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CYNICISM, PHENOMENOLOGY, AND THE PROBLEM OF PARADOX: DILEMMAS OF PUBLIC LAW DISCOURSE

Yvette M. Barksdale†

I think that the real question in this Symposium—the question that we always seem to be asking in administrative law—is how do we get government to work well? And, of course, the perennial follow-up question—what do we mean by “well”? And because there are as many different answers to this question as there are administrative scholars, or sands in the Sahara, the real quandary is—whose vision of the good should a determinedly democratic government in a determinedly individualist, capitalist state legitimately pursue? Unfortunately, the answer to this question is like a vision of sugar plums dancing in the head of a poor child at holiday—easy to imagine, but not very easy to come by.

The problem of addressing this question is exacerbated by the limits of the language of rationality as a means of deciding what good government is, given the inherent inconsistencies between our shared societal values: individualism, majoritarian democracy, market capitalism, social justice and the rule of law. Each of these norms has legitimating content. Each of these norms conflicts with one or more of the others. Yet all are so fundamental to our national identity that choosing between them requires the rejection of key pillars of our national ethos.

For example, democratic values can conflict with social justice norms, because democracy purports to legitimate governmental outcomes merely by process (i.e., democratic approval), without regard to moral content.¹ This democratic legitimization may be appropriate when the majority uses its power to fight off an oppressive minority elite. But this democratic legitimization is problematic when an immoral majority uses its political power to abuse and oppress a less powerful minority. In that circumstance, democratic values legitimate

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¹ Although we obviously do not always agree as a society what social or moral justice is, we do agree that our society should make just rather than unjust social choices. Politicians never brag that they are taking immoral, unjust actions—the public would never explicitly support such arguments. Rather, politicians seek socially acceptable cover for unjust proposals (for example, “people are homeless by choice,” or if children are poor, “it’s the fault of their parents”).

oppression, and conflict with our similarly shared values of moral justice.

Witness, for example, the legitimacy nightmare that resulted from the inability of democratic institutions to remedy the obvious moral travesty of the system of racial and gender subordination within society, because of majoritarian support for this subordination.² A judicial fiat was required to break the logjam. And the fiat, *Brown v. Board of Education*,³ was instantly subject to withering criticism as illegitimate constitutional interpretation, even though it was merely a remedy-short declaration of abstract rights.

Our democratic values also conflict with our values of individual liberty and freedom because they similarly privilege collective will (democratic majorities) over individual liberty. Thus, free market capitalism values are used as a paradigm that delegitimizes both democratic and social justice outcomes as irrational, misguided diversions from the status quo results of libertarian market transactions. Under this model, aggregate private market transactions (trades) between individuals increase social welfare,⁴ because they are the result of individual free will and thus considered inherently rational.⁵

Thus the very fact that the market produced a particular result by definition makes it rational. Accordingly, any harmful consequences to market actors that result from these market transactions are seen as inherently legitimate because they are the market's rational allocation of resources to those (almost always the wealthy) who can best exploit them⁶ instead of those (like the poor) who would squander the resources on less wealth-producing activities like food, rent, clothing, and health care. This is the market defense of poverty—if people are poor, it is only because they are ill-equipped to do battle in the marketplace and thus rationally are denied access to the economic resources of the society. (In other words, they deserve to be poor and everyone else is better off for it.) This is essentially the argument of the anti-welfare debate—redistribution of wealth on the basis of need

² Slavery is an easy example of this problem with democratic legitimation, but it is also a problematic example. Slavery itself is fundamentally inconsistent with democratic ideals because of its necessary formal exclusion of slaves from equal participation and status in the polity. In contrast, under Jim Crow laws, people of color formally had voting rights (after the 15th and 19th constitutional amendments), even though their rights were practically denied.

³ 347 U.S. 483 (1954).

⁴ This assumes that (1) both *A* and *B* can accurately determine whether they will be better off (perfect information), and (2) their trades do not impose countervailing costs (so-called externalities) on third parties (say *C* and *D*), sufficient to result in a net decrease in total social welfare.

⁵ This is because *A* and *B* presumably would never trade unless both would be better off after the trade.

⁶ For example, by investing in wealth-producing activities like funding foosball-playing Ivy League dropouts with an awesome idea for a really boffo website.

to have, rather than ability to earn, squanders the resources of the society on non-wealth-producing activities (i.e., non-value added transfers).⁷

Although this market model conflicts with the alternative legitimating ideals of democracy and justice, it also reflects fundamental shared historical social values: “individual liberty and freedom,” “private ownership of property,” and “the possibility of collective social progress through acquisition of property.”

One way to address this dilemma is to try to rationally assign appropriate boundaries for each of these paradigms—for example, constitutional rights limits on the role of democratic institutions, democratic boundaries on the proper roles for individualism and market capitalism, and democratic, individualism, and market limits on the roles of social justice and morality. However, this approach as well is problematic as a means of determining the proper role of government in our society, because to rationally delineate these values boundaries you need a super-legitimizing norm. What might that be?⁸ Without such a principle, the intellectual debate over the bound-

⁷ This is also the argument against the living wage—that poverty wages are the most efficient allocation of societal resources. Because this is the wage that the rational market is willing to pay, adherents argue any other wage is wealth-depleting, not wealth-enhancing, and thus hurts the poor (who have fewer jobs) as well as the rich (who have fewer profits).

Private charity is often advocated as one solution to the inequities of wholly market distribution of wealth—which has the benefit of retaining individualism as a legitimating norm. For example, Professor Macey’s article, Jonathan R. Macey, *Cynicism and Trust in Politics and Constitutional Theory*, 87 CORNELL L. REV. 280 (2002), advocates the concept of public-service, private-community organizations (private charities, foundations, public service) as an antidote to presumably corrupt governmental institutions. In any event, this private altruism is not a substitute for market power, but simply another form of market power. That is, the private altruism model continues to leave resource distribution decisions in the hands of market “haves.” These private market actors simply create extramarket mechanisms for their decisions about how to redistribute societal resources. Those without market power still do not have any control over societal resources. All they have is charity from those who do. Although this charity may be better than nothing, it is not a substitute for power. Government, at least, has the prospect of democratic empowerment for those with votes, instead of money. (It is unclear why this private charity is not also seen as a squandering of societal resources on non-market activities. After all, whether the redistribution comes by way of government, or by way of private “gift-giving,” it is still redistributive. And if redistribution is going to occur, is the whim of rich eccentrics preferable to the outcome of albeit imperfect democratic processes? Alas, at this point someone would probably make a first-order moral argument against the “coercive state redistribution of private property.” I suppose social justice norms are not always eschewed by market maniacs.)

⁸ Basically, this is the continuous debate of constitutional law, which is even more complicated by the additional baggage of constitutionally predetermined first-order rule of law choices (themselves internally inconsistent, because they also reflect, indeed significantly establish, these conflicting fundamental societal norms). Add to that complexity federalism, separation of powers, and public/private debates about the inter- and extra-governmental distribution of the power to make these values-reconciling decisions.

aries becomes simply another ideological battleground in the warfare among these legitimating norms.⁹

The answer may be that you cannot resolve these conflicts. This is why it is so easy to trash government. Pick a program, pick a paradigm, you are guaranteed to find a problem. Even the governmental choice to do nothing is problematic. For example, government inactivity is easily trashed as attributable to the shortcomings of “do-nothing politicians” or “lazy bureaucrats” who have failed to address public problems (social justice model), or do the public’s bidding (democratic legitimacy model), or, properly correct market failure (market capitalism model). And, since every government decision has detractors, whether gored oxes or conscientious objectors, there is rarely a shortage of trashing volunteers.

However, this trashing obscures the reality that for all the theoretical wrangling, there is still a real-life consequence of governmental action that people who are subject to it experience, and this governmental action or inaction makes the reality of their lives materially better or worse. Unfortunately, the consequence of the trashing is that there is no language which can successfully describe and defend government efforts to improve that reality which is not itself subject to withering theoretical (and political) attack.¹⁰ Thus, there is no such thing as defensibly good government, not even no government.

This, it seems to me, is the basic quandary of our social order. How do you make democratically, morally, and economically legitimate social choices in light of these inconsistent legitimating norms,

⁹ I have previously argued for consensus-directed government processes for resolving these values conflicts, as a means of avoiding the difficulties with rationality-based attempts to resolve fundamental values conflicts. See Yvette M. Barksdale, *The Presidency and Administrative Value Selection*, 42 AM. U. L. REV. 273 (1993). The vision I had in my article was that isolating the values choices inherent in divisive policy debates would help sparring parties (such as environmentalists and loggers) arrive at a consensus as to which values mattered (for example, perhaps the parties could agree that both environmental values and economic values mattered—without environmental protection there would be no forests to log, and without economic well-being there would be no resources to protect the environment). Once this values consensus was reached, my perhaps idealistic hope was that the parties would then find a mutually agreeable solution which honored these consensus values (that both the environment and the economy were important). Thus, the achievement of a consensus agreement about which values were important to advance would transform otherwise acrimonious, destructive public policy battles into warm and fuzzy deliberative dialogues about the best way to achieve mutually agreed upon public purposes. I did not distinguish between material values (environmental protection, economic protection), rights-based values (social justice) and process values (democracy), perhaps because my view was (and I think still is) that all values must be about material well-being (whether physical or spiritual) in order to have any worth beyond academic fodder for intellectual jousts. However, consensus-directed processes may do little good for conflicts among internally inconsistent categories of values.

¹⁰ This is particularly true in this era of media sound bites in which thumbnail invocations, of one or more of these megalegitimating paradigms is often the sum total of public political debate.

when any choice which satisfies one norm simply conflicts with another?¹¹ Perhaps another way to put this is how do you defend any social choice in society when such choice can be easily delegitimated simply by reference to one or more of these fundamental yet inconsistent consensus values? This does not mean that the criticism is never right—just that it is always possible.

The two articles here in many ways reference these normative conflicts, albeit from oppositional perspectives. Professor Macey's Article¹² is a classic demonstration of the power of these legitimating paradigms for mounting a devastating critique of the worth of government action. In contrast, Professor Rubin's Article¹³ attempts to circumvent these normative conflicts by rejecting objective normative discourse as a basis for legitimating government. Instead, Rubin seeks to legitimate government not by rational conceptions of the good, but by the subjective, individual collective will of its citizenry.

Macey attacks government as redistributing societal resources from rational private markets to corrupt and irrational public processes, whether rent-seeking democratic politicians or arrogant, foolish bureaucrats. In Macey's view, government is susceptible to three bad influences: (1) corruption¹⁴ (the financial or electoral bribery of self-interested public officials by self-interested special interests with a stake in overactive government), (2) hubris¹⁵ (the arrogance of public officials who use their public offices to impose their own vision of the good on a captive public), and (3) stupidity (the cognitive biases of a really confused public who irrationally delude themselves into the false belief that there are serious social problems that government can and should solve).

However, Macey goes beyond simply arguing the generally indisputable point that government often does bad, stupid, or self-serving things, to conclude that government is so likely to be defective that the only sensible response is a position of such relentless cynicism that persons (for example, voters and academic researchers) should simply assume that any government action is illegitimate, unless proven otherwise.¹⁶ Macey wields this "uber" cynicism, which he calls "Macey's razor," as an acrid tonic for what in his view is government's corrup-

¹¹ And this description does not even include rule of law norms as an alternative legitimating model. This model also lacks moral content (or democratic content—witness the crisis of democratic legitimacy after the recent presidential election).

¹² Macey, *supra* note 7.

¹³ Edward L. Rubin, *Public Choice, Phenomenology, and the Meaning of the Modern State: Keep the Bathwater, but Throw Out That Baby*, 87 CORNELL L. REV. 309 (2002).

¹⁴ See Macey, *supra* note 7, at 285–86.

¹⁵ See *id.* at 286–87.

¹⁶ See *id.* at 293–95. And given the problems of imperfect public information about government, such proof is unlikely ever to occur.

tion and irrationality. The cynical glance of Macey's razor, he argues, will defend the public from being fooled into complacency, only later to sadly discover that greedy, arrogant, bumbling politicians and their self-serving public patrons sabotaged its public interests. He argues that Macey's razor will work this magic because the increased public vigilance will make government more contestable, and thus force government actors to better justify their decisions.¹⁷

However, the possibility that government actors could ultimately justify their decisions sufficiently to avert the edge of Macey's razor seems more chimerical than real if the only good government is no government (and even that may not be good). Macey in fact denies having this view in the Article, stating that government is not always bad, it is just not always good.¹⁸ However, in supporting this argument, his triple threat critique of government as antidemocratic, over-redistributive, and irrational, shows how readily the combined power of our societal legitimating norms can delegitimize any government action. In light of this, Macey's razor starts to look more like a machete.

For example, Macey implicitly argues that good government might be government "in the public interest," as opposed to in the self-interest of "special interests" or "bureaucrats."¹⁹ However, under Macey's analysis, resort to any of the likely legitimate definitions of public interest simply opens up the government action to yet another form of attack.

For example, one classical way to define the public interest is as the aggregated interests of the individual members of the public. However, also classically, once one defines the public interest in that way, it easily becomes disaggregated into multiple individualized self-interests (or partially aggregated group interests). The legislation passed in favor of this coalition of disaggregated private interests becomes easily subject to attack as merely "corrupt" government for the private interest, rather than good government in the "public interest." And because all legislation is passed only if it has support from a majority coalition of interests, and probably supermajority support given the requirements of bicameralism and presentment not to mention consensus procedures in the Senate, all legislation is subject to the attack on the grounds that it is a "pay-off" to these individuals, rather than genuinely for the public. (By definition, the "public" apparently are not members of any of these individual interest groups—which must mean that the public are the minority).

¹⁷ See *id.*

¹⁸ See *id.* at 290.

¹⁹ *Id.* at 283.

Moreover, even if one were to identify a clear separate collective "public interest," apart from aggregated individual private interests (perhaps an interest in protection from invasion by hostile forces would be such an interest—clearly shared by all in society), under Macey's analysis government action in service of such a public interest may still not be legitimate. This is because any such government action requires, not surprisingly, a government actor. And, according to Macey, that government actor is likely to merely be using the purported public interest as a shield to pursue his or her own separate private interest (whether financial, electoral, or ideological).²⁰ Thus the apparent public-interested legislator is now vulnerable to attack, not as being the captive of narrow outside private interests—but even worse, as pursuing his or her *own* selfish individual interests. However, those selfish interests are not necessarily financial (i.e., bribery or job security), or even electoral (reelection), but they may be ideological (pursuing his own vision of the public interest, based upon his own professional bias, rather than objectively true public interest).²¹ Case in point: Macey's example of the opportunistic politicians who use disasters, like earthquakes and floods, to get legislation passed. Although this legislation appears to be public-spirited, that is pursuing "disaster relief," Macey argues that the legislation is usually useless for averting disasters (which were a low risk to begin with), but very helpful to the selfish interests of the legislator or of her interest group constituencies.²² This legislation is not in the public interest; the public interest is simply a cover.

However, Macey's razor can slice too broadly here. The mere fact that the disaster was only the pretext for the legislation, rather than its real motivation, does not necessarily mean that the legislation is self-serving. While it is likely true that clever politicians often exploit media circuses like disasters to push through their regular legislative agenda, more so than to solve the purported disaster, this does not necessarily mean that their regular legislative agenda is not otherwise in the public interest. For example, a public-interested legislator might use the fortuitous disaster to pass wonderful public-interested legislation (in fact, right over the defenses of those other members of Macey's legislative den of corruption). Of course the legislation may be simply pay-offs to "discrete, highly organized groups."²³ However,

²⁰ And, this bureaucrat, acting in the name of his or her own self-interest, seems even more chicanerous than those bureaucrats who at least have the public-spiritedness to be captured by some outside private interest, no matter how narrow.

²¹ See Macey, *supra* note 7, at 286–87.

²² See *id.* at 300.

²³ *Id.*

this is true of any legislation—whatever was the catalyst for its passage—whether disaster du jour, or say, party politics.²⁴

However, note the delegitimizing paradigm here is social justice renamed “the public interest,” which now conflicts with democratic legitimacy (approval by the public who wanted disaster relief). But the public was self-deluded, and the legislators were professionally deluded, so in the end, the public interest was not served after all—as objectively determined by “Dunno—who was that masked bandit anyway?”

However, let us assume that the researcher concludes that the legislator actually does work in the public interest, and the legislation does benefit the public (i.e., actually averts disasters, or solves some other significant public problem). Do we now have legitimate government? Perhaps. After all, the legislation is not easily categorized as simply “self-regarding” or “special interest.” But more likely, the government program will be criticized as an inefficient wealth transfer, because innocent private capitalists (regulated or taxpaying parties) are corralled into insuring greedy rent-seeking beneficiaries (that “public” of the public interest), from disasters which ought to be their responsibility. And of course, heaven forbid that these “public” beneficiaries are neither the “majority,” nor the wealthy friends of the innocent capitalists, but rather are the poor, the dispossessed, and the politically powerless. Then the legislation becomes subject to attack from all three barrels: antimajoritarian because it helps people who have no power, redistributionist because it helps people who have no wealth, irrational because it “pursues someone’s own vision of the good at public expense,” “uses the politically powerless as a cover to benefit the politically powerful,” or is the consequence of “cognitive biased self-delusional altruism.” Clearly, government cannot win by losing here (that is, unless its critics agree to sheath their weapons, which, if they wield Macey’s razor—they never will).

To the extent that Macey argues that government is particularly prone to waywardness because of its relative power, autonomy, and insularity he is clearly right. And, he is clearly right that sometimes government does really stupid (or corrupt) things. He is also correct that a cautious, careful, watchful citizenry will do a better job of policing government than a naïve, gullible one. However, is it really true that government never acts properly?²⁵ If so, then we need some way

²⁴ Query how the current stream of anti-terrorism legislation stacks up under this analysis.

²⁵ For example, for all of the controversy, most would agree that environmental laws have substantially improved the quality of our air and water over the last two decades, even though there are debates over the economic costs. I am old enough to remember when the Cuyahoga River in Ohio caught fire because of pollution. Now, apparently, the fish are

of distinguishing good government from not so good government. For example, does cynicism require government to stand by idly while people starve and do nothing until some academic researcher has sufficiently proven that the government program will work? Of course we should inquire whether government really is working effectively. Macey is right that defenders of a role for government should be the first to care about the effectiveness of its policies. However, is Macey's razor a close shaver or a guillotine which, once loosed, permits no escape? The question is whether the internal inconsistency of our societal norms may have in fact deprived us of a language that permits us to describe when that good government occurs (at least within our current politicized environment in which no good deed lacks detractors, and no bad deed lacks supporters).²⁶

It may be that this normative incoherence in our conception of government is a necessary prerequisite for public choice theory's persuasiveness. Public choice theory is easily criticized as tautological because its premise (that government actors are self-interested and behave rationally) necessarily preordains its conclusion (that government decisions made by rational, self-interested actors, would in fact turn out to serve the actors' self interest). Any other result would be logically impossible, given these premises.²⁷ The premises could be disproved by proof of public-interested government. However, the indeterminacy of our normative conception of the public interest ensures that such "proof" of good government will never materialize, leaving public choice theorists free to label any government program as corrupt and self-serving, without fear that some do-gooding proponent will prove them wrong.

Additionally, part of the allure of public choice scholarship was that it purported to avoid these value conflicts by merely being descriptive. It modelled government behavior to empirically determine whether government was accomplishing its purported goals, but did not critique the legitimacy of these goals. However, as several commentators pointed out in this Symposium, even descriptive models contain value choices because given the complexity of reality, the very act of description requires a simplification of reality (i.e., a choice as to what to put into the description and what to leave out). Thus, that very winnowing focus necessarily reintroduces the very same problem of value choice that the presumedly descriptive enterprise was sup-

back. See *Mentor Fire Department Does Its Part on Ozone Days*, CLEVELAND PLAIN DEALER, Aug. 15, 2001, at B2.

²⁶ Perhaps one silver lining of our current national terrorism tragedy will be a sustained moratorium on the previous decade's scorched earth politics.

²⁷ Unless the rational actors are stupid or ignorant, in which case their decisions are worse than self-interested—they are arbitrary, serving no one's interest, not even their own.

posed to banish. This is not necessarily a serious problem, as long as the model's purpose is simply intellectual enlightenment, or knowledge for its own sake. In this circumstance, the model provides useful information that is admittedly only as good as its premises, worthwhile as far as that carries you, but not beyond. However, when the model becomes the basis for pragmatic real-life decisionmaking, these descriptive choices become problematic because the oversimplification necessary to say something meaningful risks distorting the public policy debate by obscuring relevant complexity.

Such is the case with public law scholarship. The simplicity of its assumptions about the self-interested nature of human behavior is clearly useful as a means of identifying and analyzing at least some aspects of government decisionmaking (for example, politicians do want votes and campaign contributions, bureaucrats do want power, prestige, and influence, interest groups do want policies that favor their material or ideological interests, and certainly such concerns drive at least some of their behavior). However, these assumptions become dangerous when the conclusions of such scholarship, usually that the programs are simply sellouts to private interests, become ammunition in the political debate over the normative desirability of the programs, even though the simplistic assumptions of public choice theory necessarily limit the reliability of its conclusions.

This is the jumping-off point of Edward Rubin's article. Rubin critiques public choice theory as irremediably based upon a flawed premise—that human behavior can be accurately described as merely a quest for material self-interest. Rather, argues Rubin, human beings are immensely more complex than this simplistic assumption, and seek not simply their material self-interest, but rather a deeper, almost spiritual goal, the quest for "meaning," that is, some coherent, yet subjective, sense of significance or purpose for, their lives. Accordingly, argues Rubin, people construct government not simply as a means of serving their material self-interest, but rather as a means of determining this "meaning" or "purpose."²⁸

Rubin argues that this view of the citizenry is more descriptively correct than the rational self-interested actor of public choice theory. And, instead of Macey's cynical view that government is generally up to no good, Rubin postulates that government necessarily does good because it is a vehicle by which the citizenry seek to determine the meaning of their existence, and thus government has value apart from its objective benefit to the citizen's material well-being. Rubin argues that government has a more elevated purpose of helping the citizenry define their own lives, and collectively, through public discourse and

²⁸ See Rubin, *supra* note 13, at 328–40.

“intersubjective dialogue,” define a broader meaning and purpose of their society as well. That is, government is essentially a flow-through mechanism, by which the citizenry (including government actors) seek to do good as an expression of their own conceptions of self.²⁹

Macey would probably call this conception of government hubris (the arrogance of persons who use public offices to impose their own vision of the good on a captive public). Rubin, in turn, calls Macey’s cynicism (and public choice theory in general), a fundamentally flawed, reductionist, oversimplistic distortion of human nature, that flies in the face of reality (and of behavioral science). People are not the selfish nogoodniks poised at the edge of Macey’s razor, Rubin argues. Instead, they are much more complex psychologically, in that they seek to structure their lives in ways that can satisfy their primal search for life’s deeper meaning and purpose. And, argues Rubin, when viewed in this way, it becomes apparent, historically, that government has been a more or less effective mechanism for this search. The administrative state, argues Rubin, is an example of this.³⁰

Rubin’s approach avoids in many ways the normative prison set up by the inconsistencies in our society’s conflicting values because it abandons the quest to find an objective normative legitimating goal for government. Rather, Rubin seeks to legitimate government not by rational conceptions of the good, but rather by deference to the subjective, collective judgment of individuals. That is, government is good, not because it is objectively correct, or because it does objectively good things, but rather because it reflects individuals’ subjective judgment of how they wish to construct their society. This approach thus relegates the resolution of any normative conflicts regarding government purposes to the subjective judgment of individuals (including voters, politicians, bureaucrats, and academics) rather than the arguably inachievable objective decision of privileged actors (whether politician, bureaucrat, voter, or academic).

I was truly fascinated by Rubin’s Article because of its potential for elevating public discourse about government in a way that opens the door to a much richer discussion of the value of government and the role of government. One problem that I have, though, with phenomenology as an operating rationale for government, is that it also does not seem to provide a language for describing good government, but rather a language which legitimates any government good or bad, because that government reflects the collective subjective will of the people, in their perennial quest for meaning. That is, by grounding government solely in the subjective imaginations of the citizenry, Rubin’s phenomenology, like Macey’s cynicism, also disembodies gov-

²⁹ See *id.*

³⁰ See *id.* at 345–49.

ernment from the reality of people's lives, and the question of whether government is making their lives better or worse.

Regardless of the justifications or non-justifications of government action, there is still a real-life consequence of that action experienced by real people who are subject to it. The lack of a credible normative discourse makes it easy to ignore these real-life consequences of government for its citizens, particularly the less powerful ones. In the case of Macey's public choice razor, this lack of a coherent normative language makes it easy to trash government programs which might make people's lives materially better. In the case of Rubin's phenomenology, this lack of any normative language makes it difficult to attack government programs which might make people's lives materially worse.³¹

Now perhaps Rubin's vision will empower those people materially affected by government to also use government to vitiate their subjective meaning. However, one's ability to actually accomplish this feat practically depends upon one's relative power. Thus, until you have equality in the distribution of power, only the powerful will be successful at that quest. Perhaps an enlightened ruling class may choose to help others as a means of finding meaning—but what if they do not?

For example, insiders like professionals and intellectuals can much more easily use government to achieve their subjective visions of the meaning of life than the homeless person begging for alms on urban streets. While these insiders may decide to seek to shift government resources towards ameliorating homelessness, that occurrence would only be fortuitous from the homeless person's vantage point. These same do-gooders might decide to transfer their altruistic largesse to symphony orchestras, or space exploration. If so, our homeless person, despite his own quest for meaning, would likely have little power to stop them. It is the intersubjective meaning of the powerful that would get translated into policy—not that of the powerless. Unless all citizens get to equally participate in and control this quest for meaning, then it translates into simply more privilege for the privileged. Indeed, to be honest about it, the journey for subjective meaning seems to be one that only rich people can afford. It is hard to find time for intersubjective quests when you are worried about food, clothing, and shelter.

Perhaps, though, Rubin's vision works as a procedural, rather than a substantive one. That is, it answers a question of collective choice, how do we structure the society's collective choice mechanisms (whether public or private) to empower all citizens to success-

³¹ Whether or not people are solely motivated by material self-interest, certainly material self-interest is important to them, particularly when they are not rich enough to easily satisfy their most basic needs, such as food, shelter, clothing, and education.

fully pursue their quests for meaning (whether through government, or other means)? If we do so successfully, perhaps we can trust the citizens to protect their own welfare. However, this requires some mechanism for addressing imbalances of power.

Perhaps this collective journey requires our society to adequately prepare and privilege all citizens to participate fully in this quest for meaning, whether through government or through other means. That is, if “meaning” is the meaning of life, perhaps a society must ensure the minimum material preconditions for all citizens to search for that meaning, such as education, food, shelter, and health care. And, if so, perhaps citizens will truly gain self-determination and escape the trap of our nation’s powerful, yet ultimately incoherent, normative symbols—so easily manipulated to delegitimize all efforts at social change.