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**POLICY SCIENCE AND THE  
ADMINISTRATIVE STATE:  
THE POLITICAL ECONOMY OF  
COST-BENEFIT ANALYSIS**

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The idea of governing under the constraint of a benefit-cost test of contemplated public actions is not new. Inspired by Jeremy Bentham's argument that, morally speaking, society's problem is the provision of the greatest happiness for the greatest number, it has been urged in one form or another in certain philosophic and economic circles for nearly two centuries. Until recently, however, government by felicific calculus had gone largely untried.

The central advantage claimed for cost-benefit government is that it would discipline public choice so that scarce public and private resources are rationally allocated to their highest valued uses. In this way, it is argued, contemporary social well-being is optimized and future happiness enhanced through resource conservation. To accomplish these ends, however, will require fundamental changes in the governmental decision-making process. The current domination of this process by political interest and power has resulted, according to cost-benefit advocates, in a systematic distortion of the value of resources and their public uses. What is required to remedy this situation is the recognition that the paramount problems of governance are not those

having to do with power and conflict but with the efficient administration of state actions. Supporters of cost-benefit tests of government policy do not deny the existence of conflict; indeed, many assert its unavailability. But it is argued that this recognition impels attention to the problem of how conflict should be managed by the state. In this context, cost-benefit analysis is offered as a viable alternative to politics. With it otherwise amorphous issues of governance purportedly can be resolved in an orderly manner and the rationally superior public action for many, if not all, social problems discovered.

The tenability of this proposal rests upon displacing politics with administrative forms in deciding issues of governance. Indeed, the advocacy of cost-benefit government represents an implicit, if not explicit, endorsement of the administrative state. Curiously, however, the desirability of such a displacement is seldom addressed. It appears that cost-benefit government, suitably debugged and with possible allowance for certain "inalienable" rights, is presumed inherently good and preferred. Concern is focused almost exclusively on whether and to what extent such a mode of governance can be implemented. Despite a divergence of opinion on feasibility, there remains a common presumption that installment of cost-benefit tests for public actions would be desirable.

The desirability of cost-benefit analysis, and the technocratic system of governance that it requires, cannot be resolved by presumption. If the tenability of cost-benefit analysis hinges upon the emergence of the administrative state, then ultimately the use of this technique to decide public policy specifically, and the nature and role of state power generally, hinges upon the preferability of such a system of governance. My argument against cost-benefit rule is focused on the normative and ideological implications of the use of this technique to decide questions of power and policy and the displacement of politics that is essential to its effective use.

**THE RULE OF REASON**

Cost-benefit analysis is now an established, if still controversial, tool of public policy making and evaluation. The national government especially is a frequent user, employing the technique for such purposes as determining acceptable levels of various pollutants, setting industry standards of worker health and safety, assessing the feasibility of safety

improvements in automobiles, and evaluating the impact of alternative technologies on social and economic welfare. But although the uses of this mode of analysis are growing, they nonetheless continue to be confined to decisions made in executive branch agencies. Legislative and judicial decisions are seldom if ever based on such logic. Even in the executive branch, cost-benefit calculations usually play only a minor role in policy decisions. The limited integration of this tool into the policy apparatus has raised the problem that only parts of a policy may be subjected to the rigor of analysis, whereas others continue to be formulated on grounds that either contradict or neutralize those applied in analysis.

69 Thus advocates have directed their attention increasingly to the problem of expanding the use of cost-benefit analysis. Not surprising, much of the criticism as well as advocacy of cost-benefit analysis has been preoccupied with the appropriateness of this technique to certain classes of problems and to the value implications of its use in identifying solutions. Normative dilemmas, if they are recognized, are seen to derive from the nature of the problem to which the technique is applied rather than from the implication for governance of its use. For advocates and many critics, the key questions have become, "To what range of problems is cost-benefit analysis applicable?" and "Under what conditions would its contribution be optimized?" Responses to these questions can be separated into two groups: those which recognize social order as necessarily imperfect and treat cost-benefit analysis as an organizing rather than calculative framework for addressing social concerns, and those which see the use of this technique as part of an effort to establish formal rational criteria in government decision making. The first is characterized by a pragmatic understanding of social problems and deemphasizes the formal features of cost-benefit procedures in favor of the heuristic value of its general logic and perspective. The work of Alice Rivlin and Tom Beauchamp<sup>1</sup> is representative of this approach. The other, more formal approach stresses the precision and ethical superiority of cost-benefit decision making and calls for a decisive role to be played by such analysis. The arguments of E. J. Mishan and David Braybrooke and Peter Schotch<sup>2</sup> are indicative of this latter understanding.

For "informalists" such as Beauchamp and Rivlin, the practical conditions of *realpolitik* urge the use of cost-benefit analysis. The contemporary problem of governance is seen to be one of establishing rules of reason by which to decide issues of public concern in an

otherwise untidy world of power and politics. Although cost-benefit analysis cannot deliver the ultimate rules of governance, nevertheless this technique is seen as important and valuable for the opportunity it provides for arriving at a rational accommodation of the moral conflicts of an irrational world. In this respect cost-benefit analysis represents an attractive solution to problems of modern governance offering the prospect of escape from total reliance on power and politics. Thus, for example, Beauchamp claims that cost-benefit analysis is a pragmatic necessity in "real" moral life where rights frequently conflict. It provides a "morally adequate"<sup>3</sup> means of decision making that evaluates political decisions against the standard of aggregate welfare, a standard that "at least on some occasions is mandatory from a moral point of view."<sup>4</sup> Some critics charge that such a standard would lead to the denial of basic rights if the costs of doing so were less than the collective benefits. Beauchamp argues, however, that consistent with the familiar rule-utilitarian position, cost-benefit analysis should not be immunized from the restraining control of moral rules.<sup>5</sup> The force of moral rights will not be contravened if a "loose sense" of the cost-benefit technique is adopted in which the objective is to determine whether a particular action is "acceptable," "reasonable" within the boundaries of morality.<sup>6</sup>

Rivlin expresses a similar attitude toward the problems of society, based on her considerable experience in the federal bureaucracy:

The choices are genuinely hard and the problems are extraordinarily complex and difficult. It is hard to design an income maintenance system that will both assure adequate incomes to the needy and encourage people to work, or a health financing system that will both assure proper care to the sick and encourage efficient use of health insurance. . . . If any analyst thought it was going to be easy to make social action programs work better or to make more rational choices among programs, he is by now a sadder and a wiser man.<sup>7</sup>

In this complex world values will not be easily quantified and often will be in conflict. What can be achieved is not the definitive solution but the reasonable one, founded on an informed understanding of the general levels of costs and benefits and their distributions: "who would benefit from a policy and who would pay its costs."<sup>8</sup> Echoing the point, Boulding suggests that

even though economic measurement may be abused, its effect on the formulation of moral judgments is great, and on the whole I believe

beneficial. The whole idea of cost-benefit analysis . . . is of enormous importance in the evaluation of social choices and even social institutions. We can grant, of course, that the "real" dollar . . . is a dangerously imperfect measure of the quality of human life and human values. Nevertheless, it is a useful first approximation, and in these matters of difficult choices, it is extremely useful to have a first approximation that we can later modify.<sup>9</sup>

The value of cost-benefit analysis is thus in the discipline it brings to the policy process and the ability it provides for addressing social problems in a systematic manner. As Rivlin asserts, "The crucial questions now are . . . organizational."<sup>10</sup>

99 While recognizing that the value of cost-benefit analysis relates to its capacity to yield rational solutions of social problems, "formalists" such as Mishan and Braybrooke and Schotch see no means of using this technique within the contemporary world of politics. For these advocates, no minor modification of the world as it is will suffice. The problems are, as Mishan observes, constitutional and concern the ethical premises that serve as "a common context of aspirations."<sup>11</sup> At issue are the inescapable conflicts not only among alternative social policies or objectives but between these and questions of rights and needs. Seen in this light, cost-benefit analysis cannot be divorced from the most general value implications of social organization and action.

Equally clear, Mishan argues, is that use of cost-benefit analysis cannot be restricted to the role of consultative input into policy decisions. Requests to "'organize' the new data" and provide a framework for comparing alternative policies that would extend extraordinary power to the consultant-analyst that, practically speaking, cannot be limited.<sup>12</sup> What must be demanded instead is that the framework and organization employed are based upon nonarbitrary economic principles of allocation. Cost-benefit analysis draws its justification, as Mishan demonstrates, from allocative "propositions at the centre of welfare economics" which are represented in the "virtual constitution"<sup>13</sup> of society. Specifically, the technique is guided by the principle of Pareto optimality:

If, in any situation it is found to be impossible to make *any* change without making some individual in the group worse off, the situation is defined as Pareto-optimal or Pareto-efficient. . . . A change is defined to be Pareto-optimal, if in the transition from one situation to another: (1)

every individual in the group is made better off; or (2) at least one individual in the group is made better off and no one is made worse off.<sup>14</sup>

The elevation of cost-benefit analysis to constitutional status rests, as Liebhafsky<sup>15</sup> has pointed out, on the presupposition that Pareto optimality is a *Grundnorm* upon which the validity of all other norms depends. As such, the *Grundnorm* of Pareto optimality cannot and should not be constrained by the requirements of political consensus; as with all constitutional rules, it antecedes consent. For Mishan, then, the impetus is to moor cost-benefit analysis to the "guiding rules" that "can truthfully claim to rest on a widely accepted ethical base."<sup>16</sup> Once achieved, the cost-benefit calculus "on any ethical ranking, would . . . transcend economic decisions reached by political processes, democratic or otherwise. . . . For decisions reached by the political process will almost always rest on a narrow basis of consent."<sup>17</sup>

Braybrooke and Schotch propose a similar system of governance intended to deliver the formalist vision of a transcendental social order beyond social and ethical conflicts brought about through the exercise of "right" reason. Their proposal represents perhaps the most explicit conception of governance as a process of rational problem solving. Governing begins with the scrutiny of issues of collective concern to determine whether they involve, respectively, questions of rights, needs, and preferences. Rights and needs are to be addressed by means of threshold analyses. In the case of rights, "whether a policy conforms to a peremptory consideration is to be treated as a matter of fact that can be ascertained by comparing the features of the policy with the requirements set forth in the consideration."<sup>18</sup> Response to potential rights violations is to take one of two forms: Either the policy is not to be enacted until and unless the cause of violation is removed; or the policy is to be enacted on the condition that fair compensation of victims, again to be regarded as a matter of fact, can be assured by a compensation scheme that presumably would have to satisfy the criterion of cost-effectiveness as well. Observance of minimum needs thresholds is also to be required of any proposed policy. Such thresholds are to be established from objective analysis of "minimum standards of provision."<sup>19</sup> Any remaining public policy problems are considered in this scheme to stem from conflicts of preferences. Within an institutional framework that provides for prior checks for violations of basic rights and needs, cost-benefit analysis has the role of resolving subjective "interest" conflicts according to the criterion of maximization of

objective social benefit. In this type of framework, cost-benefit analysis represents a particular stage of analysis within a general framework of objective analysis of moral problems.

Despite important differences in the way advocates conceptualize the possibilities and limits of cost-benefit analysis, governance via a cost-benefit norm is promised to elevate policymaking above the inefficiency and irrationality of politics. Moreover, advocates project a common set of conditions for the optimal use of this technique. The social world is generally approached as one in which problems occur or may be treated as occurring relatively independently of one another and are bounded in scope. In some versions, such as the Braybrooke-Schotch scheme, this independence condition is extended to the moral dimensions of social problems as well, with an expectation that rights, needs, and preferences can be addressed separately without distorting the nature of the "problem." To this independence condition about the nature of social problems advocates add important conditions regarding the nature of their solution. The set of alternative solutions to a particular problem is treated, where such a set exists, as an analytically finite and commensurable one. This means that if solutions exist, there is always a superior one. Where no solutions exist, no rational engagement of the problem is available and no public action can be justified. A third set of conditions concerns the issue of valuation. The costliness of a particular problem and the implementation of its solution, as well as the worth of any advantages that might result (beyond the elimination of the particular social problem itself), are regarded by advocates as objectively knowable. Of special importance, these values are thought to be available to the analyst without recourse to individuals or communities who might be affected by the contemplated public action.

If these conditions can be met—and much of the debate surrounding cost-benefit analysis is absorbed by this question—a distinct political opportunity emerges. Insofar as social problems can be treated as independent and bounded in scope, their solution regarded as a question of optimizing net benefit, and the availability of objective measures by which to evaluate competing solutions confidently assumed, government by right reason would seem to be within our grasp. Historic social conflicts such as those concerning the distribution of wealth and the public provision of basic rights and needs, as well as more recent ones such as the protection of the environment, worker and product safety, and balanced economic growth, would all appear to reduce to discovering and implementing the best alternative and therewith to be

resolvable through procedures of rational calculation. This is because in a world made safe for cost-benefit analysis, conflict is the result not of irreconcilable substantive differences, as much of political theory has traditionally argued, but of the use of faulty "decisional premises."<sup>70</sup> Correcting those premises that distort our understanding of the true costs of public services, or that encourage suboptimal supply (either over- or undersupply) of such services, should lead, in a world fashioned from the postulates of cost-benefit analysis, to the virtual elimination of social conflict. Indeed this is precisely what is envisioned by advocates of the widespread use of cost-benefit analysis.

Engaging the problems of society from the vantage point of cost-benefit analysis is an exciting proposition for its advocates. It heralds the possibility of the triumph of reason over power and the displacement of politics with analysis. To some this triumph and displacement are instrumental but not complete, as they cannot be. To others a fundamental reordering of society and government is necessary. In both cases, however, the basic aspirations are the same—only the expectations about the level of accomplishment differ. Perhaps because of the attractiveness of such a triumph, and because only the level of accomplishment is in dispute, advocates tend to be unpersuaded of the tenuousness of the conditions necessary for cost-benefit analysis to be fully effective. But regardless of whether the feasibility of these conditions is conceded, the basic objections to a world made amenable to cost-benefit analysis remain.

#### WHAT'S WRONG WITH BEING REASONABLE?

The worlds projected in formalist and informalist visions of cost-benefit government would require a profound transformation in the basis of governance. Fundamentally, these worlds call for the abandonment of rule by consent in favor of the rule of reason. The replacement of consent with reason as the foundation of governance is intended to dispense with the inefficiency and irrationality of politics, but in fact it dispenses with democracy in favor of the administrative state. The issues that normally give rise to questions of democratic participation and consent are simply without salience in the transformed world of cost-benefit analysis. Indeed, the ideals of democracy could not be tolerated in the new world, and only its veneer would survive the transformation.

### CONSUMER SOVEREIGNTY AND THE DECLINE OF THE CITIZEN

Government by cost-benefit analysis has no need of a participative citizenry. The processes of public decision making depend in such a model upon the identification of objective values. It is only with their identification that rational solutions can be found. To involve the citizenry in the process of identifying values could only result in contamination of the process, for citizens can offer merely subjective assessments of their idiosyncratic circumstances. To operate effectively, the world of cost-benefit analysis must be insulated from, and preemptive of, the participation of its citizens.

The arguments in a recent U.S. Supreme Court case covering the 1980 cotton dust standard set by the Occupational Safety and Health Administration (OSHA)<sup>21</sup> illustrate the tension between cost-benefit rule and democratic participation. At issue in the case was whether the OSHA standard could be challenged on the ground that it failed to pass a cost-benefit test. The 1970 enabling legislation mandated the promulgation of a standard that "most adequately assures, *to the extent feasible*, on the basis of the best available evidence, that no employee will suffer material impairment of health" from contact with cotton dust.<sup>22</sup> The American Textile Manufacturers Institute and the National Cotton Council of America, representing industry, argued that the "to the extent feasible" requirement should be interpreted to include the demonstration of net benefit. Not to do so, it was claimed, would extend to the Secretary of Labor and OSHA extraordinary discretion to interpret the requirement as mandating a workplace "utopia" free of risks and hazards based upon the unrealistic and irresponsible ideal of absolute safety.<sup>23</sup> Justice Rehnquist, in a minority opinion supporting the industry position, was even more blunt: The cotton dust standard, he asserted, represents a choice of the balance to be observed between the statistical possibility of death or serious illness and the economic costs of avoiding death or illness; but Congress, by exacting the law without conducting a cost-benefit analysis or defining some other objective standard to determine this balance, abdicated its elected responsibility.<sup>24</sup> A majority of five justices with one abstaining concluded that a cost-benefit test of the cotton dust standard was not required because Congress, in establishing the need for the standard, had chosen "to place preeminent value on assuring employees a safe and healthful working environment limited only by the feasibility of achieving such an

environment."<sup>25</sup> Any further analysis of the standard's costs and benefits beyond that implicitly performed by Congress when it passed the 1970 Act would be, in the minds of the Court majority, an obstruction of legislative will.<sup>26</sup>

What this case illustrates is the constitutional upheaval implied by the installment of cost-benefit rule. If accepted, the industry argument and Rehnquist dissent would have required the substitution of purported objective values<sup>27</sup> for democratic participation as the basis of legitimacy for government policy. Under their vision of governance, a constraint on policy choice based on apparent objective circumstances (in this specific case, the medical, engineering, and economic facts surrounding textile manufacture) is dictated in order to ensure responsible policy selection. Without such a constraint, values could be introduced that obscure a rational understanding of the facts of the situation (such as the placing of preeminent value on a safe and healthful work environment) and that may lead to unjustifiable intrusions of political activity into society's affairs. Participative government in this view should confine itself to discovering the objective conditions of the issue at hand and affirming them in public policy. This is to be contrasted with the Court majority position, which denied the necessity of a cost-benefit constraint on policy choice and thereby preserved the opportunity for political participation in setting the boundaries of such choice, rather than merely the opportunity to select among preselected alternatives. Under cost-benefit rule such an opportunity would be denied.

But if participation is precluded, what is left of the idea of citizen? Little more than a glorified notion of consumer. In a world of cost-benefit analysis, governance is a consumption good. Citizens decide whether and to what degree they are satisfied with the products of governance, but they have no responsibility for the production of governance or even overseeing its production. Indeed, the expectation is that citizens have no substantial interest in such matters beyond the desire for objective government. The problem of political sovereignty, so hotly debated in Western political theory, is discovered to have little more meaning, rationally speaking, than economic utility won or lost, as measured by triangles of benefit under demand curves.

### FREEDOM = OBJECTIVITY; JUSTICE = EFFICIENCY

Without an active citizenry, and with an objectively grounded intolerance of democratic participation, can such a world be demo-

cratic? The notion of democratic cost-benefit rule would require, to say the least, a novel use of the term. Consider, for example, the classic association of democracy and freedom. "Free" in the new world refers neither to the absence of constraints on choice or action nor positively to the pursuit of collective goals such as the elevation of the intellectual and moral character of society, the promotion of social equality, and the like. Such definitions presuppose the cost-effectiveness (at least) of freedom, a judgment that must necessarily be questioned. Instead, freedom under cost-benefit rule refers to the appreciation of objective existence. It is the knowledge that decisions about one's future are based upon and limited to "the facts" that make one free in this world. This is not to say that the worlds projected by the advocates of cost-benefit government would not be populated by those sensitive to democratic ideals of freedom. Rather, it is to argue that a world fashioned from the postulates of cost-benefit analysis is indifferent to concerns with democratic freedom.

If cost-benefit rule is unconcerned with democratic freedoms, it likewise shows little regard for the need to ground governance in principles of justice.<sup>28</sup> As with ideals of freedom, those of justice do not find a central place in the administrative state, not because of an aversion within the mechanics of cost-benefit analysis to matters of justice but, rather, as the result of an indifferent regard to them. What is fair, moral, respectful can be incidental only to what is of maximum net benefit. Cannot such qualities either be monetized and included in rational calculations or, as Braybrooke and Schotch suggest, treated as peremptory considerations? In one sense they can be, and many writers have attempted to explain such a possibility.<sup>29</sup> But their suggestions appear to be negatively rather than positively motivated as a response to the charge by critics that such matters cannot be adequately incorporated. Little attention seems to have been given to the question of the desirability of doing so.<sup>30</sup> Most important, the issue only begins with the question of whether these dimensions can be incorporated in the cost-benefit calculus. It must also be ascertained: with what confidence can they be included, especially in comparison with what are considered the nonnormative dimensions of policy issues; and at what cost to our understanding of the role and importance of these considerations would this be done?

Again, consideration of a recent U.S. Supreme Court decision<sup>31</sup> is useful. In a 1981 case concerning the constitutionality of warrantless inspection of mines, the Court with one dissent held that

a warrant may not be constitutionally required when Congress has reasonably determined that warrantless searches are necessary to further a regulatory scheme, and the federal regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.<sup>32</sup>

The legal arguments underlying the decision are complex and concern differences historically made by the courts between privacy rights pertaining to the home and those pertaining to commercial property under the Fourth Amendment. But suppose that such differences were not decisive in the case. Would it be appropriate to substitute a cost-benefit test as the condition for authorizing a warrantless search? That is, could the surprise inspection be justified if the expected benefits in terms of deterred harmful activity outweighed the costs to mining owners' privacy and other expenses? Clearly the Supreme Court's concern with privacy rights would be of incidental importance under a cost-benefit test. Indeed, the act of violation itself would be secondary to the extent of harm. If the mine violations that might be found were expected to be petty and the deterrent effect slight, a cost-benefit rule would not only fail to support the inspection, but would furnish grounds as to why a search would be *unjustifiable*. That is, used as a rationale of law, the cost-benefit test could sanction a finding that enforcement of the law would be unjust. This result is not peculiar, of course, if the legitimacy and purpose of law are located in an equation of justice with the optimization of net benefit. However, it does raise the interesting paradox of law violation as just, due to questions not of conscience but of prudence. In this regard Ronald H. Coase's essay on social cost<sup>33</sup> takes cost-benefit reasoning to its logical conclusion by conceiving social harm as "necessarily reciprocal." Under this framework harm is not exclusively a condition of victims because, insofar as laws are enforced to protect or compensate victims, an additional harm is created in the form of the reduced utility/wealth of prosecuted violators. A truly novel idea of justice!

If in the administrative state the achievements of governance are not judged by the extent to which the governed are free and public actions just, then what is to be the measure? The success of government, if we are being reasonable, is to be measured by whether it works efficiently. In a society governed by right reason, government is held accountable for the delivery of policies of maximum yield relative to the amount of

resources used—that is, policies that satisfy the optimality *Grundnorm*. Government has little to do with the goal of ensuring that public actions are moral, normatively preferred, or fair. Although such qualities may perhaps be deemed desirable, their “intuitive”<sup>34</sup>—or, more exactly, normative—foundations preclude them from being central commitments in the constitution of Pareto-optimal society.

#### HYPOTHETICAL DEMOCRACY

If such a foundation of governance is to be called democratic, it is democracy without the attributes that have traditionally been thought to be fundamental to the idea. Cost-benefit rule imputes little value to democratic processes of decision making, preferring calculation to consent as the basis of public choice. It ascribes no special importance to the ideals of democratic freedom and justice, reserving ideal status instead for the purportedly objective and efficient decision. Ultimately it is right reason, not democratic participation or values, that is cherished and nourished under cost-benefit government.

70 But might it not be argued in defense of cost-benefit tests of government policy that democratic attributes can be grafted onto the decision-making process; that the above criticisms prove only the non-essentialness of democracy for cost-benefit rule, not its incompatibility; and that the real issue avoided by such criticisms is the prosperity of citizens under such rule? That is, are we not overlooking the fundamental importance of the *results* of government—whether the greatest happiness is provided for the greatest number? That, at the end of the day, is what cost-benefit rule supposedly delivers, and what democracy may not.

First, caution should be observed in conceding the compatibility of the democratic graft. As Mishan has pointed out, accommodating democracy may be more costly than avoiding it:

Decision-making through the political process, especially in a liberal democracy, is time-consuming. Even if the democratic process, alone and unaided, were somehow able to offer to each person the same opportunities and the same combination of goods that he already receives through the market, economists would have no difficulty in convincing people that the substitution of voting mechanisms for the pricing mechanism would take up an unconscionable amount of time and effort.<sup>35</sup>

Furthermore, where political decisions are unavoidable, a strong case based on the yardstick of results can be made for using the market rather than the vote as the model for decision making:

And yet, prodigal though it would be in the use of time and effort, it is hardly conceivable that the political process will bring about an allocation of goods and resources as satisfactory as that brought about through the market. Whatever the outcome of the political process, it is highly unlikely . . . that such an outcome could not be materially improved by introducing pricing mechanisms. And, if some improvements can be effected by the introduction of such pricing mechanisms, they can also be effected by simple allocation rules (such as net or proportionate benefit rule) which “stimulate” the workings of the price mechanisms.<sup>36</sup>

Thus democratic compromises may be too expensive and inferior in deliverable results compared to those achievable by “econocracy,”<sup>37</sup> as one writer has termed cost-benefit government. Cost-benefit advocates do not want to get too carried away with democratic ideas.

Democracy’s advocates should be equally uneager to accept its compatibility with cost-benefit rule. Even if the value of certain democratic mechanisms could somehow be warranted as positive and sizable, their function in this form of government would likely not be very encouraging. For example, representational voting might remain in the world of cost-benefit analysis, but the rationale for its retention would be quite different from that of traditional democratic theory. As noted earlier, cost-benefit analysis is predicated on the assumption that if normative dilemmas exist, they exist as attributes of the problems engaged and not as attributes of social analysis itself. This being the case, how are the problems for analysis to be selected without bias under cost-benefit rule? Clearly any selection must be normative, for it necessarily will favor consideration of one normative dilemma over another. To have some technical apparatus of analysis determine which problems are investigated and which are not would obviously undermine the very basis of authority on which rational society operates. But “democratic” voting removes at least the appearance of such a problem by transferring blame to the citizenry and its subjective proclivities. The insidious result is that a democratic mechanism is used to relieve the administrative state of democratic responsibility.

The fundamental problem with cost-benefit reasoning on this score, however, is that it misrepresents the issue. By challenging democracy to

yield utilitarian results, advocates presume the normative legitimacy of the criterion of net benefit while completely devaluing democratic results. It is as though the choice of democracy were inherently utilitarian. The possibility that decisions arrived at through democratic participation and consent could be valued in themselves independently of their economic implications is simply not recognizable from a cost-benefit perspective; such a notion makes no sense because it ignores the constitutional status accorded to efficiency. There is a fallacy, of course, in this line of reasoning which Weinrib has dubbed the "fallacy of results" and which he illustrates with the following analogy:

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 Assume that Jones loves playing golf and plays eighteen holes every Sunday morning. One particular Sunday Jones realizes that he cannot spare the time to play his usual game. Instead he goes out into his back yard, digs a hole, and drops the ball into it eighteen times. When questioned about his peculiar behavior, he explains, 'Well, since it was impossible to play golf, I decided to mimic what happens when I actually play golf. Golf, as you know, is a game which results in a ball being repeatedly deposited into a hole in the ground. Of course, this is not the whole game, which includes the process by which this result is to be attained. But surely the result is the most significant part of the game, so that is the element which I reproduced. After all, what I was playing was not actual golf (that was impossible in the circumstances), but only hypothetical golf.' It is unlikely that this explanation will persuade many golfers to try hypothetical golf when circumstances prevent the playing of actual golf. . . . [And] a claim by Jones that his commitment to actual golf led him to try hypothetical golf would be regarded as incoherent, since the challenge which is integral to the former is completely lacking in the latter.<sup>38</sup>

To reap the promised benefits of cost-benefit rule, it will be necessary to forego democracy of the actual kind for a hypothetical variety, a bargain not without its costs.

The intolerance of the administrative state to participation and debate on questions of values is traceable directly to the distinctive attribute of this system of governance—its lodging of authority in technocratic reason rather than political consent. There is no place in the workings of this system for majority votes and minority objections to interfere in, much less withhold legitimacy from, public actions dictated by rational analysis. Cost-benefit analysis and the technocratic system of governance it implies depend upon right reason to convince us

of the sensibleness of policies selected by its use. In this respect the achievement of a world in which the contributions of cost-benefit analysis to policy are optimized is the achievement of irresistibility for the decisions and actions of government. It is a world in which we must abandon political choice, participation, and dissent to gain efficient and unassailable social order.

### CLASS AND COST-BENEFIT ANALYSIS

Perhaps the most embarrassing problem with being reasonable in the cost-benefit sense is that it can provide no escape from the world of power and politics. The conditions necessary for the effective use of cost-benefit analysis in matters of public policy are normative and ideological. They favor certain conclusions about the social order over others and certain actions in that world over others. These conditions are neither morally modest nor trivial. They cannot be represented as mere analytic devices to focus attention on certain relevant attributes of social problems because they introduce systematic bias that can be removed only by violating the requisite conditions for the use of this technique. Indeed, the technique is imbued with values that strongly favor the status quo.

Three analytic conditions, as noted in an earlier section, are assumed in cost-benefit analysis: that social problems are independent and bounded in scope; that alternative solutions for problems are commensurable and finite; and that objective values exist for measuring the cost of problems and benefits of solutions. The independence condition provides closure to the calculation of costs and benefits and is therefore an essential requirement for the performance of cost-benefit analysis. If social problems are largely interdependent, then the costs and benefits of certain actions to resolve these problems cannot be assumed to aggregate mainly in the first few orders of effect. It also means that what might at first appear, in terms of direct costs and benefits, to be the superior solution may not be so superior after indirect effects are accounted for.

The obvious license taken in characterizing social problems as independent and bounded in scope should be fully recognized. But its unreality is not the primary problem. Rather, it is the implication that effective government requires that social problems be engaged in "manageable" units; that a policy perspective that divides social problems into their component parts is not only adequate but preferable



on rational grounds. Such an understanding presumes that basic change is always less desirable than a series of marginal ones and that no change is less costly than significant change, if for no other reason than that the "sunk costs" of the status quo are always sizable. It encourages the view that social problems need not be engaged from the vantage point of the collectivity, that issues of governance do not concern the whole of society but only the individuals and communities affected under a piecemeal definition of the problem. Policy, constrained in this manner, poses no threat to the existing order and thereby implicitly, if not explicitly, confers approval upon its persistence.

The condition imposed by the cost-benefit framework on the nature of solutions to social problems is equally necessary from the standpoint of the validity of cost-benefit analysis, yet highly normative in the context of public policy. The condition that alternative solutions, when such exist, be finite in number and commensurable is essential if any calculation is to take place. Indeed, a singular advantage of cost-benefit analysis—the precise comparison of rival solutions—hinges on the commensurability and finiteness of alternatives. There can be no assurance of a superior alternative without this condition.

72 Commensurability and finiteness among alternatives presume, however, that any conflict that may exist among them is reconcilable. Such an assumption might be reasonable in purely economic contexts where individuals select among alternatives all of which are desirable to them and for which interactive effects upon others (externalities in the language of economics) do not exist to any significant degree. But implanted in the world of political choice and conflict, this condition is far from innocuous. It promotes the view that the exercise of state power is indeed largely an administrative issue, having to do with organizing public action in such a way that it efficiently services nominally contending interests. But on what grounds is one to suppose that political conflict is not real? Certainly such a question is not empirical but normative. The reasons for accepting this understanding of collective conflict must derive from certain desired attributes of decisions based upon it. What might these be?

If conflicting political solutions are ultimately commensurable, then there is no need to depend upon subjective individuals to discover the right solution, with all the inefficiency that would involve in terms of both time and resources. Indeed, relying on contending parties to develop solutions to their problems is a clearly inferior course to follow when a commensurable calculus is available to ferret out the inevitable

exaggerations of each side. Thus one stands to gain efficiency and precision by the commensurability condition. Such gains, however, can be looked at just as easily as enormous costs. To say the least, this view of political solution is extraordinarily antagonistic toward the possibility that radical changes are needed to solve social problems. Ruled out by the commensurability condition are solutions in which the status quo suffers losses that cannot be "netted out" by gains elsewhere because the conflicts involved are irreconcilable (e.g., expropriation and divestment policies). Additionally, commensurability implies that where proposed solutions cannot be compared, public action cannot be defended. This suggests that from the perspective of cost-benefit analysis, the focus of governance is not and should not be the intractable problems of civilization. If such a view is intended to act as a proscriptive limit on public action, what an extraordinary limit it is. To employ this method effectively, the most consequential problems must be forsaken for the most manageable. If instead it is intended only as a restriction on the use of cost-benefit analysis, the silence of this technique on the fundamental questions of governance belies claims of its significant value in grappling with social problems. Under either interpretation, the dilemma with accepting this condition is that it puts a substantial premium on public inaction, on doing nothing or at least little, and discourages significant concern for the most difficult social problems. How else is such a posture to be understood if not as a massive endorsement of the status quo?

The most significant and controversial claim is that objective values exist to measure problems and alternative solutions. It is on the basis of this claim, more so than any other, that the image of cost-benefit analysis as nonnormative is based; it is what gives cost-benefit analysis the aura of "hard" social science.<sup>39</sup> The most prevalent measure of value employed in cost-benefit calculations is market price. Whether it is the cost of equipment and salaries of personnel necessitated by a new environmental rule imposed on an industry, or the budget savings of government programs eliminated by a change in the rule, cost-benefit calculations rely heavily on market prices to measure alternative possibilities. But are prices objective measures of collective value? Certainly only in the rare circumstance of perfect competition would conventional price theory suggest that this would be the case. And even there assumptions regarding income distribution equity, economic mobility, information cost and availability, and the like would be required to assure at least approximate equality of starting positions.

Such assumptions cannot be made in this world without serious distortion. Moreover, as has been pointed out, "perfect competition is . . . a logical category; it does not describe any real world situation nor one that is attainable and hence cannot serve as a norm or standard to be achieved in the world in which we live."<sup>40</sup> When the assumptions undergirding perfect competition are dropped, the meaning of prices as measures of value is greatly complicated. In a world where all are not equal, those more equal than others have a greater opportunity to influence prices.

Such differential influence can have profound consequences. For example, if one considers the problem of condemnation to clear land for a new highway, can existing housing prices be used as objective measures of the costs of such condemnation? The all too predictable consequence of their use, of course, is that slums become the optimal places for building highways. Similarly, in monopolistic and oligopolistic markets in which firms can pass on increased costs to them in the form of higher prices, should such prices be used to determine costs and benefits? Many examples could be cited with the same implication: Prices in an unequal world cannot readily be taken to represent nonnormative and nonideological measures of collective value.

73 In addition, the use of prices raises the problem of the individual versus the collective as the unit of measure. The presumption even in the ideal circumstance of perfect competition is that the sum of individual valuations constitutes a collective determination of value at a specified level of production. Yet much of this century's contribution to economic theory suggests that this equality is often tenuous. The theories of public goods and externalities point to vast areas of "social" production in which aggregate and collective value need not be synonymous.<sup>41</sup> Indeed to represent them as such may, according to these arguments, yield socially inefficient as well as inequitable results. The areas in which aggregate-collective equality cannot be preserved, of course, coincide almost completely with the domain of governance. If, therefore, cost-benefit analysis is to be employed in resolving such issues, either its use must be curtailed to the exception where aggregate expressions of value can be taken to stand for collective value, or this theoretical dilemma must be ignored. If the former, cost-benefit analysis once again retreats to an excuse for public inaction; if the latter, the purported objectivity of its measure of social value is reduced to dogma.

The other principal measures employed in cost-benefit calculations are taken from social and actuarial distributions. These include

demographic distributions of age, race, sex, occupation; epidemiological distributions of disease, symptoms, and the like; economic distribution of goods and services production, use, and cost; and so on. They are used by the cost-benefit analyst to develop projective information on likelihoods of certain outcomes. One of the central problems with their use, however, is that they incorporate patterns of social inequality into the cost-benefit calculation. For example, if the problem were to which of two medical research programs should public funds be allocated to yield maximum net benefit, and one program was concerned with a disease found prominently among whites and the other among blacks, likelihoods would suggest that, *ceteris paribus*, the first program would prove of higher net benefit because whites tend to live longer than blacks in this country. Yet such a determination would amount to an endorsement of an economic and social system that was an essential factor in determining this differential. Again, numerous examples could be offered identifying normative issues associated with the use of supposedly objective social and actuarial distributions. In sum, the "objective" values employed in cost-benefit analyses cannot be represented in the context of public policy formulation as neutral and nonnormative.

Cost-benefit analysis as a tool for evaluating issues of governance injects considerable and significant normative content. This content largely favors incremental change and often no change at all. Significant social problems of inequality and injustice are undervalued or not valued at all by this procedure. And this mode of analysis projects values arrived at mainly by individuals without regard to their collective consequences as social values or fails to provide any assessment whatsoever. Certain of these attributes can be, and have been, used with ingenuity to obstruct policies defending the existing order. But taken together, they make clear that the most likely beneficiaries of cost-benefit analyses in the long run are those most interested in preserving the social and economic system largely as it is.<sup>42</sup>

## CONCLUSION

In sum, the advocacy of cost-benefit analysis as a mode of governance is based on two flawed premises: first, that the basic dilemma of modern governance is how to arrive at rational definitions and ultimately solutions of complex social problems; and, second, that cost-benefit analysis provides one important method for achieving rationalization of

our problems and that it can furnish nonnormative solutions to our normative social problems. Cost-benefit analysis is not neutral, does not offer nonnormative solutions, and cannot rationalize social problems without considerable violence to our understanding of these problems. The problems of modern governance, moreover, are not mainly administrative and in need of technical definition. They are political, as they have always been, and require the exercise of political will and choice. Although such solutions will necessarily be inefficient, temporary, and confused by some measures, this is a small price to pay compared with what has so far been offered as so-called nonpolitical alternatives. The rational utopia projected by advocates of cost-benefit analysis ultimately depends upon surrender to the irresistibility of right reason. In this respect, the use of cost-benefit analysis to decide matters of governance is by no means a modest proposal that we "enjoy the advantages of the latest intellectual techniques."<sup>43</sup>

If we are serious about the evaluation of state power and its use, a far more rigorous approach is needed than what is delivered by cost-benefit tests. The truths found by this mode of analysis consist mainly of "a discovery of the meaning of the assumption originally made";<sup>44</sup> in this instance, the meaning of the optimality *Grundnorm*. Self-sealing analysis of this kind can only confirm the validity of "the efficient outcome." There is *no* other conclusion available: "Once a policy has been adopted or a decision has been made which leads to . . . an 'optimal' result, further inquiry into the problem is precluded. The problem has been solved when the analysis reaches the *Grundnorm*."<sup>45</sup> To achieve an understanding of the costs and benefits of existing and alternative social arrangements that is not self-sealing, we will have to go beyond Pareto optimality (of either the pragmatic or pure variety). Instead, a theory is needed that integrates economic, political, and ideological factors in the analysis of systems of social valuation; a theory, in particular, that accounts for the institutional nature of social value rather than a method that simply manipulates the artifacts of social value. As Liebhaufsky notes, "a cost-benefit study is a quantitative statement of the qualitative judgements of the economist making the study," and "ought to be recognized for what it is . . . a piece of evidence presented by one side or the other."<sup>46</sup> Such evidence is not a substitute for an understanding of political economy or its operation.

## NOTES

1. Alice Rivlin, *Systematic Thinking for Social Action* (Washington, DC: Brookings Institution, 1971); Tom L. Beauchamp, "The Moral Adequacy of Cost-Benefit Analysis as the Basis for Government Regulation of Research," in Norman E. Bowie, ed., *Ethical Issues in Government*, Philosophical Monographs, Third Annual Series (Philadelphia: Temple University Press, 1981), 163-175.
2. E. J. Mishan, *Cost-Benefit Analysis* (New York: Praeger, 1976); David Braybrooke and Peter K. Schotch, "Cost-Benefit Analysis Under the Constraint of Meeting Needs," in Bowie, *Ethical Issues in Government*, 176-197.
3. Beauchamp, "The Moral Adequacy of Cost-Benefit Analysis," p. 163. Beauchamp also characterizes the technique as a "means to moral ends."
4. *Ibid.*, p. 164.
5. *Ibid.*, pp. 172-173.
6. *Ibid.*, see pp. 166-167 for a definition of a "loose sense" of cost-benefit analysis; and pp. 169 and 172, respectively, for an identification of "acceptable" and "reasonable" as primary criteria.
7. Rivlin, *Systematic Thinking*, p. 5.
8. *Ibid.*, p. 16.
9. Kenneth E. Boulding, "Economics as a Moral Science," *American Economic Review* 59 (1969): 7.
10. Rivlin, *Systematic Thinking*, p. 15.
11. Mishan, *Cost-Benefit Analysis*, p. 385.
12. *Ibid.*, pp. 382-383.
13. *Ibid.*, p. 382, 385.
14. James M. Buchanan and Gordon Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (Ann Arbor: University of Michigan Press, 1962), p. 172.
15. H. H. Liebhaufsky, "The Problem of Social Cost"—An Alternative Approach," *Natural Resources Journal* 13 (1973): 616-619.
16. Mishan, *Cost-Benefit Analysis*, p. 385.
17. *Ibid.*
18. Braybrooke and Schotch, "Cost-Benefit Analysis," p. 187.
19. *Ibid.* See pp. 179-181 for an analytic definition of such standards.
20. This term is used by James G. March and Herbert A. Simon to describe the basis of organizational behavior and is the core idea for their definition of organizational-administrative, as distinct from political, authority. See their *Organizations* (New York: John Wiley, 1958); also Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*, 3rd ed. (New York: Free Press, 1967). The relationship between cost-benefit analysis and organization theory has received little attention despite the fact that they share virtually identical conceptions of decision and decision making.
21. American Textile Manufacturers Institute, Inc. et al. v. Raymond J. Donovan, Secretary of Labor, U.S. Department of Labor et al., *U.S. Law Week* 49 (June 16, 1981): 4720-4736.
22. *Ibid.*, p. 4720.

23. In congressional debate of the bill this was the principal objection of opponents. See *Ibid.*, pp. 4727-4728.

24. *Ibid.*, p. 4735: "Congress simply abdicated its responsibility for the making of a fundamental and most difficult policy choice—whether and to what extent 'the statistical possibility of future deaths should . . . be disregarded in light of the economic costs of preventing those deaths.' . . . That is a 'quintessential legislative' choice and must be made by the elected representatives of the people."

25. *Ibid.*, p. 4733.

26. An earlier U.S. Court of Appeals ruling concluded precisely this and its view was specifically affirmed in the Supreme Court majority opinion.

27. In the third section of this chapter, the claim of objectivity is challenged.

28. Indeed, one proponent of cost-benefit-type reasoning has argued that rights and justice should be administered so as to maximize their market value, thus substituting economic performance for justice as the primary aim of law. See Richard A. Posner, *Economic Analysis of Law* (Boston: Little, Brown, 1972), and also his "Utilitarianism, Economics and Legal Theory," *Journal of Legal Studies* 8 (1979): 103-140.

29. Buchanan and Tullock, *The Calculus of Consent*; Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957); and Posner, *Economic Analysis of Law*.

30. A prominent exception is the utopian writings of Milton Friedman. See his *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962); and *Free to Choose: A Personal Statement*, with Rose Friedman (New York: Harcourt Brace Jovanovich, 1979).

31. Raymond J. Donovan, Secretary of Labor v. Douglas Dervey et al., *U.S. Law Week* 49 (June 17, 1981): 4748-4753.

32. *Ibid.*, p. 4748.

33. Ronald H. Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (1960): 1-44. For a critique of neoclassical economic views of the law, see H. H. Liebhafsky, "Price Theory as Jurisprudence: Law and Economics, Chicago Style," *Journal of Economic Issues* 10 (1976): 27; and John Byrne and Steven M. Hoffman, "Efficient Corporate Harm: A Chicago Metaphysic," in Brent Fisse and Peter A. French, eds., *Corrigible Corporations and Unruly Law* (San Antonio, TX: Trinity University Press, 1985), 101-136.

34. See Braybrooke and Schotch, "Cost-Benefit Analysis," p. 189, where it is argued that ideals such as justice and equality depend upon nonrational justification.

35. Mishan, *Cost-Benefit Analysis*, p. 384.

36. *Ibid.*

37. See Peter Self, *Econocrats and the Policy Process: The Politics and Philosophy of Cost-Benefit Analysis* (London: Macmillan, 1975). Econocracy is defined at p. 5.

38. Ernest J. Weinrib, "Utilitarianism, Economics and Legal Theory," *University of Toronto Law Journal* 30 (1980): 321-322.

39. Liebhafsky, "'The Problem of Social Cost,'" p. 620.

40. *Ibid.*, note 22.

41. The dilemma in using market values as proxies of social value and market-based reasoning to devise government policy is examined in detail in J. M. Buchanan and G. F. Thirlby, eds., *L.S.E. Essays on Cost* (London: Weidenfeld and Nicolson for the London School of Economics and Political Science, 1973). See also Buchanan's *Cost and Choice*:

*An Inquiry into Economic Theory* (Chicago: Markham, 1969). These statements of theoretical reservations are of special interest because they are by neoclassicists. Nonneoclassical objections to the equation of price with social value are, of course, numerous.

42. For additional discussion of the class bias of cost-benefit analysis, see Mark Green and Norman Waitzman, "Cost, Benefit and Class," *Working Papers for a New Society* 7 (May-June 1980).

43. Braybrooke and Schotch, "Cost-Benefit Analysis," p. 196.

44. Liebhafsky, "Price Theory as Jurisprudence," p. 27.

45. Liebhafsky, "'The Problem of Social Cost,'" p. 625.

46. *Ibid.*, pp. 622, 623.

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