Preface

John R. Commons said he was attempting to develop an evolutionary theory of value in his classic book, *The Legal Foundations of Capitalism*. He was driven to do this as he explored court cases when he was engaged in examining labor problems and regulation and valuation of public utilities issues as an assistant to legislative committees in Wisconsin. This led him to try to understand what courts mean by reasonable value. But he realized that he was not working simply on reasonable value, but on the legal foundations of capitalism itself. He then tried to reconcile the work of economists with that of prominent lawyers. This mission was continued and resulted in the publication of *Institutional Economics* in 1934. His theory of the legal foundations was created by tireless empirical examination of court documents.

We employ the case method to trace the co-evolution of law and economics over time. It is our purpose in this book to extend the work of Commons through recent decades to the present. Although the actors (not simply choosers) are uncertain about the future, they must act and such action is purposeful. They act in an environment which is subject to being changed as a result of their actions. They are engaged in a process of artificial selection among alternative actions based upon the anticipated consequences. Changing economic circumstances, such as the widening of markets, result in behavior which reflects new expectations about the future. Such behavior will conflict with the established practices which the law had previously endorsed. The legal system is the forum within which such conflicts are resolved. In doing so, the legal system chooses between practices that conform to established antecedents and emerging business practices which may have demonstrated their efficaciousness. When such emerging practices are endorsed new working rules are created. New expectations arise which affect the behavior of economic actors and produce new consequences – some intended and some unintended. Thus the economic and legal systems co-evolve affecting the social provisioning process and the role of public interest in that process.

We believe that we have confirmed the advantage of empirical-historical case method employed by Commons over the mainstream method of the study of law and economics.

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