

Can We Possibly Determine the Aptness of Judicial Decision by Economic Efficiency Index?

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Abstract

The value exchange takes place in the rationality dimension which is built on the value-cost measure. The perfect property rights should be assumed to build the system of value-cost measure. It is the ceteris paribus, invariableness(Hume 1739), and sympathy-consent-free assumptions(Rhee 2012b). However, real life abides in the sympathy-consent dimension where property rights remain imperfect. In real life, inductive reasoning(Hume ibid) or sympathy-consent process replaces the deductive reasoning of rationality dimension as a process of decision making. In the open/indeterminate system of the sympathy-consent dimension, the inductive reasoning relies on the experiences, the coincidental outgrowth of which sets to shape the path dependence of decision process.

Relation exchange as the process of building-relation-specificity is more fundamental than the value exchange. The transaction cost is unable to be calculated consistently across the different paths of relation exchange. In the open/indeterminate system of the sympathy-consent dimension, the deterministic method like transaction cost to the question of the aptness of judicial decision is not available. Only evolutionary approach to the answer is available. Repeated practice of judicial decisions leads to the historical development of institutions.

Key words: *Relation exchange, Sympathy-consent dimension, Inductive reasoning, Relation specificity, Open/indeterminate system, Path dependence.*

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I. Introduction

How judicial decisions of the court operate to the system of exchange transaction? It is the root-core question of law and economics. How the structural relation between law and economics is put to be featured in shape? Economic efficiency has been the most convenient choice as measure by means of which to assess the aptness of legal institution (Posner 1992). Is the economic efficiency as effective navigator which will lead us to the approach appropriate to address the question? The approach to the answer should start from the root foundation of rational reasoning.

In this research, the rationality dimension is distinguished from the sympathy-consent dimension (Rhee 2014a). Human beings may be considered to seek rationality but within the capacity of limited intelligence. The actions of relation exchange bridge the cognizance gap which was given rise from bounded rationality. Such cognizance gap renders human life vulnerable to opportunism. This world of opportunism is coped with by the actions of relation exchange. Sympathy-consent dimension unfolds the domain for the actions of relation exchange.

The actions of relation exchange follows the steps of inductive reasoning. The decision making in the sympathy-consent dimension relies on previous impressions and experiences. The sympathy-consent dimension is exactly the domain of Hume's empiricism (Hume 1739).

Rationality dimension sets out the territory where the need for sympathy-consent process is obviated. Property rights are assumed to be established perfectly in the rationality dimension because human beings are assumed to make absolutely rational decisions. There exists no need for law enforcement. In other words, the role of law enforcement exists only in the sympathy-consent dimension. The rationale for the role of law enforcement may be drawn out from the human action which violates the mores that have evolved from the history of human experiences (Hume 1751).

The concept of relation specificity (Williamson 1975) is introduced for the

purpose of making linkage between the role of law enforcement and the relation exchanges as social order (Rhee 2014c). The action of relation exchange is considered as the process of building relation specificities, the series of which may repeat at each occasion of exchange transaction. It sets out the indeterminate system.

The finding that the effects of law enforcement operate to the actions of relation exchange, that is, the process of building relation-specificities but not operate to the actions of value exchange which belong to the rationality dimension was unfolded due to the eligibility of sympathy-consent dimension as analytic structure (Rhee 2012b, 2014c). Optimization algorithm was only methodological tool to the question in traditional economics. However, the inductive reasoning replaces the optimization algorithm as navigator to guide decision making in the sympathy-consent dimension. In this research, the case of Supreme Court of Korea Decision 2012Da94643 & 2012Da89399, which ruled on the legitimate way to calculate regular wage, is introduced as the illustrative case with a view to enhance our understanding through real-case story telling.

Section II sets out the model and illustrates how the sympathy-consent dimension as indeterminate system is drawn out from bounded rationality assumption. In Section III, the actions of relation exchange are recognized as social order. The relation-specificity-building process is introduced as a new finding in Section IV. A case of the Decision (2012) of the Supreme Court of Korea on the Calculation of Regular Wage is introduced as illustrative purpose to enhance our understanding in Section V. The operation of judicial decision on the making of the spontaneous order of relation exchange is discussed. Section VI concludes the research outcome.

II. Rationality Dimension vs. Sympathy-Consent Dimension

The relation between law and economics has been prominent topic in the recent history of the academia. It attracted interests from both sides of discipline. The ‘law and economics’ have been the highlighted field in economics. However, how the structure of the relation is featuring in shape is the issue which does not easily reach the consensus of understanding. Economic efficiency has been the most convenient choice as methodology by means of which to assess the aptness of legal institution (Coase 1960, Posner 1992). Is the economic efficiency the effective navigator which will lead us to the approach appropriate to the question? Although the question addresses to the problems belonging to the interface between law and economics, the approach should start from the root foundation of the question on rational reasoning.

Human beings may be considered to seek rationality but within the capacity of limited intelligence (Simon 1956). Typical actions of relation exchange include trust relation, friendship, and collegueship and so on¹⁾. Any marketing action, that builds trust relationship between maker and customer, all belongs to the actions of relation exchange. The actions of relation exchange bridge the cognizance gap which was given rise from bounded rationality. Such cognizance gap leaves human life vulnerable to the opportunism. This problem of opportunism is coped with by the actions of relation exchange. The analytical structure of sympathy-consent dimension (Rhee 2012b) provides the map of longitude-latitude, by means of which relation exchange can navigate the world of opportunism. The caveat is that sympathy-consent dimension cannot be measured by any index measure. It is the world where the path dependence holds on the behavior of human beings (Rhee 2012b).

Sympathy-consent dimension is the analytic dimension, which is concealed in the analytical architecture of economics that is built on rational reasoning. Its absence particularly stands out in the orthodox economics. Individuals are assumed

1) Rhee (2012b) claims that the action of relation exchange well matches the genuine concept of satisficing behavior which was introduced by Simon (1956).

to make rational decisions. The analytical architecture of rationality dimension is constructed on the two-dimensional space. One axis is cost-value measure, and the other axis is quantity measure (Rhee 2012a, 2014c). Every economic state is explained by the analytical outgrowth of optimization-equilibrium algorithm in this two-dimensional space. Rhee (2013c) classified it as determinate system and called it closed/determinate system of economics.

In this regard, Hume's epistemology (Hume 1739) and inductive approach casts the illuminating light on our understanding. It is our experiences of real life rather than reason as analytical base ground upon which to build the analysis of economics or social sciences. Between rational reasoning and experiences, the latter is more fundamental than the former. However, orthodox economics is built on the analytical structure which is laid upside down in the structural order. It assumes the perfect property right and the rationality of human decision and attempts to test the theoretical models, which are built on the assumption as such. However, the sympathy-consent dimension is the domain where the inductive method holds effect on the actions of relation exchange to navigate the direction for the human behavior in the world of open/indeterminate system.

The possibility of opportunistic business models which may mobilize positive-trust (advertisement actions) or even negative-trust (moral hazard) actions to beat the cost-efficient contester by a cost-inefficient supplier is disregarded by the assumption of rational behavior in the analysis. However, if bounded rational, rather than rational, behavior is assumed, it amounts to indicating the recognition of open/indeterminate system in the analytics of economics. Trust relations may be built by marketing actions, that is, relationship-building actions, which leaves door open to such possibility of opportunistic business models. The process of building relation-specificity (Williamson 1975, 1985, 1986), which will give rise to the actions of relation exchange, lays the base of the foothold upon which opportunistic business models can habituate. Such possibility indicates the path dependence of relation exchange actions, which indicates the open/indeterminate system of economics. In such indeterminate system, the law enforcement by judicial court, which is bound to uphold the protection of trust relations as the principle, can save the society from falling prey to the fearful jungle of disorder. The role

of judicial decisions operates to the sympathy-consent dimension.

III. Actions of Relation Exchange as Social Order

The sympathy-consent dimension stems from the lacuna between human limited intelligence and rational choice. Not much has been known about it since its inception in Rhee (2012b, 2013a). ‘Double trust dilemma’ of Cooter & Schaefer (2012) seems to share common understanding. It unearths the entirely new existential territory which connects the analytics of economics to other disciplines of humanity and social science. The unresolved topics of collective choice are the problems which belong to this dimension.

Impossibility theorem (Condorcet 1785, Arrow 1950) indicates that the consistent collective-decision-making in the society of multiple individuals is not possible to attain²⁾, which unfolds another conduit to the phenomena of sympathy-consent dimension. Individual rationality alone cannot arrive at consistent collective decision making of the society of multiple individuals. The system indeterminateness with ensuing emergence of opportunism is the idiosyncratic feature of the sympathy-consent dimension.

The sympathy-consent dimension is the world where the problem of politics may naturally habituate in the governance of the society of multiple individuals. In business management, the sympathy-consent dimension connects to marketing actions, whereas in collective choice, the sympathy-consent dimension connects to political actions. All marketing actions are the actions of relation exchange. Likewise, all actions of public relations are the actions of relation exchange. There exists the governance problem between public relation and collective choice. The institution becomes involved in this governance problem.

Public relation indicates the relationships among multiple individuals. When the propensity of human beings to exchange is put in place, public relation turns into

2) Marquis de Condorcet (1785) is cited from Dennis C. Mueller (2003), 84.

relation exchanges among multiple individuals. Obviously, human beings seek exchange because it benefits all the parties involved in the exchange. Relation exchange gives rise to the division of labor, which creates the take-off of productivity³⁾. Such private motivation of individuals, which compels individuals to seek relation exchanges, indicates the possible making of relation-exchange actions as social order.⁴⁾

Definition SO (social order): If individual propensities are compelling enough to lead all the constituting individuals in the society to engage in mutual interactions among individuals according to the propensities, it is defined as social order.

Definition SO is upheld by Hume's empiricism (1739). Human understanding starts from the impression which sets out from the experiences through sensual feelings. Ideas develop from the images made out of the impressions. Rational reasoning works on the ideas and builds the superstructure of human understanding, that is, builds metaphysics. In the open/indeterminate system, human decisions to act fundamentally rely on their experiences of real life. Human propensity to engage in mutual interactions among individuals, that is, relation exchange, is more fundamental and compelling behavior. If there exists anything like social order, e.g. spontaneous order (Hayek 1982), it has to be built on such human propensity, that is, the actions of relation exchange.

Proposition SORX (spontaneous order of relation exchange): The spontaneous order of relation exchange is the social order.

3) Adam Smith (1776), *The Wealth of Nations*, book 1, chapter 1.

4) Relation exchange actions as social order are a parallel concept with Hayek's spontaneous order (Hayek, 1982)

[Proof]

In the world of sympathy-consent dimension, the analytics become the open/indeterminate system. The relation exchange is the fundamental propensity of human behavior (empiricism; Hume 1739). In the open/indeterminate system, relation exchange is the interpersonal exchange action which is compelling to every individual of the society who cannot resist but uphold. Such overwhelming propensity of relation exchange of individuals gives rise to the social order by Definition SO.□

The validity of Proposition SORX is supported by the fundamentality of relation exchange in relation with value exchange (Lemma FRX; Rhee 2012b, 2013a). Relation exchange is the action more fundamental than the action of value exchange so that the existence of value exchanges in the market does not impede the validity of Proposition SORX.

IV. Relation-Specificity-Building Process

Asset specificity refers to the extent to which a party is tied in in a two-way or multiple-way business relationship (Williamson 1975, 1976, 1985, 1986). In this regard, the relationship-building between two-persons or among multiple persons may be considered as the building of relation-specificity. Relation exchange is the activity of exchange which is carried out through the building of relation specificities.

Definition RXRS (relation exchange through the building of relation specificities): Relation exchange is the behavior of exchange through the building of relation specificity.

The building of relation specificity may place a chance to invite opportunism by either partner of relationship (Klein, et al. 1978). Or the attempts to build relation

specificities may reveal friendly and stable patterns of relationship among the partners (Coase 2006). In either of cases, the approach of relation exchange economics (RXE) starts from the belief that the human propensity to build relation specificities among individuals is fundamental and compelling behavior. It is the behavior which distinguishes the relation exchange economics from Arrow-Debreu economics (ADE).

Hume (1739) said, “Reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them.⁵⁾” Human beings build the impression through the perception which is obtained through their senses. Ideas come from the impression. The role of rational reasoning is put in place only when the relations among ideas are taken into consideration. The passion grows out when the sensory recognition of human beings is combined with their sentiment of pleasure and pain. If the order of precedence is compared between sensory cognizance (experience) and reason, it is the former that is more fundamental. Hume’s epistemology as such precisely reaffirms the fundamentality of relation exchange being compared to value exchange (Lemma FRX; Rhee 2012b). Recent development of behavioral economics, e.g. prospect theory (Kahneman and Tversky 1979), is another vindication to confirm the legitimacy of the approach of the relation exchange economics.

The building of relation specificity is so compelling and penetrating that the value-cost measure is rendered untenable and unable to impede such human propensity to build relation-specificity (Rhee 2014c). In other words, the measure of transaction cost is unable to be sustained. The attributes of open/indeterminate system are put in shape by the autonomous propagation process of building relation-specificities (Rhee 2013a, 2013e).

It is the behavior which signifies the idiosyncratic shape of sympathy-consent dimension. Such compelling behaviors of individuals lay the ground upon which to build the relation exchange order. The sympathy-consent dimension is the space which is put forth by the bounded rationality of human beings. However, it is the world where the relation exchange order is put in operation. The relation exchange

5) David Hume (1739), *Treatise on human nature*, Book II, 3-3, 415.

order is the outgrowth of human propensity to build relation-specificity as the navigator which unfolds direction in the world of indeterminateness.

Remark SBP-RX (the specificity building process of relation exchange): The specificity building process of relation exchange is the process of relation exchange where relation specificities are built, confirmed, forged, attenuated, strengthened, changed, and replaced at each different transaction step.

In the sympathy-consent dimension, property rights are necessarily imperfect (Rhee 2014c). In the condition of imperfect property rights, every value exchange is supported by the relation exchange which makes up for the imperfectness of property right to complete the exchange transaction in the market (Rhee 2012b, 2014c). Hence, two processes consist in each exchange transaction in the market. One is value exchange, which is the exchange with price used as medium of exchange. The other is the relation exchange which carries out through sympathy-consent process, the existential embodiment of which is relation specificity. Relation specificities tend to change, i.e. are built, confirmed, forged, attenuated, strengthened, changed, and replaced at each different transaction step. Remark SPB-RX underscores an important fact, namely relation exchange as concurrent process of building specificity.

Remark Concurrency RX-SB (the concurrency of relation exchange and specificity building): The action of relation exchange and the action of specificity building are two different descriptions of the same action so that they are the concurrent process.

Remark Concurrency RX-SB dictates the important concurrency between relation exchange and specificity building. The legitimacy of relation-specificity-building process is supported by the value-cost transcendental domain (Rhee 2014c).⁶⁾ The

6) The value-cost transcendental domain indicates the state of nature before the filtering through the veil of ignorance. Of course, the veil of ignorance means to indicate the economic condition measured in the value-cost units.

existence of value-cost transcendental domain comes from the fundamental human propensity to seek relation exchange, which is supported by the inductive human behavior of decision making, e.g. empiricism (Hume 1739).

Hypothesis PD-RSBP (path dependence of relation-specificity-building process):

The relation-specificity-building process reveals the attribute of path dependence.

Relation-specificities-building process is the conduit through which relation exchanges are put in place. It seems natural and realistic to assume the path dependence of relation-specificities-building process. Relation specificity is nothing but relationship. The analytical architecture, which is built on relation exchange as the action in the sympathy-consent dimension, follows the tradition of empiricism, that is, decision making according to the judgment from experiences, rather than rationalism (Hume 1748). It is the analytical world of inductive reasoning, not deductive reasoning. Inductive reasoning which is guided by the experiences is bound to hold the attribute of path dependence. Once some relation specificity is built, we can expect that it will carry over as the legacy to the next step of exchange transaction. The path dependence of relation exchange follows as a consequence of Hypothesis PD-RSBP.

Remark Concurrency RX-SB indicates the path dependence which is shared by relation exchange and specificity-building.

Remark Path Dependence of RX-SB (the path dependence of relation exchange and specificity building): Relation exchange and specificity building process as well share the attribute of path dependence.

The path dependence is the idiosyncratic attribute of relation exchange, as is observed in friendship, trust relationship or maker-customer relation (Rhee 2012b) or public relations. Such relations are also the relation specificities which are imbedded in the relations among friends, trust partners, maker-customers or multiple individuals of the public.

V. The Decision (2012) of The Supreme Court of Korea and the Spontaneous Order of Relation Exchange

The author's synoptic interpretation of Supreme Court of Korea Decisions 2012Da94643 & 2012Da89399 (the SCK decisions in short), the interpretation of which is edited for convenience purpose to make it relevant in this research is: *The coverage of regular wage should include regular payments of bounty bonus, birthday bonus, personal pension subsidy, group insurance subsidy in the calculation of regular wage.* The SCK decisions seem to contribute to the avoidance of unnecessary complication so as to simplify wage calculation.

In this research, the change in the distribution of incomes between labor and firm will not be taken into consideration because such change takes place once and for all. It does not constitute the components of transaction cost. The likely effects of the SCK decisions are listed in the Table RW.

Table RW: Likely economic effects of the Supreme Court of Korea's decision on the calculation of regular wage

	Before SCK decision	After SCK decision
Labor-management negotiations	Complicate calculation of regular wage	Simplified calculation of regular wage
Transaction cost	Impossible to calculate transaction cost because the coincidental process of (path dependent) relation-specificities building carries out concurrently with every exchange transaction	Same as the left column cell

	Before SCK decision	After SCK decision
Effects on the economy		Between two possible conflicting outcomes, the turnout of economic effects will be determined by the possibility to facilitate the labor-management negotiation: (1) Due to the simplification of wage payment calculation system, the labor-management negotiation will facilitate and will become ameliorated. (2) Since the institutional leverages dwindle due to the simplification of wage payment calculation system, the labor-management negotiation will likely encounter the deterioration of the condition necessary to attain successful negotiation.

The likely economic effects of the SCK decisions on the calculation of regular wage are most of all the simplified calculation of wage. New system of negotiation will be put forth in the labor-management relation accordingly. The SCK decisions are a sort of institutional leverage to relation exchange. Institutional leverage is not relation exchange, but combines with relation exchange to attain transaction. Mores, rule, law, court precedents, standards, institutions like money, bank, credit, checking account, double-entry-book-keeping system, bill of exchange, corporation, stock market, tort rule, property right, fundamental human rights and so on are

some of the examples.

When placing a business model to attain transaction, another instrumental leverage is the physical leverage. Some of the examples are technology, manufacturing plant and facility, SOC's and so on. In the open/indeterminate system of imperfect property rights, entrepreneurs combine institutional as well as physical leverages with relation exchange to attain transaction. Some of such transaction is value exchange.

Institutional leverage works to the problem arising from the imperfect property rights. Since value exchanges take place in case of perfect property rights, institutional leverages or any of its change do not have anything to do with value exchange. That is, institutional leverages or any of its change works only to the matter of relation exchange (Rhee 2012b, 2012d, 2014c).

Therefore, institutional leverages or any of its change has effect on the making of the spontaneous order of relation exchange. As a well-designed game rule enhances the vivacity of sports game, a well-designed institution facilitates the making of relation exchanges and contributes to the invigoration of business transaction.

Proposition IL-SCP (institutional leverage operates only through the sympathy-consent process): Court ruling or institutional leverage operates effects to the exchange transaction system only through the sympathy-consent process.

[Proof]

Every exchange consists of two components (Rhee 2012b, 2013a, 2014c). One is value exchange. At each occasion of value exchange, the values of goods or objects which are exchanged are rationally calculated and exchanged at par value. Value exchange belongs to the rationality dimension, which is of sympathy-consent-free states. Property rights are assumed to be perfectly assessed in the rationality dimension⁷⁾. No room exists for the role of judiciary if perfect property rights are established. The other component is the relation exchange, which belongs to the

7) Stochastic disturbance from perfect valuation belongs to the rationality dimension.

sympathy-consent dimension. The sympathy-consent dimension is built on the lacuna of rationality in human intelligence. This is the world where humanities like sentiment, emotion, irrationality, persuasion, morality and so on are operating. Hence, opportunistic behavior is the typical attribute of sympathy-consent dimension. The role for law enforcement exists at the event of opportunistic behavior. Since human beings are only bounded-rational, every exchange transaction should be endorsed by relation exchange. Hence, the role of law enforcement or of judicial decision applies only to the sympathy-consent dimension at every occasion of exchange transaction.□

The building of relation-specificity, which may appear at each exchange transaction, takes place coincidentally. It is the distinctive attribute of open/indeterminate system. Boundedly-rational behavior corresponds to the actions to build relation specificity, which are needed to attain exchange transaction. It is the entrepreneurial actions that seek business chance by the attempts to build the relation specificities in the open/indeterminate system. In the open/indeterminate system, bounded rationality and imperfect property rights allow the possibility for the coincidence to have a role when determining decision-path. It is the sympathy-consent dimension which gives rise to the value-cost transcendental domain.⁸⁾

As Proposition IL-SCP dictates, it is the process of building relation-specificities where judicial ruling or institutional leverage operates effect to the exchange transaction system. Judicial ruling or institutional leverage exercises its enforcement to uphold the legality or goodwill of relation exchange actions or the process of building relation-specificities.⁹⁾

8) Such coincidental attribute of relation-specificities-building process are already hinted by Grossman and Hart (1986) when they discussed the concept of residual control rights. However, they chose a closed-determinate-system.

9) Franchising (Williamson 1976) may be considered as the value assessment of relation-specificity-building through bidding process. However, no franchising is free from trust relations between business partners. In other words, we cannot run away from the sympathy-consent dimension. Also, it indicates the coincidental attribute of relation-specificities-building process in the exchange transaction.

Is it possible to measure the effects of institutional change such as the SCK decisions by the measure of cost units? In other words, is it possible to measure the effects of institutional change such as the SCK decisions by the transaction cost? Stark answer is no. When there is an institutional change, the following outcome is necessarily the change in the activities of relation exchange because institutional leverages work to the actions of relation exchange. In case of an improvement in institutional leverages, the invigoration of business activities will follow. However, such business activity should contain the actions of relation exchange as necessary component because the institutional leverage works only to the actions of relation exchange.

Relation exchange is the action which belongs to the sympathy-consent dimension. Hence, the attribute of path dependence holds to the actions of relation exchange. After the introduction of new institutional leverage, there is the indeterminacy in the choice of path that following business models should face up to. The choice of path is determined coincidentally. However, once the path is determined, it will become subject to the trajectory of determined path. It is not the domain where the value-cost measure provides an effective guide. It is the domain of the imperfect property rights. It is the domain of open/indeterminate system. The decisions of individuals rely on the information of their experiences and the inductive method as decision-making process.

Proposition Inability TC (inability to measure transaction cost consistently across different sets of relation specificities): In sympathy-consent dimension, it is not possible to measure transaction cost consistently across different paths of relation specificities.

[Proof]

In the sympathy-consent dimension, relation exchange takes place through the relation-specificities-building process (Remark SBP-RX). Property rights are imperfect in the sympathy-consent dimension. That is, the sympathy-consent dimension is indeterminate system. In other words, at each exchange transaction, the exchange transaction is attained through the relation-

specificities-building process (Remark Concurrency RX-SB), not by the optimization process as in case of perfect property rights which is built on value-cost measures (Rhee 2013b, 2014a).

The choice of path for the building of relation specificity is coincidentally determined (Remark Path Dependence of RX-SB). Once the path is determined, it will become subject to the trajectory of determined path. It is not the domain where the value-cost measure provides an effective guide. It is the domain of imperfect property rights. It is the domain of open/indeterminate system. In such indeterminate system of path dependence, it is not possible to calculate the value-cost measure consistently across the different paths of relation specificities.□

The SCK decisions are institutional leverages. At the introduction of new institutional leverage, the institutional change addresses to the action of relation exchange, that is, to the building of relation specificities. The effects of new institutional leverage are the introduction of new business models or business activities.

Between two possible conflicting outcomes, the turnout of economic effects will be determined by the possibility to facilitate the labor-management negotiation: (1) Due to the simplification of wage payment calculation system, the labor-management negotiation will facilitate and will become ameliorated. (2) Since the institutional leverages dwindle due to the simplification of wage payment calculation system, the labor-management negotiation will likely encounter the deterioration of the condition necessary to attain successful negotiation.

The SCK decisions may bring effects to the labor-management relation in either way of opposite direction. They may ameliorate or deteriorate the labor-management relations by the possibility to facilitate the labor-management negotiation. But such changes in labor-management relations are not represented by value-cost measure, that is, the rise or fall of transaction cost. In the sympathy-consent dimension, the direct link between value-cost measure and business action becomes severed. The lacuna of broken link is put in place by the bounded rationality of human intelligence. It is the world

of imperfect property rights.

Proposition Inability TC unfolds the veracity of realistic features of sympathy-consent dimension. It is the analytic dimension which gives rise to relation exchange. Relation exchange carries out through the relation-specificities-building process (Remark SBP-RX). The event of relation-specificities-building process at each transaction exchange takes place coincidentally. The process of building-relation-specificity carries out concurrently with relation exchange (Remark Concurrency RX-SB). Since the relation-specificity-building is assumed to be of path-dependent process (Hypothesis PD-RS), the path dependence of relation exchange follows as consequence. Such attribute of path dependence carries on to the processes of business-model undertaking.

Such sympathy-consent dimension of the relation exchange economics contrasts with Arrow-Debreu economics where the exchange system is of the closed or determinate system (Rhee 2013a). The sympathy-consent-free (SCF) state of Arrow-Debreu economics indicates the foreclosure of sympathy-consent process. In every exchange transaction, the process of sympathy and consent is attained immediately without incurring any-cost. It is the economic system of perfect property rights. Therefore, every exchange transaction is conducted according to the optimization-equilibrium algorithm. Hence, Arrow-Debreu economics becomes determinate or closed system, where value-cost measure becomes determinate and consistent. There is no possibility of path dependence.

However, if the imperfect property rights are assumed, the attribute of coincidence becomes put in place in the building of relation-specificities. The sympathy-consent dimension as a new analytic dimension is added to Arrow-Debreu economics so that exchange system becomes indeterminate or open. In such sympathy-consent dimension, the veracity of real-life story is represented by the actions of relation exchange which operated through the process of building relation-specificities.

Proposition SORX (spontaneous order of relation exchange) may be rephrased according to Definition RXRS or Remark SBP-RX and Remark Concurrency RX-SB.

Proposition SORX-RSBP (spontaneous order of relation exchange made of relation-specificities-building processes): The spontaneous order of relation exchange is the social order, which is made of the processes to build relation-specificities.

[Proof]

The proof is accomplished by extending Proposition SORX with the combination of Definition RXRS.□

From two propositions, i.e. Proposition IL-SCP and Proposition SORX-RSBP, we come to the understanding that the law enforcement of judicial decisions holds effect to relation-specificities-building processes or relation exchange activities and eventually affects the making-shape of the spontaneous order of relation exchange. The law enforcement of judicial decisions operates effect to the sympathy-consent dimension, but not to the rationality dimension.

VI. Concluding Remarks

Is it possible to determine the aptness of judicial decision by economic efficiency index? In this question, the economic efficiency index indicates the value-cost measure such as transaction cost. The answer is no. The explanation to the answer requires the introduction of new analytical architecture which discloses the feature of interaction between institutional leverage and exchange actions. The value exchange as the analytical apparatus of orthodox economics is unable to recognize the catalytic function of institutional leverage on the process of exchange.

The value exchange carries out in the rationality dimension which is built on the value-cost measure. The perfect property rights should be assumed to build the system of value-cost measure. It is the *ceteris paribus*, invariableness *a la* D. Hume, and sympathy-consent-free assumptions (Rhee 2012b). However, real life exists in the sympathy-consent dimension, where the property rights remain imperfect.

Inductive reasoning or sympathy-consent process replaces the deductive reasoning of rationality dimension as a process of decision making. The sympathy-consent dimension is the open/indeterminate system analytically, whereas in the rationality dimension, the analytic system becomes closed and determinate. Path dependence holds as the attribute of decision making process in the sympathy-consent process.

Hume's epistemology well explicates the rationale for the legitimacy of sympathy-consent process. Our decisions have to rely on the experiences more fundamentally than on the reasoning, which is the approach of the empiricism. Relation exchange is the human behavior which will be put in place as the outcome of decision process that follows after the sympathy-consent process as inductive reasoning process.

Transaction cost is unable to be calculated consistently across different paths of decision making because it is the historical coincidence of the experiences that determines the decision path. In the open/indeterminate system, the behavior of relation exchange tends to give rise to the spontaneous order of relation exchange. Relation exchange is more fundamental than value exchange, which is 'Lemma FRX'.

Court decisions influence their effects to the sympathy-consent process. But they are not effective to the rationality dimension. Court decisions, that is, judicial precedents are the institutional leverages, which determine the shaping of the spontaneous order of relation exchange. Transaction cost, that is, the economic efficiency index is unable to adjudicate the aptness of judicial decisions. In the open/indeterminate system, such deterministic answer is not available. All what is known to be available is that the court decision can affect the shaping of the spontaneous order of relation exchange. Institutions develop as the outgrowth of evolutionary process in our efforts to direct the making of the spontaneous order of relation exchange to the desirable direction. We better remember Hume's thesis that the justice is determined by the conformity to the utilitarian purpose.

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국문초록

법원판결의 적절성을 경제적 효율성지표로 판단하는 것은 타당한가?

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가치교환은 가치-비용 척도에 의해서 이루어진다. 가치-비용 척도의 분석시스템은 완전한 재산권(perfect property rights)을 전제로 한다. 신고전학과 경제학의 Ceteris paribus 가정, Hume의 불변화성(invariableness) 가정, 관계교환경제학의 공감-동의 초월(sympathy-consent-free) 가정 등이 모두 서로 다른 입장에서 출발하고 있지만, 분석체계에서 완전한 재산권을 설정하는 가정들이다. 이 상황에서 경제주체는 최적화 의사결정을 하게 되며 경제는 균형에 이르게 된다. 이것이 닫힌 경제시스템(closed/ determinate system)이다. 최적화-균형의 알고리즘에 의해서 결정되는 시스템이다. 애로-데브루 경제학(Arrow-Debreu economics)이 이 시스템이다. 그러나 실생활에서 완전한 재산권을 존재하지 않으며, 재산권은 불완전하게 존재한다. 재산권이 완전하지 않은 상황에서 사람들은 공감-동의 과정(sympathy-consent process)에 따른 행동, 즉 관계교환 행동을 하게 된다. 이러한 의사결정은 귀납적 추론(inductive reasoning)에 따르는 행동이다. 이것이 공감-동의 차원(sympathy-consent dimension)의 세계이다. 이 공감-동의 차원이 귀납적 추론이 이루어지는 세계이며, 열린 경제시스템(open/indeterminate system)이다. 반면, 합리성 차원의 세계에서는 암묵적으로 완전한 재산권이 전제되고 있으며, 연역적 추론(deductive reasoning)의 세계이다. 공감-동의 차원의 열린/비결정적(open/indeterminate) 시스템에서는 의사결정의 경로의존성(path dependence)이 본질적 특성이 된다. 귀납적 추론이란 경로의존성을 전제로 한다. 역사적 우연성(historical coincidence)에 의해서 결정되는 서로 다른 경로들에 일관성을 가지는 거래비용(transaction cost)의 계산은 존재하지 않는다.

즉, 법원의 사법판단에 대한 적절성을 경제적 효율성 지수로 계산하는 것은 가능하지 않다. 오직 진화론적 설명이 가능하다. 즉, 사법판단의 반복이 진화적 과정을 통해서 제도의 발전에 기여하게 된다.

주제어(Key words): 관계교환, 공감-동의 차원, 귀납적 추론, 관계 특별성, 열린/비결정적 체계, 경로의존성

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■ 심사자 1의 논평과 저자의 답변

[논평 1] 저자는 ‘법원 판결의 적절성을 경제적 효율지표로 판단하는 것이 가능한가?’라는 질문을 던짐으로써 종래 경제학이 기반으로 하고 있는 가치·비용척도의 분석시스템의 한계를 지적하고, 그 대안 또는 보완으로 공감·동의 차원의 설명 방식을 설명하고, 그 유용성을 강조하고 있다.

[논평 2] 본 논문은 종래 경제학적 방법론에 대한 근본적인 문제 제기에 해당하는 공감·동의 차원의 열린/비결정적인 시스템의 실재(實在)를 강조하고, 이에 대한내지 설명 방식으로 ‘관계교환경제학’의 필요성을 역설하고 있다. 특히 제도적 수단의 하나로서 법원판결이 관계교환에 미치는 영향을 설명하려는 시도가 매우 인상적이다.

[논평 3] 그런데 판결의 ‘적절성’(aptness)을 주요 핵심어로 사용하고 있는데, 그 개념의 정확한 의미가 무엇인가 선명하지 않다. 이 개념에 대한 이해에 따라 판단의 기준 및 도구가 달리 유효한 접근 파악될 것이다. 한편, 공감·동의 차원의 설명 방식에 따라 대법원의 통상임금에 대한 판결이 관계교환에 구체적으로 어떠한 방식으로 영향을 미칠 것인가를 설명하는 것이 필요하다고 본다. 그래야 본 연구에서 주요 사례로 사용하는 법원판결에 대한 공감·동의 차원의 설명 방식의 유용성을 확인할 수 있을 것이다.

[저자의 답변] ‘적절성’이 무엇을 의미하느냐 하는 것은 그것이 ‘열린/비결정적 시스템’(OIS: Open/Indeterminate System)인가, ‘닫힌/결정적 시스템’(CDS: Closed/Determinate System)인가에 따라 다르다. CDS에서는 가치·비용척도(예컨대, 거래비용)로 해석되겠지만, OIS에서는 관계교환행동(예컨대, 노사관계)에 미치는 변화로 해석해야 한다. 이 논문은 OIS차원의 행동인 노사관계 행동 현상을 CDS차원의 분석인 가치·비용척도(예, 거래비용)로 판단할 수 없다는 것이 내용이다. 따라서 대법원의 통상임금에 대한 판결이 관계교환에 ‘구체적으로’ 어떠한 방식으로 영향을 미칠 것인가를 설명하는 것은 아니다.

법원판결이 노사관계에 미치는 변화를 CDS차원의 분석인 가치·비용척도(예, 거래비용)로 판단해서는 안 되고, OIS차원에서 노사관계를 관계교환의

관계로 보아 그 변화를 말해야 한다는 것을 논구하는 것이 본 논문의 내용이다.

즉, 농사를 짓는데 쟁기가 필요하지 붓이 필요한 것이 아니라고 논구하는 것이 쟁기로 어느 밭에서 감자, 호박 등을 얼마나 생산했는지 밝히는 것은 본 논문의 목적이 아니다.

■ 심사자 2의 논평과 저자의 답변

[논평 1] 저자는 Simon의 만족화(satisficing)를 ‘관계’에 의존한 신뢰 교환, 혹은 공감-동의를 통한 의사결정으로 보고 있다. 그러나 과연 그러한가? Simon의 의사결정론의 본질은 ‘가치’(관계가 아니라)의 “측정 및 평가”가 주관적일 수 있다고 인정한다는 것이 핵심이지, 그것이 “가치가 아니라 관계를 중심으로 의사결정을 한다”는 것을 의미함이 결코 아니라고 본다. 이에 대한 저자의 설명은 무엇인가?

[저자의 답변] 심사자의 의견에 동의한다. 논평 전반에 적용되는 것으로 관계 교환경제학(RXE)은 관계로 모든 것을 설명하려는 것이라기보다 종래의 가격(또는 가치-비용) 차원의 분석에서 ‘가치-비용’뿐만 아니라 ‘공감-동의 차원’을 확장한 차원¹⁰⁾의 경제학 분석 차원의 분석을 시도하고 있는 것이다.

이것은 ‘닫힌 경제학’(CDS: Closed/Determinate System) 분석에서 ‘열린 경제학’(OIS: Open/Indeterminate System) 분석으로 전환을 의미한다(이성섭, 2013b 참조). 이 개념이 기존 경제학 사고에서는 익숙하지 않아서 기존 사고로 이해하려는 데서 대부분의 오해가 발생한다. 그러나 OIS로 분석을 하게 되면 종래 경제학에서 생각하지 못한 엄청난 문제들이 쉽게 풀린다. 이 논문의 주제 ‘법원판단을 경제 효율성 지표로 판단하는 것이 적절한가?’라는 주제가 그 중의 하나이다.

OIS차원에서도 경제주체는 효용주의자들(utilitarian)이다. 그러나 효용극대화(utility maximization)가 아니다. 행동주의 경제학도 전통적 효용함수 이론에 동의하지 않는다는 점에서 같은 생각을 하고 있다. 그래서 행동주의는 효용극

10) 예컨대, 2차원 분석에서 3차원 또는 다차원 분석을 말한다. 좀 다르게 표현한다면, 뉴턴의 물리학에서 상대성이론을 넣어 확장된 물리학의 차원을 말한다.

대화가 주관적이라고 표현하고 있다. 본 저자는 이들이 OIS의 확장된 차원을 가지고 있지 못하기 때문에 이렇게 밖에 표현하지 못하는 것으로 본다. 즉, 행동주의의 주관적 효용극대화는 매우 부자연스러운 표현 방식(paradigm)이다.

저자는 비록 행동주의 경제학이 OIS차원을 제시하는 것은 아니지만 같은 문제를 느끼고 있다는 점에서 ‘만족화’(satisficing)이란 말로 OIS차원의 효용주의적 행태를 표현하고자 하였다. Simon도 OIS차원을 제시한 적이 없고, 관계교환행동을 의미한 것도 아니다. 그러나 만족화를 Simon의 애초 사용과 다르지만 같은 문제를 느끼고 제시한 표현이라는 의미에서 (별다른 표현이 없어서) 사용하였다. 본 저자의 다른 논문에서(이성섭, 2012b) 이 점을 밝힌 바 있다.

참고로 OIS 차원이란 경험론의 세계이다(Hume, 1739). 현대경제학은 데카르트식 합리론의 이론이다(이것이 CDS가 된다). 경험론 세계에서는 효용극대화로 자기애(self-love)를 표현할 수 없다. 관계교환행동으로 나타나는 자기애를 어떻게 효용극대화로 표현하겠는가? 경험론 경제학은 합리론 경제학을 배척하는 것이 아니라, 합리론 경제학에서 분석차원을 OIS차원으로 확장시키는 것이다.

[논평 2] 또 하나의 근본적인 의문은 저자가 ‘경로의존성’을 ‘관계교환의 본질’로 본다는 점이다. 재산권적 접근방법, 혹은 거래비용식 접근방법이 전제해 온 ‘가치를 측정하고 비교한다’는 논리가 잘 맞지 않는다는 저자의 주장을 받아들인다 하더라도 그 상황에서 그에 대한 “여러 대안 중의 하나”로 경로의존성이 유효한 방식으로 활용될 것이라고 믿을 수 있다. 그러나 관계교환이 반드시 경로의존성에만 의존하는가? 저자는 곳곳에서 이러한 전제 하에서 논리를 전개하고 있다. 따라서 이 논문의 핵심은 “재산권 이론 대신 경로의존성 이론이 더 적합하다”는 주장을 하는 것이라면 차라리 더 선명한 논문으로 받아들여질 것이다.

[저자의 답변] 역시 [논평 1]의 내용과 같은 오해이다. 현재의 경제학에서 OIS차원이 익숙하지 않다. 저자는 경로의존성(PD)을 가지고 OIS차원의 존재를 증명하였다(이성섭, 2012b). 경로의존성은 간단한 현상이 아니고 깊은 의미를 가지고 있다. 경험론의 세계는 경로의존성을 전제로 한다. 경험론의 세계에서

는 가치-비용 차원의 주류경제학 분석이 일관성을 가지지 못한다. 관계교환이 경로의존성(PD)에 의존하는 것이라기보다 경로의존적 현상이 우리 일상이란 의미이다. 우리가 사는 일상이 경로의존의 연속이다. 우연한 경험이 우리의 인상(impression) 이미지를 만들고, 그것이 다음 행동에 영향을 주는 것이다. 이것이 경험론의 세계이고, OIS차원의 행동이다.

합리적 행동은 OIS차원 행동 중에서 오직 100% 분명한 확실성이 있을 때만 가능한 행동이다. ‘ceteris paribus’가 가정된 예외적 상황(기호와 숫자로만 표시된 경제학 모델)에서만 나타난다. 그렇지 않는 모든 경우에 OIS차원의 행동(관계교환)을 하게 된다.

경험주의 상황에서만 기회주의 행동이 나타난다. 그것이 우리 삶이고 현실이다. 이것을 다스리는 것이 법이며 판례이다. ceteris paribus가 가정된 예외적 상황에서는 기호와 숫자만으로 경제상태가 표시된다. 합리성이 가정된 차원에서는 기회주의 행동이 나타날 수 없다. 즉, 법과 도덕의 역할이 없다. 이것이 이 논문의 내용이다.

왜 재산권이론이 거래비용이론과 서로 다른 길을 가고 있나? 거래비용이론은 제도를 합리성 차원에서 설명하려고 시도하고 있다. 이것은 불가능하다. 왜냐하면 우연성의 모든 경로에서 일관된 거래비용을 계산하는 것은 불가능하기 때문이다. OIS차원을 설정하지 않으면 이것이 분명히 보이지 않는다. 재산권이론은 이것이 불가능하다는 것을 느끼고 거래비용으로 설명하기를 포기한 것이다. 이 점에 대해 Klein(1978)은 Coase와 Williamson을 비판하였다.

재산권이 본질적으로 불완전하다는 것이 재산권이론이다. OIS차원의 현상이다. 그러니까 재산권 제도가 필요하고, 이것을 보호하는 법원의 판례가 필요한 것이다. 즉, 관계교환활동으로 설명된다. 즉, 신뢰를 배반하는 행동(관계교환행동, 또는 OIS차원 행동)을 법이 심판하는 것이다.

[논평 3] 신제도주의적 설명은 역사적 제도주의, 사회학적 제도주의, 합리적 선택, 제도주의로 대별할 수 있는데, 저자는 오직 역사적 제도주의가 강조한 “경로의존성”이란 것만을 엄두에 의존하고 있는 듯하다. 오랫동안 그렇게만 추론해 왔기 때문에 “완전 합리성이 없는 곳에서는 (다른 가능성은 없이) 오래 역사적 제도주의의 경로의존성에 의해서만 의사결정이 일어난다”라는 것을 이름 그대로 경로의존적으로 따르고만 있는 것은 아닐까?

또한 저자는 “관계교환은 (사회학적 제도주의가 강조하는 문화, 합리적 선택

제도주의가 말하는 의식적 선택에 의거하는 경우는 없고) 오직 경로의존성이란 기제로 일어난다”라는 대전제를 따르고 있는듯한데 이에 대한 타당한 논증이 전무하다.

[저자의 답변] 신제도주의를 ‘역사적 제도주의, 사회학적 ..., 합리적...’라고 대별한 것은 논평자가 본 어느 책에서 구분한 것을 인용한 것으로 보이는데, 저자의 제도의 개념은 되풀이 언급하지만, OIS차원에서 설명되고 있다. 즉, 공감-동의 차원을 이해해야 저자의 내용이 이해가 된다. 다른 분류로 설명하려 하는 것은 엉뚱한 논의가 된다. 저자의 주장은 분석적(analytic) 내용이다.

““관계교환은 오직 경로의존성이란 기제로 일어난다”는 대전제”는 보다 정확히 표현한다면 ‘경로의존성으로 그 존재가 확인되는 OIS차원의 행동이 관계교환 행동’이라고 표현될 수 있다. 그 논증은 저자의 다른 논문(이성섭, 2012b)에서 이 문제를 논구하고 증명하고 있다.

[논평 4] 또 하나의 의문은 저자가 곳곳에서 “가치교환”과 “관계교환”을 구분하고서, 후자에 대해서만 법 집행 및 사법 절차가 필요한 것으로 본다는 대전제를 깔고 있다는 점이다(pp. 4~7, p. 16). 그러나 그 대전제가 타당한지에 의문이 있다. 저자의 표현대로라면 가치교환(value exchange)은 재산권의 완전히 확립된 경우에 해당되므로 법 집행 및 사법 절차가 개입할 여지가 없다는 것이다(p. 16의 상단 8행). 그러나 “(완전한) 재산권이 확립되었다”는 것과 사법 절차의 필요 여부는 별개의 차원이다. 전자가 확립되면 후자가 불필요하다고 보는 것은 재산권 개념에 대한 현실적 이해와 부합되지 않는다. 재산권(곧, 재산의 소유, 이전 및 처분에 관한 개인의 자유로운 권리)이 확립되었다고 하더라도 그것이 소유, 이전, 처분의 확인 및 그 권리 관계의 내용에 대해서는 얼마든지 다툼의 여지가 있고 이를 해결하기 위해 그야말로 사법 절차가 필요한 것이다. 저자의 것이 분명한 책 내용을 누군가가 무단 인용했다면, 비록 지적 재산권이라는 게 확립되어 있다고 하더라도 당연히 법원이 개입하여 이침해 및 배상 여부를 결정한다. 저자가 예로 든 임금도 마찬가지이다. 심사자의 의견으로는, 아마도 가치교환인가, 관계교환인가에 따라 사법 절차의 “성격”이 다를지는 모르겠으나(예컨대, 재산권이 설정이 잘 되어 있는 재화에 대해서는 가치의 측정에 관한 판단 문제에, 후자에서는 아예 그것에 사법 절차가 개입할 수 있는가의 여부에 관한 판단 중심에 사법 절차가 초점을 둔다는 차

이) 사법 절차의 존부 자체가 가치교환-관계교환 여부에 좌우되는 것은 아니라고 본다.

[저자의 답변] 가치교환은 합리적 행동은 OIS차원 행동 중에서 오직 100% 분명한 확실성이 있을 때만 가능한 행동이다. *ceteris paribus*가 가정된 예외적 행동(기호와 숫자로만 표시된 경제학 모델)에서만 나타남)에서의 행동이다. 이때 무슨 법, 도덕이 필요한가? 이미 외생적으로 결정되어서 *ceteris paribus*에 의하여 가정으로 취급되어 있다. 그 배경에 법, 도덕이 있다는 주장을 한다면 자가당착이다. 배경이 어떻게 형성되었는지를 내부화된 논리로 설명해야 하기 때문이다. 그 설명을 내부적 논리로 하려면 OIS차원(경험론의 경제학)이 필요하다(이성섭, 2013b 참조).

[논평 5] ‘경제적 효율성 지수’라고 저자가 임의로 정의한 지표의 의미가 무엇인가? 거래비용의 절감인가? 그렇다면 바로 그렇게 표현함이 좋을 것이다. 왜냐하면 그 용어가 독자들에게 가장 먼저 주는 통상적 의미는 B/C 비율이기 때문이다. 경제학 문헌에서 과연 저자가 쓴 용도로 이 용어를 사용하는 경우가 몇 번이나 있던가?

[저자의 답변] “경제적 효율성 지수 ... 거래비용의 절감인가?” 되풀이 하지만, 저자는 OIS차원에서 설명하고 있고, 논평자는 이것에 익숙하지 않아서 계속 CDS차원에서 해석·표현하고 있다. 거래비용 자체가 OIS현상을 CDS차원에서 해석하는 시도이다. 경제적 효율성 지수가 어느 특정지수(거래비용 포함)를 지칭하는 것이 아니라 ‘가치·비용’으로 계산하려는 시도(예컨대, 거래비용)는 우연성의 서로 다른 경로에서 일관성을 가질 수 없다는 것이다.

[논평 6] 용어의 적합성을 차치하고 이제 그것이 과연 지표로 잘 계산되고 있기는 한가? 이 부분은 p. 14의 도표의 핵심이다. 도표에서 ‘노사관계’에 미치는 효과에 대해 분석한 부분은 뻔한 것이고, 중요한 것은 이 판결로 인해 “거래비용”에 미치는 차이가 전혀 없다고 분석한 부분을 심사자는 전혀 받아들이기 어렵다. “정기적인 상여금은 통상임금 산정에 포함되어야 한다”는 판례가 확립되면 이에 따라 노사 간에 거래비용이 당연히 달라진다. 적어도 “정기적인” 성격의 상여금에 대해서는 양측 간 논란의 여지가 없어지고(거래비용이 줄어

들고), 대신 지금까지 비정기적으로 주던 상여금을 노조 측은 균분하여 매월 지급(즉, “정기적으로”) 하도록 만들려고 할 것이고 경영측은 이를 저지할 것이다. 요컨대, 거래비용은 달라지지 않는다고 해석한 부분이 타당해 보이지 않는다.

[저자의 답변] 역시 마찬가지이다. 저자는 OIS차원에서 설명하고 있고, 논평자는 이것에 익숙하지 않아서 계속 CDS차원에서 해석·표현하고 있다.

이 판결로 ‘거래비용’에 미치는 차이가 없다는 내용이 동의하지 않는다면, 논평자는 이 판결로 거래비용이 어떻게 계산되고 달라지는가를 설명할 수 있는가? 아마 없을 것이다. 거래비용이 일관성을 가지지 못하고 경우에 따라 다르게 계산되기 때문이다. 즉, 법원 판결은 CDS현상이 아니고 OIS차원에서 설명되는 현상이다. 즉, 거래비용 얼마를 줄여주는 판결이 아니고, 노사관계를 어떤 방식에서 다른 방식으로 바꾸도록 하는 판결인 것이다. 그것을 굳이 거래비용으로 계산하려는 것이 CDS차원의 설명방식이다. 여기서 노사관계가 관계 교환 행동이다. 즉, OIS차원 행동이다.

[논평 7] 가장 근본적 문제는 분석수준(level of analysis)의 부합성(congruence)이다. 거시적 추상 이론의 틀로 시작한 논의를 한국 대법원 판례에 대한, 그것도 오직 하나의 미시적 판례에 적용하는 것으로 급전직하고(그것마저 ‘경제적 효율성 지수’라고 저자가 임의로 정의한 지표 하나에 따라 대단히 투박하게 분석하고)는 결론 부분에서 “... 따라서 진화론적으로만 설명이 가능하다”는 식의 거대한 결론을 도출하는 논증은 대단히 어색하다. 이런 식의 판례 사례 하나로 이러한 거대한 결론을 낼 수 있을까? 거대한 이론 체계를 과소한 사례 하나로 판정짓는 논증 방식은 무리라고 생각한다.

[저자의 답변] 저자는 미시적 판례 오직 하나를 CDS차원에서 분석해서 거대한 결론을 낸 것이 아니다. 법, 도덕 등 제도 현상은 CDS차원의 현상이 아니고 OIS차원의 현상이며, 따라서 효율성 지표(예컨대, 거래비용), 즉 CDS 지표로 판단할 성질의 것이 아니라고 한 것이다.

[논평 8] 결론은 저자의 논지가 압축적으로 표시되는 부분이다. 여기에서까지 다른 학자 및 자신의 기존 문헌들이 나열되고 인용됨은 축약성이 떨어져 보이

게 만든다. 또한 국문초록을 논문 전체 개황을 보다 잘 요약하도록 해 주면 좋겠다. 참고문헌의 표기 방식도 본 학회 요건에 맞추어야 할 것이다. 선행 연구를 p. 57에서처럼 처리하는 것은 너무나 간단하다. 좀 더 체계적으로 제시하고, 이들의 내용을 간명하게 분류하여 그 특성을 밝힌 후 이에 이어 나타나는 자신의 글의 의미를 연결해 주었으면 좋겠다.

[저자의 답변] 좋은 지적들에 감사한다. 지적을 참고해서 논문을 수정·보완하겠다.

