what they need but do not own” and distinguishes itself from wealth, which is instead “holding something useful for one's use” (LFC, 53-54). From this point of view, economic power (based on property) gives owners the ability to control the actions of others with state assistance (Dawson, 1998). In Commons’ opinion, political and economic power differ in nature. The first is a monopoly over physical strength while the second is a monopoly over property. The first is a hierarchical social relationship and the second a relationship between equals. However, they are interconnected as property and economic liberty are not natural attributes of individuals but are instead institutions regulated by law; a main attribute of the modern state's

⁴ “The partnership of different social classes in determining the sovereign will is possible only for those classes which have developed the capacity and power of cooperation...such capacity is based on a belief in the moral perfection of the unseen powers that rule the world...On the other hand, the ruling classes themselves must have accepted the same beliefs of moral perfection in general, else they could not understand the claims of the aspiring class and would be unable to take those concessions implied in partnership. They would submit to sheer coercion in the form of imperialism or tyranny but would not enter into that arrangement of mutual veto that characterizes the true state with its constitutional form of government” (SVS IV, 544-545).

sovereignty.

According to Commons, law is therefore the favored means by which coercion is regulated and order established. However, Commons does not adhere to the theory of natural law. His concept of law is based on an approach of institutions as human conventions that vary according to a process of artificial selection. Similarly, in the concept of reasonable capitalism developed in IE, Commons affirms that the principles put into practice by courts of justice in the United States – which resolve economic conflicts through the definition of reasonable values – better explain the nature of economic value than the classical or neoclassical economists' value theory. Indeed, for Commons, law and economy are strongly correlated and modern capitalism is increasingly characterized by judicial sovereignty, with the Supreme Court at its top, regulating, on request, transactions between individuals and/or *going concerns*.

Commons' understanding of the economy based on scarcity gives a central role to law – which helps solve property-related conflicts and more generally, structures the various domains of economic activity. Like any rules, laws constrain, give directives, and are conditions for the development of economic activities (this is Commons' general definition of an institution in IE), and reciprocally, laws are changed by the transformation of the way in which wealth is produced. The nature of things recognized by courts as private property and possible commodities has therefore evolved throughout the history of capitalism: ownership has gradually been extended from corporeal to incorporeal assets (debts) and then to intangible assets (expected future revenue). If Commons believes law to be a mediator between the economy and sovereignty, it is because the presence or absence of legal rules – and the nature and form of these rules – demonstrates the extent to which the State acknowledges the prevailing set of interests of the time (Medema, 1998, 106). Thus, in the modern era, economic interests linked to industrial development have had a powerful influence on the definition of rights and freedoms.

“The growth of monopoly and centralisation increases the coercive powers of the private owners of industry by strengthening the private sanctions...But...the state as the coercive instrument of society tends to absorb this side of the industrial institution...The state becomes the framework of industry, just as it becomes the framework of the family and the church” (Commons, quoted by Medema, 1998, 107).

However, despite the importance of economic power within the State, Commons sees in the Supreme Court's conception of American law the opportunity for every citizen to access sovereignty. Sovereignty became “judicial” when the Supreme Court was constructed as an

authority controlling legislative and executive powers and bestowing a part of sovereignty on each citizen. The Supreme Court now examines whether or not the decisions made about conflicts related to the definition of liberty and ownership are constitutional.

Therefore the relationship between political and economic sovereignty is mediated by law. This occurs via the courts of justice, which impose significant constraints on police power over state or federal legislation (Dawson, 1998). In LFC, Commons refers to two cases in which the Supreme Court identified and sanctioned economic power related to property. The first case is that of *Munn v. Illinois*, in which the State of Illinois's court of justice had imposed a maximum tariff on Chicago grain warehouse firm Munn and Scott's transport and storage of agricultural products. This decision was justified by the company's monopoly over the market, which enabled it to fix non-competitive prices. Munn and Scott objected to the State of Illinois' actions and argued that the court's decision contravened constitutional economic liberty. The Supreme Court upheld the court of Illinois' judgment and Commons refers to this decision as the first case in which the sovereign used its power to constrain economic power and which consequently extended "the police power...to the control of the bargaining power of property where prejudicial to the bargaining power of others" (LFC, 35). In this case, as economic power was "withholding from other what they need but do not own", it was considered coercive and was constrained by the physical strength of the sovereign. Commons asserts that this decision by the Supreme Court marks an evolution in the notion of property as, although the physical property of *Munn and Scott* was preserved, the company's capacity to fix prices related to the use of the property had been curbed. In the context of American political institutions, this exercise of sovereignty is very much one of judicial sovereignty, as the use of physical strength characteristic of political power is regulated by the "due process of law".

"... under American constitution the courts exercise a veto on legislatures and executives when the latter endeavor to keep up with the changes in economic conditions ... and a change in definition changes the terms of all contracts and all expectations upon which the people, the legislatures and the congress had previously acted" (LFC, 60).

This type of judicial leverage effect is important as it enables the courts' decisions to become public purposes.

The second example of this evolution of sovereignty is that of *Holden v. Harding*; the first case in which "economic power of property in the dealings of employers with employees was restrained" (Dawson, 1998). In this case, the Supreme Court upheld the State of Utah's law limiting the number of work hours for miners and smelters to be a legitimate exercise of police power and,

with regard to the Fourteenth Amendment on the liberty of contract, the court supported the view that the employees were constrained by their employers' power and that their relationship did not allow the freedom to contract.

“The physical power of the nation is called upon to limit the economic power of one class and thus to enlarge the economic power of the opposite class as respect to a particular class of transaction...their private purpose became the public purposes to that extent. How far this preference shall go is a matter, not of equality or logic, but of opinion and valuations” (LFC, 130-1).

This quotation illustrates the links which Commons generally establishes between law, ethics and economy. The Supreme Court holds its position of sovereign authority due to its ability to represent and update customs; notably transforming ethical rights (social finalities or public purposes according to opinion) into legal rights. Sovereign authority is anchored in these customs which evolves through the “common law method of making law”, as judges make reasonable choices to officially authorize new common social practices in law (LFC, 104-105).

Bringing together these different elements, we propose two models of the relationship between economic power (founded on the institution of property) and political sovereignty. 1) The first proposition derives from the basic idea that law is an attribute of state sovereignty in the form of a branch of government. Based on this model, the negotiation between conflicting economic interests – those affected by property as well as those of property – could be constitutionalized in the form of a fourth branch of government. This fourth branch would, amongst other functions, identify economic problems in different eras and provide various solutions. In this model, public purposes – which are associated with ethical strength and support the social order – are negotiated between conflicting interests. Thus economic power is controlled by democratic processes under the model of reasonable capitalism. 2) In the second model, property (and therefore economic power) is an institution which is a potential competitor to the State – able to control the legislative, executive and judicial powers. Organized economic power defends the private interests of property owners and establishes them as public purposes, after “having made” its place in the State. Property as the expression of an organized social force faced with a disorganized one could therefore be considered as the real seat of sovereignty. Property coercion is therefore either supported by the physical coercion of the State or superior to it. Commons seems to believe that his time is characterized by the influence of economic powers, and notably by the financial actors, which can be defined as “*Banker capitalism*”.

This leads us to the subject of the monetary institution as a typical element of economic

power and sovereignty and to the second section of the paper. From the preceding conceptual map and from the concept of money developed by Commons, we address the relationship between money and political sovereignty.

Monetary and Political Sovereignty

Commons is not particularly well known for his works on the subject of money. Instead, he is usually better known for his contribution to the analysis of industrial relations and labor issues. However, a significant part of Commons' activity in public affairs is consecrated to monetary issues. He believes that money and credit play an essential role in the economic instability and business cycles. Moreover, for Commons, employment and unemployment issues must be closely linked to monetary issues (Whalen, 1993). In this section we present the essential characteristics of Commons' monetary analysis. If this analysis does not explicitly make a link with the theme of sovereignty, it does provide some elements with which we can reestablish this link. From a theoretical point of view, a certain number of commonalities between Commons and Keynes on the subject of money can be underlined. These similarities are in the definition and the function attributed to money, as well as its role in the economic circuit (Tymoigne, 2003). More generally, we show that there are some points of convergence between Commons' and neochartalists approaches. This enables us to envisage two possible models of the relationship between money and sovereignty and then two models of society, one oriented by the principles or purposes of "Banker capitalism", the other by the principles of "Reasonable capitalism" and economic democracy.

Money and Sovereignty – A Blind Spot for Commons?

In IE, the purpose of the political economy is defined, "not a science of individual liberty, but a science of the creation, negotiability, release, and scarcity of debt" (IE, 390). The transaction, instead of individual action, is the unit of analysis which enables Commons to transcend the economic approaches of his time promoting instead *institutional economics*. In the chapter entitled *Futurity*, he defines money in its contemporary sense as "the special institution of the creation, negotiability, and release of debt arising out of transactions" (IE, 513); a definition which places money at the heart of the political economy reconstructed in IE.

For Commons, the development of the use of money marks the beginning of the process of separation of the economy from politics, as well as the separation of property and sovereignty. This

evolution opened up the possibility of using money to pay obligations, in turn permitting the development of economic liberty. The “transactional theory of money” developed by Commons essentially refers to the credit money used in bargaining transactions in the settlement of contractual debts. This could leave one to think that for Commons, modern money is purely endogenous to the banking system and completely removed from political sovereignty – as in mainstream monetary theory, as well as in post-Keynesian approach of endogenous money (Whalen, 1993, 904-906). In fact, Commons appears to reserve the domain of public action in monetary issues to monetary policy (dealing with change and interest rates) but not to money supply. However, in certain passages he suggests that, aside from the types of payment responding to the “need to pay voluntary debts between citizens or between the state and citizen” (when the State “acts as private person, buying and selling on the market”) – associated with bargaining transactions – money can be issued to address “the need to pay the compulsory debts due to the state, like taxes”. Described as *debts of authority* by Commons, these debts are imperative and associated with rationing transactions⁵. Thus for Commons, as money is defined as a general institution of payment of debts, it not only allows the settlement of releasable voluntary debts created through bargaining transactions, but also regularly honors the unreleasable debts of authority associated with rationing transactions – which structure public finances and keep the State “agoing”.

Commons affirms that “the two purposes of the means of paying taxes and the means of paying debts operate together, but historically they have been separated... Means of paying private debts are separable from the means of paying taxes. What the state decrees as a means of paying taxes, need not, even logically, be decreed to be a means of paying private debts” (IE, 464-65). This makes a plurality of monetary forms possible, each differing according to the powers that private and public agents hold over money: “when the institution of credit becomes dominant in the community... the means of payment are dictated more by the need of paying debts than by that of paying taxes... if the needs or policy of the state are dominant for purposes other than the payment of private debts, then it is these peculiar public needs that dictate what shall be used as a means of payment in private transactions ” (IE, 464).

Commons' theoretical perspective, which does not reduce the economy to bargaining transactions, is therefore more general than it appears at first sight and logically leads us to both

⁵ The typology of transactions that Commons proposes in IE provides an alternative approach to economics. Among the three types of transactions he distinguishes – bargaining, managerial, rationing – the first two concern exchange and production and the third *the sharing of charges and profits* resulting from those transactions. Bargaining and rationing transactions differ from managerial transactions since they are monetary transactions. They engender two mutual debts: a debt of performance which implies the execution and delivery of goods and services when property is transferred, and a debt of payment which is settled by money.

consider the State supervision of money and to a narrower integration of his theories of sovereignty and money⁶. Commons' approach, drawing from Knapp, could even be considered as consistent with the chartalist conception of money and prefiguring the neochartalist monetary tradition, from Keynes and Minsky to Wray⁷.

According to Commons, the economy is a whole set of bargaining, managerial and rationing transactions which organize the transfer of property rights on goods (corporeal properties), debts (incorporeal properties) and expected future incomes (intangible properties). It is therefore logical to define money as the institution that allows valuation of these property rights and payment of debts engendered during their transfer from one owner to another. As a result, within an analytical framework, where bargaining and rationing transactions cohabit and are interdependent, money, according to its various forms and rules, is at the origin of the formation of prices: the determination of the values of individual and collective property rights. But, for the various currencies (paying debt and paying taxes) to be combined in a stable way, they have to be expressed in the same unit of account so that their coexistence and their conversion from one into another become immediate and customary. As an institution of payment of debts, money has to be embodied in a “going concern”, whose members share – in a more or less coercive way – a common acceptance of some means of payment which benefits from customary tender. Following Knapp (1924), Commons calls this going concern a “payment community” (IE, 461). There are public payment communities (territorial communities) – some of which have the political capacity to confer legal tender to their means of payment – and there are private payment communities (banking networks) – which may have their own means of payment *authorized* to circulate in other payment communities. Commons also adopts Hawtrey's concept of *money of account* (Hawtrey, 1919), as he believes that the unit of account should appear first in the definition of money, not only logically – as put forward by Hawtrey – but also historically (IE, 475). For Commons, the money of account is the money of “the middleman who is keeping the accounts of indebtedness for the community, and is setting off their debts against each other and paying the balances by means of his own debts. It is Knapp's pay

6 Commons' primary focus on bank credit money can be explained by the historical context in which IE was written. The recent discovery by Hiroyuki Uni (2013) of a draft manuscript of IE that Commons distributed to his students in 1927, suggests an evolution in his thinking about the relationship between money and the state after the crisis of 1929. In the 1927 manuscript, the state's transactions are still qualified as judicial transactions (like in LFC), and not as rationing transactions as later seen in IE; a new concept that not only includes price and quantity judicial rations but also “value rationing” (IE,760).

7 The main themes developed by the neochartalists can be summarized as follows: money is a creation of the state, the state can be considered “an employer of last resort”, public debt is positive and financial instability is central to modern capitalism. Amongst the supporters of neochartalism we can mention, non-exhaustively: Randall Wray, Stephanie Bell-Kelton, Éric Tymoigne, Bill Mitchell, Jan Kregel; and also Alain Parguez and Marc Lavoie.

community” (IE, 473).

Therefore, Commons’ monetary theory shares the chartalist and neochartalist conception with regards to the origin and nature of money⁸. Money is not defined as a commodity but as a sophisticated social institution structuring the relationship between creditors and debtors and linking the future with the present. Money is characterized by two main functions: the unit of account, which enables liquidity and the means of payment which is the conditions of the transfer of property and of the economic process creating and distributing commodities⁹. As such, money is linked to the exercise of sovereignty and to the management of the ratio between the medium of exchange and the economic value. However, while the neochartalists emphasize the importance of the State, this is less connected to the creation of money – in the modern economy the great majority of money comes from the relationship between debit and credit induced by bank deposits – than with the fact that, according to Minsky, if “everyone can create money, the problem is to get it accepted” (quoted by Bell, 2001, p.150). From this perspective, in a credit-driven economy certain transferable debts are a type of quasi-money, depending on how great their liquidity is. In fact there is a hierarchy in the pyramid of debt and, for the neochartalists, the State is at the top of this hierarchy. The acceptance of household and company debt is determined by their acceptability to a higher level of the pyramid (and must be matched with an interest rate to counterbalance risk and the slightest liquidity), generally by banks. If bank deposits and public money are “the decisive currencies of the system” (Knapp), the bank money (bank deposits) is, according to the rules of official reserve banks (bank reserves), converted into “state money” and is thereby situated on a lower echelon of the hierarchy. Lastly, “the debt of the state, which is required in payment of taxes and is backed by its power to make and enforce laws, is the most acceptable money in the pyramid” (Bell, 2001, pp.159-160). Only the exchange of banking money into what Commons call “ready money” allows its

8 Commons' conception here is evidently in line with the current neochartalist view of money, as expressed, for example, by Tymoigne and Wray: “while many economists would prefer to trace the evolution of the money used as a medium of exchange, our primary interest is in the unit of account function of money. Our alternative history will locate the origin of money in credit and debt relations, with the unit of account emphasized as the numeraire in which credit and debt are measured” (2005, 2).

9 Commons’ concept is part of what can be referred to as the “monetary economics of production”: money is not neutral and monetary transactions precede production and exchange. This is clearly illustrated in the following quotation: “bringing together those several considerations in the time-sequence of looking to the future, there is, first, the universal business practice of accepting bank checks in liquidation of debts which, when drawn by solvent depositors on solvent banks, is a custom practically as compulsory as the acceptance of legal tender metallic or paper money in a suit at law; second, the working rules of the central bank, known directly in advance by the commercial bankers who are governed by them, and thus indirectly known by their customers; third, the “state of confidence”, which, if properly interpreted and measured, is the velocity of debits to individual accounts; fourth, the credit and debit commitments of these bankers and their, which are the active process of credit formations, fifth, the alienation and acquisition, by operation of law, of ownership of whatever securities or commodities are bought and sold; sixth, the physical control and labor management of materials in process of manufacture, made possible by the preceding transfers of ownership” (Commons, 1937, 687).

release from the bond of the infinitely renewed endogenous money. The money of the sovereign, the free money obtained from taxes and other debts of authority, is therefore the base money through which the management of scarcity regulates the issuance of credit banking money¹⁰.

However, Commons emphasizes that state money must also be accepted as customary tender within circuits of private commerce. He in fact distinguishes between the legal tender and customary tender means of payment and, according to him, in the modern phase of sovereignty in the United States, the Supreme Court plays a significant role in the selection of acceptable means of payment, including those generated by the State¹¹.

In this sense, monetary sovereignty refers less to the identity of the issuer of the money supply than to the origin of the rules governing the monetary institution and to the interests which are privileged by these rules. Commons states that, “the more important distinction to be made, therefore, is not that between taxes and debts, as to which is predominant in designating the current means of payment, but is the distinction between public purpose and private purpose, as to which shall prevail in designating the means of payment of either taxes or debts. Shall the customs of business with their private purposes prevail, or shall it be the policy of government, whether legislative, administrative, or judicial, with its public purpose? This public purposes do not turn merely upon the collection of taxes, indeed they are not inconsistent with the reduction of taxes, and therefore with their lessening importance in prescribing the means of private payment” (I.E., 465-466).

Although not explicitly articulated by Commons, the notions of sovereignty and money that we have identified in his works enable us to develop two different models which link monetary sovereignty with political sovereignty and which compete for legitimacy in the contemporary capitalist world.

Money and Sovereignty Conflicts

In IE, Commons describes a series of phases occurring during the evolution of the economy, particularly with relation to the process of debt negotiability, but he does not explicitly relate these phases to the diverse forms of sovereignty he previously presented in SVS. Nevertheless, IE almost entirely reinforces the approach of SVS and complements it with the concept of judicial

10 Similarly, in cases where its use is extended beyond the payment community, private money is also constrained by the rules of convertibility – applying to units of account – and by acceptability.

11 For example, during the American Civil War the Supreme Court delayed accepting public issued currencies (demand notes and greenbacks) as a general means of payment.

sovereignty, due to developments occurring in the period separating both texts. Therefore we can draw a parallel between the economic phases – with relation to the nature of debts – and the political phases.

In accordance with his sociological approach to sovereignty, in IE Commons suggests that “it is possible to reverse the Eighteenth Century illusion of an original state of liberty and reason, and to show the actual but resisted steps by which, out of the practices and aims of subordinate classes, releasable debts became the foundation of modern capitalism”. Therefore, “historically it is more accurate to say that the bulk of mankind lived in a state of unreleasable debts, and that liberty came by gradually substituting releasable debts” (IE, 390).

For Commons, it is clear that unreleasable debts characterize the earlier phase and that the process of liberation from these debts is concomitant and correlates with the construction of modern sovereignty and the extension of private property rights. Indeed, two essential events mark the development of releasable debts: 1) the establishment of the negotiability of debts correlating with the recognition of incorporeal property rights, 2) the recognition of intangible property by the Supreme Court.

This extension of property rights and correlating monetary changes were also accompanied by political changes affecting the forms of sovereignty. Negotiability of debts gradually grew in the 17th century, but only became outstanding when sovereignty was separated from property by the Revolution of 1689 in England (IE, 393). And, at the end of the 19th century, the US Supreme Court’s recognition of intangible property played a central role in the transition to judicial sovereignty. This portrait can be completed by drawing a similar parallel between the evolution of the legal notion of property and the development of credit money (Jongchul, 2014). Indeed two types of rights can be distinguished: rights *in personam* and rights *in rem* – the first relating to a specified person and the second to impersonal relations. Over time we can observe the evolution of the status of property – from a social network of rights and duties to a power over things – and that of property rights – from a right *in personam* to a right *in rem*. Then property and personal debts became progressively negotiable. In modern-day capitalism, this is expressed in the rapprochement between credit and money; however, their initial functions are different. Credit is a bond of debt and money is a means of canceling-out debt and, with regards to society, credit is a personalized relationship and money an impersonal one. The extension of negotiability and transferability by financial markets has given credit a decreasingly personal status, which brings it closer to that of money (Jongchul, 2014). Thus the legal institutions which participated in the development of the use of debts as money, created an institutional schema in which economic actors were able to legally develop their commercial customs and contracts and extend the negotiability of private

debts.

Commons' framework of analysis help to consider a situation of monetary plurality where a public authoritative currency circulates in cooperation with private authorized currencies; the space left to one or another currency in the general monetary circulation being variable according to the degree of predominance of public purposes over private ends reigning in society. One is a sovereign form of money, the expression of monetary power integrated within political sovereignty and backed by the State's legal coercive force – from which it obtains its legal tender. The others are forms of endogenous credit money circulating within market payment communities structured by banks. They are voluntarily accepted according to their customary tender and, since they have the power to release debts, they are *a priori* in the position of sovereign power within the payment communities they unify. Where there is room for complementarity between two forms of money, there is nevertheless the possibility for competition between means of payment of taxes and means of payment of debt; which reflects a structural conflict between political sovereignty and economic sovereignty.

As discussed in the first section of this paper, those holding sovereignty are the social actors capable of ensuring that their private interests are reflected in the public interest and institutions – this notion of the public interest being linked, for Commons, to the ethical dimension of sovereignty. This understanding of the relationship between political sovereignty and economic power can be further extended to address the issue of the nature of control of institutional purposes concerning money, the means of payment, the money supply and monetary policy with regards to monetary sovereignty.

Drawing on Commons' concepts, monetary sovereignty can be conceptualized in one of two ways. In the first case, the private banks and financial markets are in power of monetary sovereignty and are therefore potential competitors to the State. Conceptualized in this manner, private purposes prevail over public ones. Although Commons as a Democrat does not favor this conception, it makes sense when monetary power is monopolized by a cosmopolitan financial power to which executive, legislative and judicial powers of states submit themselves. The monetary socialization of individuals exclusively defined by their financial assets is then in the forefront, in comparison with political socialization, and the polity is subordinated to the economy. In the terms used by Commons, this is the model of “Banker capitalism”.

The last great financial crisis of 2007 (referred to as the subprime crisis), and that of 2012 (referred to as the European sovereign debt crisis), revealed both the weight of banking and financial institutions in the general operation of the economy and their role in the development of households, companies and states debts. The monetary institutions of Europe are the expression of

the supreme power of creditors over EU member states. From the beginning, the euro was intended to be a currency whose management was constitutionally entrusted to the European Central Bank (ECB) – independent from the EU member states. Up until recently, when necessity forced European monetary authorities to update their practices in order to manage the crisis, the mission of the ECB – in terms of monetary creation and policy – was exclusively to promote the stability of both prices and the euro exchange rate. These objectives predominantly promoted the interests of financial actors over those of households and companies. This institutional structure left member states with zero opportunity to interfere with monetary creation and, notably, they did not have the opportunity to develop countercyclical policies through monetary creation or through recourse to refinancing by the ECB – as budgetary deficits are financed through the financial markets. Therefore, “since member states are deprived of their monetary power, the Euro will be a pure-private money, created at the sole request of private agents by banks obliged to comply with the targets set by the Central Bank, sustained by the expectations of the financial markets” (Parguez, 1999, 66). This institutional framework illustrates our first model linking money and sovereignty.

In the second model, money is thought of as being similar to law – both have the capacity to affect any individual by mobilizing the symbolic (ethical) or the physical power of society. In other words, sovereign money is the money of the sovereign; it is placed under the authority of society, *i.e.* under society’s common values and customs. According to this model, build on the model of on the judicial power, it is logical to conceptualize money as a fourth constitutional power of the political order. In this conception of monetary sovereignty, public ends prevail over private ends thus corresponding to the model of “reasonable capitalism” favored by Commons. Reasonable capitalism is the institutional form of an economic democracy, conceptualized by Commons as a result of his experiences with various economic commissions. This model aims to break free of the impasses of the antagonistic social models of his time: on the one hand deregulated capitalism where the property owners act entirely in their own interest, at the very expense of a social order persistently destabilized by mass unemployment and overproduction and, on the other hand, communism or totalitarianism, where the rules conceived by those at the top are imposed on society to the detriment of individual liberties, on the basis of fixed and *a priori* principles. The model of reasonable capitalism is consistent with Commons' vision of the nature of society: neither a group of atomized individuals, nor a coherent totality, but instead a set of formally or informally-organized collectives. As their activities provoke conflicts of interests over scarce resources and economic rights, Commons does not believe in a spontaneous harmony of interests, or in pre-established criteria to determine the principles of organizations, public purposes and social rules, but he thinks they must be regulated by collective action. Inspired by his experiences in public

affairs, he advocates for “constructive research” into negotiated compromises between organized interest groups. He draws on the concept of “reasonable value” developed by the courts of justice, and notably by the Supreme Court of the United States, in order to illustrate the way in which “value” can be determined on the basis of the examination of facts and their consequences – considering the points of view of different parties as public purposes. According to Commons, this should be the method employed by governments in the determination of public and economic policies. Political measures, based on elections and political parties, seem to Commons to be an insufficient means to ensure real democracy and to protect society against attempts of recourse to totalitarian solutions from the excesses of capitalism. For Commons, a “constructive democracy” consists foremost in promoting the collective action of non-organized interests, which otherwise cannot put forward their point of view vis-à-vis organized interests. With regards to money, the role of the Federal Reserve recommended by Commons clearly illustrates his democratic conception of sovereignty and of the State (Commons [1950], 1970). Whalen explains that, “Commons argued the Federal Reserve actions should be guided by an advisory committee containing representatives of opposing economic interests, instead of an open market committee composed only of bankers” (Whalen 1993, 1166). Thus for Commons, reasonable capitalism entails a fourth monetary power, consisting of representatives for different interests affected by monetary policy, charged with developing monetary rules. Mainly interested in open market policy and the issue of interest rates, Commons was also favorable to monetary creation in times of recession. He suggests that “in order to increase the purchasing power of labor the unemployed must be put to work by *creation of new money*, and not by transferring the existing purchasing power of taxpayers to laborers, as Malthus proposed, nor by borrowing money by government which *transfers* investments but does not augment them. This new money cannot be created and issued by bankers, either in commercial, investment, or central banks, because, in a period of depression, the margins for profit have disappeared, and there are no business borrowers willing to cooperate with bankers in creating new money. In order to create the consumer demand, on which business depends for sales, the government itself must create new money and go completely over the head of the entire banking system by paying it out directly to the unemployed, either as relief or for construction of public works, as it does in times of war. Besides this new money must also go to the farmers, the business establishments, and practically all enterprises, as well as to wage-earners, for it is all of them together that make up the total of consumer demand” (IE, 589-590).

This summarizes the second model of the relationship between money and sovereignty, where monetary sovereignty is in the hands of an institution, the Federal Reserve, under the model of the Supreme Court. While remaining independent from the State, this institution incarnates social

will and “the moral or social force organized”, insofar as money and credit play a major role as social intermediary in a market economy where the social order relies on shared economic prosperity. Notably, from the perspective of the Federal Reserve, although the institutional structure advocated by Commons was never adopted, the policies of the FED have always encouraged growth and employment more than those of the ECB. Previously “the lender of last resort” in times of crisis, the FED became the “dealer of last resort” after the subprime crisis (Mehrling, 2011); in other words it became an actor permanently regulating economic activity through active intervention in the monetary market. As such, the FED will again have a “money view”, which is more supportive of economic activity, after having developed an “economics and finance view” favoring destabilizing short-term valorization behaviors, benefiting single financial actors (Mehrling, 2011).

Based on the works of J.R. Commons, this interpretation of the relationship between money and sovereignty has enabled us to demonstrate the potential conflicts between monetary sovereignty and political sovereignty; conflicts which came to full light during the subprime crisis – when, in some cases, states saved the banks or, in limited circumstances, let them go bankrupt – and during the European sovereign debt crisis – which highlighted the structural difficulties of a system with a disconnection between political territory and money, as well as a geographic separation between borrowers and lenders (Amato, Fantacci, 2012). It appears to us that, in the words of Commons, there is a conflict for supremacy between two types of payment communities whose ethical principles are *a priori* antagonistic: on one side a principle of social order and of reproduction of values and norms over time beyond the disappearance of individual members of society, and, on the other side, a principle of freedom for independent individuals striving for a sovereign position over society.

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