

# A Strategic Deconstruction of John R. Commons's Regulatory Discourse

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The relevance of the postmodern perspective to extending economic thought has been increasingly recognized within the institutional economics literature [illustrative works include Mirowski 1988, 1989; Samuels 1988, 1990a, 1990b, 1991; Dugger and Waller 1992; Waller and Robertson 1991; Brown 1991; Tool 1979; Mayhew 1987]. Prominent within this emerging stream of research is the theme that there exists no unitary truth concerning an objective economic reality, but rather economic narratives based upon particular theoretical perspectives [Hoksbergen 1994] in which notions of economic reality are rhetorically constituted [Jennings and Waller 1994; Sebberson 1990; Waller and Robertson 1990, 1991]. This focus on narrative and rhetoric is important, according to Waller and Robertson [1990, 1038] because [Economic] writers are not merely describing their age; they are helping to shape it. They have a role to play informing consciousness and understanding. Writers are not only influenced by the age in which they write—and the ages that came before—they can also influence their own age, and to the degree that their ideas strike a responsive cord, the age that follows.

The relevance of Jacques Derrida's deconstructionism to understanding this rhetorical constitution has been generally acknowledged within the institutional economics literature [e.g., Hoksbergen 1994; Samuels 1990a; for further contextualization of this tradition, see Stoekl 1992].<sup>1</sup> However, rhetorical analyses performed to date concerning the work of Pierce [Mirowski 1988; 1989] and Veblen [Waller and Robertson 1990; Jennings and Waller 1994] has not followed this approach. Similarly, the importance of economist John R. Commons's work to the early development of institutional economics has been widely recognized. His efforts to define social behavior in terms of how we create institutional structures and techniques to resolve conflicts of interest and establish regulation of government-industrial relations has received considerable attention [e.g., Gonce 1976; Rutherford 1983; Carter 1985; Parsons 1985; Ramstad 1986, 1987; Covaleski et al. 1995; Chasse 1986; for a relatively postmodern interpretation, see Dugger 1992a, 1992b]. However, the rhetorical properties of his reasoning, which we argue still resonate within current economic discourse, have not been subjected to deconstructionist analysis.

The purpose of this article is to contribute to the continuing development of the postmodern perspective within institutional economics by conducting a strategic deconstruction of John R. Commons's economic rhetoric. Specifically, we will focus on how Commons dealt with the concepts of "objectivity" and "subjectivity" within what we

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<sup>1</sup> In McCraw [1984, 59–60], there is further discussion of the interpretive problems and internal instabilities associated with the reasonable rate. A cost-plus formula relies on assets (before or after depreciation), on operating costs (included or not included), and assets valuation procedures (market, book, etc.). This range of options in turn leads to various incentive problems. He concludes by observing that "in practice, these problems promoted the rise of ingenious accounting methods by corporations, all calculated to maximize revenues in the face of regulatory limits of percentage rates of return. At worst, they made the process of rate regulation a ritualistic charade, played out in the form of full-scale 'ratecases' as part of the routine operations of commissions. Such cases conducted under elaborate procedural laws, often turned into extremely laborious hearings dominated by lawyers and engineers, incomprehensible to the ordinary citizen."

will describe as his “formalist” and “expertise” “voices.” Toward this end, the remainder of this paper is organized into four sections. In the first section, Jacques Derrida’s deconstruction perspective is sketched, and related research in sociology, organizational theory, accounting, and critical legal theory is briefly described. Section two historically embeds Commons’s work in the rise of the Progressive movement within the state of Wisconsin. Section three describes Commons’s use of the formalist voice, which prioritizes objectivity, while the fourth section describes his use of the expertise voice, which prioritizes subjectivity. Finally, the last section describes his use of a “reflective voice.” This is directed at providing reflections for institutional economics.

## **Deconstructionism as Applied to Institutional Economics**

Jacques Derrida’s work [e.g., 1978a, 1981a, 1981b, 1988] forms part of the postmodernist discourse concerned with “the search for instabilities” [Lyotard 1984, 53]. This search rejects the study of human agents as centers of rational behavior in favor of the study of social life in terms of indeterminacy and paradox. Rhetoric and narrative are not seen as passively representing or communicating aspects of the world. Rather, rhetoric and narrative are seen as constituting reality.

Deconstruction attempts to demonstrate the artificiality of the institutionalized, ordinary, taken-for-granted structures of the social world by showing these structures to be inseparable from the rhetoric that expresses them. It proceeds by subjecting written texts to critical examination. These texts are seen as the products of human agents’ efforts who impose order on their social environment through their writings, which contain latent self-contradictions. In turn, the privileged knowledge asserted by any human agent is compared to the rhetorical or linguistic strategies the human agent adopts, thus revealing the intertwining of “facts,” “theory,” and “evidence” with human interest and human manufacture [Cooper 1989, 481–482; Ulmer 1985].

Before applying deconstructionism to the analysis of John R. Commons’s rhetoric, we should briefly describe some of Derrida’s key concepts: logocentrism, overturning or metaphorization, undecidability, dangerous supplementarity, difference, and differance. Derrida uses the term “logocentrism” to refer to the belief that “something” that originates in an objective reality exists outside of the human experience, outside of discourse and text. This is the belief that a transcendent rationality and order validates and gives meaning to human activity, and that “truth” can somehow be known. According to Cooper,

Logocentrism rests on a philosophy of “presence,” the idea that things and events are given to us as fully constituted experiences. The social sciences are replete with examples of presence-e.g., individual, society, organization, environment-whose unexamined “naturalness” and “obviousness” privileges

them as “essences,” and thus puts them beyond critical analysis [1989, 488; see also Ulmer 1985, 46–48].

Derrida [1978a] rejected the philosophy of “presence” and logocentrism by recognizing the role of language and rhetoric in the social construction of reality:

[T]he entire history of the concept of structure must be thought of as a series of substitutions of center for center, as a linked chain of determinations of the center. Successively, and in regulated fashion, the center receives different forms or names. The event I call rupture presumably would have come about when the structurality of structure had begun to be thought. Henceforth, it was necessary to begin thinking that there was no center, that the center could not be thought of in the form of present-being, that the center had no natural site, that it was not a fixed locus but a function, a sort of nonlocus in which an infinite number of sign substitutions come into play. This was the moment when language invaded the universal problematic, the moment when, in the absence of a center or origin, everything became discourse [Derrida 1978a, 279–280]<sup>2</sup>

Deconstruction challenges the self-evidence of “truth” and “structure” through a double movement of “overturning,” or what Cooper [1989, 483] terms “metaphorization.” In the former or first movement, the binary structure of a text (for example, moral versus evil, reason versus unreason, inside versus outside, rationality versus irrationality; in our analysis, objectivity versus subjectivity) is recognized along with the hierarchical prioritization of the two components. Derrida noted that “we are not dealing with the peaceful coexistence of a *vis a vis*, but rather with a violent hierarchy. One of the two terms governs the other, or has the upper hand. To deconstruct the opposition is to overturn this hierarchy at a given moment” [1981b, 41]. Thus, reason is overturned by unreason, or subjectivity is overturned by objectivity. But then, because there is consequently a new hierarchical structure, the second movement of metaphorization must be immediately engaged. Here, the “interpenetration” of the two binary terms is recognized in which each defines and gives substance to the other [Derrida 1978b]. For example, the meaning of subjectivity depends upon an understanding of objectivity, and vice versa. The identity of the two terms fades into a process where opposites merge in a “constant *undecidable* exchange of attributes” [Norris 1987, 35; Cooper 1989, 483–484] in which there can be neither objectivity nor subjectivity, inside nor outside-these binary oppositions being undecidable.

Though undecidable, however, one term does tend to weigh more heavily than the other. Through the concept of “dangerous supplementarity,” or adding one term to the

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<sup>2</sup> Derrida defines discourse as “a system in which the control signified, the original or transcendental signified, is never absolutely present outside a system of differences. The absence of the transcendental signified extends the domain and the play of signification infinitely” [1978a, 280].

other at a later time, Derrida called attention to one term being incomplete or deficient until the second term joins it. Paradoxically, the apparent marginal or supplementary member is actually essential for the primary member to exist. As a necessary and essential addition, the supplemental term may consequently be conceived of as the new controlling center, which in turn, is incomplete and deficient until supplemented by the prior central term, and so on, until the two terms “interpenetrate” one another.

Closely allied with these concepts of “undecidability” and “supplementarity” are Derrida’s key notions of “difference” and “différance.” “Difference” represents a form of self-reference in which each of two binary terms is embodied in the other, thereby presenting a paradox or duality that defies any singular or unitary understanding. Thus, the concept of difference simultaneously suggests a processual “unity” between terms *and* their “division.”

Concerning “difference” Cooper observed that

In order to dramatize the *processual* nature of difference as distinct from its meaning as a fixed presence, Derrida invents the term “différance.” Différance embodies the two meanings of the French verb “différer”: to *defer*, or postpone, in time, and to *differ* in space. The very fact that these two meanings reside in “différer” means that the differential nature of the word cannot be grasped as a singularity, and that one of its meanings always has to be *deferred*. Derrida intends that différance should be understood as a continuous *absence*, as a force that is continually beyond our grasp and therefore never properly present... Différance thus destroys the idea of simple location and indeed the logic of identity which relies on locatability. But différance, as undecidable movement which cannot be pinned down, can at least be *delayed* or *deferred* [Cooper 1989, 488].

Consistent with the emerging postmodern perspective within institutional economics [e.g., Hoksbergen 1994], with his focus on rhetoric, text, and différance, Derrida emphasized the critical role played by the *users* of rhetoric and the *generators* of *text-individual human agents* such as John R. Commons. However, while the human agent uses rhetoric, the individual agent is not in sole control of the text in either its preparation or its interpretation. According to Cooper,

The paradox of human agency in Derrida’s analyses lies in censoring that force-call it différance or undecidability—which gives the agent its power. Built into the actual process of agency, therefore, is an unconscious tendency to deny its own origins... In effect, this means that the agent necessarily suppresses the processes involved in its own “becoming,” its own history and causative processes, which arise out of the conflict intrinsic to différance [1989, 491].

For Cooper and Burrell, formal properties of economic institutions are seen not so much as fixed structures or as products of immutable laws, but as “processual responses” to conflicting *social* forces, wherein “rationality” becomes rationalization that is directed at the masking of inner contradictions [Cooper and Burrell 1988, 92-93]. In turn, deconstruction can be directed at revealing the artificial, self-referential character of institutionalized, taken-for-granted structures of economic institutions.<sup>3</sup>

Although deconstruction has gained recognition and application in organizational theory [Cooper 1989; Kilduff 1993; and Martin 1990], sociology [e.g., Baker 1989], and even accounting [e.g., Arrington and Francis 1989; Covalski et al. 1995], one deconstruction of particular relevance here is one performed by Frug [1984] that critiques four general legal theories that implicitly support and defend the bureaucratic form of organization. Frug identified the bureaucratic form of organization as the primary exemplar of institutionalized power in America and pointed out that these four general theories inherently fail to address the problems of bureaucratic power and alienation because they are structured around the binary opposition of objectivity and subjectivity, when in fact each is a “dangerous supplement” [Derrida 1981a] to the other. Among these four theories, two are particularly relevant because of their prominence in John R. Commons’s institutional economics rhetoric. Briefly, the first theory we will employ in our strategic deconstruction, which Frug calls the “formalist model,” describes bureaucracy in such rhetorical terms as “instrumental rationality,” “technocratic efficiency,” “neutrality,” and “objectivity.” This model relies on the machine-like, impersonal, rationalist, neutral mechanisms-wherein objectivity resides inside the structure itself. The second theory, which Frug called the “expertise model,” holds that not only is the exercise of discretion necessary to bureaucratic administration, but it is also its *raison d’etre*. This model relies on the application of the objectified knowledge base of experts having a close association with scientific endeavor. Here, though, the exercise of judgment is by experts whose professionalism-coming as it does from some external, objective source-both encourages the application of a structured knowledge base, creativity, and flexibility, and limits bureaucratic power and personal domination. In the state of Wisconsin, this model came to be manifested in the commission form of government.

In both theories, the theme of objectivity counters the exercise of arbitrary power by political or business actors and introduces a fear of administrative-bureaucratic domination as the “machine” ignores human values. In particular, objectivity plays a prominent role in the public sector, where “legitimacy means a political order’s worthiness to be recognized” [Frug 1984, 1285]. Objectivity is so important, in fact, that it must not be infected by its dangerous supplement, subjectivity. And yet including

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<sup>3</sup> Similarly, Lyotard [1984, 28] noted the interpenetration of interests of the state and the support of rational structures when he identified a loss of faith in “the grand narrative” that serves to legitimate both science vis-a-vis rationality and the state: “The state spends large amounts of money to enable science to pass itself off as an epic: The state’s own credibility is based on that epic, which it uses to obtain the public consent its decision makers need.”

some place for subjectivity in bureaucratic affairs ensures that individuality will not be suppressed and that human domination will be contained. A more detailed treatment of Frug's work is deferred until our actual analysis of Commons's rhetoric.

## The Religious-Social-Historical Context of Commons

In keeping with prior commentary within institutional economics [e.g., Waller and Robertson 1990], it is important to historically contextualize Commons's work. During his career, Commons's writings spanned a range of matters that may be broadly classified as dealing with the question of social order and governance [Dugger 1992a]. In *Proportional Representation and Representative Democracy* [1900], Commons dealt with the question of political order (i.e., representation in government); in *Sociological View of Sovereignty* [1965], *Social Reform and the Church* [1894], and *Races and Immigrants in America* [1920], he dealt with the question of social order (i.e., institutional modifications to the corrosive aspects of self-interests, etc.); in *The Distribution of Wealth* [1893], *Legal Foundations of Capitalism* [1924], *Institutional Economics* [1934], and *Industrial Goodwill* [1919], he dealt with the question of industrial/economic order (i.e., transactions, private property, regulations). Within this work, and in a manner parallel to the administrative law instability between the objective and the subjective, runs a series of related themes. Concerning *politics and society*. Commons contrasted the rampage of public passions (often termed interests/self-interests) against the rule of law and reason. Thus, social order is sought via institutions that quell and channel the destructive spirit of individualism and contain the disordering implications of democracy. Concerning *economics*. Commons contrasted competition (natural "impersonal" processes) and monopoly (unnatural, "personal" processes). In turn, these demarcations were based on a singular preoccupation: the divergence between private and public interests, or the tension between the individual and society. Notably, Commons clearly saw that this divergence was rooted in and carried by the individualistic foundations of modern society. In arguing for the religious roots of modern individualism, he also recognizes that the public good is inevitably endangered by individuals pursuing their narrow self-interest [1894, 7–11]. Accordingly, the problematic for Commons emerged from the recognition that contemporary transformations, such as utility monopolies, threatened to subvert and be at odds with the religiously inspired liberal creed of individualism that they were based on. Hence, our analysis will focus on his role in formulating an approach to the regulation of utilities that was necessitated, according to him, by the distortions of the public interest engendered by the growth in the concentration of economic powers. Indeed, as we will show later, Commons's emphasis on the role of institutions in ordering the potential of destructive effects of

individualism is an attempt to introduce a degree of predictability and order-objective structures-into the play and irrationality of rampant individualismsubjectivity.

Much of Commons's interest in the legal aspects of economics goes back to Richard Ely, his teacher at Johns Hopkins University, who later recruited him to the University of Wisconsin, and to German scholars. While at Wisconsin, Ely sent Commons on extensive projects as a caseworker for charitable organizations and also convinced him to study social/economics problems from a historical perspective using "concrete facts." Commons subsequently became associated with the Progressive movement in Wisconsin, specifically developing an approach to utility regulation under the aegis of Governor Robert M. La Follette. Like many Progressives, John R. Commons and Richard Ely were part of the Social Gospel movement that rejected the orthodox Christian position that humans are innately sinful. It maintained that human nature is essentially good but is undermined by a corrupt society. The social gospelers generally sought to restore, if not reverse, what they thought were the unnecessary consequences of industrialization, urbanization, and the expansion of technology. Their avowed goal was to "christianize business, industry, politics, and the city's immigrant populations, all of which [were] regarded as the major unregenerated spheres of society" of which "business was declared to be the most significant unregenerate institution within the American social order" [Greek 1992, 56–58; see also Commons 1894, 89–92]. Thus, the spirit of reform and conversion, which had a long history within Christian social thought, was directed at containing the spread of social and spiritual evils particularly resident in government and big business [Mills 1943]. The movement remained true to the inner-worldly asceticism of Protestantism and called for a society founded on love, service, and equality instead of coercion, exploitation, and inequality [Greek 1992, 62].<sup>4</sup> The gospelers believed that "by using his intellect man can remake society, that he can become the creator of a world organized for man's advantage" [Woodrow Wilson, in Waldo 1948, 16], and that conscious social action would eradicate sin and hasten the coming of God's kingdom, and, consequently, would promote social reforms to "purify American society" [Woodrow Wilson, in Waldo 1948, 58].

The term "social" carried particularly positive connotations for the social gospelers. To establish the kingdom of God on earth, *individual* salvation was seen as dependent on *social* salvation and hence, "no individual is soundly converted until he comprehends his social relations and strives to fulfill them" [Gladdens, in Greek 1992, 41]. Here, a similar sentiment was expressed by Commons [1894, 71] when he stated that "society is the subject of redemption for the sake of the individuals who compose society." It is with this emphasis on the social that the moral dimension of the Progressive interventionist strategy of changing the processes of government was founded. According to Hamilton and Sutton [1989], this strategy was embraced by Progressives as a consequence of a

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<sup>4</sup> One of Commons's solutions to the social/economic problems growing out of the maldistribution of wealth was for the church to insist on the precept "love thy neighbor" and thus contribute to the "introduction of love into social relations" [1894, 11].

weak central state, the federalist structure of autonomous local and state governments, patronage party politics, and the large role played by the business community in the political arena.

After having established the pre-eminence of social salvation, the next step in legitimating the interventionist strategy was to displace the importance of natural law, God, or the ethical, responsible behavior of the individual in favor of an experiential grounding in social groups-increasingly organizations. In turn, social reforms comprising the interventionist strategies could express societal values and goals in a way amenable to their accomplishment by bureaucracies. But here, the operationalization or encoding of societal goals and values within the formal structure of organizations could be accomplished only by such experts as public administration scientists and sociologists “who took up the idea of organization as a banner” during this era:

In [the Progressive] period, organization was not merely a formal apparatus and certainly not only a means to accomplish an envisioned end; instead organization in the lexicon of American life became a goal in itself, a method developed to ensure fairness and to preserve what is valued in human life. In the revision that occurred in American thought at the turn of the century, the act of organization was intrinsically an ethical act, vital to human nature and to society [Hamilton and Sutton 1989, 14–15].

The movement relied not merely on a rhetoric of social morality rooted in organizations, but also of science. The social gospelers, adopting such secular values as progress and evolutionism, sought to transform theology into “the science of redemption [which would] offer scientific methods for the eradication of sin” [Rauschenbusch, in Greek 1992, 65]. Indeed, in the words of Visser T Hooft:

... it is one of the outstanding characteristics of the social gospel movement that it believes not only in the compatibility of science and Christianity, but also in the indispensability of their mutual interpenetration. This is a conviction that often leads to a further belief that through the contribution of modern science humanity is being enabled to understand Christianity and Christ himself much better than any preceding generation [in Greek 1992, 65].

In turn, the social gospel movement contributed to the demand for “facts” in order to identify the nature, extent, and pervasiveness of social problems, and thus to convince the public of the legitimacy of their critique and objectives [for contrast, see Hoksbergen 1994, 685]. In doing so, they promoted the reliance on science. They also contributed to the legitimization of experts as the “secular ministers” who would help the gospelers learn “the laws of nature [and] ... the divine methods” to assist them in their redemptive tasks [Strong 1902, 104].<sup>5</sup>

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<sup>5</sup> Consult Commons [1894, 20–21, 31, 45] wherein he calls for Christian ministers to study and give sermons based on sociology and more generally for the church to absorb the lessons of science.

It was not merely enough, however, for Progressives to claim the immorality of vested political and business interests and the morality of their own approach to governance [Miller and O’Leary 1989, 251–256]; the movement also wanted to invoke an active, interventionist strategy through a series of social reforms to change the face of government [Hamilton and Sutton 1989]. These reforms essentially involved installing a government bureaucratic machinery informed by science and run by professionals [Covaleski and Dirsmith 1995, 150–151].

At the turn of this century, Progressives, under the leadership of La Follette, sought to establish a political culture wherein societal values were articulated and then acted upon within a government structure. Progressive government would serve to identify relevant “facts” that would be fed into “scientifically based” bureaucratic machinery run by “professional” administrators [for an allied discussion in the business sector, see Miller and O’Leary 1989, 251–256; Wilson 1956; Kolko 1963; Wiebe 1967]. Reform efforts championed by Progressives in Wisconsin included: direct primaries; constitutional amendments on the initiative, referendum, and recall of non-judicial officials; the liberalization of the amendment procedures; home rule for cities; women’s suffrage; a dramatic increase in the number of appointed versus elected administrative officers; workmen’s compensation; the establishment of the Industrial Commission, Industrial Education Board, Railroad Commission, and Public Utility Commission; regulation of work hours for women and children; state income tax; the financing of extensive highway construction; conservation of natural resources; life insurance; and the establishment of the Board of Public Affairs, whose purpose was to modernize Wisconsin’s financial practices relating to resource acquisition and allocation [Margulies 1968, 133–135].

Relying upon the landmark *Munn v. Illinois* [1877] case in which the U.S. Supreme Court upheld Illinois’s right to regulate the “exploitive” prices charged to customers by a private sector company, La Follette introduced a bill (in 1905) that eventually established the Railroad Commission. This commission based its efforts on the earlier work of Henry Carter Adams [for example, 1887, 1903, 1918], the first statistician of the U.S. Interstate Commerce Commission. Adams devised an accounting system that detailed railroad revenue, expenses, and earnings, a system that served as a basis for much subsequent federal regulation [Churchman 1976]. Milo Maltbie [1901] eventually transformed this system into the pioneering uniform system of accounts, which served as a tool for the general social control of private enterprise [Trebing 1984; Ulen 1980]. In Wisconsin, La Follette’s Railroad Commission sought to regulate rail pricing by devising an “accounting rate of return” mechanism for gauging what would be a “fair” return on invested capital for railroads.

In turn, this basic approach was specifically emulated and mobilized by Commons, who La Follette chose to draft what would become the Wisconsin Public Utility Law of 1907 [Commons 1934, 126]. As eventually administered by the Railroad Commission, the Public Utility Law employed an “objective rate of return model” reliant on Commons’s notion of “physical valuation” along with the closely allied concept of rea-

sonable value” [1907, 1910, 1913]. This model subsequently became known as the “cost plus pricing regime” for regulating rates charged to customers of Wisconsin’s electric utilities and was first administered by the Railroad Commission and then the Public Utility Commission, both of which were purportedly comprised of experts. Because of the visibility and success of Commons, La Follette, and the state of Wisconsin in the Progressive reform efforts, components of the 1907 Law, vis-a-vis accounting rate of return regulation, gained rapid acceptance in at least 29 states and the federal government by 1913 and indeed impacted utility regulation for most of the twentieth century [Trebing 1984].

## Commons’s Formalist Voice

A significant feature of the Wisconsin legislation is ... its reliance on the physical valuation as the first step in regulation. Physical valuation means nothing more or less than the cost of construction or reconstruction of the physical property. Accompanied by a complete system of uniform accounting with special precautions as to depreciation and construction accounts, every person in the State may know at the end of each fiscal year exactly the rate of profit which each company or municipality has made on the actual property invested. With the Wisconsin idea of “physical valuation” as the starting point, every citizen can determine for himself just as well as the Commission whether the rates and fares charged by the corporations are yielding an excessive profit [Commons 1907, 222].

The notion of “reasonable value” in the physical valuation approach was the critical element in the Wisconsin Public Utility Law of 1907. To begin with, physical valuation is objective “-it is based on, for example, facts concerning the cost of assets subjected to mathematical calculations. Reasonable value, in turn, is physical valuation augmented with a subjective supplement, wherein subjectivity takes the form of discussion/debate among informed people. More specifically, an accounting rate of return on a company’s assets (or rate base) is based upon the concept of “physical valuation,” which Commons [1907, 1910, 1913] saw as essential in drafting the Wisconsin law. The concept of physical valuation serves as the foundation for setting prices, which are intended by regulators to allow utilities to earn their cost of capital on the depreciated, original cost of their assets as well as to recover their operating costs [Mereba 1994]. In Commons’s opinion, the best method would be to tie the rates to a *reasonable return* on the value of invested capital. As such, “the accounting system is the central endogenous variable available to regulators in the context of rate of regulation. [I]t is through accounting procedures that wealth is distributed [among] groups and electricity rates are set” [Jarrell 1979, 105].

However, Commons saw that his concept of “reasonable value” might have been threatened with too much subjectivity and therefore took this deferred subjectivity

to another plane—the collected opinions expressed in courts of law. Harter [1962] suggested that in order to learn the meaning of the concept of “reasonable value” Commons turned to the study of common law, which the institutional economist maintained was the means by which many societal habits and customs become encoded in a governance structure. Commons attributed his notion of reasonable value to state Senator A. W. Sanborn, from whom Commons obtained the idea that legal valuations were oriented toward the future [Horwitz 1992]. As Commons [1934, 123] stated, “From this starting point, I worked for many years in making futurity the main principle of (institutional) economics, distinguished from all other schools of economic thought.” In an evolving economic-political system, new forms of social behavior emerge in response to new needs or opportunities, and these new forms give rise to conflicts which must be resolved by the courts. Those forms that are “reasonable” or good in the eyes of the court are accepted, while those that are “unreasonable” or bad are suppressed. As Commons [1924, vii] explained,

From the Court decisions it seemed that anything “reasonable” would be sustained, and so we had to use the words “reasonable value” ... whether we knew what it meant or not.

Reasonable value, in turn, represents both an upper and lower limit of value as implicitly established by the American judiciary [Commons, in Dorfman 1964]. It is identifiable not as reflecting or seeking to reflect some notion of objective worth, but merely as “good” or “viable” in the eyes of competing parties in a court of law. Thus, case by case, common law produces standards for gauging economic behavior [Harter 1962, 219]. According to Commons:

Reasonable values and reasonable practices were entirely new words introduced into the theories of political economy. Often my students, and sometimes my economist critics, said that “reasonable” was purely subjective, and that there were as many meanings of reasonableness as there were individuals. Such a term placed the determination of reasonableness in the arbitrary mind of whatever individual happened to be in authority. But I considered this objection to be an inheritance from the subjective individualism of preceding economic theorists. A collectivist theory of value derived from existing best practices, from custom, the common law, and the decisions of courts, could make reasonableness “objective” and therefore capable of investigation and testimony, leading to the formation of working rules for collective action in control of individual action. ... *So I contended that, in economic conflicts, reasonable values and reasonable practices were not the subjective opinions of anybody, but were the collective opinion, expressed in action, of those whose economic interests were conflicting, but who investigated together, and knew by experience, all of the facts* [1934, 156, 160; emphasis added].

Thus for Commons, objectivity was defined by the degree of social-legal consensus concerning "reasonable value." Objectivity-social objectivity-and the social process of developing a reasonable value were intertwined.

Throughout his writings, John R. Commons supported the articulation and use of impersonal, bureaucratically organized forms of administration to regulate, for example, public utilities. For Commons, "the state is not the people," nor "the public"; it is the "working rules" [1924, 149]. Hays [1959] suggested that the turn-of- the-century Progressive movement attracted people such as Commons who advocated the "rational" use of resources, with a focus on efficiency, planning, and the application of objective knowledge to broad social problems. This movement served to legitimize a system of decision making in which technical experts allocated resources according to such calculative criteria or physical valuation thought to be objective, rational, and above the give-and-take of political maneuvering. It made the political seem apolitical, and it took the debatable beyond the realm of debate. In short, Hays argued, this movement sought to substitute and legitimize one system of decision making-the one inherent in the spirit of modern science, technology, and business-for another, the one inherent in stylized but subjective exchanges among political actors. The regulation of monopolies by the state became a more elaborate, procedurally oriented process, involving measurement and prediction, and invoking such business techniques as accounting for directing the course of events toward predictable outcomes. This shifted moved decision making away from the grassroots-local government-to larger networks of human interaction-the State.

Accounting and statistics, deployed for example in the Public Utility Law of 1907, produced the calculations that affected regulation. But these calculations were similar to those found in and exported from big corporations, e.g., accounting rate of return, now interpreted, modified, and taught to a new cadre of professional public administrators by academics at the University of Wisconsin. As Wisconsin State Legislature Librarian, McCarthy [1912], who took part in drafting the 1907 Act, observed,

We cannot attempt to regulate railroads or great public utilities unless our public service is in itself so organized that it has a thorough understanding of the intricate systems of cost accounting and efficiency used by these great economic units.

McCarthy went on to propose that only with uniform systems of accounting abstracted from business could such industries as electric utilities be objectively regulated and protected from the regulatees themselves-big business.

Reflecting the Social Gospel underpinnings prominent in this machine-like approach to administration, one finds repeated references to "objective facts" that could be fed into the right parts of the machine to yield merely technical as opposed to inherently political decisions, or wherein the social issues of the time "... were no longer political-they were economic" [Commons 1934, 96]. Governor La Follette considered

the “give-and-take” in political decision making unnecessary because the “facts” could purportedly reduce uncertainty such that they could “forever silence further cavil and pettifogging on a particular dispute” [*Congressional Record* May 10, 1890].

Consistent with the deconstructionist perspective discussed earlier, Commons’s work sought to establish the logocentric presence of objectivity, with its dangerous complement, subjectivity, being deferred [Frug 1984]. This formalist voice, in turn, relies on the machine-like, impersonal, rationalist, neutral mechanisms-objectivity resides inside the structure itself. Here, for example, Mashaw [1985, 267] observed that in the Progressive era, “administration, at least bureaucratic rationality, should be equated with the liberal ideal [because] the impersonality of rules [is] a safeguard against domination, a means for maintaining the social preconditions of individual moral agency.”

Within the formalist model, objectivity is so important that it must not be infected by its dangerous supplement, subjectivity. And yet subjectivity in bureaucratic affairs is required to ensure that bureaucratic domination of humans is averted.

The formalistic model assures a place is made for subjectivity by having constituents specify their goals, whereupon the bureaucratic machine is invoked to attain those goals neutrally and objectively. Frug suggested that the formalist model presents a “hard” inside (here, rational regulatory practice) controlled by a “soft” outside (here, social consensus generated by common law). What is primary, however, is objectivity with subjectivity deferred [Derrida 1978a]. Paradoxically, inclusion of objectivity’s dangerous complement, subjectivity, threatens to become the exercise of arbitrary power as it threatens to overturn objectivity. Thus, by strengthening its dosage, as in *pharmakon* being both medicine and poison, subjectivity threatened to poison the state’s regulatory efforts.

The presence of subjectivity in the formalist voice of Commons, and in Governor La Follette’s political actions, did not go unnoticed by critics of the era, who challenged the discretionary nature of the role of the physical valuation to utility regulation. Among them, Bennett [1931] argued that the Public Utility Law of 1907 “empowers the Commission to fix just and reasonable charges for services,” yet leaves the citizen to search “the law in vain for any statement of the policies and principles which are to be followed by the Commission in the determination of the reasonableness of the charges.” Citing Section 196 of Wisconsin Public Utility Law as being the only area where “the substance of everything which the law has to say about the principles of rate-making and valuations” is specifically presented, Bennett criticized the overly general nature of the law, giving the following example:

Paragraph 196.03. *Utility charges to be reasonable and just.* Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility ... shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

Paragraph 196.05. *Utility property valuation.* The Commission shall value all the property of every public utility actually used and useful for the convenience of the public [1931, 1].

As Bennett [1931, 2–3] argued, “The legislature empowers the Commission to fix just and reasonable rates, but is silent, utterly silent, as to the principles or the policies which are to be controlling in the determination of reasonableness.” In rebuttal, Commons argued:

Herein the law is elastic enough to offer the opportunity for ingenuity and experiments that may combine the principle of State regulation with that of private initiative, thus circumventing the probable damaging effect of government regulation on enterprise and initiative, and on the investment of capital for extensions and improvement [1907, 223].

Bennett [1931] countered that in the absence of more specific statements of principle in the statutes, the Commission actually became empowered to put into practice its own definitions for specifying “reasonable” rates. The Commission provided a quite generous rate of return to investors, which Bennett criticized as leading to covert manipulation by “get-rich-quick interest groups.” This

... prudent investment principle of “value” evoked by the Commissions and found by them to be so workable, vastly simplifies and expedites and lessens the cost of fixing rates [1931, 3–4].

In the *U.S. Senate Hearings on the Physical Valuation of Property of Common Carriers* [1913, 90–91], Commons conceded that “although these valuations are very liberal, they were all based consistently on the principle of cost rather than value.” Commons’s position was, however, challenged:

You are making the National Government in that case a private nurse to the investing public, and when the [corporations] have been wise and enterprising and efficient you are taking away their reward, but when they have been unwise and inefficient and negligible in business, you are making it up to them, which may be good policy for the future, but it is not the case that prevailed in the past [*U.S. Senate Hearings on the Physical Valuation of Property of Common Carriers* 1913, 108],

The major concern of this challenge in the U.S. Senate hearings pertained to the incentives embedded in a cost-plus formula for regulation, i.e., rewards for the high-cost corporations and disincentives for the low-cost corporations. In fact, Maxwell noted that the position of corporations was actually strengthened rather than weakened by utility regulations:

In spite of the Progressives' campaigns against monopoly, the administration unwittingly fostered monopoly in the process of regulating many public service corporations. Because the Railroad Commission lacked a yardstick for measuring unit costs, it tended to guarantee a fair return and profit regardless of the efficiency or inefficiency of the operation of a power plant, water works, or street railway. The physical evaluation of properties was only a partial check against inefficiency and the trend was toward higher rates to compensate for rising costs [1956, 202].

Thus, the physical valuation formula is objective in that the formula is based upon the objective fact-historical cost of asset. However, the objective is supplemented by subjectivity in that the formula is augmented with a social consensus as to what is seen as a reasonable rate of return. Physical valuation is the formalist element by which the supplement-subjectivity-is deferred though which ultimately injects objectivity. As Frug [1984] noted, paradoxically, the only solution to the deferment of each dangerous supplement is obtained through added doses of the supplement itself. Here, the only cure to the subjectivity that resides, in deferred status, within the formalist voice is added doses of subjectivity until it threatened to overturn the logocentric position of objectivity within the formalist voice. As Derrida [1976, 154] observed, "A terrifying menace, the supplement [here, subjectivity] is also the first and surest protection against that very menace." As discussed in the next section, the addition of more subjectivity took the form of the "expertise voice" and the Commission form of government.

## Commons's Expertise Voice

Instead of laying down rigid rules, as has been customary, the [Public Utility] Law creates a commission and staff of scientific investigators. These are commanded to "investigate and ascertain" for each public utility what is the "reasonable value" of the service which it renders to the public. To do this, the commission is given the most extensive powers, the widest freedom of action, and, particularly, the strongest protection against the courts... In this way the commission becomes practically the referee or master in chancery to the court. Its record is made the record of facts to which the court is practically confined, and the court does not try the case *de novo*, as it does in the injunction procedure. The real distinction which entitles the commission to its position as a fourth branch of government, is not administration, but investigation and research. But its investigations are not the academic research of the laboratory and study, nor the journalistic investigation of the agitator, but the constructive investigation of the administrator [Commons 1913, 440]... But in the arrangement finally decided upon, the scientist, the engineer, the physician, the sanitarian, who are the technical experts, are called in and utilized, just as they are in private employment,

when their services are needed and when the practical men have problems beyond their technical knowledge. If, however, the scientists dominated the investigations, their results, however brilliant and conclusive, might not be reasonable. Their investigations are indispensable and fundamental and must be taken into account, and should be liberally provided for. But, unless they lead to practicability, which only can be supplied by the practical man, they run the risk of unconstitutionality [Commons 1913, 444].

John R. Commons, following the lead of Governor La Follette, persistently espoused the contributions of non-partisan commissions or experts and intellectuals could make to the state and the progressive movement in the development and application of laws [Maxwell 1956; Kolko 1963]. In turn, Wisconsin Progressives promoted their ideology of efficiency and expertise by defining the University of Wisconsin as an apparatus of the state that had “no individuality” and “no rights” apart from the state’s will [La Follette 1913; McCarthy 1912]. Such popular rhetoric of this period as “the university which runs the state” and “the expert on tap not on top” [Nesbit 1973, 429] solidified the Progressive ideology, which became the basis of the “Wisconsin Idea”: the expertise of the university in service to the state. According to Kolko [1963, 213], the Progressives

... exploited the combined talents of a great university, and let the political decision-making process increasingly fall into the hands of the presumably positivistic academics. Relying on the talents of reform-minded professors at the University of Wisconsin, La Follette [assumed] that difficult issues could be resolved by simple reference to experts.

La Follette believed, for example, that tax reforms and utility regulation presented technical, application-oriented problems in mathematics, statistics, and economics, rather than in politics-problems requiring an objective knowledge base above the political fray:

How has it been possible that both the people of Wisconsin and the investors in public utilities have been so greatly benefitted by this regulation? *Simply because the regulation is scientific.* The Railroad Commission has found out through its engineers, accountants, and statisticians what it actually costs to build and operate the railroad and utilities [Maxwell 1956, 359; original emphasis].

The “Wisconsin Idea” advocated the expansion of the state’s functions to safeguard the well-being of its citizens and the conscription of experts to identify the needs of the people and then devise and administer reform policies to serve these needs. “Why,” the Progressives asked rhetorically, “should not the State be *the* Efficiency Expert?” [Maxwell 1956, 132; see also Larson 1977]. Salvation from the sinister subjectivity of big business and corrupt government could be gained if the power of the state was guided by intelligence, reason, and the ideology of scientific management. However, according

to Commons [e.g., 1910; 1913], this expertise still had to be supplemented by facts and the will of Wisconsin's "practical men" who called for a "reasonable" solution to the problem of regulation.

According to Frug [1984], in contrast with the formalist voice, within the expertise model, objectivity resides in deferred status and relies on the application of the objectified knowledge base of experts. Objectivity, having a close association with scientific endeavor, resides outside of the administrative structure of the state in the form of professional knowledge [Abbott 1988]. It is the external objectivity that channels and guides the subjective judgment of the expert. What is primary, however, is the subjectivity of the expert in order to curb the abuse of bureaucratic domination and preserve human individuality. Objectivity, in turn, is temporarily and spatially deferred to the scientifically derived knowledge base of the external profession [Derrida 1978a]. Thus, the expertise model assures the exercise of a contained subjectivity by the expert's exercise of seasoned judgment through reliance on a "hard" external source of knowledge. Frug suggested that the expertise model presents a "soft" inside controlled by a "hard" outside. What is primary is subjectivity, with objectivity deferred or placed into a subordinate though still present position.

As was true with the formalist model, the inherent flaw of the expertise voice lay in the arbitrary placement of the "line" between objectivity and subjectivity—that the "hard" outside of objectivity would be insufficient to contain the "soft" inside of subjectivity and that the experts would advocate for their own interests, rather than those of the citizenry, and the facts and the will of a practical citizenry would be insufficient to curb interscene subjectivity. One might expect contention to have arisen over the "line" between subjectivity and objectivity, wherein their *differance* [Derrida 1978a] suggests both their division and their interpenetration.

Consistent with this theme, Abbott [1988, 16], for example, asserted that the professions, including the emerging profession of public administration, advance the "myth" of "professional," albeit subjective judgment by aligning this judgment with the social values of rationality, efficiency, and science. Under the banner of professionalism, state resource allocation decisions, wherein social purposes are identified as merely technical, become not a matter of politics, but rather of "facts" analyzed by the objective, "scientific" tools of practice [Freidson 1986, 8–9]. But science can, of course, become interest laden and penetrated by subjectivity. Hayek [1952], for example, cited Napoleon Bonaparte's use of science and bureaucracy to reflect his own interests in transforming French society and to institutionalize the shift in power from the aristocracy to his own bureaucratic form of government. Similarly, La Follette repeatedly referred to the value of mathematically based statistics applied by experts enjoying "no individuality."

This blurred distinction between or interpenetration of the subjective and the objective, however, did not escape recognition in an active political arena, and the recognition was itself strongly influenced by power and self-interest. While some excellent legislation no doubt derived from the University of Wisconsin faculty experts [Margulies

1968, 281–288], this source of expertise proved a double-edged sword. Encouraged by such Progressive party adversaries as the Yankee Old Guard, campaign slogans such as “Do we want a State University or a University State?” and a heavily publicized five-fold increase in university appropriations from \$587,773 in 1910 to a proposed \$2,863,320 in 1914 [Margulies 1968, 148], a challenge formed. It took the form of an argument that the “soft inside” was inadequately contained by the “hard outside.” Ironically supported by statistical “facts” pointing to dramatically increasing appropriations to commissions, T. C. Richmond of the Taxpayer’s League observed, “A few years ago we had in Wisconsin something like a democracy. Now that has changed ... people are no longer trusted to manage their own affairs... Real democracy is gone. Bureaucracy has taken its place.” LaFollette’s political arch rival, Emanuel Philip, charged that “this is not a mere campaign for office. It is a fight for constitutional representative government, as opposed to the delegated powers which build up a dangerous bureaucracy” [Margulies 1968, 147].

Wisconsin Progressives came to be challenged for their purportedly self-interested, patronage-based system that assigned individuals to ostensibly selfless commissions. Writing to rebut La Follette’s 1913 autobiography, *Old Guard Yankee*, John M. Whitehead observed that:

Mr. La Follette successfully appealed to these young men [Wisconsin’s academic community] on the ground of self-interest, all the while, of course, putting up a show of very great seriousness and solemnity ... La Follette pushed these young men for local offices whenever he could, and he told them that if they would join his standard they would break up the old ring and have a chance at the political crib themselves [Margulies 1968, 22].

The point is that a new, young guard filled the logocentric position of the adversarial Old Guard, and that the “fine” between the subjectivity of the expert and the objectivity of scientifically derived knowledge became problematic. In turn, the formalist voice of Commons undertook to deal with the problem of subjectivity by applying stronger doses of its dangerous supplement, objectivity, for example, in the form of the physical valuation principle, whose strength would purportedly prevail over subjectivity. The tools of administration—or a hard inside supplemented by a differed, soft outside—stand out here as noted in the previous section, but again, the “line” between the objective and the subjective became contentious as critics similarly challenged this approach to state governance. While the human agent John R. Commons consciously employed rhetoric in advancing both the formalist and expertise visions of state governance, it is evident that this rhetoric “was quite definitely not under the agent’s own control” [Cooper 1989, 491].

## Common's Reflective Voice and Reflections

In the negotiations leading up to the Public Utility Law of 1907, the joint legislative committee did not rely so much upon public hearings required by “due process of Law,” where everybody has a lawful right to be heard and the conflicting opinions are [reconciled], as upon private and even confidential conferences with the leaders of the interests to be brought under the law, where concessions could be made and the investigations of experts could be weighed and balanced... It was the general class of negotiations which I afterwards defined as “rationing transactions” distinguished from managerial and bargaining transactions. I could tell [before the enactment of the Public Utility Law] just how the Railroad Commission would administer and interpret the law. This foreknowledge enabled us to greatly condense the bill, leaving a huge field of investigation and discretion to the Commission, instead of inserting into the law a multitude of minute details, so familiar and so often conflicting in American legislation [Commons 1934, 125–126].

Reflecting the deconstructionist perspective, Frug [1984] reasoned that the formalist and expertise forms of rhetorics make room for both objectivity and subjectivity, and a Une is drawn between the two. The rhetoric of objectivity overcomes a human fear of subjectivity exemplified by interest-laden behavior and the exercise of arbitrary power. The rhetoric of subjectivity in bureaucratic affairs, in turn, ensures that a place has been made for considering human values, beliefs, and goals to be served by either the bureaucratic structure or the expert. Frug argued that those, such as John R. Commons, who use either the formalist or expertise voice must continually strive to combine and yet separate the realms of objectivity and subjectivity by somehow drawing a line of demarcation between the two, a Une that undermines each voice by reason of its arbitrary existence.

Frug also concluded that the interpenetration of the formalist and expertise voices has a much darker side. He reasoned that theorists, or in our case institutional economist John R. Commons, who *combined* the two forms of rhetoric possess a potentially powerful tool of deception:

Theorists [e.g., Commons] can reassure themselves [and the citizens and utility companies of Wisconsin] about the existence of objectivity and subjectivity by deferring the needed element to some model not then under examination. When they find that the concept of expertise is too manipulable to ensure objectivity, they can assume that the objectivity necessary to curb managerial power can be found elsewhere (i.e., in the formalist voice). The same sort of deferral power can be found elsewhere (i.e., in the formalist voice)... The same sort of deferral pervades the attempt to locate

subjectivity somewhere: if it doesn't seem to be where one is looking, one can act as if it is safely lodged in another part of the system. Adding the ingredients together, then, allows people to believe that although the choice they are considering at any particular moment is empty, one of the others is surely better. This ability to move the necessary subjectivity or objectivity around endlessly helps theorists convince themselves and us that the internal difficulties of each particular story of bureaucratic legitimacy are unimportant. But this reassurance is comforting only as long as the process of deferral is itself hidden from view [Frug 1984, 1379].

While the literature of institutional economics is now beginning to come to terms with the rhetorical constitution of economics [Hoksbergen 1994], it is readily apparent that critics of the Progressive era had recognized at the turn of the century the inherent flaws of both Commons's formalist *and* expertise voices—that neither the issue of requisite objectivity nor subjectivity, nor placement of the “line” segregating the two, could be deferred to be considered and acted upon at some future time and place. And thus, the concepts of objectivity and subjectivity within either voice represent not a false duality, but rather a dualism in which they are interpenetrated such that each loses its unique identity [Cooper 1989].

Based upon his experience with actual utility regulation, rather than upon his theoretical work [Tool 1979; Hoksbergen 1984, 701], Commons himself apparently recognized the paradoxes inherent in his rhetoric. He recognized that the structures of the formalist voice were “elastic and manipulable” and thus were flawed by subjectivity, and the knowledge and selflessness of regulatory commissions were likewise flawed by a need for “rationing transactions” wherein regulations and their application would be influenced by the very interests of the utilities to be regulated. While recognizing these paradoxes, Commons was not crippled with indecisiveness and paralysis, but saw the need for continuing to support the bureaucratic form of economic institutions with formal structures and experts because they were “natural and necessary”:

Social organization (e.g., in the form of state administrative bureaucracies) is *psychic*, and consists of those *coercive sanctions* which subordinate individuals to a single will, notwithstanding their inclinations to satisfy their desires at cross purposes in their own private ways. “Organization” is not originally the free persuasive grouping of men for mutual satisfaction, but is an alternative *forced* upon them by increasing population and increasing struggle for existence. Upon the utilitarian explanation, organization would be immoral, for it tends to suppress the individual to the passions of a few. As it is, *organization is neither moral nor immoral—simply necessary* [1965, 109; emphasis added].

In a sense, what Commons sought was perhaps more aptly described as a “sane community” rather than a “rational society.” The problem of subjectivity and objectivity,

in part constituted by Commons, has of course plagued utility regulation for the duration of the twentieth century, while the rhetorical roots of this problem have largely escaped recognition. More specifically, the problem involves Commons's concepts of "reasonable value" and use of accounting rate of return to set rates. While a precise rate percentage may in fact be set by a regulator under the rate of return approach, the income and asset base to which it applies can still be manipulated by utilities, as was recognized by Commons. For example, in their seminal work in the area, Averch and Johnson [1962] developed a model that suggests that because of the asset base used for determining prices, rate of return regulation actually encourages utilities to bias their input mix toward capital. Because of rate of return regulation, utility resources would consequently be inefficiently allocated, thereby decreasing consumer welfare. Utility managers would also not be motivated to reduce expenses, thereby once more decreasing consumer welfare. In accounting, and applying the agency theory perspective, this reasoning was supported by Abdel-khalik, for example, who observed 80 years after Commons's work that:

Incentive problems arise in the electric utilities industry as a consequence of the institutional and legal arrangements of the cost-plus pricing regime under which natural and statutory monopolies operate. In the United States, such monopolies operate under a cost recovery system that gives the firm a mechanism by which it can shift all or part of the cost of "moral hazard" risk to consumers, who then become the residual claimants. In this setting, expense accruals have a more direct link to the firm's cash flows than is the case in unregulated industries. In particular, pricing a monopolist's output at cost-plus means that accruing expenses generates sales revenues for utilities. Consequently, agency cost can be included in the allowable cost passed on to consumers. The result is that the residual loss is shared between the consumers and shareholders with two competing consequences: (1) it would be in the best interest of shareholders to provide managers with incentives to shift all costs to the consumers; and, by the same token, (2) it would be in the consumers' interest to persuade regulators to challenge the cost assumptions underlying the firms' requests for revenue requirements [1988, 144–145; see also Sappington 1980, Baron and Myerson 1982; Gorman and Vora 1993, who modified the general agency theory model to better reflect regulated contexts].

Seeking to understand whether managers serve shareholders or consumers, Abdel-khalik conducted an empirical examination of the U.S. utility industry. He found that after controlling for the effects of size, the "padding" of operating costs and overcapitalization are associated with higher manager compensation. Thus, utility managers are actually rewarded for passing on cost inefficiencies to consumers. Recently, there have been efforts to increase the objectivity of the formalist model. These are

found in the implementation of “incentive regulation.” Using this tool, adopted by 20 state commissions by the mid-1980s [Joskow and Schmalensee 1986], electric utilities are allowed to earn in excess of the regulated accounting rate of return, with managers duly compensated if this excess is shared with stockholders.<sup>6</sup> In essence, the subjectivity *qua* the utility managers’ self-interest is itself incorporated into the formal model—it becomes objectified. Thus, “the line” separating subjectivity and objectivity is redrawn and yet remains arbitrary [see also Covaleski and Dirsmith 1995; Covaleski et al. 1995].

We conclude by arguing that the appreciation of the rhetorical constitution of various key concepts can contribute to our depth of understanding of the early formulations of institutional economics. We join with Hoksbergen [1994, 685] in recommending the postmodern perspective as a way to gain this appreciation.

In opposition to modernism, postmodernism holds that there exists no neutral, objective, scientific language. No language exists outside of tradition. As a consequence, postmodernists do not believe it possible to properly evaluate a theory, a culture, or a tradition of thought without becoming ultimately familiar with its language and its ways.

We also conclude that institutional economics should not merely be thought to have contributed to public policy and political processes. Public policy and political processes have contributed to institutional economics. On this, March and Olsen reasoned that:

[Our] observation is that governance is an interpretation of life and an affirmation of legitimate values and institutions. In a society that emphasizes rationality, self-interest, and efficacy, politics honors administration (the formalist voice) [Frug 1984] and *realpolitik* (the expertise voice) forms of rhetoric. It provides symbolic and ritual confirmation of the possibility of meaningful individual and collective action. The argument is not that symbols [such as rate of return regulation using reasonable value] are important to politics, although they certainly are. Rather, the argument is the reverse that politics is important to symbols, that a primary contribution of politics to life is in the development of meaning. It is not necessary to decide here whether decision making and the allocation of resources or symbols and the construction of meanings are more fundamental. They are heavily intertwined, and discussion of primacy may obscure that fact. But it seems unlikely that a theory of governance can represent or improve the phenomena of governing without including the ways political institutions,

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<sup>6</sup> For theoretical development, see Sappington [1980] and Hagerman [1990]; for empirical support in the accounting domain, see Lanen and Larcker [1992]; for further related discussion in institutional economics, see Berry [1992].

rhetoric, and the rituals of decisions facilitate the maintenance and change of social values and the interpretation of human existence [1983, 292].

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