POLICY PARADOX

POLICY PARADOX:
THE ART OF POLITICAL DECISION MAKING

Third Edition

DEBORAH STONE

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For Jim

somewhere always,
alone among the noise and policies of summer

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Introduction: Why This Book?

Sometime in the second or third week of seventh grade, we had our first fire drill. The drill was one more set of rules to learn in a new school with new routines—a more adult world of homerooms, different teachers for different subjects, class periods, rigid schedules, and bells regulating everything. When the fire alarm went off, we marched outside single file and were instructed by our teachers exactly how and where to line up on the blacktop.

I was standing next to Adele, my friend in the fragile sort of way that kids first come to know and like each other. We had several classes together, and whenever she spoke in class, she seemed very smart, very shy, and very gentle. Adele's skin was dark, dark brown, and she stood out. She was the only black student in the school. Though she was not the first black person I'd ever known, she was the first one my own age. I sensed that her reticence had to do with always standing out so much, because I was painfully shy and I hated standing out. I thought it must be excruciating to be so visible all the time, and I was in awe of Adele's grace in her predicament.

Just after our long line had come to a standstill, a boy on a bicycle came rolling out of his driveway. He made lazy curves the length of our line and seemed to be gloating over the fact that he wasn't in school that day and we were. He curved toward our line just in front of Adele and me, and as he reached the point on his arc closest to us, he sneered, "You should go home and take a bath. You're dirty."

I felt the searing awfulness of his remark. I wanted to protect Adele, to shield her somehow, but he'd already said it, and I couldn't make it go away. I wanted to say something to her to take away the sting, but I had no idea what to say. I wanted to beat the living daylights out of him, but he was already far away, and besides, I was small and not a fighter and I knew I couldn't beat anything out of anybody. Finally, I thought I could tell the teacher. The boy had been smart enough to make his remark

when the teacher was out of earshot, but if I told her, surely she would punish him and do something to help Adele.

All the teachers were strutting around imposing order, demanding silence, and instructing us how to count off our presence by saying absolutely nothing but our names, one by one, down the line. Against this strict lesson in proper decorum and adult ways, shouting out to my teacher to tell what had happened would have meant breaking the rules by saying something other than the regulation words we were allowed to speak. Afraid to stand out myself and wanting only to be good, I did nothing.

I tell this story because it was the first time I confronted a policy paradox, though I didn't see it that way at the time. (I saw it as my own moral cowardice.) Here was a social practice—the fire drill—whose purpose was to keep us secure. Yet, with all the seeming control the teachers had over the world, they couldn't stop an act of violence against one of us and didn't even know that one of us had been hurt.

Here was a set of rules that seemed perfectly fair on the surface. They were like traffic regulations, just rules to make sure things ran smoothly, not the kind of rules that clearly confer advantages on one group rather than another. Yet if we followed only those rules, bullies would prevail and their chosen victims would get hurt. Ordinary rules, I realized, couldn't stop bullies or help victims.

Here was a set of rules that embodied rightness and goodness. (Follow instructions. Don't talk. Do exactly as you're told.) Good citizens follow these rules. Yet, in my gut, I could feel another set of rules I knew to be right, too. (Don't hurt people. Stop people who hurt others. Help someone who is hurt. Stick by your friends.) I couldn't be good under both sets of rules. That morning on the blacktop, I had an inkling that even the clearest, simplest, most unambiguous policies could be mighty ambiguous indeed. I had a sense that citizenship was going to require learning to live with ambiguity and paradox.

Paradoxes are nothing but trouble. They violate the most elementary principle of logic: something can't be two different things at once. Two contradictory interpretations can't both be true. A paradox is just such an impossible situation, and political life is full of them. Here are just a few.

Winning Is Losing and Losing Is Winning

President Obama succeeded in passing three major government programs in his first seventeen months in office: a stimulus program, major health insurance reform, and a finance industry regulatory overhaul. But

his legislative victories quickly turned into a political liability. Each piece of legislation provided ammunition for conservatives to paint him as a big-government socialist.[1]

As the midterm elections of 2010 drew closer, Obama's victories were becoming a liability for the Democrats and, ironically, it seemed as though his legislative prowess would soon jeopardize his power as president. However, just before the midterm elections, when major Democratic losses were all but certain, political analysts saw a victory for Obama in electoral defeat. "The reality of presidential politics is that it helps to have an enemy," wrote one. "With Democrats controlling both the White House and Congress, they shoulder responsibility for the country's troubles. But if the Republicans capture Congress, Mr. Obama will finally have a foil heading toward his own re-election battle in 2012."[2]

What did the analysts mean by claiming that an electoral defeat could be a victory? Politicians always have at least two goals. First is a policy goal—whatever program or proposal they would like to see accomplished or defeated, whatever problem they would like to see solved. Perhaps even more important, though, is a political goal. Politicians always want to preserve their power, or gain enough power, to be able to accomplish their policy goals. Achieving a policy goal can sometimes thwart political gains—or vice versa.

Demonstration—Debate or Assault?

The Westboro Baptist Church pickets soldiers' funerals, carrying signs such as "Fag Troops," "Thank God for Dead Soldiers," "You're Going to Hell," "Priests are Rapists," and "America is Doomed." The church believes 9/11 was God's punishment for the nation's tolerance of homosexuality, and that it is serving the public interest by publicizing its warnings. The group demonstrated at the funeral of Matthew Snyder, a twenty-year-old Marine killed in Iraq. Snyder was not gay. Snyder's father sued the group for infliction of emotional distress and for intrusion on his privacy.

The Supreme Court ruled 8-to-1 in favor of the church. According to Chief Justice Roberts, who wrote for the majority, the protest highlighted "matters of public import," including "the political and moral conduct of the U.S. and its citizens, the fate of the nation, homosexuality in the military, and scandals involving clergy in the Catholic Church." However

[1]Sheryl Gay Stoltenberg, "Obama Pushes Through Agenda Despite Political Risks," *New York Times*, July 16, 2010.
[2]Ibid.

hateful or unpopular the group's message, it contributes to public debate. According to Justice Samuel Alito, the one dissenter, the group exploits vulnerable people in order to gain publicity for its message. Alito said public issues could be "vigorously debated" without allowing "the brutalization of innocent victims."[3]

Was the funeral demonstration a contribution to democratic debate or a vicious assault?

For or Against Government Assistance?

Portion of Americans who think "poor people have become too dependent on government assistance programs": 69 percent

Portion of Americans who believe "government should guarantee every citizen enough to eat and a place to sleep": 69 percent

Portion of Americans who think individuals have a lot of control over their lives and who reject the idea that "Success in life is pretty much determined by forces outside our control": 62 percent

Portion of Americans who believe "government has a responsibility to take care of people who can't take care of themselves": 69 percent[4]

Enemies or Allies?

For decades, manufacturing industries complained about government regulation. Regulation, the argument went, imposed unnecessary costs on manufacturers and consumers and stifled innovation. Better to let manufacturers use their own voluntary standards. The relationship between industry and government regulatory agencies was decidedly adversarial. But after years of deregulation under presidents from Ronald Reagan on, a funny thing happened in Washington: makers of toys and cars, food and cigarettes, furniture and light bulbs, and a host of other products began pressing the government to issue quality, safety, and environmental regulations. Why the sudden turnabout?

American manufacturers found themselves losing market share to cheaper foreign imports, whose makers didn't have to meet American

[3] *Snyder v. Phelps*, No. 09–751, 131 S. Ct. 1207 (2011).

[4] All figures from the same survey in 2007. Pew Research Center for the People and the Press, "Trends in Political Values and Core Attitudes: 1987–2007," Mar. 22, 2007, available at people-press.org.

"Stop! Wait! Government's no longer the problem—it's the solution."

industry's voluntary standards. Mandatory government standards could level the playing field. Mandatory standards would enhance manufacturers' credibility and reputations. In some industries, consumers and workers were suing manufacturers for defects and hazards, and manufacturers were losing. If the government issued regulations and coupled them with exemptions from liability, manufacturers (and presumably also consumers) would come out ahead. Moreover, in the absence of federal regulation, angry workers and consumers sought regulation at the state level. Manufacturers were better off with uniform federal regulation than having to meet different requirements in different states. Thus, industry benefited in many ways from government-imposed regulation.[5]

Which Came First, the Problem or the Solution?

At first, the U.S. invasion of Iraq was presented to Congress and the American people as the solution to terrorist attacks like 9/11. Saddam Hussein was allegedly in league with Osama bin Laden and harboring Al

[5]Eric Lipton and Gardiner Harris, "In Turnaround, Industries Seek U.S. Regulations," *New York Times*, Sept. 16, 2007.

Qaeda terrorists. A bit later, Saddam Hussein himself was cast as a threat to America. He was harboring weapons of mass destruction that an invasion could root out and disarm. Later still, the American occupation was depicted as the solution to Iraq's devastated economy, as a necessary force to counteract violent insurgency, and as the means of constructing a democratic state. Some say the war was a solution to a very different problem—George W. Bush's psychic need to redeem his father's failure to topple Saddam Hussein in the Gulf War. Another view holds that the war was a solution to America's need for oil and oil companies' need for profits.

Was this a case of several problems for which war against Iraq just happened to be a solution? Or was war with Iraq a constant solution adapting to a changing problem?

Are Low Prices Good or Bad?

Cheap Iranian imports into war-torn Iraq—things like bricks, rice, and buses—provided Iraqis with essential goods they otherwise couldn't afford. But these boons to consumers also undermined Iraqi industries. Some domestic manufacturers had to lay off employees, and some potential businesses could never get started in the face of competition from cheap imports.[6] Were Iraqis hurt or helped by low-priced goods?

Wal-Mart faced a different paradox of low prices. The rock-bottom prices that had made Wal-Mart a commercial success posed an obstacle for the company when it tried to sell high-end merchandise like electronics, home décor, fashion, and prescription drugs. "Our low prices actually suggest low quality," an internal report explained.[7] Prices are prices—they tell consumers how much money they must pay to acquire a product—but prices are also symbols; they signal intangible features like quality and prestige.

What's in a Pile of Rubble?

In the aftermath of Hurricane Katrina, New Orleans officials wanted to clear the rubble from city streets, but homeowners sued the city to stop demolition of their homes before they had a chance to search for their

[6]Gina Chon, "Iran's Cheap Goods Stifle Iraq Economy," *Wall St. Journal*, Mar. 18, 2009.

[7]Michael Barbaro, "Is Wal-Mart Too Cheap For Its Own Good?" *New York Times*, May 30, 2007.

possessions. "We're not demolishing homes," a lawyer for the city said. "There is debris being removed from certain streets." A city aide gave further explanation: "They [the buildings] slid off their slabs. . . . They're all in the right of way, and they are creating a public safety issue. If something is already in a pile of rubble, we're not demolishing anything." A lawyer for a community group saw things differently: "This is not rubble. This is the remains of people's houses. . . . There are trophies in there, children's athletic equipment, toys."[8]

The piles held vastly different meanings for the two sides.

Closing Guantánamo

American officials intended the Guantánamo prison to increase American security by detaining suspected terrorists there and interrogating them. To close the camp might increase the number of dangerous terrorists on the loose, especially if the governments to which prisoners were transferred set them free. Yet, once photos and stories from Guantánamo emerged, the camp became "a wonderful recruitment trigger for Islamist extremists," in the words of one historian. Keeping the camp open also increased the risk of terrorist attacks on the United States.[9]

Does Guantánamo help or harm American security?

Multiculturalism—Good or Bad for Human Freedom?

In New York, a Chinese-American man bludgeoned his wife to death because, he claimed, she had been unfaithful. In court, his lawyer offered a "cultural defense," saying that that Chinese custom allowed husbands to dispel their shame this way. The court accepted the cultural defense and convicted him of manslaughter instead of murder (a far lesser charge).

Reacting to the decision, the director of the Asian-American Defense and Education Fund found herself on both sides of a dilemma. At first, she criticized the court for not granting Chinese women American liberties: "You don't want to import [immigrant] cultural values into our judicial system. . . . We don't want women victimized by backward customs." Later, however, she praised the court's use of the cultural defense

[8]Adam Nossiter, "New Orleans Delays Razing Houses 2 Weeks," *New York Times*, Jan. 7, 2005.
[9]Scott Shane, "Seeking an Exit Strategy for Guantánamo," *New York Times*, June 18, 2006.

and its protection of minority culture. To bar the cultural defense, she said, "would promote the idea that when people come to America, they have to give up their way of doing things. That is an idea we cannot support."[10]

The Cheetah—Equalizer or Advantage?

Under what conditions should people with disabilities be able to compete with nondisabled athletes? Oscar Pistorius, a South African double amputee, runs with prosthetic feet called Cheetahs. They were designed based on studies of the tendons in cheetahs' hind feet. The International Association of Athletics Federations found that the device gave runners an unfair advantage, and ruled that no one would be allowed to use them in competitions for the able-bodied. A higher Court of Arbitration for Sport reversed the decision.

Does the Cheetah give a runner an advantage? The Cheetah's inventor, Van Phillips, said the device "may be more advantageous than the human foot" because its materials may be more energy efficient. But it would be hard to separate and measure all the factors that affect an athlete's performance wearing the Cheetah, including the way the foot attaches to the athlete's limb, how much knee flexion the athlete has, and how the runner comes out of the starting blocks. "Those differences are difficult if not impossible to quantify. Maybe there is not an answer."[11]

How can we make sense of a world where such paradoxes abound and there may be no answers? In an age of human mastery over the innermost and outermost realms, how are we to deal with situations that don't observe the elementary rules of scientific decorum? Can we make public policy behave?

Rajiv Shah apparently asked himself this question when he went from being "a brainy thirty-seven-year-old physician with little government experience" to head of the U.S. Agency for International Development (USAID). He had previously worked on development aid in the Bill and Melinda Gates Foundation, and he found the challenges of leading a public agency enormous. In the past three decades, USAID's budget and staff had dwindled while government funneled most of its foreign aid through

[10]Doriane Lamblet Coleman, "Individualizing Justice Through Multiculturalism: The Liberals' Dilemma," *Columbia Law Review* vol. 96, no. 5 (1996), pp. 1093–1167, quotes on pp. 1095–6.

[11]Carol Pogash, "A Personal Call to Invention," *New York Times*, July 2, 2008.

private contractors, and here he was, dealing with the Haiti earthquake, the Pakistan floods, and a surge of American foreign aid workers supposed to win hearts and minds in Afghanistan. Shah felt privileged and inspired by his opportunity to work in the Obama administration but, at the same time, a little wistful about "the super-exciting things we could do" in the private sector: "You could actually say, 'O.K., my goal is to solve AIDS, and how would you solve AIDS analytically?' You didn't have to worry about the politics."[12]

The Rationality Project

The fields of political science, public administration, law, and economics have had a common mission of rescuing public policy from the irrationalities and indignities of politics. They aspire to make policy instead with rational, analytical, and scientific methods. I call this endeavor "the rationality project," and it has been at the core of American political culture since the beginning. The project began with James Madison's effort to "cure the mischiefs of faction" with proper constitutional design.[13] In the 1870s, the dean of Harvard Law School (with the marvelous name of Christopher Columbus Langdell) ventured to take politics out of the law by reforming legal education. Law was a science, he proclaimed, to be studied by examining appellate court decisions and distilling their common essence into a system of principles. At the turn of the twentieth century, Progressive reformers sought to render policy more scientific and less political by removing policy-making authority from elected bodies and giving it to expert commissions and professional city managers instead. The quest for an apolitical science of government continued in the twentieth century with Herbert Simon's call for a "science of administration," Harold Lasswell's dream of a "science of policy forming and execution," and the development of college and graduate school programs in public policy. By the turn of the twenty-first century, the rationality project was in full bloom in political science and economics under the banner of "rational choice."

When I began teaching in one of the first public policy programs, Duke University's Institute of Policy Sciences, it struck me that the new field of public policy was rooted in its own paradox. Policy science was passionately devoted to improving governance, yet the field was based

[12]Mark Landler, "Curing the Ills of America's Top Foreign Aid Program," *New York Times*, Oct. 23, 2010.
[13]This was the argument of his "Federalist Paper No. 10."

on a deep disgust for the ambiguities and paradoxes of politics. By and large, the new science dismissed politics as an unfortunate obstacle to clear-headed, rational analysis and good policy. My job was to teach the core political science course for public policy majors and, somehow, make political science into a rational analytical tool that would yield definitive answers about the best way to tackle any problem. I kept asking myself, if you take the politics out of governance, what exactly is left? *Policy Paradox* emerged from my wrestle with that conundrum.

This book has three aims. First, I argue that the rationality project misses the point of politics. From inside the rationality project, politics looks messy, foolish, erratic, and inexplicable. Political events seem to leap outside the categories that logic and rationality offer. In the real world, we are often forced to entertain paradox, but we are able to live with it because paradoxes are paradoxical only from within one worldview. Politics is one way we help each other see from different perspectives. If we can get outside one viewpoint, we can do a better job of living together and solving common problems. Thus, I aim to construct a mode of policy analysis that recognizes the dark, self-interested side of political conflict but also sees politics as a valuable creative process for social harmony.

Second, the rationality project worships objectivity and seeks modes of analysis that will lead to the objectively best results for society. The categories of analysis are somehow supposed to be above politics or outside it. Rationality purports to offer a correct vantage point from which we can judge the goodness of the real world. I argue, instead, that the very categories underlying rational analysis are defined in political struggle. I aim to construct a mode of policy analysis that recognizes analytical concepts, problem definitions, and policy instruments as political claims themselves, instead of granting them privileged status as universal truths. At the same time, even though—or perhaps because—there is no "gold standard" of equality, efficiency, social measurement, causation, effectiveness, or any other analytic tool, values matter. In every chapter, I try to show why policy analysts and decision makers *must* bring their own values into the picture.

Third, the field of public policy is dominated by economics and its model of society as a market. A market is a collection of individuals who have no community life. Their relationships consist entirely of trading with one another to maximize their individual well-being. Like many social scientists, I don't find the market model a convincing description of the world I know or, for that matter, any world I would want to live in. Instead, I start from a model of community where individuals live in a dense web of relationships, dependencies, and loyalties; where they care deeply about at least some other people besides themselves; where they

influence each others' desires and goals; and where they envision and fight for a public interest as well as their individual interests.

The project of making public policy rational rests on three pillars: a model of reasoning, a model of society, and a model of policy making. The *model of reasoning* is rational decision making. In this model, decisions are or should be made in a series of well-defined steps:

1. Identify objectives.
2. Identify alternative courses of action for achieving objectives.
3. Predict the possible consequences of each alternative.
4. Evaluate the possible consequences of each alternative.
5. Select the alternative that maximizes the attainment of objectives.

This model is so pervasive it is a staple of checkout-counter magazines, self-help books, and child-rearing manuals. For all its intuitive appeal, however, the rational decision-making model fails to answer what Obama should have done on health insurance to maximize his objectives, because he, his staff, his party, and his constituencies all had multiple and sometimes conflicting objectives. Whether he succeeded in either his health insurance goals or his party-political goals depended in large part on how he was able to *portray* the health insurance reform to the American people—not merely sell it to them, but convince them in their guts that it would help them rather than harm them and that it fit their vision of good government. And whether he could convince them of those things depended far more on how he came across emotionally—whether he could connect with them at a human level—than on his advisers' calculations of the dollar costs and benefits, or even their finesse at stir-frying the numbers.

The rational decision-making model ignores our emotional feelings and moral intuitions, both powerful parts of human motivation and precious parts of our life experience. The rational model doesn't help a Chinese-American leader know whether her immigrant community's interests are better served by imposing American liberal norms on its members or by allowing them to maintain their culture. The rational model might help us begin to evaluate the security risks to the U.S. of closing Guantánamo versus keeping it open, but it doesn't help us judge whether our anti-terrorist policy is morally right, or to understand how our policy affects the minds and motives of non-Americans.

Throughout this book, I develop a model of political reasoning quite different from the model of rational decision making. Political reasoning is reasoning by metaphor and analogy. It is trying to get others to see a situation as one thing rather than another. Rubble can be seen as a public

safety hazard or a family's emotional refuge. A protest rally can be seen as a forum for public debate or an emotional assault on vulnerable people. Each vision constructs a different political contest, and invokes a different set of rules for resolving the conflict. Political reasoning involves metaphor-making and category-making, but not just for beauty's sake or for insight's sake. It is strategic portrayal for persuasion's sake and, ultimately, for policy's sake.

The *model of society* underlying the contemporary rationality project is the market. In this model, society is a collection of autonomous, rational decision makers who come together only when they want to make an exchange. They each have objectives or preferences, they each compare alternative ways of attaining their objectives, and they each choose the way that yields the most satisfaction. They maximize their self-interest through rational calculation. The market model and the rational decision-making model are tightly related.

In the market model, individuals know what they want. They have relatively fixed, independent preferences for goods, services, and policies. In real societies, where people are psychologically and materially dependent, where they are connected through emotional bonds, traditions, and social groups, their preferences are based on loyalties and images. How they define their preferences depends to a large extent on how choices are presented to them and by whom, and they aren't always consistent. They think poor people are too dependent on government assistance, but they believe government should help them anyway. They want greater welfare spending when it's called "helping poor children," but not when it is called "welfare." They want lower prices on the goods they buy, but not on the goods or labor they sell. They might want their government to go to war if someone shows them compelling security reasons or inspires them to fight on the side of the angels—and they might change their minds suddenly and dramatically when presented with different visions of what is going on "over there."

Thus, the starting point for political analysis must be a political community, not a market. I develop a model of political community in Chapter 1, and use it as the basis for thinking about every aspect of policy analysis and policy making.

The *model of policy making* in the rationality project is a production model, where policy is, or should be, created in an orderly sequence of stages, almost as if on an assembly line. An issue is "placed on the agenda," and a problem gets defined. It moves through the legislative and executive branches of government, where alternative solutions are proposed, analyzed, refined, legitimized, and, ultimately, selected. A solution is

implemented by the executive agencies and constantly challenged and revised by interested actors, often using the media and the judicial branch. And finally, if the policy-making process is managerially sophisticated, it provides a means of evaluating and revising its own policies. Ideally, as Rajiv Shah said about working for a private foundation, policy makers could solve each problem analytically without worrying about the politics.

This model of policy making as rational problem solving can't explain why sometimes policy solutions go looking for problems. It can't tell us why solutions such as deregulation turn into problems for the very groups they were meant to help. Most important, the production model fails to capture what I see as the essence of policy making in political communities: the struggle over ideas. Ideas are a medium of exchange and a mode of influence even more powerful than money and votes and guns. Shared meanings motivate people to action and meld individual striving into collective action. All political conflict revolves around ideas. Policy making, in turn, is a constant struggle over the criteria for classification, the boundaries of categories, and the definition of ideals that guide the way people behave.

The Plan of the Book

Chapter 1, "The Market and the Polis," sets forth the model of political community I call the Polis. It describes the fundamental elements of human behavior and social life that I take to be axiomatic, and contrasts them with the axioms of the market model. The other chapters build on this model of a political community.

The rest of the book takes its shape from the notion of a policy issue implied in the rationality project: we have a goal; we have a problem, a discrepancy between reality and the goal; and we seek a solution to the problem. Parts II, III, and IV correspond to the three parts of this framework: goals, problems, and solutions.

Needless to say, the political careers of most policy issues aren't nearly as simple as this three-part formula would suggest. For example, people don't always perceive a goal first and then look for discrepancies between the goal and the status quo. Often, they see a problem first, which triggers a new awareness of ideals and a search for solutions. Or, perhaps they see a solution first, then formulate a problem that requires their solution (and their services). Nevertheless, I use this framework because it expresses a logic of problem solving that is not only widespread in the policy field but that also makes sense to the rational part of our human nature.

Part II is about goals—not the specific goals of particular policy issues, such as expanding health insurance coverage or lowering health care costs, but the enduring values of community life that give rise to controversy over particular policies: equity, efficiency, welfare (in the sense of well-being, not government aid), liberty, and security. These values are the standards of analysis most commonly invoked in policy debates. They are also "motherhood issues": everyone is for them when they are stated abstractly, but the fight begins as soon as we ask what people mean by them. These values not only express goals but also serve as the standards we use to evaluate existing situations and policy proposals. There might well have been other ideals in the section on goals, such as justice, democracy, and community. Rather than giving each of these ideals its own chapter, I have woven them into the other chapters and tried to show how they influence thinking about more tailored policy goals.

One tenet of the rationality project is that there are objective and neutral standards of evaluation that can be applied to politics and that are untainted by the interests of political players. The theme of Part II is that behind every policy issue lurks a contest over conflicting, though equally plausible, conceptions of the same abstract goal or value. The abstractions are aspirations for a community, into which people read contradictory interpretations. It may not be possible to get everyone to agree on the same interpretation, but the first task of the political analyst is to reveal and clarify the underlying value disputes so that people can see where they differ and move toward some reconciliation.

Part III is about problems, and about *how we know* there is a disparity between social goals and the current state of affairs. There are many modes of defining problems in policy discourse, and each mode is like a language people use to express and defend their interpretations. "Symbols" and "Numbers" are about verbal and numerical languages, respectively, and both examine devices of symbolic representation within those languages. We also define problems in terms of what causes them ("Causes"), who is lined up on each side ("Interests"), or what kind of choice they pose and what ethical standards are appropriate for deciding ("Decisions").

Part IV is about solutions, or, more accurately, about the broad types of policy instruments governments can use to solve problems. These chapters start from the assumption that all policies involve deliberate attempts to change people's behavior, and each chapter in this section deals with a mechanism for bringing about such change—creating rewards and penalties ("Incentives"), making and enforcing rules ("Rules"), informing and persuading ("Facts"), stipulating rights and duties ("Rights"), and reorganizing authority, or changing who has power to do what ("Powers").

The common theme throughout Part IV is that policy instruments are not just tools, each with its own function and its own suitability for certain kinds of jobs. In the standard political science model of the policy-making process, policy solutions are decided upon and then implemented, though things usually go awry at the implementation stage. The task of the analyst is to figure out which is the best tool to use, and then to fix mistakes when things don't go as planned. I argue, instead, that each type of policy instrument is more like a game than a tool. Each has its peculiar ground rules, within which people continue their political conflicts once the policy game has started. Each mode of social regulation draws lines around what people may and may not do and how they may or may not treat each other. But these boundaries are constantly contested, partly because they are ambiguous and don't settle conflicts, and partly because they allocate benefits and burdens to the people on either side. The job of the policy designer, in this view, is to understand the rules of the game well enough to know the standard moves and countermoves, and to think about them strategically.

Whether you are a policy analyst, a policy researcher, a policy advocate, a policy maker, or an engaged citizen, my hope for *Policy Paradox* is that it helps you to go beyond your job description and the tasks you are given—to think hard about your own core values, to deliberate with others, and to make the world a better place.

Part i

POLITICS

1

The Market and the Polis

A theory of policy politics must start with a simple model of political society, just as economics starts with a simple model of economic society. *Polis*, the Greek word for city-state, seems a fitting name for a model of political society because it conjures up an entity small enough to have very simple forms of organization yet large enough to embody the essential elements of politics. In building a model of political society, it is helpful to use the market model as a foil because of its predominance in contemporary policy discussions. The contrast between the models of political society and market society will illuminate some ways the market model distorts political life.

A market can be simply defined as a social system in which individuals pursue their own welfare by exchanging things with others whenever trades are mutually beneficial. Economists often begin their discussions of the market by conjuring up the Robinson Crusoe society, where two people on a lush tropical island swap coconuts and sea animals. They trade to make each person better off, but since each person always has the option of producing everything for himself, trading is never an absolute necessity for either one. (Economics textbooks usually neglect to mention that the "real" Crusoe was able to salvage a veritable microcosm of industrial society from his shipwrecked vessel—everything from gunpowder and muskets to cables and nails.) Participants in a market compete with each other for scarce resources; each person tries to acquire things at the least possible cost, and to convert raw materials into more valuable things to sell at the highest possible price.

In the market model, individuals act only to maximize their own self-interest. "Self-interest" means their own welfare, however they define that for themselves. It does not mean that they act "selfishly"; their self-interest might include, for example, the well-being of their family and friends, but most market models give short shrift to anything but individual

self-interest. The competitive drive to maximize one's own welfare stimulates people to be very resourceful, creative, clever, and productive, and ultimately, competition raises the level of economic well-being of society as a whole. With this description of the essence of the market model, we can start to build an alternative model of the polis by contrasting more detailed features of the market model and a political community.

Community

Because politics and policy can happen only in communities, community must be the starting point of our polis. Public policy is about communities trying to achieve something as communities. This is true even though there is almost always conflict within a community over who its members are and what its goals should be, and even though every communal goal ultimately must be achieved through the behavior of individuals. Unlike the market, which starts with individuals and assumes no goals and intentions other than those held by individuals, a model of the polis must assume *collective* will and *collective* effort.

Untold volumes of political philosophy have tried to define and explain this phenomenon of collective intention. But even without being able to define it, we know intuitively that societies behave as if they had one. We can scarcely speak about societies without using the language of collective will ("Democrats want . . ."; "Environmentalists seek . . ."; "The administration is trying . . ."). Every child knows the feeling of being in a group and reaching consensus. We can argue about whether consensus implies unanimity or only majority, or whether apparent consensus masks some suppressed dissension. But we know that consensus is a feeling of collective will, and we know when it exists and when it does not, just as surely (and sometimes mistakenly) as we know when we are hungry and when we are not.

A community must have members and some way of defining who is a member and who is not. Membership is in some sense the primary political issue, for membership definitions and rules determine who is allowed to participate in community activities, and who is governed by community rules and authority. Nation-states have rules for citizenship. Private clubs have qualifications for members and procedures by which people can join. Religious groups have formal rituals for new members to join. Neighborhoods may have no formal rules limiting who may become a member, but informal practices such as racial discrimination in selling

and renting homes, mortgage lending, and sheer harassment can accomplish exclusion without formal rules.

In many places, growing anti-immigrant sentiment has stimulated a wave of new membership policies—policies about who gets to become a resident or a citizen of any political jurisdiction, and what social and civic rights will be accorded them. Some states and cities have passed laws that restrict undocumented aliens' access to health and social services, rental housing, and driving. In 2010, Arizona, the state with the highest rate of illegal immigration, passed a controversial law requiring police officers to investigate the immigration status of anybody they stop for any purpose, if the officer suspects the person might be an illegal immigrant. The Arizona law raises fears of prejudice, because police might use looks and accents to decide whether they "suspect" someone is an illegal immigrant. The law also creates tension between the state and the federal government over which one has legal authority to enforce U.S. membership policies.[1]

A model of the polis must also include a distinction between political community and cultural community. A political community is a group of people who live under the same political rules and structure of governance. A cultural community is a group of people who share a culture and draw their identities from shared language, history, and traditions. In most nations, the political community includes diverse cultural communities. Cultural diversity creates a profound dilemma for policy politics: how to integrate several cultural communities into a single political community without destroying their identity and integrity. (This was exactly the dilemma in the "multiculturism" paradox in the Introduction.) Issues such as criminal standards, bilingual education, and interracial and international adoption are about defending communities against death by assimilation, and about pitting community interests against individual interests. These issues can't be adequately understood in terms of individuals pursuing their self-interests. In Europe, discussions of cultural and political membership have been more salient than in the U.S. and proceed under the rubric of "integration policy." Integration focuses on what values and behaviors immigrants must espouse in order to become citizens. For example, an immigrant applying for citizenship in Denmark

[1]Darnell Weeden, "Local Laws Restricting the Freedom of Undocumented Immigrants as Violations of Equal Protection and Principles of Federal Preemption," *St. Louis University Law Journal*, 52, no. 4 (2008), pp. 479–500; Randal C. Archibold, "U.S.'s Toughest Immigration Law is Signed in Arizona, *New York Times*, Apr. 24, 2010.

must pass a Danish-language test that many Danes might not be able to pass, and must declare support for gender equality.[2]

Membership in a community defines social and economic rights as well as political rights. Even more than legal definitions of who's in and who's out, mutual aid among members transforms a collection of individuals into a community. Sharing burdens and bounty binds people together as a group. Immigrants in their new homelands tend to stick together in ethnic neighborhoods, and one of the first things they do is establish mutual aid societies to pool their resources in order to provide each other with money for culturally acceptable funerals, for sickness and life insurance, and for credit to establish new businesses. Members of a community help each other in all kinds of non-monetary ways, too, such as sharing child care or helping each other maintain homes and neighborhoods. Mutual aid is a kind of social insurance.

In the market model, insurance is a financial product that firms sell in order to make a profit and buyers buy in order to create economic security for themselves. In the polis, mutual aid is a good that people create collectively in order to protect each other and their community. Mutual aid might be the strongest bond that holds individuals together as a community. And in a larger sense, sharing, caring, and maintaining relationships is at least as strong a motivator of human behavior as autonomy, competition, and promotion of one's separate self-interests.

Altruism

Humans are social creatures and care about others as well as themselves. A model of political community must recognize altruism as a powerful human motive.[3] "Altruism" means acting in order to benefit others rather than oneself. Taking care of children, treating the sick, helping coworkers, volunteering as a tutor or a fix-it person—these are forms of everyday altruism.

Altruism is so much a part of our existence that we take it for granted. But the rationality paradigm, with its picture of humans as fundamen-

[2]Cultural pluralism within political communities is richly explored by Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989); and *Multicultural Odysseys: Navigating the New International Politics of Diversity* (New York: Oxford University Press, 2007).

[3]Kristen Renwick Monroe, *The Heart of Altruism: Perceptions of a Common Humanity* (Princeton: Princeton University Press, 1996); Deborah Stone *The Samaritan's Dilemma: Should Government Help Your Neighbor?* (New York: Nation Books, 2008).

tally self-interested, makes altruism almost invisible. In fact, according to many social scientists, altruism doesn't exist. As Thomas Hobbes, one of the first modern democratic theorists, put it, "No man giveth but with intention of good to himself."[4] Behind every apparently altruistic behavior lurks an ulterior, self-interested motive. Perhaps when you help an injured child, for example, you're really doing it to relieve your own distress from seeing a child in pain.

According to many modern social scientists, people's actions don't count as altruistic unless they receive absolutely no benefit themselves, or, to be even more stringent, unless they make some sacrifice or incur a loss when they act to help somebody else. As it happens, people who help other people almost always say they get psychic rewards: "When you help other people, you get more than you give." Here is the paradox of altruism: when people act to benefit others, they feel satisfaction, fulfillment, and a sense that helping others gives their lives meaning. The strict self-interest paradigm, therefore, makes altruism impossible by definition.

This is not to say that humans aren't also self-interested. We have both kinds of motives. But trying to measure the exact proportions of self-interest and altruism in any human behavior is as difficult as measuring whether a high-tech prosthetic foot gives a runner greater capabilities than he would have had with his own two feet. Here, it's enough to say that in the polis, people have both self-interested and altruistic motivations, and policy analysis must account for both of them.

In the polis, altruism can be just as fierce as self-interest. A manager of a fast-food franchise keeps two sets of time sheets—one to show her boss that she follows the chain's rules, the other to allow her employees time off and flexibility to deal with their family issues. The supervisor risks her job and her reputation (definitely not in her self-interest) in order to help her employees manage their jobs and personal lives. In schools, hospitals, retail stores, and government agencies, people sometimes fudge the records, bend the eligibility rules, take food and goods to pass on to desperate and suffering people—in other words, lie, cheat, and steal—when they believe the rules are unjust and there is a higher moral duty than obeying rules. Without an appreciation of altruism, we can't fully understand how policy gets implemented at the street level, nor can we understand the currents of resistance and civil disobedience that make up the "moral underground."[5]

[4]Thomas Hobbes, *Leviathan* (orig. ed. 1651), chap. 15.

[5]Lisa Dodson, *The Moral Underground: How Ordinary Americans Subvert an Unfair Economy* (New York: New Press, 2009).

Public Interest

In the polis, there is a public interest. "Public interest" might mean any of several things. It could be individual interests held in common, things everyone wants for themselves, such as a high standard of living. It could mean individuals' goals for their community. Often people want things for their community that conflict with what they want for themselves. They want good schools and clean air, perhaps, but also lower taxes and the right to drive SUVs. Citizens in this view have two sides: a private, rather self-interested side and a more public-spirited side, and we might think of the public interest as those things the public-spirited side desires.

Public interest could also mean those goals on which there is a consensus. Programs and policies favored by a majority of citizens, for example, would comprise the public interest. In this interpretation, the public interest is not necessarily enduring. It is whatever most people want at the moment, and so it changes over time. And of course, this notion of public interest raises questions of what counts as "consensus" and how we would know whether true consensus exists.

Finally, the public interest could mean things that are good for a community as a community. Even the most minimally organized community has a stake in preserving its own sense of order and fair play, whatever form that takes. All communities have a general interest in having some governing processes and some means for resolving disputes without violence. The members of a community almost always have an interest in its survival, and therefore in its perpetuation and its self-defense. This question of community survival animates the debate over fighting terrorism. One side argues that terrorism is such a threat to our existence that fighting it justifies virtually any tactic, including torturing suspects and restricting our own constitutional rights to privacy and freedom. The other side argues that our nation is defined by its civil rights and the rule of law, so that to sacrifice them is to destroy our community. Both sides agree that community survival is what is at stake.

There is virtually never full agreement on the public interest, yet we need to make it a defining characteristic of the polis because so much of politics entails people fighting over what the public interest is and trying to realize their own definitions of it. Let it be an empty box, but no matter; in the polis, people expend a lot of energy trying to fill up that box. The concept of public interest is to the polis what self-interest is to the market. They are both abstractions whose specific contents we do not need to know in order to use them to explain and predict people's behavior.

We simply assume that people behave as if they were trying to realize the public interest or maximize their self-interest.

This is not to deny that politics also includes people pursuing their self-interest. But there is no society on earth in which people are allowed to do that blatantly and exclusively. Even if we only want to understand how people pursue their self-interest, we need to understand how conceptions of the public interest shape and constrain people's strategies for pursuing their own interests.

It would be as much a mistake to think that the market has no concept of public interest as to believe that the polis has no room for self-interest. But there is a world of difference between public interest in a market and in a polis. In market theory, the public interest is the net result of all individuals pursuing their self-interest. If a community starts with a fair income distribution and has a well-functioning market, then whatever happens afterward is by definition the best result for society as a whole. In a market, in short, the empty box of public interest gets filled as an afterthought with the side effects of other activities. In the polis, by contrast, people fill the box intentionally, with forethought, planning, and conscious effort.

Commons Problems

Because people often pursue a conception of public interest that differs from their conception of self-interest, the polis is characterized by a special problem: how to combine self-interest and public interest, or, to put it another way, how to have both private benefits and collective benefits. Situations where self-interest and public interest work against each other are known as "commons problems," and, in the polis, commons problems are common. A factory owner gains a private benefit by discharging industrial waste into a river because it is a cheap and profitable disposal method; but this method ruins the water for everyone else, and so creates a social cost. A high-quality school system is a collective benefit but requires individual tax payments, and so creates private costs. Commons problems are also called collective action problems because it is hard to motivate people to undertake private costs or forgo private benefits for the collective good.

In market theory, commons problems are thought to be the exception rather than the rule. Most actions in the market model do not have social consequences. In the polis, by contrast, commons problems are

everything. Not only do they crop up frequently, but most significant policy problems are commons problems. It is rare in the polis that the benefits and costs of an action are entirely self-contained, affecting only one or two individuals, or that they are limited to immediate and direct effects. Actions have side effects, unanticipated consequences, second- and third-order effects, long-term effects, and ripple effects. The language of policy is full of such metaphors recognizing the broad social consequences of individual actions. One major dilemma in the polis is how to get people to give weight to these broader consequences in their private calculus of choices, especially in an era when the dominant culture celebrates private consumption and personal gain.

Influence

Fortunately, in the polis, the vast gap between self-interest and public interest is bridged by some potent forces: influence, cooperation, and loyalty. Influence is inherent in communities, even communities of two. Humans aren't freewheeling, freethinking atoms whose desires arise from spontaneous generation. Our ideas about what we want and the choices we make are shaped by education, persuasion, and socialization. From Kalamazoo to Kathmandu, young people covet expensive brand-name sneakers and the latest electronic gear, not because these things are inherently attractive to human beings but because global consumer culture heavily promotes them as desirable.

Actions, no less than ideas, are influenced by others—by the choices other people have made and the ones we expect them to make, by what they want us to do, and by what we think they expect us to do. More often than not, our choices are conditional. A worker will go out on strike only if she thinks that enough of her fellow workers will join her. A citizen will bother to complain about postal service only if he believes that the post office will take some action in response.

Influence works not simply by putting one individual under a figurative spell of another but also in ways that lead to curious kinds of collective behavior. "Bandwagon effects" in elections happen when a candidate's initial lead causes people to support him or her because they want to be on board with a winner. Panics happen when people fear an economic collapse, rush to cash out their bank accounts, and in so doing bring about the collapse they feared. Mobs often act with a peculiar sense of direction and purpose, as if coordinated by a leader, when in fact there is none. Fads for body piercing or backward baseball caps are frivolous examples of col-

lective behavior; prison riots and "white flight" from urban neighborhoods are more serious. Such things can happen only because people's choices are conditional. They want to do something only if most people will do it (say, go on strike), or to do something before most people do it (say, get their money out of the bank), or do something *because* others are doing it.

Influence sometimes spills over into coercion, and the line between them is fuzzy. In fact, one big difference between traditional conservatives and liberals is where they place that line. Liberals tend to see poverty as a kind of coercion, and the far Left is wont to see coercion in any kind of need, even that born of desire to "keep up with the Joneses." Conservatives have a more restricted view of coercion, seeing it only in physical force and commands backed up by the threat of force, but libertarians are wont to see it in any government rule or regulation. There is no correct place to draw the line, because coercion is an *idea* about what motivates behavior, a label and an interpretation, rather than the behavior itself. No matter that we can't draw a clear line between influence and coercion—influence in all its fuzziness, varieties, and degrees of strength is one of the central elements of politics, and we'll see it at the heart of many policy dilemmas.

Cooperation

In the polis, cooperation is every bit as important as competition. This is true for two reasons. First, politics involves seeking allies and cooperating with them in order to compete with opponents. Whenever there are two sides to an issue, there must be alliances among the people on one side. Children learn this lesson when they play in threesomes. Every conflict unites some people as it divides others, and politics has as much to do with how alliances are made and held together as with how people fight.[6] For this reason, the two-person models so prominent in economics and game theory are politically empty. When the only players in a model are "A" and "B," there is no possibility for strategic coalitions and shifting alliances, or for joint effort, leadership, and coordination.

The second reason cooperation must be central to a model of politics is that it is essential to power. Cooperation is often a more effective form of subordination than coercion. Authority that depends solely on the use of force cannot extend very far. Prison guards, with seemingly all the resources stacked on their side, need the cooperation of inmates to

[6]E. E. Schattschneider, *The Semisovereign People* (Hinsdale, Ill.: Dryden Press, 1970), chap. 4.

keep order in the prison. Despite bars, locks, and the guards' monopoly on weapons, prisoners outnumber the guards. So guards bargain with prisoners, offering them favors and privileges to gain their cooperation.[7] Even commanders of Nazi concentration camps depended on the cooperation and participation of inmates to operate the camps.[8] American counterinsurgency strategy in Afghanistan rests on cooperation between American soldiers and Afghan civilians. According to the U.S. Army's counterinsurgency manual, soldiers can be most effective by helping to provide food, water, shelter, education, and medical care, and by showing respect for people of the country they occupy.[9]

In the textbook model of markets, there is nothing but pure competition, which means no cooperation among either buyers or sellers. Sellers compete with each other to obtain raw materials at the lowest prices and to sell their products at the highest profit. They compete with savvy customers, who shop around for the best deals and thereby force the sellers to offer lower prices. Cooperation, when it occurs, is a deviation from the well-functioning market, and most words to describe it in the market model are pejorative—collusion, price-fixing, insider trading. In the polis, cooperation is the norm. It is the inseparable other side of competition and a necessary ingredient of power. The words to describe it are decidedly more positive—coalition, alliance, union, party, support, treaty.

Loyalty

Cooperation means alliances, and alliances are at least somewhat enduring. For that reason, cooperation often goes hand in hand with loyalty. In the ideal market, when a store hikes its prices or lets its products and service deteriorate, a shrewd buyer will switch stores. There is no "glue" in buyer-seller relations. In politics, relationships aren't usually so fluid. They involve gifts, favors, support, and, most of all, future obligations. Political alliances bind people over time. To paraphrase E. E. Schattschneider, politics is more like choosing a spouse than shopping in a discount store.[10]

The differing views of loyalty in the market and polis models are also reflected in language. In the market, people are "buyers" and "sellers." In

[7]Gresham Sykes, *Society of Captives* (Princeton: Princeton University Press, 1958), chap. 5.

[8]Jean-Francois Steiner, *Treblinka* (New York: Simon & Schuster, 1967), especially pp. 55–75.

[9]*U.S. Army/Marine Corps Counterinsurgency Field Manual* (Chicago: University of Chicago Press, 2007).

[10]Schattschneider, *Semisovereign People*, op. cit., note 6, p. 66.

politics, they are "enemies" and "friends." It is characteristic of friendships that we stick with our friends, even when they hurt us or do things not much to our liking. We honor friends more for what we have shared in the past than for what we expect them to do for us now and in the future. Friendships are forgiving in a way that pure commercial relationships are not. The idea of a "pure" commercial relationship is one not "tainted" by loyalty or sentiment. In the polis, history counts for a lot; in the market, it counts for nothing.

This is not to say that political alliances are perfectly stable, or that people never abandon friends and join hands with former enemies. Children learn this lesson from their threesomes, too. But in the polis there is a *presumption of loyalty.* People expect that others will normally stick by their friends and allies, and that it would take a major event—something that triggers a deep fear or offers an irresistible opportunity—to get them to switch their loyalties. Breaking old alliances can be risky, and people don't do it lightly.

Groups

Influence, cooperation, and loyalty are powerful forces, and the result is that groups and organizations, rather than individuals, are the building blocks of the polis. Groups are important in three ways. First, people belong to institutions and organizations, even when they aren't formal members. They participate in organizations as citizens, employees, customers, students, taxpayers, voters, and potential recruits, if not as staff, managers, or leaders. Their opinions are shaped by organizations, their interests are affected by organizations, and they depend on organizations to represent their interests.

Second, policy making isn't only about solving public problems but about how groups are formed, split, and re-formed to achieve public purposes. On policy issues of any significance, *groups* confront each other, using individuals only as their spokespeople. Groups coalesce and divide over policy proposals, depending on how they expect the proposal to affect them. When a state legislature proposes a cut in school funding, parents and teachers in a school district might come together to fight the proposal. But when the school board is negotiating teachers' contracts, many of the same parents might no longer wish to ally with the teachers.

Third, groups are important because decisions of the polis are collective. They are explicitly collective through formal procedures—such as voting, administrative rule making, and bargaining—and through public

bodies, such as legislatures, courts, juries, committees, or agencies. Public decisions are implicitly collective in that even when officials have "sole authority," they are influenced by outside opinion and pressure. Policy decisions aren't made by abstract people but by people in social roles and organizations, addressing audiences of other people in their social roles and organizations, and using procedures that have been collectively approved. The roles, settings, procedures, and audiences exert their own influence, even on the most strong-willed and independent minds.

I make groups an element of the polis in contrast to the market model, where the actors are conceived either as individuals or as groups acting as if they had one mind. But this model is not a pluralist theory of politics. The pluralist theory holds that all important interests have the capacity to form interest groups and that these interest groups have relatively equal chances to make their voices heard in the political system. I insist on the importance of groups, not to claim that a political system is equally open to all of them but to point out that politics is necessarily a system of alliances.

Information

In the ideal market, information is "perfect," meaning it is accurate, complete, and available to everyone at no cost. In the polis, by contrast, information is ambiguous, incomplete, often strategically shaded, and sometimes deliberately withheld. Of course, it would be silly to say there is no such thing as correct information. Surely, when the newspaper reports that Microsoft's stock closed at $27.21 per share, or that Senator John McCain voted against an arms limitation treaty with Russia, or that a police officer used the word "nigger" forty-one times in tape-recorded interviews, we are quite confident that the information is accurate and that it makes sense to think of that kind of information as being correct or incorrect. But in politics, what matters is what people make of such reports. People act on what they believe to be the financial health of a company, whether they think their senator represents their interests, or what they think a police officer's use of racial epithets means for the possibility of fair trials for black citizens. In the polis, iterpretations are more powerful than facts.

Much of what we "know" is what we believe to be true. And what we believe about information depends on who tells us (the source) and how it is presented (the medium, the choice of language, the context). Some people are more likely to believe medical information from a doctor than

from a friend, whereas others are more likely to believe a friend than a doctor. Some people find blogs more convincing than newspapers, and vice versa. The words, pictures, and imagery of information affect its very message as well as its persuasiveness. Timing matters. A company's announcement about its safety practices will be interpreted differently if issued after an accident rather than before.

Because politics is driven by how people interpret information, political actors strive to control interpretations. Political candidates and their campaign advisers are notorious for their creative presentation of information, or spin. But strategic manipulation of information is by no means the preserve of politicians. We all do it, have done it, and will continue to do it. (Think about the last time you told your professor why your paper was late, your students why the exams weren't graded yet, or your children why you make them go to school.) Information in the polis is different from information in the market model, because it depends so much on interpretation and is subject to strategic manipulation. Much of this book explores how policy information is strategically crafted in politics.

In the polis, information is never complete. We can never know all the possible means for achieving a goal or all the possible effects of an action, especially since all actions have side effects, unanticipated consequences, and long-term effects. Nor can we know for sure what other people will do in response to our actions, yet often we choose to act on the basis of what we expect others to do. Whenever people act, they act on guesses, hunches, expectations, hopes, and faith, as well as on facts.

Information is never fully and equally available to all participants in politics. There is a cost to acquiring information, if only the cost of one's own time. To the extent that information is complicated, sophisticated, or technical, it requires education to be understood, and education is not uniformly distributed. These are by now standard critiques of market theory.

But even more important for a model of the polis is that political actors very often deliberately keep crucial information secret. The ideas of inventors, the business plans of entrepreneurs, the decision of a government to devalue its currency, whether a putative candidate will in fact run for office, where the town leaders are thinking of locating a sewage treatment plant—every one of these things might be kept secret if someone expects someone else to behave differently were the information made public. Secrecy and revelation are tools of political strategy, and we would grossly misunderstand the character of information in politics if we thought of it as neutral facts, readily disclosed.

"Closing averages on the human scene were mixed today. Brotherly love was down two points, while enlightened self-interest gained a half. Vanity showed no movement, and guarded optimism slipped a point in sluggish trading. Overall, the status quo remained unchanged."

Passion

In the market, economic resources are governed by the laws of matter. Resources are finite, scarce, and used up when they are used. Whatever is used for making guns cannot be used for making butter (a textbook example dreamed up by someone who surely never made either). People can do only one thing at a time (produce guns or butter), and material can be only one thing at a time (a gun or a stick of butter).

In the polis, another set of laws operates alongside the laws of matter, ones that might be called laws of paradox if the phrase weren't paradoxical itself. Instead, I'll call them " laws of passion," because they describe phenomena that behave more like emotions than like physical matter. One of these laws is that passion feeds on itself. Like passion, political resources are often enlarged or enhanced through use, rather than diminished. Channels of influence and political connections, for example, grow stronger the more they are used. The more people work together and help each other, the more committed they become to each other and to their common goal. The more something is done—say, a regulatory agency consults with industry leaders on its proposals, or a school board negotiates with teachers on salaries—the more valuable the personal connections and organizational ties become, and the stronger people's expectations of "doing things the way they have always been done."

Political skills and authority also grow with use, and it is no accident that we often use the metaphor of "exercise" when talking about them. That skills should grow with practice is not so surprising, but it is worth exploring why authority should work the same way. Precedent is important in authority. The more one makes certain types of decisions, the easier it is to continue in the same path, in part because repeated decisions require no new thought, and in part because people are less likely to resist or even question orders and requests they have obeyed before. How often have we justified our own begrudging compliance by telling ourselves, "I've never protested all the other times I've been asked to do this, so how can I refuse now?" Or, on the other side, "I've let them get away with it many times before, so it is hardly fair to punish them now." In short, the more often an order is issued and obeyed, the stronger the presumption of compliance.

The market model ignores this phenomenon of resource expansion through exercise, use, practice, and expression. A distinguished former chairman of the Council of Economic Advisers once wrote that marketlike arrangements are good because they "reduce the need for compassion, patriotism, brotherly love, and cultural solidarity as motivating forces behind social improvement. . . . However vital [these things] may be to a civilized society, [they] are in *too short supply* to serve as substitutes" for the more plentiful motive of self-interest.[11] To make such an analogy between compassion and widgets, to see them both as items with fixed quantities that are diminished by use, is to be blinded by market thinking. People aren't born with a limited stockpile of sentiments and passions, to be hoarded through life lest they be spent too quickly. More often than not, fighting in a war increases the feeling of patriotism, just as comforting a frightened child increases one's compassion.

Another law of passion holds that *the whole is greater than the sum of its parts.* A protest march, for example, means something more than a few thousand people walking down a street; repeated denials of credit to blacks in a neighborhood means something more than a series of unrelated bankers' decisions. Widgets may get cheaper through mass production—economists call that "economies of scale"—but they are still widgets. By contrast, most human actions change their meaning and impact when done in concert or in quantity.

Finally, the most fun—and the most vexing law of passion: *things can mean and therefore be more than one thing at once.* Convicting white-collar criminals with nominal fines signals both that the government condemns the activity and that it does not. The growth of medical care expenditures

[11]Charles L. Schultze, *The Public Use of Private Interest* (Washington, D.C.: Brookings Institution Press, 1977), pp. 17–18 (emphasis added).

bemoaned by employers and taxpayers also means new professional opportunities and job growth, not to mention new treatments that save and transform lives. Ambiguity and symbolic meanings find no home in the market model of society, where everything has its precise value or cost. In the polis, where people not only count but think, wish, dream, and imagine, meanings can run wild, and they matter.

Power

Up to this point, I have defined the polis by contrasting it with a market model of society. Now it's time to summarize the characteristics, emphasizing what the polis is instead of what it is not:

1. It is a community, or perhaps multiple communities, with ideas, images, will, and effort quite apart from individual goals and behavior.
2. Its members are motivated by both altruism and self-interest.
3. It has a public interest, whose meaning people fight about and act upon.
4. Most of its policy problems are commons problems.
5. Influence is pervasive, and the boundary between influence and coercion is always contested.
6. Cooperation is as important as competition.
7. Loyalty is the norm.
8. Groups and organizations form the building blocks.
9. Information is interpretive, incomplete, and strategic.
10. It is governed by the laws of passion as well as the laws of matter.

By now, my readers must surely be wondering how a reputable political scientist could build a model of political society without making power a defining characteristic, let alone the primary one. I save power for last because it derives from all the other elements and can't be defined without reference to them. Power is a phenomenon of communities. Its purpose is always to subordinate individual self-interest to other interests—sometimes to other individual or group interests, sometimes to the public interest. It operates through influence, cooperation, and loyalty, and through strategic control of information. And finally, power is a resource that obeys the laws of passion rather than the laws of matter.

Any model of society must specify its source of energy, the force or forces that drive change. In the market model, change is driven by

Concepts of Society

	Market Model	*Polis Model*
1. Unit of analysis	Individual	Community
2. Motivations	Self-interest	Altruism and self-interest
3. Public Interest	Sum of individual interests	Shared interests; what is good for community
4. Chief conflict	Self-interest vs. self-interest	Self-interest vs. public interest (commons problems)
5. Source of ideas and preferences	Self-generation within the individual	Influences from others and society
6. Nature of social interaction	Competition	Cooperation and competition
7. Criteria for individual decision making	Maximize personal gain, minimize cost	Loyalty (to people, places, organizations, products); maximize individual and family interest; promote public interest
8. Building blocks of social action	Individuals	Groups and organizations
9. Nature of information	Accurate, complete, fully available	Ambiguous, interpretive, incomplete, strategically manipulated
10. How things work	Laws of matter (material resources are finite and diminish with use)	Laws of passion (e.g., human resources are renewable and may expand with use)
11. Sources of change	Market exchange; individual quest to maximize own welfare	Ideas, persuasion, and alliances; pursuit of power, own and others' welfare, and public interest

exchange, which is in turn motivated by the individual quest to improve one's own welfare. Through market exchanges, the overall use and distribution of resources changes.

In the polis, change occurs through the interaction of mutually defining ideas and alliances. Ideas about politics shape political alliances, and strategic considerations of building and maintaining alliances in turn shape the ideas people espouse and seek to implement. In my model of the polis, I emphasize ideas and portrayals as key forms of power in policy making. This book is not so much about how people collect and deploy the traditional resources of power—money, votes, and offices—but how they use ideas to gather political support and diminish the support of opponents, all in order to control policy.

Ideas are the very stuff of politics. People fight about ideas, fight for them, and fight against them. Political conflict is never simply over material conditions and choices but also over what is legitimate and right. The passion in politics comes from conflicting senses of fairness, justice, rightness, and goodness. Moreover, people fight *with* ideas as well as about them. The different sides in a conflict create different portrayals of the battle—who is affected, how they are affected, and what is at stake. Political fights are conducted with money, with rules, with votes, and with favors, to be sure, but they are conducted above all with words and ideas.

Every idea about policy draws boundaries. It tells what or who is included or excluded in a category. These boundaries are more than intellectual—they define people in and out of a conflict or place them on different sides. In politics, the representation of issues is strategically designed to attract support to one's side, to forge some alliances and break others. Ideas and alliances are intimately connected.

Finally, the interaction between ideas and alliances is ever-changing and never-ending. Problems in the polis are never "solved" in the way that economic needs are met in the market model. It is not as though we can place an order for justice, and once the order is filled, the job is done. (Indeed, some modern economists have puzzled over why even material needs seem to grow even as they are fulfilled.) As Plutarch wrote:

> They are wrong who think that politics is like an ocean voyage or a military campaign, something to be done with some end in view, or something which levels off as soon as that end is reached. It is not a public chore, to be got over with; it is a way of life.[12]

[12]Plutarch, cited in Jonathan Schell, *The Fate of the Earth* (New York: Avon Books, 1982), p. 109.

Part ii

GOALS

2

Equity

The most famous definition of political science says it's the study of "who gets what, when, and how."[1] Distributions—whether of goods and services, wealth and income, health and illness, or opportunity and disadvantage—are at the heart of policy controversies. In this chapter, we will describe issues as distributive conflicts in which equality is the goal. Keep in mind that in a distributive conflict, *all* sides seek equality; the conflict comes over how the sides envision a fair distribution of whatever is at stake.

To see how it is possible to have competing visions of equality, let's imagine we have a mouthwatering, bittersweet chocolate cake to distribute in a public policy class.[2] We all agree that the cake should be divided equally. The intuitively obvious solution is to count the number of people in the classroom, cut the cake into that number of equal-sized slices, and pass them out. I've tried this solution in my classes, and, believe me, my students always challenge my equitable solution. Here are some of the challenges:

1. Some say my solution is unfair to the people left out of the class in the first place. "I wouldn't have skipped class last week if I had known you would be serving chocolate cake," says one. Students not even taking the course come up to me in the halls: "Unfair!" they protest. "The catalog description sounded dull. If it had mentioned cake, we would have enrolled in your course." My cake is featured on gourmet.com and students from around the world e-mail me: "We would have applied to your university if we had known you were a gourmet chef." All these people describe my solution as *equal slices but unequal invitations.*

[1]Harold Lasswell, *Politics: Who Gets What, When, How* (New York: McGraw-Hill, 1936; 2nd ed. with postscript, Cleveland: World Publishing, 1958).

[2]My inspiration for this analysis of equity came from Douglas Rae, "The Egalitarian State: Notes on a Contradictory System of Ideals," *Daedalus* 108, no. 4 (Fall 1979), pp. 37–54; and Douglas Rae et al., *Equalities* (Cambridge, Mass.: Harvard University Press, 1981).

2. Some say my solution is unfair to the high achievers. These students think I should give a pop quiz, then divide the cake according to performance on the quiz. 'A' students get big pieces, 'B' students get small pieces, and 'C' students get a taste so they know what rewards await them if only they work harder. Of course, there aren't any 'D' and 'F' students in my class, but if there were, they would get nothing because they haven't earned cake. The proponents of this solution describe it as *unequal slices for unequal merit but equal slices for equal merit.*
3. Some of my colleagues buttonhole me the next day. This is a Political Science Department course, they say, and your cake should have been shared in accordance with the department's hierarchy. The chairperson sends me a memo proposing the following division of any future cakes:

   Your undergraduates: crumbs
   Your graduate teaching assistant: mouthful
   All other grad students: work on our research while we eat cake
   Assistant professors: slivers
   Associate professors: wedges
   Full professors: wedges with extra frosting
   Chair: wedge with extra frosting, and a linen napkin

   This solution might be described as *unequal slices for unequal ranks but equal slices for equal ranks.*
4. A group of men's liberationists stages a protest. Women have always had greater access to chocolate cake, they claim, because girls are taught to bake while boys have to go outdoors to play football. Moreover, chocolate cake is more likely to be served in courses taught by women than men, and those courses draw proportionately more female students. In short, gender roles and gender divisions in society combine to make gender the de facto determinant of cake distribution. The men, who comprise only one-third of the class, propose that men as a group should get half the cake, and women as a group should get the other half; *unequal slices but equal social blocs.*
5. One semester, all the students in my public policy class had just attended a three-course luncheon, which, mysteriously enough, did not include dessert. Several of them thought my chocolate cake should be treated as the last course of the luncheon. They pointed out that some students had managed to commandeer two shrimp cocktails, pick all the artichoke hearts from the salad, and grab the rarest slices of roast beef from the platter. Shouldn't the

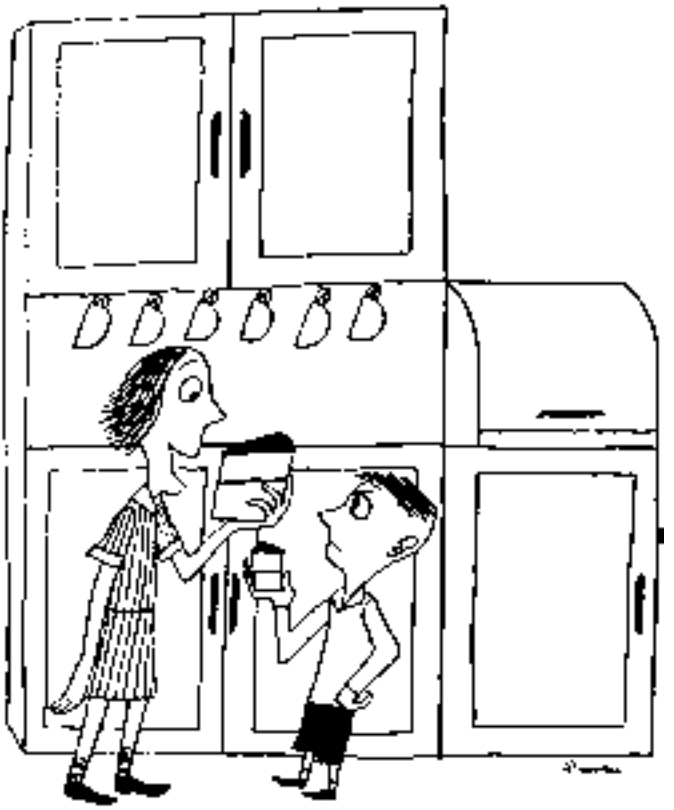
other students—the ones who had only one shrimp cocktail and overcooked roast beef, not to mention the vegetarians—get bigger slices of my chocolate cake? This solution, which I had to agree seemed fair, might be called *unequal slices but equal meals.*

6. Every year, a few students come forth saying they hate chocolate. There's always someone who is allergic to chocolate. And another who says he was born without the crucial gene for chocolate digestion, and though it would do him no harm to eat my cake, he wouldn't derive any nutritional benefit from it either. These students think I might as well reallocate their portions to those who can truly appreciate the cake. Their solution might be called *unequal slices but equal value to recipients.*
7. The business majors in the class want no part of these complicated solutions. Give everyone a fork, they yell, and let us go at it: *unequal slices* (or perhaps I should say "hunks") *but fair competition with equal starting resources.*
8. One semester, I was caught with only enough chocolate to make a cupcake. It couldn't really be divided among the large number of people in my class. The math whizzes proposed an elegant solution: put everyone's name in a hat, draw one ticket, and give the whole cupcake to the winner. They had a point: *unequal slices but equal statistical chances of winning cake.*
9. Just when I thought I finally had an equitable solution, the student government activists jumped up. In a democracy, they said, the only fair way to decide who gets the cupcake is to give each person a vote and hold an election for the office of Cupcake Eater. Democracy, they claimed, means *unequal slices but equal votes.*

Now look back at what happened in the chocolate cake saga. We started with the simple idea that equality means the same-size slice for everyone. Then there were nine challenges to that idea, nine different visions of equality that would result in unequal slices but equality of something else.

Here is the paradox in distributive problems: equality often means inequality, and equal treatment often means unequal treatment. The same distribution may look equal or unequal, depending on where you focus. I use the word "equality" to denote sameness and to signify the part of a distribution that contains uniformity—uniformity of slices, or of meals, or of voting power, for example. I use "equity" to denote distributions regarded as fair, even though they contain both equalities and inequalities.

Let's examine the challenges more carefully to see how they give us some tools for thinking about what equality means. Every distribution



"My body being a bigger machine, requires more fuel."

has three important dimensions: the recipients (*who* gets something?), the item (*what* is being distributed?), and the process (*how* is the distribution carried out?). Challenges 1, 2, 3, and 4 redefine the recipients. Challenges 5 and 6 redefine the item being distributed. Challenges 7, 8, and 9 focus on the process of distribution.

The Dimensions of Equality

1. Membership

Challenge 1 questions the definition of membership in a community. It is all well and good to say that something should be divided equally, but the sticky question is, "Among whom?" Who should count as a member of the group

of recipients? Often, defining the class of members entitled to "equal treatment," whatever that is, is the core of a political controversy.

The American political system was designed to reconcile a severe conflict over membership: who, among all the people living in the territories, should receive representation in the new political system that was theoretically to be based on consent of the governed? "All men are created equal," the Declaration of Independence had asserted, but when the founders set about drafting a constitution, slavery crashed headlong into philosophy. The Constitution embodied one of the most notorious paradoxes of all time. Slaves were defined simultaneously as human beings and material property. They were counted *as people* in censuses to determine how many representatives to Congress each district would get. But each slave counted as only three-fifths of a person—not a person who merited representation him- or herself but *a piece of human property* that would amplify the representation of slaveholders.

Even after the Fourteenth Amendment gave blacks the right to vote, under Jim Crow laws they couldn't partake of all the "cake" the country had to offer. They couldn't live in certain neighborhoods, use certain public facilities, attend whites-only schools, and, in many places, they still couldn't exercise their right to vote until the 1960s. The civil rights movement and the end of legal segregation were (and still are) efforts to redefine equality by changing the rules of membership.

Some potent residues of racism still "disinvite" black citizens. In 2007, the Cherokee Nation held a special election in which its members voted that people of mixed Cherokee-black heritage and Freedmen (descendants of freed black slaves who had been held by Cherokees) were no longer citizens of Cherokee Nation. Not only can't these black and part-black people vote in tribal elections, they are ineligible to receive various kinds of federal and tribal bounty—medical, educational, and housing aid. Even if the courts eventually overturn the decision, the episode makes black Cherokees *feel* uninvited. As one of them said, "Even having the debate is a problem. You then become a lesser person because people get to decide whether you're in or not."[3]

Political communities often differentiate among their residents for the purpose of distributing both property and political rights. In some nations where Islam is the dominant religion (Iran and Afghanistan, for example), women may inherit only half as much from their parents as men, and

[3]Evelyn Nieves, "Putting to a Vote the Question 'Who is a Cherokee?'" *New York Times*, Mar. 3, 2007; Brian Daffron, "Freedmen Descendants Struggle to Maintain their Cherokee Identity," *Indian Country Today*, Mar. 30, 2007, indiacountrytodaymedianetwork.com, accessed Feb. 17, 2009.

where fundamentalist Muslim leaders rule, girls are banned from education and women are forbidden to work outside the home, even if they are widowed and have children to support. In European Union (EU) member states, social and political rights differ according to whether a resident is a citizen of the state in which he or she lives, a citizen of another EU member state, or a citizen of a country outside the union. These latter so-called "third-country nationals" have distinctly lesser political rights and social benefits. Within the United States, people who have been convicted of a felony may never vote again in Kentucky or Virginia, even once they have served their sentence and completed parole, while in Maine and Vermont, felons never lose their right to vote and may vote by absentee ballot from jail.[4]

Immigration and citizenship policies turn on defining membership. They set the criteria for admitting new members and making them eligible to receive whatever political, economic, and social resources a country has to distribute. Membership criteria are rarely all or nothing; the terms of citizenship can be distinctly double-edged, especially when nations are struggling to incorporate people whose religious traditions vary sharply from the dominant one. In Germany, a predominantly Christian society, the federal government has relaxed its requirement that immigrants have German blood in order to become naturalized citizens, but some German states make Muslims unwelcome by prohibiting head scarves or requiring public schools to display crucifixes. In Israel, the government has debated whether to require non-Jews who want to become citizens to pledge their loyalty to Israel as a "Jewish state." Would-be Danish residents and citizens must declare their acceptance of Danish values and norms, including gender equality, equal parental responsibilities of fathers and mothers, secularism, and the duty to be self-supporting. "Invitations" to citizenship can be more or less equal.[5]

Beyond formal rules that exclude people outright, informal practices can covertly exclude. The U.S. welfare reform of 1996 made legal immigrants ineligible for Medicaid until they had lived here for five years. Although the rule was later softened, many immigrants who were eligible for Medicaid did not apply out of fear that they would jeopardize

[4]Project Vote, "Restoring Votes to Former Felons," Apr. 2010, available at projectvote.org/felon-voting.html.

[5]Jytte Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), p. 2; Isabel Kershner, "Israeli Cabinet Approves Citizenship Amendment," *New York Times*, Oct. 11, 2010; Per Mouritson and Tore Vincents Olsen, "Denmark Between Liberalism and Nationalism," *Ethnic and Racial Studies*, forthcoming, 2012.

their immigration status. In the day-to-day administration of welfare (now called Temporary Assistance for Needy Families), sometimes harsh and domineering welfare caseworkers convey to clients that they have no right to express their needs or complain about their caseworkers' requirements and decisions. Thus, at the same time government includes these citizens in the social safety net by giving them benefits, it implicitly teaches them that they are not entitled to participate in government decisions that affect them.[6]

2. Merit

Challenge 2 represents the ideal of reward for individual accomplishment. You can't get past kindergarten without learning that life is all about rewards for your personal achievement. As President Bill Clinton once put it, "If you work hard and play by the rules, you should be given a chance to go as far as your God-given ability will take you."[7] That's the American creed. Indeed, all modern liberal societies prize individual achievement as the standard of reward, and aspire to minimize the role of race, gender, ethnicity, and other immutable personal characteristics in determining citizens' fortunes.

Like every abstract ideal, merit becomes problematic when we try to figure out how to identify and quantify in order to build it into policy. Academic aptitude testing purports to measure past learning, ability to do academic work, and potential to succeed in college. On finishing one of these exams, students typically complain about the irrelevance or triviality of some of the questions. "How, pray tell, does my knowledge of this or that obscure fact show a clear picture of my abilities?" These complaints aren't mere whining. They go to the question of how we identify achievement and aptitude.

Indeed, the tests used for admission to elite colleges and universities in the U.S. have come under fire. Some critics say the tests' vocabulary and cultural references are biased and don't measure the knowledge that working-class and minority students gain from their life experiences; that they reward students whose parents have the means to pay for expensive test-prep courses; and that they fail to register any information about a person's capacity for leadership or commitment to making social

[6]Joe Soss, *Unwanted Claims: The Politics of Participation in the U.S. Welfare System* (Ann Arbor: University of Michigan Press, 2000).

[7]Bill Clinton, Remarks to the Democratic Leadership Council, Dec. 3, 1993, available at findarticles.com/p/articles/mi_m2889/is_n48_v29/ai_14891633/.

contributions, qualities that we might think especially desirable in our budding elites.[8]

Apart from thorny issues of how to measure individual merit, many social scientists question just how much credit an individual ought to get for his or her accomplishments. As social creatures, we are shaped and nurtured by the opportunities given us, by our cultural heritages, and by the resources of our communities, not only those of our parents. To be sure, every successful entrepreneur, inventor, scientist, and artist must master voluminous information and develop excellent technique, but for all their individual knowledge and hard work, each person builds on a "huge collective investment" in research, publication, education, and training. "All of this comes . . . free of charge, a gift of the past."[9]

Even long and steady practice honing skills isn't purely a matter of individual grit. Practicing depends on having access to the time and facilities for practice, and on not having to devote every spare hour to supporting one's family. As Malcolm Gladwell discovered in his book about success, Bill Gates lucked out by having a donated computer in his high school at a time when almost no adults, let alone teenagers, had access to computers. The Beatles lucked out early in their band life by getting a grueling nightly gig in Hamburg that gave them a steady supply of practice opportunities.[10]

Nevertheless, the idea of reward for individual achievement provides the major justification for income inequality. Think of the total national income in any year as a giant cake. Those who achieve more deserve bigger slices—but how much bigger? In the U.S. in 2005, the top 1 percent of taxpayers received almost 22 percent—over one-fifth—of the total income in the nation. The top 5 percent of taxpayers received 37 percent of the total income—almost two-fifths. Since the mid-1970s, as productivity and income have grown, the richest few—the top 1 percent—have reaped more of that growth, leading to even greater differences in the shares of income going to the people at the top and the bottom.[11]

[8]Nicholas Lemann, *The Big Test: The Secret History of the American Meritocracy* (New York: Farrar, Straus and Giroux, 1999); and Jerome Karabel, *The Chosen: The Hidden History of Admission and Exclusion at Harvard, Yale, and Princeton* (New York: Houghton Mifflin, 2005).

[9]Gar Alperowitz and Lew Daly, *Unjust Deserts* (New York: New Press, 2008), p. 55.

[10]Malcolm Gladwell, *Outliers: The Story of Success* (New York: Little, Brown, 2008).

[11]Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton: Princeton University Press, 2008), pp. 11–12, based on a now famous paper by Thomas Piketty and Emmanuel Saez, "Income Inequality in the United States 1913–1998," *Quarterly Journal of Economics* 2003, vol. 118, pp. 1–39.

Concepts of Equality

Simple Definition Same size share for everybody

Complications in the Polis

Dimension	*Issue*	*Dilemma*
Recipients	1. Membership (the boundaries of community)	unequal invitations/ equal slices
	2. Merit-based distribution	equal merit/equal slices; unequal merit/unequal slices
	3. Rank-based distribution (internal subdivisions of society)	equal ranks/equal slices; unequal ranks/unequal slices
	4. Group-based distribution (major internal cleavages of society)	equal blocs/ unequal slices
Items	5. Boundaries of the item	equal meals/ unequal slices
	6. Value of the item	equal value/ unequal slices
Process	7. Competition (opportunity as starting resources)	equal forks/unequal slices
	8. Lottery (opportunity as statistical chance)	equal chances/ unequal slices
	9. Voting (opportunity as political participation)	equal votes/unequal slices

Is this lopsided distribution of income in the U.S. fair? Those who think it is believe that the market, quite like a teacher, rewards the most accomplished and productive people. According to the *New York Times* columnist David Brooks, growing inequality doesn't signal anything wrong: "The market isn't broken; the meritocracy is working almost too well. It's rewarding people based on individual talents." Former Treasury secretary Henry Paulson justified inequality in the same way. If some people receive no benefits from periods of strong economic expansion, that's because "as our economy grows, market forces work to provide the greatest rewards to those with the needed skills in the growth areas."[12]

Those who find this marked income inequality unfair point to deliberate government policies that direct generous portions of the national income to the very rich and meager portions to the rest. The market, they note, is not like a teacher—it has no mind of its own. Presidents, their economic teams, and legislators set policies that can help or harm people, regardless of their education, skills, talents, and hard work. Lower tax rates on capital gains than on wages help the rich whether or not they displayed any merit in acquiring their wealth. So do high interest rates set by the Federal Reserve Bank. Allowing unemployment to rise and the minimum wage to stagnate ensures that the people at the bottom will receive ever-smaller shares of national income, no matter how hard they work. True, individual talent and achievement account for part of people's income, but government policies exert much more influence on how income gets distributed than individual effort and skill.[13]

Merit, then, is a powerful idea and a good one, but it is not as simple as it first seems. Hard work and innate talent play important roles in individual achievement, but no one graduates from Hogwarts, whips out a wand, and creates something out of nothing. Public and private investments, policies at all levels of government, and cultural, social, and economic opportunities all contribute to an individual's capacity to do great things.

3. Rank

Challenge 3 is a claim for redistribution based on rank. It holds that for purposes of distributing resources, there are relevant differences between *segments* of a larger group (faculty and student ranks within the university,

[12]Both quoted in Bartels, *Unequal Democracy*, ibid., pp. 16 and 18.

[13]For more on how government policy—and especially differences between Republican and Democratic administrations—shapes the distribution of income, see Bartels, *Unequal Democracy*, op. cit., note 11.

in my example), and that resources should be allocated on the basis of these subgroups rather than individual differences. In economics, the concept of equity based on internal ranks is called *horizontal and vertical equity*, with *horizontal equity* meaning equal treatment of people in the same rank and *vertical equity* meaning unequal treatment of people in different ranks. The two are obviously flip sides of the same coin.

Rank-based distribution is widespread. Military organizations, universities, factories, corporations, and, indeed, government itself all pay their employees according to rank. Many also distribute privileges by rank, such as use of the executive dining suite versus the cafeteria, or in universities, longer book-borrowing privileges for faculty than students. Hierarchical organizations justify their rank-based differences in power, money, and prestige by merit. They assume that rank correlates with merit. The higher someone has risen, the greater his or her competence and contributions—or else the person wouldn't have been promoted.

Rank-based distribution is at the heart of the debate about gender pay equity. In the current system, some women's advocates claim, pay is largely determined by gender rather than by skill, responsibility, difficulty, and experience. At the U.S. Capitol, of all places, women who clean are called "custodians" and receive on average $10.00 per hour. Men who clean are called "laborers" and get $11.00 per hour, yet "they're both lifting the same fifty pounds of trash and swabbing, mopping, and scrubbing the very same tables, floors, and toilets." Gender differences are just as pronounced, if not more so, in professional occupations—doctors, lawyers, scientists, professors, engineers, computer systems analysts. Professional women with the same educational credentials and experience doing the same specialty work make significantly less than their male counterparts. Pay equity advocates don't aim to eliminate pay differences between custodians and chemists, but instead to equalize women's and men's pay for jobs requiring the same level of training, skill, and responsibility. They would switch the basis of differentiation from a criterion seen as invalid (gender) to one seen as valid (rank based on difficulty and skill levels of work).[14]

Even within a framework of rank-based distribution, there are many possible ways to challenge a distribution as inequitable. One can ask whether the lines between ranks are correctly drawn or, put another way, whether the different ranks indeed represent different skills, knowledge, or other relevant factors. Are the rewards given to each rank proportional to the differences

[14]Evelyn Murphy and E. J. Graff, *Getting Even: Why Women Don't Get Paid Like Men and What to Do About It* (New York: Touchstone, 2005), quote on p. 78.

between them? Are individuals correctly assigned to ranks? Does the system evaluate people fully and fairly? Are the criteria for differentiation the right ones at all? For example, do compensation systems based on seniority really reward the "right thing"?

4. Group-Based Distribution

Challenge 4 is a claim for group-based distribution. It holds that some major divisions in society are relevant to distributive equity, and that membership in a group based on these divisions should sometimes outweigh individual characteristics in determining distribution. In the U.S., for example, military veterans have received special access to various goods (such as land grants, education, and health care) on the basis of military service, without any inquiry into their individual contributions to national security.[15]

In societies with liberal individualist ideologies, group-based distribution is usually proposed as a remedy for previous violations of merit- or rank-based distribution. In the chocolate cake example, men proposed group-based distribution to compensate them for historical deprivations based on their gender. The obvious analogy in contemporary politics is affirmative action, a policy of giving preference to members of groups that have been the victims of historical discrimination. Affirmative action is a loose term for various policies to give minority groups, primarily African Americans and women, an extra boost in distributive decisions. These policies include advertising job openings in outlets targeted to minority groups; extra steps in hiring to ensure that nontraditional qualifications and career paths are not overlooked; special programs to enlarge the pool of qualified minority applicants (for example, summer enrichment programs at universities, or mentoring programs in businesses); and altering the selection criteria to give more weight to the special experiences of living and working in diverse communities. Affirmative action has been used primarily to distribute places in higher education, to distribute jobs and promotions in public and private employment, and to distribute government contracts to businesses.

Discussions of affirmative action usually conflate it with quotas, but affirmative action as it has been practiced in the U.S. has rarely involved quotas. Quotas are a means of reserving a certain portion of an item (such as places in a medical school class, positions in a firm, or promotions to higher job categories) for members of a particular group.

[15]Laura Jensen, *Patriots and Settlers* (Cambridge: Cambridge University Press, 2003).

How are group-based and rank-based distributions different? Both types divide people into groups, but rank-based distributions assign people to groups according to more or less fine-tuned individual measurements. The justification for assignment to a rank usually has something to do with the individual's past performance or achievement. Group-based distributions assign people to groups on the basis of traits having nothing to do with individual qualifications or performance. The traits, like gender or race, are usually immutable, things a person can't change.

Group-based distribution tends to follow major social divisions, such as ethnicity, race, gender, or religion—divisions that split a society into two or three large blocs and that historically served as a basis for privileges and disadvantages. In the U.S., we have based affirmative action primarily on race and gender, but other societies have recognized other social cleavages as important to distributive justice. Germany and Japan require employers to hire handicapped people in a certain percentage of jobs, and India has preferences for Dalits, the lowest group in its historical caste system.

There are many ways to challenge the equity of a group-based distribution. One question is whether the definition of relevant groups reflects some meaningful social reality. For example, are race and ethnicity coherent categories? How should we classify people who are of mixed-race parentage? (The very question presumes there is something like "pure" racial identity, a dubious assumption.[16]) Is President Obama black because of his father and his skin color, or white because he was raised by his white mother and grandparents? Are ethnicity and national origin the same thing? Does it make sense to lump people from different Spanish-speaking cultures and nations together?

Another important challenge asserts that ascriptive identity characteristics such as race, gender, and nationality do not really correspond to the actual experience of disadvantage or discrimination, yet the primary rationale for group-based distribution is to compensate people for past disadvantage. Why should a wealthy, upper-class, highly educated, dark-skinned immigrant from the West Indies be given the same preferences as a poor, unskilled, dark-skinned American-born citizen raised in a southern town with distinctly inferior schools in its black neighborhoods? In this view, demographic groupings are too "rough." They make unwarranted presumptions about individual cases and give preferences to people who never suffered any disadvantage. Group-based distribution should be used only as a tool to correct deviations from merit-based selection.

[16]See James F. Davis, *Who is Black? One Nation's Definition* (Harrisburg: Pennsylvania State University Press, 1991).

Another challenge holds that race and gender are *always* illegitimate criteria for distribution of anything, even when used in a compensatory fashion. Any use of race or gender for the benefit of previously disadvantaged groups discriminates *against* whites or men. As Supreme Court Chief Justice John Roberts put it, "The way to stop discrimination is to stop discriminating."[17] Accordingly, private and public institutions should use strictly merit-based distribution, even if it would likely result in smaller shares (of jobs, school places, construction contracts) for women and blacks.

The main argument *for* affirmative action starts from the main feature of the polis: community. In this view, when an organization makes admission or hiring decisions, it is not merely allocating prizes to individuals. It is composing itself by creating its membership. Instead of focusing on whether diverse individuals receive a share of the prizes, this view sees diversity as a characteristic of cohesive, strong, and vibrant communities. Admitting a diverse membership gives individuals the opportunity to interact with people from other social groups and to learn about and value different experiences and outlooks. Training and promoting women and minorities provides role models and leaders for the next cohort of women and minorities, setting up a self-generating process of more equal distribution and a less divided society.[18]

5. Need

Challenges 5 and 6 are based on redefining the item to be distributed. Challenge 5 redefines the boundaries of the item. Instead of seeing a cake as a thing in itself, it is viewed as part of a larger whole, a meal. To take something and make it part of a larger entity is to expand the boundaries of what is being distributed, to present a more global vision. Expansion might be across types of goods (from cake to meal), or across time (from who gets what in the next hour to who has gotten what in the previous three hours).

Expanding the definitional boundaries of the item is always a redistributive strategy, because it calls for using the more narrowly defined item (in this case, the cake) to compensate for inequalities in a larger sphere (in this case, lunch). Challenges to the definition of an item are generally not either/or choices, but choices about how expansively to define the item along a continuum. The cake, for example, could be seen as part of today's lunch, part of today's meals, or part of this week's diet.

[17] *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).

[18] William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton: Princeton University Press, 1998).

Student financial aid involves boundary challenges to the definition of an item. Some schools give aid strictly on the basis of students' academic merit, but most distribute aid at least in part on the basis of students' financial need. When a school considers financial need, it treats financial aid not as money in itself but as part of each student's total assets. The school then has to decide what to count as a student's assets. Some schools look only at students' current earnings and savings. Others take a more global view and include parents' earnings and savings. Law, medical, and business schools typically consider their students' potential future earnings as part of their assets, and tend to offer loans rather than outright scholarships, on the theory that graduates can easily pay back loans out of their future earnings. Thus, within student financial aid, we have at least four possible definitions of what is being distributed: aid as money in itself, aid as part of a student's assets, aid as part of a family's assets, and aid as part of a student's lifetime earnings.

Welfare and tax policy both involve these questions of how to define assets. In setting levels of welfare grants, do we take into account people's cars and homes as part of their assets? Do we take into account their relatives' assets? Tax policy uses the concept of deductions to take into account that different people have different required expenses that aren't really part of their disposable income. Thus, the tax code allows deductions for support of dependents, for inescapable business expenses, and for some large medical expenses.

6. Value

Challenge 6 redefines the item in terms of its value to the individual. For lack of better terms, we might call this a switch from a *standardized value* of the item (say, the weight of a cake slice) to a *customized value* (say, how much nutrition someone derives from cake). When the economist Mollie Orshansky devised the first government poverty measures in 1963, she based her calculations on the cost of food. She knew that people of different ages require different amounts of food to be healthy—teenagers need more calories than infants. So instead of positing a single-income figure as the minimum income or "poverty line" for everyone in the country, or even for all four-person households, she calculated different poverty levels for households of differing sizes and composition.[19]

The value of some goods derives largely from the quality of relationships rather than tangible or material properties. Before 1954, racial segregation

[19]Deborah Stone, "Making the Poor Count," *American Prospect* no. 17 (Spring 1994), pp. 84–88.

in schools was still legally permissible as long a state provided "equal" education to blacks and whites. In 1950, the Supreme Court had to decide whether the state of Texas was providing equal education to black law students by educating them in a separate, all-black law school while excluding them from its public, and prestigious, University of Texas Law School. The Court said "no." According to the Court, the value of a law school education derives in large part from the reputation of its faculty, "the position and influence of the alumni," and the school's "standing in the community, traditions, and prestige." These relational factors would help a law school graduate to network, attract clients, and secure good jobs, and these factors are at least as important to legal education as the size of the faculty, the number of books in the library, or the curriculum offerings.[20]

Conflicts over the value dimension of equality are especially intense in social policy. Education and medical care are "delivered" through relationships and derive much of their value from the quality of the relationships and the ability of the provider to tailor the service to the needs of the individual. Does equality in a multiethnic school district mean that every child should have the right to study in English and to study the same topics? Or does it mean the right to study in one's native language and one's cultural history? The answer depends on whether you think the value of education consists partly in enhancing students' ability to participate in two cultures. Does equality in medical care mean that every person should have access to a physician, or to a physician of his or her own choosing, or perhaps to a physician of similar ethnic and cultural background? The answer depends on whether you think the value of medical care consists partly in the understanding and reassurance that come from personal chemistry and shared language and culture. These are all issues where judgment about the equity of a distribution turns on one's assessment of the importance of customized or individualized value.

7, 8, and 9. Competition, Lotteries, and Elections

Challenges 7, 8, and 9 all focus on the *process* of distribution. They are, respectively, calls for market competition, lotteries, and democratic elections. Process is a key dimension of equity because in the polis, distributions don't happen by magic. They are policy decisions carried out by real people, not by invisible hands.

[20] *Sweatt v. Painter*, 339 U.S. 629 (1950).

Distribution processes can be divisive and socially disruptive, as market competition can sometimes be, or orderly and socially cohesive, as elections in a stable democracy are thought to be (but aren't always). Distributive systems may provide employment—witness our tax system that employs untold thousands in accounting firms, seasonal tax preparation firms, tax software companies, and the Internal Revenue Service. A flat-rate tax scheme would put a lot of people out of business. Distributive systems may cement relationships, as patronage does, and forge social solidarity, as social insurance does. In short, the processes of distribution can create or destroy things of value such as loyalty, community spirit, or jobs, apart from the things they explicitly distribute. When people fight about equity, they are also fighting about these less tangible social and political aspects of distribution.

Process is important, too, because our notion of fairness includes not only a fair end result but also a fair decision-making process. If a jury in a criminal case listened carefully to testimony, then flipped a coin to decide whether to convict, we would think the trial unfair, even if it resulted in a decision we believed was in accord with the evidence.[21] For many things in life—such as an athletic competition, an election, or even a military draft—we are quite willing to accept unequal results so long as we know the process is fair. Many political fights and scandals arise from concerns that a distributive process was not conducted fairly.

In some ways, the field of public policy has been one long debate about the virtues of market competition versus representative government as ways of deciding who gets what. We'll have lots more to say about markets and democracy as processes for collective choice, but, for now, simply note that one major way to challenge a distribution is to argue about whether the *process* of distribution is fair—the *how*—rather than about *who* the recipients are or *what* is being distributed. Arguments for making decisions through competition, lotteries, elections, negotiations, arbitrations, and adjudications are all ultimately about fair process.

Choosing a Distributive Method

With so many competing definitions of equity, you're probably wondering what's the "right" one and how you, as a policy analyst, advocate, or leader, ought to decide. Of course, the point is that there is no right

[21]Robert Lane, "Procedural Justice in a Democracy: How One Is Treated Versus What One Gets," *Social Justice Research* 2 (1988), pp. 177–92.

way. These decisions are hard, and it's no wonder that people sometimes resort to the two solutions that free them from making tough decisions—equal slices and lotteries.

Equal slices is an intuitively powerful solution, precisely because the outcome "looks and feels" equal. In Nepal, villagers sometimes resort to equal slices to divide resources for development projects. In one project, the district government provided villages with money to plan and construct water systems. One village bought PVC pipes with its money and cut the pipes into pieces of equal lengths for each household so that each house would be able to connect to the future water system. But a village water system could never happen, because there weren't any long pipes left to construct one. In another project, the national government gave a district development committee 300 quintals of wheat to distribute among poor people in exchange for their labor on a development project. The members of the district committee couldn't decide on a project to support, so they divvied up the wheat equally among all fifty villages. The village development committees couldn't agree on projects either, so they divided their wheat equally among the wards in the village, each of which got sixty-five grams of wheat—not enough to support enough labor to build anything.[22]

Like the equal-slices solution, lotteries give the appearance of being absolutely fair, and policy makers sometimes resort to them when they can't find principled reasons to justify their decisions. Several countries, including the U.S. at one time, have used lotteries to draft soldiers into the armed forces. The state of Oregon ran a lottery for access to its Medicaid program because it didn't have enough money to cover everyone who met the eligibility criteria. The state Medicaid director explained, "We thought about other options, such as should we try to pick all of the sickest people or the kids or the people with cancer or heart disease. But . . . there's just no way to guarantee the fairness of that." Another official added, "The random selection process provides the most equitable method."[23] Lotteries violate the notion of distribution according to principled reasons, but as the Oregon officials hint, lotteries have the tremendous political virtue of *symbolizing* absolute fairness—they don't (usually) allow bias, favoritism, or pull. Also, lotteries probably dampen citizens' anger at being chosen for a burden or excluded from a benefit.

[22]Bihari K. Shrestha, "Water and Sanitation Accelerated and Sustainable Universal Coverage: An Account of the Piloting of User-Based Approach in Gujari VDC, Dhading" (Kathmandu: Nepal Water for Health, 2010), and Bihari K. Shrestha, personal correspondence, Feb. 27, 2011.

[23]William Yardley, "Bend Journal: Drawing Lots for Health Care," *New York Times* Online, Mar. 13, 2008, available at nytimes.com/2008/02/13/us/13bend.html; Commonwealth Fund, "States in Action Newsletter," Feb./Mar. 2008, p. 5.

Having participated in what seems like a fair game, losers are more likely to blame fate than politicians for their predicament.

Short of equal slices and lotteries, how can you analyze a distributive problem and arrive at a good solution? When you confront a political issue or policy problem, begin by reading different positions on the issue and identifying how they define the three dimensions of recipients, items, and process. For each of the major actors or intellectual heavies (philosophers and professors count here), figure out their answers to three questions: First, who are the eligible recipients, and what criteria make them eligible? Second, what is being distributed, and how does each player define or envision it? And third, what social processes are used to carry out the distribution, and what kind of process does each player recommend as best? As you read speeches, articles, and position papers, you probably won't find explicit answers to these questions. Your job is to read between the lines and to interpret. Gather all the players together in an imaginary room for a debate. You are the moderator. Force the players to answer the same questions. Of course, you'll be speaking for all of them in your own head, but as you do this mental exercise, the different interpretations will become clear.

Once you have mapped out the arguments, ask yourself whether they seem accurate, reasonable, persuasive, and, ultimately, fair. You may already hold some strong beliefs, but now's the time to stop and question *yourself*. What beliefs and assumptions do you take for granted? Where one stands on issues of distributive justice is often determined not so much by the specifics of any issue as by a more general worldview. Worldviews include unspoken assumptions about individualism and community, freedom and moral obligation, and the nature of democracy. We'll explore these assumptions throughout the book.

Inequality

Another avenue into the meaning of equality is to explore the nature and impacts of *inequality*. Just who eats how much of the global cake?[24] The 500 richest people in the world together have more income than the poorest 416 million. Think about that another way: one-fifth of the world's people (that's one billion people) live on less than one dollar a

[24]Unless noted, the figures in this section are from United Nations, Human Development Report 2005, *International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, available at hdr.undp.org/en/reports/global/hdr2005.

day; meanwhile, another billion live in countries where the average person drops a few dollars a day on cola and cake.

Whether we consider income, education, sickness and death, or health care, the gaps between rich and poor countries are large and mostly growing. In 1980, child death rates in sub-Saharan Africa, for example, were "only" thirteen times higher than those in rich countries, but by 2005, they were twenty-nine times higher. The average difference in life expectancy between low-income countries and high-income countries is nineteen years. A child born in Burkina Faso can expect to live thirty-five fewer years than one born in Japan. A child born in Mozambique can expect to receive four years of schooling, while her lucky French counterpart can expect fifteen years of much better education.

Inequality *within* countries is large and growing, too. In Brazil, one of the most unequal countries, the poorest 10 percent of the population hold only 0.7 percent of the income, while the richest 10 percent hold nearly half the nation's income (47 percent). In the U.S., the most unequal of the developed countries, the richest 20 percent have just over 50 percent of the income, while the poorest 20 percent have 3.4 percent of the income.[25] And for most people, inequality is getting worse: over the past two decades, inequality grew in countries that hold more than 80 percent of the world's population but narrowed in countries with only 4 percent of the population. In almost three-quarters of countries, the share of Gross Domestic Product going to wages (that's workers) has declined, while the share going to profits (investors, shareholders, and management) has risen.[26]

Money isn't the only important thing in life. Losing a child is arguably the worst thing that can happen to an adult, and that terrible experience is also distributed unequally. Whites in the U.S. have an infant mortality rate of around six deaths per 1,000 live births, but blacks have a rate of about fourteen. Infant mortality is directly related to income and education—the more of those a family has, the better the health care it will receive, and the better the chances its children will survive. Within every country, the children of the poorest 20 percent are far more likely to die before reaching age five than the children of the richest 20 percent. The grief of losing children is distributed profoundly unequally.

[25]These figures for the U.S. are for 2006 and taken from Sara Burd-Sharps, Kristen Lewis, and Eduardo Borges Martins, *The Measure of America: American Human Development Report 2008–2009* (New York: Columbia University Press, 2008), p. 133.

[26]Harold Meyerson, "A Global New Deal," *American Prospect* Jan./Feb. 2009, pp. 10–12. Trends are for the period 1995–2007.

Few people would say these distributions of life chances and well-being are fair. Yet, people still disagree about whether and why these inequalities should be lessened. The two most important considerations concern the impact of inequality on community and on democracy.

Inequality and Community

Because being part of a community is central to individual well-being, we need to go beyond asking which individuals deserve some item and why. We must also ask how a distribution affects communities—whether it helps make them cohesive or tears them apart. The evidence is unequivocal: inequality destroys communities.[27] Where inequalities of income are very large, people are less trusting and more hostile to each other. There is more violence, as judged by homicide rates (the most easily countable and comparable indicator of violence). Income inequality seems also to increase racial prejudice and discrimination against women and ethnic minorities. Where income inequality is large, fewer people participate in social associations or civic life, and fewer people vote in elections. The more unequal the income distribution, the weaker the sense of community and the fewer the individuals who engage in communal life. These relationships hold for developed countries as well as developing, and they hold for states and localities as well as nations. If we care about the health of communities, redistributing income to lessen glaring inequality is the most important thing public policy can do.

We also need to think about how a distribution affects the things that we hold in common, or "the commons." Social scientists have traditionally defined commons as resources that everyone is entitled to use, but many who have been influenced by environmentalism now define commons as assets that are communally created and maintained, as well as used. In this view, the commons includes nature, culture, and community, but let's make these abstractions more concrete: clean air and safe drinking water; awe-inspiring landscapes and rich ecological habitats; jazz and opera; sign language, and dictionaries that fit on an iPod; Wikipedia and Facebook; early cancer detection and antiretroviral medicines; and last but not least, the sheer idea of equal human worth that inspires democracy and catapulted the son of a Kenyan student to the American White House. We will think differently about fairness and equity if we imagine these commons items as collectively created, maintained, and passed on, rather

[27]For a vivid and powerful summary of the evidence, see Richard G. Wilkinson, *The Impact of Inequality: How to Make Sick Societies Healthier* (New York: New Press, 2005), chap. 2.

than as the results of individual effort and achievement, and thus things that can be earned and parceled out as private property.

As you think about a policy problem, ask yourself whether the resources at issue are individually created or part of a common heritage, and push yourself to defend your conclusions. If you lean more toward individual creation, you will tend to favor distributive solutions where the slices are sized according to merit and rank, and where competition is the main mode of distribution. If you lean more toward common heritage, you will tend to favor solutions where the slices are more uniform but sized according to individual need and group disadvantages, and where some kind of democratic decision making is the main mode of determining distributions.

Those who stress the value of the commons imagine culture, community, and environment as holistic entities that can't be divided up and parceled out; they can only be diminished or enhanced. Instead of asking how to divide a commons, they ask what kind of rules and political arrangements can best preserve and enhance it.

Consider education, for example. In a traditional goods view, education can be divided into units and transmitted to students. Equal access to education means that individuals get pieces of it, rather like pieces of cake, and they should get equal shares. Thus, we offer every child thirteen years of free public education and courses geared to assuring that all students master the same knowledge. In the commons view, education builds the prerequisites for cohesive community, in addition to transmitting knowledge to individual students. Through shared stories and histories and the common experience of learning and playing together, children of different backgrounds come to respect each other and get along. Education builds the social harmony and civic skills necessary for democracy.

In the goods view, we could provide equal access to education through public schools, through vouchers for tuition at private or public schools, or through carefully monitored home schooling. Any of these ways of distributing education could provide students with equivalent packages of lessons. In the commons view, vouchers and home schooling could undermine community if they isolate children in homogeneous economic, ethnic, or religious islands.

Inequality and Democracy

As the student government leaders pointed out in the cake saga, democracy in its idealized version means "one person, one vote." Although democracy doesn't ensure that everyone will get the same size slice, it is supposed to ensure that everyone has *equal representation* in the process

of deciding on cake shares. As distributive systems, competitive markets and democratic elections differ in many ways, but the most important is the role that income plays—or is meant to play. In markets, people vote with their dollars; if some have more to spend than others, they can pay higher prices and buy a lot more goods and services—and that is perfectly legitimate, because markets distribute things according to ability and willingness to pay. That is their raison d'être. In democratic systems, each person's vote should count equally, no matter how much income he or she has. Democracy's raison d'être is to counterbalance the power of property with the power of voice.

Income inequality undermines the democratic ideal. First, in the U.S. electoral system, with its long campaigns, it costs money to run for office and win voters' support. In an electoral system with high costs of campaigning, very wealthy people have a huge advantage. Some, such as New York City's Mayor Michael Bloomberg, can even finance their campaigns out of pocket. Candidates who represent business interests can raise money through corporate contributions; candidates who represent middle- and lower-income people have a harder time securing large contributions. True, Obama successfully changed his campaign finance dynamics by using the Internet to garner small contributions from millions of people. But the bottom line is that money can, to a degree, buy political office and representation.

Income inequality undermines democracy, second, because elected political representatives are more responsive to the rich. The political scientist Larry Bartels compared voting patterns of U.S. senators with the preferences of their constituents. Senators voted consistently with the policy preferences of their high-income constituents, only sometimes with the preferences of their middle-income constituents, and rarely, if ever, with the views of their low-income constituents.[28] If *income inequality* has grown to historic proportions, so presumably has *democratic inequality*—the inability of voters to have their views given equal weight with views of other citizens, regardless of their wealth.

Third, wealthy investors and businesses can use their wealth to obtain legislation and regulations favorable to their interests. Corporations no longer restrict their competition to buying and selling in the marketplace; they seek to gain competitive advantage through influencing the rules of the marketplace made in public policy. They donate hefty campaign contributions to political candidates with the understanding that their contributions, while not bribes, earn them at least a serious hearing.

[28]Larry M. Bartels, *Unequal Democracy* (op. cit., note 11), chap. 9.

They can afford full-time lobbying staffs at state capitols and in Washington, and their largesse during elections assures them that their lobbyists will be welcomed by public officials. No matter that everyone's vote counted equally in the polling stations—one person, one ballot, one vote. In the legislative assemblies and regulatory agencies where policies are made, some people's votes count far more than others'.[29]

Ultimately, equality of voice is the most important equality issue of all. To the (very large) extent that government policies determine the distribution of resources, privileges, and welfare, the distribution of political power shapes all other distributions.

[29]For sobering descriptions of the political dominance of economic elites, see Robert Kuttner, *The Squandering of America* (New York: Random House, 2007); Robert Reich, *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life* (New York: Knopf, 2007), chap. 4; and Sheldon S. Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Capitalism* (Princeton: Princeton University Press, 2008).

3

Efficiency

Efficiency is a fancy name for a simple idea: getting the most for the least, or achieving an objective for the lowest cost. But, as the political scientist Aaron Wildavsky observed, efficiency doesn't tell you *where* to go, only that you should arrive there with the least possible effort.[1] It is a way of judging the merits of different ways of doing things. Thus, efficiency isn't a goal in itself. It isn't something we want for its own sake but rather because it helps us attain more of the things we value. Still, I include it in the section on goals because it has become such a prominent way of discussing and evaluating public policy.

Efficiency is a comparative notion. It has come to mean the ratio between input and output, effort and results, expenditure and income, or cost and benefit.[2] As a criterion for judging goodness, it has been applied to all manner of things. Efficient organizations are ones that get things done with a minimum of waste, duplication, and use of resources. Efficient people are ones who get a lot done in a little time. Efficient programs are ones that result in the largest benefit for a given cost. Efficient distributions, say, of farm land or oil drilling rights, are ones that yield the most value for society from existing resources.

All these definitions are variations on the theme of getting the most out of something. Like the "equal slices" solution to the problem of dividing resources, getting the most out of something is an intuitively appealing solution to the problem of how to choose between policy alternatives.

[1]Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979), p. 131.

[2]Sumner H. Slichter, "Efficiency," in *Encyclopedia of Social Sciences*, Edwin R. A. Seligman, ed. (New York: Macmillan, 1947), vol. 5, pp. 437–39.

No one is opposed to efficiency any more than people are against equity. Everyone would like to attain things they value in the least costly way. That is why politicians routinely promise to deliver the same or better results for less money. The conflicts arise over three questions: Who gets the benefits and bears the burdens of a policy? How should we measure the benefits and costs of a policy? And what mode of organizing human activity is likely to yield the most efficient results?

What Is Efficiency?

In one of the classic essays on efficiency, Herbert Simon speculated on how to apply the efficiency criterion to running a public library. A "good" public library, he concluded, is not one that owns all the books that have ever been published, but one that has used its limited funds to build up as good a collection as possible under the circumstances.[3] Building on Simon's work thirty years later, Aaron Wildavsky and colleagues used the same approach to evaluate the efficiency of a real library system in Oakland, California. They began with the idea that "an agency is inefficient if it can (but does not) produce more outputs for its budget."[4] Here is a summary of their analysis:

> One output of a library system is circulation. A key to circulation is a lively, up-to-date stock of books. New books cost money, which could be found by reallocating funds in the budget. Our analysis of library staffing showed significant over-qualification among the personnel. Many branch libraries had a staff of two or more professionals where one professional with a paraprofessional could have handled the work. High-salaried professionals often did clerical tasks. If staffing policies were adjusted to the actual work load, the savings in salary could be put toward new books.[5]

In short, an efficient library is one that builds up a good collection of books, and Oakland's library would be more efficient if it replaced some professionals with paraprofessionals and spent the savings on books.

We can imagine several plausible challenges to this solution.

[3]Herbert Simon, *Administrative Behavior* (New York: Macmillan, 2nd ed. 1947), pp. 186–87.

[4]Wildavsky, *Speaking Truth to Power*, op. cit., note 1, p. 365.

[5]Wildavsky, ibid. Wildavsky and his colleagues would be quite sensitive to the kinds of challenges I am about to raise. I use this example not to criticize them but to show that apparently clear-cut definitions and criteria become much more complex when we think politically.

1. Some citizens might ask whether the book collection is really what matters about a library. Maybe instead, a library system should provide computers and Internet access, public lectures, discussion groups, storytelling, reference services, archives of community oral history, or summer and after-school jobs for local teenagers. Who set "building a book collection" as the main objective and how should all the different functions of a library be prioritized? In short, how do we know which objectives to use to judge the costs of attaining them?
2. Book lovers in the community might debate what kind of book collection would be "as good as possible." Should it emphasize books for kids or adults? Sci-fi, history, or romance? Entertainment or reference? Each type of book would benefit a different group of library users. What about loaning digital readers and MP3 players, and stocking audio books, DVDs, and podcasts? Such a collection would create a new set of library users. These are all questions of constituency: whom does the library serve?
3. The librarians who would be sacked by the professors' prescription would be quick to point out that public libraries provide valuable employment for the community and avenues of upward mobility, especially for women. They would look at staffing as an output of libraries, not just an input. Staff salaries should count as expenditures on one side of the ledger but also as income to community members on the other side. Because, as is so often true in the polis, inputs are simultaneously outputs, calculating efficiency makes for some confused arithmetic.
4. The librarians might go on to list other community benefits from their services. They help unemployed people fill out job applications and use the Internet to search for work. They read to kids in story hours, and effectively provide after-school care, giving parents free time to do other productive things. Maybe, the librarians might concede, these functions don't require professionally trained librarians, but wouldn't Oakland get more output for its expenditures if it took money from the book budget and put it into salaries for more paraprofessionals? There is no limit to the types of benefits one can imagine for any input. How do we know where to stop counting positive ripple effects and how to put values on the ones we do count?
5. The costs of any activity, economists tell us, include not only the actual money outlays for it but also the forgone opportunities that could have been accomplished with the same expenditure. Perhaps

instead of buying books, the money could build a new space for reading groups, classes, and performers. There are lots of other things the library administrator could have done with the budget besides either buying books or paying salaries. Which of all the possible forgone opportunities should count as "opportunity costs" in the efficiency calculation?

6. Some people think of an efficient library as one that would waste the least amount of time. Users would waste less time looking for books if there were always a large staff on duty able to help them, but that would mean lots of idle librarians. Librarians would waste the least time if they were always busy helping patrons, but that would mean making the users wait in lines. One person's efficiency is another person's waste.
7. Some people think of an efficient library as one that is easy to use. Oakland residents might find their library system easier to use if it had many small branches within walking distance of every neighborhood. Sure, people could borrow from interlibrary loan, but without a local branch it's harder to browse books to inform their choices and they would have to wait longer to get their desired book. Town budget officials, though, see branches as unnecessary duplication of collections, so they close branches in the name of efficiency. Thus, the duplication in a multibranch system can be seen either as helping citizens get the most out of their library or as wasteful spending.

Measuring efficiency is like trying to pull yourself out of quicksand without a rope. There is no firm ground. Policy objectives constantly change, because they are forged in political conflict, not handed down on a stone tablet. Even a very narrow objective such as a good book collection is subject to competing interpretations. What kind of book collection? And good for whom? And even if we settle these questions, how do we measure the costs and benefits of any library policy, given that costs are simultaneously benefits to someone else, that benefits extend in an infinite chain, and that costs conceived as forgone opportunities are limited only by our imagination?

As the library example illustrates, there are many possible paths to the goal of "most value for the money." Each path favors different interests. These paths can't be scored on any fixed metric of efficiency. Everyone supports the general idea of getting the most out of something, but to go beyond the vague slogans and apply the concept to a concrete policy choice requires making assumptions about who and what counts as

Concepts of Efficiency

Simple Definition Getting the most output for a given input

Complications in the Polis

1. Who determines a program's main objective or goal, and how should we weigh the importance of multiple objectives?
2. How do different outputs benefit different groups?
3. How should we count inputs (such as labor costs) that are simultaneously outputs to somebody else (such as jobs and income)?
4. How should we decide which secondary and tertiary outputs to count in the efficiency equation?
5. How should we count the virtually unlimited opportunity costs of resources used as inputs?
6. One person's efficient use of time could be another's waiting time or downtime.
7. Apparently wasteful duplication and redundancy might increase the value of a program or resource.

important. There are no correct answers to these questions to be found outside the political process. The answers built into supposedly technical analyses of efficiency are based in large part on political claims. By offering different assumptions, sides in a conflict can portray their preferred outcomes as being most efficient.

Markets and Efficiency

Markets are networks of exchanges where people come together to swap goods or trade goods for money. These exchanges have two important characteristics that serve as defining assumptions of the market model and allow its adherents to claim that markets are the most efficient mode of social organization. First, the exchanges are voluntary. People engage in trades only if they want to, and they want to trade only when they believe a trade will make them better off. Second, people make their voluntary exchanges on the basis of two kinds of information—objective information about the price and quality of all alternatives available for

trade, and subjective information about their own needs, desires, and abilities (or "preferences" in the language of economics).

In the theory of markets, assuming that exchanges meet certain conditions, they always lead to efficiency. Resources always move in a direction that make people better off, because exchanges are personal choices. Individuals survey the exchanges available to them, compare available alternatives with their personal preferences, and select the exchange that yields the "best results." Since no one would voluntarily do a trade that made him worse off, and people would engage in trades only when at least one side was made better off, all voluntary exchanges must lead to situations where at least one person is better off and no one is worse off.

In the theory of markets, voluntary exchanges transform resources into something more valuable. One kind of transformation is straightforward—the conversion of raw materials into finished goods. But there is another more mystical sort of transformation in market theory, and that is the exchange itself. In markets, all items have two values: their market price, or what we might call universal value, and their value to a person or a firm, or what we might call subjective value. My loaf of bread and your two dollars are equivalent in the first sense, but we engage in a trade only because they are unequal in the second sense. Your need for food makes bread more valuable to you, and my ability to convert flour into bread makes the cash more valuable to me. We are both made better off by the exchange, even though our little economic system contains the same two dollars and loaf of bread before and after the exchange.

Voluntary exchanges are supposed to ensure "getting the most for the least," because they leave decisions in the hands of the people who have the best information about subjective values—individuals themselves. And—now comes a big "if"—if all the exchanges in a system are efficient, then the result will be maximum *social welfare*. Why? Because in the market model, social welfare is *defined* as the grand total of all individuals' well-being added together.

The logic works for producers as well as buyers and sellers. Manufacturers, farmers, bankers, hospitals, and schools know best how to design, make, and market whatever they produce. Given freedom to innovate and do things as they see fit, they will optimize their productivity, quality, and profitability. Competition disciplines producers to fight for customers by being as efficient as possible, or, in today's marketing lingo, by giving customers the most value for money. Producers who aren't efficient will lose to the competition and go out of business. Because competition weeds out

weaker and less efficient firms, markets are naturally self-correcting and self-regulating.

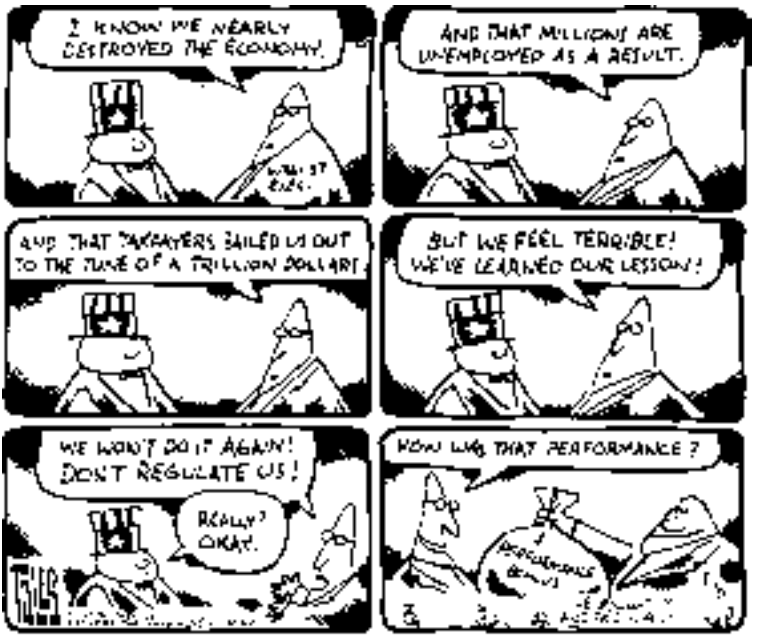
Even though the free-market logic rests on models of simple buyer-seller exchanges, many proponents leap from these market microcosms to national political economies to claim that free markets can produce social welfare more effectively than governments. Therefore, the broader theory holds, political leaders should minimize government regulation, keep taxes low, cut government spending and services, and allow private businesses to operate as freely as possible.

Behind the theory of markets and efficiency, then, there is an ideological debate about whether government should try to manage competitive capitalism or let free markets drive the economy. Free-market theory undergirds a political worldview that goes by many names: classical liberalism, conservatism, free trade, laissez-faire, globalization, the Washington Consensus, or neoliberalism—the name I'll use. On the other side of the ideological debate, in a worldview variously called liberalism or progressivism in the U.S., social democracy or social markets in Europe, and socialism in many other places, proponents believe that unrestrained markets lead to dangerous concentrations of power and wealth, and that democratic governments must manage market capitalism for social progress and prosperity.[6]

Through the twentieth century, the pendulum swung back and forth between these two ideas about how best to organize a national economy. The Russian Revolution in 1917 triggered a strong reaction in the West against government planning and in favor of maximum freedom for business. Then, following the Great Depression and the worldwide economic collapse of the 1930s, policy makers lost faith in the capacity of competitive markets to regulate themselves. John Maynard Keynes, a British economist and strong believer in the virtues of markets, put forth a theory of why markets can sometimes go awry and fail to right themselves before they cause huge damage. Government, he thought, should anticipate these failures and establish corrective mechanisms. Keynes's theory became the basis of policy in Europe and North America through the early 1970s.[7] Meanwhile, neoliberal free-market advocates and many corporate leaders pushed back against government regulation of the

[6]For an excellent critical review of the debate between markets and government in American politics, see Lawrence D. Brown and Lawrence R. Jacobs, *The Private Abuse of the Public Interest: Market Myths and Policy Models* (Chicago: University of Chicago Press, 2008).

[7]Peter Hall, *The Political Power of Economic Ideas: Keynesianism Across Nations* (Princeton: Princeton University Press, 1996).



economy. Starting in the mid-1970s in the U.S. and soon after in Europe, policy swung back in the direction of deregulation and free markets, until the financial crash of 2008, which led to another cycle of skepticism about self-correcting markets and another round of regulation.[8]

Making Markets in the Polis

Neoliberalism is so important in contemporary policy discussions that it deserves some careful analysis. Like all the theories, the theory that markets yield efficient outcomes and maximize social welfare depends on some key assumptions. We'll start by laying out these assumptions, then examine how markets work as social mechanisms and whether the assumptions are realistic.

[8]An excellent review of this policy history in the U.S. is Robert Kuttner, *The Squandering of America: How the Failure of Our Politics Undermines Our Prosperity* (New York: Knopf, 2007). For an exploration of the intellectual debates, see Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (New York: Cambridge University Press, 2002).

Rationality

Market theory assumes that people are rational and self-interested. They have goals, gather information about how best to reach their goals, and make decisions based on their assessment of which choices will maximize their self-interest. In the polis, people rarely form their goals independently. Peer pressure, families, historical tradition, trends of the times, public opinion, and political alliances all influence individual desires and goals, and thus diminish the independence and voluntariness of any individual choice. When sellers use marketing and advertising to persuade people to buy their products, they deliberately manipulate consumer preferences. Professionals such as doctors, lawyers, engineers, and consultants sell not only their services but also advice about which services clients need. In modern service-dominated economies, then, consumers are much more dependent on sellers than market theory acknowledges. And if consumers' preferences are often subtly shaped by others, especially by sellers, we can no longer assume that each transaction maximizes the welfare of both parties.

In the new field of behavioral economics, researchers examine discrepancies between economic theory and how people actually process information and make decisions. "If you look at economics textbooks, you will learn that homo economicus can think like Albert Einstein, store as much memory as IBM's Big Blue, and exercise the willpower of Mahatma Gandhi," write two of these critics.[9] Real people, the ones policy makers must plan for, can be confused, ignorant, forgetful, forgiving, spontaneous, silly, passionate, obsessive, obstinate, and overly optimistic, among our other endearing human traits.

But beyond quirkiness, people sometimes make decisions that aren't in their best interests as they themselves define them. They smoke, although they want to be healthy. They text while driving, although they don't want to die or kill somebody. They vote for candidates who promise economic policies that will hurt them, or don't even bother to inform themselves before casting their vote.[10] They cruise along on inertia, rather than taking the trouble to gather new information. In thinking about their personal security, they overestimate dangers that appeared on last night's news—such as contaminated lettuce—and go to great lengths to

[9]Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New York: Penguin, rev. ed. 2009), p. 8.

[10]Larry M. Bartels, "Homer Gets a Tax Cut: Inequality and Public Policy in the American Mind," *Perspectives on Politics* vol. 3, no. 1 (Mar. 2005), pp. 15–31.

avoid them. Meanwhile, they underestimate dangers such as junk food that are old news and part of their comfortable mental furniture.[11]

Sometimes people can't know which alternative will maximize their welfare; for example, a dangerous job with high pay and health insurance, or a safer job with low pay and no health insurance. Sometimes people give more weight to other people's interests than their own, as parents routinely do. Sometimes people must choose between advancing their own welfare and helping others, as humanitarian aid workers do when they serve in dangerous places. If people often don't know what will maximize their welfare, or don't make choices that will yield the best outcomes for them, or they can't maximize one aspect of their self-interest without jeopardizing another, the chief mechanism by which free markets produce efficiency falters.

Full Information

In order for exchanges to yield the best situation for everyone, buyers and sellers must have complete and accurate information about the available alternatives. Full information, though, is an ideal that is rarely met. Buyers often lack the background to understand technical information or even to ask the right questions. These problems can be addressed with professional quality ratings, such as doctor licensing or consumer product testing. In the polis, though, there's a far bigger obstacle to full information. People wield information strategically and use secrecy as part of their competitive strategy. Manufacturers hype their products with exaggerated claims. Pharmaceutical companies have been known to withhold studies showing that a new drug is ineffective. Insurance, credit card, and mortgage companies typically conceal negative features of their contracts in fine print and impenetrable jargon. Buyers conceal information as well. Job seekers and would-be borrowers don't readily disclose their negative histories.

Some market advocates think that the problems of deliberate concealment are solvable through regulating information; for instance, requiring price disclosure, food content labeling, and hazard warnings. In the polis, though, concealing and shading are so essential to business strategy that regulation can't eliminate them. After research showed that low-nicotine cigarettes are just as dangerous as full-strength ones, regulators prohibited tobacco companies from calling cigarettes "light" or "mild," so as not

[11]Thaler and Sunstein provide a fun, readable overview of behavioral economics in *Nudge* (op. cit., note 9).

to mislead consumers. But tobacco companies immediately figured out how to convey the misleading idea to smokers: use light colors as names ("gold," "silver"), package the low-nicotine cigarettes in light colors, and continue using the same package designs that smokers already recognized as "light."[12]

Voluntarism

Market theory assumes that people engage in trade voluntarily, but in the polis the line between voluntarism and coercion is fuzzy. In theory, workers sell their labor to employers at prices they agree upon; in practice, most people must work for a livelihood, so there's a coercive element to employment relationships. Poverty and inequality undermine voluntarism in market exchanges. Very poor people live under constant threat of starvation or homelessness and don't experience most of their purchases as choices but rather as dire necessity. For employees of some third-world factories, for women and girls in brothels built on sex trafficking, and for undocumented immigrants in some U.S. workplaces, working conditions are so oppressive and coercive that they approximate slavery. Even aboveground market relationships in mainstream institutions can be coercive. Long-term relationships between landlords and tenants, insurance companies and policyholders, banks and borrowers, and employers and employees are essential to well-being, but in every case, unequal power of the two sides compromises voluntarism. The stronger side sets the terms, leaving the weaker side little or no choice but to accede if they want to continue the relationship.

The theory of markets requires that people *enter* into trades voluntarily, but it says nothing about *terminating* them. In long-term relationships, if the stronger side suddenly terminates the relationship, the weaker side can feel coerced. Think of company layoffs. And laid-off workers can feel doubly coerced when they accept a new job offer with lower pay and benefits. Although no one holds a gun to their heads when they sign the new contract, "voluntary" probably wouldn't be the first word on their lips.

Thus, when we look at how markets actually work, many lack the voluntarism necessary to produce social welfare according to free-market theory. When we look internationally at how free-market economies often come into being, the lack of voluntarism is even more apparent. In many

[12]Duff Wilson, "Color Coding: No More 'Light' Cigarettes, but Big Tobacco Is Betting Smokers Will Recognize the Gold Box," *New York Times*, Feb. 19, 2010.

countries of Latin America, Asia, and the former Soviet Bloc, free markets were established by force—by dictators, armies, and oligarchs who sold off publicly owned resources to private investors, ended subsidies and tariffs that protected local business, disbanded unions, reduced wages, and cut social welfare payments that cushioned citizens against market instability. Some of these free-market transformations were achieved by forcefully suppressing popular protest, sometimes with massive killing, jailing, and torture. In developing countries, whose economies and citizens are already in dire straits, international lenders and donors sometimes require recipient governments to privatize publicly owned companies and natural resources, cut social spending, and open their fragile domestic production to foreign competition. In these market economies born of coercion and violence, it's doubtful whether subsequent exchanges can fairly be called voluntary.[13]

Externalities

During the mid-twentieth century, when free-market advocates were trying to restore faith in markets as a positive social force, the field of "welfare economics" emerged. Welfare economists began by acknowledging that markets sometimes fail to maximize social welfare, and went on to explore circumstances that might lead to this failure. Markets could be made to work well, welfare economists argued, if government corrected the specific defects that cause some markets to deviate from the assumptions of ideal or perfect markets. Two defects became extremely important in policy thinking: *externalities* and *public goods*.

In order for markets to yield maximum social welfare, the exchanges between buyers and sellers must not affect the welfare of people who aren't part of an exchange and don't have any say in it. Without this condition, even if the buyers and sellers are fully informed and act voluntarily, we can't be sure that exchanges make everyone better off. For example, when chemical plants and their customers negotiate contracts, they don't have to take into account the impact of their pollution on everyone else. Effects on people outside an exchange are called externalities. In the theory of markets, externalities can be corrected by forcing people to consider social costs and harmful effects on others when they engage in any exchange. This is the rationale for pollution taxes or for raising taxes on cigarettes to pay for public health measures.

[13]Naomi Klein documents these processes with meticulous detail in *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Picador/Henry Holt, 2007).

In the 1970s, when awareness of pollution and environmental damage was relatively new, the idea of externalities seemed an important but limited exception to the principle that free markets work to society's advantage. Yet in the polis, market externalities are the norm, not the rare exception. We know now that *all* production and consumption has environmental impacts; that's the message of the "carbon footprint" metaphor. Apart from environmental impacts, virtually every market transaction affects people who aren't party to it. When an American firm relocates its production abroad, the harms ripple beyond its own employees to employees of firms in its supply chain, to all of their family members, to retailers in surrounding areas who lose business, to local governments that lose tax revenue, and to communities that lose their ability to fund health care, education, culture, and recreation. The benefits of relocation go to new employees and their families in the form of jobs and wages, to American consumers in the form of lower prices on the goods, and to investors in the form of higher profits. Outsourcing is a dramatic example, but with a little imagination, you can trace the ripple effects of any economic transaction.

Public Goods

According to welfare economics, free markets work well for goods and services that are consumed individually—things like food and clothes. But some things that communities value are "public" or "collective goods," meaning that they can serve many people at the same time. One person's use doesn't diminish the supply for everyone else. Lighthouses and national defense are the ubiquitous textbook examples, but schools, hospitals, and national parks are good examples, too, as are a community's social safety nets, its system of justice, or its government.

It's hard if not impossible to charge people individually for these collective goods. But why would anyone voluntarily contribute to national defense, or having a hospital nearby, or any other public good? If the system gets built, everyone will benefit from it regardless of whether they helped to pay for it. For an individual, the rational, most efficient course of action would be to "get the most for the least," that is, to free-ride on other people's contributions. Thus, voluntary exchanges alone will fail to generate enough public goods because individuals won't voluntarily pay for them.

Until fairly recently, welfare economists acknowledged that free markets would undersupply public goods, and for these situations they advocated collective action through government. However, the purist free-market thinking of the past two decades, sometimes called market

fundamentalism or market utopianism, holds that competitive free markets can accomplish almost every social function more efficiently than government. Influenced by this thinking, state and federal governments have contracted with for-profit firms to provide significant portions of military defense, intelligence, prison management, welfare administration, public education, and disaster services—and free-market advocates press to privatize even more government programs, such as Social Security pensions and public transit.

In the polis, community is the paramount public good. Markets can't produce community (whatever kind of social glue that is), because markets are inherently competitive and divisive. They stimulate individuals and firms to look out for Number One and they punish those who don't. They promise huge rewards to companies that can patent and hoard new knowledge, or even the basic scientific resources for new knowledge such as cell lines. As a result, markets discourage and even hinder collaboration for the common good.[14]

Markets can divide communities by reinforcing and perpetuating discrimination. Markets allow people to express and satisfy their preferences—that is exactly how markets enhance people's welfare. But the market isn't a teacher, a preacher, or a judge. It doesn't care *why* people think what they think and do what they do. If they act on the basis of prejudice or stereotypes, so be it, because they know best how to maximize their welfare. If a white employer thinks blacks aren't as competent as whites, or that they're lazy and aggressive, he won't hire any—not unless laws and regulations prohibit him from racial discrimination. But then it's no longer a free market—it's an employment market constrained by government regulation. Even if employers aren't prejudiced themselves, they have to worry about satisfying their customers. If, for example, the head of a construction management company knows that his customers don't trust women as engineers, electricians, and builders, he will fear losing business if he hires women. Market forces pressure people to satisfy popular tastes. They can create discriminatory behavior, even when employers don't harbor any prejudice themselves.[15]

Paradoxically, markets are themselves public goods, because they couldn't function without all the collective effort that goes into governance.

[14]Michal Heller, *The Gridlock Economy: How Too Much Ownership Wrecks Markets, Stops Innovation, and Costs Lives* (New York: Basic Books, 2008); and Kuttner, *Squandering of America* (op. cit., note 8), pp. 186–94.

[15]Cass R. Sunstein, *Free Markets and Social Justice* (New York: Oxford University Press, 1997), chap. 6, "Why Markets Don't Stop Discrimination," pp. 151–66.

Challenges to the Theory of Free Market Efficiency

Market Theory	*Polis Realities*
1. Buyers and sellers make rational decisions.	Human decision making doesn't correspond to the rationality model; it includes emotional, moral, and social considerations.
2. Buyers and sellers have full information about decisions they are contemplating.	People use information strategically, by sharing it and withholding it.
3. Buyers and sellers enter into exchanges voluntarily.	Buyers and sellers in some relationships have vastly unequal power. The weaker side may experience the exchange as coercive.
4. Exchanges between buyers and sellers must not harm people who are not party to them.	Almost all exchanges can have harmful effects on people who are not party to them.
5. Welfare Economics: Free markets under-provide public goods because it is hard to charge people for them individually.	Government must provide public goods by using its authority to require citizens to pay for them.
6. Neoliberalism: Markets can provide verything more efficiently than government, including public goods such as military defense.	Markets cannot produce some public goods, especially community and the trust necessary for markets to function.

Without government to enforce contracts, people would be loath to trade with strangers or to make exchanges that couldn't be completed on the spot. They wouldn't buy anything much more complicated than a banana, whose quality and durability they can judge for themselves. Markets can't work without trust. Trust, in turn, depends on people's confidence that others will obey rules and honor their commitments, and that a strong authority will enforce rules and contracts.

Peter Barnes, who launched a successful mutual fund called Working Assets, wondered why so many people trusted him and his colleagues to

invest their money when the fund was brand-new and its managers were unknown. "The answer, of course, is that they didn't trust *us*, they trusted *the system* in which we operated." They sent their money to strangers because they trusted the American financial system, the Securities and Exchange Commission, the courts, and the fundamental honesty of corporations (this was before 2008). "That trust, and the larger system it was based on, was built over generations, and we had nothing to do with it," Barnes says. The financial crisis of 2008 underscores the point. Markets need government to keep them trustworthy and healthy.[16]

Competition

Market theory assumes producers and sellers will compete in ways that improve efficiency and make everybody better off. But there are lots of ways to compete, and some are better for communities than others. A manufacturer or retailer can drive down its prices to be more competitive by finding cheaper raw materials, streamlining operations, innovating to increase worker productivity, improving management—or by cutting wages and benefits for its employees. Health insurers can compete by offering benefits that people value, providing excellent customer service, designing effective prevention programs—or by insuring only very healthy people and denying claims of policyholders who need expensive treatment. (This is exactly the competitive strategy that Obama's health reform tries to restrain.) Companies can compete for investors by coming up with a compelling idea, by demonstrating actual and potential growth—or by using accounting gimmicks to hide liabilities and weaknesses. Different competitive strategies benefit some people and harm others. Competition by itself doesn't guarantee improvements for everyone.

Whose Efficiency?

In the library conundrum that opens this chapter, we saw that efficiency is a political claim, a way of portraying a situation that makes some people or things look more important than others. In the face of many different but equally plausible meanings of efficiency, we should doubt the very possi-

[16]Peter Barnes, *Capitalism 3.0: A Guide to Reclaiming the Commons* (San Francisco: Berrett-Koehler Publishers, 2006), p. 67. This point is also developed in Brown and Jacobs, *Private Abuse of Public Interest*, op. cit., note 6, and Kuttner, *Squandering of America*, op. cit., note 8.

bility of proving that one kind of social system leads to "the greatest good given our collective resources."

If efficiency is a malleable concept, "social welfare" is even more so.[17] Market theory equates societal welfare with the sum of everyone's individual welfare. This easy mental arithmetic breaks down when we try to put it into practice. It breaks down, first, because each of us has many roles that conflict with each other. As consumers, we benefit from low prices, yet a system that gives us rock-bottom prices harms us as workers and family members by giving us low wages, assigning grueling schedules, cutting health and pension plans, and stinting on quality and safety.[18]

The mental arithmetic of market theory fails, second, because many public policy goals can't be broken down into discrete situations of individuals. People are social creatures. We *care* about others and want others to care about us. We derive much of our happiness from our relationships with others. We take pleasure in others' well-being, and we usually feel some distress at others' misfortunes. We find rewards in relationships with places, such as parks and homes; with groups, such as clubs, teams, and choruses; and with religious, cultural, and regional traditions. It's a mistake to think that each person's welfare is independent of everyone else's, and that policy analysts can add up individual well-being to arrive at Total Social Welfare.

Third, free-market arithmetic breaks down because it ignores distribution. Two countries with the same total income and growth rates would be considered equally well-off, no matter that in one, all citizens enjoy a standard of living close to the average, while in the other, a small class enjoys unimaginable wealth while the rest live in squalor and misery. And as we saw in Chapter 2, inequality depresses individual and communal well-being.

Finally, free-market arithmetic breaks down because we have goals for our communities as well as goals for ourselves as individuals. Markets may be excellent at procuring the best deals for consumers and the highest profits for investors, but these are not the only or even most important kinds of well-being that ought to go into a calculus of total social welfare. As citizens, we hold civic values, too. We care about whether our public policies create equal opportunities for everyone to live a decent and satisfying life and to nurture their families; whether policies respect civil

[17]In Chapter 4, we'll examine concepts of welfare in more detail; here, we focus on the concept of social welfare in market theory.

[18]Robert Reich, *Supercapitalism: The Transformation of Business, Democracy, and Everyday Life* (New York: Knopf, 2007).

and human rights and foster tolerance and understanding; whether they protect the environment; and whether they empower us to participate in shaping our collective future.[19]

The Equality-Efficiency Trade-off

In Chapter 2, we looked at many arguments for and against policies to reduce inequality. Now we come to the longest-running policy argument against redistribution: the idea that equality and efficiency are fundamentally incompatible goals. We can't have more of one without settling for less of the other. Redistributive policies such as income assistance, public health insurance, minimum wages, and progressive income taxes inevitably reduce efficiency (the neoliberal argument goes). That means lower productivity, lower employment, lower economic growth, and lower social welfare. A better way to help those at the bottom is to let the competitive free-market economy run at top efficiency, unfettered by government restrictions. With a larger, richer economy, everyone gains because there's more to go around.

Until the 1990s, the equality-efficiency trade-off theory seemed bolstered by the dismal performance of socialist economies. They were woefully inefficient and sluggish, hobbled by bloated bureaucracies. With the fall of the Berlin Wall in 1989 and further discrediting of planned economies, conservatives pushed even harder to unshackle markets from government regulation and redistributive policies. Then came the crash of 2008 and a sudden realization that unfettered markets and unrestrained pursuit of profit can destroy economies just as handily as iron-fisted planning. Efficiency gains can turn into losses overnight.

But even with a new consensus that market capitalism needs to be monitored and managed, the dominant economic paradigm still sees equality as a drag on economic prosperity. Thus, it's worth analyzing the logic of the trade-off view. Keep in mind that in this debate, "equality" is shorthand for "redistribution." No one in the political mainstream is talking about radical, Soviet-type redistribution to maintain absolutely equal incomes of the equal slices sort.

There are two main reasons efficiency and equality are thought to be in a trade-off. First, unequal rewards motivate people to be productive. Without the prospect of getting ahead of the pack, so to speak, people wouldn't

[19]These ideas are richly explored in Kuttner, *Squandering of America* (op. cit., note 8); Reich, *Supercapitalism* (ibid.); and Barnes, *Capitalism 3.0* (op. cit., note 16).

work as hard, take so many risks, or invest and innovate so much. Any step toward equalizing incomes through progressive taxation, income assistance, public pensions, health insurance, or wage increases will inevitably reduce individual effort, personal savings, investment, innovation, and, eventually, economic growth.

Second, redistribution wastes a lot of resources. To promote equality requires administrative machinery that uses up resources but doesn't produce anything valuable in itself. The administrative machinery of equality—tax bureaus, welfare agencies, labor departments, and courts—consumes valuable resources. The labor, buildings, computers, and energy they use could go to producing other things. The economist Arthur Okun dramatized this argument with a metaphor: redistribution is like carrying money from the rich to the poor in a leaky bucket.[20] The policy question, he said, is how much waste society should tolerate before deciding the gain in equality isn't worth the loss in resources. Of course, you now know that the answer depends on whom you ask. A poor person will give a different answer than a rich one. The fallacy is thinking that policy makers can ask "society," or that policy analysts can come up with a single best answer.

Before the fall of communism, much of this argument was ideological and theoretical. Then social scientists began putting it to empirical tests. Instead of speculating about the impact of redistributive policies, we can compare advanced industrial nations whose policies have produced more or less distributive equality and see how they do on economic performance. We can also compare the U.S. at different historical moments to see whether economic performance declines when taxes and redistribution are higher.

The equality-efficiency argument doesn't hold up against the evidence. Among the countries of the Organization for Economic Cooperation and Development, some have relatively strong welfare states and low inequality, while others have relatively strong free markets and high inequality. Contrary to the trade-off argument, nations that have more equal income distributions do as well as or better than more unequal nations on measures of economic prosperity, including employment, gross domestic product (how much output a country produces), and economic growth rates.[21] Between 1970 and 1990, France, Germany, Norway, Belgium, Italy,

[20]Arthur Okun, *Equality and Efficiency: The Big Tradeoff* (Washington, D.C.: Brookings Institution, 1975). This short book popularized the idea of an equality-efficiency trade-off.

[21]Jonas Pontusson, *Inequality and Prosperity: Social Europe vs. Liberal America* (Ithaca and London: Cornell University Press, 2005), chap. 1.

Is There an Equality-Efficiency Trade-off?

Yes	*No*
1. Maintaining equality reduces or eliminates the motivation to work.	People are motivated to work by inherent satisfactions, self-esteem, need for belonging, and desire to contribute to the common good.
2. Maintaining equality requires bureaucracy, and bureaucracy equals waste.	Administration is a productive activity in itself.
3. Redistribution to maintain equality reduces economic growth.	Redistribution does not reduce economic growth; it stimulates work, innovation, and risk-taking by providing economic security.
4. A trade-off between equality and efficiency is inevitable.	Society can have both equality and economic growth; how to balance these goals is a political choice.

Ireland, and Finland all had higher taxes than the U.S., but all had higher productivity growth, too.[22] During the period of highest productivity growth in the U.S.—1951 to 1963, when productivity grew 3.1 percent per year—marginal tax rates on high earners were at their peak (91 percent on incomes of $400,000 or more in 1957, for example).[23]

In developing countries, equality actually enhances economic growth, and extreme inequality retards it. Equality and efficiency go hand in hand. Extreme inequality limits the capacity of the very poor to contribute to growth. They can't get credit for supplies or equipment that would

[22]Bart van Ark, Mary O'Mahoney, and Marcel P. Timer, "The Productivity Gap between Europe and the United States: Trends and Causes," *Journal of Economic Perspectives* 22, no. 1 (Winter 2008), pp. 25–44.
[23]Joel Slemrod, ed., *Does Atlas Shrug: The Economic Consequences of Taxing the Rich* (Cambridge, Mass.: Harvard University Press, 2000), p. 3.

enable them to be more productive, nor can they invest in themselves or their children, because they don't have resources beyond what it takes to survive. By reducing poverty, therefore, public policy can improve poor people's productivity and increase economic growth. Economic growth means a bigger pie—and greater societal welfare.

Policies that increase equality also make economic growth a more efficient mechanism for reducing poverty. For example, in Kenya the poorest 20 percent of the population receives 6 percent of the income. With this distribution pattern and a 1 percent economic growth rate, it would take until 2030 for the poverty rate to be cut in half. But if the share of growth going to the lowest 20 percent were doubled (through greater taxes on the rich and more public benefits for the poor), the poverty rate would be halved by 2015, even at the same low 1 percent growth rate.[24]

Government policies, especially those concerning taxes, wages, and social benefits, determine how much different segments of the population will benefit from national income growth. Examining distributive patterns in the U.S. from 1948 to 2005, Larry Bartels found distinctly partisan patterns of income growth among poor, middle-class, and affluent families. In years when Republicans controlled the White House, affluent families consistently saw their incomes grow more rapidly than middle-class or poor families. Under Democratic administrations, the shares of income going to the rich, the middle class, and the poor were much more equal, with families in the bottom 20 percent often receiving the largest share. Inequality increased under Republican presidents and decreased under Democratic presidents. Meanwhile, unemployment was almost 30 percent higher under Republican presidents than Democratic ones, and growth of GNP was more than 40 percent *lower* under Republican presidents.[25]

The equality-efficiency trade-off is not an immutable natural law. Rather, political leaders choose to promote economic growth in different ways and to distribute the fruits of the economy in different ways, too. The distribution of national cake is a political choice.

Markets are a way of organizing social activity, just as other forms of governance are. They require a set of rules about who can sell, what can be sold, what constitutes a valid contract, and how contracts will be enforced. They also happen to be a mode of organizing social activity

[24]United Nations, Human Development Report 2005, *International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, chap. 2, available at hdr.undp.org/en/reports/global/hdr2005.

[25]Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (Princeton: Princeton University Press, 2008), chap. 2.

that gives more power to people who control money and property than to people who do not. If we start from the premise that efficiency itself is a contestable idea about what constitutes social welfare, then the best way to organize society to achieve efficiency is to provide a democratic governing structure that allows for these contests to be expressed and addressed in a fair way.

4

Welfare

"Government is a contrivance of human wisdom to provide for human wants," wrote Edmund Burke in his *Reflections on the Revolution in France*.[1] By wants, Burke didn't mean desires and wishes; he meant the older sense of lacks or needs. ("For want of a nail, the kingdom was lost.") Both senses figure in political argument about what it means for government to promote human welfare. At the level of political rhetoric, governments promise to promote welfare in the more subjective sense—"life, liberty and the pursuit of *happiness*," as the Declaration of Independence put it. But when designing programs on the ground, policy makers typically seek objective standards of need to define the scope of public responsibility for social welfare.

Just as most people are all for equity and efficiency in the abstract, most people believe that society should help individuals and families when they are in dire need. But beneath this consensus swirls turbulent conflict over how to distinguish need from desire. The distinction matters in politics, because need is one of the strongest moral claims. Even toddlers know that if they want their parents to buy them ice cream, they stand a better chance with "I need it" than "I want it." Because need is such a strong moral claim, the question of what people need for their welfare strongly influences larger debates about what government should strive to provide for its citizens. Defining need for purposes of public programs becomes a political contest. Groups of citizens try to portray their desires as objective, essential, and impossible to reject. Policy makers seek to portray their program criteria as objective, so as to put the programs beyond political dispute.

The simplest, most common, and in some ways intuitively most appealing definition of need is what is necessary for sheer physical survival.

[1]Edmund Burke, *Reflections on the Revolution in France*, J. A. Pocock, ed. (Indianapolis: Hackett Publishing Co., 1987, orig. ed. 1790), pp. 52–53.

By this minimal standard, government should ensure that people have enough food to stay alive. This line of thinking can yield some rather dreary survival menus. In the 1960s, scientists calculated that a diet of liver, soybeans, lard, and orange juice would provide medically excellent nutrition, and cost only a few dollars a year.[2] That was before lard went out of favor. But surely now that scientists understand nutrition, they will soon invent a "nutritionally optimal meal in a pill."[3]

Such a perfect standard of need for food might not go down so well with chocolate cake lovers, though. The idea that welfare can be reduced to objective and countable needs is as conceptually enticing as the equal-slices solution to equity—and as politically problematic. Here are some of the challenges.

1. Eating turkey on Thanksgiving Day or hot dogs on the Fourth of July isn't about nutrition. It's about connection to a nation through tradition. Food connects people to specific places, as well. Pouring molasses on waffles makes you a southerner; drizzling maple syrup marks you as a New Englander and lingonberry syrup as a Swede. To guarantee people nutritionally optimum meals-in-pills might keep them alive, but it wouldn't include them in these forms of participation, and it might mark them as unworthy of a culturally normal diet. Culture can't be pulverized and crammed in a capsule. *People have symbolic needs as well as material needs.*
2. Of course, you need a piece of my chocolate cake for its *intrinsic value*—its innate deliciousness and joy—but in general, we need food for its *instrumental value*—its usefulness as means to other goals, such as healthy growth and having energy to do other things besides eat. Babies need one kind of nutrition, adults another, and teenagers—enough said. Then there are diabetics, lactose-intolerant people, and those who are gluten-intolerant. Any nutritionally optimum meal-in-a-pill will have to come in a lot of varieties to satisfy the way different bodies use food. *Some things enhance welfare by their instrumental value rather than their intrinsic value.*
3. Poor children often hide their food to save it for a time when they fear they will be even hungrier. During wars and violent conflicts, people

[2]Victor E. Smith, *Electronic Computation of Human Diets*, M.S.U. Business Studies (East Lansing: Michigan State University Press, 1964), p. 20, cited in Lester C. Thurow, *The Zero-Sum Society* (New York: Basic Books, 1980), p. 197.

[3]Michael Pollan's facetious fantasy in his book *In Defense of Food: An Eater's Manifesto* (New York: Penguin Books, 2008), p. 13.

ration their food because they aren't sure when and where they will find more to eat. The nutritionally optimum meal-in-a-pill might satisfy one form of welfare—having enough to eat today—but it doesn't address an equally important form—being able to *count on* having enough to eat every day. For this kind of welfare, society must assure that everyone has a reliable supply of the right kind of pills at all times. *People need reliable and secure ways of meeting their needs over time.*

4. Okay, now we've got a guaranteed supply of nutritionally optimal meals-in-a-pill. Are we well fed? Happy? I don't know about you, but I want to know where my pills were manufactured and whether the factory has any salmonella or toxic contamination problems. I also want to know whether the ingredients were grown with pesticides or genetically modified organisms. Even if the pills check out A-OK, I've a bigger objection. Popping pills isn't my idea of eating. They don't taste like food. In fact, they don't taste at all. *Welfare depends on quality as well as quantity.*
5. The perfect meal-in-a-pill may provide nutrition, but if this scientific utopia ever came true, we wouldn't get to sit around a candlelit table with friends, talking, sharing recipes, and reminiscing about good times. Moms and dads wouldn't be able to knit their families together by preparing favorite foods, orchestrating meals as social events, reviewing everyone's days, and taking emotional temperatures. Cooking would disappear. Some people think cooking our food distinguishes humans from the animals and represents the first step into civilization.[4] The perfect meal-in-a-pill would destroy the social aspects of eating. *People have relational needs as well as individual needs.*
6. Most poor American families eat lavishly compared with the poor of Ethiopia. By any absolute standard, they're doing fine. They don't need *any* nutritionally optimum pills, or any chocolate cake for that matter. But the Ethiopian standard of living is not their point of reference. They feel poor because they lack what is customary and necessary in American society. People's sense of deprivation or well-being comes in part from comparison with others in their community. *Need is relative as well as absolute.*

[4]Marjorie L. DeVault, *Feeding the Family: The Social Organization of Caring as Gendered Work* (Chicago: University of Chicago Press, 1991); Ruth Reichl, "Why Food Matters," Tanner Lectures on Human Values, Yale University, Oct. 26–27, 2005, available at tannerlectures.utah.edu/lectures/atoz.html-s.

Dimensions of Need

In a famous theory of individual needs and human development, Abraham Maslow postulated that people have five types of needs, which they try to fill in sequential order: first, physiological needs, such as hunger and thirst; second, safety and shelter needs; third, social needs; fourth, the need for self-esteem; and finally, the need for self-actualization.[5] In Maslow's theory, the five needs are hierarchical; lower ones must be filled before a person can move on to filling a higher need. The six dimensions of need as I characterize them are not hierarchical or sequential. They are different, equally important ways of conceptualizing needs. These conceptions lead to competing political claims about welfare.

1. Material Needs vs. Symbolic Needs

The first and perhaps most important challenge to the idea of objectively definable needs is that material things have symbolic meanings that are often more important than their material value. As Michael Walzer says, "People don't just have needs, they have ideas about their needs."[6] Food is more than calories; it's a sign of membership, social status, and spiritual worth. Partaking of meals signifies friendship, intimacy, and being "part of the family." Refusing to share food can signify difference, distrust, and being a stranger. Eating the same food as others is a basic mark of belonging. A Puerto Rican immigrant to Chicago explained why she changed her family's diet from rice and beans to pizza, hot dogs, hamburgers, soda pop, and ice cream, and why they eat at fast-food restaurants as much as they can afford: "We feel good when we go to those places . . . we feel like we're Americans, that we're here and we belong."[7] A diet of nutritionally optimal pills wouldn't make most people feel included and uplifted.

Beyond nutritional value, food has spiritual significance. Ritual fasting, a part of many religious and spiritual practices, poses another challenge to the idea of objective needs. During the month-long period of Ramadan, observant Muslims abstain from all food and drink during the daytime, although they eat a large meal before dawn and break their fast at dusk. During the daytime fast, many have less energy and may become less productive at their normal jobs. By the standards of other cultures, fast-

[5]Abraham Maslow, "A Theory of Human Motivation," *Psychological Review* 50 (July 1943): 370–96.

[6]Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), p. 66.

[7]Quoted in Richard Wilkinson and Kate Pickett, *The Spirit Level: Why Greater Equality Makes Societies Stronger* (New York: Bloomsbury Press, 2010), p. 97.

ers might be seen as poorly nourished and depleted. However, experiencing hunger helps them empathize with the poor, and self-denial reminds them of their obligations to help those who suffer. By their Koranic standards, fasting fulfills them and elevates their spiritual worth.[8]

The minimum survival concept of need turns people into biochemical machines, in much the same way that high school chemistry texts reduce people to $2.43 worth of chemicals. That sort of thinking renders us all equal. The symbolic concept of need, by contrast, recognizes human differences—different cultures, histories, social groups, classes, and even tastes. If we accept the symbolic dimension of need as important, then welfare means protecting people's identities as well as their existence.

Some political philosophers think having a culture is as essential to people's well-being as food and other material resources. Culture provides language with which to express oneself and a set of norms to help understand how others will respond to our behavior. It provides a sense of identity and, perhaps most important, a sense of belonging.[9] To feel how important culture is to your welfare, try a thought experiment. Imagine moving to a country where you don't speak the language and nobody speaks your language. You have had no upbringing in the customs of daily life, not even how to make polite requests or express thanks. You know nothing about the country's history and traditions. In your mind, try to do something relatively simple, such as getting somewhere you need to go by public transportation. Do they have buses or bus-equivalents? What does one look like? How you do you find out where these things stop, where they go, and how you hail one? How do you feel as you imagine getting through your day? It's hard for most of us to imagine what it's like to be so completely alien, so I recommend reading Tracy Kidder's book *Strength in What Remains* to put yourself in the shoes of a Burundian refugee in New York City. And if you can tap into any of your own personal experiences with being a cultural stranger, you will gain a better understanding of why culture is such an important dimension of welfare.

The issue of culture as a need provokes three kinds of policy fights. First, how should government balance minority group needs for particular cultures with a nation's need for a citizenry with a shared identity? This issue comes up, for example, when minority groups want to educate

[8]Thanks to Reem Hobeldin, a master's student in rhetoric and public policy at Carnegie Melon University, for teaching me about the significance of Ramadan fasting.

[9]For a strong defense of this argument, see Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), chap. 5.

their children separately in their own schools or observe dress codes that signal their separateness from the dominant culture. Second, what kinds of resources and accommodations do governments owe minorities to help them maintain their cultures? This question permeates disputes about bilingual education and use of minority languages by government offices. The third, and by far the most contentious and philosophically difficult, issue concerns how to reconcile conflicting political cultures. Should a liberal nation devoted to individual autonomy and equality allow minority groups to practice cultural traditions that violate these liberal values? Liberal political culture, especially in the U.S., puts a high value on religious freedom, the principle that people should be free to worship however they wish and that government shouldn't endorse or enforce any particular religion. Liberal and minority creeds clash when one sect demands that public schools not teach ideas that conflict with its religious doctrine; for example, evolution or equal treatment for women and homosexuals.[10]

2. Intrinsic vs. Instrumental Needs

We need some things not for the intrinsic satisfactions they provide but for what else they enable us to have and do. Because money is the most crucial instrument of well-being in capitalist societies, enabling people to buy everything material they might need or want, most analyses of welfare start by comparing how much income people *have* with how much they *need*. In the U.S., the "poverty line" sets an amount of income that families need for minimally adequate well-being. Internationally, the most common measures of welfare use either Gross Domestic Product or household expenditure surveys to estimate the daily per capita income for each country. People who live on $1 or less per day are counted as poor.[11]

According to the economist Amartya Sen, income isn't a very good measure of welfare because it is important only for what it enables people to *do*; the most important element of welfare is personal freedom. In fact, like most liberal political theorists, he equates individual welfare with having freedom to choose one's life path. In assessing welfare, therefore, we should think about whether people have "capabilities," or the means

[10]Kymlicka, *Multicultural Citizenship* (ibid.) offers a rich discussion of these issues, from the perspective of liberal political philosophy. In *The Spirit Catches You and Then You Fall Down* (New York: Farrar, Straus, and Giroux, 1997), Anne Fadiman explores the clash between Hmong and American ways.

[11]Cass Sunstein, *Free Markets and Social Justice* (New York: Oxford University Press, 1997), chap. 4, "Measuring Well-Being," pp. 108–27; and Robert Paarlberg, *Food Politics: What Everyone Needs to Know* (New York: Oxford University Press, 2010), pp. 37–9.

to pursue whatever ends they choose.[12] Among these capabilities, Sen includes nutrition, health and access to medical care, housing, education, freedom from violence, and political rights. Income isn't a good measure of these capabilities, Sen says, because many factors affect individuals' ability to convert income into the other capabilities. Two people with the same income may wind up with vastly different nutrition understood as a capability or a means. For example, pregnant women and nursing mothers need more of certain nutrients than other people in order to nourish their growing fetuses. Inhabitants of harsh climates must spend more money for fuel and shelter and therefore have less for food. Workers in strenuous jobs may have higher calorie requirements than workers in desk jobs.[13]

In the polis, the instrumental concept of need dominates. Anybody claiming that government should provide for some need will face the challenge, "Necessary for what?" Citizens and their representatives don't usually vote to provide things for their intrinsic satisfaction but to enable people to function in ways the public deems valuable. Many people would like to study for the sheer enjoyment of learning, but the arguments for *government* providing education are more instrumental. Education enables people to be more productive workers, to make economic and intellectual contributions to their communities, and to become informed citizens and skilled leaders. When businesses ask for bailouts, their arguments are also instrumental. For example, a failing General Motors asked the federal government to rescue it in order to save jobs and to give management time to reconfigure its cars and its business model.

Policy reformers often appeal to "society's" or "the nation's" instrumental needs, rather than individuals needs. In pursuing Obama's health care reform, the Democrats began with the national need to control health care expenditures. As each element of the reform surfaced in public discussion—expanding public subsidies for low-income people, restricting insurers' use of preexisting conditions, increasing coverage of preventive care, and promoting electronic medical records—proponents of the reform emphasized how the element would address the cost problem and save the taxpayers money, almost to the exclusion of discussing the intrinsic goals of health insurance—better health and equitable access to medical care.

[12]Amartya Sen, *Development as Freedom* (New York: Random House, 1999). We might also call these means "enablers," but Sen's term "capabilities" has caught on, and the United Nations uses his approach to measure human development and welfare.

[13]Astute readers will notice that Sen's concept of capabilities resembles the concept of customized needs in Chapter 2, "Equity."

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3. Volatility vs. Security

Much as people like to take risks and savor success in their imaginations, when the die is cast, most people dislike losses more than they enjoy gains.[14] A 10 percent pay cut would lower their sense of well-being far more than a 10 percent pay raise would increase it. Merely fearing a loss causes stress and suffering apart from the actual loss. Losing a job is one of the biggest blows to personal happiness (second only to losing a partner), but just feeling that one's job is insecure also causes a big drop in happiness.[15] In other words, personal welfare is very sensitive to change, especially to the possibility of loss. Volatility, or frequent change, diminishes welfare in the security sense, because it increases the possibility of loss. Thus, a snapshot of the resources people have at one moment doesn't give a full picture of their welfare because it doesn't capture feelings of insecurity ("I dread being worse off than I am now") or security ("I feel confident that I'm protected from losing what I already have").

[14]Daniel Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decisions Under Risk," *Econometrica* vol. 47, no. 2 (1979), pp. 263–92.

[15]Richard Layard, *Happiness: Lessons from a New Science* (New York: Penguin, 2005), chap. 5; and Katherine Newman, *Falling From Grace: The Experience of Downward Mobility in the American Middle Class* (New York: Free Press, 1988).

In the U.S., incomes have become much more volatile in the past forty years. The chance that a person's income might drop 50 percent or more in one year—that is, a person would lose at least half his or her income from one year to the next—has risen from 7 percent in 1970 to around 20 percent now. Precipitous income drops often send people into poverty. At any one time, "only" 20 percent of American children live in families whose incomes are below the poverty line, but because of income volatility, half of all American children will spend at least a year in poverty before they turn eighteen.[16]

Whether poor people live in rich or poor countries, they hover at subsistence levels. Even if they have enough to get by (which many don't), they need reserves or other ways to compensate for sudden losses and sudden expenses. The Swedish government's Level of Living Survey recognizes this aspect of need with a question about whether families could cover unforeseen expenses of up to $1,000 within a week. In a recent American survey, one-quarter of families could not raise $2,000 for an emergency within thirty days, and another fifth said they could raise the money only by selling possessions.[17]

In developing countries, where $1,000 is an unimaginable fortune and where poor people's livelihoods are extremely vulnerable to climate, violence, illness, injury, death, and corruption, the poor devote as much energy to cultivating security as they do to growing food and making money. They maintain small pots of savings here and there—hidden at home, stored with friends, invested with a savings broker—and they seek out microloans to tide them over short-term crises. For these bits of microsecurity, they pay fees that seem exorbitant by rich-country standards but that make perfect sense for people who can't rely on capital reserves or well-run public programs.[18]

In the polis, welfare in this security sense is of paramount importance. Security is so valuable that people living in extreme poverty are willing to pay for it, even though it doesn't put food in their mouths today. In

[16]The concept of income volatility and the figures are from Jacob Hacker, *The Great Risk Shift* (New York: Oxford University Press, 2006), chap. 1.

[17]Robert Erikson, "Descriptions of Inequality: The Swedish Approach to Welfare Research," in *The Quality of Life*, Martha C. Nussbaum and Amartya Sen, eds. (Oxford: Oxford University Press, 1993), pp. 67–83; Annamaria Lusaardi, Daniel J. Schneider, and Peter Tufano, "Financially Fragile Households: Evidence and Implications" (Cambridge, Mass.: National Bureau of Economic Research, 2011), Working Paper No. 17072.

[18]Daryl Collins, Jonathan Morduch, Stuart Rutherford, and Orlanda Ruthven, *Portfolios of the Poor: How the World's Poor Live on $2 a Day* (Princeton: Princeton University Press, 2009).

advanced welfare states, citizens contribute to social insurance and public and private aid programs, even though they may never have to use them. In every society, at every level of economic development, people create social arrangements to cushion themselves from volatility.

4. Quantity vs. Quality

Policy makers need clear thresholds to set program goals, define eligibility, and measure performance. In the quest for objective criteria, policy analysts emphasize the measurable. Unfortunately, what works well for policy purposes can distort or disguise what's valuable to human welfare.

Welfare depends at least as much on hard-to-measure, hard-to-define qualitative factors. In education, the federal push for accurate measures of school performance plays out in standardized testing. Tests tend to measure students' knowledge of facts but aren't as good at assessing what everyone agrees is the most important goal of education—creative and critical thinking. Nor are standardized tests very good at assessing the most important quality of good teaching—the interaction between students' learning styles and teachers' teaching styles. In health care, insurers and clinicians tend to focus on what they can measure, to the neglect of patients' quality of life. Health insurance pays doctors for physical procedures and underpays for the intangible counseling, explaining, and reassuring that affect patient welfare just as much if not more. In cancer research, the main criterion for evaluating a new treatment is how many months it prolongs the average patient's life. Few researchers ask how the treatment makes patients feel or affects their social interactions.

To avoid some of the problems of objective criteria, some social scientists use the concept of subjective well-being to measure welfare. In one approach, surveyors ask respondents how they rate the overall quality of their lives. Another approach, called experience sampling, asks respondents to rate how they feel while doing particular activities, such as taking care of children, commuting to work, and watching TV. By correlating the answers with other data, such as income or spending on welfare-state programs, researchers draw conclusions about how societal characteristics and public policies affect happiness. These methods have many problems, despite claims for a new "science of happiness." For example, people's ratings of their overall life satisfaction are dramatically influenced by whether the interviewer asks about recent dentist visits

just before asking about life satisfaction. (Clue: the finding wouldn't be a good marketing tool for dentistry.)[19]

Methodological problems aside, the research on subjective well-being does offer some intriguing insights. First, like Sen's capability approach, the subjective approach demonstrates that neither personal income nor level of national economic development fully accounts for human welfare. Having money and living in a place rich in economic resources helps, but money isn't everything. Second, the subjective approach to defining welfare confirms that there are no easy answers for policy makers, no formulas proving that "if you implement Policy X, your citizens will be N degrees happier." Studies disagree, for example, on whether generous, well-funded welfare-state programs improve citizens' subjective welfare. Third, social relationships are the single most important contributor to well-being. People say they are happier, and apparently they are also healthier, when they have extensive social networks of family and friends, and they get more enjoyment out of most activities when they are with others than when alone.[20]

5. Individual Needs vs. Relational Needs

Humans require some things that can only be gotten from relations with others: friendship and love; dignity, respect, self-esteem, and honor; and community, solidarity, and a sense of belonging. These are needs for relationships, not "things" that individuals can claim from a community. We know very little about how communities can facilitate these relationships, but social scientists have demonstrated how potent these needs are. After flooding destroyed 500 homes in Buffalo Creek, West Virginia, the victims missed their sense of connectedness to their past and their neighborhoods far more than their lost possessions.[21] Urban gangs fulfill a desperate need for social structure and stability, and they operate on well-defined, if unspoken, codes of mutual obligation.[22] In Studs Terkel's classic interviews

[19]An excellent readable review of this literature is Derek Bok, *The Politics of Happiness: What Government Can Learn from the New Research on Well-Being* (Princeton: Princeton University Press, 2010), dentistry on p. 35.

[20]Ed Diener and Martin E. P. Seligman, "Beyond Money: Toward an Economy of Well-Being," *Psychological Science in the Public Interest.* vol. 5, no. 1, pp. 1–33, esp. pp. 18–20; Bok, *The Politics of Happiness*, ibid., pp. 19–20.

[21]Kai T. Erikson, *Everything in Its Path* (New York: Simon & Schuster, 1976).

[22]William Foote White, *Street Corner Society* (Chicago: University of Chicago Press, 1943); Sudhir Venkatesh, *Gang Leader for a Day* (New York: Penguin), 2008.

about the meaning of work, people reveal themselves as more intensely concerned with dignity than with pay.[23]

Humans need *to give and to help* as much as they need to have and receive. We care *about* others and translate our emotional care into active caring *for* others. In her study of an urban ghetto, Carol Stack found that people who receive a large sum of money from an inheritance or insurance policy typically give it away to meet other people's needs rather than spend it to increase their own material well-being.[24] The will to care for others can be so strong that people risk their jobs, sacrifice their own well-being, and often break rules to carry out their moral notions of proper care. In my research on home health care, nurses and physical therapists confided that they sometimes visited patients while they were off-duty, shopped for bedridden patients, and falsely recorded time they spent talking and befriending as billable procedures. These forms of extra care were prohibited by their agencies and could have cost them their jobs.[25] When Lisa Dodson studied managers, teachers, and medical personnel who work with low-wage workers, she found many who padded employees' time clocks, slipped food and other products to the workers, and fudged paperwork to help people they thought were unjustly treated by the economy.[26]

Relational needs are no less real for being intangible and unmeasurable. In politics, these are the inchoate feelings that drive conflict and lend force to political demands, although politics often requires people to translate them into more tangible and measurable claims. For example, family caregiving might be the most important relational need, but it doesn't fit easily within the daily schedules and long-term career patterns of most workplaces. Employees who sacrifice work time to their caregiving responsibilities don't fit the stereotyped model of dedicated, hard-working, high-performing employees, and are often penalized, held back, or fired on the basis of these stereotypes. By suing employers for "caregiver discrimination" or "family responsibility discrimination," employees can place caregiving within the established legal framework of civil rights law and gradually translate relational needs into policy rules governing employment.[27]

[23]Studs Turkel, *Working* (New York: Pantheon, 1974).

[24]Carol Stack, *All Our Kin* (New York: Harper & Row, 1974).

[25]Deborah Stone, *The Samaritan's Dilemma: Should Government Help Your Neighbor?* (New York: Nation Books, 2008), chap. 4.

[26]Lisa Dodson, *The Moral Underground: How Ordinary Americans Subvert an Unjust Economy* (New York: New Press, 2009).

[27]Joan C. Williams and Stephanie Bornstein, "The Evolution of 'FReD': Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias," *Hastings Law Journal* vol. 59 (2008) pp. 1311–58.

6. Absolute vs. Relative Needs

Absolute standards peg the definition of need to a fixed point, usually an amount of income. Relative standards peg the definition of need to one's place in a distribution of resources within a community. For example, to be eligible for Social Security Disability Insurance in the U.S., you must have a physical or mental impairment that prevents you from earning at least $1,000 per month. That amount of earnings is the same for every applicant, anywhere in the country. It's an absolute standard. By contrast, to be eligible for disability insurance in the Netherlands, you must have an impairment that prevents you from earning *the prevailing average wage in your own community*. That is a relative standard of need—it says people are needy if they fall too far below what's average for their community.

In the U.S., about 13 percent of people live below the poverty line. Most of them struggle to put food on the table. Yet, 80 percent of them have air conditioning, almost 75 percent own at least one car, and 33 percent have either a computer, a dishwasher, or a second car. One might interpret these figures as evidence that the poor are irresponsible because they use some of their money to buy luxuries. Alternatively, using the relative concept of need, one could interpret the figures to mean that, "When people lack money for essentials such as food, it is usually a reflection of their desire to live up to the prevailing standard."[28]

Indeed, research on subjective well-being confirms the importance of relative need. People generally assess their own well-being by comparing themselves to others around them. In every country, no matter how high or low its standard of living, people in the top quarter of the income distribution are happier than those in the bottom quarter. Another piece of evidence indicating that people think about need in relative terms comes from a Gallup Poll conducted every year between 1955 and 1985. One question asked, "What is the smallest amount of money a family of four needs to get along in this community?" Over thirty years, actual incomes increased pretty steadily, and, lo and behold, people's estimates of necessary income rose steadily to keep pace with average incomes.[29]

Adam Smith had a movingly simple concept of relative need: things should count as "necessaries" if a person would feel ashamed not to have them. A linen shirt, he said, might have been a luxury in Greek and Roman times, but in mid-eighteenth century England, it had become a necessity. Why? Because "a creditable day-laborer would be ashamed to appear in

[28]Wilkinson and Pickett, *The Spirit Level* op. cit., note 7, p. 25.

[29]Richard Layard, *Happiness* op cit., note 15, chap. 4.

Concepts of Welfare and Need

Simple Objective Definition	Minimum requirements for survival
Dimensions of Welfare	
1. Material vs. symbolic needs	Resources have symbolic meanings that can be as important to welfare as their material value.
2. Intrinsic vs. instrumental value	Resources are important to meet immediate and direct needs, but also to enable people to fill their broader goals.
3. Volatility vs. security	Welfare depends not only on having sufficient resources at one time but also on being able to count on having sufficient resources in the future.
4. Quantity vs. quality	Welfare depends partly on hard-to-measure intangible factors.
5. Individual vs. relational needs	Welfare depends on being able to satisfy one's needs to belong, to care for others, and to give and receive help.
6. Absolute vs. relative welfare	Subjective welfare depends on comparisons with other members of one's community as well as one's absolute level of resources.

public without a linen shirt, the want of which would be supposed to denote that disgraceful degree of poverty which, it is presumed, nobody can well fall into without extreme bad conduct."[30]

Using the same concept of relative need, Malcolm Gladwell argues that health insurance should be considered a necessity in the U.S. today. Instead of a linen shirt, Gladwell starts with healthy teeth. "If your teeth are bad, you're not going to get a job as a receptionist, say, or a cashier. You're going to be put in the back somewhere, far from the public eye. . . . [B]ad teeth have come to be seen as a marker of 'poor parenting, low educational achievement and slow or faulty intellectual development.' They are

[30]Adam Smith, *The Wealth of Nations* (orig. ed. 1776), vol. 2, bk. 5, chap. 2.

an outward marker of caste." Health insurance counts as "a necessary," as Gladwell sees it, because without the ability to pay for dental care, people are ashamed to appear in public.[31]

Both Smith and Gladwell hint at another reason why relative need is so important. In the pervasive human pastime of judging others, people have a tendency to use economic status as a proxy for personal character.[32] Those who lack what others consider normal and decent risk being disdained and excluded. Appearing in public without a linen shirt in Smith's England or without good teeth in today's America sets in motion a chain of social processes from negative judgments to negative treatment.

Relative need exerts powerful influence on citizens' understanding of welfare and expectations of what they need. It explains, for example, why medical costs keep growing despite strenuous efforts at cost control. Research and innovation create new ways of restoring health—think of hip replacements and bone-marrow transplants—and of course, every patient who can benefit from a new technology thinks it is now absolutely necessary to her welfare. Every doctor treating such a patient can honestly say the procedure is medically necessary. This is the paradox of progress: instead of fulfilling needs, it creates rising expectations and new needs.

Making Needs in the Polis

Multiple ways of defining need result in different claims about what government ought to do to enhance citizens' welfare. A need doesn't become a political claim until someone demands that government do something about it. In a sense, needs-claiming is the essence of democracy: citizens make demands on government to meet their needs and government responds—or gets voted out.[33] In Chapter 10, "Interests," we'll look at how interest groups and social movements organize these claims and put them on the public agenda. Here, we'll consider how government validates claims, arbitrates them, and decides which ones are legitimate.

In programs that attempt to meet individuals' needs, eligibility requirements define what government considers necessary, and application

[31]Malcolm Gladwell, "The Moral Hazard Myth," *The New Yorker*, Aug. 29, 2005, pp. 44–49. The inside quotation is from Susan Starr Sered and Rushika Fernandopulle, *Uninsured in America* (Berkeley: University of California Press, 2005).

[32]On judgment, see Wilkinson and Pickett, *The Spirit Level*, op. cit., note 28, chap. 4, p. 42 ff.

[33]Gabriel A. Almond and Sidney Verba, *The Civic Culture* (Princeton: Princeton University Press, 1963), p. 181.

procedures test applicants against these definitions. Most programs to assist low-income people are "means-tested," meaning they ask for evidence of earnings and assets to measure whether people need, say, food stamps, cash assistance, or health insurance. Disability programs generally ask applicants for medical evidence that impairments prevent them from working enough to earn a living. Public health insurance programs such as Medicare and Medicaid use doctors as gatekeepers; the programs pay only for tests and treatments a doctor says the patient needs. Unemployment insurance programs try to screen out people who don't want to work. They define criteria for "voluntary quits" and investigate whether applicants lost their jobs involuntarily. Out of political context, eligibility requirements can glaze the eyes, but they become fascinating if we interpret them as struggles over what counts as a valid need.

Even in programs that address organizations' needs rather than individuals' needs, political decision making takes the form of validating claims about need. When manufacturing industries seek protection from foreign competition, they must petition the U.S. International Trade Commission to restrict imports, demonstrating that their industry is on the verge of ruin because of a high foreign market share or unfair foreign trading practices. Farmers and dairy producers seeking price supports from Congress or state legislatures must document their need with measures of market saturation, low prices, and farm profitability.

Congress and state legislatures use committee hearings to collect and test information about needs. Hearings are usually sponsored by representatives who are already disposed to take action on some problem. They invite witnesses who can be counted on to give an informed and passionate description of a need. Hearings on social programs typically feature academic and think-tank experts reciting statistics and generalizations, along with one or two living exemplars of the problem who tell their personal stories in vivid, colloquial prose. Budget hearings are another mechanism through which groups play out their claims. Agencies' budget requests are political claims about how much money they need to carry out essential functions. Budget negotiations then force the different players to justify their needs and make choices among their own programs.[34]

Those needs that a community recognizes as legitimate and tries to satisfy as a community might be termed public needs. The conception of public needs in real political communities is broader, more varied, and

[34]On hearings, see Walter J. Oloszek, *Congressional Procedures and the Policy Process,* (Washington, D.C.: CQ Press, 2011), 8th ed., pp. 111–17; on budgets, Aaron Wildavsky and Naomi Camden, *The New Politics of the Budgetary Process* (New York: Longman, 2003), 5th ed.

more culturally specific than the concept of public goods in economic theory. In economics, the inherent characteristics of goods determine whether they are public; a lighthouse is a public good because it is in the nature of light signals to be visible to many users at one time and to persist even after being "used." By contrast, public needs are determined in a political process. They have nothing to do with the inherent characteristics of things and everything to do with people's ideas about which needs are so important that government should help people meet them. Public needs are those things a community publicly recognizes as "necessaries" and agrees to provide, and they are often in dispute.

The pattern of public needs is the signature of a society. In its definition of public needs, a society says what it means to be human and to have dignity in that culture. In medieval Jewish communities, government's function included maintaining what was necessary to the practice of religion: synagogues and their officials; religious courts; education (for boys only, since the purpose of education was to enable men to participate in religious services and discussions); and rescuing captive Jews from persecution in other communities. The government of ancient Athens recognized a different set of public needs: a large army and navy; the supply of corn; roads; funerals for the war dead; and the famous drama festivals.[35] In the U.S. today, government guarantees individually tailored education for children with disabilities, a policy that recognizes disabled people as deserving equal opportunity to develop to their fullest potential. In Norway, Sweden, and Denmark, government finances paid parental leaves for new mothers and fathers, a policy that recognizes family-keeping as an essential aspect of the human experience.

Although countries are marked by their unique blend of public needs, there are striking similarities in the timing of adoption of public welfare programs. By and large, Western industrial nations have tended to adopt social welfare programs in the same order, as though there were a universal hierarchy of societal needs: first, industrial accident insurance; next, old age pensions; then, sickness insurance, unemployment compensation, and family allowances.[36] (The U.S. is an outlier in its late and relatively limited public health insurance and support for child-rearing.) Within disability programs, blindness, deafness, and missing limbs were usually recognized before mental illness and chronic diseases. Except for forest conservation policies, environmental protection from pollution and toxins

[35]Walzer, *Spheres of Justice*, op. cit., note 6, chap. 3.

[36]Phillips Cutright, "Political Structure, Economic Development, and National Social Welfare Programs," *American Journal of Sociology* 70 (1965), pp. 532–50.

began in most countries in the 1970s. These coincidences of timing can be explained by two factors. First, industrialization and urbanization generated similar problems wherever they took place, and second, ideas travel across political boundaries. Policy makers look to other countries for solutions, and citizens gather ideas and inspirations for their own demands from abroad as well.

Moral Hazard and the Welfare-Efficiency Trade-off

Welfare and efficiency are sometimes said to be incompatible goals. If government tries to increase welfare in the short run, its policies will backfire and diminish welfare in the long run. As with the equality-efficiency trade-off argument, this one plays a conservative role in political debate. It is usually invoked to prove that public policies to improve social welfare will fail, and, therefore, the status quo is the best we can hope for.

The welfare-efficiency trade-off rests on an assumption about human nature called moral hazard. The term comes from insurance economics, but in the U.S., it has become one of the most important assumptions about human decision making, right up there with self-interest. According to the original idea of moral hazard, when people have insurance—for example, homeowners' or medical—they know they will recoup their losses if they get into trouble. If their house burns down, they will collect money from their insurer. If they get sick and need medical care, insurance will pay most of their bills. Knowing that they won't have to pay for all their losses or their treatment, they behave a little less carefully and don't take as much trouble to prevent fire and illness.

The moral hazard argument has been expanded beyond insurance to predict people's behavior in any kind of situation where someone else assures their well-being. Even before the term became so widespread, the concept was used to demonstrate that public assistance programs undermine work motivation. If people can get their needs met without working, they will work less or not at all. Productivity will decline. Instead of contributing to economic growth, such people live from others' productivity and drain resources from the total social pie. Boom! Welfare-efficiency trade-off.

As we have seen, security in the sense of being able to count on having one's needs met is essential to human welfare. According to the moral hazard principle, though, security reduces welfare rather than enhancing it. If people know they can count on someone else to underwrite their

welfare—private charity, public programs, relatives and friends, or even safety regulations—they will be less diligent about meeting their own needs and less careful about avoiding problems.

Of course, some slacking and cheating occurs in just about any social context—schools, bureaucracies, corporate firms, and workplaces of all kinds. Distributive programs such as public assistance or health insurance are no exception. But it's a mistake to generalize from bad apples to human nature. The moral hazard idea assumes *all* people are easily persuaded to behave badly in the context of an easy way to gain resources. Reliable assistance tempts them (in religious terms) or gives them incentives (in economic terms) to behave carelessly and irresponsibly—hence the name "moral hazard." In effect, the theory says that people are slothful by nature; if they don't *have to* work to meet their needs, they won't. The policy implications of moral hazard are clear: unless welfare-enhancing policies build in counterincentives, they lead to immoral behavior and, ultimately, to less welfare.

Moral hazard is largely an ideological argument, and like the equality-efficiency trade-off, it has been put to empirical tests. To test whether monthly cash payments reduce work motivation, the federal government commissioned a social experiment tied to a scientific study. The New Jersey Negative Income Tax Experiment randomly divided low-income people into several groups and provided them with varying levels of income assistance. Meanwhile, researchers monitored how much the recipients in each group worked. Labor supply (defined as number of hours worked) did *not* go down with higher welfare payments. And black males, who have been the greatest victims of stereotypes about laziness, *increased* their work hours with higher income guarantees.[37] Notwithstanding the empirical evidence, however, the work motivation argument still wields political influence. Two decades after the New Jersey experiment, this argument persuaded Congress to reform welfare by tightening work requirements, lowering cash assistance, and placing a five-year lifetime limit on assistance.

Cross-national comparisons also refute the moral hazard theory about welfare and work motivation. As we saw in Chapter 3, many nations with health, pension, and cash assistance programs far more generous and inclusive than the U.S. have the same or higher employment rates. And if citizens work fewer hours or take longer vacations in these countries, it is not because secure benefits have made them lazy, but because strong

[37]Joseph Pechman and Michael Timpane, eds. *Work Incentives and Income Guarantees: The New Jersey Income Tax Experiment* (Washington, D.C.: Brookings Institution, 1975).

Is There a Welfare- Efficiency Trade- off?

Yes	*No*
1. Moral hazard: people are lazy and will be less careful to avoid losses if they know they will be helped by others.	Empirical evidence largely refutes the idea that availability of help induces laziness, carelessness, and cheating.
2. When people have their welfare needs met, they have less motivation to work hard. Lower productivity means fewer material resources for everyone.	Cross-national comparisons show that collective provision for welfare does not reduce productivity and economic growth.
3. Mutual aid erodes personal responsibility.	Mutual aid provides security to help people take care of themselves and their families.
4. Collective provisions for individual welfare erode community by tempting people to cheat and exploit others.	Collective provisions for welfare strengthen community by reducing distrust, hostility, and violence.

unions and labor parties have consistently influenced labor policy to limit work hours.

Numerous studies show that people who have health insurance indeed use more medical services than people who don't, a point that seems to support the moral hazard argument. But the *moral* part of moral hazard implies that insured people exploit insurance to get services they don't need. Here's where things get murky. Who's to define need? Perhaps *you*, now that you've read this chapter. Or perhaps, since we're talking about medical care, we should let doctors define need. If we bring need into the equation, moral hazard goes into reverse. There's little evidence that people who have insurance consume medical care beyond what their doctors advise them to use. By contrast, there's overwhelming evidence that people who *don't* have insurance don't receive medical treatment and preventive care that doctors consider necessary and even critical for their

health.[38] In short, insurance helps match medical care to medical need—it makes medical care more efficient, it enhances welfare, and many would say it makes the distribution of medical care more just.

The moral hazard argument can be taken to extremes. A prominent law professor once decried a plan to expand children's health insurance because, he said, it would make parents less careful to keep their children from having accidents. Mark Pauly, the economist whom many people credit with making moral hazard a mainstream concept, worried that if insurance paid for home health care, elderly people would eagerly use as much as they could because it provides "low-tech or servant services" that anyone would want. A citizen of bucolic Hanover, New Hampshire, opposed putting crosswalks in what counts as the busy downtown area because they would make pedestrians complacent and less likely to look out for cars. Crosswalks would actually cause more accidents and injuries.[39]

Whether you think these scenarios are plausible or far-fetched, they illustrate how deeply the concept of moral hazard penetrates the culture. They also illustrate how the moral hazard argument dismisses relational needs. To accept that parents wouldn't take as good care of their children if they were insured, one would have to believe that parents are in it for the money and have no emotional need to nurture their kids. Most elderly people are loath to admit needing help and resist it, but when they do receive home care services, what they value most is not the "servant" chores but the companionship and human connection. As for crosswalks, they can create momentary relationships that enhance safety: a painted crosswalk can form a zone of attentiveness where drivers and pedestrians can make eye contact and negotiate implicit agreements about who goes first.

Communal provision for welfare may be the most important force holding communities together. When people in need receive aid, they are usually grateful to, and perhaps dependent on, the giver. Gratefulness and dependence create loyalty. As Carol Stack found in the black urban neighborhood she studied, "The value of an object given away is based upon its retaining power over the receiver; that is, how much and over

[38]Institute of Medicine, *Care Without Coverage: Too Little, Too Late* (Washington, D.C.: National Academy of Sciences, 2002).

[39]Children's health insurance: Richard Epstein, letter to the editor, "Health Care Law Shows Big Government Lives," *New York Times*, Aug. 10, 1997, sec. 4, p. 14; home health care: Mark V. Pauly, "Choosing Long-Term Care Insurance," *Health Affairs* vol. 20, no. 6 (2001), pp. 109–111; crosswalks: Robert N. Leaton, letter to the editor, *Valley News* (Lebanon, N.H.), June 2, 2001, p. A9.

how long a time period the giver can expect returns on the gift."[40] The political bosses of American cities built their machines on the same principle: help a person in need and you will gain his vote forever. The strongest evidence against moral hazard, though, comes from cross-national research. In nations where government ensures high levels of welfare for most of the population, citizens enjoy better health and suffer less crime. They trust each other more, including strangers, and because they do, they are more willing to help others and more disposed to engage in community life.[41] In the polis, there is a different kind of moral hazard—not the corruption of individuals whom the community helps, but the selfish temptation to neglect people in need of help and the failure to help one's neighbors.

[40]Stack, *All Our Kin*, op. cit., note 24, p.42. Stack draws on the anthropological tradition of "gift economies" started by Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (New York: W. W. Norton, 1967; orig. ed. 1924).

[41]Wilkinson and Pickett, *The Spirit Level*, op. cit., note 7.

5

Liberty

Should people be free to burn the American flag? In 1989, the Supreme Court ruled that burning the flag is a form of speech, and therefore no state can prohibit citizens from expressing themselves in this way. A member of the American Legion, a veterans' association, went on the *Today* show to explain why he thought the Supreme Court was wrong. The flag is a symbol of the nation, he said, and government should prevent people from defacing it. The host then asked him what the flag symbolizes and why government should protect it. "It stands for the fact that this is a country where we have a right to do what we want," the veteran replied.[1]

The legionnaire was caught in a paradox: If we always have a right to do what we want, don't we also have the right to burn the flag? He seemed to intuit the crux of the liberty problem: sometimes curtailing individual liberty may be necessary to preserve a community in which all citizens can be free.

Abraham Lincoln saw the tragic side of this paradox. "We all declare for liberty," he said, "but in using the same *word* we do not all mean the same *thing*." To northerners, freedom meant that each man could enjoy "the product of his labor." To white southerners, it meant "the power to do as they please with other men, and the product of other men's labor."[2] No amount of intellectual sparring could reconcile these two meanings. The same idea that united Americans set them to bloody civil war.

Many a philosopher has tried to reason out a single, universal definition of freedom, applicable in all political contexts, but as the historian

[1]Quoted in Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991), p. 8.

[2]Eric Foner, *The Story of American Freedom* (New York: W. W. Norton, 1998), p. 97. The quoted words are Lincoln's, except for "the power to do," which is Foner's paraphrase of omitted words.

Eric Foner notes, these abstract theories miss the essential character of freedom. Freedom is a "mythic ideal" whose practical meanings emerge and change through "debates, disagreements, and struggles." It is a "morally charged idea . . . used to convey and claim legitimacy for all kinds of grievances and hopes, fears about the present, and visions of the future."[3] In the polis, efforts to define liberty begin with conflict—with two sides asserting conflicting meanings.

Nevertheless, as people fight about issues of liberty, policy makers search for firm criteria to guide and justify their decisions. The dilemma of liberty revolves around the question of when government can legitimately interfere with citizens' choices and activities. When, if ever, should community goals be allowed to trump individual choice? Under what circumstances should public policy limit individual autonomy?

The most famous and influential answer to these questions is John Stuart Mill's essay *On Liberty*, written in 1859. In it he attempted to find a single criterion for deciding when society ought to interfere with individual liberty:

> The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. . . . [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.[4]

Mill believed that deliberation and the exercise of choice are the essence of what it means to be human and therefore government should interfere with individual choice as little as possible. In reconciling the need for social control with individual freedom, he defined a sphere of action where the individual reigns supreme. The sphere includes all those purely "self-regarding" actions that do not have adverse consequences for others. A government is justified in restricting only behavior that affects other people.

Mill's resolution of the problem is the dominant way of thinking about liberty in American political thought, so it is worth highlighting the elements of this tradition. First, it holds that there is a single criterion by which we can judge whether government interference with individual action is justified—namely, harm to others. Second, it is predicated on a clear distinction between behavior that affects others and behavior that

[3]Foner, ibid., introduction.

[4]John Stuart Mill, *On Liberty* (orig. ed. 1859).

does not. Third, it sees liberty as an attribute of individuals, not social roles or groups or organizations. And finally, it defines liberty in a negative way as the lack of interference with individual action. To provide liberty in this sense is to do nothing, to refrain from acting, rather than to do something. Each of these elements is a focal point for challenges.

To define liberty as Mill does requires us to think about what counts as "harm to others." Policy issues are then cast as a choice between protecting the liberty of individuals and preventing harms to others. To ask in this framework when government should interfere with individual liberty is to ask what types of harms society should prevent. As with equity, efficiency, and welfare, the intuitively appealing and simple criterion is another battlefield upon which people fight for conflicting interpretations.

Physical injury would seem to be a self-evident type of harm that everyone would agree should be prevented. Actions that cause injury or death do not belong in the sphere of liberty. Yet, like the physical-survival definition of need, the physical-injury definition of harm is not as simple as it first appears.

What about the action of exposing people to small but toxic doses of chemicals, either in the workplace or in air and water? Should the long-term and cumulative effects of exposure count as a harm that justifies restricting action? Of course, the contemporary answer is yes, and government thus regulates a good deal of manufacturing, environmental, and medical use of chemicals. But even toxic exposure doesn't lend itself to a simple yes-or-no answer. What if the effects of chemical exposure caused by one person (say, an employer) are magnified or compounded by activities of the person who is harmed (say, a worker who smokes)? Whose behavior should government constrain?

The image of simple physical assault that worked in Mill's day hardly grapples with the kinds of harms possible in today's industrial and technological world. The harmful effects of a chemical, for example, are not "encased" in the chemical substance. Harms result in part from the social organization of the chemical's use—how work is spatially organized, how long and consistently workers are exposed to the chemical, how wage systems reward or penalize the use of protective equipment, and whether there are incentives for safety in transporting and storing chemicals. Moreover, much physical harm results from the failure of complex systems rather than individual action. Japan's nuclear catastrophe in 2011 was caused by a convoluted mix of tsunami, flooding, cooling system failures, and other engineering weaknesses. Much as people wish to avoid a similar calamity, it is impossible to identify behaviors that should be prohibited in order to prevent a recurrence.

In an era more conscious of the environment and commons problems than Mill's, a theory of liberty must also grapple with *cumulative harms*.[5] Some actions, like walking across the grass, dumping sewage in a river, withdrawing money from a savings bank, or dropping out of a group insurance plan, aren't harmful when one person does them but can be devastating if a lot of people do them. In order to protect the things people use in common, such as natural resources and cooperative institutions, policy makers need to consider accumulative harms in defining the sphere of liberty.

Thus, the connection between individual action and harm to others is not as clear as Mill's theory of liberty suggests. If we are seeking a clear criterion to guide policy—to decide when preventing harms to others should override the basic value of individual liberty—even the relatively clear idea of physical harm is not so clear. When we move beyond physical harm to other kinds of harm, Mill's criterion for deciding questions of government interference in the private sphere is even less determinate.

Before examining some other kinds of harms, though, let's consider another serious problem of Mill's resolution. For policy makers, identifying harms to others solves only part of the liberty dilemma. Even when an activity is known to produce harm to others, there are many possible ways of preventing the harm, each of which interferes with different types of liberties for different sets of people. For example, some chemicals used in manufacturing can injure fetuses. There are several ways to prevent fetal injury. Government could require manufacturers to modify their production process to protect workers from exposure to the chemicals, or it could ban the production and use of such chemicals altogether. Alternatively, employers could exclude women of childbearing age from jobs involving the chemicals. To make matters even more complicated, restrictions on someone's behavior to prevent one type of harm often cause another type of harm. Either of the restrictions on employers would harm their revenues. Excluding women would harm their careers, their incomes, and their social networks. Identifying the harmful consequences of an activity doesn't tell us which actions ought to be prevented, whose liberty to curtail, or how to spread the balance of harms equitably. And this point applies equally to the other types of harms discussed below.

Beyond bodily harm, *economic and material* harms to others are often considered a legitimate reason to interfere with individual liberty. An activity may cause someone else to suffer a loss of income—pirating music, for

[5]Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984).

example, or destroying someone's reputation by slandering them. Some activities destroy or alter natural resources in ways that affect people's livelihoods.

Market economies expressly permit some kinds of deliberate and foreseeable economic harms, while they prohibit others. As Oliver Wendell Holmes pointed out nearly a century ago, "A man has a right to set up a shop in a small village which can support but one of the kind, although he expects and intends to ruin a deserving widow who is established there already."[6] Were Holmes writing a century later, he might have been thinking about Wal-Mart displacing small family businesses or real estate developers converting low-income housing to high-priced condominiums. The point is the same: we knowingly permit all kinds of harms in the name of free markets and economic growth. On the other side, market economies expressly prohibit some kinds of economic harms: identity theft, slander, and stealing intellectual content.

Another type of harm involves *amenity effects*, or impacts on aesthetics, lifestyle, and peace and quiet. Here we would include issues such as placing advertising billboards on highways, erecting a building that blocks light from neighboring apartments, siting an office building on a former park, or locating a motorcycle race track in a quiet neighborhood. In the U.S., much of the opposition to wind energy comes from residents who think turbines damage the beauty of their surrounding landscape or who worry about the noise.

As we move from physical to more abstract types of harms, it becomes evident that harms are political claims asserted by one set of interests against another. But the imprecision of these harms and our inability to measure them, either in market values or other quantifiable units, makes them no less important. If anything, the more abstract and symbolic harms are usually the most politically contentious.

Psychic harms are difficult to grasp, yet important in political conflict. Every teenager knows the classic parental argument for saying 'no': "Because if you do that, I will worry about you." No doubt everyone has wrestled with the question of whether a parent's worry is a legitimate reason for curtailing a child's liberty. The question has its counterparts in the public sphere, where groups ask government to restrict behavior that they believe causes psychic damage. For example, when people face persistent denigration for an identity over which they have no control, they begin to doubt their self-worth, believe negative stereotypes

[6]Oliver Wendell Holmes, Jr., "Privilege, Malice, and Intent," *Harvard Law Review* 8, no. 1 (April 25, 1895), pp. 1–14; quote on p. 3.

about themselves, devalue their own cultures, and lower their aspirations.[7] To prevent these psychic harms, some universities and towns have tried to limit racial-, ethnic-, and gender-based insults, dubbed "hate speech." For similar reasons, some educators and parents think school curricula should be required to portray women and minorities in responsible positions, so as not to convey that they can attain only menial and low-status jobs.

Psychic harms pose thorny issues for policy makers. Restrictions on hate speech run up against a strong American tradition of freedom of speech—a topic we'll take up in the next section. Claims about psychic harms in order to resist land use changes or new technologies raise another set of issues about defining harm. After the Three Mile Island nuclear plant accident in 1979, some residents asked the Nuclear Regulatory Commission to shut the plant permanently because of risks to their psychological health. If the plant were to operate again, they said, they would suffer stress and anxiety from worrying about another accident. The Supreme Court rejected their claims. It would be difficult, Justice William Rehnquist pointed out, to differentiate among

> someone who dislikes a government decision so much that he suffers anxiety and stress, someone who fears the effects of that decision so much that he suffers similar anxiety and stress, and someone who suffers anxiety and stress that "flow directly" . . . from the risks associated with that same decision. It would be difficult for agencies to differentiate between "genuine" claims of psychological health damage and claims that are grounded solely in disagreement with a democratically adopted policy.[8]

The most contentious harms in contemporary politics are also the least tangible—*spiritual* and *moral harms*. Groups sometimes ask government to prohibit behavior forbidden by their own religious laws (engaging in commercial activity on Sundays) or to compel behavior prescribed by their religious traditions (requiring teachers to hold prayer time in public schools). John Stuart Mill was adamant that religious belief should never be a permissible ground for government regulation of behavior. Claims that a group is morally offended or revolted by some practice, such as eating pork or working on the Sabbath, Mill argued, should never be recog-

[7]On the psychological harms caused by racial insults, see Richard Delgado, "Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling," *Harvard Civil Rights–Civil Liberties Law Review* vol. 17, no. 1 (1982), pp. 133–182.

[8]*Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983); quote on pp. 777–78.

nized by government as the basis for policy. It is "the logic of persecutors to say that we may persecute others because we are right."[9]

For all the insistence on separating church and state in liberal political thought, religion has always been a source of intense passion in politics. Nineteenth-century evangelical Christians mobilized the abolitionist movement. Twentieth-century evangelical Christians mobilized the anti-abortion movement. While it would be hard to argue that abolition of slavery or state curbs on abortion wrote religious beliefs into law, these policies were prompted by demands that government endorse certain beliefs, and they do restrict behavior that doesn't accord with those beliefs.

Mill's concern with claims that a group is "revolted" by some behavior is not as trivial as it might sound. According to the philosopher Martha Nussbaum, restrictions on gays have been justified by disgust rather than any reasoned evidence about harms allegedly caused by homosexuality.[10] Opponents of gay marriage and adoption use visceral imagery of saliva, feces, semen, and blood, and of wanton promiscuity, seedy bathrooms, and child molesters to persuade courts and voters that homosexuality is disgusting and should not be sanctioned by the state. Like Mill, Nussbaum thinks moral repugnance should not be grounds for restricting liberty because majorities too often deploy it against unpopular minorities. (Here's a thought experiment: What intimate personal relationship involves daily contact with urine, feces, saliva, vomit, and sometimes blood? Has any society ever prohibited this kind of relationship? Hint: Ask your mother.)

Harms to others are not objective phenomena, to be discovered or documented by science, but rather political claims that are granted more or less legitimacy by government. Science is one weapon groups use in the struggle to prove their claims of harm. Among the categories of harm, there is a rough hierarchy in terms of which are more politically potent. Claims based on physical injury are easier to assert successfully (i.e., to attain a restriction on someone else's activity) than claims based on economic harms, and economic harms are stronger than amenity harms, and so on down the line. Thus, political strategy on liberty issues often entails framing claims to move them up the hierarchy of generally recognized legitimacy. Abortion opponents, for example, fervently believe that abortion is *morally* wrong, but they often argue on the basis of *physical and psychological* harms, claiming that having an abortion leads to higher risk of breast cancer and depression.

[9]J. S. Mill, *On Liberty*, op. cit., note 4, p. 156.

[10]Martha Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (New York: Oxford University Press, 2010).

The harm-to-others criterion that Mill thought was "one very simple principle"[11] turns out to be exceedingly complex. There are many types of harms, and their recognition is a matter of political struggle—not rational discovery.

Making Liberty in the Polis: Five Paradoxes

1. Negative and Positive Liberty

The words "liberty" and "freedom" are often used interchangeably, but they derive from linguistic roots with opposite meanings. Liberty stems from the Latin *libertas*, which means "unbounded, unrestricted, or released from restraint." It connotes independence, autonomy, and separateness. Freedom comes from the Indo-European root *friya*, which means beloved, and from some northern European words for friend or kin. It connotes relationships rather than independence, belonging rather than separateness.[12] These two concepts are almost antithetical, yet they are both essential aspects of liberty (or freedom—take your pick).

In the second most famous essay on liberty, "Two Concepts of Liberty," the philosopher Isaiah Berlin put forth two ways of understanding liberty that almost (but not quite) coincide with the root meanings of liberty and freedom. In the view Berlin called *negative liberty*, "I am . . . free to the degree to which no man or body of men interferes with my activity. Political liberty . . . is simply the area within which a man can act unobstructed by others. . . . And if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved." Obviously, this way of looking at liberty corresponds closely with *libertas* and its sense of being unrestrained. Berlin called the other view *positive liberty*: "I wish . . . to be moved by reasons, by conscious purposes, which are my own. . . . [to be] self-directed and not [treated as] a thing, or an animal, or a slave . . . incapable . . . of conceiving goals and policies of my own and realizing them."[13]

The two concepts of liberty are as good a test as any for separating conservatives and liberals in American politics. Conservatives generally

[11]J. S. Mill, *On Liberty*, op. cit., note 4, p. 58.

[12]David Hackett Fischer, *Liberty and Freedom: A Visual History of America's Founding Ideas* (New York: Oxford University Press, 2005), pp. 4–6.

[13]Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (London: Oxford University Press, 1968, orig. ed. 1958), pp. 118–72, quotes on p. 122 (negative liberty) and p. 131 (positive liberty). Berlin explicitly used the words "freedom" and "liberty" to "mean the same" (p. 121).

Concepts of Liberty

J. S. Mill's Negative Concept	*Liberty is freedom from coercion by others. People should be free to do what they want unless their activity harms other people.*
Complications in the Polis	
What kinds of "harms to others" should trigger government restraint on individual liberty?	Bodily injury, loss of income, aesthetic and amenity harms, psychic harms, spiritual and moral harms.
Some harms to others are not caused by simple individual behavior.	Harms may be caused or exacerbated by social organization (e.g., of workplaces, industrial waste disposal, oil drilling).
	Harms may be caused by cumulative behavior rather than by discrete individual actions.
When a social activity is known to cause harms to others, there are multiple actors whose behavior contributes to harm.	How should government choose whose behavior to restrain?
	Restraining behavior to prevent one type of harm may cause another type of harm.
Isaiah Berlin's Positive Concept	*Liberty is the ability to conceive of goals and realize them, and requires help from others.*
Positive liberty requires having literacy, education, health care, income, and physical security.	Noninterference with a person's behavior is not enough to provide liberty.
Deprivation of basic resources is a kind of coercion.	Liberty requires positive help from others and society to ensure basic resources.

emphasize the freedom to use and dispose of one's resources as one wishes, without interference. To identify coercion, they start with the status quo distribution of wealth, power, and jobs, and look for evidence of somebody taking somebody else's resources. In the extreme, they regard taxation as tantamount to confiscating property. The libertarian philosopher Robert Nozick went so far as to say that "taxation on earnings from labor is on a par with forced labor."[14] His view is hardly new. It echoes the Pennsylvania farmer who in 1768 wrote, "Those who are taxed without their own consent are slaves."[15] In pre-revolutionary days, taxation meant the British government extracting revenue from the colonists. Today's libertarians criticize redistributive programs such as public assistance or Medicaid because they force people, through taxes, to "donate" to others.

Liberals generally lean toward a positive view of liberty. They define liberty as the power to choose one's life path. Liberty in this sense requires that people have basic levels of literacy, education, health care, income, and physical security. Even if no person or group interferes with very poor people, they aren't free in the positive sense if they lack the basic resources to enable them to choose out of desire rather than necessity. To identify coercion, liberals start with the status quo distribution and look for evidence of severe deprivations that would prevent people from "conceiving goals and realizing them," in Berlin's words. The economist Amartya Sen draws on the positive tradition when he conceptualizes health care, nutrition, shelter, and political power as "capabilities" essential for exercising freedom.[16] The positive view of liberty comes back to the etymological roots of "freedom." To realize one's goals, it helps to belong to a community that provides the basic capacities to live freely.

In comparison with European nations, the negative concept of liberty plays a much greater role in U.S. politics. The most contentious issue in Obama's health reform was the mandate to buy health insurance. The very term "mandate" suggests a negative concept of liberty and conjures up the old colonial fear of tyrannical government. In Europe, where con-

[14]Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 155–74, quote on p. 169. The best-known libertarian is still the novelist and philosopher Ayn Rand. See her essays collected in *The Virtue of Selfishness* (New York: Signet, 1964).

[15]John Dickenson in his *Letters from a Farmer in Pennyslvania to the Inhabitants of the British Colonies* (Philadelphia, 1768), p. 3, cited in Foner, op. cit., note 2, p. 31.

[16]Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), chap. 1. We encountered Sen's ideas in Chapter 4, "Welfare."

tributions to public health insurance have long been mandatory, people talk about being "members" of their health plans and making "contributions" rather than paying taxes, and they consider having health insurance as an opportunity rather than a restriction.

2. Positive Obligations

In the polis, citizens care about and fight over visions of public interest. Government isn't merely referee in a giant boxing match, restraining people when they get unruly; it also acts as impresario, coordinating cooperative ventures. That means governments sometimes require individuals to participate in collective efforts. John Stuart Mill paid brief tribute to this political reality at the beginning of his essay: "There are also many positive acts for the benefit of others which [a person] may rightfully be compelled to perform."[17] He gave four examples of these obligations: the duty to testify in court, to contribute to the common defense or "any other joint work necessary to the interest of society," and to perform "acts of beneficence," such as saving someone's life. And then, Mill dropped the subject.

In the polis, the sphere of legitimate compulsion based on the interests of society (as distinct from harm to individuals) is actually quite large. In addition to the duties Mill mentioned, most societies require their members to honor contracts and promises, pay taxes to support government activities, give up land for public projects (eminent domain), educate their children, and participate in mutual aid schemes. Above all, societies require their members to obey the law, regardless of whether violations harm somebody else. The police will punish a driver for running a red light even if no one is harmed. Such restrictions of individual liberty are not meant to protect particular individuals from harm, but rather to protect social order itself. This paradox was the crux of Thomas Hobbes's *Leviathan.*[18] Unless people give up some of their liberty to a leader who can impose rules, Hobbes argued, they will be prey to everyone else's freedom to steal and kill. That kind of victimization would be a greater deprivation of liberty than having to obey government rules.

Americans have a distinctive legal culture concerning positive duties to promote social cohesion, welfare, and solidarity.[19] On the one hand, the U.S. had the earliest system of universal primary education and required

[17]J. S. Mill, *On Liberty*, op. cit., note 4, p. 70.

[18]Thomas Hobbes, *Leviathan* (orig. ed. 1651).

[19]Mary Ann Glendon, *Rights Talk*, op. cit., note 1; Seymour Martin Lipset, *American Exceptionalism: A Double-Edged Sword* (New York: W. W. Norton, 1997).

citizens to pay taxes toward public schools whether or not they had children. This is an expansive concept of positive duties. It requires citizens to contribute to raising not just their own children but the next generation of citizens. On the other hand, in many policy areas Americans have been reluctant to create legal obligations for citizens to help one another, as every president who tries to expand health insurance learns. Although the U.S. does have extensive social aid programs, such as Social Security, Medicare, Medicaid, and public assistance, each of them teeters between calls for expansion and calls for cutbacks or elimination. Even in dire emergencies, U.S. law imposes no legal duty to rescue another person. A champion swimmer who doesn't bother to save a drowning baby in a swimming pool might be morally culpable but remains legally innocent.

Perhaps the most serious defect of the individualist conception of liberty is that in seeing only harms to individuals, it fails to protect communal life by requiring participation in community institutions.

3. Paternalism

Can a person be forced to be free? When, if ever, should government prevent people from acting voluntarily in ways that harm themselves and might foreclose future options?

John Stuart Mill's answer was characteristically simple—"Never!"

> [A person's] own good, either physical or moral, is not a sufficient warrant [for interference with his liberty of action]. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him or visiting him with any evil in case he do otherwise.[20]

But, just as characteristically, Mill felt compelled to make an exception to his rule. Society can legitimately prevent people from entering into contracts to enslave themselves, even though no one but the slave is harmed by slavery. Why would Mill allow this exception? Because by entering into slavery, a person gives up liberty once and for all, and protecting individual liberty is the very purpose of prohibiting paternalism.

The slavery exception in Mill's argument exemplifies a larger issue in contemporary policy: are there other situations in which people's free-

[20]J. S. Mill, *On Liberty*, op. cit., note 4, p. 68.

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dom to choose a course of action should be denied in order to preserve other choices in the future? Most health and safety regulations rest on this sort of logic. Its underlying premise is that some types of choices are equivalent to enslaving oneself. Age limits on drinking and smoking, prohibitions on recreational drugs, and seat belt and helmet requirements are usually justified on grounds that they protect people from injuries that might impair their future ability to make free choices. The problem with the slavery metaphor as a policy guide, however, is that it is only a metaphor. It doesn't escape the trap of imposing on someone else a judgment about what sorts of experiences are "as bad as" slavery.

Although paternalism violates the norm of equal voice, the strongest argument *for* it starts with expertise. If experts know better than ordinary people what makes them better off, ordinary people should willingly cede decision-making power to the experts. Richard Thaler and Cass Sunstein propose a middle ground between expert power and individual autonomy, a concept they call "libertarian paternalism." Government would structure many individual decisions so the option that experts think is better becomes the default option. For example, many workers don't sign up to contribute to employee pensions plans, even though they would be better off if they did. (That's because payroll deductions for

retirement savings aren't taxed.) Government could overcome this irrational behavior by requiring employers to make pension contributions the default option for newly hired workers. Workers could opt out by signing a piece of paper, but most would let inertia make their decision for them. By structuring "the architecture of choice," government can nudge people to make better decisions without forcing them to make the "right" choices.[21]

Another approach to the problem of paternalism is to allow it for certain categories of people. Children and the mentally incompetent are usually considered proper objects of paternalistic policy; that is, they are forced to do things "for their own good" and denied ordinary liberties. John Stuart Mill, by the way, allowed these exceptions, too, and added yet another: backward societies, or as he put it, "backward states of society in which the race itself may be considered as in its nonage."[22] The logic of this exception is that certain categories of people are incapable of exercising meaningful choice in the first place, so that they have no liberty to be violated by protective coercion. (Considering that Mill wrote *On Liberty* on the eve of the American Civil War and some twenty-five years after his own country, Britain, had abolished slavery, his "backward races" argument testifies to racism's tenacious grip on the white European imagination.)

The exclusion of entire categories of people from rights and liberties to which other citizens are entitled is the great loophole in liberal political thought. There is always a danger that powerful citizens can simply declare unpopular groups to be "of nonage," as Mill so delicately put it. The U.S. has a long tradition of declaring entire peoples immoral, backward, incompetent, or otherwise incapable of exercising the freedoms of citizenship. Such claims were used to exclude certain races and nationalities from immigration, from becoming naturalized citizens, and from various civic rights once they were naturalized. American law developed lesser civic statuses for people the white male majority regarded as "nonage." Women and blacks were for a long time denied rights to vote, own property, serve on juries, or testify in court—all on grounds of their alleged mental inferiority.[23]

Paternalism may indeed be warranted for people whose mental capacities are severely restricted. However, deciding when paternalism is appro-

[21]Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New York: Penguin, rev. ed. 2009).

[22]J. S. Mill, *On Liberty*, op. cit., note 4, p. 69.

[23]Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven: Yale University Press, 1989); and Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, Yale University Press, 1997).

priate is an exercise replete with democratic danger. The criteria for evaluating whether a group is capable of exercising free choice are highly susceptible to interpretation and manipulation by those who have the power to decide. Racism, sexism, prejudice, and stereotyping can all too easily substitute for genuine inquiry into competence.

4. Freedom of Speech

Most discussions of liberty concern freedom to act. The First Amendment to the U.S. Constitution declares a right to freedom of *speech.* The ideal of freedom of speech supposes that words are harmless and all speech is good. For the individual, self-expression is an important component of a good life; and for communities, democracy benefits when citizens can hear and debate different ideas and points of view. Some words, though, might as well be deeds. They can do serious harm, and therefore can legitimately be prohibited without violating the First Amendment. In 1942, the Supreme Court carved out an exception to the First Amendment for "fighting words," which it defined as "words which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[24]

One might think that racist, sexist, and other prejudiced language would count as fighting words, given social science research about how damaging group-based slurs can be. Yet, in 1992, in one of the Supreme Court's most puzzling rulings, it struck down a St. Paul (Minnesota) city ordinance that prohibited placing "symbols and objects" such as "a burning cross or Nazi swastika" on public or private property if "the object arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender." A group of teenagers had put a burning cross in a black family's front yard. After being charged with violating the ordinance, one of them claimed that, instead, the ordinance violated *his* constitutional right to freedom of expression. The Supreme Court agreed. It said the ordinance was unlawful because it unfairly singled out only one category of "fighting words," those based on race, color, creed, religion, or gender. Elena Kagan, now a Supreme Court justice appointed by President Obama, but then a law professor, explained in an article that the Court's reasoning wasn't new. The Court has a long tradition of prohibiting "viewpoint discrimination," and generally refuses to let government regulate speech based on officials' hostility or favoritism towards an idea.[25]

[24] *Chaplinsky v. New Hampshire* 315 U.S. 568 (1942).

[25] The case is *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992). See Elena Kagan, "Regulation of Hate Speech and Pornography After R.A.V.," *University of Chicago Law Review* vol. 60, no. 3/4 (1993), pp. 873–902.

Nevertheless, the Court's decision contradicts its many other decisions upholding civil rights legislation—legislation that outlaws behavior based on precisely the viewpoints the Court deemed worthy of expression in the St. Paul case.

As the St. Paul case shows, freedom of speech does mystical things to liberty issues by transmogrifying actions into words. Like the cross-burning teenager, people can engage in behavior that clearly harms others and then assert that the behavior is a form of speech protected by the First Amendment. Rand Paul, a Tea Party candidate who was elected to the U.S. Senate in 2010, told the TV host Rachel Maddow that, contrary to the Civil Rights Act of 1964, private businesses have the right to refuse to serve blacks. He defended his view by likening racial segregation to speech: "Should we limit speech from people we find abhorrent?" he asked rhetorically. "Should we limit racists from speaking? I don't want to be associated with these people, but I also don't want to limit their speech in any way . . . because that's one of the things freedom requires, is that we allow people to be boorish and uncivilized, but that doesn't mean we approve of it."[26] It's unlikely that a freedom-of-speech claim will undo the Civil Rights Act, but this move from action to speech often succeeds in legitimizing discriminatory or harmful behavior, especially against groups who are not protected by the Civil Rights Act, such as homosexuals. In 1995, the sponsors of Boston's annual St. Patrick's Day parade were able to exclude gays and lesbians from having a float by claiming that a parade is not a public event, but rather an expression of the organizers' beliefs. If they were forced to allow gays to march, they said, they would be forced to express support for homosexuality.[27]

In 2010, the Supreme Court used freedom-of-speech doctrine to undo campaign finance restrictions passed by Congress in 2002.[28] Congress had prohibited corporate advertising for or against specific candidates, on the theory that companies and unions have large treasuries and their spending could distort election coverage. But the Court ruled that advertising is "political speech" and Congress may not discriminate by preventing a particular category of "speaker" from exercising the right to freedom of speech.

[26]Adam Nagourney and Carl Hulse, "Tea Party Pick Causes Uproar on Civil Rights," *New York Times*, May 20, 2010.

[27]Linda Greenhouse, "High Court Lets Parade in Boston Bar Homosexuals," *New York Times*, Dec. 18, 1995.

[28]The case is *Citizens United v. Federal Election Commission* No. 08–205, 130 S. Ct. 876 (2010). The original campaign finance restrictions were part of the McCain-Feingold Bipartisan Campaign Reform Act of 2002. See Ronald Dworkin, "The Decision That Threatens Democracy," *New York Review of Books* May 13, 2010, pp. 63–67.

You may wonder how a corporation can be considered "a speaker." The answer hides in another peculiarity of American law: in 1886, the Supreme Court gave corporations the status of fictitious persons, thus granting them the protection of the Fourteenth Amendment's due process clause (No state shall "deprive any person of life, liberty, or property, without due process of law").[29] Put freedom of speech and fictitious persons together and you get a ruling that magnifies the power of money to influence elections by spreading particular viewpoints more widely.

5. Multiculturalism

Until recently, most liberal political theory was built on the image of homogeneous societies whose members shared the same nationality, language, and culture. After World War II, growing consciousness of group identities and large migrations across national borders combined to make cultural diversity a pressing issue for public policy. The most intense controversies revolve around the meaning of liberty for cultural minorities. Should groups have rights *as groups*, and, if so, which groups, and rights to what? If learning, having, and preserving a culture are essential to being able to choose a good life, what do host societies owe their cultural minorities in terms of help maintaining a culture? And the most difficult and contentious question: how should governments respond when elements of a minority culture irreconcilably conflict with values of the majority culture (or when majorities think so)?[30]

Muslim women's veils and burqas ignite fierce debates, despite the fact that head scarves are common women's dress in most cultures. In 2004, France enacted a ban on female students wearing headscarves in public schools, and in 2011 a ban on women wearing full-face veils in public places, such as parks, buildings, and on the streets. A few other countries with sizable Muslim communities have either banned veils and burqas or are considering banning them.[31]

According to French officials who favor a ban, veils oppress women. Women are forced to wear them by men, veils "imprison" women and prevent them from interacting freely in society, and, if nothing else, veils communicate a politically unacceptable message about women's subordination. At one level, the veil issue would seem to be a simple question

[29] *Santa Clara County v. Southern Pacific Railroad*, 118 U.S. 394 (1886).

[30] See Will Kymlicka, *Multicultural Citizenship* (New York: Oxford University Press, 1995).

[31] BBC, "Women in Face Veils Detained as France Enforces Ban," Apr. 11, 2011, available at bbc.co.uk/news/world-europe-13031397.

Paradoxes of Liberty in the Polis

Positive vs. Negative Concepts	
Negative liberty means no one interferes with your behavior. Positive liberty means having active support from others to ensure literacy, education, health care, income, and physical security.	Fulfillment of negative liberty does not fulfill positive liberty, and fulfillment of positive liberty may interfere with negative liberty.
Obligations to Community	
Individuals must contribute to the public interest as well as their own goals.	Personal liberty can be enlarged by a strong community and thus by requirements to contribute to collective life.
Paternalism	
Individuals might sometimes choose to act in ways that compromise their future freedom.	Personal liberty can sometimes be enlarged by coercive requirements to act for one's own good.
Freedom of Speech	
Boundary between speech and behavior is fuzzy.	Freedom to express opinions is necessary for democratic debate, but some kinds of expression harm individuals and groups.
Multiculturalism	
Diverse multicultural societies create needs for group rights to preserve and express their cultures.	Group cultures may conflict with liberal concepts of individual rights and liberty.

of individual liberty that neatly fits Mill's "harm to others" criterion. By banning veils, the state protects Muslim women from harm by Muslim men. On another level, though, advocates of a ban think Muslim culture harms the French *polity* because it violates liberal principles of equal

dignity and equal rights for all human beings. It assigns more power to men than women and relegates women to a lower social status. By banning veils, the government protects France as a secular state and liberal society.

For those who oppose bans, veils express religious beliefs and don't harm anybody, and therefore the state has no legitimate reason to ban them. Opponents point out that government never banned crucifixes, skullcaps, or other religious symbols, so the veil ban singles out one religion for negative treatment. The government is hypocritical, opponents say, in claiming a ban is necessary to preserve a secular state. A genuinely secular state shouldn't promote or stifle any religion. Some women who wear veils say that veils enhance their personal liberty by shielding them from male leering and by insulating them from the dictates of the fashion industry and consumer culture.

The arguments about Muslim dress demonstrate how "one simple principle" can lead to diametrically opposite policy conclusions.

The Liberty-Equality Trade-off

Trade-off arguments are by now familiar—we can't have our cake and eat it, too. The liberty-equality trade-off argument runs like this: People have different talents, skills, and abilities to secure society's most valued resources and opportunities. To maintain equality, government would have to take some resources from the advantaged and give them to the disadvantaged. It would have to restrain the talented from acquiring all the high-level jobs and offices. One person's equality comes at the expense of another's liberty.

The liberty-equality trade-off argument rests on a negative concept of liberty, one that defines it as the absence of restraint. The argument adopts the point of view of the advantaged—they are the ones who would be restrained by policies to help the disadvantaged. Starting from a positive concept of liberty and the point of view of the disadvantaged, the trade-off doesn't seem so inevitable.

In the positive concept, liberty means having the wealth, health, education, and political rights to exercise effective choice. If wealth, health, knowledge, and power are prerequisites to liberty, then liberty isn't all-or-nothing. It comes in degrees. Those with greater wealth, health, knowledge, and power have more freedom than those with less. Thus, in the positive view, inequalities of wealth, health, knowledge, and power also create inequalities of liberty. A society that maximizes equality of

wealth, health, knowledge, and power also equalizes its citizens' freedom to choose their life plans. Liberty and equality are not in a trade-off.

By imagining liberty as the absence of coercion by others, the negative concept ignores the impact of personal limitations and community resources on individual liberty. It treats these factors as if they are unchangeable conditions, much like the weather. From that point of view, the fact that there is no school near where a Pakistani girl lives is no infringement of her liberty. Only a formal rule or a person standing in a schoolhouse doorway blocking her entry counts as a barrier to her liberty. Those who interpret liberty in the positive sense see the range of human control as more plastic and expansive. Somebody decided whether and where to build schools, and perhaps somebody also taught the girl that education isn't for females. No one had to block the doorway to keep her away. From this point of view, the distribution of wealth, health, knowledge, and power grows out of socially created arrangements. As disability rights leaders point out, physical handicaps can be as much the product of building design as of human bodies. The central issue for the positive view of liberty, then, isn't what kinds of harmful behavior should be prevented, but what constraints on individual freedom are within the power of society to change.

The Liberty-Welfare Trade-off

Everyone would like to get help when they need it, but no one wants to be dependent. Unfortunately, if you need help, you're by definition dependent on those who help you. There, in a nutshell, sits the liberty-welfare trade-off, or the dilemma of dependence.

On the one hand, "poverty forces the free man to act like a slave."[32] Without the security of having one's basic needs met, a person can't make free choices. When an option involves taking a risk such as starting a business or working in a dangerous job, it can't be a genuine choice if the consequence of not taking the risk is starvation. On the other hand, economic security creates dependence. As urban gangs understand so well, whenever people depend on someone for material needs and protection from violence, they feel constrained to obey and support their provider.

The ancient Greek solution to this dilemma was to make welfare a private responsibility. Before a man could participate in politics, the realm of truly free decision making, he had to secure life's necessities by man-

[32]Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), p. 64.

Liberty Trade-offs

Is There a Liberty-Equality Trade-off?

Yes	*No*
1. To maintain equality, government must take resources and opportunities from the advantaged (negative concept).	When government helps the disadvantaged, it increases their liberty to realize their goals (positive concept).
2. Inequalities of intelligence, income, talent, health, and other resources are natural and inevitable, and therefore inequalities in positive liberty are unchangeable.	Differences in intelligence, income, talent, health, and other liberty-enhancing resources grow in large part from social arrangements. Therefore, inequalities in positive liberty can be reduced through policy choices.

Is There a Liberty-Welfare Trade-off?

Yes	*No*
1. People must be self-sufficient to be truly independent and autonomous.	Complete self-sufficiency is an illusory ideal. Dependence on others is inevitable—but help from others enhances liberty.
2. To be dependent on others for welfare means being subject to their control.	Government can provide rights to protect dependent people from domination.

aging his household economy well.[33] Once he was master of his material needs, he could be independent and free. This solution worked, of course, because the small class of free men controlled (and depended on) a far larger number of women and slaves, whose lack of liberty was ignored in practice as well as political theory. The American Republic followed the

[33]Ibid., part 2.

Greek path. Many of the white founders who exalted individual liberty in their writings gained their economic autonomy and their leisure time to write on the backs of slaves. Like their Greek counterparts, most American theorists of democracy were blind to the contradictions.[34]

In a society that proclaims liberty for all citizens, the solution of "liberty for those who can provide for themselves" is not an acceptable answer. Yet, in some respects, that solution is still with us. We see it in paternalistic welfare programs after the reform of 1996. Citizens who claim their rights to public assistance must submit to intense and frequent supervision of their behavior by case managers as a condition of receiving benefits.[35]

In other ways, the history of the modern welfare state is a story of gradually expanding rights for people dependent on the state. These rights include not only rights to aid for more kinds of need (e.g., mental illness as well as physical, occupational illness as well as injury, learning problems, family problems, or addictions), but also procedural rights aimed at protecting recipients from abuse by providers. For example, informed-consent requirements seek to protect hospital patients and prisoners from being coerced into medical procedures or acting as research subjects, and rights of appeal are meant to protect public aid recipients from having their benefits arbitrarily terminated.

None of these protections is fully effective, and many scholars question whether formal political rights can have much significance in a dependent relationship. When one side is dependent on another for basic material needs, the weaker side will always be afraid to complain or challenge.[36] But the failures should not obscure the point that modern democracies attempt to reconcile welfare and liberty by creating formal political rights for the dependent. Given the problem of dependence, formal rights are the best device we have for protecting the liberty of those to whom we guarantee some modicum of welfare.

[34]Foner, *Story of American Freedom*, op. cit., note 2, chap. 2; Sylvia Frey, "Liberty, Equality and Slavery: The Paradox of the American Revolution," in *The American Revolution: Its Character and Limits*, Jack Greene, ed. (New York: New York University Press, 1987), pp. 230–52.

[35]Lawrence M. Mead, ed., *The New Paternalism: Supervisory Approaches to Poverty* (Washington, D.C.: Brookings Institution Press, 1997); Joe Soss, Richard C. Fording, and Sanford Schram, *Disciplining the Poor: Neoliberal Paternalism and the Persistent Power of Race* (Chicago: University of Chicago Press, 2011).

[36]For a critique of formal political rights in capitalist society, see Joshua Cohen and Joel Rogers, *On Democracy* (Baltimore: Penguin Books, 1983), pp. 50–59.

6

Security

> They keep talking about terror attacks. Well, I have them every night when I'm getting home from work late and wondering how my children are.
>
> *Alba, employee of a big-box retail store, and a single mother*[1]

Before 9/11, the word "security" suggested wars, invasions, and crime. Since 9/11, it conjures up terrorism, airport pat-downs, and orange jumpsuits. But as Alba says, people experience terror in the most ordinary times and places, far removed from armed conflict. Security can mean different things in different policy areas. Economic security, as we saw in Chapter 5, means having a reliable source of income to support self and family and cope with emergencies. Food security can mean getting enough to eat, having proper nutrition, or keeping the food supply free of toxins. Cybersecurity means that personal computers and business data are protected from hackers, and people's financial identities remain uniquely their own. Personal security means not being vulnerable to crime, domestic abuse, or other forms of violence. Safety, another form of security, means protection from accidents, including both natural disasters and the unintended mishaps of purposeful activities, such as driving, mining, soccer, and just about everything people do as they go about their lives. Environmental security means that natural resources and ecosystems aren't threatened or destroyed by human activity.

Three Concepts of Security

It's hard to come up with an intuitive concept of security that captures its meaning in such different contexts, so instead, we'll start with *insecurity* and work backward. A simple definition of insecurity might be "worry

[1]Quoted in Lisa Dodson, *The Moral Underground: How Ordinary Americans Subvert an Unfair Economy* (New York: New Press, 2010), p. 1.

that something bad will happen," or, as the expression goes, "waiting for the other shoe to drop." Big and small catastrophes can generate feelings of insecurity but aren't themselves insecurity. Insecurity resides in the space between a bad thing and the fear of it—not the first shoe, but waiting for the other one.

In contrast to insecurity, security might be defined as an ideal of perfect safety, the guaranteed absence of bad things and, therefore, a total lack of worry. Norman Rockwell's painting "Freedom from Fear" epitomizes this ideal.[2] The painting was one of a series Rockwell made to illustrate President Franklin Roosevelt's "Four Freedoms" speech in 1941, while war raged in Europe. Rockwell depicts two children snug under a blanket, sound asleep, blissfully free of cares (or so we adults imagine), watched over by their parents. The mother arranges the bed covers, while the father stands tall as a shield and smiles serenely, secure in the knowledge that government helps keep the family safe. Government is nowhere to be seen in the painting's domestic scene, but viewers see it anyway, because the father holds a folded newspaper revealing part of an ominous headline: "Bombings Ki . . . Horror Hit. . . ."

In his speech, Roosevelt defined freedom from fear in a classic military way: ". . . a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world."[3] In the painting, Rockwell transformed security into an ordinary family ritual and a universal human yearning. Were the painting not so definitively about the white, all-American nuclear family of the 1940s, it could represent Alba's concept of security, too. Today's low-wage single mother yearns for the same kind of security, but her economic situation denies her the bedtime ritual that Rockwell's middle class could take for granted.

Both images, Roosevelt's and Rockwell's, capture important conceptions of security. Roosevelt holds out hope of eliminating aggression, once and for all, "anywhere in the world." This is one key feature of political discourse about security—it rings with firm resolve to prevent "this terrible thing" from ever happening again. How will such absolute security come about? In Roosevelt's vision, wise leaders will negotiate arms agreements that will forever change national political behavior. Roosevelt represents the political ideal of security: security results from elite policy making.

[2]Rockwell's paintings appeared on the cover of the *Saturday Evening Post* in 1943. You can see images of the paintings at archives.gov/exhibits/powers_of_persuasion/four_freedoms/four_freedoms.html.
[3]Franklin Delano Roosevelt, Annual Message to the Congress, Jan. 6, 1941.

Rockwell speaks to another side of security—how ordinary people feel in response to events and policies over which they have no control. In Rockwell's vision, security is a state of mind, a mix of inchoate feelings that differs from one person to the next, just as the children, mother, and father differ in their awareness of danger and their responses to it. Security is the children's luxury of obliviousness and the adults' confidence that they or their leaders can prevent all harms. Rockwell represents the psychological ideal of security.

Roosevelt's speech hints at a third concept, the scientific ideal of security: danger can be analyzed, strategized, and prevented, or, in the worst case, planned for. Although intellectuals have thought about security analytically for centuries (Herodotus and Machiavelli come to mind), in the 1960s policy analysts began developing a scientific and mathematical approach to security called "risk analysis."

Risk is the likelihood of something bad happening, expressed as a percentage, as in "a 25 percent chance of rain." Like the equal-slices solution to the equity problem, risk appears to be an objective measure of insecurity, a yardstick that can be used to compare seemingly incommensurable situations, such as a terrorist attack on the U.S. and dangers to children left home alone. Such comparisons are staples of popular science reporting; for example, "You're X times more likely to die in a car accident than in a terrorist attack."

Insecurity comes not only from uncertainty about *whether* something bad will happen, but also from *how bad* we expect the bad thing to be. Policy analysts combine these two aspects into one measure with the concept of *expected value*. The expected value of a danger can be found with simple arithmetic: we multiply the probability of the danger occurring by the magnitude of the damages it would cause if it happens. For example, suppose intelligence analysts think there is a one-tenth of 1 percent (1/1,000 or .001) probability of a terrorist attack with biochemical weapons, and that if such an attack occurred, it would cause 100,000 deaths. The expected value of this scenario is 100 deaths (100,000 multiplied by .001).

Now consider a university laboratory conducting research on antidotes to anthrax, one of the most lethal biochemical weapons. Government safety experts estimate that a mishap in the lab would cause 1,000 deaths, and that such a mishap has a 10 percent chance (1/10 or .1) of happening. In risk analysis, the laboratory accident has the same expected value as the biochemical weapons attack: 100 deaths (1000 multiplied by .1). In risk analysis, the terrorist attack and laboratory accident would cause the same amount of insecurity.

By permission of Tucker Nichols.

Scientific risk analysis can be applied to all kinds of situations and so the expected value measure enables us to compare vastly different sources of insecurity. All we need is a common denominator for the bad outcomes. Analysts frequently use monetary losses or deaths, but we can also use things like human illnesses and injuries, damage to buildings, or damage to animals and crops. In theory, this simple mathematical formula—multiply the likelihood of an event by the magnitude of damages it would cause—should guide policy makers in deciding which problems merit policy priority.[4]

With this quick sketch of risk analysis, we now have three visions of what security means. In the political ideal, politicians prevent bad things from happening by making good policy (Roosevelt's speech). In

[4]For an elegant explanation of these concepts, see Cass R. Sunstein, *Worst-Case Scenarios* (Cambridge, Mass.: Harvard University Press, 2007). See also Edith Stokey and Richard J. Zeckhauser, *A Primer for Policy Analysis* (New York: W. W. Norton, 1978), chap. 12.

the psychological ideal, people wouldn't experience feelings of insecurity (Alba's statement and Rockwell's children). In the scientific ideal, analysts recognize that perfect security is unachievable, but they use all available knowledge to maximize security and minimize harms, given the realities and uncertainties of the real world (risk analysis). In the polis, many conflicts and controversies stem from these different visions of security and how to achieve it.

Psychological Security and its Complications

Security and insecurity are feelings or psychological states. Objective circumstances influence these feelings, but to the individual, security is ultimately a feeling. The policies and rhetoric that might work in a political or a scientific sense to reduce the likelihood of dangers aren't necessarily effective at quelling anxieties and creating psychological security. To be effective, policies meant to create security must create it in the psychological sense.

Risk analysts reduce bad events to a few measurable—but abstract—outcomes. They present their bottom-line estimates as a number, or a range of numbers. To risk analysts, insecurity can be calculated rationally. Lay people imagine how a dangerous event might affect them personally. Imagination doesn't follow neat rules, least of all the rules of logic and rationality.

Imagine yourself living a lingering, painful death, or your children being kidnapped and tortured. In real life, people experience some bad outcomes as deeply disturbing ordeals, no matter that they haven't happened and have a very low probability of ever happening. Fear, upset, and our own nightmares are harms in themselves. Alba can have "terror attacks" when her kids are just fine.

Although insecurity is "just a feeling," it can cause harms by itself, apart from the bad events that make people worry. According to many health studies, for example, people who perceive their jobs as insecure ("How likely is it that you will lose your job?") have worse mental and physical health than those who feel more secure, regardless of whether they actually lose their job.[5] If we imagine what it's like "waiting for the other shoe to drop," we can identify three feelings that characterize insecurity: dread, anxiety, and a sense of powerless to control events. All three feelings can

[5]Sarah A. Burgard, Jennie E. Brand, and James S. House, "Perceived Job Insecurity and Worker Health in the United States," *Social Science and Medicine* vol. 60, 2009, pp. 777–785.

cause not only psychic pain and but also physiological changes that make people more vulnerable to disease and disability.

Feelings of insecurity are connected to objective circumstances, but many other factors mediate between objective circumstances and psychological states. Most risks don't become insecurities—bad things that people worry about—until cultural and social leaders describe them, publicize them, and warn people about them. Risks are social and cultural constructions. This is not to say that risks aren't real. People didn't know what cholesterol is and didn't know to worry about it until medical science told them to. Whatever cholesterol does to arteries and hearts was perfectly real before the discoveries of medicine—the risk was always there—but people's insecurity about what they eat was created by elaborate social processes: clinical research, expert public health panels, public health education, media stories, drug innovation, and drug marketing.[6]

Risks don't become psychological insecurities unless they are transformed from something people anticipate in the future, or perhaps don't even imagine as possible, to something people experience as a present worry and a real possibility. Different kinds of risks lend themselves differently to dramatization. Climate change, like cholesterol build-up in the arteries, is an abstract theory that rests on long-term data and mathematical models; it is hard to connect with everyday experience. By contrast, terrorist threats are easily transformed into harrowing personal experience by real-time videos on television and YouTube. The two types of risks "become real" in different ways.[7]

News media, by dint of what stories they cover, elevate some risks in people's minds while leaving other sources of insecurity invisible and, in some sense, "unreal." During the 1980s and 1990s, news media publicized violence in the workplace—assaults, robberies, and the rare but sensational murders. Headlines warned workers to fear the workplace: "Violence Growing as a Job Hazard," or "Newest Danger Zone: Your Office," and "Risk of Homicide is Higher in Retail Stores." Meanwhile, pink slips, the form of job insecurity that was far more prevalent and devastating economically and psychologically, didn't rise to crisis headlines nor become the topic of everyday conversation.[8]

Perhaps the sharpest disjunction between scientific risk analysis and psychological security occurs in the concept of expected value. Expected

[6]Michael Pollan, *In Defense of Food* (New York: Penguin, 2008); Jerome P. Kassirer, "Why Should We Swallow What These Studies Say?," *Advanced Studies in Medicine*, vol. 4, no. 8 (2008), pp. 397–8.

[7]Ulrich Beck, *World At Risk* (Cambridge, England: Polity Press, 2009), chap. 4.

[8]Barry Glassner, *The Culture of Fear: Why Americans Fear the Wrong Things* (New York: Basic Books, 2010, orig. ed. 1999), pp. 26–29.

value "works" easily enough on paper but not so well in the psyche. The technique of calculating expected value builds in an assumption that a bad event is less bad if it isn't certain to occur. Reminder: To calculate the expected value of a danger, multiply a measure of its magnitude, such as monetary losses or number of deaths, by its probability of happening. Risk problems always involve probabilities of less than 100 percent (if the chance of happening were 100 percent, the event would be certain and it wouldn't be a risk problem). Therefore, the probability is always a fraction or less than one, and *multiplication always reduces the measure of magnitude.* Even if an event is 99 percent likely to happen, its damage counts for less in risk analysis than damages from an event that actually occurs. The expected-value formula always reduces the "badness" of bad events.

And—here's the sticking point in politics: if an event would be absolutely catastrophic but highly unlikely to occur, it would count for almost nothing in the analysis. Thus, to return to our earlier example, a terrorist attack with biochemical weapons that would kill 100,000 people but is estimated to have only a one-in-a-thousand chance of happening would figure as an expected value of only 100 lives. The concept of expected value essentially mitigates disasters with fractions.

Such neat arithmetic doesn't capture the way people experience bad outcomes. In real life, uncertainty eventually turns out one way or the other. Either there won't be a terrorist attack and no one will be killed, or there will be an attack and 100,000 people will be killed. There is no middle ground. The Red Cross might mitigate some consequences of the attack, but to the people who experience the attack, those consequences will not be any less bad for having been unlikely to occur.

Expected value doesn't capture the way people experience insecurity *before* disasters either, because it doesn't take account of the human capacity for imagination. Many security issues, such as terrorist attacks or nuclear power plant accidents, involve *low probability/high impact events.* The human imagination goes easily to the "impact" part of this combination and can easily supply vivid details about death and suffering. We can't so easily attach pictures or emotions to the probability part. By contrast, in the framework of risk analysis, people are supposed to temper their dread of a bad thing with the realization that the bad thing is unlikely to happen. Fears that might seem unjustified and irrational to scientists stem from this basic working of the human mind.

Risk analysis, like the rationality project of which it is a part, purports to be a science and to provide objective answers to problems of security that all rational people can agree upon. Indeed, policy analysts often disparage lay people for disagreeing with the logic of risk assessment,

as though anyone who assesses things differently is irrational or stupid. "Experts are generally right, and ordinary people are generally wrong," asserts Cass Sunstein, one of the best-known proponents of risk analysis.[9]

In risk analysis, there are rational and correct ways to behave in the face of insecurity. "If you face a 1 percent chance of getting sick," Sunstein advises, "you should act differently from how you would act if you faced a 99 percent chance of getting sick. *People who are sensible, or even sane,* do not treat a 1 percent risk of loss the same as the certainty of loss."[10] If you're like most people, though, you probably think, "It depends on the sickness—are we talking common cold or HIV?" If it's HIV you're worried about, you might *well* take precautions in your intimate relationships as if the chance of getting HIV were a certainty—and no doctor would judge you insane or unsensible.

According to Sunstein, "[p]eople who are sensible, or even healthy, do not often think about" low-probability risks.[11] Yet, most people *do* dwell on remotely possible risks if the bad thing is bad enough—*to them.* That's why Alba dwells on her kids' safety. That's why subsistence farmers in developing countries won't take risks with new seeds that might increase their crop yield but have a tiny chance of total failure. To a subsistence farmer, total failure means starvation. For some risks, there are no second chances.

To deem one kind of risk assessment healthier or better than another is to claim power for expert knowledge rather than lay knowledge and experience. Scientific discourse can become a way for the politically and economically powerful to trivialize human experience. Speaking about food safety regulation, the head of a food industry trade association dismissed lay fears as legitimate factors in policy making: "[C]onsumer activists now insist that if the public *perceives* something as risky, that perception should carry the day regardless of whether there is truly a risk or not."[12] But whether "there is truly a risk" is a matter of perspective. Policies can't achieve security in the psychological sense without taking the psyche seriously and granting legitimacy to human perception and emotion.[13]

[9]Cass R. Sunstein, *Risk and Reason: Safety, Law and the Environment* (Cambridge, Mass.: Cambridge University Press, 2002), p. 55.

[10] Sunstein, *Worst-Case Scenarios*, op. cit., note 4, p. 2 (emphasis added).

[11]Ibid. Ironically, Sunstein's main argument in *Worst-Case Scenarios* is that policy makers should take catastrophic outcomes extremely seriously and give them extra weight in policy planning even though their likelihood might be tiny. Yet, he endorses the rationality project when he deems deviation from standard rational choice models as not sane, sensible, or healthy.

[12]Quoted in Marion Nestle, *Safe Food: The Politics of Food Safety* (Berkeley: University of California Press, 2010, orig. ed. 2003), p. 24.

[13]For more on how emotions and feelings of security affect voters' judgments of political candidates and policy proposals, see Drew Westen, *The Political Brain* (New York: Public Affairs, 2007).

Making Security in the Polis

When fear and danger loom, political leaders have three ways of producing security. First, they can take measures to prevent a threat or a danger from materializing. Second, when prevention fails and the bad thing happens, they can take steps to mitigate its harms. And third, before, during, and after calamities, they can provide reassurance to citizens, as President Roosevelt did with his immortal line, "The only thing we have to fear is fear itself."

If insecurity is, as we said above, worry that something bad might happen, calming fears might be the most important of the three ways to reduce it. Reassurance depends on leaders' persuasiveness and ability to calm fears, and it can "work" regardless of whether prevention and mitigation efforts are effective. Reassurance explains why stepped-up border control after 9/11 was politically successful even though it failed to reduce the flow of unauthorized migrants. All the new personnel, weapons, and gadgetry deployed at a few Mexican border crossings made these places look "under control," even though migrants and their smugglers found more remote places to cross. The media stopped covering illegal migration so much and the public stopped worrying about it, at least for a while.[14] Thus, policies can create psychological security without enhancing actual security in a political or military sense.

To provide psychological reassurance in crises, leaders—political leaders, corporate leaders, engineers, anyone in charge of anything—must convey to the public that they are in control. After 9/11, national leaders had to convey that Americans were absolutely safe from terrorism. They had to claim they knew how to prevent terrorist attacks and had done everything possible to prevent another one. Yet, knowing that another attack could occur, leaders had to prepare a response—how the nation would deal with evacuations, personal survival strategies, rescues, medical care, communication ruptures, power failures, water contamination, and all the rest. The two messages are inconsistent. If prevention measures are so good and the nation is absolutely safe, why is it necessary to prepare a response? And if citizens should be preparing to withstand a catastrophe, then they certainly cannot feel secure. Leaders work within this paradox. They must promise prevention yet prepare for their failure to prevent.[15]

[14]Peter Andreas, *Border Games: Policing the U.S.-Mexico Divide* (Ithaca: Cornell University Press, 2000).
[15]Donald Kettl explores this paradox in *System Under Stress: Homeland Security and American Politics* (Washington, D.C.: CQ Press, 2nd ed. 2007).

One way leaders cope with this dilemma is to think and talk in absolutist terms. They reduce the problem to black-and-white, good-and-evil simplicity. They often define the cause of the problem as an enemy, declare war, and vow to vanquish the enemy. War on Cancer. War on Drugs. War on Terror. The fierceness of the promise eclipses any thoughts of failure. George W. Bush's declaration of war nine days after 9/11 fit the genre to a T: "Our war on terror begins with al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped, and defeated."[16] (Can you hear Roosevelt's echo?)

Another way leaders manage the dilemma is to dispense with careful analysis and act decisively to thwart a danger. Two months after 9/11, when U.S. intelligence gleaned that Pakistani nuclear scientists were probably aiding al Qaeda, Vice President Dick Cheney instructed top leaders about this approach to security policy: "If there's a one percent chance that Pakistani scientists are helping al Qaeda build or develop a nuclear weapon, we have to treat it as a certainty. It's not about our analysis, or finding a preponderance of evidence. It's about our response."[17]

Treating a one percent chance as a certainty seems irrational in scientific risk analysis, but it has a political logic that matches psychological logic. Often in politics, careful and deliberate scientific analysis symbolizes doing nothing and being on the defense, while swift action, however ill-conceived, symbolizes being proactive, "not taking any chances," and going on the offense. When a potential danger seems dreadful or catastrophic, hypercaution and aggressive action to "nip the problem in the bud" can seem like the right approach. By acting on what one journalist dubbed Cheney's "one percent doctrine," leaders can convey a sense of security.

The one percent doctrine wasn't Cheney's invention. In the polis, it often becomes the prevention philosophy for any problem that causes public dread. The one percent doctrine could just as well describe medicine's approach to cancer: mass screening and follow-up testing to identify the slightest possibility of cancer, even though the approach causes patients to undergo procedures with serious side effects, often to "prevent" nonexistent or latent cancers that wouldn't evolve into dangers.[18] In crime prevention, the current American philosophy goes one percent better: "zero

[16]George W. Bush, Speech to a special joint session of Congress, Sept. 20, 2001, available at history2u.com/bush_war_on_terror.htm.

[17]Quoted in Ron Suskind, *The One Percent Doctrine: Deep Inside America's Pursuit of Its Enemies Since 9/11* (New York: Simon & Schuster, 2006), pp. 61–62.

[18]H. Gilbert Welch, *Should I Be Tested for Cancer?* (Berkeley: University of California Press, 2004); Gardiner Harris, "U.S. Panel Says No to Prostate Test for Healthy Men," *New York Times*, Oct. 7, 2011.

Concepts of Security

Rationality Model	*Polis Model*
Insecurity can be measured and calculated.	Insecurity is a psychological feeling. People imagine how bad events will affect them and think in images rather than numbers.
Security is related to objective threats and consequences of bad events.	People experience some kinds of insecurity independent of the probability or objective consequences of bad events.
The expected value formula reduces the severity of low-probability events.	Expected value is an abstract measure, divorced from how people experience the consequences of bad events.
To increase security, policy makers must prevent or reduce the likelihood of bad events.	Policy makers can increase security through psychological reassurance, without changing polices and even when policy fails to prevent bad events.
Responding to a very low probability threat as if it were certain is irrational.	Using extreme caution for high-impact/low-probability events is sensible; leaders can create psychological security by acting as if they were certain, and responding decisively.
The expected value formula is rational, scientific, and has universal validity.	Balancing risks and harms is a matter of political and moral choice.
Estimating risk is a scientific process.	Risk estimates can be biased by vested interests.
Catastrophes with equal expected values are equally important.	Interpretations of causal stories and equity influence the political acceptability of risks.

tolerance." The quest for absolute certainty and security inevitably leads to overreaction, or what statisticians call "false positives." Something that isn't a problem gets identified and treated as though it is. Operating on zero tolerance of drugs and crime, school officials strip-searched a 13-year-old girl they suspected of having a prescription-strength

ibuprofen pill (she didn't) and nabbed a six-year-old boy for having a butter knife in his backpack.[19]

Choosing how to balance risk, potential harms, and tolerance of uncertainty is at the crux of security issues. In the polis, no single standard, such as expected value or zero tolerance, guides decision making on all issues, or in all communities. European and American leaders differ in how they balance risk and safety in environmental and health regulation. Europeans use the "precautionary principle," which holds: "where there are threats of serious or irreversible damage, *the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures* to prevent environmental degradation."[20]

In comparison to expected value, the precautionary principle gives much more weight to serious and irreversible harms, even if the chances of occurrence are low, and especially when scientific understanding of the issue is incomplete. Thus, European nations have banned genetically modified organisms in food and agriculture, while U.S. regulatory agencies have promoted them and deemed them safe. In contrast to the pragmatic, balancing approach of American risk science, with its preference for risk-taking in the name of innovation and possible benefits, the European approach elevates caution and protection to an ethical principle. The precautionary principle assigns today's policy makers a moral duty toward the future generations and the health of the planet. These distinctly different approaches to security policy have led to political tensions between the U.S. and Europe.[21]

Science and Politics Vie for Authority

As these examples show, security issues raise both scientific and political questions. According to one of our cultural myths—one that pervades policy science—it's possible to organize a kind of separation of powers between science and politics. In 1979, the president of the National

[19]Adam Liptak, "Strip-Search of Young Girl Tests Limit of School Policy," *New York Times*, Mar. 24, 2009; "Boy Faces Suspension for Bringing Butter Knife to School," KETV Omaha, Sept. 27–28, 2005, available at ketv.com/news/5027982/detail.html.

[20]There are many statements of the precautionary principle in international environmental agreements and writing. This one is from the United Nations Environment Programme, Rio Declaration on Environment and Development, 1992; emphasis added.

[21]My discussion draws from Kerry H. Whiteside, *Precautionary Politics: Principle and Practice in Confronting Environmental Risk* (Cambridge, Mass.: MIT Press, 2006).

Academy of Sciences proposed just such a division of authority: "The *estimation* of risk is a scientific question—and therefore, a legitimate activity of scientists in federal agencies, in universities, and in the National Research Council. The *acceptability* of a given level of risk, however, is a political question, to be determined in the political arena."[22] But science and politics are not so easily separable as our cultural myths would have it.

Let's start with the estimation of risk. Risk analysis involves techniques for estimating likelihoods and damages. Estimates are guesses. They may be well-informed guesses, based on the best available data and the most sophisticated statistical methods, but they are still guesses. In the polis, risk estimates are made by people and groups with strong beliefs, vested interests, and policies to advocate. Their biases can easily creep into their scientific best guesses. When seeking oil-drilling permits from the U.S. Minerals Management Service, British Petroleum executives underestimated the likelihood of an oil spill at its Deep Water Horizon drilling site in the Gulf of Mexico. In 2010, the drilling platform exploded, killing eleven workers and releasing over 200 million gallons of oil into the ocean. The Minerals Management Service, with a dual mission to collect oil revenues for the government as well as to regulate environmental and safety practices of oil drilling, understated the frequency of past spills and the likelihood of future ones. And quite apart from vested interests and bias, in some cases, probability estimates emerge from sheer power plays. According to scientists who worked for the Minerals Management Service, superiors sometimes ordered them to change their calculations of spill risks or altered scientists' reports themselves to downgrade the risks.[23]

In addition to downplaying risks, advocates and their scientific experts may exaggerate their confidence and certainty about their own estimates in order to coax favorable policy decisions. Policy makers may eagerly accept assurances of certainty as a way to cover themselves if things later turn out badly. When Congress considers proposals for Social Security or health insurance, it relies on actuaries to make predictions about the future—how many people will be eligible and alive to collect pensions at various dates, or how many will need this or that kind of medical care, and what it will all cost. Actuaries' estimates are uncertain by definition.

[22]The National Academy of Sciences is an elite scientific body, not part of government but chartered by it to provide lawmakers with scientific expertise relevant to policy. Quotation in Nestle, *Safe Food*, op. cit., note 12, p. 18.

[23]Ian Urbina, "U.S. Said to Allow Drilling Without Needed Permits," *New York Times*, May 14, 2010.

Yet, as Martha Derthick writes in her history of Social Security, "There is something about the actuarial process itself that fostered an illusion of certainty: the fractions were so refined, the answers came so swiftly from the actuary when committee members asked what a particular change in the program would cost." The program's chief actuary supplied estimates "with an air of confidence and mode of exact expression that seemed the very denial of uncertainty." Coasting on these illusions, "[p]olicymaking for Social Security [was] always conducted as if the policymakers could tell what the future held."[24]

Traditional risk analysis assumes that when two catastrophes have the same expected value—say, a laboratory accident and a terrorist attack—they are equally important, and therefore, rational people should care about them equally. It shouldn't matter to citizens which problem government chooses to address. But it does matter. Most people respond to risk choices according to "extraneous" factors that rational decision theory says shouldn't matter.[25]

What are some of the factors that make some risks more acceptable or tolerable than others? There's a big difference between risks that are side effects of purposeful and useful activities—such as scientific research on anthrax—and risks that result from intentional malice, such as a terrorist attack with anthrax.[26] In the first kind of risk, people have some control, or believe they do. (Even though most citizens have no control over nuclear power, for example, they can take refuge in the belief that that their democratically chosen leaders do, and that regulatory agencies do their utmost to assure safety.) Risks seem more acceptable when they arise from voluntary choices, like eating or smoking, than when they are imposed, like secondhand smoke or toxic emissions, no matter that no one intended to cause harm. Risks that are familiar are less frightening than ones that are new or foreign. Hazards and toxins found in Chinese-made toys generated far more media attention and fear than dangers identified in American-made toys. In general, when people make conscious trade-offs, they fear risks less than when they perceive themselves as powerless victims.[27]

[24]Martha Derthick, *Policy Making for Social Security* (Washington, D.C.: Brookings Institution, 1979); quotes on pp. 56, 75, and 282, respectively.

[25]For the traditional theory, see Stokey and Zeckhauser, *A Primer for Policy Analysis*, op. cit., note 4. The foundation of the new psychology work is in *Judgment Under Uncertainty: Heuristics and Biases*, Daniel Kahneman, Paul Slovic, and Amos Tversky, eds. (New York: Cambridge University Press, 1982). Sunstein, *Worst-Case Scenarios*, op. cit., note 4, uses some of each tradition.

[26]Beck, *World At Risk*, op. cit., note 7, pp. 13–14.

[27]Paul Slovic, *The Perception of Risk* (London: Earthscan, 2000).

Some kinds of risks trigger resigned acceptance while others trigger outrage. A nuclear accident might lead people to feel regret and forgiveness (unless the plant managers were negligent). A terrorist attack leads people to feel angry and vengeful. Both citizens and leaders might respond to a nuclear accident with help for the people injured and plans for re-engineering or regulation to prevent another accident. In the terrorist scenario, they might respond with thoughts of revenge—after 9/11, one high-up CIA official spoke of "finding al Qaeda members and putting their 'heads on sticks'"[28]— and their prevention ideas might run to hunting and exterminating an enemy. The two scenarios may be statistically equivalent but are in no way emotionally or politically equivalent.

Equity also plays a role in how people judge risk acceptability and evaluate public policy. Risks are often borne by particular individuals and groups in a community, not by everyone. Before Hurricane Katrina hit, meteorologists and engineers talked of its risks to New Orleans. In the event, families residing in the part of town below sea level, who were primarily poor and black, endured far more severe consequences than other residents. When TV images revealed these stark differences, what had seemed a question of faulty engineering and inadequate planning was transformed into the much more explosive issue of racial justice.[29] In American wars from Korea to Iraq, young men from poorer and less-educated communities have been more likely to be killed in combat than those from better-off communities. When citizens learn of these differences, they are much less willing to support military conflict or to tolerate casualties as the price of possible future military missions to enhance U.S. security.[30]

Just as risks aren't distributed equally, security measures don't benefit everyone equally. Alba's children are far more likely to get hurt by something that happens on a routine night when she works mandatory overtime than by any terrorist attack the government tries to prevent through homeland security and the war on terror. Airport body scanners or a troop surge in Afghanistan wouldn't enhance her security nearly as much as an increase in the minimum wage, stronger work-hour regulations, or expanded child-care funding. When leaders promise, "With this

[28]Quote from Suskind, *One Percent Doctrine*, op. cit., note 17, p. 21.

[29]Tyrone A. Forman and Amanda E. Lewis, "Racial Apathy and Hurricane Katrina," *Du Bois Review* vol. 3, no. 1 (2006), pp. 175–202.

[30]Douglas L. Kriner and Francis X. Shen, *The Casualty Gap: The Causes and Consequences of American Wartime Inequalities* (New York: Oxford University Press, 2010).

policy [whatever it is], we are addressing the greatest threats to the country," the general promise glides over distributive differences.

We normally think of public policy as the collective effort to solve problems and improve life. In his classic book *Risk Society*, the German sociologist Ulrich Beck highlighted the paradoxical opposite: in many ways, policy *generates* risks and insecurity.[31] For example, policy creates agencies that are supposed to prevent and manage disasters, such as the Minerals Management Service and the Federal Emergency Management Agency. If these institutions fail, their failure becomes a new risk and a new source of worry.

When the Environmental Protection Agency (EPA) was first deciding whether to allow genetically modified corn in human food, its decision hinged on whether a protein in the corn could provoke allergic reactions. Since severe allergic reactions can be fatal, this was an issue of no small consequence. The EPA's expert advisory panel judged the probability of severe allergic reactions as "low" but couldn't rule out the possibility. Erring on the side of caution, the EPA decided to license genetically modified corn for animal feed but to prohibit it in human food. Quite predictably, the two streams of corn mingled in grain elevators and other parts of the corn supply chain—not a possibility that the EPA even considered. Genetically modified corn showed up in human food, illegally and unlabeled.[32]

The corn story illustrates how security issues can have two levels—the nominal one concerning the issue at hand, and a deeper one concerning the trustworthiness of government. Given the experts' judgment that genetically modified corn posed a low probability of harms to humans, the EPA's cautious decision should have been reassuring. But when genetically modified corn was detected in human food, the balance of security shifted. A watchdog group, not the EPA, had done the testing and discovered the tainted food. That discovery, in turn, revealed that the EPA's regulatory solution, a supposed fence between animal and human food, had been completely unrealistic. Even though there was little to worry about from a scientific perspective, the fact that genetically modified corn found its way into the human food supply against agency regulations and invisible to consumers was extremely worrisome. Now, instead of worrying only about genetically modified corn, citizens and politicians had to worry about the food regulation system.

[31]Ulrich Beck, *The Risk Society* (London: Sage Publications, 1992, orig. ed. 1986).

[32]The corn story comes from Marion Nestle, *Safe Food*, op. cit., note 12, pp. 2–24.

Double-Edged Swords

A double-edged sword can slice you and your enemy at the same time. I can't say I've ever seen it happen, but it's a great metaphor for understanding another paradox of security: many of the tools and policies aimed at achieving greater security can make people less secure. Here we'll consider five of the most common security measures: risk assessment, surveillance, border control, prisons, and weapons.[33] First, however, a caveat. The potential for perverse effects doesn't mean that policy makers should never use these tools. Rather, understanding how security measures can backfire helps policy makers to think carefully about the causal mechanisms underlying them, and thus to design better ones. Analyzing perverse effects is an excellent way to question your causal assumptions and to push yourself to imagine unanticipated consequences.

1. Risk Assessment

Merely assessing and publicizing risk can cause people to worry and thereby feel insecure. If you've ever had a mammogram or any diagnostic test for a serious disease, you know that your fear level rises merely anticipating the test, let alone waiting for the results. To explain the phenomenon, behavioral psychologists speak of the "availability heuristic."[34] People tend to estimate the probability of an event by asking themselves how easily they can think of examples. If an instance has recently entered their consciousness, either because it just happened to them or to someone they know, or because they have seen media reports about it, they will tend to overestimate its likelihood of happening to them. That is why cancer screening ads move many people to get tested—the ads plant examples in the mind and thereby raise fears. And that is also why merely assessing a risk publicly or warning about it can paradoxically increase insecurity.

The yellow-orange-red alerts after 9/11 and the media's constant broadcasting created anxiety and foreboding without giving citizens any

[33]These measures address primarily military security and crime. Chapter 13, "Rules," considers regulation of other kinds of insecurity, such as food poisoning, occupational accidents, and environmental harms.

[34]"Heuristic" means a simplifying rule or rule of thumb. The term "availability heuristic" comes from Tversky and Kahneman, *Judgment Under Uncertainty*, op. cit., note 24. For a more accessible explanation, see Cass Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge: Cambridge University Press, 2005), pp. 36–39.

sense of what to do or how they could have any control. At one point, Homeland Security Director Tom Ridge raised the alert level from yellow to orange and advised citizens to make a "safe room" with duct tape and plastic sheets. The tools sounded laughably ineffective to a public saturated with images of the Twin Towers and anthrax. As a result, Ridge's recommendation only deepened fears that an attack was imminent and that policy makers had no idea how to keep the country secure.[35]

2. Surveillance

After 9/11, political leaders tightened airport screening. The new procedures were meant to reduce the likelihood that terrorists could carry weapons on board, and also to increase the public's sense of security about flying. Surveillance at airports became an ordinary experience for middle-class Americans and foreign visitors. New screening rules such as removing shoes and limits on liquids followed news reports of new terrorist plots, apparently with little evaluation of whether the new screening tools were effective. Transportation Security Administration officials operated on something like the one percent doctrine: the value of evaluating screening measures was overshadowed, they said, by "time pressures to implement the needed security measures quickly."[36]

As airport screening became more elaborate and cumbersome, passengers began to question its efficacy in preventing terrorism and whether the costs in time, privacy, and alienation were worth the benefits. Frequent travelers developed their own stories about how easy it would be to thwart the screening system, and this new lore probably neutralized much of the symbolic reassurance that screening had at first.

For non-U.S. citizens, screening tended to generate anger toward the U.S. rather than gratitude. Non-citizens were subject to different rules, including biometric finger and eye scans. Several Pakistani legislators invited by the U.S. State Department to improve U.S.-Pakistan relations were pulled aside (as all Pakistanis were) for a full-body scan in Ronald Reagan National Airport. The insulted delegation huffed home as living proof that the U.S. doesn't respect Pakistanis.[37] The same screening

[35]Kettl, *System Under Stress*, op. cit., note 15, pp. 94–98.

[36]U.S. Government Accountability Office, *Aviation Security*, AAO-070634, Apr. 2007, p.2, available at gao.gov/products/GAO-07-634; Eleni Linos, Elizabeth Linos, and Graham Colditz, "Did You Pack Your Bags Yourself?" *British Medical Journal* vol. 335 (Dec. 22–29, 2007), pp. 1290–92.

[37]Jane Perlez, "Upset by U.S. Security, Pakistanis Return as Heroes," *New York Times*, Mar. 10, 2010.

that symbolizes security for Americans stigmatizes foreigners. The very process of being scrutinized as a potential terrorist or criminal can create resentment, tension, anger, and hostility—social relations that increase the risks screening is meant to reduce.

3. Border Control

Walls and fortresses, fences and moats—securing borders is how people have always protected themselves from those they perceive as dangerous outsiders. In her classic book on cities, Jane Jacobs called it "Turf": "A gang appropriates as its territory certain streets or housing projects or parks—often a combination of all three. Members of other gangs cannot enter this Turf without permission from the Turf-owning gang, or if they do so it is at peril of being beaten or run off."[38] Urban developers, Jacobs noted, use the Turf strategy when they clear city blocks and erect tightly bounded "islands" of middle- and upper-class residences. Atlanta's convention center, designed in an era of racial turbulence, provides mostly white visitors their own Turf inside the mostly black downtown by routing them through enclosed bridges and tunnels as they pass from building to building. Gated communities, with their guardhouses, gates, walls, video surveillance, and private police, are pure Turf. So is the radar- and heat sensor–equipped wall on the U.S.-Mexican border and Israel's Wall of Separation in Jerusalem.

Borders are designed to keep purportedly dangerous people out, but they can exacerbate insecurity in many ways, for both the insiders and the outsiders. Living in a fortress makes for a fortress mentality. A wall symbolizes protection, but it also acts as a constant reminder of danger. It creates a perpetual *en garde* feeling. Living inside a gated community seems to make residents more fearful of the violence they see in the news, and it "reinforce[s] the perception that people who live outside are dangerous or bad."[39] Walls don't create prejudice, but by reinforcing the stigma of the outsiders and preventing insiders and outsiders from having everyday, low-key social contact, they rigidify the social prejudices that drove people to place themselves behind walls in the first place.

[38]Jane Jacobs, *The Death and Life of Great American Cities* (New York: Vintage Books, 1992, orig. ed. 1961), p. 47.

[39]Setha M. Low, "A Nation of Gated Communities," in *The Insecure American: How We Got Here and What We Should Do About It*, Hugh Gusterson and Catherine Besteman, eds. (Berkeley: University of California Press, 2010), pp. 27–44, quote on p. 35.

4. Prisons

Threats to security from people already inside a community can be summed up in a word: crime. Prisons are the primary response to such threats—walls within borders. Imprisonment stops crime primarily through incapacitation. While in prison, criminals can't commit further crimes. Beyond incapacitation, imprisonment is supposed to prevent crime by rehabilitating the inmates, teaching them vocational skills and social norms. In theory, the prospect of imprisonment for criminal behavior also deters other people from committing crimes.

Starting about 1970, American policy makers began using imprisonment more aggressively to fight crime. From 1970 through 2000, the number of people in prison and jail grew by 500 percent; by comparison, the population grew by less than 40 percent in the same period. The U.S. now imprisons more people than any other country—over 700 people per 100,000 residents. On any day, one of every 32 adults is caught in the prison system, either incarcerated, on parole, or on probation. One out of six black men has been imprisoned, and young black men have a one-in-three chance of being imprisoned during their lives. Young Hispanic men stand a one-in-six chance of being imprisoned.[40]

The impact of such high imprisonment rates has been mixed. Most scholars agree that imprisonment did reduce some kinds of crimes, especially during the 1990s when crime rates dropped dramatically. Establishing a causal relationship isn't so simple and clear-cut, however. Other things besides imprisonment rates affect crime rates—notably, economic growth and employment opportunities—and in the 1990s, economic growth was strong. And because federal policy has emphasized punishing drug use, the majority of people in federal prisons are there for relatively small and non-violent crimes—using drugs, street dealing, and acting as couriers. Imprisonment seems to be much more effective at stopping property crimes (thefts and burglaries) than more threatening violent crimes against people.[41]

Meanwhile, extensive imprisonment, unequally distributed by race, ethnicity, and social class, can actually undermine the goal of crime control. Imprisonment incapacitates people from committing further crimes

[40]Ryan S. King, Marc Mauer, and Malcolm C. Young, "Incarceration and Crime: A Complex Relationship" (Washington, D.C.: The Sentencing Project, 2005), and Marc Mauer and Ryan S. King, "Uneven Justice: State Rates of Incarceration by Race and Ethnicity" (Washington, D.C.: The Sentencing Project, 2007), both available at sentencingproject.org.

[41]For an excellent overview of research on imprisonment and crime reduction, see King, Mauer, and Young, "Incarceration and Crime," ibid.

while they are in prison, but it has many indirect effects on crime rates and community security. Steady employment is the best route to rehabilitation and reintegration, because work provides stable and legitimate social networks along with income. But having a prison record vastly reduces former inmates' ability to get any job, especially steady jobs with decent pay, benefits, and possibilities for wage growth. Imprisonment of low-income men in poor communities reduces their chances of marrying, increases their risk of divorce, and prevents fathers from parenting their children. Because growing up in a single-mother household increases children's risk of poverty, school failure, and delinquency, imprisonment probably has the unintended effect of nudging low-income youths on a path to criminal behavior.[42] In all these ways, incarceration exacerbates insecurity for the incarcerated as well as the people in their communities.

5. Weapons

Nowhere is the paradox of weapons more evident than in the American debate over gun rights versus gun control. For gun rights supporters, guns are "a necessary tool vital to the human right of self-defense."[43] They are also part of America's cultural heritage, "symbols of citizenship, intimately tied to defending political rights."[44] Colonists armed themselves against Native Americans and the British and, thanks to guns, survived and won their independence. The right to own and use guns is "at the center of the Western liberal tradition, a right without which all other rights and obligations are meaningless and impossible."[45]

For gun control advocates, guns kill and injure. They are the weapon of choice in crime and are more likely to result in death than any other weapon. And though guns can be used for self-defense, they can also be used for suicide—in fact, gun suicides exceed gun homicides. Guns kept in the home for self-defense can fall into children's hands, leading to accidental deaths and injuries. They can also fall into burglars' hands and become weapons of crime. The more securely a homeowner keeps guns locked and inaccessible to children and burglars, the more difficult it is to

[42]Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage, 2006).

[43]Brian Doherty, *Gun Control on Trial: Inside the Supreme Court Battle over the Second Amendment* (Washington, D.C.: Cato Institute, 2008), p. xix.

[44]Clayton E. Cramer, *Armed America: The Story of How and Why Guns Became as American as Apple Pie* (Nashville: Nelson Current, 2006), p. xvii.

[45]Doherty, *Gun Control on Trial*, op. cit., note 42, p. xxiv.

Paradoxes of Security

Positive Effects	*Negative Effects*
Risk assessment, prevention, and planning can increase security.	Risk assessment, prevention, and publicizing security planning can increase psychological insecurity.
Surveillance can increase security by detecting threats to security.	Surveillance can create lack of confidence in government, distrust, and hostility to government, thereby increasing threats to security.
Borders create physical protection from outside threats.	Protective borders increase psychological insecurity by symbolizing danger and heightening awareness of outside threats.
Imprisonment can increase security by incapacitating criminals and deterring potential criminals.	Mass imprisonment as conducted in the U.S. can indirectly increase crimes by ex-convicts and destabilize communities.
Weapons can increase security by enhancing self-defense.	Weapons can decrease security through non-defensive uses—intentional attacks, accidents, and suicides.

access the guns for self-defense. Guns carried inside public buildings, as several state "concealed carry laws" now permit, "strip the public of its right to occupy public spaces without the threat of being shot." For gun control supporters, then, the potential benefits of self-defense are outweighed by the costs of increased violence and insecurity.[46]

Policy on guns is pulled between these two strong ideas: guns are vital to personal safety and a threat to public safety. Policy makers must balance conflicting imperatives. When the Supreme Court in 2010 declared

[46]Robert J. Spitzer, *The Politics of Gun Control* (Washington, D.C.: CQ Press, 4th ed. 2008), chap. 3; quotation from Verlyn Klinkenborg, "Once a Progressive State, Minnesota is Now a Fief of the N.R.A.," *New York Times*, Sept. 5, 2006.

the city of Chicago's gun ban unconstitutional, the majority recognized the tension between public safety and handgun ownership but said that public safety concerns should not outweigh constitutional rights.[47] The five-to-four split among the justices highlighted that the decision was a policy choice about balancing two conflicting goals. The minority justices made clear that they would have tilted the balance the other way.

The Security-Democracy Trade-off

> No sacrifice is too great for our democracy, least of all the temporary sacrifice of our democracy.
>
> Clinton Rossiter, *Constitutional Dictatorship*, 1948

After 9/11, the Bush administration consolidated executive power under the rubric of necessity. With the USA PATRIOT Act of 2001, the administration asked for and got hurried congressional approval to suspend some civil liberties—especially the right not to be searched without a warrant and the right not to be detained indefinitely without charges. Bush signed a secret executive order authorizing the National Security Agency to eavesdrop on American citizens. He renamed captured terrorist suspects "illegal enemy combatants" and declared the Geneva Conventions on treatment of war prisoners inapplicable to them. These enemy combatants lost their rights not to be detained indefinitely, to be tried in regular military tribunals, and to be treated humanely while imprisoned. Through carefully worded legal memoranda, the Justice Department effectively authorized torture.[48]

Bush and his advisers justified these suspensions of law as absolutely critical to prevent terrorist attacks. The government couldn't keep Americans safe unless citizens were willing to "untie the hands of our law enforcement officials" and give government "the tools" it needed. Here is the trade-off argument in a nutshell: citizens can't have both full security and full democracy. They must sacrifice one or the other.

The Bush administration's behavior was extraordinary in the experience of most Americans, but ruling under emergency powers goes back to ancient times. During crises, leaders often claim that to ensure security,

[47] *McDonald et al. v. City of Chicago, Illinois, et al.*, No. 08–1521, 130 S. Ct. 3020.

[48] On the PATRIOT Act, see Kettl, *System Under Stress*, op. cit., note 15, chap. 6; on the Geneva Convention and torture, see Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008).

they must be able to act swiftly and forcefully, without the constraints on executive power that law is meant to exert. Invoking threats to security and public order, they declare a state of emergency and suspend ordinary laws, governmental procedures, and sometimes constitutions. They continue to govern outside the law through an ad hoc accumulation of temporary, emergency, and exceptional powers that add up to a new de facto legal framework. In 1921, the German theorist Carl Schmitt coined a wonderfully paradoxical phrase to describe this phenomenon of government by exceptions to rules: "the state of exception."[49]

Just before seizing extraordinary, extralegal power, leaders typically claim that survival is at stake. It might be individual survival, survival of the economy or a standard of living, survival as an autonomous polity, or, as George W. Bush warned in his declaration of the War on Terror, survival of "our way of life." In some ways, security is the most potent and dangerous of all policy goals, because leaders can use it to trump all others. If survival is at stake, anything goes.

A Latin dictum holds, "Necessity knows no law." The dictum isn't merely a justification for seizing power. It applies equally to people in their private lives. Slave narratives, Holocaust memoirs, and intimate stories of people in dire poverty all reveal this phenomenon: when survival is at stake, people will violate laws and their own deeply held moral principles. Some of the greatest conundrums in moral philosophy stem from this question: is it ethical to lie, cheat, steal, betray a friend, or kill to ensure one's own survival? At some animal level, humans know that survival is the necessity that invalidates all rules. Thus, when leaders invoke security and necessity, especially in times of war or crisis, their claims find fertile ground, for they are speaking to the gut as well as the mind.

After World War I, the use of emergency powers accelerated in Europe and the United States. Based partly on an analysis of Franklin Roosevelt's presidency, the political scientist Clinton Rossiter elaborated a theory of constitutional dictatorship. To him, this oxymoron was the inevitable and necessary way for democracies to govern during crises:

> Dictatorship is no sure panacea for a democratic nation's woes. . . . Other things being equal, however, a great emergency in the life of a constitutional democracy will be more easily mastered by the government if dictatorial forms are to some degree substituted for democratic, and if the executive branch is empowered to take strong action without an excess of deliberation and compromise.[50]

[49]Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005, orig. ed. 2003).
[50]Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies* (New Brunswick: Transaction Publishers, 2009, orig. ed. 1948) quote on p. 288.

Rossiter had great faith that dictatorial powers could be limited and eventually terminated, and he set forth criteria for "good" democratic dictatorship. First, no dictatorial regime or institution should be started unless it is absolutely necessary for the preservation of the state and its constitutional order. Second, the decision to establish dictatorial powers should never be made by the same person who would exercise them. Third, a government should not initiate a dictatorship without making specific provisions for its termination.[51]

Rossiter published his book in 1948, amid American triumphal euphoria about recovering from the Great Depression and winning World War II. Half a century later, emergency and dictatorial powers have become "a normal technique of government," according to the Italian theorist Giorgio Agamben, and they raise troubling questions and fears. Temporary suspensions of civil rights, increases in police powers, and grants of unlimited executive power have changed imperceptibly into permanent structures of governance. Since the end of World War II, in Europe and the U.S., legislative bodies have lost much of their power to initiate and deliberate law; instead, they often sign off on executive proposals and decrees.[52] And, Rossiter might note, in the U.S. post-9/11, the same White House that would exercise unchecked powers also decided that they were necessary.

There is an alternative to the view that we have to sacrifice democracy in order to secure its future. Rather, the rule of law secures democracy's future, as well as citizens' security. The rule of law is the antidote to vengeance and violence. Abandoning the rule of law renders citizens more insecure vis-à-vis their own governments. When government wields law as a weapon against its own citizens—by invading their privacy, searching them without cause, detaining them without charges, denying due process rights and civil liberties, and, in the extreme, kidnapping, disappearing, and torturing—it undermines legality, the essence of democracy.[53] Without the rule of law and the democratic accountability that maintains it, citizens are prey to vigilante justice, arbitrary punishment and imprisonment, and unrestrained violence. Nothing could be farther from a state of security.

[51]Ibid., pp. 298–300. Rossiter specified eleven criteria; these are the first three. I have closely paraphrased his words.

[52]Agamben, op. cit., note 49, p. 14, also Sheldon Wolin, *Democracy Incorporated: Managed Democracy and the Specter of Inverted Totalitarianism* (Princeton: Princeton University Press, 2008).

[53]Susan Hirsch, "Deploying Law as a Weapon," in *The Insecure American*, op. cit., note 39, pp. 292–313.

Part III

PROBLEMS

7

Symbols

During a few weeks in 2007, several nooses were left anonymously around the New York area, in a police station locker room, on the doorknob of a black professor's office, in a sanitation department garage, in a highway department yard, and at a construction site—all places where conflict over hiring and promotions was racially charged. "They represent terrorizing black people and keeping them in their place," said a black employee of the highway department where a noose had been left. "Now they don't lynch you. It's all about jobs." The *New York Times* headlined the story, "In Nooses, Many See a New Trial on Race.[1]

In the U.S., a noose is more than a piece of rope. It is a symbol that tells a story, or rather, different stories to different audiences. It represents the distinctly American system of racial hierarchy. In the historical context of Jim Crow laws, legal segregation, lynching, and violent repression, leaving a noose is tantamount to saying, "If you, black people, don't stay in your place, white people will push you down—hard." For blacks, finding a noose is tantamount to getting a threat letter, and a vivid reminder that race-based hatred and violence are not merely historical relics but present threats.

A symbol is anything that stands for something else. Its meaning depends on how people interpret it, use it, or respond to it. It can be an object, such as the Statue of Liberty; a person, such as Mahatma Gandhi; or a place, such as the site of the Berlin Wall. Words, songs, pictures, logos, and events can be symbols. A symbol can stand for an organization or a set of ideas, such as a political party. In Nepal, where there is a high illiteracy rate, the election commission designates a picture symbol for each political party to use in campaigns and on ballots. Trivial as a symbol might seem, it can take on a life of its own. The Nepal Congress Party

[1]Paul Vitello, "In Nooses, Many See a New Trial on Race," *New York Times*, Oct. 21, 2007.

had a tree as its symbol. When two factions wanted to split the party in 2002, they fought over which faction would keep the tree symbol. All agreed that whichever faction got the tree would win the next election, and some people questioned whether the commission unfairly influenced the election through its decision about awarding the tree symbol.[2]

Symbols also tell stories. For example, in 2010, the U.S. military symbolized its transfer of authority over Iraqi prisons to Iraq with a U.S. soldier handing a giant mock key to an Iraqi official.[3] The key stood for a discrete policy decision, to be sure, but it did much more. The little drama of the big key told a story about American-Iraqi relations, perhaps something along these lines: "We American soldiers have been here keeping you Iraqi citizens secure. You've made such progress that you don't need us anymore. With this key, we're showing you that we have faith in you and your future. And incidentally, this key is also a good faith gesture that we will keep our word about ending our occupation." To some people, the key might also have said, "What happened at Abu Ghraib Prison when we Americans controlled the keys won't happen again. Now you're in charge."

In politics, *narrative stories* are the principal means for defining and contesting policy problems. We don't usually think of policy as literature, but most definitions of policy problems have a narrative structure, however subtle. Problem definitions are stories with a beginning, a middle, and an end, involving some change or transformation. They have heroes and villains and innocent victims, and they pit the forces of evil against the forces of good. Stories provide explanations of how the world works. These explanations are often unspoken, widely shared, and so much taken for granted that we aren't even aware of them. They can hold a powerful grip on our imaginations and our psyches because they offer the promise of resolution for scary problems.[4]

Two broad story lines are particularly prevalent in policy politics: stories of change and stories of power. A story of change can be either the *story of decline* or its mirror image, the *story of rising*. A story of power can be either the *story of helplessness* or its mirror image, *the story of control*. In this chapter, we will first analyze these story genres and some of their common variations. Then we will explore two important symbolic devices that contribute to political storytelling. *Synecdoches* are figures of speech in which a part is used to represent the whole. They are important

[2]"Shri Bhadra Sharma, "Four Stars and the Tree," *Nepal Times* no. 105, Aug. 2, 2002.

[3]See the photo at reuters.com/article/idUSTRE66E3NI20100715.

[4]See Bruno Bettelheim, *The Uses of Enchantment: The Meaning and Importance of Fairy Tales* (New York: Knopf, 1976).

Symbolic Devices in Politics

Stories	Narratives with heroes and villains, problems and solutions, tensions and resolutions. The most common themes are: • Change: Stories of decline, including the story of stymied progress and the story of illusory progress, and stories of rising and progress. • Power: Stories of control, including the story of helplessness, the conspiracy story, and the blame-the-victim story.
Synecdoche	A small part of a policy problem is used to represent the whole—for example, the horror story.
Metaphor	One policy problem is likened to another. Common metaphors in policy politics include organisms, disease, natural laws, machines, wedges, containers, and wars.

symbolic devices in political life because we often make policies based on examples believed to be representative of a larger universe. *Metaphors* are implied comparisons. In poetry, a metaphor is using a word that denotes one kind of object or idea to describe another. For example, "We live on Spaceship Earth," or "Regulations strangle business." Metaphoric reasoning—seeing a likeness between two things—is essential to classification and counting. To make a metaphor is also to make a political claim: "There is a likeness that is important." This chapter, along with the next (Chapter 8, "Numbers"), explores how metaphorical claims work in politics. Finally, we'll consider *ambiguity*, the capacity to have multiple meanings. Ambiguity is a feature of symbols and, for better or worse, of the human condition. While this entire book is about struggles for the control of ambiguity, this chapter focuses on how ambiguity enables coalition and compromise.

The rationality project treats symbols as mere costumes that hide the true nature of things (to use a metaphor). Good analysis can identify the correct, most accurate, and true definition of a policy problem, in part by eliminating ambiguity and symbolic devices. I start with the premise that symbolic representation is a fundamental part of all discourse, political or

not. Words themselves are symbols, each one a shorthand for something much more complex than letter shapes (or hand gestures or Braille dots). No language and no communication is free of symbols, and we couldn't have any discussion or do any analysis without them. Moreover, in the polis, symbolic devices do extra work. They function as weapons in the problem-definition arsenal (to use another metaphor). Political actors use them strategically to define problems in a way that will persuade doubters and attract support for their own side in a conflict.

In politics, symbols are means of influence and control, even though it is often hard to tell exactly who is influencing whom. The meaning of a symbol isn't intrinsic to it, but is invested in it by the people who use it. In that sense, symbols are collectively created, maintained, and changed through being used. Any good symbolic device, one that works to capture the imagination, also shapes our perceptions and suspends skepticism, at least temporarily. Those effects are what make symbols political devices, capable of influencing how people think and feel about issues. An astute policy analyst or political actor must understand and be able to analyze how symbols work.

Stories of Change: Decline and Rising

The story of decline resembles the biblical story of the expulsion from paradise. It runs like this: "In the beginning, things were pretty good. But they got worse. In fact, right now, they are nearly intolerable. Something must be done." This story usually ends with a prediction of crisis—there will be some kind of breakdown, collapse, or doom—and a proposal for some steps to avoid the crisis. The proposal might even take the form of a warning: unless such-and-such is done, disaster will follow.

The story of decline almost always begins with a recitation of facts or figures purporting to show that things have gotten worse. Poverty rates are rising, crime rates are higher, exports are declining, environmental quality is worse—you have heard these all before. Visually, the decline story comes as a graph whose line can slope either upward or downward—upward to indicate something bad on the rise, or downward to show something good slipping away. PowerPoint presentations often include such a graph, and you can get a good handle on the main point of the presentation by reading the graph as a decline story. What gives the decline story dramatic tension is the assumption, sometimes stated and sometimes implicit, that things were once better than they are now, and that the change for the worse causes or will soon cause suffering.

The story of decline doesn't necessarily have to be about human beings to be gripping. Consider the following article about government data from the *New York Times* by a former director of statistical policy for the Office of Management and Budget, portraying the decline of federal economic statistics. (Go ahead, turn the page, and read the article. I'll get a cup of coffee while you read, and we'll continue when you're ready. By the way, can I get you a piece of cake?)

Like most pleaders for budget increases, Mr. Duncan tells a story of decline and doom. He tells us that things were once better by referring to the "high-quality statistical procedures and databases that we have developed over the last 40 years." In the second paragraph, he uses six words in only twelve lines to connote deterioration: "undermining," "decline," "dissolved," "cuts," "reduced," and "failure." There we have the beginning of the story; the author has established a bygone era of well-being and placed us, his audience, on the precipice of decline. We are ready to roll.

From here to the last paragraph, the author presents examples of government statistical records and procedures that have not kept pace with economic change. In each example, he shows that some lack in the data prevents policy makers from making effective policy. The middle of this story, then, is a compilation of small steps in the direction of decline. The end comes in the final paragraph, with its prediction of doom: "Unless this potential crisis is addressed, the effectiveness of policy decisions will be severely undercut." (Not the worst crisis most people can imagine, I grant, but for analyst types, having your effectiveness undercut is the equivalent of 8.3 on the Richter scale.) And just in case we have, so far, missed the emotional tenor of the story, the author cues us by introducing the denouement with the word "Regrettably."

The drama of heroes, villains, and innocent victims is part of every problem definition, even though one sometimes has to read between the lines to find it. I selected the article on statistics as an illustration precisely because it has very little in the way of obvious human actors, feelings, motives, and morals, and yet it still has all the elements of a good yarn.

A variation on the story of decline is the *stymied progress story*. It runs like this: "In the beginning, things were terrible. Then things got better, thanks to a certain someone. But now somebody or something is interfering with our hero, so things are going to get terrible again." American manufacturers tell a story of how minimum wage legislation, mandatory health benefits, and occupational safety regulations threaten to destroy America's once-preeminent position in the world economy. The CIA and the Pentagon warn that restrictions on their operating methods will

ARE GOVERNMENT NUMBERS ACCURATE

The Economy Has

By JOSEPH W. DUNCAN

IT is fashionable today to blame economists for the confusion and contradictions in economic forecasting. But we may be ignoring a more basic source of error: the quality of Federal economic statistics.

A combination of factors is undermining the high-quality statistical procedures and data bases that we have developed over the last 40 years. The decline can be traced to deregulation, which dissolved regulatory agencies that had collected data, to budget cuts, which have reduced the flow of information from Government departments to statistical agencies, and — most important — to a failure to update statistical systems.

For example, the Bureau of Economic Analysis, which provides data used to compile the gross national product, still uses statistics that are heavily weighted toward the manufacturing sector, even though an estimated 70 percent of total employment is in service industries.

This lopsided emphasis also is reflected in the Standard Industrial Classification system, which is crucial for tracking activity in specific industries. The system has 140 classifications for manufacturing companies but only 40 for services.

The lack of detailed information on services has profound implications. The strong dollar has produced a tremendous influx of less expensive foreign goods that compete with domestic products. While this puts strong and well-documented pressure on domestic manufacturers, the benefit of increased imports to domestic service businesses, such as the warehousing, finance, distribution and retailing industries, is unmeasured.

How is Congress supposed to make informed policy decisions on economic and trade issues when it is, at least to some extent, groping in the dark? Without accurate information, decision-making becomes arbitrary.

Statistical policy has not kept pace with the restructuring of the economy. In 1982, the Office of Federal Statistical Policy recommended that Standard Industrial Classification group 7392 — management, consulting and public relations services — be divided into six new industries. The revision was never made. Now, it is difficult to confirm evidence that large corporations are using outside technical services rather than rebuilding their staffs.

Such information is crucial to Federal policy makers. Employment regulations are intended to encourage hiring of permanent workers, who usually gain tax-subsidized benefits

Joseph W. Duncan, director of statistical policy for the Office of Management and Budget from 1974 to 1981, is corporate economist and chief statistician with the Dun & Bradstreet Corporation.

Source: Joseph W. Duncan. "The Economy Has Left the Data Behind," *New York Times*,

Left the Data Behind

packages. Yet there is evidence that some companies may be hiring temporary workers solely to avoid Federal employment rules, such as unemployment compensation.

Dated industrial codes for the financial sector inhibit accurate appraisals of the impact of deregulation on banking services. Automated teller machines, for example, are rapidly replacing bank clerks. But without detailed data, the impact of such technological developments on inner-city employment, future demand for skills and other trends is difficult to determine.

The deterioration of Federal statistics has become particularly evident during current efforts to revise the nation's tax code. For example, one of the key features of the Reagan Administration's proposed revision concerns business taxes. Current government statistics show that, in 1984, corporate profits and non-farm proprietors' income totaled $462 billion, or 11.2 percent of total G.N.P., down from 12.2 percent in 1979 and 14.6 percent in 1969. The decrease is especially perplexing because of the recent reduction in corporate taxes.

Interpreting the decrease, however, is not an easy matter. The size of the Internal Revenue Service's corporate sample declined from 105,000 companies in 1969 to 93,000 in 1981. Thus, coupled with the fact that the I.R.S. estimated that the total universe of companies increased by 75 percent in the same period, means that the actual sample has been cut in half, from 6 percent to 3 percent of the total universe of firms.

WHILE improved sampling design and estimating methodologies may have reduced errors caused by smaller samples, there are no studies that have gauged the effect smaller samples may have on measuring long-term trends or trends by industry or size of company. Both of these factors are crucial for accurately evaluating the potential impact of the proposed new tax laws.

Measures of personal savings also have been clouded by a lack of data on participation in the four-year-old Section 401(k) programs, under which employees may defer income. Although there may be as many as 2 million workers participating in such programs, there are no statistics on either the extent of the coverage or its impact on reported income.

Personal savings, as measured by the B.E.A., is simply the difference between total reported income and calculated personal consumption expenditures. Currently, income deferred under the 401(k) program is not included as reported income. As a result, the nation's overall savings rate is probably understated by between 5 percent and 10 percent.

We are currently faced with a number of major policy challenges, such as evaluating the impact of imports, stimulating savings and investment and revising the tax code. Regrettably, the quality of the statistics on which we will base our decisions on these issues is deteriorating. Unless this potential crisis is addressed, the effectiveness of policy decisions will be severely undercut. ■

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undercut the progress they have made in fighting terrorism. In health insurance reform debates, both opponents and supporters use stymied-progress stories. Many opponents of major reform believe that the U.S. has built the best health care system in the world; any shift away from the current system will stifle innovation, cause long lines, and eventually harm Americans' health. Supporters of major reform tell a different version of stymied-progress: the U.S. has built an excellent health care system, but now sky-high health care costs are undermining it and it will deteriorate unless we make major changes.

Policy stories, like fairy tales, have universal themes and culturally specific variations. When I asked students at the University of Warsaw for examples of stories from Polish politics, one student told me, "Here, it's not the story of decline. It's the story of rising."[5] Sure enough, the story of rising helped me make sense of Poland in 2009. The year 2009 was the twentieth anniversary of the first democratic election in post-Communist Poland. Along the old Royal Road, where Starbucks, Wrangler Jeans, and posh chain stores mingled with gorgeously restored churches and royal palaces, there were photo exhibits of grim deprivation and harsh political repression in the 1980s. A new government planning report trumpeted statistics of progress since 1989: GDP growth rate was now higher than average for the European Union, the foreign purchasing power of the average salary had increased fivefold, the portion of young people studying was up from 10 percent to 40 percent, life expectancy had increased by five years, and 50 million Poles were flocking on holiday trips abroad, up from 10 million in 1989.

Developing and developed countries tend to differ in their overarching story lines of change. In developed countries, progress is already part of historical memory, and people may experience a sense of slowing down, if not decline. In developing countries, material and technological progress can be fresh and palpable, even when political and social turmoil disrupt a steady economic climb. And leaders in developing countries need an inspirational story. Nepal's state-owned newspaper is pointedly called "Nepal Rising."

Because societies and polities are always changing, rise and decline stories can coexist, even in the same place and policy sector. In Poland and other post-socialist countries, the privatization and foreign investment that generated economic prosperity also forced wrenching cultural

[5]Thanks to Adam Gendźwiłł, Ph. D. candidate, Department of Sociology, University of Warsaw, for the idea of the story of rising and the English summary of *Polska 2030. Wyzwania rozwojowe. Rekomendacje (Poland 2030: Development Challenges. Final Recommendations)* Board of Strategic Advisers to the Prime Minister of Poland, Warsaw, 2009.

and social changes on workers and took away some of the gains women had made in professional careers.[6] In the slow economic recovery from 2008, many American industries enjoyed substantial profit growth, at the same time as employment, investment, and production continued falling. In this case (as so often), the rise and the decline went to different people. Managers were plowing increased revenues into shareholder dividends rather than rehiring laid-off workers or maintaining their already-reduced workforces.[7]

One more variant of the change story is the *change-is-only-an-illusion story*. It runs like this: "You always thought things were getting worse (or better). But you were wrong. Let me show you some evidence that things are in fact going in the opposite direction. Progress or decline is an illusion." In 2010, as the White House and Pentagon were still issuing assurances of progress in the Afghanistan war, WikiLeaks released a cache of military documents that revealed small ways the military had created illusions of progress. Military spokesmen had credited Afghans with missions that were carried out by American forces; they had exaggerated the effectiveness of unmanned drones; and they had downplayed the Taliban's strength and weapons capabilities.[8] In the world of medicine, new research often challenges earlier progress stories. For example, annual breast cancer screening is widely believed to reduce the death rate from breast cancer by detecting it early. However, there is a downside: mammograms have led to substantial misdiagnoses that in turn cause women to undergo unnecessary surgery and worry. As with many cancers, the story of breast cancer is a rollercoaster.[9]

Stories of Power: Helplessness and Control

Another broad type of narrative in policy analysis is the story of power, which links *helplessness* and *control* as the two sides of power relationships. The story of power usually runs like this: "The situation is bad. We have always believed that the situation was out of our control, something we

[6]Linda J. Cook, *Postcommunist Welfare States: Reform Politics in Russia and Eastern Europe* (Ithaca: Cornell University Press, 2007); Elizabeth C. Dunn, *Privatizing Poland: Baby Food, Big Business, and the Remaking of Labor* (Ithaca: Cornell University Press, 2004).

[7]Nelson D. Schwartz, "Industries Find Surging Profits in Deeper Cuts," *New York Times*, July 26, 2010.

[8]"The Afghan Struggle: A Secret Archive, Unvarnished Look at a Hamstrung Fight," *New York Times*, July 26, 2010. Internet cite: C. J. Chivers et al., "View is Bleaker Than Official Portrayal of War in Afghanistan," *New York Times*, July 25, 2010.

[9]Stephanie Saul, "Prone to Error: Earliest Steps to Find Cancer," *New York Times*, July 20, 2010.

had to accept but could not influence. Now, however, let me show you that in fact we *can* control things." Stories about control are always gripping because they speak to the fundamental problem of liberty—to what extent can we control our own life conditions and destinies? Stories that warn of helplessness and loss of control are always threatening; and ones that promise more power and control are always heartening.

Much of the politics of public policy revolves around stories of power and control. Things that had formerly appeared to be "accidental," "random," "a twist of fate," or "natural" are now alleged to be amenable to change through human agency. For example, in the 1930s rampant inflation and disastrous depressions made economies seem to behave more like the weather than social institutions. John Maynard Keynes (whom we met in Chapter 3) revolutionized political economy by asserting a control story. Government, he argued, can manage economic fluctuations with fiscal tools (taxing and spending) and monetary tools (regulating the supply of money).[10] In the 1950s and 1960s, heart disease and cancer seemed like scourges of modernity, striking victims unpredictably. Then in the 1970s, public health agencies in Canada and the U.S. linked these and other diseases to personal behavior, notably overeating, smoking, and failing to exercise.[11] In the 1980s and 1990s, environmental scientists began to tell a story about human causes of climate change, a story that is almost universally accepted by scientists but still generates political controversy.[12] We'll consider causal stories such as these in Chapter 9, but for now note that stories about power and change constitute the grand narratives underlying policy politics in every sector.

A common twist on the power story is the *conspiracy*. Its plot moves us from the realm of fate to the realm of human control, but it claims to show that all along control has been in the hands of a few who have used it to their benefit and concealed it from the rest of us. Ralph Nader's famous crusade against automobile manufacturers was a story that converted car "accidents" into events that were preventable through better car design. Further, Nader argued, automakers knowingly accepted unnecessary acci-

[10]John Maynard Keynes, *The General Theory of Employment, Interest and Money* (New York: Harcourt & Brace, 1936).

[11]Marc Lalonde, *A New Perspective on the Health of Canadians* (Ottawa: Department of Supply and Services, 1974); and Joseph Califano, *Healthy People: The Surgeon General's Report on Health Promotion and Disease Prevention* (Washington, D.C.: Department of Health, Education and Welfare, 1979).

[12]Among many excellent reviews of human causes of climate change, see James Gustave Speth, *The Bridge at the End of the World* (New Haven: Yale University Press, 2008), pp. 19–30.

dents rather than make expensive improvements.[13] Many analysts traced the 2008 market crash to deliberate strategies by high-level financiers to garner outsized profits by bilking investors and disguising their true levels of risk and indebtedness.[14] Conspiracy stories always reveal that harm has been deliberately caused or knowingly tolerated, and so evoke horror and moral condemnation. Their ending always takes the form of a call to wrest control from the few who benefit at the expense of the many.

Another variant of the power story is the *blame-the-victim story*.[15] It, too, moves us from the realm of fate to the realm of control, but locates control in the very people who suffer the problem. Blame-the-victim has many versions. The poor are poor because they seek instant pleasures instead of investing in their own futures, or because they choose to live off the dole rather than work.[16] Third-world countries are poor because their governments borrow too eagerly and allow their citizens to live too extravagantly.[17] Many people lost their homes in the 2008 market crash because they took out mortgages they couldn't afford, failed to read their adjustable-rate contracts, and counted on the market value of their homes rising indefinitely. An alternative story, more along the conspiracy lines, blamed retail banks for hustling mortgages to poor credit risks, investment banks for disguising bad risks in opaque "mortgage-backed securities," and credit-rating agencies for giving triple-A ratings to low-grade securities.[18]

Just as the conspiracy story always ends with a call to the many to rise up against the few, the blame-the-victim story always ends with an exhortation to victims to reform their own behavior. After an American attack in Afghanistan killed seven children and found no trace of the al Qaeda leaders it had targeted, military officials supplied the local governor with "talking points" to quell the villagers' anger. The U.S. officer's incident report noted that the governor's speech "followed in line with our current story": "It was a tragedy that children had been killed, [the

[13]Ralph Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile* (New York: Grossman, 1965).

[14]Michael Lewis, *The Big Short: Inside the Doomsday Machine* (New York: W. W. Norton, 2010).

[15]The phrase became a byword in social science after William Ryan's *Blaming the Victim* (New York: Random House, 1971).

[16]See Lawrence Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (New York: Free Press, 1986).

[17]This was the crux of International Monetary Fund policy requiring developing countries to cut their public spending as a condition of more loans. Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Metropolitan Books, 2007).

[18]Lewis, *The Big Short*, op. cit., note 14.

governor] said, but it could have been prevented had the people exposed the presence of insurgents in the area."[19]

What all these power stories have in common is their assertion that there is choice. The choice may belong to society as a whole, to certain elites, or to victims, but the drama in the story is always achieved by converting seeming helplessness into deliberate human decisions. Stories of control offer hope, just as stories of decline foster anxiety and despair. The two stories are often woven together, with the story of decline serving as the stage set and the impetus for the story of control. The story of decline is meant to warn us of suffering and motivate us to seize control.

Policy stories use many literary and rhetorical devices to lead the audience ineluctably to a course of action. They have good guys and bad guys, even though nonhuman entities may be cast in these roles, and they have a moment of triumph. Look back at the article on federal statistics. The author starts right in telling us we have been pursuing the wrong villain ("economists") in our quest to find the perpetrator of the evil deed ("confusion and contradictions in economic forecasting"). The real source of error is the poor quality of federal economic statistics. But these statistics are not the villain—they are the innocent victims of larger evil forces ("deregulation," "budget cuts," and "failures"). The heroes of this story are the struggling statistical agencies, such as the Bureau of Economic Analysis, the Internal Revenue Service, and the Office of Federal Statistical Policy, who have been unable to carry out their own recommendations and to implement changes they know to be "crucial." The good guys have had their weapons undermined: the IRS has to make do with a smaller sample, the Bureau of Economic Analysis doesn't have enough categories, and Congress is groping in the dark. The whole story is a plea for Congress to come to the aid of the innocent victims (statistics) by strengthening the heroes (agencies) who could perform the rescue.

Now we turn to three of the most common and powerful literary devices in policy stories.

Synecdoche[20]

Synecdoche is a figure of speech in which a whole is represented by one of its parts: "Ten thousand feet moved down Pennsylvania Avenue toward the White House." Synecdoches are common in political discourse and

[19]*New York Times*, "The Afghan Struggle: A Secret Archive," op. cit., note 8 ("June 17, 2007, Patika Province, Incident Report: Botched Night Raid").

[20]Pronounced *sin-ECK-da-key*.

news reporting, where examples are offered up as "typical cases" of a larger problem. These typical cases then define the entire problem and frame the policy response.

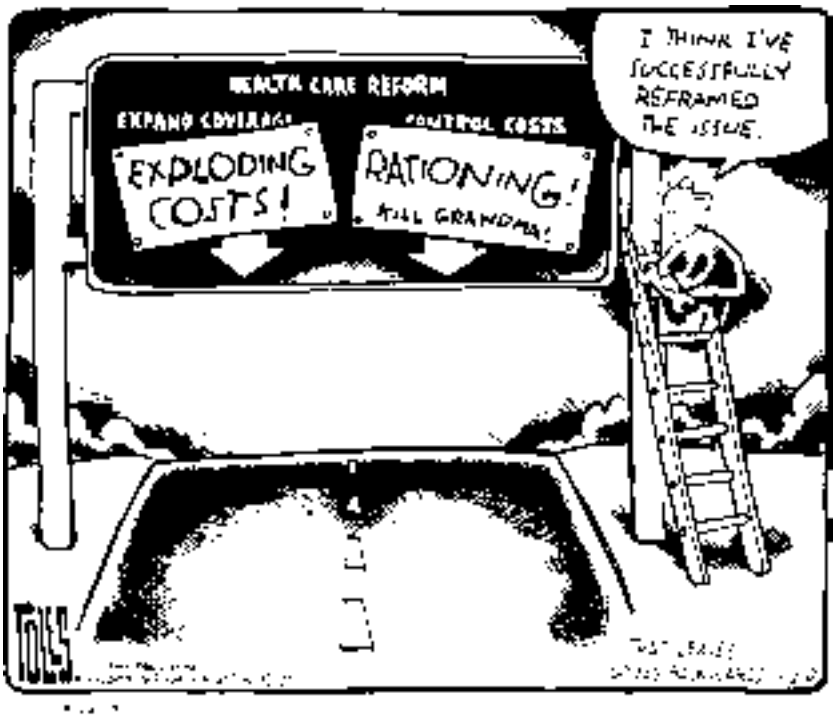
In the U.S. welfare reform debates of the 1990s, the "welfare queen" became the dominant symbol of the welfare problem—a mother of many children who had been on the rolls for ten or twenty years and had adopted welfare as a way of life. In fact, only about one-fifth of welfare recipients had been on the rolls for ten years or more, but the reform was designed to get such women back to work with skills training, motivational workshops, and, above all, tough rules and financial penalties. Several years into the new welfare program, it became clear that the welfare problem was better defined by two quite different types of recipients. One was the worker who had a job but still couldn't make ends meet because of extremely low wages and high child care and medical expenses. The other was the unemployable person—someone with intractable mental, physical, or substance abuse problems who would never be able to get or keep a job. To the extent that new welfare regulations were designed to address the habitual, long-term recipient who didn't *want* to work, they were ineffective in addressing the other types of cases.[21]

One common political genre, the *horror story*, is itself a form of synecdoche. Politicians or interest groups deliberately choose one egregious or outlandish incident to represent the universe of cases, then use that example to build support for changing a policy addressed to the larger universe. After 9/11, the figure of "the ticking time-bomb terrorist" was invoked to justify torturing suspected terrorists.[22] In fact, very few (if any) of the captured detainees was someone known to have planted a time bomb. Yet, the symbol embodied a powerful story: an evil villain is about to cause imminent serious destruction, and willing heroes could avert the destruction if their hands weren't tied by legal prohibitions. Horror stories generate fear that may temporarily suspend our inclination to ask factual and analytical questions.

Horror stories are a staple in political fights against regulation and reform. Horror stories describe events that are not only atypical but highly distorted. In 1995, as Congress dismantled much of the safety and environmental regulation of the previous decades, antiregulation crusaders

[21]Jason DeParle, *American Dream: Three Women, Ten Kids and A Nation's Drive to End Welfare* (New York: Viking, 2004).

[22]The ticking time-bomb terrorist story originated before 9/11, but was popularized by Alan Dershowitz, "Should the Ticking Bomb Terrorist be Tortured?," in *Why Terrorism Works* (New Haven: Yale University Press, 2002), pp. 131–63.



claimed that the Occupational Safety and Health Administration had abolished the tooth fairy by requiring dentists to discard any baby teeth they pulled. The agency never required disposal of baby teeth, only that dentists protect themselves from blood-borne pathogens when handling the teeth.[23] As Congress wrestled with health insurance reform in 2010, opponents seized on a small provision to reimburse doctors for end-of-life counseling and turned it into a story of "death panels"—when Granny needs expensive care, government doctors will decide whether she lives or dies.

As with other forms of symbolic representation, the synecdoche can suspend our critical thinking with its powerful poetry. The strategy of focusing on a part of a problem, particularly one that can be dramatized as a horror story, easily leads to skewed policy. Yet, it is often a politically useful strategy. It serves as a good organizing tool, because it can make a problem concrete, allow people to identify with someone else, and

[23]John H. Cushman Jr., "Congressional Memo: Tales from the 104th: Watch Out, or the Regulators Will Get You!" *New York Times*, Feb. 28, 1995.

mobilize anger. And it serves as a good focusing tool for policy makers, because it (seemingly) reduces the scope of a problem and thereby makes it more manageable.

Metaphors

Metaphors are important devices for strategic representation in policy analysis. On the surface, they simply draw a comparison between one thing and another, but in a more subtle way they usually imply a larger narrative story and a prescription for action. Take this example:

> One of the most pervasive stories about social services diagnoses the problem as "fragmentation" and prescribes "coordination" as the remedy. But services seen as fragmented might be seen, alternatively, as autonomous. Fragmented services become problematic when they are seen as the shattering of a prior integration. The services are seen as something like a vase that was once whole and now is broken. Under the spell of the metaphor, it appears obvious that fragmentation is bad and coordination good.[24]

Merely to describe something as fragmented is to call for integration as an improvement, without ever saying so. The jump from description to prescription in policy metaphor is what Martin Rein and Donald Schon have called the "normative leap."[25]

Embedded in every policy metaphor is an assumption that if *a* is like *b*, then the way to solve *a* is to do what you would do to solve *b*. Because policy metaphors imply prescription, they are also a form of advocating particular solutions. The claim that *"a* is like *b"* takes on political importance in another way as well. In a culture where the common understanding of fairness is "treating likes alike," to claim a likeness is also to posit an interpretation of equity and to demand equal treatment.

Metaphors are pervasive in policy language, and once you're sensitized, you'll find them everywhere. One common metaphor is to see social institutions as *living organisms*. Communities or groups are said to have a "life of their own" and organizations have "goals." The assertion that something is like an organism is implicitly a claim that it must be viewed as a whole whose importance is more than the sum of its parts. To see

[24]Donald Schon, "Generative Metaphor: A Perspective on Problem Setting in Social Policy," in *Metaphor and Thought*, Andrew Ortony, ed. (Cambridge: Cambridge University Press, 1980).

[25]Martin Rein and Donald Schon, "Problem Setting in Policy Research," in *Using Social Research in Public Policy Making*, Carol Weiss, ed. (Lexington, Mass.: Heath, 1977).

something as an organism is to assert that it is "natural," which in turn implies that however it is, that is "the way it is supposed to be." (In fact, the word "natural" is a good hint that there is an underlying metaphor of organism.) Deliberate human interference with it then becomes artificial and perhaps even futile. The normative leap in the organism metaphor is usually a prescription to leave things alone, and it is often used by those who want to resist change. They argue that tampering with any part of an organism—family, community, program, political system, ecosystem—will upset a delicate balance, destroy the whole, or interfere with nature.

A variant of the organism metaphor is the idea of *natural laws* of social behavior. Many famous social scientists have claimed to discover laws that govern the social world and that set limits, and even total barriers, to the changes humans can accomplish through policy making. In the eighteenth century, Thomas Malthus argued that "nature" keeps populations and food supply in balance by culling the weak, the sick, and the lazy. Therefore, government efforts to help the poor with social aid can only lead to excess population, starvation, and economic disaster. Two influential nineteenth-century sociologists, Gaetano Mosca and Vilfredo Pareto, argued that all societies are naturally and inevitably divided into rulers and the ruled, and therefore democratic reforms such as expanded voting rights couldn't possibly bring about real change. Another nineteenth-century sociologist, Robert Michels, formulated the "iron law of oligarchy," according to which all organizations, no matter how participatory and egalitarian they begin, inevitably evolve toward a concentration of political power among a few leaders. The economist Albert Hirschman groups these kinds of stories under the heading "futility thesis," because their underlying story is that it is futile for people to attempt social improvement.[26] They are all stories about the impossibility of human control, a story we'll take up again in Chapter 9, "Causes."

Undoubtedly, the most influential "law" of social behavior in contemporary public policy is Charles Murray's "law of unintended rewards." It states: "Any social transfer increases the net value of being in the condition that prompted the transfer." In plain English, this law says that giving money or services to people who have problems (such as poverty, illness, and homelessness) actually *rewards* them for having the problem. Worse, social aid *creates an incentive* for them to stay or become poor, sick, or homeless. Therefore, it is impossible to mount any kind of social welfare programs that don't perpetuate or even increase the problems they

[26]Albert O. Hirschman, *The Rhetoric of Reaction* (Cambridge, Mass.: Harvard University Press, 1991), esp. chap. 3, "The Futility Thesis."

aim to ameliorate. Though no one in Washington or state capitols goes around quoting Murray's law, the equation "help equals incentive to be needy" drives neoliberal social policy.[27]

Machines and mechanical devices form the basis of many policy metaphors. Eighteenth-century political thought, from which the U.S. Constitution is derived, conceived of a political system as a machine with working parts that had to be kept "in order" and "in balance." Thus, "checks and balances" are central to our way of thinking about how political power should be allocated. The image of a balance scale also appears in international relations, where a "balance of power" is thought to ensure peace. With the advent of nuclear weapons, strategists talked of a "balance of terror," where mutual fear prevents either side from taking aggressive action. A "balanced budget" suggests that either revenue surpluses or deficit spending would be bad, though most people believe that saving for the future or borrowing to invest in education or business are sensible (indeed virtuous) strategies. The metaphor of balance implies a story about the decline from balance to imbalance and prescribes adding something to one side or subtracting from the other.

Wedges and inclines (think of a rubber doorstop) abound in political language. Government regulation is often portrayed as a wedge: once they get their foot in the door, the regulators will be pushing through with more and more rules. An animate version is *the nose of the camel in the tent.* "Educating women is like allowing the nose of the camel into the tent," goes a saying some Islamic men believe. "Eventually, the beast will edge in and take up all the room inside." And that's exactly the thought behind Greg Mortenson's passion to build schools and educate girls in Pakistan and Afghanistan: If you educate girls, women will take up more room in the political tent.[28]

The image of a wedge suggests that a seemingly small beginning can have enormous leverage. The image of an incline suggests that once something starts on a downward path, it will inevitably be drawn farther by gravity. Metaphors of wedges and inclines usually contain warnings of future decline, and their implied prescription is that policy should

[27]Charles Murray, *Losing Ground* (New York: Basic Books, 1984, 2nd ed. 1994), pp. 213–16. I analyze this story in more depth in *The Samaritan's Dilemma: Should Government Help Your Neighbor?* (New York: Nation Books, 2008), pp. 38–45.

[28]"Educating women" quote from Geraldine Brooks, *Nine Parts of Desire: The Hidden World of Islamic Women* (New York: Anchor Books, 1995), p. 146; Greg Mortenson and David Oliver Relin, *Three Cups of Tea* (New York: Viking, 2006).

avoid the "first move" in order to prevent the inevitable "slide" or "push" downward.

From the metaphor of the incline comes a potent genre of policy argument, *the slippery slope*. Much argument over behavior seen as immoral invokes the slippery slope: a drink, a cigarette, a lapse from a diet, a white lie, or a small bit of cheating are seen as the first step down the slippery slope. Slippery slope arguments have a common form.[29] They begin by acknowledging that the phenomenon (a law, a proposal, a rule, a program, a drink) is not in itself wrong or bad or dangerous. But then they declare that permitting the phenomenon would inevitably lead to other situations or cases that *are* wrong or bad or dangerous. For example, some opponents of physician-assisted suicide for terminally ill people concede that euthanasia is justified, even desirable, under certain conditions. Then they shift ground, saying government shouldn't permit euthanasia even in cases where it *is* justified, because ill-intentioned or misguided doctors might perform it in the wrong circumstances. Slippery slope arguments can be used in this fashion to resist changes even when the opponent can't find any good justifications against the change itself.[30]

Wedges, inclines, and slippery slopes play on counterintuitive but dramatic *changes of scale*: small steps can lead to big change. Alcoholics Anonymous and other recovery programs promise to counteract addiction's slippery slope by reassembling it into a staircase with "twelve steps," making it much easier to reach the top. Obama's "Yes We Can" message promised big national change from small acts like donating to his campaign and voting for him. Change-of-scale metaphors capture the dynamic processes of social change, sometimes incremental, slow, evolutionary, or glacial, and sometimes radical, sudden, discontinuous, and tumultuous.

The normative leap in change-of-scale metaphors can be either a warning, or a promise of good things to come—bad change or good change. As an example of bad change, the leaked Afghanistan war documents, according to *New York Times* editors, warned of "a resilient, canny insurgency that has bled American forces through *a war of small cuts.*"[31] As an example of good change, before Hillary Clinton officially declared her candidacy for president, she said she had "learned some valuable lessons about the legislative process . . . the wisdom of taking small steps to get

[29]See Frederick Schauer, "Slippery Slopes," *Harvard Law Review* 99, no. 2 (1985): 361–83; and Wibren van der Burg, "The Slippery Slope Argument," *Ethics* 102 (1991): 42–65.

[30]Dan Brock, "Voluntary Active Euthanasia," *Hastings Center Report*, March–April 1992, pp. 10–21.

[31]*New York Times*, "The Afghan Struggle: A Secret Archive," op. cit., note 8, emphasis added.

a big job done."[32] Of course, she was consciously refashioning her image from someone who had tried to radically overhaul health care. Often, as in both Clinton and Obama's campaigns, change-of-scale metaphors serve as *revelation stories*, dramatizing the teller's special knowledge of yet-unseen transformations to come and casting the teller as a prophetic leader.

Another set of policy metaphors is based on *containers* and the idea of a fixed space. The problem might be that a space is overfilled; thus, for example, Mexican workers "spill over" the borders into the United States. Or, a container is underfilled, as when journalists declare a "power vacuum." If a container has holes, there will be "leaks" (e.g., of information) or "seepages" (e.g., of power). American foreign policy in the 1950s was dominated by the drive to "contain communism." If a container is not big enough, there might be "spillovers" that require "mopping-up operations." Or too much "pressure" might develop, leading to "outbursts" and "explosions," as people seek "outlets" for their frustrations.

The solutions to such problems are varied but appropriate to the metaphor. One can stop the border "spillover," say, by building higher walls. One can "drain off" some of the contents of the container ("draining off the opposition") for example, by transferring disgruntled employees to another location or appointing them to low-level management positions where their loyalties will be split between management and fellow workers. One can allow a gradual release of pressure through a "pressure valve," such as letting enraged community residents or agency clients "blow off steam" in meetings and hearings. Some scholars have argued that what often appear as acts of resistance by the relatively powerless in a society are really just "safety valves" consciously designed by elites to maintain their position of dominance.[33]

Disease, especially the contagious variety, forms the basis for many policy metaphors. Cults, communism, crime—any behavior or set of ideas one wants to condemn are said to "spread." Members and advocates "infect" others with their ideas. Teenage pregnancy, unwed motherhood, obesity, and dropping out of school are declared "epidemics." Universities and slums are "breeding grounds" for all kinds of troubles. We talk almost unthinkingly about "healthy" economies, businesses, and institutions, and from there it is a short step to diagnosing "urban blight" and

[32]Raymond Hernandez and Patrick D. Healy, "From Seeking Big Change to Taking Smaller Steps: Hillary Clinton's Evolution," *New York Times*, July 13, 2005.

[33]For an insightful (and skeptical) analysis of safety-valve theories of social control, see James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), chap. 7.

"dying industries." An influential theory of crime, "the broken windows" theory, suggests that vandals and petty criminals are like any virus or bacteria—they seek vulnerable, undefended targets. When broken windows are left unrepaired and property is left untended, it signals that the property is vulnerable because "no one cares." One broken window or abandoned car can start a contagious process in which even law-abiding people catch the urge to destroy and plunder. The normative leap of broken windows is a prescription for harsh medicine: just as doctors would swoop in at the first sign of cancer, police should deal swiftly and harshly with minor violations of public order such as window smashing.[34]

In the U.S., we wage metaphorical *war* on poverty, crime, drugs, cancer, and even terror. We launch "campaigns" against drunk driving, illiteracy, fraud, and corruption. American politicians use the war metaphor so easily and frequently, according to the sociologist Jonathan Simon, because only in the U.S. has any war—World War II—been associated with good times, national unity, high morale, and economic vitality.[35] Leaders declare war on social problems not only to signal their firm determination, but also to create public support for increased funding. When we are at war, survival is at stake and so we ignore the costs of waging war.

The war metaphor sanctions draconian policy measures, such as zero tolerance polices in schools and mandatory long prison sentences for drug users. After Hurricane Katrina, the media likened New Orleans to a "war zone," a frame that justified strong, militaristic responses. Black residents' behavior that could have been described as survival strategies was characterized as "looting" and "civil unrest," though often whites' behavior was called "finding supplies." Residents who declined to leave their homes were called "holdouts." With the war metaphor firmly in place, government disaster relief took on a military tone, with workers dressed in uniforms and carrying arms. "Search and rescue" missions resembled "search and destroy missions," as armed soldiers broke down doors and carried out orders to "handcuff and 'forcefully remove' holdouts."[36]

Beyond metaphors, politicians, journalists, and advocates use *names and labels* to lend legitimacy and attract support to a course of action. Gov-

[34]James Q. Wilson and George L. Kelling, "Broken Windows," *Atlantic Monthly*, vol. 249, no. 3 (March 1982), pp. 29-38. Wilson and Kelling do not make the disease metaphor explicit, but I think it underlies their compelling narrative.

[35]Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007), pp. 259–60.

[36]Kathleen Tierney, Christine Bevc, and Erica Kuligowski, "Metaphors Matter: Disaster Myths, Media Frames and Their Consequences in Hurricane Katrina," *Annals of the American Academy of Political and Social Science*, vol. 604, no. 1 (2006), pp. 57–81.

ernment spending to aid business can be legitimized with labels like "stimulus" or "partnership," or discredited with labels like "giveaway," "bailout," or "windfall." Call a government check a "tax rebate," and people will tuck it in the bank, thinking they're replenishing money they've already spent. Call it a "bonus," and they'll take it to the store and stimulate the economy.[37] If you are a military officer, and a reporter asks whether your troops "are still serving in Haditha," be sure to answer, "Yes, we are still fighting terrorists of al Qaeda in Iraq in Haditha." Why? Because, according to a Marine memo on how to deal with journalists, "The American people will side more with someone actively fighting a terrorist organization that is tied to 9/11 than with someone who is idly 'serving,' like in a way one 'serves' a casserole. It's semantics, but in reporting and journalism, words spin the story."[38]

Symbolic devices are especially persuasive because their story lines are subtle and their poetry so emotionally compelling that the normative leaps slip right past our rational brains. During the 1990s debate over ending welfare entitlements, Senator Phil Gramm promised to make the 40 million people who have been "riding in the wagon on welfare get out and help the rest of us pull."[39] With that evocative metaphor, his listeners could practically feel their burdens lighten. Suffused with relief and anger, people who depend on low-wage workers for their goods and lifestyles were less likely to question who's pulling whom in the American economy. In the run-up to the Iraq war, when Secretary of State Condoleezza Rice warned, "We don't want the smoking gun to be a mushroom cloud,"[40] she planted two potent stories in the public imagination. A "smoking gun" symbolizes tangible evidence of a crime that has *already* occurred. In the debate about policy on Iraq, the symbol suggested a story: Saddam Hussein was about to commit a crime with weapons of mass destruction. A "mushroom cloud" symbolizes nuclear attack and unthinkable destruction. That symbol suggested another story: 9/11 was mild compared to what might happen if the U.S. didn't attack Iraq to disarm Saddam's "gun" before it "smoked."

The emotional impact of symbolic devices can make it harder for audiences to recognize and question the underlying factual assumptions. Sometimes the morality play embedded in a story—a struggle between

[37]Nicholas Epley, "Rebate Psychology," *New York Times*, Jan. 31, 2008.

[38]"A Marine Tutorial on Media 'Spin,'" *New York Times*, June 24, 2007.

[39]See Bob Herbert, "In America, Scapegoat Time," *New York Times*, Nov. 16, 1994; and "Welfare Helps Kids, Moms," *USA Today*, Nov. 16, 1994, p. 12A.

[40]Wolf Blitzer interview with Condoleezza Rice, CNN Late Edition, aired Sept. 8, 2002. Transcript available at transcripts.cnn.com/TRANSCRIPTS/0209/08/le.00.html.

good and evil—makes it hard to see the conflict from any other perspective. As a policy analyst or a policy actor, you can be more effective if you cultivate some skill in recognizing symbols and questioning their assumptions. What is the underlying narrative? Does it make sense? Does the metaphor seem to obviate the need for evidence, or does it bias the kind of information opponents might bring to bear on a conflict? Can you think of different metaphors or alternative story lines to describe the policy conflict, and how would they suggest a different resolution?

Ambiguity

In both art and politics, the most important feature of symbols is their ambiguity. A symbol can mean two (or more) things simultaneously: "equal opportunity in education" can mean giving every student a tuition voucher for the same dollar amount, and it can also mean providing extra resources for those with special needs. A symbol can mean different things to different people: to some Christians in the U.S., "religious freedom" means organized vocal prayer in public schools; to others, religious freedom means absolutely no prayer in public schools and strict separation of church and state. To Muslims in predominantly Christian nations, religious freedom can mean the right to dress according to religious codes and to build mosques. A symbol can mean different things in different contexts: a cross sitting atop a steeple means something different than a cross burning on a lawn.

Ambiguity is a source of richness and depth in art. Symbols call forth personal imagination and experience, and draw observers into a work of art as an active participant. For these very reasons, ambiguity is anathema in science. The scientific method depends on observations that can be replicated by many observers in different times and places. Scientific observations should not be affected by an observer's identity, feelings, or beliefs, and they should be unambiguous. Most science doesn't meet these pure ideals; for example, doctors frequently acknowledge that diagnosis is both art and science. But politics is even more like art than science, in that ambiguity is central to political strategy. Modes of policy analysis that ignore ambiguity or try to eliminate it miss something essential to policy debate in the polis.

Ambiguity serves many functions in politics. Ambiguity enables the transformation of individual intentions and actions into collective results and purposes. Without it, cooperation and compromise would be far more difficult, if not impossible. As Charles Elder and Roger Cobb say, symbols

help synchronize diverse motivations, expectations, and values, and thereby make collective action possible.[41] Ambiguity allows leaders to aggregate support from different quarters for a single policy. For example, a president might unify advocates and opponents of foreign military intervention by asking for a congressional mandate allowing him to send troops "only if American interests are threatened." Legislators will agree to that phrase, even though they might have very different ideas about what constitutes a threat to American interests. "Defending American interests" is an ambiguous idea around which everyone unites.

Similarly, ambiguity allows leaders of interest groups and social movements to unite people who want different policies. The postwar women's movement was initially portrayed in terms of equalizing the rights of women and men, a portrayal that seized on the common identity and interests of all women. Later, when specific policies were at issue—such as requiring employers to provide maternity leave benefits—old coalitions fell apart as subgroups coalesced around new symbols such as "mothers" and "small business owners." Many women entrepreneurs saw their businesses threatened by proposals for parental leave. As this example shows, the ambiguity so beneficial at early stages of a movement usually masks internal conflicts that will become evident as the diverse groups within it seek concrete policies.

Ambiguity can unite people who would benefit from the same policy but for different reasons. In California, some people sought restrictions on construction and development in order to preserve natural resources and wildlife habitats, while others supported the restrictions to preserve the low-density, high-priced, exclusive character of their neighborhoods. On the national level, environmentalists from southern and western states found ready allies among northeastern members of Congress, because strong environmental controls on new industries would hinder Sunbelt economic growth and help the ailing Frostbelt industries to remain competitive.[42] These different groups would probably find themselves opponents on a variety of other political issues, but the symbol of "environmental preservation" united them around a common vehicle for preserving different things.

Ambiguity enables leaders to carve out a sphere of maneuvering beyond public view. Legislators can satisfy demands to "do something" about a problem by passing a bill with broad, ambiguous provisions, then letting

[41]Charles D. Elder and Roger W. Cobb, *The Political Uses of Symbols* (New York: Longman, 1983), p. 28.
[42]Bernard J. Frieden, *The Environmental Protection Hustle* (Cambridge, Mass.: MIT Press, 1979); and Robert W. Crandall, "Environmental Ignorance," *Wall Street Journal*, Apr. 22, 1985.

administrative agencies hash out the details behind the scenes. In the U.S. banking and finance overhaul of 2010, politicians couldn't agree on key ideas, such as whether to regulate derivatives. Derivatives are essentially insurance policies on investments. Before the crash, they were traded privately, off the books, with no way for investors to compare prices, and they were not subject to any kind of transparency or oversight. The new law required some derivatives to be traded in competitive markets through clearinghouses that must disclose their prices. But the law left it to regulators to decide which kinds of derivatives would be subject to the new rules, and how long traders could wait before disclosing price information. Needless to say, the ink wasn't dry before banks began lobbying the regulators to create favorable interpretations.[43] This particular use of ambiguity in American politics has been criticized as a vehicle for moving political decisions into arenas where strong special interests dominate.[44] But it is also a feature of politics that allows highly conflictual issues to move from stalemate to action.

Ambiguity allows policy makers to placate both sides in a conflict by "giving the rhetoric to one side and the decision to the other."[45] The Food and Drug Administration (FDA), whose mandate is to ensure the safety of food and medicines, is often caught between industries seeking to market a product, and scientific experts and consumer groups who question the product's safety. In the case of Olestra, a no-calorie fat substitute for foods, the FDA ruled that the substance was "safe" and permitted it to be marketed. At the same time, however, it required labeling to warn consumers of Olestra's hazards—a double message if ever there was one. In this case, the decision went to industry (the stuff is safe enough to market), while the rhetoric went to consumer advocates (the stuff is unsafe enough to require warnings).[46]

Ambiguity and symbolism enable skillful political actors to clothe their behavior in different meanings. By portraying a decision one way in press releases, speeches, preambles, or surrounding language, yet executing it

[43]Binyamin Applebaum and David M. Herszenhorn, "Congress Passes Major Overhaul of Finance Rules," *New York Times*, July 15, 2010; Eric Dash and Nelson D. Schwartz, "Cut Back, Banks See a Chance to Grow," *New York Times*, July 16, 2010.

[44]The classic statement of this critique is Theodore Lowi in *The End of Liberalism* (New York: W. W. Norton, 1969).

[45]Murray Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press, 1964), p. 39.

[46]Marion Nestle, *Food Politics: How the Food Industry Influences Nutrition and Health* (Berkeley: University of California Press, rev. ed. 2007), chap. 15.

Strategic Functions of Ambiguity in The Polis

1. Helps create alliances around a common policy or rule by blurring disagreements over more specific meanings.
2. Enables social movement and interest group leaders to unite people around broad goals.
3. Unites groups that would derive different benefits or suffer different kinds of costs from a policy.
4. Enables policy makers to negotiate out of public view by writing ambiguous statutes and rules in public forums, then working out specific meanings behind closed doors.
5. Allows policy makers to give something to both sides in a conflict.
6. Enables political leaders to package themselves as "successful" to constituencies that have different definitions of success.
7. Facilitates collective action.

in another, leaders can perform the political magic of making two different decisions at once. Since 2004, Native American leaders had been pressuring the U.S. government to issue an official apology to indigenous people. President Obama finally signed such a resolution, saying the U.S. "apologizes for the many instances of violence, maltreatment, and neglect inflicted on Native Peoples by citizens of the United States." But the apology was buried in a defense appropriations package where nobody would notice it, and to the chagrin of Native American leaders, the White House issued a press release about the defense appropriation bill, but not one about the apology. Moreover, the resolution used the apology word, but included a disclaimer saying nothing in the apology supports any legal claims against the United States.[47]

Ambiguity facilitates negotiation and compromise because it allows opponents to claim victory from a single resolution. In negotiation, both

[47]Rob Capriccioso, "A Sorry Saga," *Indian Country Today*, Jan. 13, 2010, available at indiancountrytoday.com/archive/81343107.html. Language of the resolution from John D. McKinnon, "U.S. Offers Official Apology to Native Americans," *Wall Street Journal*, Dec. 22, 2009, available at blogs.wsj.com/washwire/2009/12/22/us-offers-an-official-apology-to-native-americans/.

sides must feel they are better off with an agreement than without, or they won't reach a settlement. Since most aspects of a settlement—such as redrawing boundaries or monetary payments—have symbolic value as well as material consequences, opponents can invest them with different meanings. For example, one party might accept a smaller payment than it wants or thinks it deserves, but still claim victory by portraying the payment as an admission of guilt by the other side.

The ambiguity of symbols helps transform individual strivings into collective decisions. Symbols can unite people around ideals because they exist outside the realm of the practical and the real. Symbols allow coalitions to form when pure material interests would divide people. They enable leaders to assemble broad bases of support on divisive issues. They facilitate negotiation and compromise. In all these ways, politics obeys the laws of poetry rather than the laws of matter: a program or policy or speech, unlike a physical object, can be two things at once. But if ambiguity is the invisible hand of politics, it is not because it is some mysterious force coordinating individual decisions into the best possible harmonious outcome. Rather, symbols enable us as individuals to "read ourselves into" social programs and policy decisions however we wish. They allow us to believe we are authors of our own destiny.

8

Numbers

One common way to define a policy problem is to measure it. Most policy discussions begin with a recitation of figures purporting to show that a problem is big or growing, or both. Although numbers hold a preeminent status in our scientific culture, measuring is only one of many ways to describe. Literature describes with words; painting, with pigments; and measurement, with numbers. And just as there are infinite ways of describing an object in words or paint, so there are infinite ways of describing with numbers. Think of numbers as a form of poetry.

Suppose I hire you to measure an elephant. That may sound like a pretty straightforward job description, but think about it for a minute. Do you measure its weight? Height? Length? Volume? Intensity of its color gray? Number and depth of its wrinkles? Or perhaps the proportion of the day it sleeps? In order to measure this creature, you need to select one or a few features from many possibilities. That choice will be determined by your purpose for measuring, or rather mine, since I hired you. If I were manager of a railroad freight department, I would need to know the elephant's height, length, and weight. But if I were a taxidermist, I would be more interested in its volume and wrinkles. As a trainer, I might care more about the proportion of the day it sleeps. As a producer of synthetic animal skins, I would want to know its exact hue of gray. You, sensing a chance to prolong your stay on my payroll, might insist that I can't understand my elephant without knowing the seasonal variation in its body temperature.

There are many possible measures of any phenomenon, and the choice among them depends on the purpose for measuring. The fundamental issues of any policy conflict are always contained in the question of how to count the problem. The unemployment rate, for example, is designed as a measure of people wanting work, or the need for jobs. People are counted as unemployed if they are older than sixteen, have

previously held a job, are available for work, and have looked for work within the previous four weeks. The official method of counting unemployment (which, make no mistake, is the official definition of the problem), leaves out a host of people who fit somebody's notion of unemployed but not the official definition: people who are unwilling to take available jobs because they consider them too dangerous, unpleasant, or demeaning; people who can find part-time jobs but are holding out for full-time; people who quit a job to search for something better but are still searching; people who are willing to work but can't find child care; or recent graduates who are looking for work but don't count because they have never been in the workforce. Should any of these count as unemployed?

The very question highlights the critical issue in numbers: counting always involves deliberate decisions about *counting as*. To count peas, one first needs to decide which things are peas and which aren't. Counting begins with categorization, which in turn means deciding whether to include or exclude. We categorize by selecting important characteristics and asking whether the object to be classified is substantially like other objects in the category. Categorization thus involves establishing boundaries in the form of rules or criteria that tell whether something belongs or not. (If it's green and round and small, it's a pea.) Only after categorizing does mere tallying come into play. Tallying, by the way, is what arithmetic is about.

All that may seem like a terribly abstract description of counting, but notice how political the language sounds. It is impossible to describe counting without talking about inclusion and exclusion (terms that in themselves suggest community, boundaries, allies, and enemies); selection (a term that implies privilege and discrimination); and important characteristics (a term that suggests value judgments and hierarchy). Remember, too, that it was impossible to talk about the goals of public policy without using the language of counting. Who should count as a recipient or what should count as a relevant item in equity issues? What use of resources gives the most for the least in efficiency issues? What should count as a "need" in welfare issues, a "risk" in security issues, or a "harm" in liberty issues?

Counting resolves questions like these by assigning things to one group or another. When children learn to count, they learn that things are either peas or beans and must be assigned to a pile. In arithmetic, there are no borderline cases. In that sense, numbers are the opposite of symbols—they're not ambiguous. Something is either counted or it isn't. But ambiguity—the range of choices in what to measure or how to classify—always lies just beneath the surface of any counting scheme. Before a decision is made, things could go either way.

The 2000 presidential election stunned Americans with the realization that tallying ballots is no kindergarten exercise. In any election, local ballot-counters and officials make thousands of decisions about which squiggles, dents, and holes count as a vote, not to mention which ballots count as valid. The vote between Al Gore and George W. Bush was so close in Florida that challenges went all the way to the Supreme Court. The controversy sensitized citizens to the impact on election outcomes of machine malfunctions, official discretion, and unofficial shenanigans. This new understanding of election results as highly political led to new legislation on polling places and voting machines. The new consciousness about elections also led to new kinds of political participation. Lawyers and other professionals volunteered at polling places to help rejected voters fight for their rights to vote. Advocacy groups mobilized the Twitter-sphere to publicize any irregularities while polls were still opened. Poll-watching, which used to be a neighbors-and-coffee operation, went viral. All of this political turmoil came about because the most elemental process of democracy—counting votes—turned out to be not so elementary.[1]

Numbers as Metaphors

As answers to policy problems, the resolution numbers offer is nothing more than a human decision about how to "count as." Numbers, in fact, work exactly like metaphors. To categorize in counting or to analogize in metaphors is to select one feature of something, assert a likeness on the basis of that feature, and ignore all the other features. Counting as unemployed only people who have looked for work in the past month is to see unemployment as active job hunting. That vision excludes from the unemployed people who desperately want to work but are unable or too discouraged to pound the pavement.

Because counting requires judgment about inclusion and exclusion, counting schemes are always subject to two possible challenges. The first kind asserts a real likeness where the measure finds a difference, and insists on including something the measure excludes. We might call this challenge *wrongful exclusion*. For example, social scientists and government agencies measure homelessness by counting people who sleep on

[1]For an interesting attempt to measure the quality of elections, see Jørgen Elklit and Andrew Reynolds, "A Framework for the Systematic Study of Election Quality," *Democratization*, vol. 12, no. 2 (2005), pp. 147–162.

the streets or in doorways, parks, bus stops, and train stations, and, in some measures, people who sleep in shelters. Advocates for the homeless believe the concept and the count should include people who are in jails, detox centers, and mental health institutions who would have no home if and when they were released, as well as people who crowd into the living spaces of their family and friends but really have no place of their own to live.[2]

Wrongful-exclusion challenges are inevitable in policy because the need for clear rules drives policy makers to establish thresholds as dividing lines. Agencies, legislatures, courts, and officials must decide who will receive benefits, loans, contracts, budget increases, jobs, fines, and penalties. For many policy purposes, we make fairly arbitrary classifications by setting a cutoff point or threshold on a numerical scale—hiring and promotion on the basis of test scores, welfare eligibility on the basis of income level, or drinking and voting rights on the basis of age. But thresholds are always subject to the challenge that they differentiate among people or situations that should be considered the same. Is there any significant difference between the person earning $10,000 and the one earning $10,001, or the person age twenty years and eleven months and the person age twenty-one? The commonsense understanding that numerical thresholds mask underlying similarities leads people to conceal, fudge, and bend the rules at the borderline.

The second kind of challenge asserts a real difference where a measure finds a likeness, and insists on exclusion of something the measure includes. We can call this challenge *wrongful inclusion.* Consider the problem of counting hospital beds for health planning. Health planners determine the need for new hospital construction by using the ratio of hospital beds to a community's population. The "bed ratio" seems a sensible measure of a community's capacity to provide health care, since beds are the places in hospitals where patients can be put, and they are manifestly easy to count. (If it has four legs and a mattress, . . .) But almost as soon as the measure was put into practice, it became obvious that not all hospital beds are the same. A bed might be an iron cot or an electric multiposition unit. It might include electronic monitors and emergency equipment at its station, or it might share equipment with a whole corridor of beds. It might be supported by a staff of four hundred specialists or fourteen general practitioners. It might be within five miles of its client population or within fifty. Needless to say, communities with old, ill-equipped hospitals didn't think their beds should count the same as a bed at the Mayo Clinic.

[2]My discussion draws from Christopher Jencks, *The Homeless* (Harvard University Press, 1994), chap. 1.

If it is hard to count beds because they can mean so many different things, imagine the difficulties in counting "new jobs" for purposes of employment policy. Should unionized, secure, well-paying jobs be treated as equivalent to low-paying, high-turnover jobs? There are dead-end jobs and jobs with built-in career ladders; blue-collar, pink-collar, and white-collar jobs; and seasonal jobs, short-term jobs (elected officials), long-term jobs (midlevel managers), unpredictable-length jobs (political appointees), and virtually permanent jobs (civil servants and tenured professors). There are jobs with pensions and health insurance, and jobs without. There are make-work jobs and essential jobs. A job is not simply a job, and debates about unemployment often hinge on the ambiguity lurking in the question "What's in a job?" Wrongful-inclusion challenges are possible, indeed inevitable, because no matter how small and precisely defined a category is, it still masks variety among the objects or people it includes.

Estimates of Iraq War casualties faced both kinds of challenges. Until 2005, the Bush administration didn't count Iraqi civilians in its casualty counts (or at least claimed it didn't)—an exclusion that all but screamed, "Iraqis aren't as important as Americans, and soldiers are more important than civilians." Under congressional pressure, the administration started releasing rough counts. Its counts of civilian deaths were consistently lower than those of Iraqi ministries or Iraq Body Count, a respected British anti-war group that gets its figures from press releases. Critics said the U.S. government figures wrongfully excluded many civilian deaths because the U.S. had an incentive to minimize the damage the war inflicted on Iraq. The Bush administration and other war supporters countered that Iraqis had an incentive to exaggerate deaths when they talked to reporters in order to exaggerate the damage the U.S. had inflicted.[3]

Debating the size of things is one of the most prominent forms of discourse in public policy. Although the debate often appears to be about the tally—whether things were added up correctly—it is usually about categorization—how the different sides "count as." To be sure, there are occasional conflicts over the tally, such as when candidates for public office ask for a recount of votes, or cities ask for a recount of the census. Almost always, however, the conflict in policy is over what legitimately counts as what, and political actors invoke numbers to give an air of finality to their opinions.

[3]Clark Hoyt, "The Reality in Iraq? Depends on Who's Counting," *New York Times*, Oct. 7, 2007; Sabrina Tavernise and Andrew W. Lehren, "Buffeted by Fury and Chaos, Civilians Paid Heaviest Toll," *New York Times*, Oct. 23, 2010.

Every number, therefore, is an assertion about similarities and differences. No number is innocent, for it is impossible to count without making judgments about categorization. Every number is a political claim about "where to draw the line." Projections, correlations, regressions, simulations, and every other fancy manipulation of numbers all rest on the decisions about "counting as" embodied in their numbers, so they, too, are claims about similarities and differences. And similarities and differences are the ultimate basis for decisions in public policy.

Numbers as Norms and Symbols

Like metaphors, numbers make normative leaps. Measures imply a need for action, because we don't measure things except when we want to change them or change our behavior in response to them. To call for a measurement or survey of something is to take the first step in promoting change.

In the 1930s, during the Great Depression, Congress wanted the administration to begin a full-fledged unemployment census. Until then, the Bureau of Labor Statistics had collected data on employment, from which business and labor organizations as well as economists had tried to estimate unemployment. President Franklin Roosevelt did not want a formal unemployment census, because the mere presence of official unemployment figures would put even more pressure on him to lower them. Roosevelt eventually did create the Civilian Conservation Corps (CCC) and the Works Progress Administration (WPA) to provide jobs for the unemployed. The WPA began its own monthly survey of unemployment in 1939, first to dispute the administration's lower figures and later to convince Congress of the continuing need for the WPA after World War II had begun to stimulate new jobs. Everyone—first Congress, then Roosevelt, and then the head of the WPA—saw that unemployment figures could be a force in politics.[4]

Paradoxically, measuring a problem creates subtle pressure to do something about it, but, at the same time, some level of the measure can become a norm and therefore an acceptable status quo. In 1946, Congress passed the Employment Act, mandating the administration to collect data on unemployment levels and also to provide "full employment." During the 1950s and 1960s, when unemployment averaged about 4.6 percent,

[4]Judith Innes De Neufville, *Social Indicators and Public Policy* (Amsterdam: Elsevier, 1975), pp. 75–76.

economists defined "full employment" as an unemployment rate between 3 percent and 4 percent. (If that sounds like a contradiction, that's because it is. This is the political language of numbers.) In the early 1970s, unemployment climbed to more than 6 percent, and Nixon administration economists began claiming that employment should be considered full at around 4.5 percent to 5 percent unemployment. With average unemployment rates over 9 percent in 1982 and 1983, Reagan administration economists began to define full employment as about 6 percent unemployment. Meanwhile, economics professors helped mute the pesky political problem of persistent unemployment with theories of a "natural rate of unemployment," below which inflation would inevitably accelerate. Like Voltaire's *Candide*, we lived in the best of all possible worlds, no matter the unemployment rate of the moment.[5] In subsequent periods of economic boom, the full employment norm dropped to 4.5 percent unemployment. Then, in 2010, with unemployment rates stuck at 9.5 percent for months on end—16.5 percent, using the expanded definition of people who want to work but have stopped searching—economists began to talk of "the new normal."[6]

As norms, numbers are part of a story of helplessness and control. Voters hold the current administration responsible for the state of the economy, and much of a president's electoral support is contingent on seeming to be in control of the economy. Presidents must weave a tortuous path between invoking numbers to prove they have reduced a problem through good policy and invoking numbers to prove that part of the problem is beyond human control. President Obama, responding to discouraging unemployment figures in the summer before the 2010 congressional elections, didn't even try to spin the numbers. Instead, he spun the story. "The road to recovery doesn't follow a straight line. Some sectors bounce back faster than others. So what we need to do is push forward." One of Obama's economic advisers, Christina Romer, disputed that the economy was stuck: "The fundamental problem we are still facing is the old cyclical, not the new normal." Translation: since cycles go 'round inexorably, recovery is inevitable. But like Obama, she suggested that policy makers could influence the speed of recovery: "What you need to do to get back to normal is to find more ways to get demand up."[7]

[5]David Gordon, "Six Percent Unemployment Ain't Natural: Demystifying the Idea of a Rising 'Natural Rate of Unemployment,' " *Social Research* 54, no. 2 (Summer 1987), pp. 223–46.

[6]Motoko Rich, "Nation Lost 131,000 Jobs As Governments Cut Back," *New York Times*, Aug. 7, 2010; Nelson D. Schwartz. "Jobless and Staying That Way," *New York Times*, Aug. 8. 2010.

[7]Obama quote: Rich, "Nation Lost . . ." ibid.; Romer quote: Schwartz, "Jobless," ibid.

In politics, many measures are double-edged swords; that is, it is good to be high on the measure but also good to be low. Because so many of the things we measure are symbols, not just objects, how a measure is interpreted can be more important than the actual number. Once, when the navy found it had saved $2.5 billion in shipbuilding costs, top officials weren't sure whether to brag or keep quiet. The secretary of the navy thought the saving showed thrift and good management. The vice admiral in charge of buying ships worried that Congress might see the savings as proof of fat in the navy's budget.[8] If savings symbolized frugality, then it was good to show a high number, but if they symbolized waste, then better to be low.

Cost is another double-edged sword. We usually think of high costs as bad. All things being equal, it's better to pay less for something than more. But for many types of goods and services, high cost symbolizes high quality (think of doctors' and lawyers' services) or prestige (think of designer clothes). To some extent, we all use cost as a proxy measure for quality ("It's so cheap, it can't be any good"). In policy debates, measures of cost are often double-edged. Is a costly national defense system waste-ridden or extra secure?

Cost can have a double meaning in another way as well. Expenditures are always income to somebody else, so there is always a constituency for high expenditures to battle the one for low costs. The high cost of medical care for patients and insurers can mean jobs and incomes to health care providers and drug companies. In one of Obama's first defense budget decisions, whether to continue building F-22 fighter jets, he had to consider two conflicting imperatives. If Congress continued the program, taxpayers would be paying $1.75 billion for a weapon that was designed for the Cold War and had no use in Iraq or Afghanistan. But if Congress discontinued the program, some 95,000 jobs would be lost—according to the not-disinterested primary contractor, Lockheed Martin—in an economy that had already lost millions of jobs.[9]

Efficiency (getting the most output for a given input) and productivity (output per hour of labor) can be double-edged swords. The terms are value-laden to begin with—the more efficiency and productivity, the better—but sometimes the positive connotations can go sour as political attention focuses on other values. When physicians open clinics to treat Medicaid patients quickly and efficiently, critics complain about "Medic-

[8]Richard Halloran, "Savings by Navy Posing a Problem," *New York Times*, March 24, 1985.

[9]Christopher Drew, "A Fighter Jet's Fate Poses a Quandary for Obama," *New York Times*, Dec. 10, 2008; Christopher Drew, "Obama Wins Crucial Senate Vote on F-22," *New York Times*, July 22, 2009.

aid mills" that deny patients individual attention and quality care. When manufacturing firms move their production to countries with cheap labor, their productivity goes up, but so does concern about exploitation and fairness.

Middles and averages often become norms in politics, and because they are symbols as well as mathematical concepts, they can take on conflicting meanings. "Average" can mean normal, decent, and acceptable; it can also mean mediocre. A CEO recruiting new talent might consider the firm's "average salaries for the industry" a selling point, but she might look unfavorably on applicants whose references describe their skills as "average." Surveys show that most people think of themselves as middle class, even when they fall substantially above or below the median income. Curiously, for all you symbol mavens, if respondents are given a choice between low, middle, and upper class, 90 percent identify themselves as middle class. But if "working class" is added as an option, about 45 percent identify themselves as working class, and the middle class drops to 45 percent.[10]

The Hidden Stories in Numbers

In policy debates, numbers are commonly used to tell a story. Most obviously, they are the premier language for stories of decline and decay. Political actors invoke figures to show that a problem is getting bigger and worse, or to project present trends into the future to demonstrate that decline is just around the bend. Numbers are also important in stories of helplessness and control. But as important as the explicit stories numbers tell are the implicit ones. The acts of counting and publicizing a count convey hidden messages, independent of the numbers and their explicit stories.

First, numbers impart an aura of expertise and authority to the people who produce and use them. Because numbers have such exalted scientific status in our culture, politicians use them to authenticate their stories. With numbers, an author or speaker tells the audience, in effect, "The numbers show that my story is true." Mitt Romney, the first presidential candidate to use PowerPoint presentations on the stump, elicited exactly this effect. "It was amazing. I mean, he didn't just make claims. He backed them up with graphs," exclaimed an auto executive after seeing Romney at a Detroit campaign event. A campaign spokesman explained the deliberate

[10]S. M. Miller and Karen Marie Ferroggiaro, "Class Dismissed?" *The American Prospect*, no. 21 (Spring 1995), pp. 100–104.

"Any requests?"

strategy behind Romney's graphs and numbers: "PowerPoints speak to the competency that he exudes and the authoritative nature of his understanding of the issues."[11]

Second, to count something is to assert that the phenomenon occurs often enough to bother counting. The initial demands to count something formally, such as sex trafficking or discrimination against gays, grow from a belief that the phenomenon is widespread but underground; the cases that occasionally surface are not isolated rarities. Sometimes, even one instance can be damning. The movement to end the death penalty got great leverage from each case in which DNA or other evidence proved a convicted death-row inmate innocent. Although only 123 such convicts were exonerated between 1973 and 2007, advocates publicized each new case as a fundamental violation of a basic American principle. And as the cases mounted, advocates transformed facts that had been seen as "one-of-a-kind historical flukes or lucky breaks for the wrongly condemned" into "evidence of the entire system being flawed."[12] Measures can convey a

[11]Paul Bedard, "Washington Whispers: The PowerPoint as Running Mate," *U.S. News & World Report*, March 5, 2007, p. 12.

[12]Frank Baumgartner, Suzanna L. De Boef, and Amber E. Boydstun, *The Decline of the Death Penalty and the Discovery of Innocence* (New York: Cambridge University Press, 2008), quote on p. 5.

double message that something rare and small is in fact common enough to have a big effect. Consider "parts per billion" standards in environmental and health regulations. On the one hand, the fact that scientists have to measure a substance (mercury, arsenic, whatever it is) in parts per billion suggests it is very rare; on the other hand, having a standard so small suggests the stuff is so potent we might as well be ingesting those toxins by the bottle.

Third, to count something is to assert that it is an identifiable entity with clear boundaries. No one could believe in a count of something that can't be identified, so to offer a count is to ask your audience to believe the thing is *countable*. That is no trivial request. In designing the first U.S. population census of 1790, James Madison argued for counting people's occupations. He wanted to have three categories—manufacturing, agriculture, and commerce—because he believed they represented the only important political interests to which congressmen should attend. (He thought the learned professions should not be counted in the census because Congress would not make policy concerning them anyway.) Samuel Livermore, a fellow congressman, opposed counting occupations, because he thought it was impossible to distinguish the categories Madison set forth. A tobacco grower worked in both agriculture and commerce; or a man might be a farmer in the summer and a shoemaker in winter. Livermore said, in effect, you can't count something you cannot distinguish, and he denied that the political interests Madison wanted to represent were in fact distinguishable. Madison lost.[13]

The problem of countability vexes today's debates about how to count race and ethnicity in censuses and other government programs. Many people question, as Livermore did about occupation, whether race and ethnicity are coherent categories that *can* be counted. In the U.S. during the nineteenth and early twentieth centuries, white lawmakers and census-takers treated race as a biological concept, something inherited from one's ancestors. This belief led to the "one drop of blood" rule, under which people were legally classified as Negro if they had a small fraction of ancestors who had been defined as black—as little as one out of 256 in one state.[14] Now scientists generally understand race and ethnicity to be social and cultural experiences, rather than biological characteristics. Moreover, migration, intermarriage, and procreation wreak havoc on neat biological

[13]This story is from Patricia Cline Cohen, *A Calculating People* (Chicago: University of Chicago Press, 1982), p. 163.

[14]James F. Davis, *Who Is Black? One Nation's Definition* (University Park: Pennsylvania State University Press, 1980).

categories. But government uses statistics on race and ethnicity for many policy purposes, for example, to measure disparities in health and education and to monitor compliance with anti-discrimination laws. For policy purposes, agencies need clear, countable categories, but the policy imperative leads to some strange, and some would say arbitary, ways of counting race and ethnicity. For the Department of Education, any student who acknowledges partial Hispanic descent gets counted as Hispanic; any student who acknowledges "mixed" parentage other than a Hispanic parent gets counted as "two or more races," so that a child of one white and one Asian parent goes into the same category as a child of one black parent and one American Indian parent.[15]

Early in every policy issue, there is debate about whether a phenomenon is measurable at all. Can we measure work disability and learning disability? Can we measure teacher quality? Quality of medical care? Quality of life? Can we measure discrimination on the basis of looks? Once a measure has been proposed, the debate centers on challenges to the measure as too inclusive or exclusive. But by the time debate reaches that point, both sides have already accepted the premise that the phenomenon is distinguishable and countable.

A fourth hidden story in numbers is that counting makes a community. Counting moves an event from the singular to the plural. Any number is implicitly an assertion that the things counted in it share a common feature and should be treated as a group. Sometimes numbers represent members of what we might call "natural communities" or "primary groups," people who actually interact regardless of whether they are counted. The population of a village, size of a family, or size of a school are examples. Other numbers represent artificial or statistical communities; they lump together people who have no relationship other than the shared characteristic that determined the count, such as age, occupation, or sexual orientation.

Social movement leaders must convert statistical members (ones who share important characteristics but have no real relationship with the group) into natural members (ones who actually participate). By identifying a statistical community and showing its members' common interests, counting can be a deliberate tool for political mobilization. Early in the issue of asbestos as a health hazard, for example, trade unions and physicians devoted most of their efforts to counting people who worked with asbestos *and* developed certain types of cancer.[16] Similarly, when residents of Woburn, Massachusetts, noticed what seemed like higher-than-average

[15]Susan Saulny, "Counting By Race Can Throw Off Some Numbers," *New York Times*, Feb. 10, 2011.
[16]Paul Brodeur, *Expendable Americans* (New York: Viking, 1974).

cancer rates, they began with case counts and measures of proximity to a toxic waste dump. Eventually, the neighborhood group gained support of physicians and lawyers, and won a suit against the dump's owner.[17] In both cases, counting created a community of "victims of industry" out of a mass of otherwise unrelated cancer victims.

A fifth hidden story is that numbers promise a distinctive kind of conflict resolution. Putting a number on something makes it amenable to arithmetic, so numbers become a vehicle for dividing, weighing, and balancing political interests. Negotiators can work with irreconcilable demands by breaking them into smaller components and trading the parts off against each other. By putting countable lists in front of the parties, a skillful negotiator can get them to focus on how many of their demands are being met and take some of their attention away from all-or-nothing substantive issues.

One of the most striking examples of this strategy is Justice Blackmun's majority opinion in the 1973 Supreme Court decision *Roe v. Wade*, the case that established a legal right to abortion.[18] To supporters of abortion rights, motherhood changes women's lives in a quantum fashion, so that their future life course is qualitatively different, not just a little bit more of motherhood. To opponents of abortion, a fetus is a living person for whom abortion means death, not just a little bit less of life. It is hard to find a compromise between such absolutist views. After all, pregnancy and abortion are all-or-nothing states; a woman can't be a little bit pregnant, nor can a fetus be a little bit aborted.

In his opinion, Justice Blackmun acknowledged the fundamental importance of childbearing to women's identity and acknowledged that the Supreme Court couldn't settle the debate about when life begins. Then he made two brilliant arithmetical moves. First, he imagined these concerns as bundles of "interests"—a pregnant woman's interests in her own life on the one side, and a state government's interests in prenatal life on the other. Once he had made this metaphorical leap of conceptualizing the two concerns as divisible bundles, he could assert that it was possible to "weigh" and "balance" them against each other. Next, he divided pregnancy into three trimesters (as medicine had been doing for a long time) and asserted that as a pregnancy progresses, the state's interest grows larger in comparison to the mother's. "These interests are separate and distinct," he wrote. "Each grows in substantiality as the woman approaches term, and at a point during pregnancy, each becomes

[17]Jonathan Harr, *A Civil Action* (New York: Random House, 1995).

[18]*Roe v. Wade*, 410 U.S. 113 (1973).

Why Counting Is Political

1. Counting requires decisions about categorizing, about what or whom to include and exclude.
2. Measuring any phenomenon implicitly creates norms about how much is too little, too much, or just right.
3. Numbers can be ambiguous, and so leave room for political struggles to control their interpretation.
4. Numbers are used to tell stories, such as stories of decline ("we are approaching a crisis").
5. Numbers can create the illusion that a very complex and ambiguous phenomenon is simple, countable, and precisely defined.
6. Numbers can create political communities out of people who share some trait that has been counted.
7. Counting can aid negotiation and compromise, by making intangible qualities seem divisible.
8. Numbers, by seeming to be so precise, help bolster authority of those who count.

'compelling.'" Continuing with his metaphor of a balance, with bits of "interest" being added and subtracted from the two sides of the scale, he said that during the first trimester, the risk to the mother of dying from abortion was less than the risk of dying from childbirth, so the mother's interest was heavier, or "compelling" in legal language, and a state couldn't interfere with her and her doctor's decision to abort. By the beginning of the third trimester, the fetus had presumably reached the point of viability outside the womb, and so the state's interest had now gotten heavier and tipped the scale, or reached the "compelling point." At this point, a state could prohibit abortion if it wished.

Like pregnancy, once a phenomenon has been converted into quantifiable units, it can be added, multiplied, divided, or subtracted, even though these operations might have little meaning in reality. Numbers provide

the comforting illusion that incommensurables can be weighed against each other because arithmetic always "works": it yields answers. Numbers force a common denominator where there is none. They make it possible to reduce conflicts to the single dimension of size—big versus little, more versus less.

Finally, in our profoundly numerical contemporary culture, numbers symbolize precision, accuracy, and objectivity. They suggest mechanical selection, dictated by the nature of the objects, even though all counting involves judgment and discretion. By the time we are adults, the categorization part of counting is so much second nature that we tend to forget we do it. One has only to watch a child learning to sort and count to see how self-conscious, learned, and precarious are the categorizations adults take for granted. Numerals hide all the difficult choices that go into a count. And certain kinds of numbers—big ones, ones with decimal points, ones that are not multiples of ten—seemingly advertise the prowess of the measurer, as if to say he could discriminate down to the gnat's knees. To offer one of these numbers is by itself a gesture of authority.

Making Numbers in the Polis

If counting is a complex mental process, measurement is a complex social process as well. In politics, numbers are measures of human activities, made by human beings, and intended to influence human behavior. They are subject to conscious and unconscious manipulation by the people being measured, the people making the measurements, and the people who interpret and use measures made by others. George Washington knew he had this kind of trouble on his hands in 1790, when the numbers from the first census began rolling in:

> Returns of the Census have already been made from several of the States and a tolerably just estimate has been formed now in others, by which it appears that we shall hardly reach four millions; but one thing is certain: our real numbers will exceed, greatly, the official returns of them; because the religious scruples of some would not allow them to give in their lists; the fears of others that it was intended as the foundation of a tax induced them to conceal or diminish theirs; and thro' the indolence of the people, and the negligence of many of the Officers, numbers are omitted.[19]

[19]J. C. Fitzpatrick, ed., *The Writings of George Washington* (Washington, D.C.: Government Printing Office, 1939) 31, pp. 329, cited in E. J. Kahn, Jr., *The American People* (Baltimore: Penguin Books, 1975), p. 45.

Measuring social phenomena differs from measuring physical objects because unlike, say, rocks, people respond to being measured. Try measuring people's heights and watch how they stretch. Like a camera, measurement triggers the natural desire to look good. When people know they're being measured, they try to imagine the results beforehand. They take stock of themselves or their program, organization, or firm. Because measures carry implicit norms, people wonder whether they will "measure up" to social norms as well as their own ideals. Measurement provokes people to "play the role" and to present themselves as they want to be seen. Such changes of behavior in response to being observed and measured are called *reactive effects*, and *reactivity* is as pervasive among organizations as it is among individuals.

Counting requires looking and thinking, so the very process focuses people's attention on the thing being measured, and they tend to notice it more. When the Head Start program was given a mandate to enroll handicapped children and required to submit enrollment figures, local directors started perceiving children as handicapped. One director noted, "We didn't know we had so many handicapped children until we started counting."[20] Perhaps counting made the staff notice some previously overlooked handicapped children, and perhaps counting changed their perceptions of children they would not previously have considered handicapped.

The establishment of new record keeping always brings out cases, as if counting exerts some kind of magnetic force on the things being counted. Sometimes this happens because a formal count normalizes a problem thought to be rare, and so can legitimize something people were previously afraid or ashamed to discuss. This phenomenon is thought to explain one reason why reports of rape to police escalated in the 1970s. Once the women's movement made rape a public issue, rape victims were more likely to report their experiences to the police instead of remaining silent. Moreover, counting enables victims of a stigmatized condition to come forward as group members rather than as lone individuals. Record keeping also provides a channel for reporting. Once an agency publicizes that it is keeping a count, people turn to that agency to report instances.

Record keeping is especially apt to stimulate reporting in the early phases of a policy issue. Reformers actively seek out cases, and because there is a relative lack of statistics for the previous period, the proportions of the problem loom large. Many public problems are in fact things

[20]Robert Bogdan and Margaret Ksander, "Policy Data as a Social Process: A Qualitative Approach to Quantitative Data," *Human Organization* 39, no. 4 (1980), p. 304.

that have been tolerated for decades, if not centuries, without getting on the political agenda as important issues—race and gender discrimination, alcoholism, domestic violence, environmental degradation, unequal access to health care, poor public schools, and congested cities, to name a few. Sudden growth rates can reflect a decline in social tolerance of a problem more than an increase in the problem itself, just as annoying noises seem to get louder once we feel annoyed.

In public policy, measures are often explicitly evaluative and used to determine how people and organizations will be treated. Some measures evaluate performance of organizations, officials, employees, firms, or government agencies, and are used to determine rewards and punishments. Other measures evaluate qualifications of applicants for services, loans, jobs, school admissions, grants, or budget allocations. Decision makers use these measures to allocate resources and privileges.

People thus have a strong incentive to manipulate measures, and the possibilities for manipulation are endless. Under the No Child Left Behind Act of 2002, in order to receive federal aid, states were required to demonstrate that their students met minimum standards of proficiency on state tests. To avoid being penalized with loss of federal aid, many states lowered the cut-off score for "proficiency," a tactic that became obvious when students performed markedly worse on national tests than state tests. The same law required that teachers of core academic subjects be "highly qualified" in their subject areas, but states could determine how they measured "highly qualified." Many states awarded qualification points to teachers for activities having little bearing on subject knowledge, such as sponsoring a school club or joining an educational organization.[21]

Under the Temporary Assistance for Needy Families (TANF) program, state agencies and private contractors that run state welfare programs are supposed to ensure that a certain percentage of welfare applicants take jobs or actively look for work. This number is known as the "participation rate," and it determines whether the agencies and contractors will get paid or whether they will be sanctioned with reduced reimbursements. In turn, the participation rate determines how caseworkers are evaluated by their supervisors. Agencies are allowed to count in their participation rate clients who attend job-readiness classes or who respond to job ads. Case workers can influence the participation rate by pressuring clients to do these activities and to turn in reports

[21]Elizabeth Weiss Green, "Local Success, Federal Failure," *U.S. News & World Report*, March 5, 2007, pp. 44–5; Anne McGrath, "Can Teachers Measure Up?" *U.S. News & World Report*, Sept. 12, 2005, pp. 52–3.

documenting their class attendance or job search efforts. In some places, caseworkers count turning in such documents as a work-related activity, so caseworkers can boost their clients' participation rates just by pushing them to do paperwork.[22]

Manipulation is the Achilles' heel of pay-for-performance systems. If hospitals are judged by the cost per patient they incur, hospital administrators can transfer difficult-to-treat patients to other hospitals. If doctors are paid according to how many of their patients get well or stay out of hospitals, they can avoid taking on patients with severe or chronic problems. If job-training programs are evaluated by the proportion of trainees they place in jobs, they can select the most employable people as trainees rather than people who need lots of training, and they can push their trainees into plentiful low-wage, dead-end jobs. In all these examples, no one actually falsifies the numbers. Rather, people change their behavior in response to being measured.

Understanding reactivity is so important in policy analysis because, unlike deliberate falsification of numbers, it is an inextricable feature of social measurement.[23] Moreover, reactivity violates the canons of good scientific practice, on which all statistical reasoning is based. Scientific method assumes a strict separation between the observer and the observed, so that neither the subject nor the observer has incentive or opportunity to manipulate the measurement. In experimental research with human subjects, scientists use the metaphor of blindness to mean lack of knowledge about whether the subject is in the control group or the experimental group. In a "single-blind experiment," the subject doesn't know which group he or she is in, but the observer does. In a "double-blind experiment," a third party codes the subjects so that neither the subject nor the observer knows. In science, double-blindness is thought to make for the most accurate, unbiased, objective measurement.

In the polis, double-blindness is out of the question. Separation between the measured and the measurers is rarely, if ever, possible. Most measures in policy debates come from statistics gathered and reported by the agencies whose performance or budget needs government wants to assess.

[22]Sanford Schram, Joe Soss, Linda Houser, and Richard C. Fording, "The Third Level of U.S. Welfare Reform: Governmentality Under Neoliberal Paternalism," *Citizenship Studies* vol. 14, no. 6 (2010), pp. 739–54.

[23]Most contemporary social science aspires to eliminate reactivity in social measurement and thus to make the social sciences meet the presumed standards of the physical sciences. The classic work in this tradition is Eugene J. Webb et al., *Unobtrusive Measures: Nonreactive Research in the Social Sciences* (Chicago: Rand McNally, 1966). I argue the folly of such a dream in this chapter.

Crime statistics are produced by crime-fighting agencies, housing statistics by housing development agencies, oil spill data by oil companies. Thus, the measures often reflect as much on the behavior of the measurers as the measured, and measurers, too, have an incentive to manipulate.

Even when the measurer is organizationally separate from the measured, such as when an accounting firm audits a business firm or one government agency monitors another, separation is only nominal. The very fact that one organization measures another links them in a relationship of cooperation and influence. Sometimes, money makes the link. In the U.S., bond-rating agencies, as the world now knows, are paid by the companies whose creditworthiness they judge. It's as if students paid teachers to grade their papers—and paid by the paper. The accounting firm needs the business of the firms it audits, and so must be responsive to their desires, and it depends on the data its client firms provide. Even when there is no direct payment between a monitoring agency and the organization it monitors, the relationship may still be quite interdependent. A government monitoring agency needs the cooperation of the agencies or firms it monitors, both because it needs data and because the inspectors or surveyors who work in a monitoring agency would rather have pleasant working relationships than hostile ones.

Measurers also have power over the fate of the measured, since measuring is done to inform policy decisions. The census taker not only counts heads but also determines the apportionment of seats in the House of Representatives and the allocation of federal revenue-sharing funds. The health inspector makes bacteria counts with which he closes down restaurants. The Department of Justice's Antitrust Division measures market concentration to decide whether to allow corporate mergers and acquisitions. Because policy measurement is always linked to benefits and penalties, the measured try to influence the measurers, occasionally with outright bribes, but more often with pleading, cajoling, and selective disclosure.

Evaluative measurement sometimes makes strange bedfellows. A suspect who confesses to many crimes is more valuable to police than a suspect who confesses to only one, because the multiple offender helps "clear" or solve several crimes at once. Police are more willing to bargain with a multiple offender by offering reduced charges, arranging to put only one of the offenses on the record, and promising immunity from prosecution for the other crimes. In the war on drugs, political pressure on prosecutors to eliminate drug trafficking makes big dealers, growers, and importers more valuable to them than the small fry, because the kingpins can lead them up and down the chain to many more offenders.

By offering to reduce harsh mandatory sentences in exchange for "cooperation," prosecutors can accumulate guilty pleas, tips, and more convictions. Paradoxically, the evaluative measures often reverse the hierarchy of punishments so that multiple offenders are treated more leniently than single offenders and petty criminals.[24]

Numbers can be manipulated by strategically selecting one measure from the vast range of possibilities—remember my elephant. If, as the saying goes, where one stands depends on where one sits, so does how one counts. When Congress debates a new policy proposal, the Congressional Budget Office (CBO) estimates how much the proposal will cost and assigns it an official price tag. Supporters hope for a low price tag so they can offer voters an almost-free lunch; opponents rejoice at a high price tag so they can scare voters with tax increases. A lot of speculation, assumption, and guesswork goes into projecting how much any program will cost, but no matter how shaky or speculative, the price tag can make or break a proposal. When the CBO estimated the cost for President Clinton's health reform, it decided to count individual insurance premiums as part of the program's budget, giving it a whopping price tag and dooming the program. Not to be undone by the same process, President Obama appointed Peter Orszag, the then CBO director, as director of his executive-branch budget office, the Office of Management and Budget. "Peter doesn't need a map to tell him where the bodies are buried in the federal budget," Obama said on announcing Orszag's appointment. Translation (by journalist Ezra Klein): "Thus, he [Orszag] can advise Obama on how to construct the legislation most likely to pass unscathed through CBO's scoring process."[25]

In order to raise funds for their programs, leaders of charities and government agencies choose measures that make "their" problems seem as big as possible. But once an agency has been in operation, allegedly working to solve the problem, its leaders also need to show that the problem has diminished so that the agency looks effective. Thus, leaders might highlight an absolute number of cases as a measure of a problem early in an agency's life. At a later stage, they might switch to the proportion of known cases they have treated.

Business firms, too, select measures to show their performance in different lights to different audiences. They want to look highly profitable to investors but not so profitable to the Internal Revenue Service. If

[24]Jerome Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society* (New York: Wiley, 1975), chap. 8; and Eric Schlosser, *Reefer Madness* (Boston: Houghton Mifflin, 2003), chap. 1.

[25]Ezra Klein, "The Number-Cruncher-in-Chief," *American Prospect*, Jan./Feb. 2009, pp. 15–18.

Numerical Strategies in Problem Definition

1. People react to being counted or measured, and try to "look good" on the measure.
2. The process of counting something makes people notice it more, and record keeping stimulates reporting.
3. Counting can be used to stimulate public demands for change.
4. When measurement is explicitly used to evaluate performance, the people being evaluated try to manipulate their "scores."
5. The power to measure is the power to control. Measurers have a lot of discretion in their choice of what and how to measure.
6. Measuring creates alliances between the measurers and the measured.
7. Numbers don't speak for themselves, and people try to control how others will interpret them.

they have lost environmental or product liability suits, they can wipe out their assets on paper by inflating estimates of their future liabilities. Famously, Johns-Manville, a large asbestos manufacturer, used this trick to show bankruptcy even as it ranked number 181 in the *Fortune* 500 and held more than $2 billion in assets.[26] While Congress and the administration were debating tougher bank regulations in 2010, investment banks didn't want to appear as if they were continuing to invest huge amounts of borrowed money, a practice called "leverage" that had greatly magnified, if not helped cause, the 2008 crash. Now in the national spotlight, many investment banks reduced their debt levels just before issuing their quarterly financial statements, then bumped up their borrowing again until the end of the next quarter. A former Goldman Sachs analyst explained the strategy bluntly: "You want your leverage to look better

[26]Paul Brodeur, "The Asbestos Industry on Trial," *The New Yorker*, June 10, 1985, p. 49.

at quarter-end than it actually was during the quarter, to suggest that you're taking less risk."[27]

Measures tend to imply certain solutions to a problem, so people who have particular solutions to peddle will promote measures that point to their solutions. Social workers benefit from such definitions of poverty as the number of broken families (a metaphor worth pondering) or the number of families with children at risk of abuse. The medical industry benefits from measures of "medical indigence," the number of people who can't afford its services. Building contractors benefit more from a definition of poverty based on housing, such as the number of families who live in substandard dwellings. Educators tout illiteracy as an indicator of poverty. Farmers with surplus agricultural products might prefer a definition based on malnutrition. Measures, in short, obey the law of the hammer: if all you have is a hammer, every problem looks like a nail.

In the polis, measures are not only strategically selected but strategically presented. Numbers never stand by themselves in policy debates; they are clothed in words and symbols and carried in narrative stories. Political articles and speeches rarely say simply that a rate changed from this to that number. They give stage directions, telling the audience that rates rose rapidly, skyrocketed, escalated, plummeted, plunged, moved sluggishly, crept, edged, hovered, or otherwise behaved dramatically. Without these verbal costumes, we wouldn't know how to react to the naked numbers.

Numbers in policy debates can't be understood without probing how people produce them: What makes people decide to count something and then find instances of it? How are the measurers and the measured linked together? What incentives do people have to make the numbers appear high or low? And what opportunities do they have to behave strategically? People change how they behave when they know they're being measured and evaluated. They try to influence the measurers. The exercise of counting makes them notice things more. The things being counted can become bargaining chips in a strategic relationship between the measurers and the measured. The choice of measures is part of strategic problem definition, and the results of measures take on their political character only with the costume of interpretive language.

If numbers are thus artifacts of political life, and if they are themselves metaphors, symbols, and stories, are they "real" in any sense? Numbers are always descriptions of the world, and as descriptions they are no more

[27]Kate Kelly, Tom McGinty, and Dan Fitzpatrick, "Banks Briefly Cut Debt to Mask Risk," *Wall Street Journal*, Feb. 19, 2010.

real than the visions of poems or paintings. Their vision of experience may correspond more or less to popular visions, just as realist, impressionist, and abstract expressionist paintings correspond more or less to common visions. Numbers are real as artifacts, just as poems and paintings are artifacts that people respond to, collect, recite, and display. But the dominance of numbers as a mode of describing public problems is only a recent, and perhaps temporary, phenomenon in cultural history—not the result of some underlying reality of numbers.

9

Causes

> Men do not think they know a thing till they have grasped the "why" of it (which is to grasp its primary cause).
>
> *Aristotle's Physica*, Book II

Aristotle's treatise on causes speaks to a fundamental human instinct to search for the cause of any problem. We often think we have defined a problem when we have described its causes. "Finding the root cause" is such a common metaphor in policy debate it is almost a cliché. And yet, the importance of analyzing causes is taken so much for granted that it is scarcely mentioned in policy analysis textbooks. What most scholars have to say about causal analysis is that it is difficult, that policy problems are complex, and that we often lack a good understanding of underlying causal processes. But they are unanimous in their belief that one can't solve a problem without first finding its cause.

The effort to define a problem by identifying its causes rests on a certain conception of cause. In this conception, any problem has deep or primary causes that can be found if one looks hard enough and does enough careful research. Causes are objective and can, in principle, be proved by scientific analysis. We speak of suspected causes and true causes as though once a true cause is found, suspected causes are off the hook and the true cause, like the convicted criminal, is all we have to worry about. Once "the" cause is identified, policy should seek to eliminate it, modify it, reduce it, suppress it, or neutralize it, thereby eliminating or reducing the problem.

Causal reasoning in the polis is something quite different from this mechanistic model. In politics, we look for causes not only to understand how the world works but to assign responsibility for problems. Once we think we know the cause of a problem, we use the knowledge to prevent people from causing similar problems, to make people pay for harm they

caused, and to punish them. To identify a cause in the polis is to place burdens on one set of people instead of another. It is also to tell a story in which some people are oppressors and others are victims.

In the polis, causal theories have a political life independent of the evidence for them. They are ideas about causation, strategically crafted with symbols and numbers. The different sides in an issue act as if they are trying to find the "true" cause, but they are always struggling to influence which causal story becomes the main guide to policy. Political conflicts over causal stories are therefore more than empirical claims about sequences of events. They are fights about the possibility of control and the assignment of responsibility.

Causal Stories as Problem Definition

We have two primary frameworks for interpreting the world: the natural and the social. In the natural world, we understand occurrences to be "undirected, unoriented, unanimated, unguided, 'purely physical.'"[1] There may be natural determinants—the clash of tectonic plates causes an earthquake—but there is no willful intention behind natural occurrences (at least not without invoking a purposeful God). The natural world is the realm of fate and accident, and we believe we have an adequate understanding of causation when we can describe the sequence of events by which one thing leads to another.

In the social world, we understand events to be the result of will, usually human but perhaps animal, spirit, or divine. The social world is the realm of control and intent. We usually think we have an adequate understanding of causation when we can identify the purposes or motives of a person, a group, or a divinity, and link those purposes to their actions. Because we understand causation in the social sphere as related to purpose, we believe that influence works. Coaxing, flattering, bribing, threatening, praying, and propitiating make sense as efforts to change the course of events, and it is possible to conceive of preventing bad things from happening in the first place. In the natural world, influence has no place. We laugh at those who would bring rain with their dances. In the natural world, the best we can do is to mitigate effects.

In everyday discourse, as Erving Goffman points out, we use the term causality to refer to both "the blind effect of nature and intended effect of man, the first seen as an infinitely extended chain of caused and causing

[1]Erving Goffman, *Frame Analysis* (New York: Harper & Row, 1974), p. 22.

effects and the second something that somehow begins with a mental decision."[2] Yet in policy and politics, the distinction between actions that have purpose, will, or motivation and those that do not is crucial. So, too, is the distinction between effects that are intended and those that are not, since we know all too well that our purposeful actions may have unintended consequences.

These two distinctions—between actions and consequences and between purpose ("guided") and lack of purpose ("unguided")—can be used to create a framework for describing the causal stories used in politics. Each section of Table 9.1 contains a type of causal story commonly asserted in policy argument. The types are rough categories with fuzzy boundaries, not clear dichotomies. Once you recognize the different types, though, you can analyze how political actors strategically represent issues by framing them as different types of causal stories, and by pushing them around from one box to another (to use a metaphor).

In the upper right box are *accidental causes.* These include natural disasters such as floods, earthquakes, tsunamis, droughts, and hurricanes.

Table 9.1
Types of Causal Theories

	Consequences	
Actions	Intended	Unintended
Unguided	MECHANICAL CAUSE • machines that perform as designed but cause harm • people who act like automatons • rigid bureaucratic routines	ACCIDENTAL CAUSE • natural disasters • fate • bad luck • machines that run amok
Guided	INTENTIONAL CAUSE • oppression • conspiracies • harmful side effects that are known but ignored • "bad apples" • blaming the victim ("hard" versions)	INADVERTENT CAUSE • unanticipated harmful side effects of policy • avoidable ignorance • carelessness • blaming the victim ("soft" versions)

[2]Ibid., p. 23.

Here, too, goes anything our culture understands as belonging to the realm of fate—perhaps personal looks, some aspects of health, winning the lottery, or driving across a bridge at the moment it collapses. Here we might also put machines that run amok—the car that careens out of control or the CAT scanner that crushes its captive patient. These phenomena are devoid of purpose, either in their actions or consequences. In fact, one can't really speak of actions here, but only of occurrences. This is the realm of accident and fate. Politically, this is a good place to retreat if you are being blamed, because in the realm of fate, no one can be held responsible.

Such was exactly the strategy of CEO Robert E. Murray in 2007, when one of his company's mines in Utah collapsed, trapping and killing six miners. Scientists at the University of Utah initially thought an earthquake had caused the collapse but quickly reassessed the seismic evidence and decided that the collapse had caused the seismic waves, not vice versa. Murray stuck with the earthquake theory, though. "There is no blame. It was a natural disaster," he insisted, as families and rescuers were losing hope and reports of unsafe conditions in the mine emerged. Two weeks later, after multiple rescue efforts had failed and three rescuers had been killed in the trying, Murray, beleaguered and exhausted, moved to a kind of intentional causal story, but one that sits somewhere between the realm of fate and the realm of the spirits. He blamed the mountain: "Had I known that this evil mountain, this alive mountain, would do what it did, I would never have sent the miners in here. I'll never go near that mountain again. It's alive and it's evil."[3]

At the politically opposite pole from accidental causes are *intentional causes* (in the lower left box). Asserting a story of intentional cause is the most powerful offensive position to take, because it lays the blame directly at someone's feet, and because it casts someone as willfully or knowingly causing harm. In this kind of story, problems or harms are understood as direct consequences of willful human action. Either someone acted in order to bring about the consequences, or someone acted with full knowledge of what the consequences would be. When the consequences are perceived as good, this is the domain we know as rational action. But when the consequences of purposeful human action are bad, we have stories of oppressors and victims.

[3]First quote: Kirk Johnson, "Safety Issues Slow Mine Rescue Efforts," *New York Times*, Aug. 8, 2007; second quote: AP News, "AP Interview: Utah mine boss defends search for miners; 5th bore hole breaks through into mine," Aug. 22, 2007, available at wsvn.com/news/articles/national/MI58899/; accessed Aug. 17, 2010.

One interpretation of illegal immigration, for example, holds that the plight—and to some extent the sheer presence—of illegal immigrants can be directly traced to deliberate decisions of American employers, legislators, and bureaucrats. Many politicians support permissive immigration rules for agricultural workers and other very low-wage industries, and the immigration agencies have accommodated employers by being lax in enforcing the law. Many of these same politicians accuse illegal immigrants of flouting the law and of taking social aid they don't deserve, when in fact (the interpretation goes), American recruitment and underpayment of illegal workers causes whatever problems they generate. President Obama subtly used this story when he called for greater accountability of employers: "If the demand for undocumented workers falls, the incentive for people to come here illegally will decline as well."[4] A similar story blames both Congress and auto company executives for the collapse of the Big Three American automakers. Automakers promoted gas-guzzling SUVs and trucks, and lobbied Congress not to raise fuel-economy standards (the argument goes). For its part, Congress bowed to industry pressure on mileage and emission standards and even allowed automakers to monkey with how they counted gas mileage for their poorest-performing vehicles. Congress and the automakers knew in some way that they were harming the American industry, because all the while, foreign companies produced high-performing vehicles that gradually won more of the American market share.[5]

Conspiracy stories also belong in the intentional box. Here, the argument is that problems result from deliberate but concealed human action. For example, in conflicts over tobacco marketing, health advocates argued that smoking-related disease and death were caused not so much by personal choices about smoking as by tobacco companies' deliberate efforts to conceal scientific evidence about the dangers of smoking. Cigarette manufacturers advertised and promoted smoking (advocates claimed), knowing full well that nicotine is addictive and that smoking is a health hazard.[6]

Faced with charges of conspiracy or deliberate malfeasance, political actors often deflect blame with a "bad apple" version of intentional causation. The leadership didn't plan or authorize the harmful actions; a few

[4]Remarks by the president on Comprehensive Immigration Reform, American University School of International Service, Washington, D.C., July 1, 2010.

[5]Thomas Friedman, "How to Fix a Flat," *New York Times*, Nov. 12, 2008.

[6]Philip J. Hilts, "Scientists Say Cigarette Company Suppressed Findings on Nicotine," *New York Times*, April 29, 1994; and Alix M. Freedman and Laurie P. Cohen, "How Cigarette Makers Keep Health Question 'Open' Year After Year," *Wall Street Journal*, Feb. 11, 1993.

low-level rogues violated the rules and policies of the organization. "Those people" acted intentionally and malevolently, but "we leaders" had only good intentions, and if our policies had been carried out, there would have been no harms. In 2004, photos from Iraq's Abu Ghraib prison showed American soldiers torturing, humiliating, and sexually degrading Iraqi prisoners. When the Bush administration blamed the abuses on six "morally corrupt" and out-of-control guards, this was the bad-apple story at its most evasive. Subsequent investigations revealed a web of higher responsibilities. Defense Secretary Donald Rumsfeld had decided to invade Iraq with far fewer troops than most military advisers recommended, so that Abu Ghraib was woefully understaffed—only 92 military police guards for 7,000 prisoners. The White House, the Department of Justice, the Department of Defense, and General Ricardo Sanchez, the coalition forces commander, had all created a climate of uncertainty about prisoner treatment by publicly questioning the Geneva Convention. Interrogation had been outsourced to private contractors outside the military chain of command, who in turn were left to supervise the guards. This counter-story of responsibility at the highest levels was also an intentional cause story. It blamed leaders for bad planning and bad supervision, and, therefore, for causing harms that could and should have been foreseen.[7]

In the lower right section are *inadvertent causes*, or the unintended consequences of purposeful human action. Here resides the tale of harmful side effects of well-intentioned policy, or to give this story a jazzier title, "Help is Harmful."[8] According to the main proponents of reducing welfare, the cash assistance programs meant to help poor people inadvertently give them an incentive to stay out of the labor market, thus they can never emerge from poverty.[9] According to opponents of minimum-wage increases, these laws that are intended to raise the standard of living of low-wage workers raise the cost of hiring workers. As an unintended side effect of minimum-wage laws, employers will hire fewer workers and unemployment will rise, causing more harm than good.[10] Help-is-harmful is the core argument of conservatives who promote free markets and deregulation as solutions to most social problems. Whenever governments interfere with the "natural" workings of free markets, the argument goes, unintended but perverse

[7]Steven Strasser, ed., *The Abu Ghraib Investigations: The Official Reports of the Independent Panel and the Pentagon on the Shocking Prisoner Abuse in Iraq* (New York: Public Affairs, 2004).

[8]I elaborate this story in Deborah Stone, *The Samaritan's Dilemma: Should Government Help Your Neighbor?* (New York: Nation Books, 2008).

[9]Charles Murray, *Losing Ground: American Social Policy 1950–1980* (New York: Basic Books, 1984).

[10]For the story and a critique, see David Card and Alan Kruger, *Myth and Measurement* (Princeton: Princeton University Press, 1995).

consequences result. Help-is-harmful is part of a larger genre of conservative argument against political reform that Albert Hirschman calls "the perversity thesis." Whether reformers aim to increase voter participation, redistribute income, or expand the welfare state, conservatives argue that government efforts to improve upon the status quo inevitably make things worse.[11]

Another type of inadvertent cause is *ignorance*. In some liberal interpretations of poverty and disease, for example, the poor don't understand the importance of education or saving money, and the sick don't understand that bad nutrition leads to diabetes and heart disease. When ordinary people don't understand how their willful actions cause harmful consequences, experts (who claim to understand and often make these arguments) recommend education as the policy solution. These stories are "soft," liberal versions of "blaming the victim": if the people with the problem only became more informed and changed their behavior, the problem wouldn't exist. By contrast, a "hard" conservative version of blaming the victim rests on intentional causation: the victim actually chooses to have the problem. For example, according to this story, many poor people calculate the economic returns of receiving welfare versus the returns from working at low-wage jobs, find welfare yields higher returns, and so choose to take welfare and remain poor.[12]

Still another type of inadvertence is *carelessness* or *recklessness*. Many people who lost their homes in Hurricane Katrina accused insurance companies of harming them (intentionally) by refusing to pay on their insurance policies. Some insurers responded by accusing the homeowners of carelessness. Some homeowners, these insurers claimed, failed to buy adequate insurance, and others didn't read their policies carefully enough to understand the limitations of their coverage.[13] For someone accused of intentional or even inadvertent harms, depicting the victims as careless makes a good defensive strategy because it shifts at least some of the blame but doesn't make the victims sound malevolent.

In the upper-left section are *mechanical causes*. These can include events caused by things (or sometimes people) that have no will of their own but are designed, programmed, or trained by humans. We can consider the results intentional, if only indirectly, because somebody carries out their will

[11]Albert O. Hirschman, *The Rhetoric of Reaction* (Cambridge: Harvard University Press, 1991), chap. 2.

[12]Murray, *Losing Ground* op cit., note 9.

[13]Leslie Eaton and Joseph B. Treaster, "Insurers Bear Brunt of Anger in New Orleans," *New York Times*, Sept. 3, 2007.

through machines, other people, or through "automatic" social procedures and routines. For example, when the stock market plunged 999 points in about fifteen minutes on May 6, 2010, market analysts first looked for a human error or a single trader who might have dumped a mass of stocks and triggered a sell-off. Very quickly, though, the stock market detectives fingered high-speed computer trading as the culprit. The *New York Times* headlined its story, "When Machines Take Control," and quoted a finance professor who explained, "We have a market that responds in milliseconds, but the humans monitoring respond in minutes, and unfortunately billions of dollars of damage can occur in the meantime."[14]

In any hierarchical organization, subordinates who rigidly follow rules without exercising their own judgment might be said to be acting like automatons. "I was just following orders" is the classic defense of low-level bureaucrats and soldiers when things go awry. But the following-orders excuse functions ambiguously in political contests over responsibility. Obedience to authority can sometimes exonerate people whose actions have caused harm, but the defense can raise troubling issues about individual duty to question authority.

In a world of complex social systems and technologies, the very nature of human control over people and machines becomes hard to sort out, and therefore ripe for political contention. In the months following the 2010 *Deepwater Horizon* oil spill in the Gulf of Mexico, causal theories multiplied rapidly.[15] The company's first explanations were *mechanical*: a blowout preventer had failed; the shearing rams or pincers that were supposed to squeeze the main oil pipe hadn't worked; then (perhaps) the electronic signals to the shearing rams had failed. Then came the possibility of deficient cement work around the pipe. Within a few days, *inadvertent* cause edged out mechanical causes as the leading explanation. British Petroleum (BP) had (perhaps) stinted on safety. It hadn't adequately studied the problems of drilling in such deep water (carelessness). It hadn't followed "best practices" and equipped the drilling rig with a second shearing ram in case the first one failed, nor had it provided a backup signaling system. Later, an investigative panel said the rig workers had ignored warning signs that something was amiss.

[14]Nelson D. Schwartz and Louise Story, "When Machines Take Control," *New York Times*, May 7, 2010; Tom Lauricella, Scott Paterson, and Carolyn Cui, "Computer Trading is Eyed," *Wall Street Journal*, May 8–9, 2010.

[15]The causal stories in the next three paragraphs are drawn from daily news coverage and opinion pieces between late April and September 2010 in the *New York Times*, *Wall Street Journal*, and *Financial Times*.

Soon the causal stories crossed into intentional territory, with hints that both Transocean, the rig's owner, and BP had knowingly put profits ahead of safety. Rig workers said drilling took precedence over maintenance, and told interviewers that they had been afraid of getting fired if they reported safety concerns. BP had a record of accidents, injuries, and unmitigated safety violations. In applying for its *Deepwater Horizon* permit, it had underestimated the likelihood of a spill to the Minerals Management Service (MMS), the regulatory agency in charge of granting permits. To meet the agency's requirement for contingency plans in case of a spill, BP had offered up copies of Exxon's plans from the *Valdez* spill in Alaska years earlier, including a mention of rescuing walruses (in the Gulf of Mexico???) and a phone number for a long-deceased clean-up expert. The story began to look like a *conspiracy* to deceive the regulators.

Eventually, as almost always happens in big crises and disasters, the causal stories shifted the blame to government. At first, the MMS was accused of *inadvertent* cause. It allegedly had evidence of problems with blowout preventers but didn't require the company to make design changes or equip the rig with a backup system. Or, MMS officials too easily accepted BP's assurances about the low risk of spills and the high reliability of blowout preventers. Then the accusations moved again into *intentional* territory. The MMS had a conflict of interest between its two missions—to generate oil royalty revenues for the U.S. government and to ensure safety and environmental protection—and had allowed revenue-generation to overshadow environmental and safety concerns. Another causal story suggested that the MMS had "a culture of coziness" with industry and had essentially ceded oversight of drilling operations to the companies. Eventually, Congress came in for its share of the blame—politicians, beholden to oil companies and oil revenue, had increased financial incentives for drilling and decreased budgets for regulatory oversight.

The Gulf oil spill suggests a type of causal story far more complex than can be contained in the table. Accidental, mechanical, intentional, and inadvertent causes all conjure up images of a single action and a direct result. This mechanistic image of a single actor pulling levers remains even when the stories apply to corporations, agencies, and large groups, or to sequences of multiple actions and results. But many policy problems—such as toxic hazards, global warming, oil spills, and food safety—require a more complex model of cause to offer a satisfying explanation. There are many such models, but let me paint three broad types of complex causal stories.

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One type might be called "complex systems."[16] This model holds that the social systems necessary to solve modern problems are inherently complex. Today's technological systems involve multiple decision makers, mechanical parts that serve multiple functions, extreme environments, and complicated feedback loops among numerous subsystems. In such complex interactive systems, it is impossible to anticipate all possible events and side effects, so failure or accident is inevitable. Failures also involve so many components and people that it is impossible to attribute blame in any fashion consistent with our cultural norm, that responsibility presupposes control.

Because the complex-systems model characterizes industrial and environmental catastrophes as unavoidable, with no identifiable responsible human agent, it resembles "accidents of nature" as an exonerating causal story. For example, the Massachusetts Institute of Technology sued the architect Frank Gehry for alleged design and construction failures that had caused leaks, cracks, and other problems in a building his firm designed. Mr. Gehry responded with a complex-systems defense: "These things are complicated, and they involved a lot of people, and you never quite know where they went wrong. A building goes together with seven billion

[16]Charles Perrow, *Normal Accidents* (New York: Basic Books, 1984).

pieces of connective tissue. The chances of getting it done ever without something colliding or some misstep are small."[17] However, just as our cultural norms require that people must have some control in order to be held responsible for a situation, we also expect that people who hold themselves out as experts, professionals, and public officials *do* have control and should use their powers responsibly. In large-scale calamities, such as the near-collapse of the global financial system in 2008 or the Gulf of Mexico oil spill in 2010, citizens are reluctant to accept "complexity" as a defense. We expect our public officials and professional experts to keep up with and even ahead of the complex systems they regulate.

A second type of complex cause might be called "institutional." This model envisions a social problem as caused by a web of large organizations with built-in incentive structures and patterns of behavior. Gigantic cost overruns plague military operations and rebuilding projects in Iraq and Afghanistan. For example, it costs the U.S. Agency for International Development (USAID) $250,000 to build a school that an Afghani contractor can build for $50,000. Why? The institutional explanation focuses on changes in the structure of U.S. defense and foreign policy making. Government now outsources most of its functions to private contractors but lacks the personnel and mechanisms to oversee them. Between 1963 and 2008, the number of civilian employees in the federal government stayed the same, while the budget increased four times, from about $100 billion to $2.7 trillion—in other words, the same number of government employees now oversaw four times as much taxpayer money. A USAID contract in Afghanistan can be divided among several layers of subcontractors, each one hiring its own employees and charging fees as they pass work down the line. The more players, the more opportunity for graft and the harder to keep tabs on everyone. Because many private-sector defense industry jobs generally pay much higher wages than public service jobs, government employees have an incentive to cultivate good relations with the contractors they oversee so they can land a more lucrative job. Not surprisingly, when media or government inspectors bring abuses to light, contractors and subcontractors aren't punished, fired, or even denied promotion. Thus, policy isn't "made" in any unified way by the Pentagon or the State Department, and there are few institutional mechanisms for accountability.[18]

[17]Robin Pogrebin and Katie Zezima, "M.I.T. Sues Frank Gehry, Citing Flaws in Center He Designed," *New York Times*, Nov. 7, 2007.

[18]Allison Stanger, *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy* (New Haven: Yale University Press, 2009).

The institutional causal story can place blame in many places—on large organizations and their rules, as well as on people—but like the complex systems story, it can serve as an excuse for inaction. Many public officials blamed the persistent high unemployment in 2010 on "structural" causes. They said the problem wasn't lack of jobs but a fundamental mismatch between employers' needs and workers' skills. In fact, according to the economist Paul Krugman, there were no sectors, no industries, and no regions with job openings, and even highly skilled workers remained unemployed. Calling unemployment a "structural" and "deeply rooted" problem was a way for officials to say nothing could be done about it and to avoid creating the public jobs programs that many economists and politicians recommended.[19]

A third type of complex cause might be called "historical." This model holds that early policy decisions establish institutions and procedures that perpetuate themselves and make it hard for subsequent policy makers to embark on different solutions or even make adjustments to the original policy. Political scientists call this kind of historical cause *path dependence*.[20] Path dependence sounds fancy, but it's no more complicated than Robert Frost's idea for "The Road Not Taken." The poem begins: "Two roads diverged in a yellow wood." They were equally beautiful, so he chose to take the one "less traveled by." He made peace with having to choose by telling himself he'd try the other one another day, but inside, he knew better: "Yet knowing how way leads on to way, / I doubted if I should ever come back."[21]

In politics, an early policy decision forecloses the option to take a different path later, because people form interest groups and organizations to influence and implement the early decision. Those early organizers, the ones who get in on the ground floor, develop political connections, know-how, and organizational capacity that give them an advantage over later groups seeking change. Path dependence explains why Obama found it impossible to move the health system toward a public insurance model, the so-called "public option," and away from the model of competitive, for-profit commercial insurers. During World War II, when the federal government froze wages and gave tax breaks for employer-sponsored health insurance, private insurers were the only organizations with sufficient

[19]Paul Krugman, "Structure of Excuses," *New York Times*, Sept. 27, 2010.

[20]Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* vol. 94, no. 2 (2000), pp. 251–67.

[21]Robert Frost, "The Road Not Taken," *The Poetry of Robert Frost*, ed. Edward Connery Latham (New York: Holt, Rinehart, and Winston, 1969), p. 105.

capital reserves to cover large employee groups. Ever since, they have mobilized and had the political clout, and money, to resist any government attempts to cut into their market. Workers and unions, as well as employers, have vested interests in the system as it is.

In politics, the complex-systems, institutional, and historical models of cause often function like accidental or natural cause. They create a sense of unavoidability and suggest a kind of innocence, because no identifiable actor can exert control over the whole system or web of interactions. Without control, there can be no purpose—and no responsibility.

While social scientists find intriguing puzzles in complex causes, and political actors take refuge in them, environmental scientists have created an intellectual revolution in our understanding of causation. In the modern science of global warming and climate change, the philosophical separation between the natural world and the social world has broken down. We can no longer speak of "the blind effects of nature" as most people did in the 1970s. The old joke "Everyone talks about the weather but no one does anything about it" isn't funny anymore. Human activity actually *does* affect the weather. As Al Gore's movie *An Inconvenient Truth* tries to demonstrate, monsoons, floods, droughts, tsunamis, hurricanes, and glacial melting are all intensified by human production of greenhouse gases. "One thing people always loved about the Weather Channel was that it was nobody's fault," said Dr. Heidi Cullen, the channel's climate scientist. "And then Katrina came along, and suddenly the weather wasn't the weather anymore. . . . Suddenly the weather was potentially our fault." Even though we can't point to a particular event as an example of climate change, Dr. Cullen continued, "we can look at things like dikes and levees in New Orleans and say, 'That is what bad infrastructure looks like' in an age when the vast majority of scientists are warning that global warming will make seas rise, storms more powerful, and droughts and heat waves longer and deeper."[22]

The idea that natural phenomena are "uncaused" and have no relation to human decision making is outmoded. Human activity does influence natural events, and human activity can mitigate the consequences of natural catastrophes. But as the discussion in this chapter shows, the old way of thinking still strongly influences us and structures political use of causal stories.

[22]Quoted in Thomas L. Friedman, "Did We Do That?" *New York Times*, Oct. 28, 2007.

Making Causes in the Polis

In 1995, Governor William Weld of Massachusetts went to President Clinton seeking federal disaster assistance for the state's fishing industry, because the fish stocks in the state's water were at historic lows. The low fish supply put many fishermen out of work, and since most of them were self-employed, they weren't eligible for state unemployment compensation. However, if the fishing industry were declared a natural disaster, fishermen would be eligible for unemployment compensation from the federal program.

In order to qualify for federal disaster aid, a state has to show that its problem is the result of uncontrollable forces of nature. Governor Weld therefore told a story of accidents of nature: fluctuations in water temperature and rising predator populations had killed off the cod, haddock, and flounder, he claimed. But many scientists, especially experts outside the state, countered with a story of human control. Overfishing was the most important reason for declining fish populations. Massachusetts fishermen were therefore responsible, at best because they didn't know better (inadvertence through ignorance), and at worst because they scrambled for individual profit even though they knew fish resources were limited (intentional cause). Moreover, said the federal experts, the state government was also responsible; it knew about the problem and should have done something to curb overfishing. The state's leaders, too, could be accused of deliberately ignoring information, hoping to help local constituents in the short run and get bailed out by the federal treasury in the long run.[23]

Table 9.1 can be used as a "map" to show how political actors push an issue from one territory to another in the struggle for political power. Two positions are relatively strong: accident, with its story of no possibility of human responsibility; and intent, with its story of direct control and knowing action leading to full responsibility. Two positions are relatively weak: mechanical cause, with its story of human control mediated by other people, by machines, or by systems; and inadvertent cause, with its story of action without full knowledge. In the contest over problem definition, the sides will seek to stake out the strong positions but often will move into one of the weaker positions as a next-best option.

As one side in a political battle seeks to push a problem into the realm of human purpose, the other side seeks to push it away from intent back

[23]"Massachusetts Seeks Aid for Fishing Industry," *New York Times*, Mar. 22, 1995.

toward the realm of nature, or to show that the problem was intentionally caused by someone else. The side accused of causing the problem is best off if it can show the problem was accidentally caused. Second best is to show that the problem was caused by someone else. This strategy is only second best, because anyone else accused of causing the problem will fight back and resist the interpretation. For example, in the Gulf oil spill, BP, the company in charge, tried to blame Transocean, owner of the drilling rig. Transocean naturally countered with accusations that BP hadn't properly managed its leased equipment. By contrast, the accidental causal story doesn't generate a live opponent. A third strategy for the side accused of causing the problem is to show inadvertence, especially of the unforeseen-consequences variety. Carelessness and neglect don't look very good, but they are probably better defenses than planned or designed failures.

Books and studies that catalyze public issues have a common structure to their argument. They claim that a condition formerly interpreted as accident is actually the result of human will, either indirectly (mechanical or inadvertent cause) or directly (intentional cause); or alternatively, they show that a condition formerly interpreted as indirectly caused is actually pure intent. Crystal Eastman's *Work Accidents and the Law*, usually deemed the trigger event for state workers' compensation laws in the early decades of the twentieth century, showed that workplace injuries were not primarily caused by worker carelessness (inadvertence) but by employer refusal to provide safe machines and working conditions (intent). Eastman's framing of the problem is illustrative of the political logic in all these arguments:

> If adequate investigation reveals that most work-accidents happen because workmen are fools, like Frank Koroshic, who reached into danger in spite of every precaution taken to protect him, then there is no warrant for direct interference by society in the hope of preventing them. If, on the other hand, investigation reveals that a considerable proportion of accidents are due to insufficient concern for the safety of workmen on the part of their employers, . . . then social interference in some form is justified.[24]

Rachel Carson's *Silent Spring* argued that deterioration of animal and plant life isn't a natural phenomenon (accident) but the result of human pollution (inadvertence), and with this book she catalyzed the environmental movement.[25] Ralph Nader's *Unsafe at Any Speed* claimed that

[24]Crystal Eastman, *Work Accidents and the Law* (New York: Russell Sage, 1910); quote is on p. 5.
[25]Rachael Carson, *Silent Spring* (New York: Fawcett, 1978).

automobile crashes were not primarily due to unpredictable mechanical failures (accidents) or even to careless drivers (inadvertence) but to manufacturers' decisions to stint on safety in car design (intention).[26] As the leader of a widespread consumer movement, Nader popularized the notion that manufacturers design light bulbs, appliances, and tools to wear out so that consumers will have to buy new ones frequently. This theory of "planned obsolescence" is an assertion that a problem once thought to be unintended machine failure (accident) is really a case of intended machine failure (intention).

The concept of risk has become a key strategic weapon for pushing a problem out of the realm of accident into the realm of purpose. Risk serves this function in two ways. First, when the harms at issue are injury or death (as in food and drug regulation, occupational safety, consumer product safety, environmental pollution, or nuclear accidents), a statistical association of harmful outcomes with human actions is widely accepted as a demonstration of a cause-and-effect relationship.[27] If the harms associated with an action or policy are predictable, then business and regulatory decisions to pursue the policy in the face of that knowledge can be made to appear as a "calculated risk," and portrayed as knowingly causing harms to others, or at least tolerating them, in the pursuit of benefits to oneself. In 1981, a federal appeals court first ruled that a company could be held responsible for knowingly tolerating risks of injuries. In a suit against Ford Motor Company for its alleged disregard of safety in the design of its Pinto models, the court construed Ford's business decision to trade safety for cost as "conscious disregard of the probability that [its] conduct will result in injury to others," and therefore as "malicious intent."[28] Since then, reformers have used the idea of calculated risk to push a problem from inadvertence to intent. Thus, for example, in the *Deepwater Horizon* spill, environmental and community advocates accused British Petroleum, Transocean, and the Minerals Management Service of disregarding human and environmental safety in their pursuit of material gain.

A second way the idea of risk serves to push harms into the realm of purpose is in the area of civil rights. Before the early 1970s, the only way to win a discrimination suit was to show evidence of *intent* to discriminate on the part of an employer, a prosecutor, or whomever. In cases where

[26]Ralph Nader, *Unsafe at Any Speed: The Designed-In Dangers of the American Automobile* (New York: Crossman, 1965).

[27]On the rise of probabilistic interpretation of causation in twentieth-century scientific culture, see Jacob Bronowski, *The Common Sense of Science* (London: William Heinemann, 1951).

[28]*Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757, 174 Cal. Rptr. 348 (1981).

a policy or rule didn't explicitly mention race or gender, this requirement usually meant the plaintiff had to provide evidence of a person's motives and intentions, either by showing that a seemingly neutral rule was really just a pretext for discrimination, or by showing that a rule was administered in an obviously discriminatory fashion. Then in 1971, the Supreme Court for the first time allowed statistical evidence of a rule's "disproportionate impact" on a minority group to stand as proof of discrimination, without a showing of intent to discriminate.[29] Since then, statistical evidence became the primary tool to prove discrimination in employment, jury selection, schools, voting districts, housing, and other government programs. Statistical analysis also was essential for affirmative action policy, because it allowed advocates to demonstrate systematic patterns of different treatment even though there was no evidence of overt discrimination. In the backlash against affirmative action, there was push in the other direction, when the Justice Department under Ronald Reagan and George H.W. Bush advocated returning to a standard of *actual discrimination* against a specific plaintiff.

Although the Supreme Court has become much less deferential to statistical evidence, statistical analysis remains a crucial technique for crafting causal arguments about discrimination.[30] Civil rights advocates have long argued that economic and occupational differences between blacks and whites or women and men are partly caused by the lingering effects of *past* discriminatory treatment, even though there may be no current discernible intentional discrimination. Statistical evidence broadens the concept of discrimination to encompass systematic or patterned effects, without a direct link to individual intent and motivation. In effect, advocates successfully created the problem of "institutional discrimination" by pushing a causal story from the realm of intent to the realm of inadvertence. The acceptance of statistical evidence by courts as proof of discrimination converts "discriminatory impact" into the moral and political equivalent of calculated risk.

[29]*Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). Duke Power Company required either a high-school diploma or a minimum score on an intelligence test as a condition for internal promotion. The Court found neither requirement was related to ability to learn or perform jobs. Far fewer blacks than whites (proportionately) could satisfy either of these requirements, and so blacks fared poorly in job advancement, even though the promotion criteria never mentioned race.

[30]On the rise and significance of statistics in discrimination law, see Stewart J. Schwab and Steven L. Willborn, "The Story of Hazelwood: Employment Discrimination by the Numbers," in *Employment Discrimination Stories*, Joel William Friedman and Stephen F. Befort, eds. (NY: Foundation Press, 2006), pp. 37–63.

Causal Strategies in Problem Defintion

1. Show that a problem is caused by an "accident of nature" or fate.
2. Show that a problem formerly interpreted as accident is really the result of human agency.
3. Show that a problem was caused by a few bad apples.
4. Show that someone secretly intended the effects or results of an action.
5. Show that someone accepted the low-probability harms of an action as a calculated risk.
6. Show that someone didn't or couldn't know the effects of an action.
7. Show that the cause of the problem is so complex that identifiable actors lack control.
8. Show that the cause of the problem is so complex that only large-scale institutional policy changes can alter the causal dynamics.

In the polis, causal stories need to be fought for, defended, and sustained. There is always someone to tell a competing story, and getting a causal story believed is not an easy task. Research on public opinion suggests that to some extent, people have stable, overall outlooks on responsibility for social problems. Roughly speaking, conservatives tend to hold individuals responsible for problems such as poverty, illness, and family breakdown, while liberals tend to hold society or its organizations responsible.[31] But public acceptance of causal stories is also strongly influenced by the way television news frames stories. In general, when news coverage casts a problem like poverty as a series of individual cases and personal stories, the audience is likely to hold individuals responsible. Conversely, when the coverage is more thematic, discussing trends,

[31]George Lakoff, *Moral Politics: How Liberals and Conservatives Think* (Chicago: University of Chicago Press, 2002).

making generalizations, and featuring commentary by experts, the audience is more likely to attribute responsibility to society at large.[32]

The political success of causal theories is also influenced by two powerful institutions for determining cause and legitimizing claims about harms: law and science. The judicial branch is devoted to hearing claims, examining evidence, pronouncing judgments, and enforcing them. Science is an intellectual enterprise with its own vast social and economic organization devoted to determining cause-and-effect relationships. And if law carries greater formal authority by virtue of its status as part of government, science commands enormous cultural authority as the arbiter of empirical questions. Not all battles over causal stories will be resolved in the court of law or science, but most significant ones will find their way into one or both of these forums.

Using Causes in the Polis

Causal theories do several jobs in politics beyond demonstrating the possibility of human control over bad conditions. First, they can either challenge or protect an existing social order. Second, by identifying causal agents, they can assign responsibility to particular political actors so that someone will have to stop an activity, do it differently, compensate the victims, or possibly face punishment. Third, causal theories can legitimize and empower particular actors as "fixers" of the problem. And fourth, they can create new political alliances among people who stand in the same victim relationship to the causal agent. Let's look more closely at these different functions.

Bringing a condition under human control often poses a challenge to old hierarchies of wealth, privilege, or status. Contraception and abortion enable women to exercise control over something that humans once deemed part of "nature's ways"; indeed, much of the rhetoric against family planning is couched in terms of "interference with nature." Women's control over childbearing threatens the social order in which a woman's status and social protection is determined by her role in the family; at the same time, family planning enables a social order in which her status is determined by her role in the workforce. And in fact, women who actively oppose permissive abortion policies tend to be those who don't work outside the home and whose social identity is tied to motherhood, while

[32]Shanto Iyengar, *Is Anyone Responsible? How Television Frames Political Issues* (Chicago: University of Chicago Press, 1991).

pro-choice activists tend to be career women whose identity depends on work outside the home.[33] The theory of maternal deprivation—that children whose mothers work outside the home suffer developmental deficits—arose just as middle-class women entered the workforce in large numbers and the women's movement was pressing for equal opportunity for women in formerly male occupations. By making full-time mother care seem to be a natural requirement for healthy child development, the theory undermined women's demands for equality opportunity and for equal parental responsibility for child-rearing.[34]

Nowhere is the threat to the status quo more evident than in the causal story of greenhouse gases and climate change. Slowing global warming would require the U.S. to reduce its oil and gasoline consumption drastically, which in turn would upset a way of working and socializing that depends on cars and abundant, cheap electricity. Suburbia would have to be undone (not likely, or possible) and tourism would take a hit. Motorized toys—off-road and all-terrain vehicles, snowmobiles, motorcycle and car racing, and recreational vehicles—would all have to be given up for recreational pursuits that don't rely on fossil fuels. Meanwhile, to China and other rising economies, international negotiations to limit carbon emissions seem like changing the rules just when they are beginning to enjoy the luxuries long enjoyed by residents of wealthy industrial countries. No wonder lots of people fight to retain their privileges by challenging the science behind climate change. Struggles over causal definitions of problems are contests over basic structures of social organization and allocations of power.

Such struggles are also about the assignment of responsibility and the burdens of reform. Any bad situation offers multiple candidates for the role of "cause." In the old nursery rhyme, the fall of a kingdom can be traced back through a lost battle, a fallen soldier, an injured horse, and a loose horseshoe, all the way to a missing nail and a careless blacksmith. In the real world, problems rarely come with such a neat lineage, but, like the *Deepwater Horizon* explosion in the Gulf of Mexico and its aftermath, they are replete with possible causes.

In the world of policy, there is always choice about which causal factors in the lineage to address, and different choices locate the responsibility and burden of reform differently. For deaths and injuries resulting from

[33]Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1984), chap. 10.

[34]Mary Douglas, *Risk Acceptability According to the Social Sciences* (New York: Russell Sage, 1985), pp. 53–60.

drunk driving, both law and cultural beliefs place responsibility with the drunk driver. There are certainly other ways of viewing the problem: we could blame vehicle design (for materials and structure more likely to injure or kill in a crash); highway design (for curves likely to cause accidents); lack of fast ambulance service or nearby hospitals; lax enforcement of drunk-driving penalties by police; or even easy availability of alcoholic beverages.[35] Grassroots organizations of victims, such as Mothers Against Drunk Driving, have successfully moved the issue beyond moral exhortation by looking for targets of responsibility other than the driver—restaurants, bars, private hosts, and even governments. They have pressured legislatures to pass laws making hosts and servers liable for damages caused by drunk drivers, and lobbied to ban "happy hours." And similarly with the issue of shooting deaths with illegal handguns, advocates have tried (without quite as much success) to expand legal liability from gun users to gun manufacturers and distributors.

Even when there is a strong statistical and logical link between a substance and a problem—such as between alcohol and car accidents, handguns and homicides, tobacco and cancer deaths, or illicit drugs and overdose deaths—there is still a range of places to locate control and impose sanctions. Each of these problems has a virtually identical chain of causation: substance or object–user–seller–manufacturer–raw materials suppliers. In the case of alcohol, we have traditionally seen drinkers as the cause and limited sanctions to them, although sellers have more recently been made to bear some costs. In lung cancer deaths, we have blamed the smoker primarily, but to the extent that people have sought to place the blame elsewhere, they have gone after cigarette manufacturers, not cigarette sellers or tobacco growers. With handgun homicides, we have largely limited blame to the users of guns, rather than imposing sanctions on sellers or manufacturers. And with drugs, we cast the widest net, with attacks against users, sellers (importers, street peddlers, pharmacies, physicians), and growers.

Finding the true or ultimate cause of harms in these policy areas is not what is at issue. Rather, the fight is about locating moral responsibility and real economic costs on a chain of possible causes. The location is dictated more by the political strength of different groups, such as the tobacco industry or the gun lobby, than by any statistical proof or causal logic.

[35]This observation is the starting point for Joseph Gusfield's classic study of problem definition in public policy, *The Culture of Public Problems: Drunk Driving and the Symbolic Order* (Chicago: University of Chicago Press, 1981).

The Uses of Causal Argument in the Polis

1. Challenge or protect an existing set of rules, institutions, and interests.
2. Assign blame and responsibility for fixing a problem and compensating victims.
3. Legitimize certain actors as "fixers" of the problem, giving them new authority, power, and resources.
4. Create new political alliances among people who perceive themselves to be harmed by the problem.

Just as different causal stories place the burden of reform on some people rather than others, they also empower people who have the tools, skills, or resources to solve the problem in the particular causal framework. People choose causal stories not only to shift the blame but also to cast themselves as the most capable fixers. Like the famous six characters in search of an author, people with pet solutions often march around looking for problems that need their solutions. Causal stories then become mechanisms for linking a desired program to a problem that happens to be high on the policy agenda. Health Maintenance Organizations (HMOs) were first promoted as reforms to increase health care for the poor during the liberal 1960s, on the theory that limited access of poor people to health care was caused by the inefficient solo-practice system of medicine. The same advocates of HMOs then pushed them to the Nixon administration as answers to the cost-containment problem, on the theory that high health care costs were caused by fee-for-service payment.[36] Similarly, advocates of urban mass transit have billed it variously as a solution for traffic congestion, pollution, energy conservation, global warming, economic growth, and unemployment as each of these issues waxed high on the national agenda.[37] Thus, policy entrepreneurs use causal stories to procure political support and public funds.

[36]Paul Starr, "The Undelivered Health System," *Public Interest*, no. 42 (Winter 1976), pp. 66–85.

[37]John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little, Brown, 1984), p. 181; Joan Fitzgerald and Joseph McLaughlin, "On Track to Jobs," *Boston Globe*, Oct. 19, 2010, p. 11.

Shifting the location of responsibility on a causal chain can restructure alliances. Under the old view of drunk driving, where the driver bore sole responsibility for accidents, the drunk driver was pitted against everybody else. In the new view, the driver becomes a victim (of the server's negligence) along with the people he or she injured, and the server is cast outside this alliance. The new causal story alters the relationship between bars and their customers, because now all customers—indeed, especially the best ones—represent a potential liability. Tavern owners may seek new alliances with other anti-regulation groups. One can also imagine alcoholic-beverage manufacturers facing a difficult political choice whether to ally themselves with the taverns (their wholesale customers) or with injured victims, in the hopes that victims won't go after manufacturers next.

Causal theories predicated on statistical association can create alliances by mobilizing people who share a "risk factor" but otherwise have no natural communication or association. One lone benefits counselor in the Chicago Veterans Administration office triggered Vietnam veterans to mobilize around the Agent Orange issue by counting. She thought she saw a pattern of illnesses and exposure to Agent Orange. She collected her own statistics, publicized them on television, and soon Agent Orange–based disability claims began pouring into the VA.[38] Causal theories thus can be both a stimulus to political organization and a resource for political leaders seeking to create alliances.

In summary, causal theories, like other modes of problem definition, are efforts to control interpretations and images of problems. Political actors create causal stories to describe harms and difficulties, to attribute them to actions of other individuals and organizations, and thereby to invoke government power to stop the harm. Like other forms of symbolic representation, causal stories can be emotionally compelling; they are stories of innocence and guilt, victims and oppressors, suffering and evil. Good political analysis must attend to all the strategic functions of causal interpretation.

[38]Peter H. Schuck, *Agent Orange on Trial* (Cambridge, Mass.: Harvard University Press, 1986), p. 23.

10

Interests

The quintessential political point of view defines problems not by their causes but by their effects: Who is affected? In what way? Do they know it? What do they do about it? Ask politicians to define a problem and they will draw a battlefield and tell you who stands on which side. The sides in politics are called interests. Interests are people and organizations who have a stake in an issue or are affected by it.

In a democracy, as you no doubt learned in high school, citizens with common interests form organized "interest groups" in order to secure public policies that satisfy their interests. This vision of politics assumes that people know what their interests are and already "have" well-defined, fully formed interests before trying to influence the policy-making process.

In the market model, this assumption makes sense. As we saw in Chapter 3, "Efficiency," an individual's sole interest is to maximize her satisfaction (or utility or well-being). Each person knows her own tastes, preferences, and goals, and no one else can know her interest as well as she does. Leaders and policy analysts don't need to define other people's interests, and shouldn't try. Instead, policy makers should establish markets, where individuals can determine and pursue their own interests. Notably, in the market model, interests are individual, subjective, and formed independently.

In the polis, interest formation is more dynamic than the process pictured in either the market model or even liberal democratic theory. Citizens don't enter politics with their interests already defined. Interest group leaders try to attract members and supporters by raising public awareness about issues. Raising awareness, a mantra of political organizing, could be defined as "educating people to see interests they don't know they have." Elected officials and other policy makers try to gather support for proposed policies by explaining to citizens' what their interests are (for example, lower taxes or good schools), and showing how proposed policies will satisfy those interests. Interests and issues define each other.

Making Interests in the Polis

In the polis, group identities and memberships shape people's interests—both their subjective perceptions of their interests and the tangible ways that policies affect them. Some social groupings, such as race, ethnicity, gender, religion, or occupation, have an overwhelming impact on people's well-being and life opportunities. Karl Marx, writing during the industrial revolution of the mid-nineteenth century, thought the most important determinant of interests is economic class, or what he called the relationship to the means of production—whether people own land and factories, or whether they work for owners as wage laborers. In different times and places, other shared group identities might be more important; for example, whether you were Hutu or Tutsi in Rwanda during the 1990s. Individuals have several social identities and memberships, of course, but politics and history often render one of them far more crucial than others to their well-being. Thus, in Israel, whether you are Jewish or Arab is an overwhelming determinant of your life chances; in Afghanistan, whether you are a man or a woman; in Mississippi or South Africa, whether you are black or white; and in Detroit, whether you are a factory owner or a wage worker, as well as whether you are black or white.

Shared group identities broadly shape interests, but the specific content of group interests must still be defined through politics. It's far easier to identify common problems of a group than to find a common solution. Black Americans certainly have a common interest in ending discrimination, but some will benefit more than others from any new rules or selection practices designed to remedy discrimination. People who care about running for office and electing officials who represent them will benefit from voting rights policies, while people who care about higher education will benefit more from university admissions and financial aid procedures. Specifying a *positive* group interest is much harder than articulating a negative one. (That explains why reformist programs are usually far more satisfying in their critique of the present than in their vision of the future.)

In politics, it's hard to know what a group or class interest is without someone to articulate it. No "general will" of a community has ever manifested itself without a few leaders who claim to express it. Someone has to articulate what group interests are and speak for them—in short, to represent them. And here's where things get sticky, because no matter how important a group identity might be (things such as gender, race, or class), differences within groups can undermine common interests.

For example, a woman may have needs and problems as a woman (gender), a black person (race), a small-business owner (class), and a parent (family status). Numerous political organizations clamor to represent her

and to make her identify her interests in common with them. NOW (the National Organization for Women) wants her to see gender as the fundamental determinant of her life chances. The NAACP (National Association for the Advancement of Colored People) wants her to see race as primary. The Chamber of Commerce wants her to see her entrepreneurial position as the key to her well-being. Mothers Against Drunk Driving wants her to see her role as a parent as her primary interest. Moreover, her multiple roles might make her interests in any particular issue contradictory. A law making tavern owners responsible for curbing excessive drinking might hurt her as a business owner but help her as a parent. Each of these many interests is only abstract and hypothetical until advocates define and activate it by teaching her how policy issues affect her.

The term "representation" usually refers to the process through which citizens choose officials to speak for their interests in political decision-making bodies.[1] But the word aptly describes how leaders define citizens' interests for them as well as speak for those interests in policy-making debates. Interest group leaders, electoral candidates, officials, and policy makers seek to portray a policy proposal in ways that make it appear advantageous or disadvantageous to different sets of people. In turn, individuals and groups decide which organizations and candidates to support depending on which portrayal they find more convincing. Interest representation thus has a dual quality: leaders *define an interest* by portraying an issue, showing how it affects people, and persuading them that the portrait is accurate; and leaders *speak for people* in the sense of standing for them and articulating their wishes in policy debates (the classic meaning of representation).

Interests derive from these two senses of representation, the artistic and the political. Groups, often led by charismatic individuals, deliberately portray issues so as to win the allegiance of large numbers of people, who then tacitly agree to let the portrait speak for them. Herein lies a great paradox of interest representation: When leaders speak for their members or constituents in public forums, they rarely transmit the constituents' own words. They speak the words they composed and used to persuade their constituents in the first place.[2]

[1]For the classic view of representation, see Hannah Fenichel Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967).

[2]Hannah Pitkin formulated a different paradox of representation: On the one hand, democracy requires a representative to do what his or her constituents want, but on the other hand, effective representation requires the representative to do what he or she thinks best. In Pitkin's concept of representation, constituents define their own interests independently of the representative. In mine, representatives "do what they think best" in large part by convincing constituents what their interests are. Hannah F. Pitkin, "The Paradox of Representation," in *Representation*, NOMOS X, yearbook of the American Society for Political and Legal Philosophy, J. Roland Pennock and John W. Chapman, eds. (New York: Atherton, 1968).

Mobilizing Interests

There is much political wisdom in the old proverb, "The squeaky wheel gets the grease." The proverb is usually invoked to show that it pays to complain, but it has another, equally important meaning: just because a wheel doesn't squeak doesn't mean it has enough grease. The proverb captures the idea that there is a difference between real interests—what problems and needs people have—and political demands—what people ask for from government.

When people understand their problems as shared by others and they organize to influence policy, the process is called *mobilization.* One of the enduring questions of politics is whether certain types of interests are more likely to mobilize than others, more likely to draw a large number of active adherents, and therefore more likely to obtain policies that help them. In everyday language, we want to know what kinds of wheels squeak—and what kinds don't.

According to pluralism, the dominant school of thought in political science from the 1950s to the 1970s, if people are adversely affected by a social condition or policy, they will organize and demand that government rectify the situation. All groups have an equal chance to have their grievances heard; thus, all important interests are represented in policy making.[3] The theory might have seemed plausible in the decade after World War II, when the nation still felt unified against Fascism and Communism and the economy was humming toward prosperity. But once the civil rights and women's movements revealed profound discrimination against blacks and women and Michael Harrington's book *The Other America* documented communities in dire poverty, pluralism lost much of its credibility. It was criticized for being naïve at the least, and complacent about deep inequalities that prevent some interests from getting adequate representation.

Apart from the obvious impact of economic inequality on mobilization, the structure of interest group mobilization privileges stronger, wealthier, and existing interest groups over newer social-issue oriented groups. The vast majority of interest groups—80 percent according to a classic study—do indeed develop from the bottom up as pluralism suggests. But they grow from preexisting, relatively homogeneous groups with distinct economic or occupational interests—primarily business, labor, and professions. Within this sector, business and professions that work for for-profit institutions are far more prevalent and powerful than

[3]David Truman, *The Governmental Process* (New York: Knopf, 1951).

labor and professionals in the nonprofit sector. Broad social movements such as civil rights and environmental protection tend to be organized from the top down by political entrepreneurs. They depend on patronage from philanthropists who share their cause, and from businesses that may share the cause or may donate to burnish their image as socially responsible. A third type of interest group, advocacy organizations for poor and vulnerable people, tends to be organized by professionals working in the nonprofit sector. They depend heavily on philanthropic and, sometimes, government funding. Social movements and advocacy groups comprise only 20 percent of the major interest groups with a strong presence in Washington, D.C.[4]

Outside the U.S., many nations use a system of representation called "corporatism" to equalize the influence of business and labor in policy making. In corporatist systems, organized representatives of business and labor participate as equal "social partners" in negotiating all business and employment-related laws and regulations. Corporatist systems do reduce the pronounced skewing evident in American industrial relations, but business remains much more powerful than labor. In Europe, where economic policy making has largely shifted from national political systems to the European Union (EU), cross-national business and labor interest organizations have mobilized to represent their interests at the EU level. Despite the EU's nominally corporatist system, business interests comprise about two-thirds of the interest groups formally recognized by the EU.[5] In short, even when weaker groups succeed in mobilizing and have formal channels of access to policy making, they face an unequal contest inside the halls of power.

Powerful interests sometimes suppress interest mobilization outright. The often violent white repression of the black civil rights movement stands as a well-known rebuke to pluralism. The extent of labor repression in the U.S. is less well-known. In the first half of the twentieth century, employers used brutal violence against union organizers. Now, private- and public-sector employers use the services of a multimillion-dollar "union avoidance industry" to destroy union drives with less overt but equally repressive tactics. Consulting firms help employers screen job applicants for labor sympathies, investigate union organizers to pin criminal charges on them, and run campaigns to mislead and frighten

[4]Jack Walker, *Mobilizing Interest Groups in America: Patrons, Professions and Social Movements* (Ann Arbor: University of Michigan Press, 1991).

[5]Simon Hix, *The Political System of the European Union* (New York: Palgrave Macmillan, 2nd. ed., 2005), chap. 4.

employees about unions. Law firms advise employers how to evade labor law, contest it in court, and rewrite it to their advantage. So-called "strike management" firms provide "labor disruption security forces" staffed by ex–police officers, military veterans, and ex–drug enforcement agents. Union leaders say these security guards incite violence and then respond in kind. According to one scholar, strike management has turned the economic strike from a mobilizing tool into "a virtually suicidal tactic for U.S. unions."[6]

Interest mobilization is crucial to citizens' capacity to define their problems and link them to policy solutions. In that light, repression, though not part of the standard theories of interest mobilization, is as troubling for democracy as economic inequalities and structural imbalances in organizational influence.

Rational Choice Theory: Pluralism Turned on its Head

Rational choice theory, the most influential contemporary theory of politics, starts from the model of rational behavior in which individuals are motivated exclusively by the desire to maximize their self-interests. From that core assumption, rational choice theory predicts that interest mobilization will be the exception, not the rule. Rational choice theory is the mirror image of pluralism. Pluralist theorists thought that individuals affected by common problems would easily, almost automatically, form interest groups to influence public policy. Rational choice theorists think that individuals affected by common problems will rarely form interest groups—but not because of inadequate resources or political repression. Instead, the most formidable barrier to political mobilization is human nature, or the way humans think.

Rational choice theory demonstrates the obstacles to cooperation and mobilization with two important concepts, the *prisoner's dilemma* and the *free-rider problem.* Prisoner's dilemma is the name of a game or thought experiment that shows why people don't cooperate even when it's in their individual interest to work together.[7] Like all games, the prisoner's dilemma

[6]John Logan, "The Union Avoidance Industry in the United States," *British Journal of Industrial Relations*, vol. 44, no. 4 (2006), pp. 651–75; quote on p. 667.

[7]For a marvelous social and intellectual history of prisoner's dilemma and its influence on economics and public policy, see William Poundstone, *Prisoner's Dilemma* (New York: Random House/Anchor Books, 1993).

has a story line. Two men have been rounded up and locked in separate cells. The prosecutor thinks they committed a crime but doesn't have sufficient evidence to convict them. With the help of the prison guards, the prosecutor contrives a situation to win a conviction. The guards present each of the men with some choices but don't permit them to talk with each other. Here are the choices: If you confess and agree to testify against your partner, he'll get the book thrown at him and you'll get immunity for turning state's evidence. Likewise, if he confesses but you don't, he'll get immunity and you'll get the book. If you both stay silent, we're going to trump up some minor charges, give you a slap, and let you go. If you both confess, you'll both be punished, but with moderate sentences, less than the book but more than just a slap.

According to rational choice theory, even though the prisoners would receive the least severe punishment if they both remained silent, they will both confess and testify against the other. Ratting on the other guy is the rational thing to do if you want to minimize your sentence and maximize your own well-being. Why? If you're not sure you can trust the other guy to cooperate, you'd *better* rat on him, because if he rats and you don't, you'll get the slammer. Betrayal is the wisest course of action. Even if you both rat on each other, you'll still get less than the slammer. The lesson of the prisoner's dilemma is that people are self-interested to the point of self-destruction.

Rational choice theory uses this game as a starting point for modeling how people interact and pursue their interests. Whenever people contemplate cooperating with others, contributing to a common cause, or helping someone else, they face a choice just like the imaginary prisoners: cooperate with others or betray them. And since in the rationality model people are always out to get the best for themselves, they'll always choose betrayal and selfishness instead of loyalty or altruism. I promise to shine some polis sunlight on this dismal scenario, but first, let's examine the free rider problem, the other big reason that rational choice theorists think cooperative political action is unlikely to occur.

Most significant political interests involve collective goods—natural resources, goods, services, or programs whose benefits are shared by many people. Individuals have little or no incentive to join groups and work for a collective good, because they will receive the benefit if others do the work to obtain it (hence the term "free ride"). Groups will be able to mobilize only if they can offer selective benefits to people who join—benefits that only joiners can get, such as subscriptions to newsletters, exclusive access to information, or special deals on travel and insurance. Therefore, the types of interests most likely to get activated are those

that satisfy individual and private wants. According to the theory, the free-rider problem is less of a force in small groups, where peer pressure and camaraderie can overcome purely self-interested motives. Otherwise, though, this problem is thought to result from an inexorable logic of human behavior; indeed, the theory is sometimes called "the logic of collective action."[8] It purports to predict behavior on the basis of a universal logic of human motivation.

Collective Action in the Polis

The predictions of rational choice theory are betrayed by reality. Even in Nazi concentration camps, where prisoners were murdered for helping others, people often cooperated and sacrificed themselves for others' benefit. Rational choice can't explain the emergence and staying power of large issue-oriented organizations that offer few, if any, selective benefits: environmental groups, antinuclear groups, pro-choice and pro-life groups, antiwar groups, coalitions for the homeless and the hungry, or even trade associations. Rational choice is the logic of markets, where buyers and sellers exist outside the reach of influence, care, cooperation, loyalty, or belief in a common good. If we start instead with a model of the polis, we will see several forces that lead to cooperation and mobilization for collective interests.

First, in the polis, unlike a prison, people don't live in isolation. They have relationships with parents, friends, partners, teachers, bosses, and cultural heroes. These ties create strong mechanisms of influence and moral leadership. In turn, these mechanisms create norms of altruism, reciprocity, cooperation, and ready channels for collective action. People might participate in collective efforts because their parents do, because their friends ask them to join, because someone intimidates or shames them into joining, because their education and socialization taught them to sacrifice for the common good, or because political action groups are a good source of social contact. All these factors serve as forces of mobilization in the polis.

Second, unlike in the prisoner's dilemma, in the polis people can and do talk with each other. The political scientist Elinor Ostrom won the 2009 Nobel Prize in Economics for her life's work based on that simple idea. Given the opportunity to meet face-to-face, people can manage common resources such as forests or fisheries without depleting them through

[8]Mancur Olson, *The Logic of Collective Action* (Cambridge, Mass.: Harvard University Press, 1965).

selfish overuse. They can come up with sophisticated rules for conserving and dividing a common resource, sharing the work of maintaining it, and enforcing compliance. In Nepal, for example, when small local user groups were empowered to manage their local forests, they brought the forests back to health after decades of deforestation under authoritarian regimes.[9]

Third, cooperative efforts generate a kind of perpetual energy that keeps on generating more collective action. Participating in any kind of voluntary organization, even nonpolitical ones like soccer clubs or parent-teacher associations, creates feelings of trust, loyalty, reciprocity, and altruism. Norms of reciprocity, of give-and-take, and responsibility for the well-being of others can overcome the barriers to collective action and encourage civic engagement. If a community has a dense network of voluntary associations, these serve as channels of participation for the collective good. All of these factors create *social capital*, which, like physical assets or material wealth, can be used to harness individual energies for the common good.[10]

Fourth, participation in collective efforts tends to follow the laws of passion rather than the laws of matter. Even though the nominal purpose of any collective effort is to achieve some result, the rewards of participation come as much from participation itself as from achieving the result. Collective action in politics is more like a sports competition than a bargain hunt. One plays to win, and winning gives the game its direction and structure; but one plays even more just to play, and the greater satisfactions come from being in the game. Seen in this light, the costs of collective action such as time and effort *are* its benefits.[11]

Fifth, the Internet and all the various forms of cybertalk dramatically facilitate communication and group action. In the "Arab Spring" of 2011, young urban professionals mobilized social movements against authoritarian regimes using cell phones and social media. Through the Internet, they not only planned demonstrations, they broadcast videos and their own versions of events to gain international coverage and, eventually, outside assistance. Women in Egyptian villages who previously could not

[9]Elinor Ostrom, *Governing the Commons: The Evolution of Institutions of Collective Action* (New York: Cambridge University Press, 1990); George Varughese and Elinor Ostrom, "The Contested Role of Heterogeneity in Collective Action: Some Evidence from Community Forestry in Nepal," *World Development*, vol. 29, no. 5, 2001, pp. 747–65.

[10]Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* (New York: Simon & Schuster, 2000).

[11]For an especially illuminating discussion of this point, see Albert O. Hirschman, *Shifting Involvements: Private Interest and Public Action* (Princeton: Princeton University Press, 1982), pp. 82–91.

have joined political groups without men's permission were able to participate through chat rooms.[12] The Internet sprung the prisoners from this real-world prisoner's dilemma.

Finally, symbols and ambiguity, so prevalent in the polis, can change the way people interpret their interests and defeat the logic of rational choice. Every political goal can be portrayed either as a good to be sought or a bad to be avoided. Striving to develop alternative energy sources is also fighting against pollution. Working for disarmament and better relations with Russia is also working against nuclear destruction. These labels may be flip sides of the same coin, but as symbols, they affect motivation differently because people respond differently to "bads" and "goods." They are far more likely to organize around a threatened or actual loss than around a potential gain, and they will more readily sacrifice and take risks in order to avoid a loss. Taking away something a person already has stimulates strong emotions: anger, resentment, and a sense of injustice. Promising something new can stimulate hopes and desires, but when people have adapted to living with the status quo, hope and desire are weak emotions.[13] Thus, if leaders can portray an issue in a way that emphasizes bads, losses, and costs, they can more effectively harness individual energies for collective purposes.

How Issues and Interests Define Each Other

People respond to policy issues not only according to whether they perceive the impacts as costs or benefits but also by whether they think the policy affects them very strongly or only weakly. Just as they are more likely to organize and fight hard about something they perceive as a loss, they are more likely to organize and fight hard about something that affects them in a big way than about something that affects them only minimally.

James Q. Wilson created a widely used scheme that relates political mobilization to these two dimensions of policy effects.[14] Wilson uses the terms "benefits" and "costs" to describe good and bad effects, and the terms

[12]Michael Slackman, "Bullets Stall Youthful Push for Arab Spring," *New York Times*, March 18, 2011.

[13]For explorations of the relative strength of losses and gains as motivations for political change, see Peter Marris, *Loss and Change* (New York: Pantheon, 1971); and Russell Hardin, *Collective Action* (Baltimore: Johns Hopkins University Press, 1982).

[14]James Q. Wilson, "The Politics of Regulation," in *Social Responsibility and the Business Predicament*, James W. McKie, ed. (Washington, D.C.: Brookings Institution, 1974), pp. 135–68; and "The Politics of Regulation," in *The Politics of Regulation*, James Q. Wilson, ed. (New York: Basic Books, 1980), pp. 357–94.

"concentrated" and "diffused" to describe the intensity or strength of policy effects. Effects are concentrated if they are spread over a small number of people, such as a tax on one type of business, and diffused if they are spread over a large number, such as a general sales tax. The degree of concentration also depends on how much of a person's life is affected. If a policy touches a major portion of people's time or resources, especially their livelihood, its effects are more concentrated than if it touches only a peripheral area of their life (say, a hobby or a minor tax deduction). According to Wilson, diffusion of effects, whether costs or benefits, inhibits political organization, whereas concentration fosters it.

From the two dimensions of policy effects—costs versus benefits and concentration versus diffusion—Wilson derives four types of political contests, shown in Table 10.1. The main point of the scheme is that different combinations of effects create different kinds of political contests. Two of these contests are fairly equal matches—those between two sets of concentrated interests and between two sets of diffused interests. Issues of the concentrated-versus-concentrated type (Box 4) are likely to result in either stalemates or alternating victories for the two sides, since neither side is strong enough to dominate the other. Labor-management relations typifies this

Table 10.1
Types of Political Contests with Examples

	Benefits	
Costs	Diffuse	Concentrated
Diffuse	1. Sales taxes Social Security	2. State-mandated health insurance benefits Climate change in the 1950s New tariffs on imported clothing
Concentrated	3. Food safety regulation No tariffs on imported clothing Social Security cutbacks to balance the budget Climate change after 1988	4. Labor-management bargaining in corporatist systems Social Security cutbacks to lower government spending and taxes Climate change in the 1980s

Note: See text for fuller explanations.

type of contest, especially in countries where union membership is high and unions have strong affiliations with a national political party. Programs of the diffused-versus-diffused type (Box 1) are likely to expand gradually, since elected legislators have every incentive to hand out widely distributed benefits. Why don't legislators have equally powerful incentives to minimize widely distributed costs? Because, first, they need to be seen as doing something for their constituencies. Simply not creating any new costs doesn't make them look active and powerful, whereas creating a new benefit does. And second, they can manipulate the image of these programs by publicizing the benefits and downplaying the costs.

The other two configurations yield unequal contests. Concentrated interests almost always win when pitted against diffused. In the case of concentrated benefits versus diffused costs (Box 2), the group that stands to gain will mount a strong organized effort, while the larger group whose members stand to lose smaller amounts will likely remain passive and unorganized. For example, state legislatures sometimes make laws requiring health insurance policies to cover a particular service—say, acupuncture or infertility treatment. The providers of the services stand to gain an enlarged market of paying customers; their livelihood is at stake. The costs of these mandates are widely dispersed among all the people who pay premiums for health insurance. Therefore, the state association of acupuncturists or infertility clinics will mount a concerted campaign for such a law, while the millions of affected premium payers remain unorganized.

Similarly, with concentrated costs versus diffused benefits (Box 3), an organized opposition to a proposed regulation will easily defeat the hard-to-organize potential gainers. For example, food makers will resist a new regulation prohibiting their use of an unhealthy preservative if the regulation substantially increases their production costs. Food consumers, on the other side, might benefit from a healthier (if shorter-lasting) food product, but probably wouldn't find it worth their while to organize over such a small aspect of their lives.

In practice, the two types of unequal contests (Boxes 2 and 3) are really only one, depending on whether we look at the issue from the vantage point of proposed change or the status quo. Consider tariffs and import quotas on clothing. If domestic clothing manufacturers, a small producer group, are able to get tariffs on foreign-made clothes, they can sell their clothes at higher prices (a boon to their profits) and they can pass the costs on to buyers in pennies per garment. Clothes consumers have little incentive to mobilize, clothes being a small part of their budget, but manufacturers have every reason to lobby hard for the change. This is a situation of concentrated benefits versus diffused costs (Box 2). But we could just as easily interpret

this contest as concentrated costs versus diffused benefits (Box 3). Without tariffs (the status quo), domestic manufacturers bear the relatively high cost of losing market share to foreign imports, while consumers receive the relatively small but widespread benefit of having cheaper clothes. Whether we look at the tariff issue from the vantage point of the status quo or a future policy change, the contest is unequal because one side has a much greater stake in the issue and more incentive to mobilize.

It's tempting to think that the distribution of costs and benefits is inherent in a policy, and that knowing a little bit about a program or proposal should enable someone to map it onto the table and predict which kind of politics it will generate. More often than not, however, a political issue seems to fit into more than one box.

Social Security is usually considered the classic example of a policy with diffuse costs and diffuse benefits (Box 1). The costs (payroll taxes) are spread out over millions of employers and employees, and the benefits (retirement, survivor, and disability payments) go to millions of people. But whenever Republicans try to cut back Social Security benefits in order to lower the deficit, Democrats cast themselves as guardians of the program's needy beneficiaries. In contrast to the nebulous beneficiaries of balanced budgets—all Americans and future generations—the beneficiaries of Social Security are a large group of identifiable people who depend on the program for the bulk of their income, and who can be readily mobilized by AARP (an organization for retirees) and disability rights organizations. Social Security beneficiaries may be a diffuse interest while the program hums steadily along, but in the face of proposals for change, leaders can transform them into a concentrated loser group (Box 3). Now a diffuse interest (people who would benefit from a balanced budget) faces a more concentrated interest (people who would lose their current Social Security benefits). But we're not through watching this issue mutate. Contemporary antigovernment Tea Party leaders focus voters' attention on taxes and try to persuade them that government spending is all costs to them without any benefits. From that perspective, reduced spending and lower taxes look like as concentrated an interest as Social Security. Perhaps it fits in Box 4.

Our ability to move Social Security from one box to another suggests a fundamentally different way of looking at the relationship between problems and politics. *Policy issues don't determine the kind of political contests that occur; instead, politics shapes the way policy issues are portrayed and perceived in the first place.* Problems don't have inherent effects that fall in a predetermined pattern, willy-nilly. Political actors deliberately try to influence how people perceive the effects of policies and proposals.

Manipulating perceptions of costs and benefits is a key strategy of issue framing and mobilizing interests. Seeing interest mobilization and cost-benefit framing as part of the same political process explains why issues seem to move around on the table as they are played out over time.

Let's take one more example of how issues and interests can mutate. As climate change grew from a scientific theory into an international issue, different contests successively took shape on the political stage.[15] In the 1950s, scientists were the most concentrated interest on the issue. Their interest was chiefly in having their research and theoretical speculations taken seriously (their cultural authority) and getting funding for more research (their financial livelihood). Taxpayers are usually a diffuse interest, so it was relatively easy for governments to fund research through existing national science bodies and even create new climate research organizations. The issue could be described as concentrated benefits versus diffuse costs (Box 2).

In the 1970s and 1980s, as research identified specific environmental damages, such as rising sea levels, more frequent hurricanes, flood damage, and species extinction, scientists' interest changed to persuading governments to restrict carbon emissions. Environmental advocacy groups joined the issue. Saving the environment was their raison d'être, so they provided organization, funds, and political passion. To them, the benefits of stopping global warming were concentrated. Meanwhile, oil and coal producers, confronted with possible restrictions, suddenly had a concentrated interest in resisting change. In the U.S., industry leaders mounted campaigns to discredit the science of climate change and to scare politicians and business owners by predicting complete economic collapse if the government were to adopt emissions limits. Now concentrated gainers squared off with concentrated losers (Box 4). But we could also see the contest as one between a concentrated interest in the status quo emissions levels—industry everywhere—and a classic diffuse interest—world citizens who would benefit from emission reductions . . . maybe, sometime in the distant future, hard to get excited about (Box 3).

In 1988, the patterns shifted again as the climate change issue went global and new actors came onstage. The United Nations created an international body of climate science researchers, the Intergovernmental

[15]Judith Layzer, "Climate Change: The Challenges of International Environmental Policy Making," in *The Environmental Case* (Washington, D.C., CQ Press, 3rd ed., 2011), pp. 270–307; Ann Campbell Keller, *Science in Environmental Policy* (Cambridge, Mass.: MIT Press, 2009); and Tom Zeller, Jr., "Negotiators at Climate Talks Face Deep Set of Fault Lines," *New York Times*, Dec. 5, 2009.

Panel on Climate Change, and began sponsoring international conferences. In Toronto, forty-eight nations declared climate change to be a security threat "second only to global nuclear war." National governments now had a concentrated interest in cooperating against a common threat. Very quickly, however, the process of negotiating concrete national emission limits in international meetings in Rio (1992), Kyoto (1997), and Copenhagen (2009) reconcentrated national leaders' interests on their domestic economies and made the international security threat seem diffuse by comparison. Industries in old industrial states, especially the United States, wanted to preserve their economies as is—no limits on us, thank you. National leaders in rising economies, especially China, Brazil, and India, didn't want to be held back by new rules of the industrialization game. Yet, to developing countries, many of which are small island states (e.g., Singapore and Haiti) or have densely settled coastal areas (e.g., most of Africa), rising oceans and rivers pose a security threat made all too familiar by periodic tsunamis and floods.

As the climate change issue makes clear, political actors deliberately portray policy issues in terms of who and how many people benefit in order to mobilize support for and against proposals. Programs don't themselves have inherent distributions of costs and benefits. Rather, political actors strategically represent programs as contests between different types of costs and benefits.

Good Interests versus Bad

Theories of mobilization are part of the larger quest in political science to understand recurring patterns in the contests among interests. Are some types of interests universally stronger than others? We have seen two answers. According to rational choice theory, individual interests that can be fulfilled with individualistic, divisible, material means will always triumph over collective, shared, and nonmaterial interests. According to Wilson's distribution-of-effects theory, the interests of small minorities who are intensely affected by something will dominate the interests of large majorities who are only incidentally affected by something.

In the polis, people are concerned with normative values in addition to power dynamics. They believe some things are right and some are wrong, and they want policy makers to "do right." For political actors, therefore, the normative dimension of issues and interests looms large. Every leader, every group, and every politician wants to be seen on the side of the angels.

Democratic theorists, revolutionaries, and reformers all sketch a contest between good and bad. For them, the good, legitimate, and virtuous interests aren't necessarily the strong ones; in fact, they tend to be the weak ones. Reform is necessary, they say, because the good interests need protection. Government's job is precisely to protect weak but legitimate interests against stronger but less virtuous ones. When Thomas Jefferson declared, "All men are created equal," he meant morally equal, not physically, mentally, or financially equal. A well-designed government should counteract these nonmoral differences in order to render moral equality real—to enable every person to pursue life, liberty, and happiness.[16] Democratic theories differ, of course, in what they identify as the weak and strong interests and in the means they assign to government for protecting the weak. But they share these two key assumptions: that some important, good interests are too weak to flourish on their own, and that one important function of government is to foster these types of interests.

The contest has often been billed as one between strong "special interests" and a weakly defended "public interest." Jimmy Carter, the first modern president to run as an outsider to Washington, decried "a Congress twisted and pulled in every direction by hundreds of well-financed and powerful special interests." Carter's story had the classic heroic plot of all populist political rhetoric: a small, selfish interest has dominated a larger, more virtuous interest, and I am coming to the rescue. Obama stepped right into the role; in his congressional address meant to seize control of health care reform, Obama vowed, "I will not stand by while the special interests use the same old tactics to keep things exactly the way they are."[17]

There are many schemes for classifying the good/weak and bad/strong interests. Table 10.2 lists some other characterizations of this grand political contest. Each pair in the table suggests an unequal political contest. The interests on the right side aren't necessarily bad because they're inherently evil, or even illegitimate, interests. They might be bad simply because they are strong enough to squeeze out other legitimate interests.

[16]There's another reading of the American constitution: it was designed to add government's heft to the numerically smaller property-owning class against the numerically dominant poor and landless. Then as now, the economic elite of which the Founding Fathers were a part saw themselves as the chief virtuous interest. Through their industriousness and inventiveness, the rest of the people would prosper.
[17]Carter speech quoted in Graham Wootton, *Interest Groups: Policy and Politics in America* (Englewood Cliffs, N.J.: Prentice-Hall, 1985), p. 4; Obama speech: "Remarks by the President to a Joint Session of Congress," Sept. 9, 2009.

Table 10.2
Rhetorical Characterizations of Political Contests

Good Weak Interests	*Bad Strong Interests*
Collective	Individualistic
Diffused	Concentrated
Broad	Narrow
Long-term	Short-term
Spiritual	Material
Social	Economic
Public	Special
"The People"	Elites
99%	1%

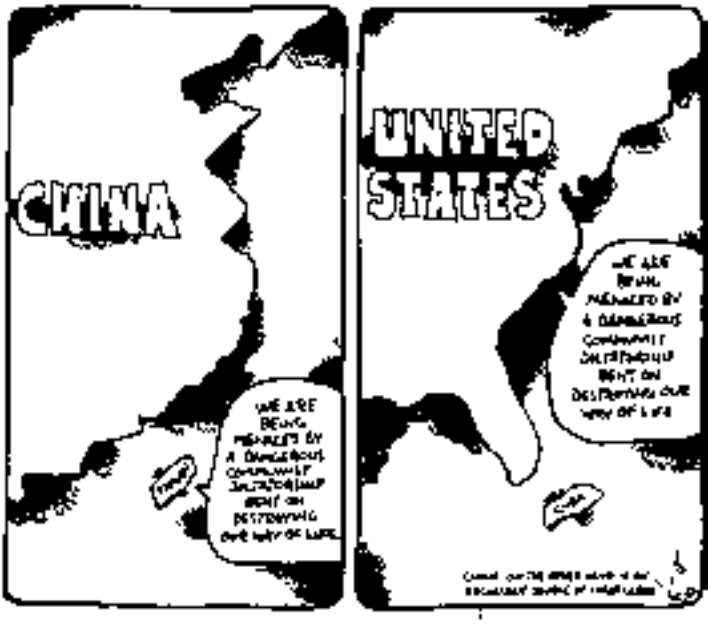
In any political contest, both sides try to amass the most power, but it is always the weaker side, the underdog, who seeks to bring in outside help. In American political culture, where government is viewed as properly a referee among interests rather than a strong power itself, the most important source of outside help is government. Ironically, then, portraying one's own side as weaker becomes strategically useful in order to attract both government support and broad support from as-yet-uninvolved groups who share your values.

To gain the support of powerful groups, it helps to portray your own side as capable of inflicting concentrated costs or delivering concentrated benefits. In the student-led anti-sweatshop campaign against Nike, students were a diffuse and weak group, for whom Nike clothes and shoes were only a small part of their budgets. But as Nike's chief consumers, or market segment, they could credibly threaten the company's market share by tarnishing its moral reputation.[18] The student group thus threatened to deliver a concentrated cost. To take a sweeter example, years ago a coalition seeking to expand Daylight Saving Time made sure that October 31—Halloween—was included in the proposed new period, and then contacted candy manufacturers to join the coalition.[19] By bringing a major candy-selling holiday into the proposed period of Daylight Saving Time, the coalition offered to deliver a concentrated benefit.

For purposes of attracting the support of diffuse, uninvolved bystander groups, it sometimes pays to look like the weaker, public-spirited side,

[18]Pietra Rivoli, *The Travels of a T-Shirt in the Global Economy: An Economist Examines the Markets, Power, and Politics of World Trade* (New York: John Wiley & Sons, 2nd ed., 2009), pp. 125-30.

[19]Arlen J. Large, "Congress Again Tinkers with Daylight Time; Candy Lobby Has a Big Hand in This Clock War," *Wall Street Journal*, July 22, 1985.



someone struggling to do good. Making a particular interest appear to be in the interest of the general public is a classic political strategy. Whenever a powerful corporate interest comes under public criticism, you can expect to see TV spots and full-page ads detailing its contributions to the public good. American pharmaceutical companies have been criticized for their excessively high drug prices. In many of their ads, they portray themselves as humanitarian sponsors of medical research and discoverers of cures, rather than as sellers of medicines.

Beyond asserting that it is on the side of the angels, the chief strategy for an accused "special interest" to appear public-spirited is to disaggregate itself. The alleged special interest shows that it isn't a single political actor with a uniform interest but is actually composed of a large number of ordinary and average citizens. Utility companies fight rate regulation and pollution control by depicting themselves as shareholder companies owned by grandmothers, widows, and hardworking Americans whose pensions and nest eggs would plummet if the regulations went into effect. To stop U.S. agreement to the 1997 Kyoto accords on limiting greenhouse gas emissions, American industry painted a grim scenario of daily life for average Americans families: gasoline prices would shoot up by 50 cents or more; heating and electricity bills would soar; the cost of everything would go up; and thousands of coal miners, autoworkers, and employees

in energy-related fields would lose their livelihoods.[20] Of course, far worse happened to the American family ten years later after the financial crash of 2008, *without* strict emissions controls. Enter the natural gas industry as savior. In 2010, with unemployment rates hovering around 10 percent, a nonprofit arm of the industry mounted an ad campaign touting itself as "an employment and job creation engine." One ad pictured a drilling rig and read, "This is not a drilling rig. It's a factory." The ad and other public relations materials highlighted the benefits of drilling to ordinary people—3 million jobs, and more coming.[21]

One more strategy for portraying an interest as "good" is to transform economic interests into social values. Tariff protection from foreign competition saves jobs, thereby "saving communities." Agricultural price supports and farm loans save a "way of life," not an industry. Sole-source defense contracts, while appearing to provide monopoly guarantees to defense companies, actually build a stable national capacity to make specialized equipment.

In a similar vein, immediate short-term interests can be portrayed as long-run interests. Industry leaders almost always portray government aid as an emergency stabilization measure necessary for more thoroughgoing long-term restructuring. Opponents of spending on social programs portray cutbacks as hurting beneficiaries in the short run in order to help them in the long run. "A hand up, not a handout," in President Clinton's metaphor, promised to change poor people's long-run earning capacity instead of solving their immediate economic crises. When companies announce massive layoffs, the press releases are sure to say that while these cuts are painful, they are necessary for the company's health so that it can continue to employ the remaining workers and eventually recall the others.

Problems are defined in politics to accomplish political goals—to mobilize support for one side in a conflict. To define an issue is to make an assertion about what is at stake and who is affected and, therefore, to define interests and reconfigure alliances. There is no such thing as an apolitical problem definition. In confronting any definition of a policy problem, the astute analyst needs to ask how that definition defines interested parties and stakes, how it allocates the roles of bully and underdog, and how a different definition would change power relations.

[20]Layzer, *The Environmental Case*, op. cit., note 15.

[21]American Clean Skies Foundation, "This is not a drilling rig" ad in *The New Yorker*, Sept. 20, 2010, p. 50.

11

Decisions

For some people, decision making comes easily. "I delegate to good people," George W. Bush said, by way of explaining his decision to veto a popular children's health insurance bill.

> I got a lot of PhD-types and smart people around me who come into the Oval Office and say, "Mr. President, here's what's on my mind." And I listen carefully to their advice. But having gathered the advice, I decide, you know, I say, "This is what we're going to do." And it's, "Yes, sir, Mr. President." And then we get after it, implement policy.[1]

For other people, decision making is full of uncertainty and angst. President Warren Harding (1921–23) was one of the latter. "I listen to one side and they seem right, and then I talk to the other side, and they seem just as right, and there I am where I started . . . God, what a job!"[2]

Whether you feel more like Bush or Harding, no doubt you have wrestled with difficult decisions. No doubt, too, you have used many of the decision-making methods known to humankind: habit, social custom, impulse, intuition, procrastination, and avoidance; cogitation, delegation, advice-seeking, and prayer for guidance; consensus, bargaining, mediation, voting, or chance. One major goal of public policy as a field of study is to help people make good policy decisions. And arguably, the hallmark of contemporary policy analysis is its faith in rational methods of decision making.

[1]Sheryl Gay Stolberg and Carl Hulse, "Bush Vetoes Health Bill Privately, Without Fanfare," *New York Times*, Oct. 4, 2007, p. A17; Deb Riechmann, "Bush: 'I Make a Lot of Decisions,'" *Huffington Post*, Oct. 3, 2007, available at huffingtonpost.com/huff-wires/20071003/bush-unplugged/.

[2]Quoted in Emmet John Hughes, *The Living Presidency* (New York: Coward, McGann & Geohegan, Inc., 1973), p. 135.

Rational Decision Making

In the rationality model, problems are cast as a choice between alternative means for achieving a goal. Rationality means choosing the best means to attain any goal. You probably recognize its similarity to the concept of efficiency (Chapter 3). Both ideals are rooted in the utilitarian tradition, or what is sometimes called means-ends thinking. Utilitarianism as a way of thinking about public policy started in the nineteenth century and became the dominant way in the mid-twentieth century.

The rational decision model portrays a policy problem as a *choice* facing a political actor. The actor then goes through a sequence of mental operations to arrive at a decision.[3] These steps are:

1. defining a goal,
2. imagining alternative means for attaining the goal,
3. evaluating the likely consequences of pursuing each alternative, and
4. choosing the alternative most likely to attain the goal.

The rational decision model doesn't deal explicitly with steps 1 and 2. It assumes the actor already has goals and knows what they are. By contrast, theories of political interests focus on exactly this question of where people get their goals. Nor does the model ask where the alternatives come from or who promotes and opposes them. Instead, the model zooms in on step 3, assessing consequences of policy proposals. The essence of rational decision making is to tally up the consequences of different alternatives and choose the one that yields the best results. "Best" usually includes the idea of "least costly" as well as best outcomes.

The decision in step 4 is made on the basis of a single criterion—*maximum total welfare*. Sometimes the criterion is called "well-being," "utility," or "benefit," but the idea is the same: The decision maker should choose the alternative that maximizes overall welfare. If the decision maker is an individual, he should decide according to which alternative will maximize overall personal welfare. If the decision maker is an agent for an organization, a leader, or a policy maker, then she should maximize the overall welfare of the entity in question. Even though a decision might be very complicated and involve many factors, all considerations

[3]A lively, enjoyable text on rational decision making is Robert Behn and James Vaupel, *Quick Analysis for Busy Decision Makers* (New York: Basic Books, 1982).

must be translated into a single scale or common denominator in order to yield a single measure of total welfare.

One form of this rational decision model, *cost-benefit analysis*, has become the signature method of policy analysis. It consists in tallying the negative and positive consequences of an action (step 3) to see whether, on balance, the action will lead to a gain or a loss. The decision in step 4 is then made according to a single criterion or rule: take the action if its benefits outweigh its costs. Thus, cost-benefit analysis connects steps 3 and 4.

The federal government first began to use cost-benefit analysis for assessing whether to implement public water projects. The Flood Control Act of 1936 required the Army Corps of Engineers to demonstrate that the benefits of any proposed project would outweigh its costs. Now, cost-benefit analysis is used primarily to help decide about major public expenditures, such as infrastructure projects or public health screening and vaccination campaigns. However, starting with President Ronald Reagan, who sought to reduce the size and scope of government, politicians have increasingly required that proposed regulations and legislation pass a cost-benefit test in order to be implemented.

Making Decisions in the Polis

Decision making in the polis differs in many ways from the rational model. The rational model ignores or neglects some of the most important modes of thinking and techniques that political leaders use to structure their decision making and to gather political support for their policy choices.

The rational decision model is itself a form of dramatic story. It asks us to identify with a protagonist—the decision maker—who is poised on the brink of a dilemma. Confusion and a sense of urgency, epitomized in President Harding's lament, give the story its emotional impetus. The hero is a policy analyst, someone like President Bush's "PhD-types and smart people," armed with rational decision models. Rational analysis offers a compelling resolution to the befuddled decision maker. It cuts through confusion, reducing heaps of information to a manageable amount. It provides a simple decision rule, a single criterion of "maximizing something good." Most of all, the rational decision model offers *determinateness*, the promise that if you go through the process of analysis, you will get a definite answer. Even if what you find is equivalence—say, that two programs have exactly the same cost-benefit ratio—at least you know definitively that it doesn't matter which one you choose.

Behind the technical methods of rational decision analysis, then, are hidden storylines. The method promises to help individuals work through difficult decisions and find the right answer. The method also bolsters politicians' authority. By saying they relied on objective analytical methods, politicians convey that their decisions weren't political and that they didn't just favor their allies. These hidden stories explain a large part of the political appeal of cost-benefit and other rational decision techniques as a way to define problems.

Like the other modes of problem definition we have examined in this section, rational decision models are partly persuasive techniques mounted by people with stakes in the outcome. By recognizing these techniques and understanding how rational decision models differ from decision making in the polis, you can bring political intelligence to your own policy analysis.

Defining Goals

In the rational model, analysts take policy actors' stated objectives at face value and use them as the yardstick by which to evaluate policy alternatives. Explicit goals are a sine qua non of the model. If decision makers don't articulate goals precisely enough to measure whether they have been achieved, or if they change their minds about their goals, there can't be stable standards for judging effectiveness of proposed alternatives. Explicitness and precision about goals are therefore not only virtues but also necessities in the rational model.

In the polis, by contrast, statements of goals are more than wishes and intentions; they are also means of gathering political support. Political actors state goals as inspirational visions of a future, hoping to enlist the aid of others in bringing it about. For this purpose, ambiguity is often far better suited than explicitness and precision. Recall some of the functions of ambiguity in politics: By labeling goals vaguely and ambiguously, leaders can draw support from different groups who otherwise might disagree on specifics. Ambiguity can unite people who might benefit from the same policy but for different reasons. Vague goals in statutes allow legislators to vote for a law and shunt the conflicts to an administrative agency for interpretation and implementation.

Being ambiguous about one's intentions leaves a policy maker wiggle room in the future and can help manage political relationships. Alan Greenspan, longtime chairman of the Federal Reserve, was famous for keeping the Fed's actions secret until the last minute. At one point, after a speech in which he gave away nothing except to intimate that the Fed might either raise or lower the interest rate, he quipped to reporters, "I worry incessantly that I might be too clear." By not leaking which way he was leaning, he would maximize the dramatic impact of the announcement. There was yet another reason for Greenspan to be unclear. He was facing a meeting of his monetary policy committee in a few weeks, and if he announced his policy intention in advance, he would put the committee members in a bind: either they could go along with him and feel like rubber stamps, or they could recommend a different policy but be seen as undermining their chairman. Thus, being ambiguous also helped Greenspan deal with the internal politics of his organization.[4]

Selecting Alternatives

The rational decision model doesn't give much thought to how policy alternatives come into consideration, though this is probably the most creative part of policy making. The model tells you how to analyze the likely outcomes of a policy proposal to decide whether the proposal is worth doing, but not how to dream up ideas in the first place and whether to put them on your short list.

Constructing a list of possible alternative solutions to a policy problem is one of the most important techniques of *issue framing*. A frame is a boundary that cuts off parts of something from our view while focusing

[4]Keith Bradsher, "Fed Sees Signs of Weakness in Robust Economy," *New York Times*, June 22, 1995.

our attention on other parts. Framing an issue means "to select some aspects of perceived reality and make them more salient [important or visible] . . . in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation."[5] In the polis, controlling the number and kinds of alternatives on the table is one of the most important techniques of issue framing. Keeping things off the agenda is as much a form of power as getting them on.[6] If an alternative doesn't float to the surface and appear on the list of possibilities, it can't be selected; to keep it off is effectively to defeat it. In fact, keeping an alternative from explicit consideration is even better than defeating it, because an alternative that remains unarticulated, unnamed, and unexamined doesn't lurk around as the focus of discontent and hope.

The selection of alternatives for a decision depends a great deal on conceptions of causation. Political creatures are always maneuvering to locate the blame somewhere else and to find solutions that either put the costs on other people or require their own services (well compensated, of course), or both. Since causal chains are virtually infinite, there is potentially a wide range of choice about where to locate the blame, and, correspondingly, about what type of corrective steps to take. The "drunk driving problem" (to repeat an example from Chapter 9, "Causes") can be seen as caused by irresponsible drivers, un-crash-worthy cars, poorly designed roads, insufficient ambulance and medical facilities, irresponsible tavern owners, or overzealous advertising by the beverage industry. A set of cultural assumptions, perhaps bolstered by promotional activities of the auto and beverage industries, prevents consideration of anything but the driver as the source of the problem. The usual list of solutions—driver education programs, stiff penalties, better enforcement—therefore excludes all the alternatives directed at other conceptions of cause. Hence, focusing attention on a particular slice of an extended causal chain is a technique of issue framing.

Another part of strategy in the polis is to make one's preferred outcome appear as the only possible alternative. For this purpose, construction of the list is crucial, because an alternative is judged by the company it keeps. By surrounding the preferred alternative with other, less attractive ones, a politician can make it seem like the only possible recourse.

[5]Robert Entman, "Framing: Toward Clarification of a Fractured Paradigm," *Journal of Communication*, vol. 43, no. 4 (1993), pp. 51–8.

[6]The classic political science essay on this point is Peter Bachrach and Morton Baratz, "Two Faces of Power," *American Political Science Review* 56 (1962), pp. 947–52.

This strategy is so pervasive in social life that it has a name in rhetoric: Hobson's choice.[7] The author, speaker, or politician offers the audience an apparent choice, wearing all the verbal clothing of a real choice, when in fact the very list of options determines how people will choose by making one option seem like the only acceptable possibility. Thus, for example, Milton Friedman tells us in *Capitalism and Freedom*, his hugely influential paean to free markets:

> Fundamentally, there are only two ways of coordinating the economic activities of millions. One is central direction involving the use of coercion—the technique of the army and of the modern totalitarian state. The other is voluntary cooperation of individuals—the technique of the market place.[8]

In fact, all states employ some combination of market exchanges and government rules and incentives. But once the audience accepts the structure of a Hobson's choice—that the alternatives presented are the only ones (cooperation and coercion), and that they have the qualities the author imparts to them ("voluntary" versus "totalitarian")—then it is stuck with the offerer's preferred alternative.

Hobson's choice can become a fairly elaborate strategy of argument. It is the underlying structure of James Madison's classic essay "Federalist Paper No. 10," in which Madison purported to demonstrate that federal government in a large republic is the best method for controlling factions and therefore the best design for a new American constitution:

> There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects. There are again two methods of removing the causes of faction: the one by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, same passions, and the same interests.[9]

Here, Madison suggests that to eliminate factional conflict, government would have to eliminate freedom of speech and association (liberty), or would have to engage in a kind of brainwashing ("give every citizen the same opinions . . ."). The essay goes on in this vein, leading us like sheep

[7]This name comes from Thomas Hobson, a seventeenth-century liveryman in Cambridge, England, who rented out horses but required each customer to take the one nearest the door, instead of giving them a choice.

[8]Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962), p. 13.

[9]James Madison, "The Federalist Paper No. 10," in Alexander Hamilton, James Madison, and John Jay, *The Federalist* (orig. 1787).

through a series of carefully controlled two-part choices, some of which are "obviously" unacceptable. (Here, both ways of removing the causes of factions are bad, so we must choose to curb the effects.)

The strategy of Hobson's choice is used not only to gain support for a policy alternative beforehand but also to gain legitimacy for actions already taken. In 2011, during the protests in Libya, the Obama administration decided to participate in a multilateral intervention against Colonel Muammar el-Qadaffi's dictatorial regime. Knowing the decision was highly controversial, Obama presented it as a Hobson's choice: "I want the American people to know that the use of force is not our first choice, and it's not a choice that I make lightly. But we can't stand idly by when a tyrant tells his people that there will be no mercy." As between using force, with all its risks, and permitting a merciless tyrant, Obama was saying there was only one acceptable choice.[10]

In the rational decision model, the image of a list of alternatives implies that all the items on the list have equal standing until the analysis proves one superior. In the polis, a list of alternatives is sometimes a carefully constructed Hobson's choice, where one alternative is embedded among others that are all portrayed as negatively as possible. By the time a problem has become formulated as a decision in politics, a lot has already been ruled out. Whether you are wearing your citizen hat or your analyst hat, be on the lookout for Hobson's choices. Whenever you are presented with an either-or choice, you should be tipped off to a trap. You can disengage it by imagining different alternatives other than those presented (there are always more), and by giving new attributes to the ones presented (always keep a bag of adjectives handy to try on for size).

Controlling the Political Meanings of Alternatives

Labeling or naming alternatives is another important framing technique. It is no accident that Milton Friedman chose the names "voluntary cooperation" and "coercion" for his two alternatives, instead of, say, "cut-throat competition" and "public regulation," or that he further controlled our emotional responses by appending the labels "totalitarian," "army," and "free market." We expect this kind of loaded writing in political treatises, but the rational model theoretically rises above verbal trickery. Ideally, the verbal labels attached to different alternatives shouldn't affect their evaluation. Alternatives are actions that have objective consequences, and

[10]Quoted in David D. Kirkpatrick, Steven Erlanger, and Elisabeth Bumiller, "Allies Open Assault on Qaddafi's Forces in Libya," *New York Times*, Mar. 20, 2011.

it is the measure of those consequences that counts in the final decision, not the decision maker's emotional responses to names.

In the polis, of course, language does matter. Try this mental experiment.[11] Suppose a serious flu epidemic is expected to kill 600 people. The government is considering two possible vaccination programs. Program A would use a conventional vaccine that can be counted on to save 200 people. Program B would use an experimental vaccine that has a 1/3 chance of saving 600 people but a 2/3 chance of being totally ineffective and saving none. You are the surgeon general of the United States. Which would you choose?

Now suppose you're considering a choice between two other programs. Program C would use a conventional vaccine that we know from past experience will result in the death of 400 people. Program D, using an experimental vaccine, would offer a 1/3 chance that no one will die and a 2/3 chance that all 600 would die. Which of these would you choose?

If you're like most people, you chose Program A in the first problem and Program D in the second. In terms of rational decision theory, the choices are structurally identical. They offer the same probabilities of the same outcomes. The first options (A and C) will have as their result 400 people dying from the flu. The second options (B and D) are gambles whose expected values are 400 deaths.[12] Both dilemmas, therefore, offer a choice between a certain outcome of 400 deaths and a gamble with an expected value of 400 deaths. Most people choose the certain outcome when the alternatives are labeled as "lives saved" but the gamble when the alternatives are labeled as "deaths." In the rational model of decision making, the switch most people make from the certain option to the gamble when the labels are changed is thoroughly irrational.

If you have always counted yourself among the rational, you will no doubt want to think about why you switched your preference (if you did). Psychologists believe the labels create different points of reference against which people evaluate alternatives. In the flu vaccination program, labeling the outcomes as "people saved" creates as a reference point a situation in which 600 lives are already doomed; to choose the gamble seems like standing around doing nothing when you could be rescuing 200 people. The label "people die" suggests a starting point where the

[11]The experiment comes from Daniel Kahneman and Amos Tversky, "The Psychology of Preferences," *Scientific American* 286 (January 1982), pp. 160–73.

[12]Expected value means the magnitude of an outcome multiplied by its probability of occurring. In this case, a 2/3 chance that 600 people will die equals an expected value of 400 deaths. For a refresher on the concept of expected value, see Chapter 6, "Security."

same 600 people are very much alive, and to shun the gamble seems tantamount to sentencing 400 of them to death.

The way we think about problems is extremely sensitive to the language used to describe them. Many scholars believe that such framing effects of language distort rational thinking. A purely rational decision should be based on the objective consequences of actions, purified of the poetic impact of words. As the authors of the flu vaccine experiment put it, human "susceptibility to the vagaries of framing" creates "impediments to the achievement of rational decision." Reflecting on the experiment, they weren't sure whether the effects of framing "should be treated as errors or biases or whether they should be accepted as valid elements of human experience."[13] But after three decades of research in cognitive psychology, we now accept and understand much more about how metaphors, analogies, and mental associations influence decisions.

Changes in wording can dramatically alter how citizens evaluate policy alternatives. In the depth of recession in 2009, a majority of Americans (53 percent) approved of "the expansion of the government's role in the economy." But when asked their assessment of Obama's proposals, public opinion flipped depending on whether his proposals were characterized as "expansion of government *power*" or as "expansion of government *spending*." Fifty-six percent thought Obama's proposals called for the right amount or not enough expansion of government *power*; when asked about spending, 55 percent thought Obama's proposals called for too much.[14] In surveys about government's role in poverty alleviation, the mere word "welfare" acts like a poison pill. Questions that mention "welfare" reduce public support for such programs by almost 40 percentage points compared with questions that use the phrases "assistance to the poor" or "caring for the poor."[15]

The power of language to influence the way we see policy choices points to yet another strategic function of ambiguity in the polis. In the rational model, the analyst assumes that the decision maker must choose one alternative. She can't have her chocolate cake and eat it, too. To be sure, a smart analyst might suggest cobbling together the best parts of two or three alternatives, and demonstrate why such a blended policy would be superior. But in politics, ambiguity works a kind of magic that allows

[13]Kahneman and Tversky, "Psychology of Preferences," op. cit., note 11, p. 173.

[14]Frank Newport, "Americans OK With Short-Term Government Growth," Apr. 29, 2009, available at gallup.com/poll/117523/Americans-Short-Term-Growth.aspx.

[15]Tom W. Smith, "That Which We Call Welfare by Any Other Name Would Smell Sweeter: An Analysis of the Impact of Question Wording on Response Patterns," *Public Opinion Quarterly*, vol. 51, no. 1 (1987), pp. 75–83.

political actors to do two incompatible things at once. Symbolic meanings can combine and reconcile seemingly contradictory alternatives and thereby make possible a new range of options. Here are two examples of how policy makers were able to transform apparently "either-or" choices into "both-and" decisions.

American leaders have been pulled in two directions by the 1997 Ottawa Treaty, which prohibits anti-personnel land mines. Humanitarian groups deplore the injuries and deaths that unexploded mines cause to innocent civilians, and want the U.S. to sign the treaty. The Pentagon strenuously opposes the treaty, because without the deterrent effect of mines, more American soldiers would be injured and killed. Neither presidents Clinton nor Bush signed the treaty, and in 2009, under strong pressure from the Pentagon, Obama declined to sign as well. Immediately after Obama's announcement, his administration was faced with overwhelming pressure from Congress, humanitarian activists, and the 158 countries that had signed—including our NATO allies—to reconsider its decision. In response, the administration announced it would hold a "policy review" to consider an option that was neither signing or not signing. Instead, the U.S. might "pledge" to abide by the treaty provisions, earning credit with the humanitarian side, without actually signing the treaty, thereby mollifying the Pentagon and leaving lots of room for military leaders to ignore the pledge outside public scrutiny. Nothing ever came of the policy review, but merely announcing it gave the impression that the administration was reconsidering—a sort of decision in itself.[16]

The Food and Drug Administration (FDA) must often decide whether to approve new drugs that prevent or mitigate serious illnesses but also have serious side effects. Should the FDA approve such a drug or not? On the side of approval stand patient groups, who are desperate for help, and the drug's manufacturer, which is keen to recoup its sizeable research investment and ultimately earn a profit. On the side of nonapproval stand some physician groups, whose ethical lodestone is "First, do no harm," and public-interest advocacy groups, whose experts believe the drug's benefits are unproven and who condemn what they see as dangerous experiments on the public. The FDA has ways of acting that don't force it to decide between approving or not approving a drug. It can approve a drug but require that it be sold with safety warnings and disclosures of potential harms. Also, it can approve a drug only to treat a specific disease for which it has been proven safe and effective. Once a

[16]Mark Landler, "White House Is Being Pressed to Reverse Course and Join Land Mine Ban," *New York Times*, May 8, 2010.

drug has been approved for any purpose, doctors can prescribe it for "off-label" uses, and patients can hunt for doctors willing to prescribe it for them. Both of these strategies enable the FDA to placate both sides by making a decision that isn't all-or-nothing.

In the polis, policy makers are often as concerned about how policy alternatives will be *perceived* as they are about the practical outcomes. In fact, in the polis, how different audiences interpret a decision *are* part of its outcome. For example, in deciding whether to participate in the Libya intervention in 2011, the possible appearances and interpretations of military action weighed heavily in the Obama administration's calculus. Leaders knew that the meaning of any intervention was open to several interpretations. On the one hand, America claimed to stand for democracy, civil rights, and human rights. Intervention could enhance America's image in the Muslim world by supporting the Libyan protesters and putting its might behind Arab struggles for democracy. On the other hand, the United States needed Middle Eastern oil and had for a long time supported other Middle Eastern dictators in order to keep oil supplies forthcoming. U.S. military intervention in Libya might be perceived by its Middle Eastern allies as a threat, and might appear to the Muslim world as another American attack on a Muslim country.

The Libya decision illustrates another difference between decision making in the rational model and the polis. In the rational model, a decision maker faces a choice between clear, predefined alternatives. In the polis, a decision maker actively designs and presents alternatives to control how a decision will be interpreted. Before deciding about Libya, key administration officials took pains to structure the intervention alternative to create the right appearances, and only then did Obama authorize U.S. participation. First, Secretary of State Hillary Clinton obtained agreement from several Arab leaders to undertake military action against Libya, so the intervention could be portrayed as Arab-led. Second, U.N. Representative Susan Rice pushed the U.N. Security Council to vote for a military intervention, so an intervention would appear multilateral. In presenting the decision publicly, Obama emphasized that the U.S. was only one participant in an international coalition, and that its role would be limited to air support with absolutely no troops on the ground.[17]

[17]Mark Landler and Helene Cooper, "Obama Seeks a Course of Pragmatism in the Middle East," *New York Times*, March 11, 2011; Dan Bilefsky and Mark Landler, "U.N. Approves Airstrikes to Halt Attacks by Qadaffi Forces," *New York Times*, March 18, 2011; Helene Cooper and Steven Lee Myers, "Obama Takes Hard Line with Libya After Shift by Clinton," *New York Times*, Mar. 19, 2011.

Decision-Analysis Strategies of Problem Definition

Rational-Analytic Model	*Polis Model*
1. State goals explicitly and precisely.	State goals ambiguously, and possibly keep some goals secret or hidden.
2. Adhere to the same goal throughout the analysis and decision-making process.	Be prepared to shift goals and redefine goals as political conditions change.
3. Try to imagine and consider as many alternatives as possible.	Keep undesirable alternatives off the agenda by not mentioning them.
	Make your preferred alternative appear to be the only feasible or possible one.
	Focus on one part of the causal chain and ignore others that would require politically difficult or costly policy actions.
4. Define each alternative clearly as a distinct course of action.	Use rhetorical devices to blend alternatives; don't appear to make a clear decision that could trigger strong opposition.
5. Evaluate the costs and benefits of each course of action as accurately and completely as possible.	Select from the infinite range of consequences only those whose costs and benefits will make your preferred course of action look best.
6. Choose the course of action that will maximize total welfare as defined by your objective.	Choose the course of action that hurts powerful constituents the least, but portray your decision as creating maximum social good for a broad public.

A political analysis of any policy decision must examine the list of alternatives before getting down to measuring their likely results, costs, and benefits. Maybe the alternatives have been presented in a way that makes the decision a foregone conclusion. Maybe important options have been left off the agenda. Maybe—for better or for worse—there is an

option that enables the decision maker to satisfy both sides, or, at least, not make a hardened enemy of one. Evaluating different options should include how the options are and could be *characterized* and what they represent—or might represent—symbolically, as well as practically.

Evaluating Policy Alternatives with Cost-Benefit Analysis

You have probably used cost-benefit analysis in your own decisions, if not in a formal quantitative way, at least by listing the "pluses" and "minuses" of an action you were considering. The only difference between your list of pluses and minuses and formal cost-benefit analysis done by policy analysts is that the analysts add numbers to theirs. For every plus and minus listed, they think of a way to measure it. And while you might be satisfied with an intuitive feel from your list as to whether the action is "worth it," formal analysts force themselves to measure all the consequences in the same terms so that the measures can be added up. The analyst is a stickler for arithmetic.

In cost-benefit analysis, outcomes are typically measured in dollars, since the impetus for the analysis is usually the puzzle of how best to spend money. Cost-benefit analysis is used to answer such questions as, "Is it worth investing in a major international campaign to reduce AIDS?" or "Is a municipal recycling program worth doing?" An analysis would tally the dollar costs and benefits of the program and give an answer.

In the polis, important consequences of an action are often intangibles and hard to define, let alone measure. Depending on the proposal, intangible costs might be accidental deaths, adverse health effects, damaged political reputations, urban decline, or loss of a wilderness area. Intangible benefits might be psychological security from safety measures, enhanced political credibility, urban revitalization, species diversity, or spiritual nourishment from the landscape. Economists have gone to great lengths to measure some intangible factors, using a technique called "willingness to pay." For example, in health policy, we might want to measure the value of additional length of life that could be obtained from a very expensive anti-cancer drug. Willingness-to-pay surveys ask people how much they would pay for an extra year, thus putting a dollar value on the policy output (a year of life) that can be compared with the cost of the drug. Measuring intangible values may create as many problems as it solves, however. Willingness-to-pay measures are strongly influenced by people's economic circumstances. Moreover, it's not clear whether people's responses to such questions represent careful thought or are off-the-cuff answers.

Often, intangible factors are omitted from cost-benefit analyses for lack of a convincing way to measure them; in fact, one major criticism of the method is that it subtly pressures analysts to ignore what they can't count. At the other extreme, analysts sometimes force the intangible elements into the procrustean bed of the analysis. In order to assess the benefits of reducing disease and death due to global warming, one group of analysts calculated the dollar value of a human life as a person's potential lifetime earnings. Since average earnings are far greater in developed countries than in developing, this made American, Canadian, and European lives far more valuable than Mexican, Chinese, or Brazilian lives—a morally questionable result, to say the least. And because global warming is expected to cause the greatest damages in developing countries, addressing global warming didn't produce a very high benefit-to-cost ratio.[18]

Another problem with cost-benefit analysis is the tendency for analysts to take their measures of costs and benefits from the economic status quo. Take a moment to read "Moving Mountains," the story of two doctors who made a public health revolution of this idea.

Cost-benefit analysis has to take its prices from somewhere, and analysts almost always take them from current market values. Market prices are determined by existing political and institutional arrangements. As Dr. Paul Farmer and Dr. Jim Yong Kim learned, the method has a built-in conservative bias. The lesson: Instead of taking prices as a given, policy reformers should analyze the forces that create prices and sometimes put their efforts into changing prices by changing the power relations that set them.

Besides market arrangements, the way a society pays for a program can affect a decision about its worth. Try another thought experiment. You lost your job as surgeon general but managed to be confirmed secretary of health. You have to decide whether Medicare and Medicaid should cover hip replacements. The procedure is fairly expensive (about $20,000 per patient) and is something that's done mostly for people over age 65. If you think of funding the operations by taking small amounts of money from everyone who pays taxes, the costs appear small and the action (restoring people's mobility and quality of life) might appear very worthwhile. Now imagine that the payment system works differently. Under congressional budget rules, any increase in one program must be financed by a corresponding decrease in some other program. You have to raise the money for each hip

[18]This example and critique comes from Eric A. Davidson, *You Can't Eat GNP: Economics As If Ecology Mattered* (Cambridge, Mass.: Perseus Books, 2000), pp. 41–42.

Moving Mountains

When Dr. Paul Farmer and Dr. Jim Yong Kim tried to interest the World Health Organization in funding public health campaigns against multi-drug-resistant tuberculosis, or MDR-TB as the disease is nicknamed, they learned that WHO deemed treating the disease in developing countries as not cost-effective. Indeed, it cost about $15,000 per person to treat MDR-TB. Treating the simpler forms of TB that respond to standard antibiotics was much cheaper. And so, in the deadly jargon of policy analysis, WHO had declared: "In settings of resource constraint [read: poor countries], it is necessary for rational resource allocation to prioritise TB treatment categories according to the cost-effectiveness of treatment of each category." In other words, doctors like Farmer and Kim were supposed to ignore patients with MDR-TB, because they could cure more people by putting all their resources into treating those with ordinary TB.

Farmer and Kim were incensed by the way cost-effectiveness analysis "rationalized an irrational status quo: MDR-TB treatment was cost-effective in a place like New York, but not in a place like Peru." Though it was hard to raise money without WHO's approval, they went ahead treating a small number of patients, begging and borrowing the money and drugs. They noticed that one of the drugs cost them $29.90 a vial at their own hospital in Boston, $21.00 a vial in Peru, and only $8.80 per vial in Paris. When their Paris supplier suddenly refused to sell them any more drugs, a light bulb went on: The price of drugs is set by the pharmaceutical manufacturers, and they set radically different prices for different markets. The cost of treating MDR-TB wasn't fixed, and the conclusion of WHO's cost-effectiveness analysis was merely an artifact of manufacturers' pricing policies.

Farmer and Kim went to work to change the price. They persuaded Eli Lily, which held the patent on one of the most effective drugs, to donate large amounts of its drug, and they talked other manufacturers into lowering their prices. Suddenly, the cost of curing a case of drug-resistant TB plummeted from $15,000 a year to $1500 a year, and cure rates were very high. Not content to get a few companies to lower prices for small quantities of drugs, they set about trying to change the entire system of supply and demand. In order to stimulate production of large quantities of MDR-TB drugs at lower cost, they had to show that there was a demand for them—meaning that a lot of TB projects would use (and buy) them. So, they joined forces with other nonprofit organizations to persuade smaller drug companies to make generic versions.

Quotations from and story based on Tracy Kidder, *Mountains Beyond Mountains: The Quest of Dr. Paul Farmer, A Man Who Would Cure the World* (New York: Random House, 2003).

replacement by taking several thousand dollars from another public health program—say, free vaccinations for poor children. Each time you authorize a hip replacement, a vaccination program has to shut down for a month. The decision undoubtedly looks different. The cost of the medical procedure is the same in the two cases, but how we pay for it, or even imagine paying for it, influences how we evaluate its worth. Perhaps you'll decide to pay for lots of hip replacements because seniors vote in droves; children and poor mothers aren't kingmakers. Or perhaps you'll decide to stint on hip replacements because your moral commitments tell you to give children a better shot at long and healthy lives.

In the polis, there is yet another critical aspect of strategy: deciding which consequences to include in the analysis in the first place. Finding the consequences of an action is like finding the causes in reverse. Every action has infinite consequences, so there is no natural or correct place to draw the line. Selecting which ones to include is both arbitrary and strategic. The clever analyst can throw the decision one way by including enough negative consequences to outweigh the positive ones, or throw it the other way by including more positive consequences.

For example, a program to treat HIV-positive children in developing countries can be made to look highly cost-effective if one counts as a benefit the number of lives saved. (OK, to value these lives, we'll use the median earnings for all countries so as not to fall into the same trap as the global warming study.) But now, count as costs all the schooling and medical expenses of the children "saved," and the program appears to generate fewer benefits. Add in their children's schooling and medical care costs—children they wouldn't have had if they had died without the treatment—and these beneficiaries of our policy become burdens on the public treasury. Now, count as program benefits the taxes paid by the people we rescued and their contributions to development as teachers, engineers, and health workers. The program begins to look better. Once again, if you understand how malleable cost-benefit analysis can be, you can more effectively critique other analyses and construct analyses that will support your political goals. And you can step outside the entire framework by asking yourself, "What's the right thing to do?"

Ethical Decisions

President Harry Truman thought he made the right decision to drop atomic bombs on Hiroshima and Nagasaki. For all the horrors, the bombings had shortened the war, thereby averting millions of deaths and

incalculable destruction. Elizabeth Anscomb, who later became a major philosopher, was a student in her twenties when she wrote a pamphlet condemning Truman's decision: "For men to choose to kill the innocent as a means to their ends is always murder. . . . If you had to choose between boiling one baby and letting some frightful disaster befall a thousand people—or a million people, if a thousand is not enough—what would you do?"[19]

With one pointed question, Anscomb raised the central challenge to utilitarian philosophy and the rational decision models it spawned. Sometimes, consequences aren't all that matter.[20] Sometimes, people decide on the basis of strongly held principles rather than on any calculation of net benefits. These two ways of deciding correspond to two grand traditions in moral philosophy. Utilitarianism says we should judge actions by their results. Deontological theories of morality, by contrast, say we should judge actions by whether they correspond to enduring principles of rightness.[21] What those principles are, where they come from, and how we find out what they are—those are questions that have been debated for millennia. Yet, even without any universal agreement or clear formulas for moral behavior, people sometimes think in terms of duties and obligations, right and wrong, and moral absolutes. You use deontological morality every time you say, "It's wrong to lie, to steal, to murder," or "It's your duty to uphold your promises, help an injured stranger, or fight for your country." I'm not saying that you believe any of those things, only that most people hold some principles about right and wrong.

Under George W. Bush, the U.S. government acknowledged that it used interrogation techniques commonly recognized as torture, although government officials denied that they authorized torture. Ever since, there has been vigorous public debate in the U.S. over whether torture is justified. Should a government ever decide to use torture? If so, what would be legitimate reasons? If not, why not?

The major argument for using torture rests on cost-benefit analysis of a story known as the ticking time bomb scenario. We (the heroes) have captured a man (the villain) who has planted a bomb set to kill thousands (the innocent victims). Should we torture the man if that is the only way to get him to divulge the bomb's location in time to defuse it or evacuate the area? The simple calculus of the argument totes up the costs and

[19]James Rachels, *The Elements of Moral Philosophy* (Boston: McGraw Hill, 4th ed. 2003), pp. 118–19.

[20]See Steven Kelman, "Cost-Benefit Analysis: An Ethical Critique," *Regulation*, Jan./Feb. 1981: 33–40.

[21]For a good introduction, see Rachels, *The Elements of Moral Philosophy*, op. cit., note 19.

benefits. The costs are severe physical and mental harms to the captive and his family. The benefits are the lives of all who would be killed by the bomb. Both choices—don't torture or torture—would yield bad outcomes, but torturing one man is the lesser of two evils. It yields the least harm. In such a situation of one-versus-many, the numbers give a clear answer. Agreed, I have made the argument sound disarmingly simple, but this simple weighing of numbers *is* the essence of utilitarian reasoning.

Proponents of the utilitarian argument for torture make it more subtle and add restrictions. For example, Alan Dershowitz, a constitutional law scholar, opposes torture in general but thinks that in exceptional cases, like the ticking time bomb scenario, utilitarian reasoning ought to prevail over principle. He would legalize torture so it would be carefully supervised and controlled by government officials, rather than left up to police, soldiers, and interrogators to decide whether it is necessary and how to carry it out. Security personnel would have to obtain a "torture warrant" by persuading a judge that torture in a specific case is necessary to prevent mass killing.[22]

The major argument against torture is that it is morally wrong. Moral philosophers ground the wrongness in different but related ideas. Some derive ideas of right and wrong from religious teachings. For some, there is a moral imperative to respect the *dignity* and *equal moral worth* of every person. Torture violates the body as well as the spirit. One of its major purposes is to break the sense of self and self-respect. For other opponents, there is a moral imperative to respect individual *autonomy*. Torture robs the victim of autonomy. By inflicting unbearable pain and making him believe he has the power to stop it, torture forces him to do something he does not want to do—to betray himself and his friends. For still others, it is wrong to *use people as means to your ends*, because doing so deprives them of the human right to set one's own ends. Whatever the reason, deontological arguments share the idea that torture violates fundamental moral principles.[23]

Although the major arguments against torture are deontological, don't think that utilitarianism always justifies torture. Some opponents have made strong utilitarian arguments against it. These arguments work

[22]Alan Dershowitz, "Should the Ticking Bomb Terrorist Be Tortured?," in *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven: Yale University Press, 2003) pp. 131–63.

[23]For deontological arguments against torture, see David Sussman, "What's Wrong with Torture," *Philosophy and Public Affairs*, 2005, vol. 33, no. 1, pp. 1–33; Charles Fried and Gregory Fried, *Because It Is Wrong: Torture, Privacy and Presidential Power in the Age of Terror* (New York: W. W. Norton, 2010); and Marcy Strauss, "Torture," *New York Law School Law Review*, vol. 48, nos. 1–2, 2003–4, pp. 201–74.

by expanding the kinds of costs and benefits they count beyond "lives saved." They count indirect, nonlethal harms to individual citizens. For example, if we use torture against our captive enemies, our enemies will be more likely to torture our captive soldiers. If we torture, we stimulate more people to hate us and engage in more terrorism, hurting more people. Professionals who aid government torture programs usually suffer guilt, shame, and post-traumatic stress from violating their moral and professional ideals. Another utilitarian argument considers how government-sponsored torture harms social institutions, both domestic and international. Scientific, medical, judicial, military, and law enforcement communities divide over the moral question; former colleagues become alienated from one another, making cooperation more difficult. By contravening international legal and humanitarian norms, we alienate our allies and weaken international security institutions.[24]

Utilitarianism doesn't always uphold the status quo, either. The conservative bias of cost-benefit analysis comes from its reliance on current market arrangements and prices, but utilitarian thinking can generate powerful arguments for redistribution. As the philosopher Peter Singer argues so compellingly, if everyone with more than enough money for their families to live adequately gave everything above that standard to charity, a billion desperately poor people would experience major improvements in their quality of life, while the donors would suffer comparatively minor declines in theirs. On balance, total social welfare would skyrocket. Thus, Singer concludes, it is morally wrong for people who aren't poor not to give away all of their money beyond what they need for themselves and their families to live comfortably.[25]

If policy analysts or philosophers could come up with the "right answer" to a policy problem, should government require citizens to abide by it? If Singer is right, for example, should governments tax all but their poorest citizens and redistribute the money as development aid? Here is the hardest conundrum for believers in democracy. In democracies, the process of decision making has value independent of the outcomes.[26] People value town meetings not because they render correct decisions but because they offer individuals a chance to participate in making policy decisions. The

[24]Vittorio Bufacchi and Jean Maria Arrigo, "Torture, Terrorism and the State: A Refutation of the Ticking-Bomb Argument," *Journal of Applied Philosophy*, vol. 23, no. 2 (2006), pp. 356–373.

[25]Peter Singer, *The Life You Can Save: Acting Now to End World Poverty* (New York: Random House, 2009).

[26]Laurence H. Tribe, "Policy Science: Analysis or Ideology?" *Philosophy and Public Affairs*, 2 (1972), pp. 66–110.

process of deciding even affects how we evaluate a decision's outcome. We might feel differently about an all-female jury convicting a male of rape if the prosecutor had systematically rejected all prospective male jurors than if the jury were composed by a random draw from the jury list.

Here is a final way the rational decision model must be drastically modified to account for policy making in a democracy. The rational decision model assumes a political actor who can think and act with one mind. In theory, this hypothetical decision maker could be a corporate entity—a legislature, a firm, a nonprofit organization—but, ultimately, the analysis must be done as the calculus of a single mind. Thus, the authors of a decision analysis textbook claim that the method can be used for all kinds of policy problems, including "health policy for a nation." But then they exclude problems where "the power to make the decision is dispersed over a number of individual actors and/or organizational units," because "we assume in this book that the decision maker has the responsibility and authority to make the decision. . . ."[27]

Outside of dictatorships, such singular authority is either a fantasy or a nightmare. In the polis, most policy issues involve struggles over who has the power to decide and who has influence over the deciders. Authority is and should be dispersed, shared, negotiated, and constantly contested. When Obama came to Washington determined to reform "health policy for a nation," he had to reckon with disputes about which congressional committees would have jurisdiction over bills and which set of rules would apply to deliberations and votes. He had to fight hospital and insurance lobbyists for influence over legislators. He had to joust with economists for favorable cost estimates of his proposals. He had to battle other politicians and media for influence over voters, who, in turn, would be trying to influence their representatives. He had to consider fifty state governments that would implement any reform. Obama could not decide the way George W. Bush claimed he did—gather advice from smart people, announce his decision, and then after a quick "Yes, sir, Mr. President," start implementing.

Any viable policy plan has to grow from analysis deeply attuned to the realities of the polis. And once a policy plan reaches the point of becoming an official decision, it is still not out of the polis. In the implementation phase, it begins a new journey through the wondrous forms of influence in human society—incentives, rules, persuasion, rights, and powers.

[27]Behn and Vaupel, *Quick Analysis for Busy Decision Makers*, op. cit., note 3, quotes on pp. 228 and 377.

Part iv

SOLUTIONS

12

Incentives

The idea behind incentives is simple: carrots and sticks. If you promise people a reward or threaten them with a penalty, they will act differently than they otherwise might. Incentives and deterrence are flip sides of a motivational coin. With incentives, we make it easier or more rewarding for people to do something we want them to do; with deterrence, we make it harder or more costly for them to do something we don't want them to do. One uses the promise of rewards, the other the threat of penalties, but they both rely on getting other people to choose actions we would desire. Because incentives and deterrence share a similar logic, I treat them as one type of policy strategy, although I will point out some important differences.

Some areas of public policy traditionally rely on deterrence—most notably, the criminal justice system and defense policy, but also the income tax system with its penalties for tax avoidance, and occupational safety, with its (albeit weak) penalties for unsafe practices. Other areas rely primarily on incentives; for example, tax credits for activities governments want to encourage, foreign aid in exchange for political cooperation, or federal funds to induce states and localities to undertake special programs.

In most areas, policy relies on a combination of rewards and penalties—rewards as long as you cooperate, and penalties as soon as you don't. Social scientists continually debate whether rewards or penalties are more effective, but in an important sense, the distinction is false. Every reward contains an implicit or potential penalty of withdrawal, and every penalty short of death contains an implicit reward of cessation (torture being the notorious case in point). For example, the U.S. imposes economic sanctions on countries it designates as state sponsors of terrorism. Sudan had been subject to such sanctions since 1997. In 2010, as part of a

package of incentives to persuade Sudan's leaders to allow a referendum on southern Sudan secession, President Obama offered to remove Sudan from the list of state sponsors and end all the penalties associated with being on the list.[1]

In common parlance, the term "incentives" has two meanings. It usually refers to positive inducements or rewards, as in "incentive pay systems," while the term "sanctions" usually refers to negative inducements or penalties, as in "economic sanctions." However, "incentive" has also come to mean the general policy strategy of attempting to change behavior through either rewards or penalties. I will use the term in both senses unless the meaning would be ambiguous without distinguishing rewards and penalties.

The Theory of Incentives

Incentives are one possible response to commons problems. Recall that a commons problem occurs when private interests and the public interest diverge, or when individuals benefit (or lose) from doing something that harms (or helps) the community. The purpose of incentives is to bring individual motives into line with community goals. Incentives alter the consequences of individual actions so that what is good for the community is also good for the individual.

It is useful to think of incentives as a system with three parts: the incentive giver, the incentive receiver or target, and the incentive itself. In analyzing how incentives might work, we can then look at these elements separately and consider what is necessary for each part so the three parts function together to bring about the desired change.

Incentives work not through direct force but by getting people to *change their minds*. The theory rests on a utilitarian model of human behavior. People are assumed to be rational. They have goals, and each decision to act is predicated on conscious goal-seeking. Every action is first a mental decision based on an economic calculus: Which of the possible actions I could take will get me to my goal in the easiest or least costly way? The theory of incentives says we can alter people's self-propelled progress toward their goals by changing the opportunities and obstacles they face.

Obviously, such a model makes many assumptions. One is that the targets of incentives have control over their own behavior, so that when

[1]Mark Landler, "U.S. Revises Offer to Take Sudan Off Terror List," *New York Times*, Nov. 8, 2010.

confronted with a new penalty or reward, they can change their calculus and their behavior. Individuals, in other words, are *adaptable*. One issue in assessing an incentive policy, then, is the extent to which this assumption of adaptability holds true. We can simply note here that many social factors keep people from changing their behavior. Habits, social customs, beliefs, and loyalties are forms of social stickiness that limit adaptability.

The theory of incentives assumes, second, that givers and receivers are *unitary actors*. This means not that the actor is necessarily an individual but that it is an entity capable of rational behavior. A giver must be able to implement a consistent policy of rewarding or penalizing behavior, and a target must be capable of making a unified calculation and taking a single course of action.

The mechanism of incentives is enormously complicated in the polis by the fact that the givers and receivers are likely to be, or to operate in, a collective entity. We can easily imagine a donkey responding to a carrot, but a trainer who proposed to motivate a hundred donkeys with a bunch of carrots would leave us pondering many questions: Should he put the carrots all in one place? Throw them into the middle of the herd? Should he have one carrot for each donkey? Do all donkeys like carrots? Will two or three aggressive donkeys get all the carrots, regardless of how the others behave? Will the latecomers and slow learners get no carrots anyway and figure it's not worth changing their ways? Might the donkeys stampede the trainer and devour the carrots? And what if carrot distribution policy is decided by a committee of independent-minded, strong-willed trainers? The carrots might be given out according to several different standards, or the committee might be paralyzed and the carrots never given out.

The carrot-and-stick metaphor, played out a bit more fully, suggests numerous ways an incentive strategy can go awry. Even though each person within a group may be a rational actor, likely to respond to incentives in predictable ways, membership in an organization or a community alters the way individuals respond. In designing and assessing incentives, therefore, one of the most critical tasks is to analyze how collective processes influence the way individuals will apply and respond to them.

In most policy situations, the target of incentives or the giver, or both, will be a collective entity with some inner conflict and some ability to act as a unified group. The giver is apt to be a small committee (such as a parole board or a zoning board), a large agency (such as the Internal Revenue Service or the Environmental Protection Agency), or even an agency representing a country (such as the U.S. Department of State or the U.K. Department for International Development). Commonly, the

giver is nominally a single person but is really acting on behalf of and with the authority of a larger organization or political entity. The school principal who disciplines students with penalties may well have to negotiate with teachers who have different educational philosophies before she can impose a penalty. Once having decided on a penalty—say, expelling a student—she may have to negotiate with parent groups as well. Even the top banana in an organization can rarely assign and implement penalties alone.

Similarly, the target of an incentive might be a single person heading a firm, an organization, or a government entity, so that the target's response to an incentive cannot be the product of a single mind. Incentive reimbursement plans for hospitals offer a good example. Under such plans, an insurer such as Blue Cross or Medicare seeks to induce hospitals to operate efficiently by offering them a share of any savings below some target cost. These plans assume that hospital spending decisions are controlled by a unified organizational structure under a single administrator, when in fact authority is widely dispersed. Key decisions that affect cost are made by physicians, nurses, pharmacists, and supply clerks. On the other side, each hospital faces an array of different insurers who pay its patients' bills, somewhat like my imaginary committee of donkey trainers. Hospitals are able to play one insurer against another and shift their costs to the ones with the least restrictive requirements.[2]

A third assumption of the theory of incentives is that the receiver has some *orientation toward the future.* Incentives can work only to the extent that the target cares about the costs or rewards to be faced in the future and is willing to modify current behavior in order to shape future results. There must be some correspondence between the time frame of the receiver and the time frame of the incentive itself. Incentives to reduce global warming are hard to enact largely because citizens experience the near-term costs long before they get proof of long-term benefits.

If the "discovery time" between when an action takes place and when it becomes visible is very long, the effect of penalties is weakened. For example, we penalize dumping hazardous waste, but since dumps can be concealed until a slow-developing health problem affects a community, dumpers may not be particularly responsive to penalties. Moreover, the longer the discovery time for an activity, the more difficult it is to impose a penalty. Long-past activities are harder to document than recent ones because records and evidence disappear; the responsible people may no longer be in office or available to provide evidence. Also, it is part of our

[2]Judith Feder and Bruce Spitz, "The Politics of Hospital Payment," *Journal of Health Politics, Policy and Law,* 4, no. 3 (Fall 1979), pp. 435–63.

general notion of fairness that people should not have to face the prospect of discovery and punishment forever. This notion lies behind "statutes of limitation" for many crimes and negligent activities, and creates a climate of greater leniency toward long-past deeds than toward recent ones.

A long time frame can play havoc with the effectiveness of incentives, because people grow and change. The National Health Service Corps, a program to induce young physicians to practice in small towns and rural areas, offers would-be doctors medical school tuition if they agree to practice in an underserved area when they finish their training. Many who accept this deal when they're coming out of college change their minds when they're emerging from medical training, some five or more years later. By then, they are likely to be in a long-tem relationship and no longer free to decide on a job location without considering their partner's career needs and perhaps children's schooling. They are less willing than their younger selves to accept a no-choice assignment from the program. Having been socialized in academic medical centers, they are less willing to practice primary-care medicine in remote places without high-tech facilities and markets for specialties.[3] The moral of the story? The longer the time span between the reward or penalty and the requisite behavior change, the more likely the target's situation will change and, along with it, the value of the incentive to the target.

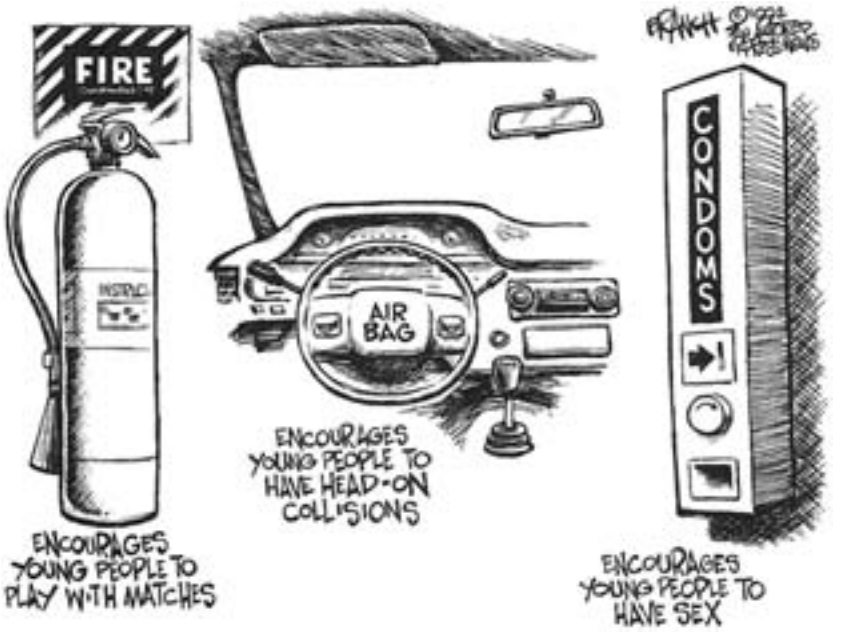
Designing Incentives: Social Dynamics

Designing effective incentives requires understanding the complex causes of the behavior you seek to change.[4] Too often, policy makers implement incentives based on simplistic images of cause-and-effect relationships. In an effort to raise grades and graduation rates of low-income and minority teenagers, many schools pay them cash for good attendance, good behavior, and good grades. Chicago's Mayor Richard M. Daley supported such a plan, because, he said, it duplicates the key to success for kids from well-off backgrounds. "Wealthy parents in the suburban area, they give their kids a car. They take them on a trip to Hawaii. They send them around the world."[5] Daley was right as far as he went. Wealthy suburban parents often *do* give their kids cars and vacations. But material rewards are far less important to educational success than other resources and cultural training they provide.

[3]Frank E. James, "Despite Federal Aid, Doctors Are Still in Short Supply in Rural Areas," *Wall Street Journal*, June 23, 1987.

[4]See Alfie Kohn, *Punished by Rewards* (Boston: Houghton Mifflin, 1993), esp. pp. 59–62.

[5]Bill Turque, "Incentives Can Make or Break Students," *Washington Post*, Nov. 2, 2008.



An effective educational incentive system would have to be based on a deeper understanding of *why* inner-city kids fail or drop out of school. Perhaps it's because they live in crowded apartments, or lack a stable home and have no time and place to study; perhaps because their parents don't speak English, don't have books in the home, and can't help with homework; perhaps because the kids want to help their mothers by earning money instead of going to school, or because they have to babysit younger siblings instead of studying; perhaps because their parents don't move in social circles that provide opportunities to meet and interact with well-educated role models; perhaps because when they get into scrapes with teachers and other authorities, their parents lack the cultural skills to help them negotiate. Fixing the dropout problem would require grappling with underlying causes such as these, but small checks and welfare cuts are politically much easier to accomplish. Not surprisingly, educational incentive systems generally show lackluster results, with modest if any gains in student achievement.[6]

[6]Annette Lareau, *Unequal Childhoods: Class, Race and Family Life* (Berkeley: University of California Press, 2003); Roland G. Fryer, Jr., "Financial Incentives and Student Achievement: Evidence from Randomized Trials," Harvard University EdLabs, Apr. 8, 2010.

For the targets of incentives, rewards and penalties don't come in isolation. Numerous rewards and penalties already structure their lives. Any new incentives stand in line behind a broad array of consequences the target already faces. The designer tends to focus on only the incentives he or she designs, and the giver only on the ones he or she controls. But for the target, new incentives always fit into a web of reinforcing and crosscutting incentives. When a social problem is rooted in institutional patterns and practices, or a long-standing historical pattern of social and political relationships, incentives applied by one small set of actors to another are unlikely to have significant impacts.

In addition to understanding the causes of behavior, designers of incentive programs must understand the social relations created by the incentives themselves. Rewards and penalties differ in some important ways, not the least of which is how the target experiences them. Whether an incentive is a reward or penalty is determined not by the giver's intentions but the target's expectations.[7] A $1,000 raise sounds like a reward, but if you had every reason to expect $2,000, you will experience it as a disappointment and perhaps a penalty. Likewise, a notice that you will have to pay a $100 fine will feel like a reward if you expected to owe $200. Incentives are thus negative or positive only in relation to the target's expectations, and understanding the target's point of view is critical in designing them.

Positive and negative incentives are often treated as conceptually equivalent.[8] The more carrots offered, the more desired behavior we get, and the more sticks wielded, the less undesirable behavior we get. In both cases, the target's behavioral response is thought to be proportional to the incentive. However, as we have seen in earlier chapters, losses and gains have qualitatively different political and psychological effects; therefore, carrots and sticks work differently from one another. Politically, it makes a difference whether we chose to motivate with rewards or penalties. Here are several ways these differences show up.

Rewards and penalties, or promises and threats, can foster different kinds of political relationships. Positive incentives, such as wage productivity bonuses, foreign aid, or trade subsidies, may create an alliance and a spirit of goodwill. They can encourage the two parties

[7]See David Baldwin, "The Power of Positive Sanctions," *World Politics*, 24 (1971), pp. 19–38 for an exploration of this point in international relations.

[8]Baldwin, ibid., is a notable exception. See also his "Thinking About Threats," *Journal of Conflict Resolution*, 15 (1971), pp. 71–78. My discussion builds on his analytical distinctions and suggestive hypotheses.

to cooperate on other issues. If the giver's promise succeeds in getting the target to change its behavior, a bond is created between them. In fulfilling the giver's wish, the target creates an obligation for the giver to fulfill its promise, and the implicit bargain creates a sense of loyalty and mutual aid.

Negative incentives, such as fines, tariffs, and embargoes, create a climate of conflict and divide the two parties, even if the threats are not carried out. If, under threat of penalty, the target refrains from some action it would like to take, it is not likely to feel especially warmly toward the giver. If the target doesn't refrain and the penalty is imposed, the adversary relationship becomes explicit. Thus, threats and penalties, even when they succeed from the point of view of the giver, build resentment and solidify an oppressor-victim relationship, making it likely that the giver will have to use more threats and penalties in the future.

When a political actor promises rewards to motivate a target, the giver doesn't have to do anything if the attempt fails. But if it succeeds, if the target does change its behavior in the desired way, then the giver must dispense the reward. The target gives up something by doing something it otherwise would not have done, and the giver sacrifices something by granting the reward. Rewards thus have a structure of reciprocity and compromise that further enhances a sense of alliance.

Penalties and sanctions work in the opposite way. The sanction giver sacrifices something only if the threat fails; if the target doesn't comply, then the giver must carry out the sanction and incur the costs of its implementation. The target, of course, also loses. However, if the threat succeeds and the target refrains from doing what it otherwise wanted to do, the target bears some losses but the sanction giver doesn't have to do anything. Successful threats are free; the powerful get something for nothing.

For all these important differences between rewards and penalties, there is one overwhelming political similarity: rewards, just as much as penalties, are efforts by one party to control the behavior of another.[9] Incentive systems of either stripe entail unequal power relationships. In reward systems, no less than punishment schemes, one party sets the terms, makes the rules, monitors the other's behavior, and decides when and whether to dispense the consequences.

[9]This point is brilliantly explored in Kohn, op. cit., note 4, and is one of the central elements of Kohn's critique of incentive plans in workplaces, schools, and families.

Implementing Incentives in the Polis

In the basic model of incentives, if society penalizes an activity, people will do it less, and if it rewards an activity, people will do it more. In the polis, things aren't so simple. Incentives are usually designed by one set of people (such as policy analysts, legislators, and regulation writers), applied by another (executive branch bureaucrats or field inspectors), and received by yet a third (individuals, firms, organizations, lower levels of government). The passage from one group of actors to the next is treacherous. Rarely is there a direct correspondence between the incentive as proposed by the designer and as applied by the giver.

The biggest problem is a lack of willingness to impose sanctions or withhold rewards on the part of officials charged with meting them out. Several elements of the polis make giving out incentives difficult. Penalties and sanctions are divisive and disruptive to relationships, as we saw above, and therefore to the sense of community. People generally don't like causing suffering to those they work with. Physicians, for example, are extremely reluctant to report their colleagues for ethics violations or extreme incompetence, and professional disciplinary boards are correspondingly reluctant to revoke licenses or even give warnings.[10] Even in more distant relationships, such as that between factory safety inspectors and managers, or restaurant health inspectors and owners, inspectors know they need the ongoing cooperation of the establishments they visit. They would often rather cajole their targets into compliance than risk the strains on work relationships that would come with being known as "the tough guy." Fear of poisoning one's work relationships restrains sanction givers. Thus, imposing a penalty often creates costs for the giver as well as for the target.

Even handing out rewards can create costs for the giver. In a university where I once taught, my department awarded prizes to the best undergraduate theses in various subfields. Faculty members were asked to nominate theses they had supervised. Typically, very few nominations were made. Why? I suspect each professor knew that nominating a thesis meant writing a short summary and a statement of its virtues for the prize committee. That would be work and, moreover, would open the professor's judgment to the scrutiny of colleagues.

Rewards and penalties never happen automatically. They must be decided upon and brought into being by people with headaches, leaky

[10]See Eliot Freidson, *Profession of Medicine* (New York: Dodd, Mead, 1970), pp. 149–51.

basements, and buses to catch. Bureaucratic rules, especially requirements to document reasons for decisions, often make it costly for officials to apply an incentive, and so skew *their* incentives to take one kind of action rather than another.

In the abstract, rewards sound like something good that anybody would want. In reality, positive incentive systems can generate negative consequences for the people who are subject to them. People sometimes resist incentive schemes because they fear the divisive and competitive atmosphere they would generate. Teachers, physicians, and office workers have generally opposed pay-for-performance schemes, because, like most employees, they would rather have the security of a fixed income and because they don't want to be pitted against their co-workers in a competitive environment.[11]

Another source of resistance to incentive schemes is a basic principle of justice—the notion that people should not be held responsible for outcomes they can't control. Many professionals resist pay-for-performance schemes for this reason, too. They fear that the evaluation system won't account for unmeasurable factors and factors beyond their control that affect their results. As one third-grade teacher asked, "Can you account for the child's emotions? Can you account for whether their parents are getting them to school on time?"[12] Similarly, doctors and hospitals worry that outcomes-based reimbursement methods might penalize them for treating patients with more severe and complex problems.

Incentives can be paradoxical. A single, seemingly clear incentive can reward and penalize at the same time and thus have ambiguous effects on the behavior it is meant to change. In an effort to promote worker safety, a DuPont plant gave coupons to employee teams as a reward for going several weeks without an injury. The coupons were redeemable at local stores and restaurants, and workers looked forward to them as a nice bonus. But the potential rewards also created peer pressure for individuals not to report their injuries, lest the whole team lose its coupons. "You know that if you report an injury, everybody says, 'You son of a bitch,' " one worker told a reporter. "I've heard people say, 'So-and-so reported an injury, and it's going to cost us our safety bucks this month.' " Workers who don't report an injury cannot have their medical care paid for by workers' compensation, so the incentive system probably harms their health.[13]

[11]Kohn, op. cit., note 4, chap. 7, reviews evidence that performance-based pay schemes don't work and anger employees.

[12]Nancy Zuckerbrod, "Merit System is Met with Skepticism," *Boston Globe*, July 5, 2007, p. A11.

[13]Steven Greenhouse, "System to Resolve Workplace Injury Leaves Ill Will on All Sides," *New York Times*, Apr. 2, 2009.

Sometimes, the designers of penalties make them so drastic that the penalty givers are loath to impose them, especially if they regard their only options as vastly out of proportion to the badness of a target's behavior. Such perceived severity has been a complicating factor in mandatory sentencing laws, laws that dictate penalties for crimes and leave judges no discretion. Very harsh mandatory prison sentences were written into two national drug control acts in 1986 and 1988, and were also part of several state law-and-order reforms, such as California's "three-strikes-and-you're-out" law requiring a twenty-five-year prison sentence for someone convicted of three felonies. Early on, some judges refused to implement the mandatory sentences,[14] but eking out such discretion is now more difficult, because the Supreme Court has upheld the constitutionality of grossly severe sentences. In 2003, the Court ruled that a twenty-five-year sentence for a man who stole three golf clubs, and a fifty-year sentence for one who stole some videotapes did not violate the constitutional ban on "cruel and unusual punishment." Some judges have resigned and others have refused to hear drug cases, to avoid having to mete out penalties that violate their consciences.[15]

Sometimes, incentives are poorly designed, so that imposing a penalty hurts the very thing one is trying to protect. This is a common problem in government quality assurance systems for hospitals, nursing homes, and group homes for the mentally disabled. Government's only leverage over the institutions is its threat to withdraw its subsidies and, ultimately, close the facility, which would deprive the very people it wants to help. The incentive (government funds) contains an implicit penalty (withdrawal), but the penalty is virtually unusable. Unusable penalties convert an incentive into a guarantee.

If there is a gap between designers and givers of incentives, there is a virtual canyon between designers and the targets. A great deal of slippage occurs because of the possibilities for symbolic meaning of incentives. Whatever the actual reward or penalty in a material sense, the target might give it different meaning than the giver. Remember high school, where the most unruly students were also the ones who considered punishment an emblem of prestige? Likewise, rogue and rebel regimes are apt to welcome punishment as proof of their victimization or as a test of their commitment. In general, sanctions are ineffectual for changing an

[14]"California Judge Refuses to Apply a Tough New Sentencing Law," *New York Times*, July 20, 1994.

[15]Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010), chap. 2; The Supreme Court case is *Lockyer v. Andrade*, 538 U.S. 63 (2003).

activity that defines the target's identity or mission. Fifty years of U.S. economic sanctions never induced Fidel Castro to renounce socialism, and sanctions on Iran since 1987 haven't yet persuaded it to give up its nuclear ambitions. Sanctions may actually provide the target with resources for creating a martyr identity, gathering public support, and demonstrating its strength. In response to economic sanctions, Iran's leaders regularly denounced the United Nations and the U.S. as "weak and desperate," and declared that Iran's supplies of embargoed goods were undiminished. For example, a few months after sanctions were strengthened in 2010, Iran's health minister announced, "Presently 96 percent of the medicinal need of Iranians is produced in the country, and the main reason behind Iran's progress in the pharmaceutical industry is Western sanctions."[16]

Perhaps the most important reason for slippage between the design of incentives and the target's response is that people—far more than donkeys—are strategic as well as adaptive. Strategic creatures can always find ways to get around requirements and still collect a reward or avoid a penalty. They can conceal information about themselves and their activities. They can manipulate the information, even, as we saw in Chapter 8, "Numbers," when the criterion for a reward or penalty is numerical. Mothers who apply for public assistance are required to give information about their children's fathers so the welfare department can pursue the men for child support payments. The program designers thought the threat of no welfare would be enough to get women to cooperate, but many welfare mothers get informal help from fathers, and they don't want to jeopardize their children's relations with their fathers by "putting the law on" the men. Instead, they pretend to comply with the welfare department by giving a false Social Security number or "not knowing" the father's whereabouts.[17]

Targets of incentives can "game the system" by trying to reap a reward or avoid a penalty without changing their behavior. For example, when New Jersey required owners of industrial facilities to finance a clean-up plan before they could sell a plant, plant owners immediately began to talk of evasion strategies: they could close a plant without selling it,

[16]On sanctions and identity, see David A. Baldwin, *Economic Statecraft* (Princeton: Princeton University Press, 1985), p. 142. For a compilation of Iran's responses to sanctions, see "Sanctions on Iran: Reactions and Impact," American Enterprise Institute, Oct. 5, 2010, available at irantracker.org/us-policy/sanctions-iran-reactions-and-impact.

[17]Kathryn Edin, "Single Mothers and Child Support: The Possibilities and Limits of Child Support Policy," *Children and Youth Services Review*, vol. 17, nos. 1/2, 1995, pp. 203–30.

Incentives in the Polis

	Rationality Model	*Polis Model*
Giver	unified entity capable of consistent and rational decision making	may be a collective entity with internal conflict and inconsistent decision making
Target	unified entity capable of consistent and rational decision making	may be collective entity with internal conflict and inconsistent decision making
	adaptable—can and will change behavior in response to incentives	social ties, customs, beliefs, and loyalties may inhibit change
	oriented toward future; will change current behavior to obtain future rewards	may scramble time frame; actors within the entity may have different time frames, and their motivations may change over time
Incentives	meaning and value to targets is clear and unambiguous	may have different meaning and value to target than giver intends; may have symbolic meanings in conflict with surface meanings; may have paradoxical effects
Rewards	the more rewards offered, the more likely the desired behavior change	may create alliances (and collusion) between givers and targets; may create costs for givers
Penalties	the more penalties threatened, the more likely the desired behavior change	may create conflict between targets and givers; may harden target's resistance; may be sabotaged by givers; may hurt the people one is trying to protect instead of altering the behavior of the targets

run it with a skeleton crew, or declare bankruptcy.[18] If all else fails, targets may be able to shift a penalty to someone else. A firm can pass on pollution taxes to its customers in the form of higher prices. It can also pass the taxes to its workers by reducing wage increases or benefit packages, or to taxpayers in the form of lower profits and lower corporate income taxes.

Even more effective than evasion, however, is gaining control of the political institution that controls the incentive system. If there is a pollution control board meting out taxes on industrial discharges, for example, industry executives can demand some seats and try to influence the selection of members favorable to themselves. They might press for a division of seats that explicitly represents industry (along with, perhaps, labor, technical experts, and "the public"). They may succeed in having a former industry employee appointed as the technical expert, or they might make it clear to the public representative that a high-paying job in industry follows a "cooperative" term on the board. Targets will do everything they can to make incentive givers dependent on them—for future jobs, for information, for money—so that the givers will be restrained in meting out penalties or generous with rewards.[19]

No system of incentives is a self-executing price list, and few people are passive receptors of rewards and penalties. Incentive strategies are organized social systems involving two sets of people who are trying to influence each other. Incentive givers seek control over their targets, but targets are adaptive and strategic creatures who can influence the application of rewards and penalties. Even the incentives, whatever form they take, aren't inert objects, passed from one set of people to the other. Their impact on people's behavior depends on how the givers and receivers interpret them, and their meanings are subject to ongoing negotiation and change.

Incentives and Democracy

In political debates, incentives are often presented as noncoercive policy instruments. They leave people choice, rather than imposing a rule. In practice, incentives, especially material rewards and penalties, are most effective when the targets are somewhat needy or deprived, so that the

[18]Barry Meier, "Pressure Builds for Cleanup of Closed Plants," *Wall Street Journal*, Aug. 7, 1985.

[19]From the early days of environmental regulation, industry was well represented on regulatory bodies in both the United States and Europe. See Giandomenico Majone, "Choice Among Policy Instruments for Pollution Control," *Policy Analysis*, 2, no. 4 (Fall 1976), pp. 589–614, especially pp. 603–13.

resources really matter to them. Incentives are more likely to get people to change their behavior the more the targets are dependent on the giver and unable to attain the "goodies" in other ways. Incentives work by capitalizing on the targets' weaknesses. Not surprisingly, incentive schemes are frequently used to manipulate the behavior of dependent populations—children, students, prisoners, factory workers, and developing countries.

Because incentives are a form of power, argues the political philosopher Ruth Grant, their legitimacy should be judged by the same criteria we use to judge other forms of power in a democracy. A legitimate exercise of power should ensure that "the parties involved are treated as beings capable of moral agency on account of their rationality and capacity for freedom."[20] In examining an incentive scheme, we should ask whether the *apparent* choices one party gives another are *real* choices that the second party could accept or reject. The International Monetary Fund, the World Bank, and other international aid agencies usually make their loans contingent on the recipient country adopting some of their preferred public policies, such as privatizing state-owned industries, ending gender or caste discrimination, or charging user fees for hospital care. Donors think of their policies as giving recipient governments incentives to adopt policies that will eventually benefit their populations. But for recipient countries, often deeply in debt and unable to attract private investment, the incentive may not feel like a choice. It may feel like an offer they can't refuse.

Incentives might also be considered illegitimate uses of power if they alter the target's motivations or diminish its autonomy in making important choices. Incentives are often promoted as the most democratic policy instrument because they respect individual autonomy and don't interfere with individual decision making. Yet, incentives are *meant* to interfere with the target's autonomy. They are *intended* to alter the targets' motivations and change their patterns of decision making.

Consider how health insurers use incentives to influence patient and doctor decision making. Insurers require consumers to pay fees, so-called copayments, each time they visit a doctor or fill a prescription. Policy makers, seeking to contain health care expenditures, believe that small charges for each doctor visit or drug purchase will force patients to evaluate how important medical care is to them, so they won't use medical resources thoughtlessly and extravagantly. But fees change the

[20]Ruth W. Grant, "Ethics and Incentives: A Political Approach," *American Political Science Review*, vol. 100, no. 1, 2006, pp. 29–38, quote on p. 35.

way patients think about their medical care. Instead of deciding whether to consult a doctor solely on the basis of their symptoms and medical knowledge, or instead of refilling a prescription because a doctor has told them the medicine is important, they now decide partly on the basis of their pocketbooks—or completely, if they are poor. To make doctors more cost-conscious, insurers reward them for meeting budget targets or penalize them if their prescribed treatments and referrals exceed budget targets. Professional and personal ethics command doctors to make treatment decisions on the basis of their clinical knowledge, and to put patients' well-being above all other motives. By inserting financial self-interest into doctors' decision-making processes, financial incentives can lead them to withhold care, override their clinical judgment, and, sometimes, to violate their professional ethics.[21]

Incentives can be demeaning and degrading. Developers trying to find sites for noxious waste facilities learned early on that offering local residents monetary compensation can backfire. If the residents have already expressed their opposition for principled reasons, then accepting money would mean showing themselves as lacking principles and susceptible to bribes. Accepting the incentives would diminish their moral stature in their own eyes. Thus, offering material incentives to change someone's mind conveys disrespect. Symbolically, the offer says, "You claim to stand on principle or have strong views, but I suspect you can be bought."

Finally, monetary incentives can devalue and even displace civic motivations. Several studies have found that citizens are more willing to support a "NIMBY" project in their community if they feel they would be contributing to the public good. When told that "there is a need" for a facility or that their own community is a "safer" site than other locations, citizens' public spirit kicks in and their willingness to allow the facility increases. However, when residents are offered monetary compensation instead of being informed about public interest rationales, their support for the project decreases. Researchers demonstrated this phenomenon in a Swiss village that was the leading candidate for a nuclear waste repository. Discussion of the issue was very much in the news at the time. The researchers asked residents whether they would accept the facility if the parliament formally proposed their village as the site. Just over 50 percent agreed to accept it. Then the researchers asked whether residents would

[21]On financial incentives and patients, see Deborah Stone, "The False Promise of Consumer Choice," *Saint Louis University Law Journal*, vol. 51, no. 2 (2007), pp. 475–87. On financial incentives and doctors, Deborah Stone, "The Doctor as Businessman: Changing Politics of a Cultural Icon," *Journal of Health Politics, Policy and Law*, vol. 22, no. 2 (1997), pp. 533–66.

Incentives and Democracy

Market Model	*Polis Model*
Incentives are like market exchanges.	Incentives are instruments of power.
Incentives give individuals more freedom than other policy instruments.	Incentives can be coercive if the target is needy or dependent on the giver.
Incentives respect individual autonomy.	Incentives are intended to interfere with targets' autonomy by inducing them to make different choices than they have made in the past.
Incentives respect targets' capacity for reasoned decision making.	Incentives can signal disrespect for targets' choices and imply that they can be bribed.
Participants in a market do and should make choices on the basis of maximizing their self-interest.	Citizens in the polis do and should make choices partly on the basis of promoting the public interest.

accept the facility if parliament decided to compensate each resident a substantial monthly payment, equal to at least half the median household monthly income. Now only 25 percent said they would agree to accept it. The researchers concluded that monetary incentives actually depress the sense of civic duty and willingness to sacrifice for the common good.[22] Perhaps no amount of money, or at least not the feasible amounts public programs offer, can provide citizens with the same sense of satisfaction they get from contributing to the common good.

Over the long run, if incentives become the dominant way of influencing citizens' decisions, they can unwittingly undermine civic spirit. The very existence of an incentive program conveys a subtle civic lesson. It tells citizens that the proper way to decide about public issues is

[22]Bruno S. Frey, Felix Oberholzer-Gee, and Reiner Eichenberger, "The Old Lady Visits Your Backyard: A Tale of Morals and Markets," *Journal of Political Economy*, vol. 104, no. 6 (1996), pp. 1297–1313.

to ask, "What's in it for me?" An incentive scheme can change not only people's ways of behaving but their definitions of good character and good citizenship.[23]

In planning any kind of incentive system, policy analysts and reformers must take into account how incentives work as social systems, and pay special attention to a proposed incentive's impact on citizen autonomy and public spiritedness. Though ostensibly a policy instrument that increases individual freedom, all incentive systems are instruments of power and work most effectively when the targets are weak and dependent. And like everything in the polis, incentives have symbolic meanings. If incentives become the dominant way of talking about individual motivation and decision making, they can teach citizens to put self-interest ahead of public interest.

[23]Grant, op. cit., note 20, emphasizes this point.

13

Rules

Rules are the essential form of social coordination. Rules are necessary because, in the words of H. L. A. Hart, "No society could support the number of officials necessary to secure that every member of society was officially and separately informed of every act he was required to do."[1] Still less could society apply rewards and penalties for every action it wanted to influence. Policy making relies heavily on official rules—rules consciously designed to accomplish social goals. Official rules in this sense are generally referred to as laws, although they might be rules made by legislative bodies (statutory laws), administrative bodies (regulations), courts (common law), or laws contained in constitutions (state or national).

Some kinds of official rules mandate behavior. They command people, organizations, and governments to act in certain ways. Other rules confer powers, either on private citizens and organizations or on public officials and agencies. Such rules specify how people must act if they want to invoke government power to support their relationships with other people, in contracts, wills, and lawsuits, for example. And they specify how government bodies must act if their own decrees and actions are to be considered valid.

Rules must be negotiated, written, issued, implemented, and enforced. At every stage, rules are not only objects of political conflict but also weapons. People fight with rules about rules, trying to shape them to accomplish public and private purposes. In Congress, legislators fight about substantive policy in large part by making procedural rules and using them strategically. The way President Obama and the Democrats secured passage of the 2010 Patient Protection and Affordable Care Act provides a stunning illustration.

[1]H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 21.

At the end of 2009, the House and Senate had each passed versions of a health reform bill. Normally, once the House and Senate have passed versions of a bill, the two versions go to a conference committee, which works out a single compromise bill. Both houses must pass the compromise version for it to become law. In the House, a simple majority is enough to pass legislation, but in the Senate, a custom known as the filibuster allows forty-one (out of 100) senators to prevent any bill from coming to a vote. In November 2009, a special election in Massachusetts to replace the deceased Senator Ted Kennedy, a Democrat, gave the Republicans their forty-first seat and thus the ability to stop the Senate from passing any compromise bill. But under Congress's rules, financing bills—those concerned only with taxing and spending—cannot be filibustered. Democrats, knowing they couldn't secure a Senate vote on a revised health insurance bill, used a two-step process. First, the Democratic-controlled House voted to pass the same health insurance bill the Senate had passed in December; because the two versions were identical, the bill didn't need to go to a conference committee. Then Democrats incorporated many of their preferred changes to the Senate bill into a separate spending bill, for which they needed (and got) only a simple majority in both houses.[2]

In addition to formal laws and regulations, societies have many other types of rules to coordinate behavior—social customs and traditions, informal norms of families and small groups, moral rules and principles, and the rules and bylaws of private associations. These unofficial rules often have the force of laws, at least in their powerful impact on people's lives, and they can significantly reinforce or undermine official rules. In the U.S., racial discrimination continues long after constitutional, legislative, and judicial decrees officially abolished various forms of discrimination.[3] We distinguish between *de jure* laws—the ones "on the books" issued by an authoritative government body, and *de facto* rules—the ones people actually follow in practice (or "in fact"). Unofficial rules are important not only because they guide so much behavior but because they shape the categories and classifications used in official rules, as well as how official rules are interpreted and enforced in practice. A good analysis of rules must account for the way formal and informal rules interact in the polis.

[2]Lawrence R. Jacobs and Theda Skocpol, *Health Care Reform and American Politics: What Everyone Needs to Know* (New York: Oxford University Press, 2010).

[3]Tim Wise, *Colorblind: The Rise of Post-Racial Politics and the Retreat from Racial Equality* (San Francisco: City Lights Books, 2010) documents racial discrimination in health, education, welfare, criminal justice, housing, and other policy areas.

How a Rule Works

Rules are indirect commands that work over time. They are indirect in that they are stated once to the general class of people to whom they apply, rather than being told directly to each person in every situation the rules cover. They apply to a broad class of actions as "standing orders." Although the threat of punishment is always present, rules are intended to induce compliance without the necessity of invoking coercive sanctions every time someone steps out of line.

Rules derive most of their power from legitimacy, the quality of being perceived as good and right by those whose behavior they are meant to control. Legitimacy binds rule-follower to rule-maker. Like the "willing suspension of disbelief" that makes readers follow a novelist through all sorts of improbable situations, legitimacy makes citizens follow the commands of leaders, even at great costs to themselves. Legitimacy is the political scientist's equivalent of the economist's invisible hand: we know it exists as a force that holds societies together, but we can't give very satisfactory explanations of how to create it or why it is sometimes very strong and sometimes seems to disappear. Nevertheless, we can say that rules work best when they are perceived as legitimate.

Rules generally have two parts. They prescribe *actions* to be taken in certain *situations or contexts.* They can be formulated as "if . . . then" statements: if situation A holds, then do X. The context might involve *personal identity.* For example, if you hold a medical degree and a license, you may slit open people's bellies. If you are a male German citizen over age eighteen, you must perform military service, but if you declare yourself a conscious objector, you may fulfill your duty by working in schools, eldercare homes, or rehabilitation centers. The context might involve *location.* In this place you may smoke, but in that place you may not. The context might involve *time.* You may hunt deer only between the first Friday in October and the last Sunday of November. Or the context might involve a complex relationship defined by *identity, space, and time*: you may slit open someone's belly only if you are a licensed doctor, working in a medical setting under sterile conditions, after having received informed consent from the patient.

Rules depend on context because we judge the moral rightness and acceptability of actions according to contextual factors. Slitting open someone's belly counts as medical therapy when done by a surgeon but assault when done by a hoodlum. Kissing a child is deemed an expression of love when done by parents (usually) but molestation when done by strangers. Sexual harassment poses a policy conundrum because it is so hard to define what contexts make sexual advances romantic courtship

and what contexts make them exploitative uses of power. Sometimes, the context part of a rule is only implied. A "No Swimming" sign on a deserted beach seems to prohibit an action, but the implicit message is "No swimming *here*." Who, after all, hasn't been driven by a hot summer day to consider the implied boundaries of "here," or how wet one has to be before one is "swimming?"

Much as officials hope that rules provide *black-and-white* distinctions and *bright lines* (to use a common metaphor in law), the ambiguity of a rule's contexts create fuzzy boundaries, gray areas. (The world of rules abounds with metaphors.) A rule can't fully substitute for an official telling people what to do at every moment (in H. L. A. Hart's fantasy), because individuals have to interpret general rules and apply them to the situation at hand. For example, the U.S. bans international relief agencies that receive government money from giving aid to or through terrorist organizations. The government classifies Hezbollah as a terrorist organization. That sounds like a clear enough distinction, but for relief agency leaders on the ground, it's not: "We clearly cannot and would not have contact with Hezbollah's military wing, or its social services arm," said the head of Mercy Corps in Lebanon. "But can we work with people elected under its political banner?" Hezbollah is so thoroughly intertwined in Lebanese politics, social welfare, and reconstruction that the boundary is hard to maintain. According to one mayor, "You can't say this money or aid is going to Hezbollah or not going to Hezbollah. It is a matter of normal human contact.[4]

Like U.S. policy on aiding terrorist organizations, rules work by categorizing situations, actions, and people. Being classified inside or outside the category makes all the difference in what behavior a rule permits or how people and organizations will be treated. When the Canadian government formally classified BPA, a chemical used in plastics, as a "toxic substance," the classification triggered a set of new regulations on its use in household products as well as its release into the environment. A decision by the U.S. National Labor Relations Board to classify some registered nurses as "supervisory workers" meant that they could not unionize, because labor law assumes that if workers are also managers, they would be bargaining with themselves.[5] Rules thus add important practical consequences to the abstract process of categorization.

[4]Robert F. Worth and Hassan M. Fattah, "Relief Agencies Find Hezbollah Hard to Avoid," *New York Times*, Aug. 23, 2006.

[5]Ian Austen, "Canada Declares BPA, A Chemical in Plastics, To Be Toxic," *New York Times*, Oct. 14, 2010; Steven Greenhouse, "Board Redefines Rules for Union Exemption," *New York Times*, Oct. 4, 2006.

Rules can create surprising incentives to assume particular identities; that is, to classify oneself in a social category. Until fairly recently in human history, "handicapped" was a stigmatized identity. A provision of the Rehabilitation Act of 1973 forbidding employment discrimination on the basis of handicap eventually brought people into courts seeking to have obesity, short stature, left-handedness, and transvestism classified as handicaps. The Americans with Disabilities Act of 1990 expanded job protections for people with disabilities, attracting people with mental illnesses to reveal the most heavily stigmatized kind of disability in order to gain the workplace accommodations that the law requires.[6]

Categorization and the allocation of benefits and burdens make rules quintessentially political. Rules include and exclude, unite and divide. They include and exclude by defining different treatment or permissible activity for different people. They unite and divide by placing people in different categories; those treated favorably by a rule have a common interest in preserving it, while those treated unfavorably share an interest in changing it. Rules thus create natural alliances. Moreover, the classifications embodied in rules are far from automatic. They are made by human beings, first in writing rules, and later in applying and enforcing them. Because these classifications determine other people's fates, rule making and rule enforcement are always acts of power.

In Search of Good Rules

Ambiguity is both the boon and bane of rules. Designing good rules requires balancing the tension between precision and flexibility. A good rule should be precise enough to accomplish its purpose and prevent people from manipulating it in ways that undermine its intent. The ideal of precision goes hand in hand with the ideal of the rule of law. The argument for precise formal rules rests on three pillars.

First, precise rules help ensure that *like cases will be treated alike*, and this type of consistency is part of what we mean by fairness and the rule of law. The formula itself conveys a deceptive precision, though. What counts as "alike?" Likeness, as we have seen in the earlier discussions of equity, symbols, and numbers, is not a quality inherent in people and situations; likeness is a perception on the part of observers. To judge

[6]Ruth O'Brien, *Crippled Justice: The History of the Modern Disability Movement* (Chicago: University of Chicago Press, 2002); and Jacqueline Vaughn Switzer, *Disabled Right: American Disability Policy and the Fight for Equality* (Washington, D.C.: Georgetown University Press, 2003).

things as like or different requires selecting some features and ignoring others. To claim that things *are* alike is really to say they *ought to be treated alike* for the purposes of achieving some end, or because moral principles require treating them alike. Declaring a likeness is always an assertion, an act of both poetry and politics.

Second, precise rules help insulate citizens from the whims, prejudices, or personal predilections of officials. This feature is related to the first: one reason not to give officials' power to decide citizens' fates is that individual discretion would lead to like cases being treated differently. But more than the concern for consistency is at stake here. In theory, precise rules prevent officials from exercising improper power or giving their own prejudices the stamp of public authority. This is another interpretation of rule of law, captured by the phrase "a government of laws, not of men": officials must look outside their own will, to known rules, for their decision criteria.[7]

Third, precise rules provide predictability. They inform people in advance what is allowable and what will be the consequences of forbidden behavior. Being able to choose one's actions with knowledge of the consequences is part of what we mean by freedom. Also, precision ensures that no one will be punished or harmed because of the way a rule is interpreted after his action. This is a third meaning of rule of law: "Government in all its actions is bound by rules fixed and announced beforehand."[8]

Protection from *ex post facto* laws is guaranteed by the Constitution (in Article I, section 9). Although the phrase usually refers to punishment under a law *promulgated* after an action, the distinction between promulgation and interpretation may be meaningless if laws can be interpreted and understood only through ad hoc implementation. As Justice William O. Douglas wrote in an obscenity case, "[To] send men to jail for violating standards they cannot understand, construe, and apply is a monstrous thing to do in a Nation dedicated to fair trials and due process."[9] Precision in laws thus helps prevent the injustice of after-the-fact lawmaking.

Precision has its disadvantages, however. Precise rules can't be sensitive to some kinds of individual and contextual differences, nor perfectly tailored to individual circumstances. Every rule is based on a classification scheme and disregards features that belong to another scheme. For example, rules about town eligibility for federal economic development grants might be based on population size and per capita income, two scales that

[7]This formulation is Robert Cover's, *New York Times Book Review*, Jan. 14, 1978; cited by Leif Carter, *Reason in Law* (Boston: Little, Brown, 1984), 2nd rev. ed., p. 310.

[8]Friedrich Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1944), p. 72.

[9]Justice William O. Douglas, dissenting, in *Miller v. California*, 413 U.S. 15, 93 (1973).

allow very fine distinctions. Yet, two towns of the same size and per capita income might differ dramatically in other features relevant to economic development, such as unemployment rate, education level, or proximity to a metropolitan area. No matter how refined the categories of a rule are in one classification scheme, they will usually be too crude in another.

Precise rules stifle creative responses to new situations. We can never fully anticipate future circumstances, so it is impossible to write rules that account for new facts, technologies, and contexts. Precise rules are good for only short periods; they lose their efficacy as time passes and conditions change.

The failings of precision are the virtues of vagueness. Vague rules with broad categories and lots of room for discretion can be flexible and allow sensitivity to differences. They enable creative responses to new situations. Vagueness can boost a rule's effectiveness by allowing individuals with knowledge of particular facts and local conditions to decide on the means for achieving general goals. This is one argument for allocating federal money to states in the form of block grants rather than dictating exactly how states should spend the money.

Vague rules allow decision makers to use tacit knowledge, the things people know but can't put into words. The legitimacy of tacit knowledge was immortalized in Justice Potter Stewart's famous remark in a Supreme Court pornography case: "I can't define it but I know it when I see it."[10] People skills are a kind of tacit knowledge deemed essential to good leadership as well as to effective education, health care, and social work. A home health aide's ability to sustain her elderly clients' dignity can't be put into rules such as "smile often" or "give bath once a day." These things help, but it's the intangibles of the relationship that make for high-quality care. Intuition is another kind of tacit knowledge. Criminal lawyers and judges often report a "sixth sense" about whether people are guilty or innocent.

Democracies typically have a certain distrust of tacit knowledge in law and policy—for all the reasons that vagueness and discretion are criticized. If insurance for home health care paid for comforting and dignity preservation, it would trigger concerns about fraud and accountability. A system of criminal law that relied on judges' unarticulated intuitions would seem to be the height of arbitrariness. For this reason, we have developed a constitutional protection against vague statutes. Yet, we sometimes want to legislate in areas where our knowledge is only tacit or partially tacit, such as sexual harassment or elder care.

[10]Justice Potter Stewart, concurring, in *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964).

Vague rules also serve important symbolic functions. Just as precise rules symbolize fairness and predictability, vague rules allow for the expression of community ideals. Aspirations are better captured in abstract concepts and high-sounding slogans, such as the "public interest," the "best available technology," "pure air and water," or a right to trial by "a jury of one's peers." Vaguely stated rules can convey tough determination and commitment to eradicating a problem, and, at the same time, allow lenient enforcement where strictness would be impossible or would disrupt entrenched relationships and ways of doing business. (Whether this is a good or bad feature of vagueness depends on whether you are one of the entrenched.)

The debate about precision versus vagueness in the design of rules is part of a larger debate about the proper balance between formal rules and discretion in the design of policy. How much should government officials be bound by formal rules, and how much should they apply their wisdom to individual situations? Do formal rules enhance fairness or promote rigidity? Does discretion produce refined and compassionate policy, or does it lead to favoritism and bias?

Philosophers have the luxury of conjuring up societies governed entirely by rules or by discretion. Policy makers confront the dilemma in a much narrower way: when to make a rule instead of leaving things to discretion, and how to make a good rule that helps accomplish their purposes. These questions are decided in politics rather than in theory, but it is worth exploring some of the unattainable ideals scholars have imagined, precisely because they do inspire policy makers who design rules.

First is the rational ideal of *the optimum social balance* between discretionary power and control by formal rules. This ideal rests on a belief that rules and discretion each have proper uses, and that it is possible to distinguish between the necessary and unnecessary uses. Kenneth Culp Davis, in his pioneering treatise *Discretionary Justice*, argues that "the proper goal [for public policy] is to *eliminate unnecessary discretionary power*, not to eliminate all discretionary power."[11]

The problem with this ideal is how to identify the "unnecessary" component. The discretion police officers deem necessary to do their job is surely not the same as what arrested suspects and their defense lawyers think is necessary. Defense lawyers and civil libertarians say that citizens lose their Fourth Amendment right to be free of unreasonable searches and seizures if the police are able to conduct searches without a warrant.

[11]Kenneth Culp Davis, *Discretionary Justice* (Urbana: University of Illinois Press, 1971), 3rd printing, p. 217 (emphasis added).

Police claim they cannot effectively fight crime if they always must obtain a warrant before searching in order to use the evidence against a defendant at trial. They prefer a regime that allows them to conduct searches at their discretion. The choice of how much discretion to allow them is not between "necessary" and "unnecessary" discretion but between the values of defendants' liberty and crime victims' security.

The choice between rules and discretion is also a choice about *who* makes decisions. Mandatory sentencing laws that specify required sentences for specific crimes take away sentencing authority from judges and give it to legislatures (since legislatures write sentencing guidelines and put them into law). These laws aren't just a new set of rules but a way for citizens to exert more control over judges by demanding tougher penalties and getting their representatives to write them into law. Thus, apparent fights about the proper degree of discretion are also power struggles between one set of actors and another.

A second unattainable ideal is *the perfectly precise rule.* It would spell out all the circumstances to which it applies, and would describe situations and actions with no ambiguity. It would eliminate all possibilities for deliberate manipulation. But problems worth making policy for are almost always complicated—full of fuzzy boundaries and subtle distinctions. The variety of human situations is always greater than the variety of categories in even the most precise rule, and people will insist on the importance of distinctions that the rules don't recognize. Perfect rules would require, in Plato's words, "a legislator [to] sit at everyman's side all through his life, prescribing for him the exact particulars of his duty."[12] The perfectly detailed rule is one continuously in the making—it is the judgment of a wise person and not a rule at all.

Third is the ideal of *the perfectly flexible rule.*[13] It would be infinitely elastic, capable of being stretched to fit the most peculiar circumstances and the newest, previously unimaginable situations. Such a rule would hardly be a rule, either. Just as the perfectly precise rule would require constant formation, the perfectly flexible rule would be so vague as to be absolutely unconstraining. The perfectly precise and perfectly flexible rules are static ideals, rules that work for all time and circumstances. Because rules allocate important benefits and burdens, people who are disadvantaged by the rules will bend them, challenge them, and revise them. In the polis, people don't leave the rules alone, like boulders too big to move.

[12]Quoted by Jerome Frank, *Courts on Trial* (Princeton: Princeton University Press, 1949), p. 406.

[13]For a position advocating the perfectly flexible rule, see Robert Goodin, *Political Theory and Public Policy* (Chicago: University of Chicago Press, 1982), chap. 4.

The U.S. Constitution illustrates the tension between the perfectly flexible rule and the perfectly precise one. On the one hand, the Constitution was designed as a perfectly flexible rule, a guiding framework that established general rules about how government should make more specific rules in the future. With its built-in provisions for an amendment process, it came complete with a mechanism for its own adaptation. On the other hand, the Constitution was intended to be precise enough to assure that the principles of freedom and justice agreed upon by the founders would constrain future leaders and officials forever. These two ideals form the poles of current debates about how Courts should interpret the Constitution. Advocates of flexibility believe that constitutional language should be interpreted in light of current social conditions and political consensus—for example, that slavery and racial discrimination are not permissible. Advocates of precision believe that judges should discern what the original framers intended and maintain laws that are consistent with those intentions.

A fourth ideal is *the neutral rule.* In theory, neutral rules affect everybody similarly and create no advantages or disadvantages for different people. According to the philosopher Friedrich Hayek:

> They refer to typical situations into which anyone may get and in which the existence of such rules will be useful for a great variety of purposes. . . . They do not involve a choice between particular ends or particular people, because we just cannot know beforehand by whom and in what way they will be used.[14]

As examples, Hayek uses traffic rules, such as stop signs, speed limits, and right-side driving, which he contrasts with rules that command people "where to go" or "which road to take." One wonders where "one-way" signs fit in this schema, but leaving aside this anomaly, the traffic rules Hayek imagines as neutral benefit some interests more than others. Stop signs and speed limits make safer neighborhoods for the residents, but at the cost of lost time for drivers. The ideal of the neutral rule rests on the ostrich fallacy: just because we can't immediately see or predict the effects of a rule on different people, we shouldn't assume that differential effects don't occur.

Rules can be neutral on their face but profoundly and intentionally discriminatory. The Social Security Act of 1935 established old-age pensions and other income security programs in the United States. The legislation covered most workers, but not agricultural and domestic workers.

[14]Hayek, op. cit., note 8, pp. 74–75. He calls such rules "formal rules" rather than neutral rules, but his meaning is clear. See also Herbert Wechsler, "Toward Neutral Principles of Constitutional Law," *Harvard Law Review*, vol. 73 (1959), pp. 1–35.

Rules in the Polis

Rationality Model	*Polis Model*
A rule should have the optimum balance between covering all situations and allowing for discretion.	The balance between firm rules and discretion entails value conflicts. There is no "optimum" for everyone.
A rule should be perfectly complete and precise; all exceptions should be stated precisely.	Policy problems are too complex and varied to allow for perfectly detailed rules.
	Policy actors deliberately write vague rules in order to symbolize a comprehensive response to a crisis, and in order to build support among diverse constituencies.
	Rules are not written all at one time. Policy actors fight to define a rule's categories more precisely at every stage of legislation, implementation, and enforcement.
A rule should be perfectly flexible so it can be applied to as many situations as possible.	A rule that is flexible enough to accommodate all situations would be so vague that it would not be a rule.
A rule should be neutral: it should not confer advantages or disadvantages.	All rules draw lines, include and exclude, and confer advantages and disadvantages.
A rule should be perfectly enforced.	Policy actors cannot monitor all behavior covered by a rule.
	People affected by a rule act strategically to influence its enforcement.
	Because policies usually have multiple and conflicting objectives, rules often contain perverse incentives for both targets and enforcers.

Other national social security systems also based eligibility on occupation in their early years, typically covering industrial workers, miners, and railroad workers first, before they became universal. However, the occupations excluded from the American program were those in which blacks were overwhelmingly employed. In practice, defining eligibility by occupation enabled Congress to discriminate on the basis of race without doing so openly. To take a more recent example, since the 1980s, drug control laws set much harsher penalties for possession of crack cocaine than powder cocaine. The distinction is race-neutral on its face. However, among drug users, powder cocaine is the drug of choice for whites, while crack cocaine is the one commonly used by blacks. The distinction, though not based on race, combines with other factors in law enforcement to ensure that a vastly higher proportion of blacks spend vastly longer times in prison than whites.[15]

In policy debates, conflict over rules takes place on two levels: the nominal policy issue, such as health care or criminal justice, and the democratic ideals behind the rules. If you are a policy actor or an analyst, it's easy to get mired at the first level. A sophisticated analysis of rules should try to understand how they measure up to these ideal, if unattainable, standards.

Writing Rules in the Polis

As rules are initially written, certain pressures create a tendency toward vagueness. New statutes and regulations generally get their impetus from some kind of crisis—natural disasters, major accidents and catastrophes, riots and rebellions, or scandals. The Social Security Act was triggered by the Great Depression. The Food and Drug Administration was established following Upton Sinclair's exposé about the meatpacking industry. Its authority to regulate drugs was expanded in the 1960s after thalidomide, a drug given to pregnant women to stop morning sickness, was found to cause severe birth defects. Marches, demonstrations, and urban riots catalyzed civil rights legislation. The Constitution, which shapes all our other political rules, was born of colonial rebellion and the need for order (or protection of private property, depending on your reading of history) in a society just cut loose from its governing framework.

Crises—from suddenly intolerable tyranny to chemical plant accidents—create a mentality of absolute prevention. People want to ensure that "that

[15]Michelle Alexander, *The New Jim Crow* (New York: New Press, 2010), pp. 5–6 and 109–10.

kind of thing" never happens again. The crisis or disaster becomes the enemy, and, like a foreign invader, it unites a community and makes people temporarily forget other conflicts. Such an atmosphere produces slogans and war cries, not precisely worded rules. Citizens demand wholesale solutions ("eliminate the problem") and politicians often oblige them with vague and grandiose promises—"safe and effective drugs," "equal opportunity," "decent and affordable housing," "a secure homeland." At the same time that a crisis mentality generates verbal hyperbole, the spirit of closing ranks on the enemy restrains policy makers from questioning feasibility or seeming to be soft on the problem.

Formal rules are negotiated in elected legislative bodies by representatives of affected interests. Legislatures have certain institutional characteristics that drive them toward the side of vaguer legislation. Legislators must worry about getting reelected as well as about substantive issues. Each legislator faces conflict with representatives of other constituencies, as well as conflicting interests within his or her own constituency. One way to escape conflict and avoid alienating potential supporters is to shun statutes that clearly harm some people. Legislators can do this by sponsoring purely symbolic legislation (designating a National Homemakers' Week or renaming streets after local heroes) and by logrolling (obtaining programs with jobs and money for one's own district by supporting similar programs for other districts.)[16] But when they are forced to make substantive rules, ambiguity is a wonderful refuge. Nothing lubricates bargaining and hides conflicts so well. Who can blame a legislator for supporting "reasonable rates of return" for public utilities or opposing "unfair methods of competition" in business?

The drive toward ambiguity may be exacerbated by the U.S. electoral system, in which legislators face voters in single-member districts and stand and fall on their individual records. In European parliamentary systems, with their much stronger parties and proportional representation, a legislator's electoral fortune depends far more on that of his or her political party and less on pleasing a small group of voters with tangible and symbolic rewards. Also, in parliamentary systems, legislation is usually initiated, if not drafted, in the bureaucracy, where the concern for workable guidelines and details is immediate.

Once a legislative body passes laws, executive agencies need to promulgate specific rules interpreting all the vague phrases and ambiguities. Writing the rules is thus the first stage of implementation. Lobbying

[16]Morris P. Fiorina, *Congress: Keystone of the Washington Establishment* (New Haven: Yale University Press, 1977).

can be just as intense at this stage because the affected interests want to obtain the interpretations most favorable to them. In crafting the Patient Protection and Affordable Care Act, congressional Democrats managed to gain support for restrictions on commercial health insurers by writing vague standards and delegating their definition to other agencies. One new rule requires insurance companies to devote at least 80 percent of their premium revenues to paying for medical care, as opposed to administration, marketing, and profits. During months of meetings over this rule, insurers fought to have as many administrative expenses as possible counted as "medical activities," including brokers' sales commissions, fraud control, new customer enrollment bonuses, and the costs of administering contracts with doctors and hospitals.[17]

Enforcing Rules in the Polis

Enforcement begins with monitoring. Rule enforcers need a mechanism to find out whether people are complying with the rule. Almost every system of rule enforcement uses record-keeping and reporting requirements as fundamental tools. For example, when government makes grants to lower-level government agencies or to nonprofit organizations for the purpose of carrying out specific projects or providing services, it requires the implementing agencies to keep records of how they spend the money as a way of documenting compliance. Often, record keeping is combined with reporting requirements; for example, the implementing agency must submit specific information at specified time intervals.

In one theory of monitoring and oversight, enforcers can adopt either a "police patrol" model or a "fire alarm" model. In the police patrol model, enforcers proactively investigate the activities of people responsible for implementing a rule. In the fire alarm model, enforcers rely on people who have been hurt by rule violations to come forward with complaints, then the enforcers investigate the complaints. According to the authors of this theory, the fire alarm model is more efficient. It doesn't require the enforcers to invest resources for monitoring, and it brings to light the most harmful violations, because the people who are most hurt are the ones most likely to complain. By contrast, in the police patrol model, enforcers can't possibly monitor every activity covered by a rule, so they examine only small samples. They will necessarily miss some violations by people

[17]Robert Pear, "Health Insurance Companies Try to Shape Rules," *New York Times*, May 15, 2010; Timothy Stoltzfus Jost, "Writing the New Rules for Insurers—Progress on the Medical Loss Ratio," *New England Journal of Medicine*, vol. 363, no. 20, Nov. 11, 2010, pp. 1883–85.

"These new regulations will fundamentally change the way we get around them."

or agencies not in their samples, and some of their investigative resources will be "wasted" on situations where they find no violations.[18]

The differences between the two models are probably overdrawn, however. In some cases, such as sub-prime mortgage lending, the people hurt by violations don't know about them and have no way to find out. The fire alarm model works less well when people hurt by violations lack the technical knowledge, civic skills, legal assistance, time, or money to mount a complaint. Proactive inspection by technically qualified monitors may be necessary when rules aim to regulate complex, technical activities, such as finance, engineering, or medicine, and when there is a large power difference between groups who can benefit from rule violations and those who can be harmed.

Because rules allocate privilege and power, and because they are ambiguous at the boundaries, they creates incentives for people to portray themselves or their behavior as falling "on the right side of the law." For example, in 2010 Congress placed restrictions on *earmarks*. Earmarks are bills that designate public funds to specific recipients or localities, without any competitive bidding or other evaluation of the recipient's competence to achieve the policy goal. Earmarks benefited wealthy corporate

[18]Mathew D. McCubbins and Thomas Schwartz, "Congressional Oversight Overlooked: Police Patrols versus Fire Alarms," *Journal of American Political Science*, vol. 28, no. 1 (1984): 165–79.

interests, which, in turn, devoted lobbying resources and campaign contributions to representatives who supported the earmarks. When Congress enacted a ban on earmarks, it exempted nonprofit organizations. Some corporate executives, in order to preserve the flow of public money, formed nonprofit affiliates, often with themselves on the board, and successfully applied for earmarked funds.[19] In the polis, such strategic behavior abounds, and has a rich vocabulary of metaphors to describe it: "bending the rules," "using loopholes," "making end runs around the law," and "staying within the letter of the law."

Like the targets of rules, rule enforcers may have incentives to manipulate or ignore rules they are supposed to enforce. Without a military draft, the U.S. army had trouble meeting its recruitment goals for the Afghanistan and Iraq wars, even with its enlistment bonuses. The army couldn't influence most factors that affect enlistment rates, but it could influence its own rules: it could lower its standards. It raised the age limit from thirty-five to forty, raised weight limits, made its fitness test much easier to pass, and began accepting people without high school degrees. Presto! Enlistments increased.[20] Foreign-aid donors face a similar predicament. If they strictly enforced their conditions of aid, they would have to withhold further aid when a recipient country didn't meet the standards of good governance or management written into previous grants. However, suddenly stopping the flow of aid would trigger economic chaos and political turmoil, so aid officers often feel compelled to ignore their own rules.[21]

Enforcement costs an organization in time, personnel, and money, so saving resources is another incentive to be lax on enforcement. George W. Bush explicitly aimed to loosen federal safety and environmental regulation. He couldn't easily change laws and regulations, but he could reduce regulatory agencies' budgets to ensure that they couldn't monitor and enforce too zealously. Caught between insufficient resources and laws they were supposed to enforce, many agencies relied on companies to submit their own reports, or they delegated enforcement to private inspectors and auditors. These inspectors were often underpaid and underqualified, and sometimes were even hired and paid by the companies they inspected.[22]

[19]Eric Lipton and Ron Nixon, "Companies Find Ways to Bypass Earmarks Ban," *New York Times*, July 5, 2010.

[20]Douglas Belkin, "Struggling for Recruits, Army Relaxes Its Rules," *Boston Globe*, Feb. 20, 2006.

[21]Ravi Kanbur, "Aid, Conditionality and Debt in Africa," in *Foreign Aid and Development: Lessons Learnt and Directions for the Future*, Finn Tarp, ed. (London: Routledge, 2000), pp. 409–22.

[22]Stephen Labaton, "OSHA Leaves Worker Safety Largely in Hands of Industry," *New York Times*, April 25, 2007; Michael Moss, "Peanut Case Shows Holes in Food Safety Net," *New York Times*, Feb. 9, 2009; and Michael Moss and Andrew Martin, "Food Safety Problems Elude Private Inspectors," *New York Times*, March 6, 2009.

Rules and Incentives

Rules are made in the interplay between those whose behavior they govern and those who enforce them. Since rules are meant to make people do things they might otherwise choose not to do (or refrain from doing things they might choose to do), there is always some pressure on rules from potential evasion or disobedience. From this tension comes one of the most fascinating phenomena of politics, *perverse incentives*. Perverse incentives are incentives unwittingly built into a rule to comply with it in a way that creates new problems or exacerbates the very problems the rule is meant to cure.

Perverse incentives arise when there are trade-offs between objectives, but a rule rewards or penalizes only one of them. According to Western legend, Soviet economic planning in the 1930s epitomized perverse incentives. Government set textile production targets in terms of meters of cloth, so factory managers narrowed the width of looms and produced ribbons. Railroads were subject to mandatory freight-hauling goals expressed in terms of weight. When there weren't enough goods to be shipped to meet the quotas, workers hauled goods in one direction, then filled the cars with water for the return trip. Even now, such stories are often told as proof of socialism's failure and the futility of economic planning, but they illustrate a universal dilemma of rules: the dimensions of human activity we care about are always far more numerous and complex than what can be captured in formal rules, so rules contain inadvertent escape hatches.

One doesn't have to go to Siberia to find perverse incentives. Exhibit A: In an early-1980s effort to contain hospital costs, Congress established Medicare payment rules that reimburse hospitals on the basis of the average durations and treatments for each disease. (Previously, hospitals were reimbursed on the basis of their costs as reported to the government.) Many hospitals, especially for-profit ones, have responded by reporting some patients as having more severe and costly types of diseases, or worse, by discharging patients as soon as they have "used up" the amount of reimbursement allowed for their diseases.[23] Exhibit B: To protect electricity consumers from service interruptions in nuclear power plants, many state utility commissions establish pricing formulas that penalize power companies for shutdowns and reward them for steady operation.

[23]Robert S. Stern and Arnold M. Epstein, "Institutional Responses to Prospective Payment Based on Diagnosis-Related Groups," *New England Journal of Medicine* 312, no. 10 (March 7, 1985), pp. 621–627; Elaine Silverman and Jonathan Skinner, "Medicare Upcoding and Hospital Ownership," *Journal of Health Economics* vol. 23 (2004), pp. 369–89.

Such rate formulas create perverse incentives to avoid shutdowns for repairs and maintenance. Here, the pursuit of reliable service in the short term undermines safety and reliability in the long term.[24]

Rules can create perverse incentives for rule enforcers as well. Formal criteria lead officials to devote their time to enforcing things that are part of the rules rather than things that are not. Factory safety inspectors, for example, will diligently hunt for tangible violations specified in regulations, no matter how trivial, but ignore more significant or complicated problems. They know they won't be penalized for missing problems not listed in the rules, but if they try to report unlisted problems, they can't point to something "in black and white" when the factory owner protests.[25]

In the polis, formal rules are enforced partly through informal *rules of thumb.* Officials charged with enforcing rules rarely follow through on all the violations they observe or mete out penalties exactly in accordance with the formal rules. Rather, they develop informal guidelines about the seriousness and blameworthiness of violations, and seek to fit the punishment to the crime in a way that matches their own sense of justice. Their own sense derives from social customs, peer norms, moral beliefs, and existing practices. District attorneys, for instance, have notions of normal or typical crimes based on the socioeconomic characteristics of the offender and the victim, the setting, and the manner of the crime. They may make deals (plea bargains) with suspects they deem to have committed normal offenses, offering a charge to a lesser offense in exchange for a guilty plea, but these deals are always conditioned by the prosecutor's sense that the suspect will "get his due."[26] Enforcers set priorities among the violations encompassed in the formal rules and carry out justice according to some mixture of their personal values, social norms, and formal criteria.

The rules of thumb of enforcers can become the street wisdom of targets about what it takes to qualify for a benefit or what violations an agency considers minor and not worth prosecuting; in other words, what a person can "get away with." Targets learn the rules of thumb partly through direct hints or "coaching" from bureaucrats, as often happens in government assistance programs. Denmark's unemployment insurance program requires, among other things, that beneficiaries "actively seek work." But what does that criterion mean in practice? If a beneficiary asks,

[24]Matthew L. Wald, "Cutting Corners on Nuclear Safety," *New York Times*, Dec. 8, 1985.

[25]Eugene Bardach and Robert Kagan, *Going by the Book* (Philadelphia: Temple University Press, 1982), pp. 102–104.

[26]David Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender Office," *Social Problems*, vol. 112 (1964–1965), pp. 255–76.

a caseworker might respond that "two job applications per week would put you on the safe side."[27]

Targets also learn the rules of thumb indirectly by observing patterns of enforcement and spreading the information by word of mouth. Drivers know the police usually "give you ten miles an hour" over the speed limit. Tax accountants know the IRS allows everyone to take a charitable deduction up to $1,000 without documentation. Under the George W. Bush administration, the Justice Department drastically reduced its criminal indictments of large corporations for bribery, fraudulent accounting, and other financial crimes. Instead, the department entered into "deferred prosecution agreements," under which offending companies paid fines and submitted to some monitoring, but didn't face trials or public disclosure of their wrongdoings. As the pattern became known, corporations learned that typical penalties for financial crimes would be relatively slight, and they could change their calculus of the risks of illegal behavior.[28]

In the polis, the myths of perfectly precise, neutral, and enforced rules are essential to the legitimacy of laws. Our reigning image of fairness includes the idea that "likes are treated precisely alike," however little guidance the formula provides in practice. In liberal political theory, which places a higher value on individual autonomy than on collective power, the myths are necessary to justify why people should ever give up their autonomy and submit to government rules. At the same time, the formula of treating likes alike implies a competing formula for justice: giving each person his or her due. This formula requires inquiry into the particular circumstances of each case—an inquiry that is necessarily personal and open to considering factors that don't fit the rules precisely. The "each person his or her due" formula suggests that more vague rules and more flexible enforcement would be the better part of justice. Informal rules mediate the tensions between these two contradictory aspects of formal rules.

Rules and Democracy

The ideal of the rule of law rests on an assumption so obvious that we rarely question it: Following rules is good. But as soon as we surface the assumption, troubling issues arise.

[27]Danish example (a true case) from Dorthe Høgh Hansen, "The Rule of Availability, Including Activation When Receiving Unemployment Benefits," unpublished seminar paper, Department of Political Science, Aarhus University, Spring 2011. For more on how agencies teach their clients the rules of the game, see Michael Lipsky, *Street Level Bureaucracy* (New York: Russell Sage Foundation, 1980), pp. 61–65.
[28]Eric Lichtblau, "In Justice Shift, Corporate Deals Replace Trials," *New York Times*, April 9, 2008.

First, officials or citizens can follow the letter of the law while fully intending to violate its spirit. AIG, a multinational insurance giant, evaded New York's campaign financing law with this strategy. The law prohibits a corporation from contributing more than $5,000 to a candidate for state office. AIG funneled many times that amount to several candidates, including $335,000 to George Pataki's 2002 gubernatorial campaign. Multiple $5,000 checks poured into campaign coffers, bearing names of different AIG subsidiaries, but all drawn on the same account, with sequential numbers, and with the same address—AIG's headquarters in Philadelphia. The parent company decided which candidates each subsidiary should support but insisted the multiple contributions were legal because they were "charged back" to each subsidiary.[29]

Following the letter of the law in order to thwart it suggests a paradox. Rules foster democracy by guiding citizens to behave in ways that promote the common good. But the effectiveness of rules and laws depends on citizens' *already* sharing the basic values of democratic governance and rule of law. If they don't share those values, rules can't make for democracy.

Sometimes rules that ostensibly sustain an institution would destroy it if people enforced them or followed them. This is a second reason that following rules might not always be good for society. "Working to rule" is a widely used tactic for workers to press for more pay, better working conditions, or changes in the rules. As the phrase suggests, working to rule means following the rules to the letter, doing no more and no less than is required. In chronically understaffed organizations, workers can disrupt services by working to rule. For example, because many airports are ill-equipped for the volume of flights they manage, air traffic controllers can keep flights on schedule only if they ignore safety rules about how frequently planes can take off and land. Thus, by enforcing the rules, air traffic controllers can disrupt passenger and cargo flights, thereby causing social harm. Underfunded organizations often depend on workers to go beyond their required job descriptions in order to carry out the organization's mission. For example, if nurses and doctors worked by the clock and abandoned seriously ill patients at the end of their shifts, hospitals could not provide necessary care.

As the airport and hospital examples hint, sometimes following rules reveals deeper problems that policy makers have ignored. A sad example caught Nebraska's lawmakers by surprise. In 2008, the state legislature enacted a "safe haven law" permitting mothers to drop babies at hospitals anonymously without prosecution for abandonment. Safe haven laws were

[29]Mike McIntire, "Campaign Gifts from Big Insurer Elude the Limit," *New York Times*, Aug. 19, 2006.

meant to prevent distraught mothers from putting newborns in trash bins or leaving them somewhere to die. Unlike safe haven laws in the other forty-nine states, Nebraska's didn't specify an age, but rather referred to "a child." Within four months of the law's passage, parents had deposited thirty-five children at hospitals, most of them teenagers. Investigation of these cases revealed a reservoir of troubled parents, unable to cope with behavioral problems and mental illness, and a shortage of psychiatric services to help them. Lawmakers responded not by expanding services but by closing the loophole—they changed the law to specify infants up to thirty days old.[30]

These examples reveal another paradox of rules. By following rules to the letter of the law, citizens can actually bring to light issues that policy makers have failed to address. Arguably, this kind of literal rule following could strengthen democracy, because if policy makers heed the signals, they can learn how to improve policy. But as the safe haven story shows, this paradox of rules arises from an even thornier one: in democracies, policy makers sometimes avoid dealing with a complex social problem by making rules that sweep the problem under the rug or address only a superficial aspect of it.

The strongest challenge to the assumption that following rules is always good might be called the Nuremberg Lesson: sometimes following rules is the wrong thing to do. At the end of World War II, the Allies tried Nazi leaders, doctors, and judges on charges of crimes against humanity. The trials were held in the city of Nuremberg, Germany, and became known as the Nuremberg Trials. Many of the perpetrators defended themselves by saying they shouldn't be held responsible because they had followed orders of their superiors. The Nuremberg judges roundly rejected the defense. Ever since the Nuremburg trials, "following a superior's orders" no longer defines the limit of individual responsibility. Leaders, officials, and ordinary citizens have a duty to exercise their moral judgment and follow their conscience.[31]

Civil disobedience, or breaking laws to follow what one regards as moral duty, holds a place of honor in democratic theory. From Mahatma Gandhi's colonial resistance to Nelson Mandela's fight against apartheid, from Henry David Thoreau's tax resistance to Martin Luther King's civil

[30]Erik Eckholm, "License to Abandon Children in Law Meant to Save Them," *New York Times*, Oct. 3, 2008; Erik Eckholm, "Nebraska Revises Child Safe Haven Law," *New York Times*, Nov. 22, 2008.

[31]Norbert Ehrenfreund, *The Nuremberg Legacy: How the Nuremberg War Crimes Trials Changed the Course of History* (New York: Palgrave Macmillan, 2007), pp. 49-52. The "superior's orders" defense was allowed as evidence for mitigating a sentence, but not for determining guilt or innocence.

rights movement, from the Polish families who succored striking Solidarity workers to the San Francisco mayor who issued same-sex marriage licenses in defiance of state law, breaking the law has long been a force for equal rights and democratization.

But civil disobedience raises other paradoxes of rules and democracy. Democracy requires that citizens make laws together and agree to abide by them for the common good. To follow one's conscience is to make one's own law. If everyone did it all the time, there would be anarchy, not government of any sort, let alone democracy. On the other hand, democracy needs citizens who are willing to risk punishment, ostracism, and perhaps their lives to challenge injustice and exclusion. Democracy needs citizens who are willing to hold it to its ideals by breaking the rules that citizens make.

14

Facts

> To be political, to be in a polis, meant that everything was decided through words and persuasion and not through force and violence.
>
> Hannah Arendt, *The Human Condition*

> Attitude is more important than facts.
>
> Chinese fortune cookie

The Two Faces of Persuasion

Of all the means of coordinating and controlling human behavior, none is more pervasive, more complicated, or less well understood than persuasion. Certainly none arouses such ambivalence. As a policy instrument, persuasion has two faces, one revered and the other feared: persuasion as enlightenment, or persuasion as indoctrination.

On one side, persuasion evokes images of reasoned and informed decision, what we can call the rational ideal. In this by now familiar model, individuals consciously formulate goals, gather information about alternative means to achieve them, evaluate the alternatives, and choose the ones most likely to succeed. The rational ideal esteems those who act according to reason, and denigrates those whose decisions are based on raw emotion, unconscious biases, blind loyalty, or momentary passion. (Did you notice my choice of adjectives?) The rational ideal cherishes argument by fact and logic, and canonizes the scientific method. It drives a search for neutral facts, unbiased techniques, and disinterested conclusions.

The rational ideal offers reason as the basis for policy making. Groups, organizations, and even whole societies can emulate the process of rational deliberation by individuals. Democracy, many have said, is government by discussion. Rational persuasion is associated with voluntarism.

If people can be educated, they don't need to be coerced or even induced to behave in harmony with their own and the common good. ("The facts speak for themselves.")

In the rational ideal, information and knowledge obviate the need for force because they can resolve conflict. ("The pen is mightier than the sword.") Most conflict is seen to derive from ignorance, not from fundamental differences of values, character, or interests. In the U.S. during the 1790s, when the first wave of almanacs appeared, these compilations of descriptive facts and figures were touted as the solution to differences of opinion and political disagreements. Diversity of opinion, claimed one editor, arises from indolence, dogmatism, and "a want of certain data." To correct this lack, academics, clergymen, and historians offered their collections of facts, always "authentic," "impartial," and "accurate."[1]

The dream of conflict resolution through facts is by no means a relic of history. The economist Milton Friedman also argued that policy disputes could be resolved with data. "Differences about economic policy," he wrote, "derive predominantly from different predictions about the economic consequences of taking action," rather than from "fundamental differences in basic values." Because economics "is, or can be, an 'objective' science in precisely the same sense as any of the physical sciences," he asserted, conflicts over economic policy could eventually be eliminated by "the progress of positive economics."[2] And a leading textbook from the 1970s, the founding period of public policy degree programs, offered this hope to students:

> Policy disagreements would lessen—and perhaps vanish—if we could predict with certainty the safety consequences of the breeder reactor, or the costs of annual upkeep of clay courts, or whether a special shuttle bus for the elderly would be heavily used.[3]

By now, you know this book rejects the idea that policy conflicts arise from a lack of facts. Sure, policy disputes entail some disputes over facts, but the deeper and more important conflicts are over values. Even if experts could accurately predict the safety consequences of a nuclear reactor, citizens would still disagree about whether the consequences would be distributed equitably, whether their welfare would be enhanced

[1]Patricia Cline Cohen, *A Calculating People* (Chicago: University of Chicago Press, 1982), chap. 5; quotations on p. 155.

[2]Milton Friedman, *Essays in Positive Economics* (Chicago: University of Chicago Press, 1953), p. 5.

[3]Edith Stokey and Richard Zeckhauser, *A Primer for Policy Analysis* (New York: Norton, 1978), p. 261.

or their liberty diminished, and whether their government was keeping them secure.

Nevertheless, despite enduring value conflicts, the ideal of policy making through rational deliberation remains a core value of democracy. Once every citizen has an equal voice in policy making, albeit indirectly through elected officials, a democratic government needs a way to turn multiple voices into coherent policy. That method is deliberation—pondering together, weighing, questioning, and eventually, reaching consensus. The rational ideal and the democratic ideal go hand in hand. Together, they offer a vision of society where conflict is temporary and unnecessary, where force is replaced by discussion, and where individual actions are brought into harmony through the persuasive power of logic and evidence.

Persuasion's ugly face is captured in the words "propaganda" and "indoctrination." Indoctrination has two elements that distinguish it from educating, informing, or discussing conceived in the rational ideal. First, it is intentionally manipulative, disguising its perpetrator's hidden motives. It is designed to make its audience serve someone else's interests rather than to foster the audience's self-interest through increased knowledge. Second, indoctrination robs people of their capacity to think independently. It drives out rational thought by appealing to emotions, especially fear and anxiety. When it uses more rational appeals (for example, visions of a prosperous future), it often truncates rational deliberation by distorting and withholding information.

Indoctrination suggests images of Big Brother and thought control from George Orwell's dystopic novel *1984*. This face of persuasion evokes abhorrence and condemnation among political scientists, and, for the most part, they take the position that "it doesn't happen here." Thus, Charles Lindblom, author of a major book on comparative political systems, argues that persuasion as a means of social control plays a central role only in totalitarian political systems. His model of an extreme persuasion-based political system, which he calls a "preceptoral system," is defined as:

> a system of social control through highly unilateral governmental persuasion addressed not to an elite or to a bureaucracy alone but to an entire population. . . . It is more an aspiration than an accomplishment, more often a disguise for coercion—even terror—than an independent system of control.[4]

In the rational ideal, the individual is autonomous and free to choose on the basis of accurate information; in the indoctrination model, the individual is a puppet whose mind has been invaded by others and who appears

[4]Charles Lindblom, *Politics and Markets* (New York: Basic Books, 1977), chap. 4; quote on p. 55.

to choose voluntarily but is in fact directed from without. In totalitarian systems, government controls education and media and dictates the content of curricula and news. Indoctrination permeates every realm of life, from street posters and subway ads to public celebrations and official ceremonies.

Each view of persuasion has its own language. "Information" in one is "propaganda" in the other. Information "enlightens" and "liberates"; propaganda "benights" and "enslaves." "Education" in one view is "brainwashing" in the other. "Learning" in one is "conditioning" in the other.

Most analyses of the institutions of persuasion use these two ideals as ends of a continuum and acknowledge that no actual system perfectly fits either one. In the polis, the boundary between the two sides of persuasion is blurry. Between the two idealized models stretches the vast terrain of influence. The debate about persuasion as a policy instrument concerns where in this terrain we should draw the line between legitimate and illegitimate forms of influence. For any policy based on persuasion, such as public information campaigns, disclosure rules, or education, how do we know whether it enhances rational deliberation or manipulates behavior? When does information become propaganda and education become brainwashing? What are the boundaries of legitimate persuasion in a democracy?

Making Facts in the Polis

The rational ideal presupposes the existence of neutral facts—neutral in the sense that they accurately describe the world but don't serve anybody's interest, promote any value judgments, or exert persuasive force beyond the weight of their correctness. Yet, facts don't exist independent of interpretive lenses. For starters, they come clothed in words, and words, as we know, are loaded. The mere act of naming something places it in a class and suggests that it is like some things and unlike others.

In a Massachusetts controversy over legalizing casinos, the two sides used different names. Opponents referred to "gambling," proponents to "gaming." The Greater Boston Chamber of Commerce (a proponent) commissioned a consulting firm to do an "objective" study estimating the number of jobs and amount of "gross gaming revenues" casinos would bring. A critic pointed out that "gaming revenues" to the state are "gambling losses" to individuals. Thus, the critic wrote, the study actually touted the benefits to the state coffers of citizens losing between $1.5 billion and $1.75 billion

should casinos be allowed. The critic skewered the report merely by changing the labels.[5]

Names can be such powerful persuasive devices because they carry implicit stories and moral connotations. One can see the tactical use of labeling in debates over whether the U.S. government practices torture. Starting with publication of the Abu Ghraib photos in 2004, as news media raised questions, military and government officials steadfastly referred to the treatment of suspected terrorists as "enhanced interrogation techniques." Specific techniques were called by anodyne names: "stress positions" for keeping someone shackled to the floor or suspended by their arms; "waterboarding" or "inducing the sensation of drowning" for temporarily suffocating a person by filling his respiratory passages with water. The infamous 2002 Justice Department memo that effectively declared torture legal accomplished its task by choosing words carefully. "Certain acts may be cruel, inhuman or degrading," the memo said, but "fail to rise to the level of torture." Only acts that cause "severe physical or mental pain or suffering" constitute torture. But how bad does pain and suffering have to be to qualify as "severe?" To define "severe," the deputy assistant attorney general John Yoo borrowed a definition from health insurance law that specifies when insurers must cover emergency room visits. "Severe" is when a prudent person would think that without immediate medical attention, acute symptoms could cause "death, organ failure, or the permanent impairment of a significant bodily function." Thus, by reducing the question of torture to the meaning of a single word, then controlling the definition of that word, Yoo could declare that all interrogation techniques that stop short of causing death or near-death are not torture.[6]

To name is to take a stand. And because naming is political, the ideal of pure description that conveys neutral information must be open to question. This is not to claim that there aren't some neutral facts that most people could agree upon—for example, that I am sitting at a desk and that you are holding a book. (Or is it an electronic reader, and if so, is that a book? You see? We're already in trouble.) But these simple objects are not the kinds of things at issue in politics. In politics, people care about ideas, concepts, and practices, such as freedom, hunger, and whatever it is that goes on inside casinos. When things become political issues, even names lose their objectivity.

[5]Steve Bailey, "The Rest of the Story," *Boston Globe*, March 12, 2008, p. C1.

[6]Jay Bybee, Memorandum for Alberto R. Gonzalez, "Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A," U.S. Department of Justice, Office of Legal Counsel, Aug. 1, 2002, §II B. The memo was drafted by John Yoo and signed by his boss, Assistant Attorney General Jay Bybee.

Nor am I claiming there is no such thing as accuracy and distortion, no yardstick by which to judge descriptions of events. Most people think that "torture" comes closer to describing what they saw at Abu Ghraib and read about at Guantánamo than "a stressful day" or "making people believe they might drown," as the *New York Times* once described waterboarding. "Even a dog distinguishes between being stumbled over and being kicked," noted the great jurist Oliver Wendell Holmes. Moral ideas and social conventions give us some standards for judging names as more or less close to the truth. But every name is a symbol, not the thing itself, and in the choice of names lies judgment, comparison, evaluation, and, above all, the potential for disagreement.

The problem of neutrality and objectivity begins in naming but goes far deeper than naming. What we think of as facts—statements about the true state of the world—are produced in social processes. Scientists conduct research; courts hold trials and lawyers interview witnesses; leg-

islatures conduct hearings; public and private agencies collect data; and news media investigate and report.

These institutions, or rather the people within them, make numerous choices in developing and presenting information. Legislators decide whom to invite to testify at hearings and how much time to give each witness. Agencies decide what sort of data to collect, how vigorously to pursue nonrespondents or other missing information, and how to categorize the information they do receive. Courts attempt to determine the facts of a case in order to decide which rules of law apply. But, in the words of one prominent jurist, Jerome Frank, "facts are guesses":

> The actual events, the real objective acts and words of [the two parties to a suit] happened in the past. *They do not walk into court.* The court usually learns about these real, objective, past facts only through the oral testimony of fallible witnesses. . . . *Judicially, the facts consist of the reaction of the judge or jury to the testimony.*[7]

Maybe Frank exaggerates a bit. Courts also rely on physical evidence and written documents. They bring in expert witnesses as well as ordinary people. Still, the two parties present different versions of the past, or they wouldn't be in court in the first place. They are engaged in a contest to provide the most convincing representation of reality to the judge and jury.

Think of the Rodney King trial. Rodney King was a black motorist who was beaten by the Los Angeles police as they arrested him in 1991. During the trial of police officers on assault charges, past events very nearly did walk into court, to use Frank's phrase, because a bystander had captured the whole arrest on videotape. Judge, jury, and the public could all watch a replay of what actually happened. They could and did watch it over and over. On the video, the officers could be seen clobbering Mr. King's head with nightsticks and kicking him while he was down on the ground. But the video didn't settle the legal question of whether the police had "assaulted" Rodney King and used "unnecessary force." The officers' defense attorneys used slow motion and freeze frames to make it appear that Mr. King had tried to get up off the ground and fight with the police. Therefore, the defense story went, police had reason to feel threatened, and their actions should be understood as using force "necessary

[7]Jerome Frank, *Courts on Trial* (Princeton: Princeton University Press, 1949), pp. 15–16, emphases added.

and appropriate for self-defense" and for performing their job. (The jury was persuaded and acquitted the officers. A large part of the Los Angeles community was not persuaded, and rioted in protest. Later, in federal court, the officers were convicted of violating Mr. King's civil rights.)[8]

In courts, facts are openly under dispute in an adversary system. By contrast, science is supposed to be a collaborative process to test theories by using shared standards to observe and report facts objectively. But on policy issues with intense moral, ideological, or economic conflicts, science has become politicized. Because scientific research serves as the currency of policy deliberation in democracies, some advocacy groups style themselves as scientific research organizations. A new breed of agenda-driven research institutes produces spurious science alongside legitimate research institutes.

One such organization, the Family Research Institute, sounds like a scientific body but is an advocacy organization whose goal is to stop same-sex marriage and gay parenting, end anti-discrimination laws for gays and lesbians, and punish homosexuality. In court cases on gay and lesbian family rights, the Family Research Institute provides its own medical research and testimony purporting to show that same-sex couples endanger their children—in direct contradiction to the findings of studies by leading professional organizations, such as the American Academy of Pediatricians. The institute packages its research with scientific jargon, charts and tables, and sponsorship by organizations with names that mimic genuine medical organizations. One such sponsor, the anti-gay "American College of Pediatrics," has exactly one employee, but its name and imprimatur can confuse even a sophisticated reader and therefore have a big impact. Moreover, the research is purely polemical. In "Medical Consequences of What Homosexuals Do," a pamphlet by the head of the Family Research Institute, readers learn:

> Often these encounters occur while the participants are drunk, high, and/or in an orgy setting. . . . Every year, a quarter or more of homosexuals visit another country. . . . And fresh pathogens from these continents come here. Foreign homosexuals regularly visit the U.S. and participate in this biological swapmeet.[9]

The Family Research Institute operates in the tradition of nineteenth-century moral crusaders who published spurious scientific investigations

[8]Seth Mydans, "Jury Could Hear Rodney King Today," *New York Times*, March 9, 1993, and other news coverage.

[9]Michael Kranish, "Beliefs Drive Research Agenda of New Think Tanks," *Boston Globe*, July 31, 2005, p. A1; Martha Nussbaum, *From Disgust to Humanity: Sexual Orientation and Constitutional Law* (New York: Oxford University Press, 2010), quote on p. 1.

to prove that a social group they despised and feared should be restrained for the public good.[10]

When the stakes are money rather than morals, the misuse of science takes a less extreme but more insidious and politically effective form. If scientific research shows a product to be dangerous or unsafe, the affected industry can create doubt about the research as a tactic to delay or stop regulation. In the case of tobacco, "the industry and its scientists manufactured uncertainty [about the health consequences of smoking] by questioning every study, dissecting every method, and disputing every conclusion." Industry pays expert consultants to challenge adverse findings on science's own terms—the data weren't representative, the statistical methods weren't correctly done, the causal mechanism wasn't demonstrated, or the time frame wasn't long enough. The findings, therefore, are still only "an unproven hypothesis." Next, the industry publishes these consultants' reports, sometimes getting them into regular scientific journals, otherwise issuing the reports under the banner of an industry-created organization with a scientific-sounding name. Last, the industry uses the publications it funded and generated as evidence that there really is controversy and the science isn't definitive.[11]

The doubt strategy has been used to prevent regulation of myriad products harmful to health and the environment, including asbestos, beryllium (used in nuclear industry), and chlorofluorocarbons (CFCs or Freon). The strategy is used by creationists to challenge evolution and justify their demands that creationism be included in school curricula. The fossil fuel industry has used the doubt strategy to forestall American regulation of carbon emissions and ratification of the Kyoto Protocol and other international climate change policies. For example, the American Petroleum Institute, representing the oil industry, targets college campuses for educational workshops and environmental programs challenging the science behind global warming and the wisdom of regulation.[12]

Both the moral crusade-as-science strategy and the put-research-in-doubt strategy undermine the ideal of scientific objectivity in the polis. The point here is not that all science is corrupt, but, rather, in the polis, science can be and is increasingly used as an instrument of

[10]James A. Morone, *Hellfire Nation: The Politics of Sin in American History* (New Haven: Yale University Press, 2003).

[11]David Michaels, *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health* (New York: Oxford University Press, 2008), quote on p. 4; Michelle Nijhuis, "The Doubt Makers," *Miller-McCune*, June/July 2008, pp. 26–35.

[12]Nijhuis, "Doubt Makers," ibid.; Judith Layzer, "Climate Change: The Challenges of International Environmental Policymaking," in *The Environmental Case: Translating Values Into Policy*, 3rd ed. (Washington, D.C.: CQ Press, 2012), pp. 270–307.

influence in political conflict. And if these uses of science don't exactly count as propaganda, neither do they meet the ideal of rational persuasion through information.

Challenges to the Informed Citizen

Because it *is* an ideal, the rational ideal naturally exaggerates human rationality in processing information. A voluminous social psychology literature tells us we rely on habit, stereotypes, and cultural norms for the vast majority of decisions. We are as much influenced by the *source* of information—the person's race, looks, social manners, reputation, and credentials, or whether the source is a person or some other medium—as by the content. We are subject to extremely strong influence by peers, coworkers, family, and other groups of which we are a part. The drive to conformity with important reference groups would seem to be at least as strong as the drive to select the best means to an end.[13]

Studies in cognitive psychology tell us that emotion plays a big role in our personal and political decisions.[14] Rational, means/end decision making requires the capacity to feel emotions. For example, people with brain injuries that prevent them from experiencing fear but whose cognitive function remains intact cannot make informed decisions about their personal safety. In the polis, citizens use emotion, prior attitudes, and, alas, stereotypes, to evaluate news, policies, and candidates for office. Walter Lippmann, an early scholar of public opinion, understood the point already in the 1920s, long before any sophisticated research on how people form their political opinions:

> For the most part we do not first see, and then define, we define first and then see. In the great blooming, buzzing confusion of the outer world, we pick out what our culture has already defined for us, and we tend to perceive that which we have picked out in the form stereotyped for us by our culture.[15]

In our various social and political roles, we act largely according to prior attitudes and beliefs rather than new information. For example, after the U.S. invaded Iraq and found no weapons of mass destruction, people

[13]For an early study on the importance of the source and conformity to group norms, see Carl I. Hovland, Irving L. Janis, and Harold Kelley, *Communication and Persuasion* (New Haven: Yale University Press, 1953), chaps. 2 and 5.

[14]Antonio Damasio, *Descartes' Error: Emotion and Reason in the Human Brain* (New York: G. P. Putnam, 1994); Drew Westen, *The Political Brain: The Role of Emotion in Deciding the Fate of the Nation* (New York: Public Affairs Press, 2007).

[15]Walter Lippmann, *Public Opinion* (New York: Harcourt Brace, 1922), p. 31.

who supported President Bush were more likely to persist in believing that Iraq *did* have weapons of mass destruction.[16] Prior attitudes affect voters' choices, judges' decisions, teachers' assessment of student performance, and mental health professionals' evaluation of patients.[17] As social beings, our individual judgments and decisions are highly influenced by our participation in groups. When individuals discuss issues in groups whose members already tend to think alike, their opinions tend to move toward the group consensus, and, sometimes, toward more extreme views than they held at the outset.[18]

Studies of how people use information to arrive at policy judgments present a shaky picture of rationality. To a large degree, citizens remain ignorant about public issues, especially economic ones. In surveys about the Bush tax cuts in 2001, an issue that had received intense media coverage, over 40 percent of respondents said they "hadn't thought about the issue," despite the fact that taxes affect everybody palpably. But ignorance is only the beginning of the mystery. Of those who *had* thought about the tax issue, over 40 percent supported the cuts. As the political scientist Larry Bartels found out, people's support for the tax cuts bore little rational relationship to their views on larger policy questions. A majority of citizens believe the rich pay too little in taxes and the poor bear an unfairly high burden. But citizens' views on equity had almost no impact on their views of the tax cut, which lowered taxes on the rich and raised them on the middle class. Instead, citizens who thought their *own* tax burden was too high favored the cuts—most of them apparently believed the president's hints that the cuts would lower their taxes. Surprisingly, people who believed government "wastes a lot of money" were less supportive of the cuts than those who didn't see government as wasteful. It seems that on issues that affect people and that they care about, they often support policies that contradict their values (equity), their views of government ("wasteful"), and their material self-interest (their taxes).[19]

[16]S. Kull, C. Ramsay, and E. Lewis, "Misperceptions, the Media, and the Iraq War," *Political Science Quarterly* vol. 118, no. 4, 2003, pp. 569–98.

[17]On voting, see Michael S. Lewis-Beck, *The American Voter Revisited* (Ann Arbor: University of Michigan Press, 2008); on judicial behavior, Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge, England: Cambridge University Press, 2002); on teachers, Robert Rosenthal and Lenore Jacobson, *Pygmalion in the Classroom: Teacher Expectations and Pupils' Intellectual Development* (New York: Holt, Rinehart and Winston, 1968); on mental health professionals, David Rosenhan, "On Being Sane in Insane Places," *Science* 179 (Jan. 19, 1973), pp. 477–85.

[18]Cass Sunstein, *Going to Extremes* (New York: Oxford University Press, 2009).

[19]Larry M. Bartels, "Homer Gets A Tax Cut: Inequality and Public Policy in the American Mind," *Perspectives on Politics*, vol. 3, no. 1, 2005, pp. 15–31; see also Jacob S. Hacker and Paul Pierson, *Winner-Take-All Politics* (New York: Simon & Schuster, 2010).

Information Disclosure as a Policy Instrument

In democratic theory, the key function of news is to provide citizens with information so they can engage intelligently in debates and use factual information to arrive at their policy views. If political actors convey erroneous information, one hopes that news media will correct it and that on receiving new, more accurate information, citizens will incorporate it into their thinking. Here, too, research results are unsettling. In some studies, corrections to erroneous information do change people's beliefs, but many studies find no discernible impact. In one recent study, subjects were given a mock news story with an error, then shown another story with a detailed correction of the error. To the dismay of the researchers, the corrections didn't change people's minds most of the time, and in many cases the corrections backfired. After receiving a correction, more people believed the original incorrect information. For example, after being told that Bush's statements about Iraq's WMDs (weapons of mass destruction) had been refuted by a CIA report, *more* people believed Iraq had WMDs. This backfire effect was most pronounced among people who were ideologically committed—in this case, people who supported the war in Iraq and thought it was a very important issue. This line of research suggests that, contrary to the rational ideal, providing citizens with more accurate information from authoritative sources can actually harden their ideologically motivated views.[20]

Still, the *ideal* of the rational and informed citizen has spawned numerous policy ideas based on persuasion and voluntary behavior change. Policy makers have embarked on persuasion campaigns to get people to stop littering and smoking; to use seat belts and drive safely; to conserve energy and join car pools; to limit population growth, prevent forest fires, finish high school, exercise, recycle, and donate their organs. To help citizens make informed choices, government sometimes requires manufacturers and sellers to disclose particular kinds of information about their goods and services. Thus, we have nutrient and country-of-origin labels on food; health warnings on cigarette packages, wine bottles, and pharmaceutical drugs; fiber content labels on clothing; financial disclosure rules for issuers of stock; "plain English" requirements for insurance policies; "truth in lending" requirements for banks and credit card issuers; risk disclosures and informed-consent requirements for doctors; fuel economy ratings of cars and energy efficiency ratings of appliances; and tire grading, meat grading, and hospital "report cards."

[20]Brendan Nyhan and Jason Reifler, "When Corrections Fail: The Persistence of Political Misperceptions," *Political Behavior*, vol. 32, no. 2 (2010), pp. 303–30.

Models of Persuasion

Rational-democratic Model	*Totalitarian Model*	*Polis Model*
1. Reason forms basis for personal and government decisions.	Citizens accept government propaganda, act like puppets, and do not decide for themselves.	In addition to reason, people use emotion, prior beliefs, stereotypes, and other "irrational" factors in making decisions.
2. Facts, data, and information are neutral, and can settle conflicts.	Government produces slanted information and tightly controls all news. Government uses information as a means of social control, not democratic conflict resolution.	Facts and information (even names) are interpretive and socially constructed. Political actors use information strategically to achieve their interests.
3. Government uses information and deliberation to bring individual actions into harmony with the public interest.	A central government indoctrinates ordinary citizens and elites by controlling all communication apparatus.	Political actors attempt to manipulate others' beliefs and policy preferences. Government agencies and dominant groups have more resources to influence others, even without controlling a central apparatus.

The information disclosure strategy rests on a key assumption: if citizens are given factual information to guide their decisions, they will make better decisions, ones that maximize their own welfare and the common good. In many cases, however, new information doesn't change people's behavior. For example, according to public health wisdom, government can encourage people to eat fewer calories by requiring restaurants to post the calorie counts of their menu items. Eating fewer calories will make individuals healthier, stem obesity, and reduce the nation's health care

expenditures. In 2008, New York City required fast-food restaurants to post calorie contents of their meals. Even among customers who reported that they noticed the calorie postings *and* that the information had influenced their food choices, there was no difference in the calorie content of their meal purchases before and after the law.[21]

Interestingly, providing information about social norms may have a greater impact on individual behavior than more factual health information. In later studies of calorie posting and fast-food restaurants, when restaurants posted a recommended daily calorie intake in addition to each menu item's calorie content, customers purchased meals with fewer calories. And in research on how to reduce college drinking, correcting students' perceptions about campus drinking norms seems to have more impact than information about the dangers of drinking too much.[22] These results make perfect sense in the polis model of individual decision making, where people are as much or more influenced by social norms and networks as by "hard" factual information.

The wave of information disclosure policies starting in the late 1970s rolled in with the neoliberal anti-regulatory tide. Even though disclosure requirements are a kind of regulation, conservative opponents of regulation thought they were preferable to regulating industry practices through standards, for example, by setting limits on auto fuel emissions or credit-card interest rates and fees. Information disclosure is the market model of regulation. It relies on consumers to become indirect regulators by exercising the (limited) clout of their individual, uncoordinated purchasing decisions. The market model allows government to avoid using its greater power to deal with a problem.

Indoctrination in the Polis: Business's Power to Persuade

As we saw earlier, political scientists define indoctrination as persuasive efforts that: 1) are carried out by a single, central government authority; 2) are intentionally manipulative; 3) are designed to secure the interests of the indoctrinator; and 4) deprive citizens of their capacity to make

[21]Brian Elbel, Rogan Kersh, Victoria L. Brescoll, and L. Beth Dixon, "Calorie Labeling and Food Choices," *Health Affairs* vol. 28, no. 6, 2009, supplement pp. w1110–w1121.

[22]Christina A. Roberto, et. al., "Evaluating the Impact of Menu Labeling on Food Choices and Intake." *American Journal of Public Health*, 2010, Vol. 100 Issue 2, pp. 312–318; William DeJong, "The Role of Mass Media Campaigns in Reducing High-Risk Drinking among College Students, *Journal of Studies on Alcohol*, Supp. no. 14 (2002), pp. 182–92.

independent, reasoned decisions. Making totalitarian government part of the definition rules out any possibility for indoctrination to occur in other regimes; notably, the democracies most political scientists inhabit. If instead, we define indoctrination in a way that captures its meaning without making one form of government a part of the definition, then we can at least consider the possibility that indoctrination occurs in non-totalitarian societies. Thus, let's define indoctrinations as: 1) *a regime in which dominant elites shape people's beliefs and knowledge*; 2) *in a manipulative and self-interested way*; 3) *that deprives them of the capacity for independent thinking*. Arguably, in the U.S. and other democratic capitalist societies, economic and political elites engage in forms of persuasion that meet this definition of indoctrination.

First, business occupies a pivotal position in capitalist economies. As the engine of economic development, business has a plausible causal story to tell: "What's good for business is best for citizens." In every debate about economic policy or business regulation, business interests cultivate public support for their preferred policies by promising that business profits trickle down to benefit every citizen. With that overarching causal story, business can more easily persuade citizens to accept its dominant influence in policy making, and to refrain from challenging the grand bargains of political economy—private property, private enterprise, corporate autonomy, and a skewed distribution of income and wealth.[23]

Second, business commands overwhelming financial and organizational resources to shape political culture and influence elections. Starting in the early 1970s, American business embarked on a campaign to shift elite and popular opinion in favor of free markets and against all forms of government regulation, and to persuade citizens to accept its dominant influence in policy making. Through its national associations, such as the American Chamber of Commerce, the National Association of Manufacturers, and the Business Roundtable, business funded think tanks, academic studies, scholarly journals, and academic and popular books putting forth the business point of view. In 1978, member companies of the Business Roundtable had almost $1.3 trillion in gross revenues, equal to about half of the GNP of the United States. Business has been able to influence and thwart campaign financing laws, in part by using political action committees to funnel money to political candidates who share its free-market, antigovernment views.[24]

[23]Joel Rogers and Joshua Cohen, *On Democracy* (New York: Penguin Books, 1983); Lindblom, *Politics and Markets*, op. cit., note 4, chap. 15.

[24]Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (New York: Cambridge University Press, 2002), esp. chap. 6; Hacker and Pierson, *Winner-Take-All Politics*, op. cit., note 19.

Third, as we've already seen, business sometimes manipulates scientific information to serve its economic interests. In addition to the doubt strategy, business uses what might be called the "certainty strategy"—exaggerating evidence for the benefits of its products and practices, and downplaying or concealing the risks. The Food and Drug Administration (FDA) regulates pharmaceutical drugs largely by requiring scientific evidence that a new drug is "safe and effective." Firms can manipulate the research to make the safety and efficacy of drugs appear highly certain, and certain enough to gain FDA approval. They can design clinical trials in a way that almost guarantees positive results. They pay medical school faculty to conduct trials, giving them an incentive to produce positive findings so they will win more research contracts. In some cases, drug firms retain control over the content of researchers' publications. Eager to bring a drug to market, firms sometimes publish only studies with positive results and suppress the rest.[25] Taken together, these practices meet our definition of indoctrination: manipulation of information to secure the companies' interests in a way that deprives patients and doctors of information necessary for reasoned decisions about medical care.

Fourth, in capitalist economies, business owns and controls the media. To be sure, there are nonprofit and voluntary publishers, filmmakers, TV and radio stations, and new media projects, but they are minuscule and undercapitalized compared to the corporate media. Although not a monopoly, the information sector can be characterized as an oligopoly, where ownership of mass media has become highly concentrated into major conglomerates.[26] Because news providers—newspapers, magazines, television, and radio—all depend on advertising as their chief source of revenue, they can't afford to offend advertisers. Corporations use their advertising dollars to pressure editors to kill investigative stories—or not do them in the first place. Nonmedia corporations can also use their wealth to buy positive media coverage—witness full-page ads by investment firms during financial crises, oil firms during environmental crises, and manufacturers during product recalls. At the same time, corporate crisis advertising illustrates that the media are not completely beholden to their advertisers. The very newspapers that run crisis-response ads also published the investigative reporting that made the corporate crisis

[25]Marcia Angell, "Drug Companies and Doctors: A Story of Corruption," *New York Review of Books*, vol. 56, no. 1, January 2009, pp. 8–11.

[26]Scholars debate the degree of concentration of media ownership and whether current levels of concentration are a problem for democracy. For a thoughtful overview, see C. Edwin Baker, *Media Concentration and Democracy* (New York: Cambridge University Press, 2007).

that made the ads necessary. To take one example, during the 2010 Gulf of Mexico oil spill, despite BP's daily infusion of ad revenue to the *New York Times*, the *Times* never let up on its front-page investigative reporting. In short, the media are far from blatant propaganda mills, but corporate ownership does mean the owners can bias the content toward their interests, which are probusiness.[27]

Indoctrination in the Polis: Government's Power to Persuade

Government also engages in forms of persuasion that arguably might be located toward the indoctrination end of the spectrum. In the modern welfare state, government has face-to-face contact with citizens through street-level bureaucrats—people such as voting registrars, teachers, police, judges, parole officers, social workers, and eligibility determiners for the numerous health and welfare programs. These people effectively dispense moral and political lessons, backed up by serious threats.

The power of such low-key persuasion by petty officials is illustrated in V. O. Key's research on how southern voting clerks could prevent blacks from exercising their constitutional right to vote in the 1940s:

> The registrar registers any qualified person, black or white, if he insists. When a Negro applies, however, she tells him that he will be registered if he insists, but she gives him a quiet, maternal talk to the effect that the time has not yet come for Negroes to register in the county. The people are not ready for it now and it would only cause trouble for the Negro to register. Things move slowly, she tells the applicant, but the day will come. . . .[28]

No central bureaucrat wrote this registrar's lines and no state-controlled media broadcast her message. Yet, when Key examined records for her county in 1947, he found that only six out of 13,000 eligible blacks were registered to vote. Of course, quiet talks were not the only influence on blacks' voting behavior. Violence against blacks was a pervasive background threat. Nevertheless, this scenario must surely count as a dominant elite controlling other people's beliefs in a manipulative and self-interested way.

In addition to merely talking, street-level bureaucrats have forceful incentives with which to prod client behavior in the preferred directions.

[27]Robert W. McChesney, *Rich Media, Poor Democracy* (New York: New Press, 2000).

[28]V. O. Key, Jr., *Southern Politics* (New York: Knopf, 1949), pp. 566–67.

Social workers and case managers hold the power to reduce or increase welfare benefits, to get clients into special housing and employment programs, or to remove children from families by pursuing claims of child abuse. Mental health professionals wield the power to institutionalize and release people. Judges hold the power to exact payments, send people to jail, or take away their children. Consider the power of a Texas judge who, in a routine child custody case, scolded a bilingual Hispanic mother for speaking and teaching Spanish to her daughter:

> You're abusing that child and you're relegating her to the position of housemaid. Now get this straight. You start speaking English to this child because if she doesn't do good in school, then I can remove her because it's not in her best interest to be ignorant."[29]

Some government efforts to mold citizens' character could be considered a kind of indoctrination. For American social scientists, the archetype of indoctrination has always been communist efforts at character reform, specifically to make "a new man" suitable for participation in socialist government. In the U.S., current criminal justice and welfare policy were explicitly conceived as character reform, meant to remake people of lower socioeconomic status into virtuous democratic citizens. The political scientist James Q. Wilson, one of the intellectual architects of tough crime policy, explained how government could, and should, reform character by punishing even minor infractions:

> If we wish to address the problems of family disruption, welfare dependency, crime in the streets, educational inadequacy, or even public finance properly understood, then government, by the mere fact that it defines these states of affairs as problems, acknowledges that *human character is, in some degree, defective and that it intends to alter it.* . . . The essential first step is to acknowledge that in almost every area of public concern *we are seeking to induce persons to act virtuously*, whether as schoolchildren, applicants for public assistance, would-be lawbreakers, or voters and public officials. . . . *Virtue . . . is learned by the regular repetition of right actions.* We are induced to do the right thing with respect to small matters, and in time we persist in doing the right thing because now we have come to take pleasure in it.[30]

The most important "regular right action" communist governments instilled in their new socialist men and women was hard labor, in mines,

[29]Sam Howe Verhovek, "Mother Scolded by Judge for Speaking in Spanish," *New York Times*, Aug. 30, 1995.

[30]James Q. Wilson, "The Rediscovery of Character: Private Virtue and Public Policy," *The Public Interest* no. 81 (Fall 1985): 3–16, quote on p. 15, emphases added.

Persuasion in the Polis: Between Pure Facts and Indoctrination

Business Persuasion	*Government Persuasion*
1. Capitalism is a virtually unquestioned economic philosophy.	Low-level bureaucrats influence citizens' attitudes and behavior through their authority over benefits and punishments.
2. Business can sponsor scientific research and manipulate public perception of science research to serve its interests.	In some policy areas, notably criminal justice and welfare, policies are designed with purpose of molding individual citizens' character.
3. Business can cultivate support for its policy positions through producing educational materials and funding educational programs.	Government can shape the news citizens receive by producing slanted information.
4. Business owns and controls most mass media and can influence public opinion through media campaigns.	Government can shape the news citizens receive by selectively withholding information or forbidding publication.

factories, and on farms. Lawrence Mead, one of the intellectual architects of welfare reform, explained why government should enforce mandatory work for the poor: "[Great Society] programs failed to overcome poverty because they largely ignored behavioral problems among the poor. In particular, they did not tell their clients with any authority that they ought to behave differently." In a chapter titled "Why Work Must Be Enforced," Mead explained why public assistance should always be tied to mandatory work: "Under current conditions, society's interest in work can be greater than the individual's, especially in the case of 'dirty' low-paid jobs."[31] If indoctrination means character reform through coercive regulation of daily behavior, the crime and welfare policies these influential policy thinkers helped design seem to fit the description.

[31]Lawrence Mead, *Beyond Entitlement* (New York: Free Press, 1986), quotes on pp. 49 and 69.

Although government in nontotalitarian systems doesn't hold a monopoly on news coverage, it can exercise significant control over the information that news networks disseminate and citizens receive. Officials and agencies can actively create news content through the statements and documents they craft, and they can indirectly shape news content by withholding information. During the Iraq War and a period of intense criticism of policies at Guantánamo prison, the Bush administration developed an information apparatus designed to package its policy positions as objective, expert military analysis. The Pentagon recruited retired military officers, many of whom were now working for defense contractors, gave them private briefings and trips to Iraq and Guantánamo, and provided them with access to top military and government officials. These former military officers carried the administration's sometimes slanted information and talking points to the major national networks. On TV, they were presented as "military analysts," and some network officials were unaware of their connections to either the administration or defense contractors. According to the *New York Times*, there was "a symbiotic relationship [between the administration and the news media] where the usual dividing lines between government and journalism have been obliterated."[32]

Finally, government can manipulate public attitudes toward its policies by withholding information as well as by creating it. By not releasing casualty information, banning televised images of soldiers returning home in coffins, and not keeping counts of civilian casualties, the U.S. government inhibited potential sources of opposition to the Iraq War. Candidates for political office disguise sources of campaign income in order not to reveal their loyalties to particular groups or raise questions about deals they might have made. Those financial ties and deals, if made more public, would destroy the illusion that elected officials are responsible to "the voters" or that they decide policy issues on the basis of reasoned judgment about the public interest. Withholding campaign finance information robs citizens of the chance to make informed voting decisions.

Persuasion as a policy instrument has often been viewed either as a neutral instrument of science and the market or as a dangerous weapon of totalitarian governments. These ideal types obscure the nature of influence in the polis. Shaping information is an inevitable part of communication and an integral part of strategic behavior. Still, the ideals are useful to help us design and evaluate persuasion policies.

[32]David Barstow, "Message Machine: Behind the TV Analysts, Pentagon's Hidden Hand," *New York Times*, April 20, 2008; David Barstow, "One Man's Military-Industrial-Media Complex," *New York Times*, Nov. 30, 2008.

15

Rights

Resolving policy problems with legal rights is a long-standing impulse in American politics. Well over a century ago, Alexis de Tocqueville observed:

> There is hardly a political question in the United States which does not sooner or later turn into a judicial one. . . . [L]egal language is pretty well adopted into common speech; the spirit of the law, born within schools and courts, spreads little by little beyond them; it infiltrates through society right down to the lowest ranks, till finally the whole people have contracted some of the ways and tastes of a magistrate.[1]

To appreciate how deeply rights are ingrained in our political culture, consider how many political demands are framed in terms of rights. Abortion is cast as a "right to life" on one side versus a "right to reproductive freedom" on the other. School integration is fought as a "right to equal education" versus a "right to local self-government." Welfare policy pits the poor person's "right to subsistence" against the wealthier person's "right to dispose of one's property as one wishes." Inspired by the black civil rights movement, numerous groups mobilized around the concept of rights: women, students, gays and lesbians, prisoners, consumers, Native Americans, welfare recipients, the elderly, and the disabled. Inspired by the colonial tax revolt against Britain, property owners, taxpayer groups, libertarians, and the Tea Party movement have mobilized around a right to be free of government restraints.

The discourse of rights has two broad traditions: realist and normative.[2] In the realist tradition, a right is a citizen's claim backed by the power of the

[1]Alexis de Tocqueville, *Democracy in America*, J. P. Mayer, ed. (New York: Doubleday Anchor, 1969, orig. ed. 1835 and 1850), vol. 1, pt. 1, ch. 8, p. 270.

[2]For a short review of rights concepts, see Stanley Benn, "Rights," in *Encyclopedia of Philosophy*, vol. 7 (New York: Macmillan, 1967), pp. 195–99.

state. It is an expectation about what one can do or how one will be treated, but what distinguishes it from just any fantasy is the capacity to realize it by invoking the state's help if necessary. Oliver Wendell Holmes once defined law as "prophecies of what the courts will do in fact."[3] In this tradition, we can know whether a right exists only by determining whether a government has backed similar claims in the past, or by making a claim as a test case. Rights in this sense are thus specific to individual political systems.

In the normative tradition, rights derive from something higher than man-made law—moral principles that exist before and separate from government. Different schools of thought find these moral principles in natural law, religious texts, rational thought, public opinion, social practices and institutions, and the idea of universal human rights.[4] Whatever the source of their principles, the various normative schools share two central beliefs. First, rights derive from some source other than the power of enforcement. Second, people can have a right to something that they don't actively claim or for which the state would not back them up. In this tradition, one might claim that wives have a right not to be beaten by their husbands, even though many never seek help and even though law enforcement agencies ignore much violence against women. In the realist tradition, by contrast, wives have a right to be free of violence only if, when they protest beatings, the state takes their side and restrains the husbands.

In the polis, the two sides of rights are inseparable. Oppressed people, advocates, reformers, and social movements organize around the normative concepts to claim new rights that haven't yet been legally recognized, or to claim fulfillment of rights that have been legally recognized but not honored. Normative meanings of rights mobilize citizens to insist on legal change, and thereby energize, challenge, constrain, and expand the legal rights of real political systems.

The U.S. founding illustrates the way normative and realist concepts of rights interact. When the colonists decided to separate from Britain, they cast their Declaration of Independence in normative terms, invoking "the Laws of Nature and of Nature's God" to justify their action. They felt no need to point to human law, because, as they said, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among

[3]Oliver Wendell Holmes, "The Path of Law," in *Collected Legal Papers* (New York: Harcourt, Brace and Howe, 1920), pp. 167–202; quote on p. 173.

[4]On the origins of the idea of universal human rights, see Andrew Clapham, *Human Rights: A Very Short Introduction* (New York: Oxford University Press, 2007), chap. 1.

Concepts of Rights in the Polis

Positive Rights	*Normative Rights*
1. A right is a claim backed by the power of the state.	A right is whatever people in a given society ought to be able to do, have, or expect from fellow citizens and the government.
2. Rights derive from the power of government.	Rights derive from some source other than power, such as morality, religion, rationality, or natural law.
3. People can have rights only to those things they claim and for which the state backs them up.	People can have rights to things they don't actively claim, and for which the state would not back them up.

these are Life, Liberty and the pursuit of Happiness." Nevertheless, as they formed a new government, they didn't count on Nature or God to guard their unalienable rights. They drew up a written constitution, appended a formal Bill of Rights, and provided for a judicial system to resolve the conflicts they knew would arise.

How Legal Rights Work

What does it mean to call for a legal right to something as a policy solution? We can answer this question in two ways: first by describing what it is that people want or could possibly get when they call for a legal right, and second by describing what they must do to bring a right into existence or realize it.

People with disabilities have called for a "right to work." Many things besides physical and mental impairments can prevent disabled people from working. Employers often refuse to hire them; some can't drive or use public transportation to get to a job; some were not accepted in public schools as children, and so lack the necessary education; or perhaps they can't manage to perform all the tasks of an available job, as jobs are now defined. Given these problems, what might a right to work mean?

A right to work might mean that every time a disabled person applied for a job, he or she would receive individual consideration "on the merits." Employers would have to inquire into the capabilities of each applicant. They would not be permitted to conclude, say, that all blind people are incapable of operating machines. This type of right is *procedural.* Procedural rights spell out a process by which important decisions must be made. A procedural right is a right to have a decision that affects you made in a certain way, but it does not include the right to an outcome of a certain kind (say, the employer must hire you).

Classic procedural rights are the right to a fair hearing or a trial by a jury of one's peers. For the most part, the rights against discrimination demanded by blacks, women, the disabled, immigrants, and other minorities are procedural rights. They are claims to have decisions about employment, housing, schooling, or criminal punishment made on the basis of individual merit rather than ascriptive characteristics. Hence, the civil rights strategy rests on a paradox: in order to be treated as individuals, people first have to organize and make claims as a group.

A right to work might mean that no one can prevent you from working—say, by making an outright rule against disabled people in the workplace, or by maintaining physical barriers to wheelchairs. This would be a *substantive* right. Substantive rights go beyond procedure to specific actions and entitlements. In this case, we have provided a *negative substantive right*—the right to do something free of restraint.[5] Negative rights are single-party rights; no second party is necessary for an individual or group to assert them. Second parties can only prevent the exercise of negative rights (which they do illegitimately if the activity is indeed a right). The classic First Amendment freedoms are of this type—the right to free speech, assembly, religion—as are the rights to organize collectively and to vote.

We could provide both a procedural right and a negative substantive right, and disabled people might claim they still don't have a right to work. A genuine right to work, they might say, means that someone has an obligation to create jobs disabled people can do, and to hire them. In fact, the Americans with Disabilities Act of 1990 requires employers to redesign jobs—tasks, equipment, schedules—to accommodate people with disabilities who are otherwise qualified. Government could also provide jobs for the disabled by organizing "sheltered workshops," or, as

[5]Negative substantive rights are the same as Isaiah Berlin's concept of negative liberty in "Two Concepts of Liberty," in *Four Essays on Liberty* (New York: Oxford University Press, 1969), pp. 118–72.

in Germany, by requiring employers to hire the disabled as a certain portion of their work force.

This type of right would be a *positive substantive right*—an entitlement to have or receive something, such as a job, education, health care, or food. A positive substantive right implies the necessity of a second party to provide the "right-holder" with the entitlement. Asserting that there is a right to a job or to health care makes no sense if no one has a duty to provide it. Thus, positive substantive rights must always be coupled with positive duties of second parties.

All three types of rights are plausible claims about a right to work, so we can see how there might be conflict over whether disabled people do or don't have a right to work and what is necessary to establish one. Note, also, that all three types of rights define relationships. The relationships are most obvious in positive substantive rights, with their corresponding obligations. Procedural rights specify how one party must make decisions with respect to another. Negative substantive rights create relationships of noninterference. Rights function as social regulatory mechanisms by defining relationships.

What do people have to do to assert rights and create new relationships? Strictly speaking (the lawyer harrumphs), a legal right entails three elements. First, there must be an *official statement of the right*—a law, rule, decision, contract, or international covenant that specifies or at least implies the right. Second, there must be a *grievance process for determining contested rights.* And third, there must be a *remedy*, a way for right-holders to enforce the relationship defined in the right.

When groups call for a right to something, they must go beyond sloganeering and try to establish a formal legal rule to define the right. One route is statutory law—either passing a new statute or amending an old one. For example, amendments to the Urban Mass Transportation Act in 1970 declared that "elderly and handicapped persons have the same rights as other persons to utilize mass transportation facilities and services." The statute went on to assert a rather vague positive duty: public transit operators must make "special efforts" to design accessible services.[6]

Administrative law is another route to establishing a right. Most statutes are written vaguely and require administrative rules to refine and

[6]This and the other examples of disputes over access to public transit are drawn from Susan Olsen, "The Political Evolution of Interest Group Litigation," in *Governing Through Courts*, Richard Gambitta, Marilyn May, and James Foster, eds. (Beverly Hills: Sage, 1981), pp. 225–58.

implement them. For the Urban Mass Transportation Act, the Department of Transportation issued regulations in 1976 defining the "special efforts" public transit agencies would have to make. (Armchair philosophers might speculate about what kind of right to public transportation was enjoyed by disabled people between 1970, when the statute was passed, and 1976, when the implementing regulations were passed.)

Formal statements of legal rights are also created in common law, the decisions of judges as they resolve disputes. In claiming rights, individuals and groups usually try to link their claim to a constitutional phrase, statute, administrative rule, or previous court decision. For example, a disability rights group sued the Washington, D.C., transit authority under the Urban Mass Transit Act because the new subway system, with its steep escalators, wasn't accessible to wheelchair users. A federal judge enjoined the subway from opening until elevators were installed, and ordered that stations had to be constructed so that disabled people would have "ready access." Later, disabled people could point to the judge's decision as a statement of a right to accessible stations.

If citizens don't succeed in getting a judge to interpret written law to include their demands, they may seek new legislation or a constitutional amendment. For a long time, many public and private employers offered disability insurance to their employees, but excluded pregnancy, even though they did cover treatment for some conditions unique to men, such as baldness and vasectomies. Women's advocates tried litigation, but when the Supreme Court refused to read the Constitution's equal protection clause as applying to pregnant employees, they turned to Congress and got a legislative right to equal treatment in the Pregnancy Disability Act of 1978. It is much harder to amend the Constitution than to get new legislation, as feminists learned from the failure to secure an Equal Rights Amendment, but difficulty doesn't stop groups from trying.

A federal system of government provides many levels of constitutions, statutes, regulations, and decisions that can serve as access points for rights claimants. Regional governments such as the European Union (EU) and international human rights law provide additional access points. In the EU, directives from the European Council to member states can provide new rights, albeit slowly. In 2000, the European Council, a quasi-executive body of the EU, issued a Directive on Equal Treatment in Employment that prohibits discrimination against people with disabilities and mandates employers to make "reasonable accommodations" for them. Although the directive would seem to create a positive substantive right, the road to rights is even more indirect in the EU than in the U.S. legal system. A directive doesn't apply directly to employers or other actors

within a nation. Rather, it requires the member states to change their laws to comply with its provisions and to establish enforcement mechanisms. Disabled people who want to claim the right to work guaranteed by the directive must use their own nation's laws and courts to compel employers to make reasonable accommodations. The process of adapting national laws to EU law can take years and gives national governments wide latitude in interpreting a directive's provisions. Nevertheless, over the long term, harmonization of national laws through EU directives does give citizens a vehicle for establishing rights.[7]

International rights law provides another route to establishing rights. The United Nations passes various international "conventions" on human rights that member nations may voluntarily ratify. The 2006 Convention on the Rights of Persons with Disabilities directs national governments to "take appropriate steps, including legislation," to ensure that people with disabilities have full access to education, vocational training, and job placement services, and that employers make reasonable accommodations for them. As we'll see later in this chapter, UN member states have even more leeway than EU member states in deciding whether to modify their laws or abide by any part of a convention, yet international human rights law has indirectly helped domestic groups claim rights in their countries.

The second element of a legal right is a highly stylized *grievance process* through which individuals and groups channel their claims. This process, called litigation (from the disputing parties' point of view) or adjudication (from the judge's point of view) is associated with courts but can also take place in administrative agencies. For example, the Social Security Administration uses several hundred "administrative law judges" to hear claims of applicants who believe they have been unfairly denied disability benefits. The essence of adjudication is that two parties—one claiming a right denied, the other alleged to have denied the right—air their dispute before a neutral third party. In theory, at least, they conduct their dispute through reasoned argument, rather than through force, exchange of money, or emotional appeals. The judge is constrained to make a decision by applying preexisting rules to the facts of the particular dispute.

Legal scholars disagree about how much judges can and do conform to the ideal of a neutral third party. At one end of the debate, some scholars hold that the law is a seamless web of logical relationships. Good judges

[7]Lisa Waddington, "When It Is Reasonable for Europeans to Be Confused: Understanding When a Disability Accommodation Is 'Reasonable' from a Comparative Perspective," *Comparative Law and Policy Journal*, vol. 29 (2007–2008), pp. 317–40; and Simon Hix, *The Political System of the European Union* (New York: Palgrave Macmillan, 2nd ed. 2005).

should decide entirely on the basis of legal rules and principles. The current Chief Justice of the United States, John Roberts, often expresses this view: "Judges are like umpires. Umpires don't make the rules, they apply them." Judges should decide on "the more solid grounds of legal analysis—what are the texts of the statutes involved, what precedents control."[8] Most scholars, though, find that judges are heavily influenced by factors outside the law—including their economic interests, career interests in getting reelected or promoted, political beliefs, and policy views. Judges are also influenced by threats of defiance from institutions whose behavior they regulate—legislatures, executive agencies, lower courts, and, in the case of international courts, national governments. Judges hesitate to issue decisions they know will be flouted, because open defiance would damage their authority.[9] Some lawyers—Barack Obama among them—think that on some social issues, judges cannot and *should not* decide on the basis of the legal texts and precedents alone. In 2005, when Obama was a U.S. senator, he voted against John Roberts's confirmation as Chief Justice. To explain his vote, he said that on issues such as affirmative action and reproductive rights, "the critical ingredient is what is in the judge's heart. It is my personal estimation that [Roberts] has far more often used his formidable skills on behalf of the strong in opposition to the weak."[10]

Whatever one's views on how judges *should* decide, clearly their decisions emerge from the strategic interplay of legal principles and interests from outside the law. Yet, the promise that disputes can be resolved according to preexisting rules rather than according to relative wealth, power, or charm gives rights their legitimacy as a mode of social regulation.

Finally, in order for rights to work as a policy instrument, there must be an *enforcement mechanism.* With incentives and rules, the primary responsibility for monitoring behavior lies with the government (or rulemaker). In practice, as we saw in Chapter 13, "Rules," law enforcement and regulatory agencies rely heavily on citizen complaints to obtain information about rule violations, but we would consider a police department remiss if it did nothing to stop crime other than answer the telephone. With rights, by contrast, the primary responsibility for monitoring lies with the right-holders. The model of rights assumes that any violations will be discovered by right-holders themselves, as they are harmed.

[8]Quoted in Jeffrey Toobin, "No More Mr. Nice Guy: The Supreme Court's Stealth Hard-Liner," *New Yorker,* May 25, 2009.

[9]Jeffrey A. Segal and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge, England: Cambridge University Press, 2002); and Clifford J. Carrubba, Matthew Gabel, Charles Hankla, "Judicial Behavior Under Political Constraints: Evidence from the European Court of Justice," *American Political Science Review,* vol. 102, no. 4 (2008), pp. 435–52.

[10]Quoted in Toobin, "No More Mr. Nice Guy," op. cit., note 8.

Assuming that someone has discovered a violation and wins in an adjudicatory proceeding, there still needs to be a way of ensuring that the decision is enforced and claimants get their due. Systems of rights, like systems of rules, rely on legitimacy to induce most people to comply voluntarily. All that adjudication does, after all, is produce a declaration. If one party doesn't heed the declaration, other remedies are needed. Rights must be backed up by the threat of force.

Perhaps the most dramatic example of government force to back a right was the case of James Meredith, a black man who in 1963 obtained a federal court order allowing him to enroll at the staunchly segregated University of Mississippi. The governor of Mississippi announced he would defy the order. He declared Mississippi's courts "as high as the Supreme Court and more capable," personally blocked Meredith's way into the university buildings, and encouraged angry citizens to come to the campus to protest Meredith's enrollment. To back up the court order, President John F. Kennedy federalized the Mississippi National Guard, dispatched several hundred troops to the campus to protect Meredith while he enrolled, and provided federal marshals to protect him until he graduated.[11]

School desegregation is often presented as a model of how legal rights are supposed to work. Legislatures and courts produce official declarations of rights; violations are discovered and protested; adjudication clarifies and broadens rights by applying existing rules to new controversies; and, with proper enforcement, the whole process brings behavior into compliance with official policy. In this model, formal statements of rights are like a magic wand that transforms society in one whoosh. In 1954, in *Brown v. Board of Education*, the Supreme Court held that racially segregated public schools were unconstitutional. Richard Kluger, assessing the impact of the Court's decision, wrote: "It meant that black rights had suddenly been redefined; black bodies had suddenly been reborn under a new law. Blacks' values as human beings had been changed overnight by the declaration of the nation's highest court."[12]

The magic-wand view has rightly been called "the myth of rights."[13] Rights rarely work as well as they did for James Meredith, and even if they sometimes work for one person or one situation, it is far harder for rights to alter institutional structures of power and entrenched behavior. Six years after *Brown v. Board of Education*, there were still five states in the Deep South where not a single black child attended an integrated

[11]Arthur M. Schlesinger Jr., *A Thousand Days* (Boston: Houghton Mifflin, 1965), pp. 858–67.

[12]*Brown v. Board of Education* 347 U.S. 483 (1954); Richard Kluger, *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* (New York: Vintage Books, 1977), p. 749.

[13]Stuart Scheingold, *The Politics of Rights* (New Haven: Yale University Press, 1974).

school. Ten years after the decision, only a little more than 1 percent of the nation's black children were attending integrated schools.[14] In a moment, we'll assess the impact of rights in both domestic and international policy making. For now, it's worth noting that there are no magic wands of any kind to be found in the polis, and yet the *idea of rights* has probably been the most powerful source of political change in modern history.

Making Rights in the Polis: The Normative Basis of Legal Rights

The system of rights depends crucially on citizens' willingness to bring their grievances to government. The disjunction between what people perceive as moral rights and what they experience in political practice drives the system of rights-claiming. Ideas about moral rights provide not only the intellectual rationale for making claims, but also the emotional impetus. People have many, many more conflicts than they bring into the legal arena through formal claims, and most conflicts are handled by putting up with the problem, ignoring it, or discussing it with the other party.[15] What propels people into courts is a feeling that a moral issue is at stake, or as one study put it, they "conceptualize their problem as a principled grievance."[16]

Judges, too, rely on normative visions for resolving disputes, and appeal to moral ideals in their written decisions. Moral values are like the forces of gravity, pulling and pushing on all sides in a rights dispute, as well as on judges' reasoning. The Supreme Court's opinion in *Brown v. Board of Education* illuminates how judges use moral ideals to interpret legal rights. In the *Brown* decision, the Supreme Court explicitly overruled one of its earlier decisions, *Plessy v. Ferguson*, in which it had held that "separate but equal" facilities for whites and blacks did not violate the equal protection clause of the Fourteenth Amendment. Knowing the decision would be politically explosive, the justices took pains to explain how they reached it. They said they had tried hard to understand what the drafters of the Fourteenth Amendment thought about racial segregation, but history

[14]Michael J. Klarman, *From Jim Crow to Civil Rights* (New York: Oxford University Press, 2005).

[15]Marc Galanter, "Reading the Landscape of Disputes: What We Know and Don't Know (and Think We Know) About Our Allegedly Contentious and Litigious Society," *UCLA Law Review*, 31 (1983): 4–71.

[16]Sally Engle Merry and Susan S. Silbey, "What Do Plaintiffs Want: Reexamining the Concept of Dispute," *The Justice System Journal*, vol. 9 (1984), pp. 151–78; quote on p. 154. For a contrary view that moral values may be expressions of self-interest, see Dennis Chong, "Values versus Interests in the Explanation of Social Conflict," *University of Pennsylvania Law Review*, vol. 144, no. 5 (1996), pp. 2079–134.

proved unhelpful because public education at that time was so different. In the south, free public education supported by taxes "had not taken hold." The opinion continued:

> In approaching this problem, we cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy* was written. *We must consider public education in the light of its full development and its present place in American life throughout the Nation.* Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.[17]

Having thus redefined the legal question as the "place of education in American life," the Court focused on how segregated schooling affects the place of blacks in American society:

> To separate [children] . . . solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.[18]

Between the lines in this heart-tugging sentence, the justices embed a moral lesson: it would be wrong to knowingly permit the continuation of policy rules that harm children so deeply. The *Brown* decision is often cited to show the impact of social science research on judicial policy, because the judges accepted evidence from psychologists about segregation's effect on children's development. The opinion, however, relegates social science to a footnote, and gains its persuasive power by invoking a universal moral norm against deliberately hurting others.

Making Rights in the Polis: The Sociological Basis of Legal Rights

When judges are about to depart from precedent, either to create new rights and duties or to restrict old ones, they often justify the decision (and prepare the audience) with rhetoric about changed social conditions. They conjure up pictures of society then and now, tell a story of how law has failed to keep pace with social change, and conclude that "the legal response we are about to give is our only choice."

[17] *Brown v. Board of Education*, op. cit., note 12, emphasis added.

[18] Ibid.

Brown v. Board of Education also illustrates how judges weave empirical social knowledge into their moral interpretation. The justices took time to elaborate on the importance of education in American life, and especially for maintaining democracy. "It [education] is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship." Education, they said, was now critical to individual success in a way it had not been in the nineteenth century. "Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training. . . . It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."[19] Only after painting this sociological picture of "the place of education" did the justices write about the moral wrong of depriving black children. Such sociological pictures of society do much of the work of legal reasoning. The pictures, more than logic, justify the decision.

In the rationality model, the sociological pictures judges use should be value-free, empirical descriptions. In the polis, judges see social conditions through their own political and ideological lenses. Over the nearly five decades since Congress passed the Voting Rights Act in 1965, the Supreme Court has become more conservative and its (majority) interpretations of the political conditions that gave rise to the law have changed accordingly. Congress passed the Voting Rights Act to ensure that blacks have a meaningful right to vote. Because some southern white politicians had designed election rules and district boundaries to prevent black candidates from winning, the Voting Rights Act required them to get approval from the Justice Department before changing their voting rules or district boundaries. Immediately after the law passed, South Carolina challenged Congress's authority to supervise state and local elections. In a decision upholding the Voting Rights Act, Chief Justice Earl Warren began his opinion with a picture of southern white voting officials:

> Typically they made ability to read and write a registration qualification. . . . White applicants for registration have often been excused altogether from the literacy and understanding tests or have been given easy versions, have received extensive help from voting officials, and have been registered despite serious errors in their answers. Negroes, on the other hand, have typically been required to pass difficult versions of all the tests, without any outside assistance and without the slightest error.

[19]Ibid.

When the justices looked at the behavior of southern white elites, they saw "stratagems" and "subterfuge" and "unremitting and ingenious defiance" of federal law. They explained the rationale for supervising southern election officials in unflinching prose. Without the provisions of the Voting Rights Act, "[J]urisdictions which had resorted to the *extraordinary stratagem of contriving new rules* of various kinds for the sole purpose of perpetuating voting discrimination . . . would be likely to engage in similar maneuvers."[20]

Twenty years later, white county officials in Alabama used an "extraordinary stratagem of contriving new rules" to deprive blacks of voting power. But when the case reached the more conservative Supreme Court headed by Chief Justice William Rehnquist, the justices focused their vision on something else. The case was brought by Laurence Presley, the first black person since Reconstruction to be elected to the six-member county commission of Etowah County. A new white commissioner was also elected in the same election. Before the two new commissioners took office, however, the four incumbent commissioners "reorganized" the duties of office. Instead of letting each commissioner control road funds and construction jobs for his district, as had been done in the past, they pooled road funds for the whole county into a common fund and gave themselves control of it. They gave the newly elected white commissioner the job of overseeing the county department of engineering, and assigned Mr. Presley to oversee maintenance of the county courthouse—in effect, they made him chief janitor. This time, the Court ruled that the Voting Rights Act did not apply, because changes in the "duties of office" don't affect the right to vote. County citizens, the majority said, "may still vote for members of the county commission." Unlike the liberal Warren Court in 1966, the main danger the Rehnquist court saw was not black disempowerment, but federal suffocation of states and localities through "unconstrained expansion" of the Voting Rights Act: "If federalism is to operate as a practical system of governance and not a mere poetic ideal, the States must be allowed both predictability and efficiency in structuring their governments."[21]

By 2009, when a Texas utility district sought exemption from the Voting Rights Act, many conservatives thought the nation had made so much progress that the law was no longer necessary and believed the Supreme Court should declare it unconstitutional. According to the plaintiff's brief, in an America "that has elected Barack Obama as its

[20] *South Carolina v. Katzenbach* 383 U.S. 301 (1966), emphasis added.

[21] *Presley v. Etowah County Commission* 502 U.S. 491 (1992).

first African-American president," voting discrimination is a thing of the past. The new chief justice, John Roberts, had expressed his agreement with this view. Yet, only three years earlier, Congress had held hearings to decide whether the law was still needed, and after gathering 16,000 pages of testimony, voted overwhelmingly to renew it—by 98 to 0 in the Senate and 390 to 33 in the House. To the surprise of court watchers, the Roberts court *upheld* the federal supervision provision of the Voting Rights Act by 8 to 1. In his opinion, Chief Justice Roberts reviewed the strong arguments and evidence for ending the Voting Rights Act but then pictured a different, and more pressing, problem: the relationship between the judicial and legislative branches in American democracy. He portrayed Congress as "a co-equal branch of government" and noted that the "Fifteenth Amendment [granting voting rights to blacks] empowers Congress, not the Court, to determine . . . what legislation is needed to enforce it." The Supreme Court, he suggested, would face a crisis of legitimacy if it declared the Voting Rights Act unconstitutional.[22]

Each of these Voting Rights Act decisions redefined the rights of black citizens and the obligations of federal and state government. Each did so by invoking a picture of society, and each Court could have rendered a different decision by painting a different picture. These pictures, not legal reasoning, ground legal decisions, and compel—or fail to compel—our loyalty in accepting them. Oliver Wendell Holmes's description of the law in 1881 still holds true:

> The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed.[23]

Making Rights in the Polis: The Political Basis of Legal Rights

In the rationality model, all citizens are "equal before the law." In theory, the identity of litigants should not affect their ability receive a fair and open-minded hearing or to win on the merits of the case. Nor should their

[22] *Northwest Austin Municipal Utility District No. 1 v. Holder* 129 S. Ct. 2504 (2009); and Adam Cohen, "The Supreme Court's Hostility to the Voting Rights Act," *New York Times*, May 14, 2009.

[23] Oliver Wendell Holmes Jr., *The Common Law* (Boston: Little, Brown, 1881), p. 1.

Rights in the Polis

Rationality Model	*Polis Model*
People rely on official statements of rights found in constitutions, statutes, administrative rules, or court opinion (positive concept).	People get beliefs and ideas about rights from moral philosophy, media, and other people, as well as from official statements (both normative and positive concepts).
Official statements of rights are clear, and judges merely apply formal rules to the facts of the case, using logic and reason.	Official statements of rights are never perfectly clear; judges must interpret formal rules and they use norms and beliefs, as well as logic and reason.
Judges are not influenced by power of disputants, or anything except reason and facts.	Judges are influenced by their own experiences, beliefs about justice, and understandings of society.
All citizens have equal access to the courts to claim their rights; litigants' identity and resources do not influence the outcome of litigation.	Parties who are *repeat players* in courts have more power than those who use courts once or sporadically. Money helps. Interest groups and organizations deliberately structure and manage disputes to increase their chances of winning.
Courts ordinarily rely on voluntary compliance; in extraordinary situations, they can call on legislative and executive branches to help enforce contested decisions.	Judges actively use rhetoric to increase voluntary compliance with their decisions. Legislative and executive branches get involved often, both to enforce court decisions and to overrule judges.

identity or resources affect their ability to reach a court in the first place. According to one scholar, the legal system "provides a uniquely democratic . . . mechanism for individual citizens to invoke public authority on their own and for their benefit . . . without any requisite involvement by a collectivity or any necessity for a public consciousness."[24]

[24]Frances Kahn Zemans, "Legal Mobilization: The Neglected Role of Law in the Political System," *American Political Science Review* 77 (1983), pp. 690–703; quote on p. 692.

This image of the legal ideal closely resembles the market model, where the public interest emerges from pursuit of individual self-interest. In the polis, however, litigants don't arrive in court as interchangeable representatives of abstract issues. The different parties hold social positions that give them more or less power in the courts. Legal disputes are simultaneously contests between individuals who happen to represent larger interests, and contests between large interests that happen to be represented by particular people.

As in any political contest, the interests in a legal dispute can be diffuse or concentrated (to use the framework of Chapter 10). In legal contests, concentrated interests are parties who use courts often in the course of running their everyday affairs, or "repeat players." Diffuse interests are people who use courts rarely or sporadically, or "one-shotters."[25] Landlords, insurance companies, banks, and, of course, lawyers and prosecutors are in court all the time; tenants, policyholders, debtors, and delinquents find themselves in court only on rare occasions, and then, a legal case is a major event in their lives. These different relationships to the judicial system give the two types of players different resources to use in legal contests as well as different goals in settling disputes.

Repeat players have many cases and know they will have more in the future. They have low stakes in the outcome of any one case. They are more likely to care about obtaining a declaration of rights—a statement of a new rule that will be favorable to them in most of their cases—than in winning a particular case. They are more likely to have resources to pursue their long-run interests, not only because they are often large businesses, but also because going to court is part of their business, so they budget for litigation. And because they have ongoing contact with court personnel, they enjoy better access to information and collegial bonds of loyalty.

One-shotters are by definition focused on the case at hand. Because the outcome will affect their lives profoundly, they probably have an intense interest in the case but usually lack resources and inclination to mount a legal battle. They have good reason to compromise, settle the case quickly, and stop feeding money to lawyers. They are more likely to care about the tangible outcome of the case (will they owe money or go to jail?) than about establishing a precedent to govern future cases. Even an organized interest group may need a quick tangible victory in order to hold the group together. For example, in suits over public transit accessibility, disability rights groups have usually settled for agreements with

[25]The terms and analysis come from a legal sociology classic, Marc Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9 (1974–75), pp. 95–160.

local transit agencies to modify stations and vehicles, rather than holding out for a new legal mandate or statutory interpretation.[26]

The dichotomy between one-shotters and repeat players here is really a continuum, and what matters most is the *relative* concentration of competing interests in a single contest. Many disputes are between two repeat players, such as those between unions and employers, or regulatory agencies and regulated firms. Many are between two one-shotters, such as divorce cases or neighborhood disputes. The vast bulk of legal contests, however, pit one-shotters against repeat players—tenants versus landlords, criminal defendants versus prosecutors, debtors versus finance companies, consumers versus manufacturers, welfare clients versus welfare agencies, or public interest advocacy groups versus industry trade associations. And the power and resource disparities between the parties mean they are not equal before the law.

Because the identity of disputants matters a great deal for who wins and who loses, organizations and advocates craft "test cases" to challenge a rule or policy; they seek out plaintiffs with a high potential to win. The ideal plaintiff has a factual situation that seems to compel the desired legal outcome, and personal attributes that make for a strong case in the court of public opinion as well as the courthouse. These attributes include a good public image; a life story that the average American admires and identifies with; a situation that evokes broad sympathy; and a determination to litigate all the way to a rule change.

When James Meredith integrated the University of Mississippi, he didn't do it on his own initiative. The National Association for the Advancement of Colored People (NAACP) chose him to be the face of its legal challenge to segregation in public universities. Meredith, a nine-year veteran of the air force, was especially suited for the case, both because his military service to the country created a public moral obligation to him, and because he presumably had the stomach to withstand the violence that asserting his legal right would entail.[27] Forty years later, when the Center for Individual Rights sought to end affirmative action in university admissions, it selected Jennifer Gratz as the lead plaintiff. Gratz had come forward in response to a press release soliciting students who felt they had been unfairly rejected from the University of Michigan. After interviewing twelve of the hundred volunteers, the lawyers chose Gratz because she had strong convictions that people shouldn't be judged according to race, and because, as a former

[26]Olsen, "The Political Evolution of Interest Group Litigation," op. cit., note 6.

[27]For a description of the NAACP's test case strategy, see Clement Vose, *Caucasians Only: The Supreme Court, the NAACP, and the Restrictive Covenant Cases* (Berkeley: University of California Press, 1967).

cheerleader and homecoming queen, she was used to being in the public eye. The lawyer also thought a female plaintiff would "be appealing in a way that maybe not all white males would be." She couldn't be read as an angry white male.[28]

The system of rights and litigation has been criticized for fragmenting larger social conflicts into disputes between single parties, and thereby blunting social change. The criticism has a good deal of validity, but it would be a mistake to ignore public law litigation. Public law litigation aims to reform systematic patterns of practice in a large area of public policy, such as racial balance of public school systems, prison management, or electoral redistricting. Public interest lawyers can partially redress the power imbalances in these institutions by assembling hundreds or even thousands of individual plaintiffs in a "class action suit." In cases of this type that flourished in the 1960s and 1970s, judges took an active role in articulating detailed standards for institutions to follow and supervising them, often for years.[29] With the conservative turn in politics and the judiciary after 1980, this kind of litigation for institutional change has declined.

In 2011, the Supreme Court rejected use of a class-action suit by female Wal-Mart employees charging discrimination in pay and promotions. The justices didn't rule on the merits of the case but said the women didn't have enough in common to sue as a class, thereby limiting the ability of other groups to mount class-action suits.[30] However, as we'll see in the next section, public interest litigation continues to inspire social change in developing countries, where lawyers, often American-trained, use class-action lawsuits to address discrimination and prod their governments to deliver basic services.

Do Rights Work?

It all depends (the lawyer's favorite phrase) on what we mean by "work." Rights generally don't work as the magic wand portrayed in the myth of rights. Court decisions do not produce social change overnight. But when seen in the wider sense of rights discourse as well as litigation, rights

[28]Lisa Belkin, "She Says She Was Rejected by a College for Being White. Is She Paranoid, Racist or What?" *Glamour*, November 1998, pp. 278–81.

[29]Joel Handler, *Social Movements and the Legal System* (New York: Academic Press, 1978); and Abram Chayes, "The Role of the Judge in Public Law Litigation," *Harvard Law Review*, 89 (1976), pp. 1281–316.

[30]Adam Liptak, "Justices Rule for Wal-Mart in Class-Action Bias Case," *New York Times*, June 21, 2011; *Wal-Mart Stores, Inc. v. Betty Dukes, et al.*, 131 S. Ct. 2541 (2011).

can be transformative. In the polis, rights work by dramatizing power relationships as personal stories, by legitimizing political demands, by mobilizing new political alliances, and, eventually, by transforming social institutions. We can see these processes at work in two different arenas, American civil rights and international human rights.

Brown v. Board of Education is widely considered the Supreme Court's most important decision and one that transformed American racial politics.[31] In its rejection of "separate but equal" schools and its endorsement of a right to integration, the Supreme Court set in motion a chain of social and political developments. Before *Brown*, southern laws segregated every imaginable aspect of social life: hospitals, libraries, restaurants, hotels, factories (right down to the shop floors, pay windows, entrances, showers, and locker rooms), orphanages, homes for the elderly, jails, juvenile detention centers, industrial schools, graduate and professional schools, and, of course, primary schools. The logic of *Brown* "fundamentally undermined *all* segregation laws," and inspired civil rights activists to challenge them all. Before *Brown*, challenging segregation, even verbally, was to risk losing one's job and home at best, beatings and murder at worst. *Brown* "gave civil rights activists courage by signaling that one branch of the national government was unanimously in favor of their cause." Before *Brown*, no American political institution provided leadership in the struggle for equality. With *Brown*, the justices "sent a strong moral message—a heroic message—that the [Supreme] Court would no longer tolerate segregation." The decision even emboldened a few lower-court judges to criticize the Supreme Court for not pushing desegregation fast enough or forcefully enough. And finally, *Brown* changed the moral climate of race and politics in the United States. It could do that, according to Paul Finkelman, because it wasn't a direct assault on the distribution of political and economic power, as a decision about voting rights would have been. "Rather, *Brown* put a human face to the horror and tragedy of segregation. It was a case about a seven-year-old girl who wanted to attend the elementary school closest to her home. Virtually all Americans could understand this."[32]

[31]For the minority view that the *Brown* decision did not accomplish racial integration and was not the major factor in transforming racial politics, see Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago Press, 1991); and Klarman, *From Jim Crow to Civil Rights*, op. cit., note 14.

[32]Quotes in this paragraph and the main argument are from Paul Finkelman, "Civil Rights in Historical Context: In Defense of *Brown*," *Harvard Law Review*, vol. 118, no. 3 (2005), pp. 973–1029. The point about emboldened judges is from David J. Garrow, " 'Happy' Birthday, *Brown v. Board of Education*? *Brown*'s Fiftieth Anniversary and The New Critics of Supreme Court Muscularity," *Virginia Law Review*, vol. 90, no. 2 (2004), pp. 713–29.

Minority and human rights are a worldwide issue, within nations and among them. Innumerable multinational treaties, conventions, and directives aim to end discrimination against ethnic, linguistic, religious, tribal, caste and indigenous minorities, and against women, immigrants, and aliens. The 1948 United Nations Universal Declaration of Human Rights established a moral vision of human equality that guided many national constitutions and motivated social movements.

The Universal Declaration also spawned further international laws to implement its vision. To take three examples, in 1966, Article 27 of the UN International Covenant of Civil and Political Rights laid the foundation for minority cultural rights, beginning what would become a vigorous movement for multiculturalism. Article 27 reads:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[33]

In 1969, the UN adopted the International Convention on the Elimination of All Forms of Racial Discrimination, prohibiting "any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin. . . ." In 1979 came the Convention on the Elimination of All Forms of Discrimination Against Women, commonly known as CEDAW (rhymes with see-saw). CEDAW obliges its members "to modify the social and cultural patterns of conduct of men and women" to eliminate prejudices and practices "based on the idea of the inferiority or the superiority of either of the sexes. . . ."[34]

On paper, human rights have proliferated mightily. In practice, the paper rights offer sweeping rhetorical protections but lack teeth. The conventions and treaties apply only to nations that voluntarily ratify them, and the ratification process allows each government to define "reservations"—a euphemism for opting out of provisions it doesn't like. Thus, a nation can ratify a convention but continue policies that violate it. For example, Algeria ratified CEDAW with a reservation that it wouldn't implement any provisions incompatible with its Family Code—an Islamic code that allows polygamy and denies women the right to consent to marriage, seek divorce, or transmit their citizenship status to their children. The U.S. ratified the UN Convention on Torture in 1994 with many "declarations" and "understandings," saying that it would not implement

[33]Quoted in Will Kymlicka, *Multicultural Odysseys* (New York: Oxford University Press, 2007), p. 34.
[34]Clapham, *Human Rights*, op. cit., note 4, chap. 2.

"I'm going to let you off this time with a misdemeanor against humanity."

requirements that conflict with its own laws. George W. Bush's Justice Department later used these provisos to justify its opinion that many of the administration's interrogation practices did not constitute "torture."[35]

Another weakness of international treaties is that most of the rights are negative rights. Like Article 27, they state rights to be free of discrimination, but no positive duties. CEDAW is unusual in that it states a positive duty to modify discriminatory "social and cultural practices," but transforming culture is a tall order for any government. Finally, international rights laws have few provisions for monitoring and enforcement. What provisions exist depend mostly on governments submitting self-assessment reports to an international oversight committee, which reviews the reports and can only "recommend" that governments change their policies.

Given the weakness of enforcement tools, can international human rights laws be effective policy instruments? To some extent, this is a matter of whether the glass is half-empty or half-full. Rights activists tend to focus on continuing violations and on the glacial pace of change in

[35]On Algeria: Jessica Neuwirth, "Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women," *Harvard Human Rights Journal*, vol. 18, 2005, pp. 19–54. On U.S., Jay Bybee, Memorandum for Alberto R. Gonzalez, "Standards for Conduct for Interrogation under 18 U.S.C. 2340-2340A," U.S. Department of Justice, Office of Legal Counsel, Aug. 1, 2002, §II A, "Ratification history," pp. 18–20.

recalcitrant countries. Yet, activists have successfully used international rights agreements to pressure their governments and achieve reform. For example, although Nepal retains laws and practices that discriminate against women, by using CEDAW's standards and requirements, activists won major Supreme Court decisions criminalizing marital rape, allowing daughters and widows to inherit property, granting abortion rights, and even requiring government to cover abortion costs for poor women.[36]

Like American civil rights law, international human rights law gains most of its leverage through its normative visions and through indirect, long-term mechanisms. Rights discourse creates new norms of what it means to be a good government and a "normal state." Those norms are based on liberal, democratic values. They emphasize individual equality and freedom, and nondiscrimination on the basis of any group identity, including ethnicity, race, gender, religion, caste, and, increasingly, disability and sexual orientation.

International rights discourse in international organizations influences domestic politics by legitimizing minority groups as political actors within nations, especially nations whose leaders regard assertions of minority identity as a refusal to assimilate. Having legitimation and support from prestigious international bodies encourages minority groups to engage in political action and claim rights at home. In the international human rights context, judicial enforcement may be far less important to the way rights work than their capacity to help politically weak citizens claim their place in democratic politics.[37]

On the surface, rights discourse appears to be "just words," but its moral passion generates real political organizations that can use all the conventional tools and strategies of politics. Behind each international declaration, notes the Canadian political philosopher Will Kymlicka, there is "a veritable industry of promotional activities, creating international networks of activists, scholars, and policy makers, all of whom have a vested interest in further promoting and publicizing these norms."[38] International declarations may lack strong enforcement tools, but the institutional infrastructure they generate translates human rights norms into action by training local leaders, producing model guidelines, and making the new norms part of the way of doing busi-

[36]Neuwirth, "Inequality Before the Law," ibid; and Center for Reproductive Rights, "Nepal Supreme Court: Abortion is a Right," available at reproductiverights.org.

[37]Kymlicka, *Multicultural Odysseys*, op. cit., note 33, chap. 2.

[38]Quote from Kymlicka, *Multicultural Odysseys*, op. cit., note 33, p. 45; See also Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

ness. For example, international aid agencies usually include "equal opportunity statements" in their job advertisements, noting that that they do not discriminate on the basis of gender, religion, ethnic group, or caste. Even though such ads reach only highly educated elites, they signal what norms domestic elites must hold in order to gain respect in the international community.

International rights organizations also create pressure on governments that violate rights treaties by exposing the gap between their practices and the principles stated in their own laws and treaties they have ratified. These organizations monitor rights violations by sending their own staff and by training local rights organizations to gather individual testimonies and quantitative information.[39] In a sense, international actors initiate a grievance process from outside a country where, because of the absence of legal rights, citizens cannot initiate the process themselves.

Like all policy instruments, rights depend on larger politics for their effectiveness. In the U.S., racial integration of schools has declined since 1990, but not because "rights don't work." Rather, the nation's commitment to racial and ethnic integration declined, and after 1974, the Supreme Court itself undermined progress on school integration by striking down race-conscious remedies to segregation.[40] Similarly, international rights treaties have the most impact in countries that already accept human rights norms, already have strong democratic political systems, and strong civil society organizations that can use the democratic process to advance rights.[41] The myth of rights may be a myth, but it inspires and nurtures the politics of rights, and the politics of rights can have profound and enduring consequences.

[39]Keck and Sikkink, *Activists Beyond Borders*, ibid.

[40]Gary Orfield and Chungmei Lee, "Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies," Civil Rights Project/Proyecto Derechos Civiles, University of California at Los Angeles, August 2007.

[41]Eric Neumayer, "Do International Human Rights Treaties Improve Respect for Human Rights?" *Journal of Conflict Resolution*, vol. 49, no. 6 (2005), pp. 925–53.

16

Powers

> A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained.
>
> James Madison, *Federalist* No. 62 (1788)

It's hard to imagine a more elegant definition of policy making. In a few words, Madison combines normative aspirations and pragmatic means. You might think he wrote this passage as a kind of guiding spirit for designing a new constitution. In fact, it appears in a much narrower context—an essay justifying the proposed Senate in the completed draft Constitution. The founders had explicitly designed the Senate to be less representative and less responsive to citizens than the House of Representatives. The Senate gives equal representation to small and large states regardless of their population, and its term of office is six years instead of two. Madison put forth his definition of good government to explain why a less democratic, more elitist institution would make better policy. Senators, by virtue of their longer commitment to office and their relative insulation from constituents, Madison argued, would have greater "knowledge of the means" for attaining policy goals, and, therefore, a greater chance of securing the happiness of the people. In short, the Senate wasn't so elitist after all.

"Powers" is my shorthand for policy about the structure of decision-making institutions. To make policy, governments need power. They need *authority to act* (make policy decisions) and they need the *capacity to act* (carry out policy decisions). Policies about who makes policy decisions and how they are made are the "meta" policy instrument, the one that shapes all else. These policies create what H. L. A. Hart called power-conferring rules, or rules that confer legal powers on individuals, organi-

zations, and public bodies enabling them to create "structures of rights and duties within the coercive framework of the law."[1]

Power-conferring rules shape policy and they also shape democracy. Process reforms are always ways of changing *who* makes the decision. Each is a call for empowering a different set of people to make decisions and to exercise authority over something. Every policy about policy making gives more or less power to citizens and the people affected by public policy, many of whom are not citizens or even residents of the government whose policies affect them. In the polis, policies that reform decision-making processes are the most important political strategy. Advocates of process reforms usually argue that a new process will produce better policies—ones that are more just, more efficient, more consistent with liberty, more protective of security, or, in Madison's case, more effective at promoting the happiness of the people. But a call to restructure decision making is also a bid to reallocate power.

Thus, there is another way to read arguments about institutional reform: they are attempts by someone who is not winning in one arena to shift decision making to a different arena where they might prevail. As a matter of strategy, weaker or subordinate interests always argue for the shift in terms of logic and mechanics: the new decision-making structure, by the design of its mechanism, will produce decisions in the public interest. (James Madison was a master at this kind of political argument.) Underneath this public-spirited logic there is usually another kind of calculus: a new configuration of participation and authority might enable a subordinate interest to become dominant, or a numerical minority to preserve its dominance.

Every choice about the structure of authority can be examined from these two perspectives. First, does it make the trains run on time? Does it "work" to solve the nominal problem—reduce poverty, restore forests, provide employment, generate economic growth, prevent crime, increase health, slow global warming, or mitigate ethnic conflict? Second, who gains the right to participate in decisions about the problem? Whose voice counts, both for choosing leaders and for choosing policies? Who is subordinated to whom? Does the process promote democracy (if only we could agree on a definition)? In short, every policy, whether fisheries policy, education policy, or immigration policy, implicates what we can call democracy policy.

[1]H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961), p. 27.

With these two levels of analysis in mind, we can now examine how the strategy of institutional reform works in some of its major variations. These variations are: 1) changing the membership of the voters and the citizenry; 2) changing the leadership; 3) centralizing or decentralizing authority; 4) changing mechanisms of accountability; and 5) shifting or delegating authority to the private sector. Finally, we'll consider some issues of power and accountability in international relations beyond national borders.

Membership: Voting and Citizenship

In democratic theory, every citizen counts equally in policy making. Every adult gets to vote and has an equal chance at influencing decisions of representatives and leaders. But that is the myth of democracy, an ideal that has never been fully realized. All democracies have at one time excluded large portions of their populations, such as women, ethnic and racial groups, legal immigrants, or people who don't own property. Such voter exclusions always permit the subordination of one set of people to the decisions of another without any voice.

Exclusions are commonly called "voter qualifications" and justified in terms of competence. Elites usually defend the criterion for exclusion (such as race, gender, age, or property) as a proxy for the ability to understand public affairs and make intelligent voting decisions. Thus, in 1966, when the Supreme Court struck down Virginia's $1.50 poll tax as a precondition of voting, Justice Harlan dissented with a classic defense of voter qualifications. He thought it quite rational to suppose that payment of a poll tax "promotes civic responsibility, weeding out those who do not care enough about public affairs to pay $1.50." Likewise, he added, "people with some property have a deeper stake in community affairs, and are consequently more responsible, more educated, more knowledgeable, more worthy of confidence, than those without means" and "*the community and Nation would be better managed if the franchise were restricted to such citizens.*"[2] Here, in a version applied to voting restrictions, is the more general argument that changing the membership of a decision-making body will improve the quality of its policy decisions.

[2] *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966), emphasis added. Incidentally, even the majority accepted without question that a state has a legitimate interest in fixing voter qualifications. It simply said that wealth couldn't be one of them, because, "like race, creed, or color, [it] is not germane to one's ability to participate intelligently in the electoral process."

Battles over the composition of the electorate are by no means confined to some original founding moment or promulgation of a new government form. Since the 1980s in the U.S., there have been contests over voting rights for homeless people (some states require a mailing address as proof of residency), people with cognitive and emotional disabilities, and people with felony convictions, to name a few issues. But by far the most contentious voting rights issues concern immigrants. In today's world of easy international travel and communication, large-scale immigration raises new issues about citizenship and rights to participate in public decision making.

Citizenship is double-sided. It creates insiders and outsiders at the same time. On the one hand, citizenship connotes universal rights for all members of a political community. On the other hand, the very distinction between citizens and noncitizens connotes exclusion from rights. The concept of a nation-state implies that its laws apply only to its members, but not to members of other states. The idea of citizenship wouldn't make sense without aliens whose exclusion makes citizens rights' meaningful and worth something.[3]

If we focus our attention on citizens, as most citizens tend to do, we see only the inclusive side of citizenship. In countries without significant immigrant populations, excluding foreigners from rights and obligations doesn't seem to pose a serious problem. However, countries with large immigrant populations by definition have large alien populations—people who live, work, pay taxes, raise families, and grow up in the country, but who lack the right to vote or other political and social rights. Guest workers, permanent residents, and extended families that spread across national boundaries all scramble the old premises of democratic representation.[4] Thus, international migration makes noncitizen voting rights into a major democratic policy conundrum. What can democracy mean in states with large populations of noncitizens who are subject to government decisions but can't influence them?

With millions of people around the world affected by this question, policies about the constitution of political communities are as salient today as they were to the American founders. Perhaps the most common

[3]Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton: Princeton University Press, 2006).

[4]Yasmin Soysal, *The Limits of Citizenship: Migrants and Post-national Membership in Europe* (Chicago: University of Chicago Press, 1994); Rogers M. Smith, "Beyond Sovereignty and Uniformity: The Challenges for Equal Citizenship in the Twenty-First Century," *Harvard Law Review*, vol. 122 (2009), pp. 907–36; and Christian Joppke, *Citizenship and Immigration* (Cambridge: Polity Press, 2010).

change for long-term immigrants is a trend toward granting them voting rights in local elections. Under the European Union's Maastricht Treaty of 1993, citizens of EU member states who live in another EU country gained rights to vote as well as to stand in local elections in their host countries. However, the right does not apply to "third-country nationals," that is, immigrants from outside the EU, and thus, it doesn't give political voice to the large populations of workers from Turkey, the Middle East, North Africa, and Asia whom EU countries encourage and admit. European Union voting rights policy mirrors the dilemma of nation-states. Because the EU is a political community in the process of building a governing structure and stimulating a sense of common citizenship, it must make belonging to it a privilege—but it does so at the cost of undermining democracy within national borders.

Nevertheless, the voting rights provision of the Maastricht Treaty should be counted as a significant pro-democracy policy change, because it acknowledges the importance of representation as a fundamental governing principle and sustains the idea of equal voting rights as an ideal. Democratic nations are to some extent creatures of their own ideals. Ideals invite citizens to notice gaps between ideals and practice, and to attempt to close them. Indeed, several countries have extended local voting rights to all residents, regardless of their nationality, including the

Netherlands, Ireland, Sweden, Denmark, Norway, Iceland, Luxemburg, Belgium, Hungary, Lithuania, and Venezuela.[5]

Immigration and citizenship policy reveal a profound paradox for democracy. Governments are supposed to be controlled by their citizens, yet through immigration laws, governments can *choose* their citizens, and in choosing citizens, they can influence what kinds of policy preferences their citizens will express. The 1924 National Origins Act pegged U.S. immigration quotas from other nations to the proportion of people from each nation registered in the 1890 census. The Act pointedly excluded "the descendents of slave immigrants," however, in order to keep out new residents who might agitate to end racial segregation. American immigration law explicitly excludes prospective immigrants on the basis of some political viewpoints; notably, people who have had any affiliation with a "communist" or "totalitarian" party. Several European nations require prospective immigrants and permanent residents to sign "integration contracts" agreeing to uphold the nation's "values."[6]

Voting and citizenship rights go to the most basic questions about constituting a political community and designing democratic policy-making processes. Membership issues arise in every policy arena, from who participates in local school policy to who participates in energy and environmental policy making, to who gains citizenship rights. In analyzing any policy reform, therefore, remember to ask the fundamental democratic question: how does it incorporate or exclude the voices of people affected by the policy?

Representation: Selecting and Changing Leaders

Because modern democracies use representative rather than direct democracy, battles over the qualifications of representatives and officeholders can be as intense as the ones over citizens and voters. Officeholders, be they legislators or administrators, theoretically represent the interests of their constituents. Therefore, the theory goes, by changing either the

[5]Rainer Bauböck, "Expansive Citizenship: Voting Beyond Territory and Membership," *PS: Political Science & Politics*, vol. 38, no. 4 (2006), pp. 683–87.

[6]On U.S., see Howard F. Chang, "Immigration Policy, Liberal Principles and the Republican Tradition," *Georgetown University Law Review* vol. 85 (1996–97), pp. 2105–119; On Europe, see Sarah Wallace Goodman, "Integration Requirements for Integration's Sake?" *Journal of Ethnic and Migration Studies*, vol. 36, no. 5 (2010), pp. 753–72; and Christian Joppke, "Beyond National Models: Integration Policies for Immigrants in Western Europe," *West European Politics*, vol. 30, no. 1 (2007), pp. 1–22.

identity of representatives or the ability of constituents to control them, we can change the kinds of decisions they will render.

But what does it mean to "represent" constituents? One concept, called *descriptive representation*, holds that representatives who share important social and economic characteristics with their constituents can best represent their interests.[7] This concept drives demands for ethnic and gender diversity in local councils, legislatures, boards, and other representative bodies. The logic here is that people who share social characteristics will also "mirror" each other's thoughts and attitudes, and eventually policy preferences. An alternative concept, called *substantive representation*, holds that representatives must explicitly share important policy beliefs and goals with their constituents in order to represent them well. The logic of substantive representation is that representatives who share political interests and beliefs with their constituents will *act* to further those interests. "In the end, what matters for a minority group is not who wins office but rather whether those in office enact policies that benefit or hurt the minority group."[8] (Symbols Alert: notice how the labels win the argument—*of course* representation on substantive matters is more important than superficial descriptive characteristics.)

The changing implementation of the Voting Rights Act since 1965 can be read as a dispute between these two views of representation.[9] Congress passed the Voting Rights Act to exert national control over southern states, where officials often made election rules that didn't mention race but effectively excluded blacks from voting and holding office. In the first two decades of the Voting Rights Act, one of its important tools was so-called race-based districting, or drawing the boundary lines of some electoral districts to ensure a majority of black voters.[10] The primary rationale for this policy was the assumption (backed by some significant social science research) that all citizens, white and black, male and female, feel better represented by people of their own social and demographic background. And because very few white voters would vote for black

[7]Hannah Fenichel Pitkin formulated the concepts of descriptive and substantive representation in *The Concept of Representation* (Berkeley: University of California Press, 1967).

[8]Zoltan L. Hajnal, "Who Loses in American Democracy? A Count of Votes Demonstrates the Limited Representation of African Americans," *American Political Science Review*, vol. 103, no. 1 (2009), pp. 37–57.

[9]The views and the dispute are nicely drawn in Carol M. Swain, *Black Faces, Black Interests: The Representation of African Americans in Congress* (Cambridge, Mass.: Harvard University Press, 1993); and Katherine C. Tate, *Black Faces in the Mirror: African Americans and Their Representatives in the U.S. Congress* (Princeton: Princeton University Press, 2003).

[10]Chapter 15, "Rights," examined changing interpretations of another provision of the Voting Rights Act, federal supervision of electoral districts with histories of discrimination.

candidates (again, the social science evidence was strong), government could provide blacks the opportunity to elect "their own" only by deliberately creating black-majority districts. Thus, in 1986, in the first major challenge to this policy based on descriptive representation, the Supreme Court voted decisively to allow so-called "majority-minority" districts.[11]

At that time, however, the political climate was already turning against "color-consciousness" in policy in general and against specific remedial and corrective policies to overcome black disadvantage. When another race-based districting case reached the Supreme Court in 1993, the majority strongly rejected the notion of descriptive representation and put an end to deliberate race-based districting. In a forceful opinion for the majority, Justice Sandra Day O'Connor wrote:

> A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible stereotypes.[12]

Justice O'Connor highlighted the disturbing the similarity between descriptive representation and stereotyping. Compelling as her analysis is, however, it doesn't address some serious obstacles to black representation.

Black voters have more difficulty than any other demographic group electing their preferred candidates from among those running. In elections for president, senators, governors, and mayors, more than half of black voters voted for the losing candidate. Only in elections for the House of Representatives have a majority of blacks—71 percent, a big majority—succeeded in electing their favored candidate. (Not coincidentally, House seats have more often been subject to the Voting Rights Act, under which legislative districts are sometimes created to include a majority of black voters.) Members of no other disadvantaged or stigmatized group find themselves on the losing side of elections so often—not gays and lesbians, not women, not Latinos, Asian Americans, low-income voters, or voters with less-than-high school education.[13]

[11] *Thornburgh v. Gingles*, 478 U.S. 30 (1986).

[12] *Shaw v. Reno*, 509 U.S. 630 (1993), quote on pp. 647–48.

[13] Hajnal, "Who Loses in American Democracy?" op. cit., note 8.

Another major impediment to black representation is the failure of the party system to mobilize black voters and represent their interests. Party leaders care more about winning elections than about enacting any specific policies, so they organize electoral campaigns to appeal to as many voters as possible. Leaders of both major parties believe that discussions of race alienate white voters, and, according to most studies, the majority of white voters *are* antagonistic to policies that help blacks and *are* bothered by explicit discussions of race. But no matter what the opinions of voters or how much white attitudes might be changing, party leaders base their strategic decisions on their *perceptions* that most white voters don't support black interests. Therefore, party leaders don't attempt to mobilize black voters or attract their support, fearing that doing so will drive away other potential supporters.[14]

In addition to ignoring blacks as potential voters, party leaders downplay or ignore political issues of importance to blacks, especially redistribution of income, opportunity, and power. By keeping issues important to blacks out of election campaigns and off the governmental agenda, the competitive party system fails to produce policies that serve black interests and fails to provide blacks with the electoral mechanisms for holding government accountable. Barack Obama's election as president doesn't indicate an end to these patterns. In his campaign, Obama steadfastly avoided talking about race or dealing with issues that specifically addressed black problems. And most political analysts attribute his victory precisely to his ability to attract white voter support by avoiding race, while maintaining the overwhelming support of black voters.[15]

The continuing weakness of black representation in the current electoral system, along with Supreme Court opposition to race-conscious districting, has led many scholars and activists to advocate a different rationale for race-conscious representation and selection decisions. They emphasize the positive impact of minority leadership on racial attitudes and on policy making. According to this theory, once blacks get into office (or firms, universities, and professional schools), their presence has a transformative effect on whites as individuals, as well as on the organizations they join and the policies those organizations pursue. Minority representatives link minority constituents with government agencies. They provide role models for minorities and make holding political office seem like a realistic

[14]Paul Frymer, *Uneasy Alliances: Race and Party Competition in America* (Princeton: Princeton University Press, orig. 1999, reissue with afterword, 2010).

[15]Ibid., Afterword; and Michael Tesler and David O. Sears, *Obama's Race: The 2008 Election and the Dream of a Post-Racial America* (Chicago: University or Chicago Press, 2010).

aspiration. They provide white colleagues the chance to know and interact with minorities, and to develop respect based on experience. Minority representatives articulate minority concerns and sensitize whites to them, and increase passage of legislation desired by minority constituents.[16] If experience with black leadership *does* change political attitudes and behavior in a constructive way, then deliberately fostering descriptive representation could reduce racial tensions, enhance interracial understanding and cooperation, and have a healthy impact on political life.

Policies to augment women's representation have been much less controversial than similar policies for racial and ethnic minorities. More than 100 countries have established some form of quotas for women in politics, be it through reserved seats for women among elected legislators or quotas for women on party candidate lists.[17] Domestic and international women's movements take for granted that increased descriptive representation—more women in political office—translates into substantive representation—more policies that respond to women's political interests and serve women's distinctive needs as women.

The belief that descriptive representation translates into substantive representation serves as the main motive for women's political mobilization. As with race, a substantial body of research shows that this belief is well-founded. More than men, women legislators tend to regard women as an important part of their election constituencies and to think of themselves as responsible for and qualified to represent women's interests.[18] Women representatives are also more likely to define family, children, and caregiving as matters of *public* concern, and to initiate and fund policies on these issues.[19]

In the U.S., the more recent arguments for deliberately structuring elections and other selection processes to include traditionally underrepresented groups no longer stress compensation for past exclusion. Rather,

[16]See Zoltan L. Hajnal, "White Residents, Black Incumbents, and a Declining Racial Divide," *American Political Science Review*, vol. 95, no. 3 (2001), pp. 603–17; and Paul Frymer and John D. Skrentny, "Law and the New Significance of Race in America," *Connecticut Law Review*, vol. 36, no. 2 (2003–2004), pp. 677–723 and references cited there.

[17]Global Database of Quotas for Women at www.quotaproject.org; and Mona Lee Krook, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide* (New York: Oxford University Press, 2009).

[18]Beth Reingold, "Concepts of Representation Among Female and Male State Legislators," *Legislative Studies Quarterly*, vol. 17, no. 4 (1992), pp. 509–37.

[19]Sue Thomas, "The Impact of Women on State Legislative Politics," *Journal of Politics*, vol. 53, no. 4 (1991), pp. 958–76; Michele L. Swers, *The Difference Women Make: The Policy Impact of Women in Congress* (Chicago: University of Chicago Press, 2002); and Kathleen A. Bratton and Leonard P. Ray, "Descriptive Representation, Policy Outcomes, and Municipal Day Care Coverage in Norway," *American Journal of Political Science*, vol. 46, no. 2 (2002), pp. 428–37.

they stress how diversity benefits all members of a group, individually and as a community. In 2003, a major challenge to the University of Michigan's affirmative action policies reached the Supreme Court.[20] Although the case concerned universities, a distinguished group of military generals filed a friend-of-the-court brief urging the justices to uphold affirmative action. The generals argued that without race-conscious selection procedures, the military services wouldn't be able to recruit enough minority officer candidates. Given the disproportionately high number of minority troops in the lower ranks, experienced minority officers are essential for effective command and cohesive functioning of racially diverse troops. Ultimately, the generals argued, affirmative action is essential to effective military performance and national security.[21]

Diversity-based arguments for group-conscious policy collapse the distinction between descriptive and substantive representation. Descriptive representation *can be* substantive—it can improve organizational functioning and policy making, and it can make government institutions more responsive to less powerful members of society.

Changing the Locus: Centralizing and Decentralizing Power

How centralized should power be? The question concerns every political community as it grows and evolves—early American states debating how much power to cede to a new federal government, European Union member states debating the limits of their national sovereignty, or Iraqi provinces and ethnic groups debating their relationship to a new national political system. Federalism is a loose concept that signifies combining small governing units into a larger whole.

The very idea of federalism is something of a paradox: somehow, it is supposed to combine autonomy of the member units with uniform policy making by a central authority. This contradictory combination can be made to work easily enough in words—Governor Nelson Rockefeller of New York celebrated federalism as "stability without rigidity," "secu-

[20]This is the same case discussed in Chapter 15, "Rights," as an example of the test-case strategy and plaintiff construction.

[21]Sylvia H. Walbolt and Joseph H. Lang Jr., "Amicus Briefs Revisited," *Stetson University Law Review*, vol. 33, 2003–2004, pp. 171–80. For a strong diversity argument in higher education admissions, see William G. Bowen and Derek Bok, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions* (Princeton, Princeton University Press, 1998).

rity without inertia," and "diversity within unity"[22]—but elegant poetry doesn't resolve the tensions of concrete situations.

Political arguments about federalism tend to be abstract and often metaphorical, although, as we will see, they are always about who has power. According to its advocates, decentralization puts authority in the hands of people who are "close to the problems" and "know the lay of the land." Local officials should be empowered to set program rules, the argument goes, because they are more familiar with citizens' preferences, as well as local traditions and needs. Decentralization gives local officials flexibility to adapt policy to local conditions. Within a large nation, decentralization allows for diversity of solutions to meet the variety of local needs. In the U.S., states are said to serve as "political laboratories" for experimentation with new ideas before they are adopted at the national level.[23] And finally, decentralization allows more citizens to participate in making decisions that affect them through local governing bodies.

Advocates of centralization tell a different story: centralization is necessary to accomplish large public purposes, especially those that require major investment or risk-sharing beyond the capacity of local governments, such as highway systems, energy production and distribution, environmental protection, or social insurance. Problems such as a banking or auto industry collapse transcend the capacity of states to handle. When the knowledge required for policy is highly technical and scientific, rather than social and cultural, smaller governing units are less likely to be able to marshal the requisite expertise. Moreover, standards of education, health, welfare, and justice are more universal than they are matters of local taste. Quality health care is the same in Nevada and Massachusetts, and a right to non-discrimination as a gay person, a black person, or a woman shouldn't depend on which state one lives in.

Centralization, its advocates say, can overcome the ability of local elites to dominate in small communities. This argument has been particularly salient in the U.S., where federal courts and Congress have used their power to reduce, if not completely remove, racial prejudice from laws and polices. The argument has also been salient in the European Union, where the European Commission and the European Court of Justice have pressed member nations and aspiring member nations to adopt anti-discrimination

[22]Nelson A. Rockefeller, in *The Future of Federalism* (Cambridge, Mass.: Harvard University Press, 1963), p. 7.

[23]The laboratory metaphor was first used by Supreme Court Justice Louis Brandeis in *New State Ice Co. v. Liebman*, 285 U.S. 262 (1932), and later popularized by Governor Rockefeller of New York in *The Future of Federalism*, ibid., pp. 53–54.

policies for racial and ethnic minorities, women, people with disabilities, and immigrants.

Politicians and advocates often argue about centralization versus decentralization in terms of the relative technical competence of federal, state, and local governments, but the organization of authority is always a struggle over power. The crucial issue in policy politics is not whether a particular allocation of power among government units makes for punctual railroads, but how it distributes both political authority and material outcomes. We can make the question more pointed: Is there really a difference between the distributive results of centralized and decentralized systems? Do they consistently benefit different sets of people?

Many political scientists think the federal government is more likely than state and city governments to undertake redistribution. For one reason, it has greater fiscal capacity to engage in redistribution, because it has a far larger and more progressive tax base than the states or cities, which tend to rely on sales and property taxes, rather than income tax. By attaching strings to its numerous federal aid programs, it can effectively force cities and states to carry out national goals. Another reason the federal government is more likely to undertake redistributive policies is that cities and states have more permeable boundaries. If they attempt to redistribute, businesses and individuals can relocate to avoid the high taxes; and if they provide a generous array of welfare, education, health, and housing benefits as compared to other cities and states, new residents will migrate in to take advantage of the benefits.[24] By comparison, the federal government has relatively impenetrable boundaries. Immigration restrictions limit the influx of would-be benefit seekers, and residents cannot (or at least probably will not) readily flee the country to escape national taxes. However, globalization weakens even national government powers to redistribute, because businesses can easily relocate their operations and shelter their profits in foreign tax havens.[25]

Public health insurance in the U.S. offers a good test of the arguments about federalism and redistribution. In 1965, Medicare was established as a federal program for insuring the elderly. Medicaid was established as a joint federal-state program for insuring the poor. Medicare is highly centralized. The federal government sets standards for eligibility, benefits,

[24]Paul Peterson, *City Limits* (Chicago: University of Chicago Press, 1981) makes this argument for cities; Paul Peterson and Mark Rom, *Welfare Magnets* (Washington, D.C.: Brookings Institution, 1990) make it for states. Subsequent research about these effects has been quite mixed and inconclusive.

[25]Organization for Economic Cooperation and Development (OECD), *Harmful Tax Competition: An Emerging Global Issue* (Paris: OECD, 1998).

and financial arrangements with medical providers, and administers the program through regional and state agencies it supervises. Medicaid is much more decentralized. Within federal guidelines, states are allowed to establish their own rules for eligibility, benefits, and how much to reimburse doctors, hospitals, and other medical providers. States must spend some of their own money to pay for health care, but the federal government picks up a significant share of their costs, according to formulas that differ for each state.

The two programs have evolved in complex ways, but some differences in their redistributive effects stand out. Medicare followed on the heels of the Civil Rights Act of 1964, and was partly inspired by the same concerns for racial justice. Its architects saw that federal dollars could be used as a powerful incentive to make states and cities end racial segregation in hospitals and nursing homes. Thus, the Medicare legislation included stringent prohibitions on segregation and discrimination as a condition for receiving federal Medicare money. The prohibitions weren't fully enforced, and the Medicare program had some unintended effects. Notably, the inflow of new federal money enabled hospitals to finance construction of wings with private rooms, so that without any formal segregation rules, well-off white patients could avoid sharing rooms with blacks. But despite its less-than-100-percent effectiveness, Medicare's centralized rule making and federal purse strings have had a major impact on reducing racial discrimination in health facilities, and opening up access to medical care for elderly black Americans. Medicare also redistributes from high earners to low earners, because it is financed by a payroll tax established by the federal government.[26]

Although Medicaid was established at the same time as Medicare, it was a political afterthought, rather than a carefully designed program.[27] It built on existing state aid programs and left key program decisions to the states. Citizens' eligibility was linked to each state's eligibility rules for its welfare program, so that states varied widely in the portions of their low-income populations who received Medicaid. The federal government required states to cover some basic benefits, including hospital care, physicians' services, nursing home care, and laboratory tests and X-rays, but apart from defining the minimum basic coverage, the federal government put no pressure on the states.

[26]David Barton Smith, "Health Care's Hidden Civil Rights Legacy," *St. Louis University Law School Journal*, vol. 48 (2003), pp. 37–60.

[27]My overview of Medicaid is based on Laura Katz Olson, *The Politics of Medicaid* (New York: Columbia University Press, 2010).

Changing the Locus of Decision Making

Arguments for Decentralization	*Arguments for Centralization*
1. Gives authority to local officials, who have better knowledge of their communities.	Gives authority to national officials, who have broader views of common problems among smaller units.
2. Suitable for smaller programs that affect only the small unit and don't require greater resources or coordination beyond the small unit.	Allows for large public projects that serve multiple communities and that require large-scale planning and resources.
3. Allows smaller units to experiment with policy ideas and develop knowledge about what works.	Allows for standardization of "best practices" in all jurisdictions, and application of technical and scientific expertise available outside smaller units.
4. Allows for diversity of solutions to meet differing local needs and political preferences, thereby enhancing citizens' liberty.	Suitable for issues involving state or national legal rights that should be the same across all subunits, thereby promoting equality.
5. Gives communities more autonomy, thereby enhancing citizens' liberty.	Allows central officials to redistribute power and resources among smaller jurisdictions, thereby promoting equality.

To states, Medicaid was something of a Trojan horse. By and large, they didn't want to spend their own money on health care for the poor, which they were required to do in order to get their share of federal matching funds. Especially during economic downturns, state leaders tended to see their Medicaid programs as budget drains. Meanwhile, starting with President Ronald Reagan, national leaders sought to reduce the federal government's obligations to fund medical care for the poor. Thus, both state and national leaders saw the opportunity to meet their fiscal goals with the same kind of reform: further decentralization of authority over Medicaid.

Through an administrative device called "waivers," the federal government granted states exemptions from some eligibility and benefit require-

ments. Through the fiscal device of block grants, the federal government awarded lump sums to the states to use as they saw fit, replacing the old method of open-ended reimbursements based on what the states had already spent on medical care for the poor. The Clinton administration encouraged states to cover more people under Medicaid by limiting their benefits to basic primary care services, and by requiring patients to pay fees each time they used medical care. Under President George W. Bush, the federal government made it even easier for states to obtain waivers, and permitted them to increase out-of-pocket costs for the (poor by definition) beneficiaries. The lesson of the Medicare-Medicaid comparison is that higher levels of government have the *possibility* and the *means* to effect redistribution among their sub-units, but whether they do so depends on the constellation of attitudes and interests that dominate policy making.

In the polis, there are no fixed rules for assigning jurisdiction over issues to particular institutions. At various times and on different issues, policy decisions might be made in local, state, national, or international bodies; in families and private voluntary organizations; or in business organizations and markets. Each venue has its own "decisional bias" or biases, because the participants and rules of the game vary. Political actors seeking a change from the policy status quo go "venue shopping," searching for a decision-making venue where their interests are more likely to win. Getting an issue moved from one venue to another can change the balance of power and allow formerly weaker or minority interests to prevail over ones that dominated in the old arena.[28] Thus, all proposals for restructuring authority can be interpreted as venue shopping. Arguments for shifting authority to a higher or lower level in a federal system, or in any hierarchy for that matter, are usually couched in terms of efficiency, freedom, justice, or public interest. They assert that one level of government rather than another is inherently better able to make good decisions on an issue or more likely to produce better policy. In fact, behind such arguments is a hope that one's interest might find stronger support in a different arena.

Accountability and the Paradox of Democracy

Here is another paradox of democracy: the people choose and control their leaders, who, once in office, control the people. The concept of accountability is meant to resolve this paradox. Accountability describes the relationship between people who wield power and people who are

[28]Frank R. Baumgartner and Bryan D. Jones, "Agenda Dynamics and Policy Subsystems," *Journal of Politics*, vol. 53, no. 4 (1991), pp. 1044–77.

subject to it. We can think of accountability as "bottom-up power," the ability of the governed to control the governors. In a more formal definition: "Accountability implies that some actors have the right to hold other actors to a set of standards, to judge whether they have fulfilled their responsibilities in light of these standards, and to impose sanctions if they determine that these responsibilities have not been met." Accountability can work only where both parties, the governed and the governors, recognize each other's roles as legitimate, "one to exercise particular powers, and the other to hold them to account."[29] This process of the governed evaluating the performance of the governors and "holding them to account" closes the democratic circle.

In democratic theory, elections serve as the crucial machinery of accountability. Citizens are supposed to choose their legislators, and a legislature is supposed to express the will of constituents as it writes laws and makes policy. If voters don't like the way their chosen leaders govern, they can remove them and install others who will make policies more to their liking. But several factors dilute and even overwhelm citizens' power to remove their representatives.

In yet another of those beguiling democratic paradoxes, legislators have significant resources to influence elections. In the American system, they control the apportionment of seats and the boundaries of legislative voting districts. The dominant party in a legislature can manipulate district boundaries to include a majority of its traditional supporters. Thus, at each moment of redistricting, the legislature chooses its constituents, not vice versa.[30] Once legislators are elected, incumbency, or holding office, gives them resources that enable them to hobble challengers and increase the likelihood that they will stay in office. Incumbents can usually attract more campaign donations from powerful interest groups who seek legislative favors in return. Incumbents have government resources to dispense as favors—military bases, lucrative contracts for private companies to conduct state functions, regulatory waivers, tax benefits, funds for state and local programs, and, above all, access to legislative aides and input into

[29]Ruth W. Grant and Robert O. Keohane, "Accountability and Abuses of Power in World Politics," *American Political Science Review*, vol. 99, no. 1 (2005), pp. 29–43, quotes on p. 29; Robert D. Behn provides a marvelous review of the concept in *Rethinking Democratic Accountability* (Washington, D.C.: Brookings Institution, 2001).

[30]Stephen Ansolabehere and James M. Snyder Jr., *The End of Inequality: One Person, One Vote and the Transformation of American Politics* (New York: W. W. Norton, 2008), pp. 8–9. This problem is not as severe in parliamentary systems with proportional representation, yet, even in these systems, a sitting legislature has some control over elections, because the majority party or coalition selects the prime minister, who has some discretion to control the timing of elections.

drafting legislation. By virtue of being in office, incumbents acquire power far beyond the votes that put them there. With every succeeding election, the votes of dissatisfied citizens become less powerful against the advantages of incumbency.[31]

Policy reforms such as campaign finance limits, conflict-of-interest rules, and term limits are meant to counterbalance the incumbency effect, and thereby strengthen democratic accountability. But such reforms must pass through the legislatures and often courts as well. Even when Congress managed to pass moderately restrictive campaign financing laws, the Supreme Court struck them down as violations of free speech.[32]

Elections as accountability mechanisms are undermined most dramatically by the long-term shift of policy-making power from legislative to executive bodies and from the public sector to the private sector. In part, a shift from legislatures to executives is inevitable with modernization, as government must oversee more complex economic and technological activities. Independent of any generalized need for strong executive authority, however, executives have the capacity to appropriate power to themselves and evade legislative control. American presidents use the doctrine of "executive privilege" to keep their policy deliberations secret. George W. Bush successfully used executive privilege to deny Congress access to discussions of his Energy Task Force—an influential group heavily staffed with oil industry executives and headed by Vice President Dick Cheney, a former CEO of an oil-services company that receives major contracts from the U.S. government. Presidents can make policy through "executive orders" that don't need any ratification by Congress. And several presidents have asserted their policy preferences over legislation by signing bills into law with "signing statements," indicating that they may not enforce provisions of the law with which they disagree.

Last, as we saw in Chapter 6, "Security," executives can use the device of emergency powers to evade legislative control. Seizing emergency powers isn't something used only by national leaders in times of war. In 2011, the governor of Michigan sought, and the Republican-controlled legislature granted, "financial emergency powers." The statute enables the governor to decide unilaterally when municipalities or school districts are in financial

[31]Stephen Ansolabehere and James M. Snyder Jr., "The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942–2000," *Electoral Law Journal*, vol. 1, no. 3 (2002), pp. 315–38; and Robert Reich, *Supercapitalism: The Transformation of Business, Democracy and Everyday Life* (New York: Knopf, 2007).

[32]The most recent case, *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), was discussed in Chapter 5, "Liberty."

trouble, to appoint a private-sector "emergency financial manager," and to replace democratically elected town governments and school boards with private, for-profit firms.[33] These and other executive powers significantly thwart the most important accountability mechanism of democracy.

Privatization and Democracy

Since the 1970s, the world has seen a dramatic ideological and political shift in the dominant ideas about how government can best foster economic prosperity and societal well-being.[34] From the Great Depression in the 1930s until the 1970s, the reigning consensus held that private enterprise and market competition are vital to prosperity, but because markets are subject to extreme volatility and downturns, government must use macroeconomic tools to manage them. Neoliberalism, the view that became ascendant in the late 1970s, holds that government does more harm than good and should leave as many decisions as possible to entrepreneurs. Business owners and their associations funded neoliberal ideas, scholarship, policy analyses, and candidates for public office who subscribed to the ideas.[35] Once in office, neoliberal leaders have transferred many public functions and government responsibilities to the private sector.

So many government functions have been privatized in the U.S. that one prominent law professor dubs the trend "outsourcing sovereignty."[36] State governments hire private companies to run prisons and income assistance programs and, as in Michigan, possibly to manage town governments and public schools. The federal government contracts out many core governmental functions, including collecting delinquent tax revenues, managing veterans' hospitals, providing disaster relief, and securing the Mexican border. In the past three decades, much of national defense has been delegated to the private sector. The government has always relied on private companies to manufacture weapons, ships, planes, and supplies, but government now contracts out many more

[33]Local Government & School District Fiscal Accountability Act, PA 4, enacted March 17, 2011. As of this writing, the law is being challenged in court, so whether it will take effect is unclear.

[34]The shift from managed capitalism to neoliberalism is discussed in Chapter 3, "Efficiency."

[35]David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005); and Mark Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century* (New York: Cambridge University Press, 2002).

[36]Paul R. Verkuil, *Outsourcing Sovereignty: Why Privatization of Government Functions Threatens Democracy and What We Can Do About It* (New York: Cambridge University Press, 2007); also Kimberly J. Morgan and Andrea Louise Campbell, *The Delegated Welfare State* (New York: Oxford University Press, 2011).

"Remember, 'accounting' and 'accountability': nothing in common."

defense activities, including construction and operation of military bases, combat, intelligence-gathering, and counterinsurgency. The Pentagon has used contractors to train the Iraqi army and police, as well as Afghan security forces. Contractors have provided virtually all the war zone security services to the American diplomatic mission in Baghdad as well as to military convoys. And in Abu Ghraib prison at the time of the 2004 scandal, twenty-seven of the thirty-seven interrogators were employees of a private military company.[37]

Military contracting illustrates how privatization can hollow out public institutions and undermine citizens' capacity to hold leaders accountable. Because former Secretary of Defense Donald Rumsfeld believed the private sector is vastly more efficient than government, he also contracted out most Defense Department *administrative* functions and drastically reduced the department's civilian staff. As a result, the department lacks sufficient staff to oversee the defense contracts it lets. According to one employee in the Office of the Secretary of Defense, "We don't even know how many contracts

[37]Allison Stanger, *One Nation Under Contract: The Outsourcing of American Power and the Future of Foreign Policy* (New Haven: Yale University Press, 2009).

we have."[38] Without oversight, the agency cannot ensure that contractors comply with its rules and fulfill its objectives.

Privatization of national defense creates other impediments to democracy and accountability. Article I of the Constitution grants Congress the power "to raise and support armies." By contracting with private companies for military personnel, the executive branch can hire and fund soldiers without obtaining congressional authorization. The government loses control over armed forces by ceding recruitment, standards, and training to private companies; contract employees are not part of the military command chain, nor subject to military discipline.

When the private sector carries out the bulk of national defense, citizens have less opportunity and motivation to debate foreign policy and deliberate whether they want the nation to fight a war. The all-volunteer army draws primarily from lower-income families whose young adults have low education levels and few good job prospects. Middle- and upper-class families aren't drawn to think about war in terms of sacrificing their own children, as they were during the Vietnam War when there was a draft, nor are they so strongly motivated to join anti-war movements. Because both the official combat troops and the unofficial private combat forces are volunteers, it is easier for the rest of the public to disengage from questioning the legitimacy of war. Private soldiers get very little media coverage, even when they die in war zones, and the government doesn't keep count of casualties among contractors, as it does for its own soldiers. With those "private" casualties out of the public eye, citizens lack complete knowledge about the human costs of war, and this factor, too, weakens public engagement with military policy. Meanwhile, for private contractors and their employees, wars mean jobs, income, and profits. The more war and security functions the government contracts out, the stronger the pro-war lobby grows, and the less influence ordinary citizens have over government policy.[39]

Military contracting is only one example of a much larger pattern. Influenced by neoliberal ideas, governments have increasingly shifted policy decision making from the public sector to the private sector, through deregulation, liberalization of government restrictions on trade, privatization of public agency functions, and selling publicly owned companies to the private sector. All of these shifts erode institutional mechanisms for accountability and remove policy decisions from public view and debate.

[38]Ibid., p. 87.

[39]Verkuil, *Outsourcing Sovereignty*, op. cit., note 36; Stanger, *One Nation Under Contract*, op. cit., note 37; and Jon D. Michaels, "Beyond Accountability: The Constitutional, Democratic and Strategic Problems with Privatizing War," *Washington University Law Quarterly*, vol. 82, no. 3 (2004), pp. 1003–1128.

Accountability in Global Politics

Although there is no world government in which we can all claim legal citizenship, globalization confronts us with questions about our duties as moral citizens in the global community. Three pressing sets of issues command the global citizen's attention: first, stopping violence, genocide, slavery, and human trafficking; second, slowing environmental degradation and exercising stewardship for future generations; and third, reducing poverty, illness, illiteracy, and other forms of deprivation. I'll end my reflections on power and accountability by focusing on the last—specifically, accountability in international development aid.

Development aid "attempts to promote long-term, self-sustaining political and economic improvements in poor areas."[40] (By contrast, humanitarian aid seeks to provide emergency food, water, medical care, and shelter to those in immediate danger, as opposed to effecting long-term structural change.) Individual donors, voluntary organizations, and national governments give aid through multilateral organizations such as The World Bank or the United Nations, through direct bilateral relations between two national governments, and through nongovernmental organizations such as Oxfam, Doctors Without Borders, Heifer International, and the International Red Cross.

Most donors hope their aid will not only relieve poverty but also empower people to participate in politics and, eventually, bring about or strengthen democracy. If aid is supposed to empower individuals and strengthen weak governments, it becomes important to ask whether donors are accountable. If donors use aid for their own gain, without helping the recipients and possibly even exploiting them, aid fails its purpose and perpetuates a nondemocratic international regime.

The first question is, "Accountable to whom?" When a national government proffers aid through its development agency, such as the U.S. Agency for International Development (USAID), should agency officials be accountable to their own government's department or ministry? To taxpayers, who ultimately provide the money for aid? To the recipient government that is responsible for putting the aid to good use? To the citizens of the recipient country whom aid is supposed to empower? Or to the particular groups of citizens the aid is meant to help? Each of these different actors would need its own mechanisms to hold a development agency

[40]Leif Wenar, "What We Owe to Distant Others," *Politics, Philosophy and Economics*, vol. 2, no. 3 (2003), pp. 283–304, quote on p. 293.

accountable. Scholars and activists hotly debate accountability in development aid, and the disputes arise in large part from lack of agreement about who should be accountable to whom.

According to one critique, because recipient governments are so poor and dependent on aid, they must do donors' bidding to get aid and keep it flowing. This dependence allows donors to impose their own values, policy priorities, and even preferred policy instruments. Recipient governments have little say in setting their own priorities.[41] Yet, as some critics note, donor agencies need recipient countries as much as recipient countries need donors. Donor agencies' raison d'être is to make development grants and loans. They gain credibility with their sponsors and funders—and more money—only when they show that they have given away the money they were hired to dispense. Their strongest incentives are to dispense money, rather than to prove that the programs they funded were effective. The imperative to give out money counteracts their ability to impose their will on recipient governments. And even though recipient countries are beholden to donors, they have their own sources of power. When a donor agency tries to withhold aid because a government has failed to meet its conditions, it comes under strong pressure from government agencies, businesses, and other aid agencies who claim (rightly) that without the aid, they can't function. As one former World Bank Representative in Ghana put it, donor agencies are plagued by "the weakness of strength."[42]

According to another critique, accountability requirements can impede democracy in both recipient and donor countries. Dependence on foreign donors leads national leaders to be more responsive to donors than to their own citizens. They must spend huge amounts of time meeting with donor representatives and their consultants, reporting to them, and filling out paperwork. Government resources spent on cultivating donors don't go to helping the country's own businesses, farmers, or poor citizens.

On the donor side, a national aid agency may be under cross pressures that work against democracy in both donor and recipient countries. For example, USAID depends on congressional appropriations for its funds. Members of Congress respond to domestic interest groups, such as farmers who want government to purchase their excess commodities, and

[41]For good overviews of accountability in international aid, see Leif Wenar, "Accountability in International Development Aid," *Ethics and International Affairs*, vol. 20, no. 1 (2006), pp. 1–23; Matthew S. Winters, "Accountability, Participation and Foreign Aid Effectiveness," *International Studies Review* vol. 12, no, 2 (2010), pp. 318–43; and Grant and Keohane, "Accountability," op. cit., note 29.

[42]Ravi Kanbur, "Aid, Conditionality and Debt in Africa," in *Foreign Aid and Development*, Finn Tarp, ed. (New York: Routledge, 2000), pp. 409–22.

shipping companies who want government contracts for shipping food commodities to recipient countries. By one estimate, about 90 percent of U.S. food aid expenditures remain in the U.S. and go to U.S. citizens and their businesses, against the intent of legislators who wanted to aid other countries. USAID is also accountable to the State Department, which wants to deploy aid to allies for strategic reasons. Often, this means U.S. aid goes to countries with dictators—and helps keep them in power.[43]

In spite of these problems, development aid can promote democracy through indirect mechanisms. By increasing education and literacy, aid enhances citizens' capacity and desire to participate in public discussions and exercise their civic rights. By promoting economic development in general, and health improvement and income growth specifically, aid indirectly gives individuals more time and energy to devote to civic life instead of subsistence. Economic development lowers women's fertility rates, which increases likelihood that young girls will receive education and women will participate in politics. As we saw in Chapter 15, "Rights," pressure from aid agencies to grant civic rights to women and minority groups gradually legitimizes their political participation and stimulates their mobilization. Finally, development aid engages governments in the international community, where human rights, equality, and democracy are strong norms.[44]

In the polis, power comes in many forms. Every form has multiple practical effects and moral meanings. To analyze how the exercise of power works, one must get behind, around, underneath, and through the organization chart to ask who benefits—in exactly what ways?—and who loses—in what ways? Who benefits and loses from any rearrangement of power? Losses and gains might be short-term or long-term, material and economic, or political and strategic. And the different forms of gain or loss don't always go hand in hand. That's the nature of policy paradox—one can win and lose at the same time.

[43]Ibid.; Wenar, "Accountability," op. cit., note 41; and William Easterly, "Foreign Aid for Scoundrels," *New York Review of Books*, Nov. 25, 2010, pp. 37–38.

[44]Ross E. Burkhardt and Michael S. Lewis-Beck, "Comparative Democracy: The Economic Development Thesis," *American Political Science Review*, vol. 88, no. 4 (1994), pp. 903–10; and Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007), chap. 2.

Conclusion: Policy Analysis and Political Argument

For centuries, governing through knowledge instead of politics has been a utopian dream. Inspired by a sense that politics is messy, irrational, selfish, and shortsighted, generations of reformers have sought to infuse politics with science. The public policy field arising after World War II was the latest effort to transform policy into a sphere of rational analysis and allegiance to truth in order to attain the maximum possible social welfare.

The enterprise of extricating policy from politics assumes that analysis and politics can be separate and distinct activities. Charles Lindblom, one of the foremost modern policy thinkers, explained the distinction this way:

> When we say that policies are decided by analysis, we mean that an investigation of the merits of various possible actions has disclosed reasons for choosing one policy over others. When we say that politics rather than analysis determines policy, we mean that policy is set by the various ways in which people exert control, influence, or power over each other.[1]

Most social scientists and practitioners (including Lindblom) chafe at a strict dichotomy between reason and power, so they have imagined various middle grounds that draw elements from the two spheres. From one side come visions of rational analysis that is a little more like politics. Lindblom offered a diluted form of rational analysis, known as "muddling through" or "incrementalism," in which policymakers formulate very small goals (incremental change) and consider only a very limited number of

[1]Charles Lindblom, *The Policy-Making Process* (Englewood Cliffs, N.J.: Prentice-Hall, 1980), p. 26.

alternatives.[2] Amitai Etzioni proposed "mixed-scanning" that would combine fundamental "rationalistic" decision making with incrementalism.[3] Charles Schultze suggested that policy analysts could be "rationality advocates" within politics, throwing their weight against presumably "political advocates."[4]

From the other side come models of politics that make it a little more like analysis. Policy making is portrayed as a sequential process that sometimes gets out of order. An issue is put on the agenda and defined. It moves down the conveyor belt of political institutions, from legislative committees to chambers of the whole, where it is converted into a "policy alternative," or program. The program moves on to the bureaucracy and out into the field, where it is implemented and perhaps evaluated. Even though no political scientists (so far as I know) think that the process actually happens this way, many use this framework as the benchmark to compare what actually happens and to nudge the real policy-making process a little closer to the benchmark.

This book challenges the dichotomy of analysis and politics from which such middle grounds are blended. I have argued that the categories of thought behind reasoned analysis are themselves constructed in political struggle, and nonviolent political conflict is conducted primarily through reasoned analysis. Therefore, it is not simply a matter that analysis is sometimes used in partisan fashion or for political purposes. *Reasoned analysis is necessarily political.* Reason doesn't start with a clean slate on which our brains record their pure observations. Reason proceeds from choices to notice some things but not others, to include some things and exclude others, and to view the world in a particular way when other visions are possible. Policy analysis is political argument, and vice versa.

Metaphoric versus Calculating Reason

The rational model of decision making is reasoning by calculation. It rests on estimating the consequences of actions, attaching values to the consequences, and calculating which actions yield the best results. But, as

[2]Charles Lindblom, "The Science of Muddling Through," *Public Administration Review* 19 (1959), pp. 79–88; and *The Intelligence of Democracy* (New York: Free Press, 1965).

[3]Amitai Etzioni, "Mixed-Scanning: A 'Third' Approach to Decision-Making," *Public Administration Review* 27 (1967), pp. 385–92.

[4]Charles Schultze, *The Politics and Economics of Public Spending* (Washington, D.C.: Brookings Institution, 1968), p. 96.

we have seen, calculation can't occur until we already have categories in place. The very definition of categories determines the result of a count.

Categories are mental containers in a world that has only continua. They are intellectual boundaries humans put on the world in order to help us apprehend it and live in an orderly way. That is the meaning of the phrase "social construction of reality" and the school of thought it denotes—not that there is no reality apart from social meanings, but that we can know reality only by categorizing it, naming its parts, and giving it meaning.[5]

That the world is composed of continua, not categories, is as true in the natural world as in social affairs. According to Stephen Jay Gould, some strange controversies over categorization racked the scientific community in earlier times: is (or are) a Siamese twin(s) with one head and two lower bodies one person or two people? Is a Portuguese man-of-war a single organism, as it functions, or a colony, as it evolved?[6] There are no objective answers to these questions, because nature doesn't have categories; people do.

We might be tempted to write off the problem of the Siamese twin(s) as a rarity, but the question it raises comes mighty close to ones we ask in contemporary policy debates: Is a fetus a person? Is a person born in Denmark to a Danish mother and a Turkish immigrant father a Dane? Is our economy in a recession or just a normal downturn? Has the nation whose drone kills civilians violated international war treaties? What is an Islamic political party or leader? "If the Islamic spectrum goes from Bin Laden to [Turkish Prime Minister Recep Tayyip] Erdogan, which of them is Islam?"[7]

There are, to be sure, more or less objective facts underlying all these situations. For example, a fetus could be described as consisting of tissues with certain physiological properties arranged in certain anatomical patterns. But these kinds of facts are not the ones that matter in politics. What people care about and fight about are interpretations of personhood, identity, economic welfare, war, and the proper relationship between religion and government. What communities decide about when they make policy is meaning, not matter. And science can't settle questions of meaning.

[5]The phrase is the title of a book by Peter L. Berger and Thomas Luckmann (New York: Doubleday, 1966).

[6]Stephen Jay Gould, "Living With Connections," and "A Most Ingenious Paradox," both essays in his *The Flamingo's Smile: Reflections in Natural History* (New York: Norton, 1985).

[7]Rachid Ghannouchi, head of Tunisia's Ennahda party, quoted in Anthony Shadid and David D. Kirkpatrick, "Activists in Arab World Vie to Define Islamic State," *New York Times*, Sept. 29, 2011.

Given a world of continua, there is infinite choice about how to classify. Legend has it that according to a certain Chinese encyclopedia, animals are divided into: (a) belonging to the emperor, (b) embalmed, (c) tame, (d) suckling pigs, (e) sirens, (f) fabulous, (g) stray dogs, (h) included in the present classification, (i) frenzied, (j) innumerable, (k) drawn with a very fine camel-hair brush, (l) et cetera, (m) having just broken the water pitcher, (n) that from a long way off look like flies.[8] We take delight in this kooky list because it liberates us from our own conceptual cages and reminds us how powerful a hold our categories have on our ways of seeing the world.

Compare the ancient Chinese taxonomy of animals with the following list of the causes of poverty. I derived this list from a 1920s sociology textbook, but it could easily derive from today's scientific research about the causes of poverty, and it strikes me as only a little less kooky: (a) poor natural resources, (b) adverse climate, (c) adverse weather, (d) insect pests, (e) disasters, (f) illness and diseases, (g) physical inheritance, (h) mental inheritance, (i) adverse surroundings of children, (j) death or disability of the earner, (k) unemployment, (l) lack of proper wages, (m) traditions, (n) customs, (o) habits, (p) advertising and installment buying, (q) fluctuations between costs of living and income, (r) inequitable distribution of wealth and income, (s) family marital relations, (t) political conditions, and (u) unwise philanthropy.[9]

Policy is centrally about classification and differentiation, about how we do and should categorize in a world where categories are not given. The old saws about "treating likes alike" and "giving each person his due" tap into a powerful drive for order, even if they are indeterminate about what that order should be. Policy arguments are convincing to the extent that they give a satisfying account of the rightness of treating cases alike or differently. Political reasoning, therefore, is primarily a reasoning of sameness and difference, and of good and bad or right and wrong. The reasoning of more or less is only secondary.

The modes of problem definition discussed in Part III are techniques of classifying. Literary devices serve to make something look more like one thing than another. Numbers carry implicit categorizations of the things they measure. Causal stories divide events into accidents and willed or controlled actions, and within the realm of control, they dif-

[8]I got this story from Laurence Tribe, "Policy Science: Analysis or Ideology?" *Philosophy and Public Affairs*, 2, no. 1 (1972), pp. 66–110. Tribe got it from Michel Foucault, who got it from Jorge Borges.

[9]J. L. Gillin, *Poverty and Dependence*, quoted in C. Wright Mills, "The Professional Ideology of Social Pathologists," *American Journal of Sociology*, vol. 49, no. 3 (1943), pp. 165–80; the list of poverty causes is on p. 172.

ferentiate kinds of responsibility. Representations of interests divide political actors into strong and weak forces and good and evil characters. Representations of decisions divide human actions into possible and impossible means, good and bad outcomes, and ethical and unethical valuations.

Reasoning by calculation—the reasoning of more or less—becomes important in politics only once categories have been established. Then we can ask, will policy A or B lead to the least harm? Which policy will do the most good, given our goals? Which policy is morally right, and can there be degrees of rightness?

Policy Argument as Strategic Representation

If policy argument is metaphoric, what makes it different from poetic metaphor? First, the stakes are higher in politics. Poets struggle to win over their audiences with their stunning metaphors, but political actors struggle to control immediate and often very concrete policy results.

Second, because policy argument is part of a political contest, it is always addressed to a hostile audience. Poetry audiences are open to new ways of seeing. They listen or read because they are seeking new understanding. By contrast, a policy metaphor always faces a potential opponent, a competing metaphor. That opponent might simply be the status quo, the usual or dominant way of looking at things, or what a

community takes for granted. Or it may be a specific opponent, a political actor who poses and defends an alternative metaphor. Sometimes no one challenges a reigning metaphor, but that doesn't mean it is secure forever.

Third, policy argument is strategic. It is designed to build constituencies, to break up old alliances and forge new ones, and to galvanize people into action, or, alternatively, to maintain old power structures and lull people into complacency. It seeks to evoke values and emotions by presenting something as good or evil, innocent or guilty, responsible or not, possible or impossible, strong or weak, right or wrong. Ultimately, policy argument is a process of creating, changing, and defending boundaries.

Policy Paradoxes as Boundary Tensions

In a world of continua, boundaries are inherently unstable. Whether they are conceptual, physical, or political, boundaries are border wars waiting to happen. At every boundary, there is a dilemma of classification: who or what belongs on each side? In politics, these dilemmas evoke intense passions because the classifications confer advantages and disadvantages, rewards and penalties, permissions and restrictions, or power and powerlessness.

Each type of policy solution presented in Part IV might be seen as a mode of constructing and maintaining boundaries. With incentives, people try to cast their behavior as "fitting" in the category that draws reward or escapes penalty. They try to influence incentive givers to see their behavior in one way or another. With rules, people seek to continue doing something important to themselves while still coming "within" the bounds of what is permissible. And rule enforcers interpret rules according to their own sense of the bounds of normality or justice. Persuasion as a policy strategy is permanently caught in a debate about the boundary between indoctrination and education. The articulation and administration of rights is a continuous struggle over the boundary between what the state does—the positive concept of rights—and what people think it ought to do—the normative concept of rights. Finally, the design of authority structures is a battle for participation, for inclusion among the category of decision makers. These mechanisms are best understood as modes of establishing boundaries and stylized rituals for the conduct of boundary disputes. Through them, policy boundaries are drawn and redrawn.

The Value of Argument

In the rationality project, analysis is often presented as though it were a collection of scientific, neutral techniques outside the political fray. The approach often leads to formulas for the "best way" that are, in fact, hidden strategies for framing issues in a way that benefits some interests at the expense of others. Analysis is always a species of argument. It includes some things and excludes others, and thus has a point of view.

Politics is a process of argument and persuasion. It entails searching for criteria and justifying choices. Equity, efficiency, welfare, liberty, security, democracy, and justice are aspirations for a community into which people read contradictory interpretations. But while the interpretations divide people, the aspirations unite us. The work of imagining what a common goal means and bringing others to one's own view joins people to common cause.

The search for criteria to justify classifications requires us to articulate our wishes, preferences, and visions. Political argument may seem messy, even angry, but it forces us to interact with an audience, to persuade others, and to look outside our own will for grounds for action. Without that pressure, we could not communicate and wouldn't be a community. In the process of articulating reasons, we show each other how we see the world. We may not ever see eye to eye, yet there is a huge difference between a political process in which people honestly try to see the world from different vantage points, and one in which they claim from the start that their vantage point is the right one.

Boundary tensions may be the curse of our existence as thinking and communal beings but political argument is our privilege. It allows us to fight our border wars with imagination and words.

Acknowledgments

Writers work with a peculiar paradox: to be able to write, we have to create an imaginary audience for the work not yet written. For the first edition of *Policy Paradox*, I summoned students, colleagues, former teachers, and a veritable auditorium full of my intellectual and political adversaries. They all listened attentively in absentia, which is to say, inside my head.

None of them, however, was as impressed and enthusiastic as my grandmother Celia E. Stone. She, too, listened in absentia, for she died six years before I began *Policy Paradox*. She used to read my school and college papers and talk with me about them, and she was a fabulous audience. She was intelligent, and though unable to pursue formal education beyond high school, keenly interested in ideas and world affairs. She made me want to write for people like her. She also happened to think I was the greatest. Whenever I write, I always put Gram front and center in my imaginary audience to remind me that I don't need to obfuscate to impress anyone. I just need to make myself plain.

By the time I came to write this edition of *Policy Paradox*, my imaginary auditorium was overflowing with current and former students, some I've taught in person, others I've met only through e-mail. More than a few have written to thank Gram for keeping me plainspoken, and several have thanked me for inspiring their professors to bring a chocolate cake to class. All my students, actual and virtual, have shown me how to use my own ideas in new ways and taught me about places and policies I can't experience for myself.

Three former colleagues at Duke University's Institute of Policy Sciences inspired me to write the original edition. Robert Behn and James Vaupel taught the required entry course for the public policy major, "Decision Theory for Policy Analysis." Never having studied decision theory, I thought I'd better sit in on the course. When I just couldn't get it, they tried to teach me how to discover my policy preferences by closing

my eyes and imagining I was drawing one red ball from an urn filled with a hundred balls in varying proportions of red and white. Those séances and Behn's article "Policy Analysts and Policy Politicians" stimulated me to investigate how the political circuitry of policymaking differs from the brain circuitry of decision scientists. Also at Duke, Carol Stack, a pioneer of American ethnography, showed me how to go beyond the research methods I'd learned in graduate school. She taught me to open my eyes, talk with people, and treat everything I saw, heard, and felt as research material.

This edition of the book benefited from the wise and wonderful help of many professors and students who use the book. Linda Fowler, my colleague at Dartmouth College, kick-started this revision by explaining bluntly why *Policy Paradox* was no longer on her syllabus: "I'm waiting for you to update it." Her syllabus made me want to take her course, and I used it as my first rough guide to the new terrain I would cover. Maarten Hajer's students at University of Amsterdam pleaded with me to include more non-U.S. cases, and Kuo Yu Lisa Wang at National Chung Cheng University showed me how she makes the book work for her Taiwanese students. Forty anonymous adopters who answered Norton's survey were beyond generous with their praise and suggestions. A special thanks to Norton's Courtney Hirschey for organizing and compiling the survey. Several colleagues reviewed drafts and provided supremely constructive advice: Ross Cheit, Andy Dunham, Jorrit DeJong, Rogan Kersh, Laura Jensen, Lars Thorup Larsen, Judy Layzer, Sandy Schram, and Nicolle Zeegers. Friends and colleagues at Aarhus University, besides helping me conceive the last chapter from a more global viewpoint, have enriched my work in so many ways. *Tusind tak* to Annette Andersen, Jørgen Elklit, Jens Blom Hansen, Gitte Sommers Harrits, Lars Thorup Larsen, Carsten Bagge Laustsen, Lasse Lindekilde, Jørn Loftager, Per Mouritsen, Marie Østergaard Møller, Thomas Olesen, and Marina Stanov. George Varughese and Mohan Manandhar opened a whole new old world to me when they invited me to help establish a policy research institute in Nepal, the Niti Foundation.

Every so often, I marvel at how a manuscript review I once did for Roby Harrington gained me Norton citizenship and entrée into Roby's enchanted circle of author-friends. In the person of Aaron Javsicas, I lucked into a warm, thoughtful, sensitive-to-nuance, talk-it-through book editor. Aaron caught the spirit of the old edition and breathed new life into this one. Copyediting is something I look forward to about as much as going to the dentist, but Erika Nein's and Ann Kirschner's edits made me smile and give silent thanks, again and again and again.

("Repetitive—delete," I hear them thinking. I say, "Stet.) For the previous editions, Norton's designers had come up with such a classy cover that I couldn't imagine a new one I'd like as much. Fortunately, Chin-Yee Lai has a much better imagination than I. She added brilliant color to Josef Albers's black-and-white lithograph of what I've come to call "The Parabox" and she made the whole thing pop. Such an assembly of writers, editors, and designers might have turned the book into a parabook, as impossible to follow as Albers's Parabox, but my project editor, Diane Cipollone, kept everyone in line and could not have been more solicitous of my authorial pride of place.

My parents, Stephen and Sybil Stone, nurtured me and everything I have done, including every edition of *Policy Paradox*. They died before I began working on this edition, but they live in every page—even inside the Paradox, for they lit my love of art by surrounding me with it.

Long ago in Chicago, after an American Political Science Association panel where we met, Jim Morone invited me to the Art Institute. He thought it a bit strange that I was so uninterested in art, given what I'd told him about my parents' art collection. Fortunately, he's a quick study and soon figured out what I *was* interested in. My thanks to you, Jim, for exploring the arts of living and loving with me since that first magical date.

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