

FSU College of Law, August 25, 2004

DISCOURSE FAILURE

**A Philosophical Essay on Political Deliberation,
Democracy, and Consent**

Guido Pincione and Fernando R. Tesón

**Draft. Please do not quote or circulate. Comments welcome.
Copyright © 2004 by Guido Pincione and Fernando R. Tesón**

Table of Contents with Summary of Each Chapter

CHAPTER 1. INTRODUCTION

1. The Allure of Deliberation
2. Rational Choice and Political Discourse

We formulate the main argument and locate the book within the rational choice tradition. The book extends the rational ignorance hypothesis to *social theories*. That is: citizens will not only ignore relevant political facts; they also, and more importantly, will misunderstand how society works.

CHAPTER 2. THE EPISTEMIC ARGUMENT FOR DELIBERATION

1. Rational Ignorance and the Charge of Utopianism
2. Discourse Failure and Patterns of Political Belief
3. Persuasive Definitions
4. Discourse Failure and Desert
5. The Cost of Dissenting

We explain in detail and with a number of examples (including an extended discussion of the trade debate) the discursive pathologies in modern democracies by introducing the key notion of *discourse failure*.

CHAPTER 3. THE RESILIENCE OF DISCOURSE FAILURE

1. Reliable Social Science and Opacity
2. Deliberativist Institutions
3. Good Policies, Bad Reasons
4. Shortcuts
5. Deliberation, Free Speech, and Truth
6. Deliberation as a Regulative Ideal
7. A Note on Condorcet and Bayes

We examine and reject possible replies to our critique of deliberation, including those based on “shortcuts,” the “marketplace of ideas,” the Jury Theorem and Bayesian inductive principles.

CHAPTER 4. SYMBOLISM IN POLITICAL ARGUMENT

1. Self-Defeatingness as Symbolism

2. Symbolic Behavior in Politics
3. Symbolic and Causal Utility: Nozick's Challenge
4. Symbolizing as the Intended Outcome
5. Are Self-Defeating Reformers Rational?
6. Why Political Deliberators Appear to Neglect Consequences

We examine and reject the view that political error may be reinterpreted as legitimate symbolic reasoning; in particular, we show that standard rational choice assumptions accommodate apparently self-defeating political positions.

CHAPTER 5. PRINCIPLES AND CONSEQUENCES IN POLITICAL DELIBERATION

1. The Moral Turn and Its Shortcomings
2. Direct Involvement in Evildoing
3. Shared Responsibility
4. Causal Complexity in Political Argument
5. Moral Error
6. A Note on Religious Morality
7. Types of Discourse Failure: A Summary
8. Appendix: Minimum Wages and Employment

We examine and reject the view that consequence-insensitive political views may be properly reinterpreted as legitimate moral positions. We also question the attempt by deliberativists to treat most political disagreements as moral.

CHAPTER 6. NON-EPISTEMIC DEFENSES OF DELIBERATION

1. Deliberation as the Exercise of Autonomy
2. Sincerity in Deliberation
3. Deliberation and Social Conflict
4. Deliberation and Impartiality
5. Deliberation, Participation, and Equality
6. Is Discourse Failure Always Bad?

We discuss and reject non-epistemic defenses of deliberation based on autonomy, equality, impartiality, and other moral ideals; and we criticize attempts to justify political error in deliberation.

CHAPTER 7. DELIBERATION, CONSENT, AND MAJORITY RULE

1. Consent and Reasonableness
2. Deliberation, Justice, and Rights

3. Deliberation and Majority Rule
4. Vote Indeterminacy
5. The Courtroom Analogy
6. Substantive Principles and Deliberative Politics

We explore the obscure relationships between deliberation, majority rule, and consent, and show why theories of deliberative democracy find it difficult to bring those notions into a coherent whole

CHAPTER 8. THE RATIONAL CHOICE FRAMEWORK: METHODOLOGICAL AND MORAL PROBLEMS

1. Rational Choice and Morality
2. Why Our Argument Is Not Ad Hominem
3. A Note on Empirical Testing

Here we dispel some possible misunderstandings about our use of rational choice assumptions and suggest directions for empirical testing of our theory.

CHAPTER 9. OVERCOMING DISCOURSE FAILURE: VOLUNTARY COMMUNITIES

1. A Contractarian Society
2. Contracts and Truth
3. Contracts and Compromise
4. The Paradox of Contract
5. Further Objections and Replies
6. Discursive Advantages of Voluntary Communities
7. Loose Ends

This last chapter outlines, tentatively, a possible way out of discourse failure: the radical redesign of political institutions in the direction of more contract and less politics. This includes the possibility of creating voluntary communities. Voluntary exchanges and consent are the centerpiece of our proposal.

Chapter 2

THE EPISTEMIC ARGUMENT FOR DELIBERATION

1. Rational Ignorance and the Charge of Utopianism

Consider one argument often given by people who defend trade barriers (e.g., quotas, tariffs, and subsidies). Protectionism is needed, they claim, to preserve domestic jobs. Domestic industries that lose out to foreign competitors have to downsize or go out of business, and thus lay off workers. Foreign workers and some local firms may gain from trade liberalization, but we should care about our own workers, our own national welfare. We owe a duty of solidarity to our fellow citizens in an economic context where what they lose foreigners gain. If our goal is to preserve domestic jobs, we should protect industries threatened by foreign competition.¹

The argument gains credibility from the obvious fact that domestic industries affected by foreign competition *do* suffer financially and so lay off workers. Who the precise losers and winners are is left obscure in this argument, but this much seems to be common to all protectionist positions: trade is not seen as mutually advantageous. Sometimes protectionists suggest that aggressive exporting strategies from other nations are unfair. This position is more moderate, as it would accept trade liberalization if trade volumes were roughly equivalent, or if everyone agreed not to protect.

Generally speaking, the argument from job loss is not supported by reliable economic theory or by empirical evidence.² To be sure, the relationship between trade liberalization and employment is quite complex. It seems fair to draw the following conclusions from an assessment of the literature:

- 1) Trade liberalization increases *aggregate* global and national wealth. This positive-game result is predicted by economic models that apply the well-established law of comparative advantages.³

¹ Examples abound. During the 2004 presidential primary season in the United States, candidates received cheers from large audiences by opposing free trade in the name of protecting domestic jobs. In North Carolina, billboards read, “Lost your job to free trade or offshoring yet?” See Elizabeth Becker, “Globalism Minus Jobs Equals Campaign Issue,” *New York Times*, January 31, 2004, A12, col. 1. One of the candidates, Senator John Edwards, made headlines when he said that trade was a “moral issue,” and that it was not right “to drive up stock prices if it drives down wages.” See “AFL-CIO: Looking for Unity,” *New York Times*, February 20, 2004, A16, Col 1. On March 5, 2004, the U.S. Senate voted to bar most firms that win federal contracts from performing the work outside the United States (“outsourcing”), thus apparently endorsing the politicians’ claim that outsourcing labor is harmful to the country. The Chairman of the Federal Board, Alan Greenspan, did not seem to convince many Senators with his pro-free-trade testimony. See “Greenspan Warns Congress Not to Create Trade Barriers,” *New York Times*, March 12, 2004, C6, Col. 5.

² See, in addition to works cited in the notes that follow, Jagdish Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004), pp. 122-134.

³ Explanations of the law of comparative advantages can be found in any textbook on international economics. It was first formulated by David Ricardo in his *Principles of Political Economy*, 1817. See, generally, Animesh Dixit and Victor Norman, *The Theory of International Trade* (Cambridge: Cambridge University Press, 1980). For a standard statement of the law, see Alan V. Deardorff, “The General Validity of the Law of Comparative Advantages,” *Journal of Political Economy*, Vol. 88, 1980, pp. 941-957.

- 2) Trade liberalization, on the other hand, produces winners and losers, yet what winners win is more than what losers lose.⁴
- 3) The effect of trade liberalization on employment depends in great part on the degree to which a country is labor-intensive. This is so by virtue of the Hecksher-Olin theorem.⁵ The claim that “free trade causes loss of jobs” is ambiguous. We must distinguish between several issues (recall that these questions are asked against the undisputed background of national and global gains from free trade):
 - a. Does free trade lower the *rate of employment* in a country? The answer is generally negative, because consumers as a whole improve, and the corresponding rise in demand will create new jobs in the more

Regarding empirical confirmation of the law, see James Harrigan, “Specialization and the Volume of Trade: Do the Data Obey the Laws?,” working paper of the National Bureau of Economic Research, available at www.nber.org/papers, December 2001. A country has a comparative advantage in producing a good if its *opportunity cost* (i.e., the value of goods forgone) of doing so is lower than that of other countries. Standard trade theory predicts that countries will export goods in which they have a comparative advantage, and that free trade is a necessary condition for global efficiency. The law of comparative advantages entails that even nations lacking an *absolute* advantage in the production of any commodity (i.e., nations that cannot produce any good more cheaply than their trading partners) can gain from free trade if they concentrate on producing commodities for which they have *comparative* advantages (i.e., goods in which they had the smallest disadvantage in terms of forgone production.) Most economists either accept the law of comparative advantages or qualify it for reasons (e.g. game-theoretic models of retaliatory tariffs) that are vastly more opaque and limited in scope than the protectionist arguments that we find in the political arena. Notice that a country *C* may possess a comparative advantage over country *C** in producing a good without having an absolute advantage over *C** in producing that good, that is, without producing it at a lower cost than *C**. Moreover, every nation has a comparative advantage in something, namely, that product for which it forgoes least value relative to the rest of the world.

⁴ The literature is extensive. See Lori G. Kletzer, *Import, Export, and Jobs: What Does Trade Mean for Employment and Job Loss?* (Kalamazoo, Mich.: Upjohn Institute for Employment Research, 2002), pp. 144-145 (increased imports cause job losses and increased exports cause job gains, but “the employment-enhancing effect of expanding exports is significantly greater than the employment-reducing effects of increasing imports”); Hian Teck Hoon, *Trade, Jobs, and Wages* (Cheltenham, UK: Edward Elgar Publishing, 2002), pp. 184-190.

⁵ For a statement of the Hecksher-Olin theorem, see Thomas A. Pugel and Peter H. Lindert, *International Economics* (Boston: Irwin-McGraw Hill, 11th ed., 2000) pp. 61-72. To understand the Hecksher-Olin effect, imagine two countries, Ruralia and Textilia, and two products, cloth and wheat. In a situation of autarky, that is, without trade, each country produces both products. Cloth requires more labor and less land; wheat requires more land and less labor. However, Textilia has a lot of labor available, while Ruralia has less labor and more and better land. When trade is opened, the theory of comparative advantages predicts that Ruralia will specialize in wheat while Textilia will specialize in cloth. Ruralia will buy all the cloth it needs from Textilia, and Textilia will buy all the wheat it needs from Ruralia. There will be a net gain for both countries in the long run. However, former cloth workers in Ruralia will see their wages go down, because they have now to work in the wheat fields, where demand for labor, and hence wages, are lower. Land rents, on the other hand, will go up in Ruralia. Notice, however, how unrealistic the model is: land is, of course, finite; you can’t “produce” more land. In any realistic situation where industries can expand by using more labor, the Hecksher-Olin effect will be less significant. But it is still true that if, say, the industries in which country *C* is relatively efficient require less labor than the industries in which *C* is relatively inefficient, those workers (usually unskilled) will suffer (will have to accept jobs at lower wages). Still, that will not affect the employment rate, and it will certainly be the case that the gains by other workers and by consumers at large will offset those losses. (The example is adapted from Pugel and Lindert, op. cit., p. 64.)

efficient industries. The consensus is that in the long run the rate of employment *increases* with trade.⁶

- b. Does free trade lower the *real wages* in a country, while leaving unaffected the unemployment rate? Generally speaking, the answer is no, because the wages of workers in the efficient industries will rise even if the trading partner refuses to lift its barriers to domestic products (cheaper imports liberate purchasing power), and, relatedly, because the real value of wages will rise by workers' having better priced imports available for consumption. Also, the level of wages seems more strongly correlated with technological change (something that freer trade facilitates) than with the level of openness.⁷
- c. Does free trade increase the *wage gap* between unskilled and skilled workers? The issue is controversial, but it seems that, at least in the United States, freer trade can widen the wage differential between skilled and unskilled workers.⁸

- 4) Even in cases where, due to the Hecksher-Olin effect mentioned in 3-c or to high costs of labor adjustment, unskilled workers suffer, the optimal way of helping them is *never* protectionism.⁹ To the demonstrable losses already mentioned, one has to add the resources divested toward rent-seeking activities (lobbying, bribery, and other strategies to secure protection).¹⁰

In summary, the protectionist argument from job loss has minimal plausibility in one situation only: when, because of the Hecksher-Olin effect, the gains from trade go disproportionately to one factor of production, say, the landowners, or when they create increased wage differentials between unskilled and skilled workers (these are two applications of the same effect.) But even in these cases, the consensus is that protectionism is a bad remedy. All one can say is a trivial truth: that if the government's goal is to protect *particular* workers from competition, then the government can achieve it by protecting the industry. But trade barriers do not "protect" the national employment rate; nor do they "protect" the real value of wages; and they positively harm consumers and, as a result (since everyone is a consumer), reduce general welfare. Particularly hidden are the harmful effects of protection in *other* sectors of the economy, including reduced job creation in those other sectors.

⁶ See Stevem Matusz, "International Trade, the Division of Labor, and Unemployment", *International Economic Review*, 1996, Vol. 37, No. 1, February 1996, pp. 71-83.

⁷ See Paul Krugman, "What Do Undergraduates Need to Know About Trade?," *American Economic Review*, Vol. 83, 1993, pp 23-26.

⁸ See Elias Dinopoulos and Paul Segerstrom, "A Schumpeterian Model of Protection and Relative Wages," *American Economic Review*, Vol. 89, No. 3, June 1999, pp. 450-472.

⁹ See Dinopoulos and Segerstrom, op. cit., who, after suggesting that unskilled workers may be worsened by opening trade, write: "We are anxious to point out that our analysis does not advocate protection as a way to raise the living standards of unskilled workers." Addressing the same issue, Jeffrey Sachs and Howard Shatz warn that "even if trade is an important factor in the recent widening of wage inequality, this does not suggest a case for increased trade protection. Theory and evidence both suggest that open trade is likely to be beneficial for the vast majority of the U.S. population." Jeffrey D. Sachs and Howard J. Shatz, "U.S. trade with Developing Countries and Wage Inequality," *American Economic Review*. Vol. 86, No. 2, May 1996, p. 239.

¹⁰ For a full analysis of the dynamics of protectionist rent-seeking, see Gene Grossman and Elhanan Helpman, "Protection for Sale," *American Economic Review*, vol. 84, No. 4, Sep. 1994, pp. 833-850.

Despite these findings, the protectionist argument based on job loss remains alive and well in politics.¹¹ Moreover, in the public arena protectionists never pay due attention to economic theory. Their views usually rest on pre-Ricardian mercantilist notions that have been refuted two hundred years ago. They never try to show, say, that the protectionist measures they propose meet the stringent conditions laid down by the Hecksher-Olin theorem. And they invariably omit mentioning that, even if protectionist measures were effective to preserve jobs in the protected industries, they would frustrate the attainment of valuable goals, such as increasing the availability of cheaper goods and creating jobs in other industries. On the contrary: politicians who mention how free trade “transfer our jobs to foreigners” enjoy a rhetorical advantage. Why is there such a profound divide between the views on trade of the public at large and those of professional economists, and this, in one of the most advanced, open, and stable democracies in the world, and nowadays the leader in economic research?

One would think that the gap between reliable social science and public opinion exemplified by the trade debate would be bridged by robust public deliberation. Citizens who deliberate, we are told, have a better chance of getting things right.¹² Political deliberation, many people think, has epistemic value. On this view, democracy is not about majority rule alone, or even about majority rule constrained by certain rights. It is a forum where citizens submit their views to the scrutiny that deliberation alone furnishes. Deliberation enhances the quality of political decision-making. John Stuart Mill famously defended free speech on the grounds that the unhindered exchange of views improves citizens’ understanding of things political. Present-day deliberativists urge citizens to use their right to free speech in a deliberative manner to advance their understanding of what is politically good.¹³ Many questions are left open, of course. Good for whom? For each

¹¹ In an *Investor’s Weekly* poll, only 24% of those asked thought that free trade created jobs in the United States, while 45% thought that free trade destroyed them; 61% thought that restrictions to protect American jobs were justified. Most revealingly, a *Pew Research* poll found that 78% thought the top priority of trade policy should be “to protect American workers,” while a 74% of the same pool thought that the top priority should be “to keep American economy growing.” If mainstream economics is to be believed, these views are incoherent. The way the question is asked, people cannot see the distinction between protecting particular American jobs (those that lose out to foreign competition) and expanding the job market. In a recent *Newsweek* poll, 80% of those asked thought that the reason for the loss of “American jobs” was that workers in other countries were willing to work for lower pay. In that same poll, people were asked whether free trade agreements such as NAFTA were good or bad for the United States. The answers: good, 28 %; bad, 35 %; mixed, 11%; don’t know, 26%. Asked if they agreed with a government official who said that the “outsourcing” of service jobs was good for the United States, 23% agreed; 68% disagreed; and 9% didn’t know. These and other opinion polls about international trade can be found at www.pollingreport.com/trade.htm.

¹² The literature is extensive. Representative works include: Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (Boulder: Westview Press, 1996); Robert E. Goodin, *Reflective Democracy* (Oxford: Oxford University Press, 2003) (emphasizing internal deliberation, as well as deliberation with others); Amy Gutmann & Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Belknap Press, 1996); Carlos Santiago Nino, *The Constitution of Deliberative Democracy* (New Haven: Yale University Press, 1996); the essays in James Bohman & William Rehg (eds.), *Deliberative Democracy: Essays in Reason and Politics* (Cambridge, Mass.: MIT Press, 1997); and Joshua Cohen, “An Epistemic Conception of Democracy,” *Ethics* 97 (1986), pp. 26-38. A classical statement of the idea that democracy leads to truths about the “common good” is in Jean Jacques Rousseau, *Du Contrat Social*, Livre 4, Chapitre 2.

¹³ Thus, Carlos Nino writes: “the value of democracy is of an epistemic nature with regard to social morality... [I]f certain strictures are met, democracy is the most reliable procedure for obtaining access to

citizen? For the polity? How is the citizen supposed to identify his, or the polity's, good? What exactly is deliberation? How does it differ from the bargaining that characterizes market transactions? The questions multiply, but epistemic defenses of deliberative democracy face a preliminary difficulty.

The difficulty is this. A rational citizen will remain ignorant about politics, since his vote is for all practical purposes non-decisive, and reliable political information is usually quite costly to him.¹⁴ In particular, citizens will not invest much time in careful deliberation. Moreover, for the average citizen, deliberating *in the manner recommended by deliberativists* is particularly onerous, and thus unlikely to occur. The average citizen will not ordinarily consider all reasonable contrasting political views offered in the deliberative forum, nor will he make sure, in most cases, that his proposals give equal consideration to everyone's interests.¹⁵ Unfortunately, citizens who do not make the effort of acquiring accurate political information or of deliberating in an appropriate manner will often be mistaken. Actual deliberation, then, is unlikely to reach the truth.¹⁶ Theories of deliberative democracy are utopian, if only because they assume that citizens have, or will acquire, the information that, we believe, it would not be reasonable for them to acquire.¹⁷

the knowledge of moral principles." *The Constitution of Deliberative Democracy*, p. 107. And, according to Goodin, "democracy has great epistemic merits, in any of its forms." See Goodin, *op. cit.*, p. 108. See also Christiano, *The Rule of the Many*, *op. cit.*, pp. 116-118.

¹⁴ See Anthony Downs, *An Economic Theory of Democracy* (New York: Harper, 1957), especially part III, pp. 207-76. Empirical research has even suggested that individuals, experts included, are often prone to invalid forms of inference. See the discussion and survey of relevant literature in Gerald Gaus, *Justificatory Liberalism* (New York: Oxford University Press, 1996), pp. 54-59. This innate propensity to err suggests that the task of becoming well informed is even more daunting than implied by Downs' formulation of the rational ignorance hypothesis. For a recent study of the level of political ignorance among US citizens, see Stephen Earl Bennett, "Is the Public's Ignorance of Politics Trivial?," *Critical Review*, Vol. 15, No. 3-4

¹⁵ Defenses of such constraints on deliberation can be found in Gutmann and Thompson, *Democracy and Disagreement*, *op. cit.*, pp. 126-127, and Nino, *The Constitution of Deliberative Democracy*, *op. cit.*, p. 122. Rawls's idea of public reason can also be interpreted as imposing constraints on the kinds of reasons that citizens should offer. See John Rawls, "The Idea of Public Reason Revisited," in *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 129-180.

¹⁶ Ideal deliberation may take place in highly structured expert settings. But theories of deliberative democracy cannot rest on this possibility. It is no reply to say (as Christiano does in *The Rule of the Many*, pp. 122-123) that institutions ought to be designed so that expert deliberators somehow represent the public at large. This, as Ilya Somin shows, only moves the rational ignorance problem one step further, because citizens would have to bear high informational costs in ascertaining who the experts are and whom to believe if these disagree. See Ilya Somin, "Citizens' Ignorance and the Democratic Ideal," *Critical Review* 12 (1998), pp. 424-426. See also note 91.

¹⁷ In the same vein, Russell Hardin observes that "if individuals have no reason to participate, because they cannot affect outcomes, then they would have no reason to know enough to participate wisely if they did participate." See *Liberalism, Constitutionalism, and Democracy* (New York: Oxford University Press, 1999), p. 166. Deliberativists have seldom addressed the problem of citizens' ignorance. An exception is Christiano, *The Rule of the Many*, *op. cit.*, Chapters 3 and 4. Unfortunately, after presenting the rational ignorance critique, he nowhere replies to it. See note 6 and accompanying text. A recent example of utopian requirements for deliberation is Goodin, *Reflective Democracy*, *op. cit.*, pp. 15, 17, and 127 (claiming that citizens must not only heed to the opinions of others, but also update their beliefs accordingly through Bayesian procedures; see below Chapter 3, Section 7). Among critics of epistemic defenses of democracy, Ilya Somin first addressed systematically the problem of citizens' ignorance in "Citizens' Ignorance and the Democratic Ideal," pp. 413-458.

2. Discourse Failure and Patterns of Political Belief

We argue that deliberative pathologies, such as that illustrated by the trade example, are the result of a phenomenon we call *discourse failure*. Let us explain.

The claim that political deliberation brings us closer to the truth depends on the claim that citizens are able to acquire accurate information about the way society works. For deliberation to fulfill that epistemic role, citizens must be able to educate themselves about the workings of society, its economy, political processes, and likely social consequences of alternative policies. Unfortunately, this does not happen, and as a result serious pathologies pervade deliberative politics. Citizens in modern democracies systematically misunderstand how society works. This leads them to offer spurious arguments in their deliberative exchanges. Because they will systematically misdiagnose social problems, they (and politicians) will recommend inept policies to address those problems. Deliberative practices in modern democracies have an unfavorable impact on knowledge, understood as true belief, as contrasted with error and ignorance.¹⁸

A starting point in our critique of the epistemic argument for deliberation is the rational ignorance hypothesis, already mentioned. Rational voters lack an incentive to become informed about politics. Each voter knows that her vote will be, for all practical purposes, non-decisive on the outcome of an election—the chances that her vote will break a tie are negligible.¹⁹ This is a major reason why she will remain ignorant about politics. Knowing this, politicians and lobbyists will spread political “information” and theories that voters find easy to believe. Indeed, as we will see, politicians and lobbyists have an incentive to feed false, distorted, or misleading information and theories.

The literature on rational ignorance has focused on the well-documented ignorance of citizens about various political facts, such as the number of senators representing their state, the identity of even one of their representatives in Congress, and whether the Soviet Union was a member of NATO.²⁰ We carry the rational ignorance hypothesis one step further. The same incentives that motivate citizens to ignore elementary political information lead them to a much deeper form of ignorance: they will systematically adopt and publicly endorse unreliable *theories* about society. So even if they knew who the relevant political actors were and what policies they favored, they would misconstrue social phenomena, including the consequences of those policies. Thus, the main problem with public deliberation about trade policy is not that the citizen does not know who the candidates are or even what their views are on trade. The deepest problem is that he typically holds pre-Ricardian views (“we need to protect our jobs,” “exports are good, imports are bad”). This theoretical error makes him vote for protectionist candidates, and thus frustrate his own goal (e.g., to enhance general welfare or reduce unemployment). The public’s mistakes about theory are often deeper and more pervasive than the public’s factual mistakes and ignorance found in the literature. The

¹⁸ We are borrowing here the terminology of Alvin I. Goldman, *Knowledge in a Social World* (Oxford: Clarendon Press, 1999), p. 5. Unless otherwise specified, in our critique of the epistemic argument for deliberation we adopt a notion of “knowledge” that does not require that true beliefs be justified. We will show that deliberative practices often fall short of this weaker ideal. The above work of Goldman is a recent example of social epistemology targeted to the weaker notion of knowledge.

¹⁹ See reference to Downs in note 22.

²⁰ We take the examples from Goldman, pp. 317-318.

public frequently errs about whether the *policies* they endorse will bring about the *outcomes* they prefer.²¹

We use *discourse failure* as a generic term denoting political positions reached as a result of truth-insensitive cognitive processes. For stylistic convenience, we use sometimes that term to refer to those cognitive processes themselves. A truth-insensitive process is one that disregards the best available reasons, understood as those that define the *status quaestionis* in the relevant reliable scholarly disciplines.²² Truth-insensitive processes will normally lead to false beliefs about society. However, someone may be right yet reach the truth through a truth-insensitive cognitive process; to that extent, he engages in discourse failure (think about someone who formulates a correct prediction about the effects of free trade after having consulted a psychic). Conversely, not all false beliefs about society can be characterized as discourse failure, because people may err notwithstanding the fact that the process by which they reached the false view was truth-sensitive (think about trial and error in science). A political position evinces discourse failure if, and only if, it is held for reasons other than the best available reasons in the sense indicated. Notice that the best *available* reasons may be bad reasons, since during any truth-sensitive investigation people may provisionally endorse reasons that are later defeated by better ones.

We identify two main sources of discourse failure (although there may be others): the stakes that some people have in distorting political information, and rational ignorance. A central thesis of this book is that discourse failure results from the combination of the incentive for politicians and lobbyists to spread inaccurate views and the high cost for members of the public to check the credentials of the views they receive. One obvious such incentive is self-interest, broadly understood. Human beings have an inborn psychological tendency to argue in self-serving ways in all areas of social life, and they do this in more or less conscious ways. Market transactions are obvious instances of this disposition: sellers tend to over-praise their products. Politics is a particularly insidious terrain for this kind of behavior because the relevant actors are expected to offer public-spirited arguments, and so, unlike what happens in market transactions, the self-interested nature of their statements is not always transparent. It is not just that, say, rent-seekers will furnish pieces of information and theories that benefit them, but also that other political actors, ranging from the campaigning politician to the citizen who stands to gain social esteem by publicly endorsing certain political positions, will likewise argue self-servingly in ways we will later diagnose.

The other crucial truth-insensitive incentive that affects political deliberation is the rational ignorance effect, already mentioned. It is not merely that citizens' investment in political information will fall short of the requirements for reliable political beliefs: citizens will not suspend, as a result, political judgment. They will entertain those political views that they can acquire at low cost to themselves. For example, in order to form an opinion on the current economic situation, voters are more likely to look for

²¹ Alvin Goldman sees the relevance of the distinction between policies and outcomes for an inquiry about voters' knowledge. However, he focuses on formal and conceptual issues concerning the selection the candidates most likely to bring about the voters' preferred outcomes. He offers no account of how citizens' mistakes about the causal relationships between policies and outcomes affect the epistemic value of democracy. See Goldman, pp. 320-348, esp. 347-348.

²² We propose an operational definition of "reliable social science" below in Chapter 3, section 1.

debates on television, newspapers op-eds, or magazine stories, rather than undertake lengthy and expensive studies of economics. In doing this, they err, but they act rationally. While the self-serving deliberator does not necessarily believe what he says, the rationally mistaken citizen believes what he says but his belief is the outcome of an unreliable cognitive process. Of course, these motives will often interact in practice. Thus, rent-seekers and politicians will appeal to those theories and “facts” that will most effectively persuade sincere but misinformed citizens.

To sum up, the *theory of discourse failure* presented in this book centers around the following proposition: the patterns of political error observed in citizens’ beliefs and opinions can be traced to the mutually reinforcing interaction between the public’s rational ignorance, on one hand, and the politicians’ (and often citizens’ themselves) posturing, on the other.

On the epistemic model of democracy, deliberation ideally aims at the best social policies by spawning public awareness of the best available normative and empirical theories. Yet, if the incentives of all the relevant political actors run in the opposite direction, deliberators will predictably offer and endorse unsound arguments. Political discourse, then, fails when judged by the standards set by the epistemic model. Rational ignorance is compounded by rational error, and rent-seekers and politicians will typically fuel citizens’ error by making easily available to them those theories and “facts” that would command rational belief given their previous beliefs. Goldman’s terminology helps us see the extent of the discursive pathology involved here. A citizen *C* can be in one of three possible epistemic states regarding a true proposition *P*: *C* may either believe *P*, or withhold judgment on *P*, or reject *P*. In order to assess the amount of social knowledge, we can assign the following values to each of those states. If *C* believes *P*, the value is 1.0. If *C* withholds judgment on *P*, the value is 0.5. If *C* rejects *P*, the value is 0.²³ If, as we suggest, most poorly informed people will not suspend judgment on many social issues, the amount of social knowledge will not be as high as if those same people suspended judgment. This is because the mistaken yet convinced citizen will contribute 0 to social knowledge of political issues. Interestingly, discursive pathologies are less common in the public’s attitudes toward the hard sciences. This may strike us as odd, but it is just a consequence of the fact that people who are uninformed about the hard sciences usually do suspend judgment. So, using Goldman’s framework, we suggest that social knowledge of the hard sciences increases at a rate of 0.5 per each uninformed citizen—a higher rate than the one expected for the social sciences. There is here, then, a noticeable difference between the social and the hard sciences: the truth is that dabbling in physics is not socially acceptable, whereas dabbling in economics is. Once we realize that people err about the social world because they have ingrained theories about how society works, that difference is easily explained. In the modern world at least, people generally do not have similarly unreliable ingrained views about the physical world, if only because they have no views at all on many areas of physics.

.....

²³ Goldman, *Knowledge in a Social World*, op. cit., p. 89.

One would think that the diversity of views contained in cheap sources, such as newspapers and everyday intercourse, would be reflected in a diverse public opinion. The political alternation that we see in liberal democracy seems to reflect such diversity. We will not pursue empirical questions about the specific political beliefs held by various categories of people. We argue, instead, that some underlying *patterns* of political belief will tend to prevail, whatever political differences people may have at a more superficial level (e.g., Democrats vs. Republicans, conservatives vs. liberals, environmentalists vs. industrialists, etc.). Political views that people can apprehend at low cost to themselves share some structural features. Compare two possible explanations of interest rates that the public perceives as “high.” On one explanation, high rates are the result of the greed of lenders. On the other, they are the result of the convergence of money supply and demand. The former is an explanation in terms of usury, the latter in terms of prices. The usury explanation is easier to believe than the explanation in terms of prices. Usury explanations appeal to human design (the greed of lenders). They are “visible-hand” explanations, in a sense that we will shortly explicate. Also, they conform to a zero-sum model of social interaction²⁵: they portray lenders as exploiting borrowers. By contrast, the explanation in terms of money demand and supply appeals to the impersonal workings of the market—an invisible hand. It also relies on a positive sum model of social interaction where borrowers, lenders, and (at least in a competitive economy) the public at large will benefit from interest rates largely determined by the free market. How much the market should determine interest rates (as opposed to, say, “open market” operations, used by the Federal Reserve to control the money supply) is a controversial issue among economists. But, revealingly, widespread calls for legislative action against “excessive” interest rates hardly ever invoke the monetary theories that underlie open market operations, and quite often appeal to usury and like concepts (abuse, greed) that divert public attention from the factors that underlie “excessive” interest rates.

Now consider this other example. The government grants a subsidy to farmers. The government justifies this measure by appealing to widespread sympathy for the values and lifestyle of farming.²⁶ Each taxpayer sees the benefits to farmers as worth the negligible cost to him *qua* contributor to the tax scheme. So people will generally tend to see the subsidy as a positive sum game, rather than as what it really is—redistribution. In the eyes of the public, farmers, and somehow society at large, will benefit well in excess of the social cost. However, this view ignores the costs of rent seeking and the deadweight losses of artificial changes in relative prices.²⁷ When such drawbacks are

²⁵ Game theory defines a zero-sum game as an interaction in which one party gains if, and only if, the other party loses: the sum total of payoffs is zero. A positive-sum game is one in which some parties gain while no one loses. A negative-sum game is one in which both parties lose.

²⁶ For the arguments given by U.S. President George W. Bush in 2002 for the \$190 billion farm subsidies enacted that year, see “Cringe for Mr. Bush,” *The Washington Post*, May 14, 2002, Editorial, p. A20.

²⁷ A deadweight loss is simply the net social loss caused by a protectionist measure, like a tariff or a subsidy, that is, a loss that no one recoups. For a general analysis of the economic inefficiencies caused by government subsidies, see K. Obeng, A.H.M. Golam Azan, and R. Sakano, *Modeling Economic Inefficiency Caused by Public Transit Subsidies* (Wesport, Conn.: Praeger, 1997) pp. 31-39. For a demonstration of how long-term losses of subsidies exceed short-term gains, see Jérôme Adda and Russell Cooper, “Balladurette and Juppette: A Discrete Analysis of Scrapping Subsidies,” *Journal of Political Economy*, vol. 108, No.4 (Aug. 2002), pp. 778-806. For a formal analysis of subsidies and other forms of protection, see Gene Grossman and Elhanan Helpman, “Protection for Sale,” *American Economic Review*, vol. 84, No. 4, (Sept. 1994), pp. 833-850.

properly taken into account, it is at least plausible to maintain that the farm subsidy program is a negative sum game.²⁸

The usury and subsidy examples illustrate a general phenomenon in political discourse: people are more likely to believe *vivid* theories of society. Vivid theories are easy to believe, in the sense that they trade on readily available “evidence” that fits into our unreflective theoretical mindset. But when is a theory vivid?

Facts that we directly perceive are vivid, especially if they are recent. We tend to assign disproportional importance to these vivid facts, and the theories of society that we hold will accordingly reflect that importance.²⁹ Thus, the indignation we feel as we learn about a heinous crime will be magnified by our watching the victim’s corpse on the evening news. If the newscaster also tells us that the suspect was out of prison on a “technicality,” we will overstate the relevance of the crime as confirmatory evidence for the theory that heinous crimes are due to the leniency of the justice system.³⁰

Other cases of vividness result from the simplicity of causal chains, although in many cases the two types of vividness (perceptual/temporal and causal) are intertwined. Consider first social theories that see aggregate outcomes as the product of human actions having disparate aims. Adam Smith’s famous passage on the benefits bestowed on society by self-interested agents interacting in free markets nicely exemplifies this kind of explanation:

It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their own advantages. ... [The individual] neither intends to promote the public interest, nor knows how much he is promoting it ... he intends only his own gain and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.³¹

Invisible-hand explanations are opaque, counterintuitive. For example, Smith explains prosperity in terms of myriads of actions aimed at local outcomes dictated by self-interest. By contrast, visible-hand explanations are vivid because they appeal to human design—typically, an easily identifiable agent intending to bring about the outcome we want to explain. Many people tend to view general prosperity as the result of someone (citizens, the government) pursuing it, rather than as the result of each one pursuing their narrow self-interest. People try to explain general prosperity by attributing widespread altruism or patriotism to ordinary people (everybody’s disposition to “unite and pull in the same direction,” everybody’s disposition to “do his or her share” for the sake of general prosperity, etc.) or political leaders (charisma, public-spiritedness, vision, etc.). These visible hand explanations trade on short-term effects of policies. When government

²⁸ For a graphic demonstration, see, e.g., Thomas Pugel and Peter Lindert, *International Economics* (Boston: Irwin-McGraw Hill, 11th edition, 2002), pp. 130-132.

²⁹ See Michel Tuan Pham, Tom Meyvis, and Rongrong Zhou, “Beyond the Obvious: Chronic Vividness of Imagery and the Use of Information in Decision Making,” *Organizational Behavior and Human Decision Processes*, Vol. 84, No. 2, March 2001, p. 228.

³⁰ See the discussion of the relevance of this attitude for the theory of deliberative democracy in Philip Pettit, “Depoliticizing Democracy,” *Ratio Juris*, volume 17, number 1, March 2004, p. 52

³¹ Adam Smith, *An Inquiry into the Nature and the Causes of the Wealth of Nations*, Book I, Chapter 2 and Book V, Chapter 2.

seeks to alleviate poverty by handing out goods to the poor, it is natural to relate the recipients' immediate improvement to governmental action, *and to believe that this improvement exhausts the impact of those policies on the poor*. This reasoning frequently overlooks more serious losses by those same recipients or other poor people in the long term, due to disincentives to productive activities. Such disincentives are hidden to the public because they involve complex causal mechanisms (increased unemployment as a result of stronger fiscal pressure on productive activities, bureaucratic waste, disincentives to work, etc.).

.....

Invisible-hand mechanisms are not the only source of opaque explanations. When a social phenomenon is the consequence of political decisions taken long ago, explanations that refer to those decisions tend to be opaque as well. Thus, current high interest rates, which discourage investment and raise unemployment, may reflect borrowing incurred by governments long ago to raise money for immediate, perceptible spending to the benefit of various groups. Similarly, current low retirement payments may be caused by former uses of retirement funds for various perceptible governmental programs. The general point is that long-term effects of current political decisions are typically harder to understand than short-term streams of costs and benefits. This epistemic shortcoming explains the public's support for present policies that predictably will cause economic hardship in, say, ten years. Arguably, such policies would not enjoy so much support had citizens anticipated the bad consequences. Such support both reflects discourse failure on the part of citizens and fosters discourse failure on the part of politicians and other groups that benefit from policies biased toward the present.

.....

Consider now explanations where either gains or losses are concentrated, and for that reason noticeable; for example, the view that poverty is the result of extraordinary gains by the rich. This explanation is vivid because it appeals to elementary arithmetic. A given output is held constant, and any group of people can in principle be made better off by transferring wealth from another group. The metaphor of "slicing a pie" is here quite appropriate. One person's affluence is seen as the cause of another person's poverty.³⁵ This analysis asks no questions about the effects of redistributions on the size of the output—the pie. Indeed, many popular conceptions of justice focus on the allocation of resources and not on their production, although, as we will see in Section 4 of this chapter, discourse failure often affects appeals to productive efforts as bases of desert too.

Such views invoke a zero-sum mechanism: some gain if and only if others lose. Zero-sum mechanisms usually provide vivid explanations because of their arithmetic simplicity. Positive-sum explanations, on the other hand, tend to be harder to apprehend

³⁵ There is just a short step to concluding that the rich person is responsible for the plight of the poor person.

because they run counter the ingrained intuition that resources remain constant, at least in the foreseeable future. However, sometimes a positive-sum explanation is easier to grasp. Consider the above example of farmer subsidies. The public sees them as a positive-sum game, even though, as we saw, it is arguably a zero-sum or negative-sum game. Because the costs of the subsidy are dispersed, people are easily led to believe that no one loses. Public perception reflects the fact that costs are dispersed and (as a result) individually low, and benefits are concentrated on individuals seen as deserving (farmers convey an image of hard and honest work). It may be important for this perception that benefits not be *too* concentrated: most likely, people receiving such benefits will not be seen as deserving.³⁶ Viewing farmer subsidies as a positive-sum game leads people to believe that the government awards those subsidies to benefit some without thereby harming anyone. This appearance is more salient if the tax system provides the taxpayer with no simple means to track a subsidy to his tax burden. Accordingly, we should expect from beneficiaries of the subsidies to resist moves towards simplicity in the tax system, especially if they make each taxpayer's share in the subsidy transparent. Widespread beliefs about the distribution of costs and benefits explain why positive-sum views have sometimes rhetorical advantages over their negative-sum (and more plausible) rival.

Vivid explanations get additional credibility in the eyes of the ordinary citizen because he has ready access to massively confirmatory evidence. After all, we constantly see around us people gaining at the expense of others: we lose things that others find and keep, we read in the newspapers about robberies and other forms of plunder, our child is keenly aware of the connection between our giving a slice of the pie to his brother and the size of the slice he receives, a governor opens a new public school to benefit students in this neighborhood and with no losers in sight. It seems natural to generalize from this evidence in order to explain all gains and losses in society. Our everyday experience, then, seems to call for explanations that belong to one or more of the categories we already mentioned: visible-hand, zero-sum with concentrated benefits or costs, and positive-sum with dispersed costs. Moreover, in each of these categories the vividness of an explanation has a positive correlation with the simplicity of the causal route that gains and losses are supposed to take—this is why short-term causality in general adds to vividness. Given the rational ignorance hypothesis, vivid theories enjoy rhetoric advantages in political deliberation.

There is no obvious way to overcome the opacity that often characterizes the most reliable social explanations. For suppose most people, through education, have come to learn the law of supply and demand. Still, the average citizen will have difficulty extending the law to domains other than those commonly used in introductory illustrations. They see how supply and demand govern the behavior of sellers and buyers of wheat, apples, cars, and the other goods commonly used in textbook illustrations. They also see, let us assume, that should the government set the price of apples below the price resulting from the convergence of supply and demand, there would be shortage of apples. Many people, however, have trouble connecting a *minimum* price of *wages* with *overabundance* of labor (or, to put it differently, shortage of jobs, i.e. unemployment). As a consequence, they will likely oppose price control for apples but support minimum-wage laws, notwithstanding the fact that the supply and demand model predicts

³⁶ The fact that farmer subsidies in the United States benefit thousands of households might be part of the explanation why those subsidies enjoy wide popular support.

unemployment.³⁷ To be sure, this position is sometimes defended on moral grounds. Someone may claim that there are certain transactions, such as the exchange of labor for a meager salary, that are inherently objectionable. We examine this line of argument in chapter 5. However, the argument sometimes takes a different form: some argue that the economic laws that govern the exchange of apples *cannot possibly* govern the exchange of labor. We hear frequently in public discussion (even among academics who are not economists) people claiming that the observation that minimum wages create unemployment evinces an “unduly economic” or “efficiency-driven” approach to the issue of labor, meaning that such an approach misses something important. “Economics doesn’t explain everything.” It is hard to pinpoint exactly what the objection is here. Perhaps the objector means that an efficient solution to a social problem may nonetheless be objectionable on moral grounds. This position may be tenable, on condition that it is adequately supported by moral premises and passes what we will call “The Display Test” in chapter 5. The point here is that, notwithstanding its ostensible hostility to economics, this is not a challenge to any descriptive or predictive use of economics but simply the familiar point that sometimes efficiency is trumped by moral (e.g., distributional) considerations.

But this rhetorical strategy (“economics doesn’t explain everything”) has a less savory function, explained by the theory of discourse failure. Those who benefit from the forms of discourse failure that stem from opacity have an obvious incentive to use rhetorical devices to block transparency-enhancing approaches to social and political issues. Thus, if I, an artist, want the government to subsidize my work, I will enjoy rhetorical advantages if I succeed in concealing from the public the opportunity cost of the art subsidy—the value of foregone alternatives. More generally, special interests will score a decisive rhetorical victory if they can strike a preemptive blow against economics—the most powerful intellectual tool for identifying the full costs, including the less visible ones, of political proposals. Thus, appeals to the alleged specificity of human affairs that supposedly renders them intractable by the tools of economics, or more generally rational choice theory, is all to be expected from those who stand to lose from the role of economics in rendering costs transparent.

This brings us to yet another form of discourse failure. Often people hostile to the use of economics will appeal to notions that are vague or obscure. For example, it was fashionable in the 90s in Latin America to object to the use of economic analysis aimed at showing that state enterprises are wasteful and offer low-quality services. The idea was that state enterprises are required by the ideals of nation, sovereignty, or community, and that economic analysis cannot help us achieve those ideals. The fact that this rhetoric is notoriously vague and obscure is not to its detriment. Quite to the contrary, it has a stirring effect in the public, in part because many people have a vague belief that, say, what benefits the nation benefits each of us. But it may also be that evolutionary pressures operated on humans to develop such beliefs. Tribal attachments seem to have played an adaptive role in stages of human evolution where endorsing strong notions of strict group liability and communal property had survival value. After millennia of

³⁷ Or, more accurately: notwithstanding the fact that the same logic that led them to predict shortage of apples should lead them to predict unemployment, unless they can indicate where other things are not equal in relevant respects. We briefly describe the *status quaestionis* on the minimum wage below in Chapter 5, section 8.

human interaction where economies of subsistence and nomadism made no room for the opaque idea of gains from trade, individuals who developed vivid worldviews may have had adaptive advantages. Individuals possessing the psychological attachments associated with such collectivistic notions had adaptive advantages over less collectivistic individuals, and tribes composed of the former type had in turn adaptive advantages over less collectivistic ones in the struggle for scarce resources.³⁸ Arguably, the evolutionary pressures towards the elimination of those psychological traits operate at a slower pace than the change in the technological conditions that made those traits adaptive at the tribal stage.³⁹ Evolution made those views so ingrained in us that replacing them with the opaque findings of reliable social science is quite costly. The fact that some of these beliefs are obscure has not prevented them from having had adaptive value in the distant past, provided that they generated the behavioral patterns conducive to inclusive fitness. These theoretical beliefs ingrained in us by evolution should be added, then, to those resulting from inductive generalizations from easily available evidence to the list of beliefs that people come to hold effortlessly, without deliberate investment in information and analysis. We will say that these are beliefs held *by default*.

Certain psychological tendencies reinforce discourse failure. Psychologists seem to agree that people tend to process evidence in accordance with their motivations.⁴⁰ Thomas Gilovich writes:

When we prefer to believe something, we may approach the relevant evidence by asking ourselves, “what evidence is there to support this belief?” If we prefer to believe that a political assassination was not the work of a lone gunman, we may ask ourselves about the evidence that supports a conspiracy theory. Note that this question is not unbiased: It directs our attention to supporting evidence and away from information that might contradict the desired conclusion. Because it is almost always possible to uncover *some* supportive evidence, the asymmetrical way we frame the question makes us overly likely to become convinced of what we hope to be true.⁴¹

³⁸ See F. A. Hayek, *Law, Legislation, and Liberty* (Chicago: The University of Chicago Press, 1976), vol. 2, pp. 133-152. After surveying the literature on the evolutionary forces that have instilled certain patterns of behavior in animals, Robert Nozick speculates that “intelligent organisms capable of conscious thought, planning, control of impulses, etc. are similarly advantaged. . . . Our higher capacities have been selected for because of the benefits they bring.” See Robert Nozick, *Invariances: The Structure of the Objective World* (Cambridge, Mass.: Harvard University Press, 2001), p. 243.

³⁹ Harold Demsetz persuasively argues that technological changes alter relative prices, and hence makes private appropriation of some communal things profitable. See Harold Demsetz, “Toward a Theory of Property Rights,” *American Economic Review* 57, 1967, pp. 347-349. The convergence towards animistic, normative interpretive frameworks (as opposed to mechanistic, causal ones) everywhere in tribal cultures is not only evidence of evolutionary pressures over extended periods of time. It also explains the resilience of visible-hand explanations today. For a detailed ethnographic and philosophical study of the interpretive mindset of tribal cultures, with illuminating hypotheses about the transformation of the primitive notion of design into the scientific notion of causation, see Hans Kelsen, *Society and Nature: A Sociological Inquiry* (London: Kegan Paul, 1946).

⁴⁰ See Goldman, pp. 235-236 and literature cited therein.

⁴¹ See Thomas Gilovich, *How We Know What Isn't So* (New York: Free Press, 1991), p. 81, cited in Goldman, p. 235.

If citizens' search for evidence is biased in this way, the theories they hold by default will be reinforced. The evidence thus sought will not have the function of falsifying already-held beliefs—just the opposite. Most importantly, political actors who stand to gain from spreading certain kinds of information will be helped by citizens who are willing to do their share, as it were, in the acquisition of confirmatory evidence of their default beliefs. In other words, the cost of supplying convenient information is reduced by such psychological tendencies, and, correspondingly, those who want to change public opinion in the direction of opaque theories will face additional difficulties. Not only will they have to argue against vivid beliefs that the public holds by default: they will also have to counter the psychological bias towards confirmatory evidence.

Sometimes a political deliberator eager to convince his audience of the validity of a theory *T* needs only to point to a single fact, on the assumption that that fact, processed in the light of the audience's default theories, will be taken to confirm *T*. Here is a telling example. In the late 90s, TV Channel 13 in Argentina, a ferocious opponent of free-market (“neoliberal”) policies, allotted considerable time in its much watched news to show images of “poor people grilling cats for food in Rosario [the second largest Argentine city.]” Public opinion massively reacted by blaming “neoliberal” policies. The sheer fact of cat-eating triggered, through default theories, the theoretical belief that “neoliberal” policies were causing poverty. Notice that our main point would remain even if the television images were bogus: default theories make it politically profitable to allege certain types of bogus “facts.”⁴² Or consider a less dramatic example: the images, shown in American television with some frequency, of farmers forced to foreclose their farms. Here the sheer fact of foreclosure, through default theories, is taken as evidence that unrestrained free trade cannot be beneficial.

The theory of discourse failure is about the structural features of the *views and theories* that, we submit, will predominate in political deliberation. It is not primarily about the kinds of *policies* that a liberal democracy is likely to implement. Thus, world trade has been increasingly liberalized over the last decades, in spite of the fact that, as we saw, trade theory (which shows the advantages of liberalization) is noticeably opaque. This fact does not affect our theory of discourse failure, however. First, the theory can only be undermined by evidence that the predominant patterns of political discourse are not the ones it indicates. Second, what makes a politician win an election (discourse failure) is often not what makes him remain in power. Protectionist rhetoric may help a politician win labor votes, yet he may realize, once in power, that free-trade policies will help him remain in power. His advisors, for example, may tell him that free-trade policies will boost the economy—something which, for the reasons we indicated, would have been very hard to him to argue publicly. This example shows that, to the extent that the theory of discourse failure is used to explain or predict public policy, it sometimes does so through indirect or seemingly paradoxical mechanisms.

Politicians have an incentive to spread vivid explanations, for the public will believe them given their default views. But this is not the only reason why politicians favor vivid explanations. Vivid explanations suggest that social problems are under someone's control (as opposed to being the result of impersonal forces). Responsibility,

⁴² To the best of our knowledge, no cat-eating or similarly vivid manifestations of destitution were reported by Channel 13 since a new administration took office in January 2001, even though, due to the huge financial crisis of 2001-2002, unemployment and poverty became far more serious.

not causation, is here the central concept. It seems a short step from here to conclude that the state (hence, politicians) should be summoned to make persons discharge such responsibilities in acceptable ways.⁴³

.....

Interestingly, discourse failure is sometimes about discourse failure. Consider again some usual arguments for protectionism. In many developing countries protectionists argue that free trade allows the powerful to prey on the weak. Thus, in Argentina politicians and politically connected domestic manufacturers have long persuaded the public that *el pez grande se come al pez chico* (big fish eats small fish). They usually supplement this view about the effects of free trade with a conspiracy theory: the economic interests that manipulate American trade policy will spread free trade views. The fact that these ideas are vivid and appeal to zero-sum processes accounts for their rhetorical advantage over standard international economics, which predicts various kinds of mutual benefits from free trade, even for poor people in both trade partners.⁴⁹ Now this rhetoric would be undermined were the public to learn that many *American firms* (and as we saw, the American public generally) oppose free trade: indeed, if the Argentine conspiracy theory were true, American business interests would uniformly champion free trade. But, of course, this is not the case. To be sure, there are powerful pro-free trade lobbies in the United States. Yet not only do many people support protectionist measures in the United States, but also they use exactly the opposite rhetoric: “cheap labor” and “deficient environmental protection” overseas amount to “unfair trade practices.” In short, *el pez chico se come al pez grande* (small fish eats big fish). It is important for Argentine politicians and other political actors to supplement their discourse failure regarding the economics of trade with concealment of the discourse failure involved in the protectionist rhetoric used by their American counterparts. Not only that: in Argentina the same people who believe that American imports are instances of abuse by the powerful argue that imports from, say, Indonesia are objectionable because “they are made on the backs of the poor,” that is, by people subjected to deplorable working conditions. Notice two features in the trade example. First, political actors use inconsistent trade theories in different deliberative settings, one for American imports and another for imports from developing countries. Second, political actors who promote a zero-sum theory of trade have an incentive to conceal the discourse failure that affects the prevailing rhetoric used by the trading partner. Discourse

⁴³ This is not always so. People's causal and normative beliefs might lead them to support a redistributive policy even without ascribing responsibility. Someone may recommend a redistributive policy for reasons of justice, even if he also believes no one is at fault. We might believe, for example, that distributive justice mandates incomes in proportion to effort. If we also believe that society is a zero-sum game, we might feel entitled to use coercion to redistribute resources in order to satisfy our standard of distributive justice. Someone may endorse a vivid theory of society without ascribing responsibility to particular individuals or groups.

⁴⁹ See Chapter 2, Section 1.

failure is effective here by concealing the discourse failure that affects the actual rhetoric of the supposed exclusive beneficiaries of free trade.

3. Persuasive Definitions

Certain forms of discourse failure involve persuasive definitions. According to a traditional account, some words prompt emotional reactions to the actions, objects, or events they denote. Speakers can thus manipulate the emotions of the audience by changing the descriptive meaning of words.⁵⁰ Various definitions of “democracy” are classical examples of this rhetorical technique. “Democracy” has positive connotations for most people, so political activists have an obvious interest in making it designate the political arrangement they favor (communism, the welfare state, limited government, etc.).

The theory of discourse failure helps explain the force of persuasive definitions. They are effective forms of discourse failure because they seem to exempt deliberators from complex causal and normative analysis. Persons who are told that arrangement *A* is genuinely democratic will support *A* without further ado, because they hold by default a theory of meaning (“essentialism,” in one of the senses of this term) according to which each term invariably denotes a certain fact. (They have massive evidence for this theory). In politics, the typical facts are institutional arrangements (e.g., capitalism, communism) or policies (e.g., affirmative action, the “drug war”). If one convinces others that “democracy” denotes communist institutions, one raises the argumentative costs of critics of communism. Persuading those who accepted this definition that communism is non-democratic is, given their belief in essentialism, quite costly—surely, they will not want to perpetrate the *contradictio in terminis* involved in saying that communism is non-democratic. Those costs should be added to the costs of showing that communism thwarts the realization of various values or respect for certain rights. To show this, one has to appeal to complex theories and facts. These combined costs explain why a usual way to counter essentialism is to propose an alternative *essentialist definition* (say, democracy is majority rule, political pluralism, and civil liberties), rather than addressing the complex reasons for and against the *institutions, policies, or regimes* denoted by each definition.⁵¹ The rhetorical success of persuasive definitions is tied, not so much to a mysterious emotive force of some words, but rather to the structures of incentives faced by various political actors.

Transformations in the legal concept of property provide an interesting illustration of this kind of discourse failure. Consider rent-control laws. Robert Nozick observes that these laws typically forbid subletting, despite the fact that both the principal tenant and the secondary tenant improve and the landlord is not made worse off. Why, then, do rent-control laws forbid subletting? Nozick’s answer is that allowing subletting “makes

⁵⁰ See the seminal treatment in Charles L. Stevenson, *Ethics and Language* (New Haven: Yale University Press, 1944), pp. 210-217. Compare Simon Blackburn, *Ruling Passions: A Theory of Practical Reasoning* (Oxford: Clarendon Press, 1998), pp. 101-104.

⁵¹ This, in addition to showing that the merits of communism cannot be established by definitional maneuvers.

explicit the partial expropriation of the owner.”⁵² Defenders of rent-control laws do not want to appear as condoning expropriation, so they make it appear as if the landlord retains the title over the property. As Nozick perceptively observes, allowing subletting would make transparent a taking of private property. Two sources of discourse failure (here: cognitive processes insensitive to the truth about what the constitutional protection of private property means) seem at work here. First, legislators and special interests do not want to defy the entrenched popular belief that a just and prosperous society must countenance a *core* of property rights. And second, legislators want to appoint judges who will sanction the constitutional validity of their redefinition of property rights, both to avoid judicial invalidation of legislation and to preserve legislative legitimacy in the eyes of the public. At least in matters where legislative powers are at stake, we should expect politically selected judges to favor constitutional interpretations that combine essentialist meaning with increased legislative discretion. Essentialism allows legislators and judges to preserve the illusion of a government bound by law. Predictably, then, legislative and judicial rhetoric will strive to make legislation consistent with the “objective” meaning of the Constitution. And legislators will be pleased, of course, if that “objective” meaning affords them as much discretionary powers as possible. In our example, the prohibition of subletting allows users of legal discourse to say that the landlord retains title over the property, and so that rent-control laws pose no threat to constitutional guarantees to private property.

The subletting example suggests that, while free-market theories, being opaque, are generally disfavored in the deliberative forum, the built-in beliefs that people have include acceptance of a modicum of private property. People believe that we should have some control over external things. Legislators and others do not want to be seen as supporting legislation (such as rent control laws with subletting provisions) that makes expropriation transparent. The strength of beliefs in private property will diminish as the opacity of whatever net social benefits ensue from a regime of private property increases. Thus, people will be more distrustful about inherited property than about the products of labor.⁵³

Indeed, it is hard to imagine any justification of the ban on subletting that does not involve discourse failure. Consider this one. The tenant should not sublet because rent control laws implement a desirable pattern of distributive justice. Subletting would upset this pattern, because an essential feature of the pattern is a just rent, defined as a ceiling over which the rental contract would be exploitative or otherwise objectionable. The problem with this is that the belief that price controls can be effective, that government can decree “just” prices without creating scarcity or black markets, is discredited today. This belief, however, still enjoys some popularity because it is vivid at two levels. On the one hand, the public sees the visible hand of government setting the just rent. On the other hand, they can easily see tenants, here and now, being rescued from eviction. Yet, they will rarely notice how rent control laws will aggravate the homelessness problem or

⁵² See Robert Nozick, *Anarchy, State, and Utopia*, op. cit., pp. 270-271.

⁵³ For a brief indication of the complexities involved in estimating the social costs and benefits of bequests and inheritances, see Robert Cooter and Thomas Ulen, *Law and Economics*, 3rd ed (New York: Addison Wesley Longman, 2000), pp. 145-147.

diminish the quality of housing supply,⁵⁴ because the social mechanisms by which this occurs are opaque.

The rent-control example illustrates a general tendency to describe one and the same legal or institutional structure in different ways, as political needs dictate. Consider the view, common among civil law experts, that the essence of private property is a relation between a thing and its owner: the owner exclusively controls the thing. In the common law, writers talk, less misleadingly, about property as a “bundle of rights.”⁵⁵ The Austrian legal philosopher Hans Kelsen argues instead that private property is best analyzed in terms of the notion of an *erga omnes* obligation, that is, the obligations that all others have not to interfere with the owner’s use of her property. Kelsen perceptively observes that traditional doctrine used the owner-related-to-thing notion for ideological reasons, namely, to stress the connection between private property and personal autonomy, manifested in the owners’s ability to control things, thus concealing the fact that non-owners are excluded from use.⁵⁶ Kelsen diagnoses here a case of what this book calls discourse failure: supporters of capitalism might want to conceal the fact that private property, as any other system of property, demarcates the extent to which people are free, or unfree, to use resources.⁵⁷

⁵⁴ Writers as diverse as Richard Posner and Cass Sunstein agree that rent control laws harm the very people they are supposed to help. See Richard A. Posner, *Economic Analysis of Law* (Boston: Little Brown, 1st ed. 1972), pp. 167-72; Cass R. Sunstein, *Free Markets and Social Justice* (New York: Oxford University Press, 1997), pp. 282-83.

⁵⁵ See Jesse Dukeminier and James Krier, *Property* (New York: Aspen Law & Business, 4th edition, 1998), p. 80.

⁵⁶ See Hans Kelsen, *Pure Theory of Law*, trans. Max Knight from the Second, Revised and Enlarged, German edition, 1960 (Berkeley: University of California Press, 1967), pp. 130-132.

⁵⁷ For a conceptual analysis of the relationships between property rights and freedom, see G. A. Cohen, “The Structure of Proletarian Unfreedom,” *Philosophy and Public Affairs*, Vol. 12, No. 2, Spring 1983, pp. 3-33.

⁶³ Lawyers’ and physicians’ official organizations use public-interest grounds to justify regulations of their activities that keep fees high and set barriers to entry even to those medical services that can effectively be provided by persons who have not completed formal medicine studies. A classic *locus* for the argument for deregulation of the professions is Milton Friedman, *Capitalism and Freedom*, (Chicago: University of Chicago Press, 1962), pp. 137-60.

.....

4. Discourse Failure and Desert

The types of discourse failure we diagnosed so far have competitive advantages in the political arena. But they are not all equally successful; it depends on the circumstances. Thus, public attitudes toward redistributive measures will often depend on whether or not winners and losers are perceived as entitled to their gains or deserving their losses, respectively. Typically, the public will approve redistribution if they see the beneficiaries as worthy of compassion or otherwise deserving the benefits, and conversely, they will decry gains by persons or groups they regard as undeserving. Consider, for example, why so many people see farmers, physicians, and schoolteachers as more deserving than bankers. First, these groups appear to bestow tangible benefits on society. Farmers turn uncultivated land into a harvest; physicians make the infirm healthy again; teachers transform illiterate into literate children. Second, the *processes* by which these transformations occur are highly vivid as well. The public conjures up the images of the farmer working from dawn to dusk; of the physician saving a life in the operating room; and of the schoolteacher laboriously trying to keep pupils focused on the blackboard. A related perception is that these persons have true vocations. The public does not see them as economic agents interested in exchanging a good or service *for a price*, but rather as valuing the activity in itself. Most people (and indeed the agents themselves) believe that the remunerations perceived by those groups should not come below a certain floor compatible with the dignity and social value of the services they render. The popular view about these professions is that their members are typically motivated by a commitment to lofty values; earning money is perceived as a side effect of the pursuit of such values. Sometimes these activities are even described as higher callings where the agents do not simply have a vocation but also sacrifice themselves for the good of society (the terms "profession" and "service" are suggestive in this context.) These assumptions about intent help create an aura of nobility to these activities. If public teachers lobby for pay raises, many will see them, not as pursuing self-interest, but as rallying "for education," or "the future of our children." In the case of physicians, the aura of nobility neutralizes a possible negative factor in the public eye—their high earnings, which in turn stem from anti-competitive regulations of the medical profession.⁶³ Farmers are an interesting case: they seem to be more clearly perceived as working for money, but on the other hand they have succeeded in portraying themselves as symbols of the ethic of toil and frugality.⁶⁴

Bankers do not enjoy the benefits of any of these vivid characterizations. The public sees them as simply lending money and just waiting for the financial returns. They do not seem to be "working" in any sense that the public can readily grasp. More importantly, the notion that there is a market for money is considerably opaque. Most of us find it hard to replace our vivid theories about bankers with the economics of banking, which tells us that the banker is selling something for a price, just like any other agent in the market (including farmers, doctors, and schoolteachers.) One might ask, then, why market opacity, here manifested in the public's failure to see the social benefits *and costs* of an activity, helps the above professions but not bankers. This apparent anomaly

⁶⁴For the reasons usually given by governments to justify subsidies, see Chapter 2, note 34.

vanishes when we wonder what exactly the opacity is about in each case. What people perceive as salient in the case of farmers, doctors, and schoolteachers is that they are giving to society more than they receive. This makes them, in the eyes of the public, especially deserving, since most people are assumed to exchange goods and services of approximately the same value. These ideas are naturally associated with the belief that “just” or “fair” prices, which need not coincide with market prices, are achievable through political decisions. Now the theory of just prices rests on mistakes that we can identify today by resorting to price theory, which is notoriously opaque. The idea that prices do not reflect values that are independent of people’s preferences has been opaque to various degrees to even the brightest economists until the late nineteenth century, when marginal analysis was introduced and remained at the core of mainstream economics until these days. Because the goods or services offered in the above “noble” professions are salient, their practitioners seem an exception to the general rule that people exchange approximately equivalent values.

Compare this with popular views about bankers. People have a hard time seeing how bankers contribute to productive activities. The world of finance is often contrasted with the world of production, and the suggestion is that finance does not really contribute to social output. Bankers seem to gain without "doing anything." Here, the remuneration (interest) is salient. While many people can perhaps understand the benefits of banking for the borrowers, they will not easily see how others (e.g., workers) may benefit through credit investment. (Indeed, this view of bankers as undeserving gainers pervades a long history of moral and religious condemnation of money interest). Again, people do not believe that anyone can have a vocation for banking. Whatever bankers do, they surely do it for money. While people believe a schoolteacher who says, “my students are my life,” they would laugh at the banker who said, “my depositors and borrowers are my life.” These differences make many people favor public subsidies to farmers and wage increases for schoolteachers (as opposed to incentive-based educational policies, such as school vouchers).⁶⁵ In contrast, the public regards with suspicion even unsubsidized gains by bankers.

5. The Cost of Dissent

One key source of discourse failure, already examined, is the mutually reinforcing interaction between the rational ignorance of voters and the posturing of politicians and other political actors. But political discourse may fail for another reason as well, namely, the benefits that accrue from siding with mainstream views, and, conversely, the costs of dissenting. Take the following puzzle. It is well documented that for decades communist regimes around the globe ruthlessly killed and oppressed millions of individuals. Yet during that extended period many prominent intellectuals of the West purportedly concerned with human rights and poverty focused their strictures on liberal democracies without ever mentioning the massive assaults on human rights and the worst famines in

⁶⁵ The case of physicians is complicated by arguments for privileged treatment that do not rely on the nobility of their efforts, but on the need to protect consumers. For a critique of this argument, see Friedman, *Capitalism and Freedom*, op.cit.

the history of humankind caused by communist regimes.⁶⁶ Some even praised the supposed achievements of those regimes.⁶⁷ Some equated, on a moral plane, those regimes with Western liberal democracies.⁶⁸ At any rate, they kept silent about the true nature of those regimes in contexts where sincere preoccupation with human rights and fulfillment of basic needs made such references obligatory.⁶⁹ Most notably, very few of

⁶⁶ The point in the text is difficult to document because it is essentially the history of an omission. What is remarkable is not so much that a group of influential intellectuals *praised* these régimes at the time when they were perpetrating massive crimes (see references below) but that many other intellectuals ostensibly concerned with human rights and poverty—the majority—simply remained silent. We surveyed the JSTOR database and found that scholars specialized in the Soviet Union wrote about the Soviet economy, or U.S.-Soviet relations, or the structure of the Soviet bureaucracy, or Soviet-Third World relations; sometimes, timidly, about prospects for democratization in the U.S.S.R. They almost never saw episodes such as Stalin's Great Purge (1936-1938), with widely publicized show trials where defendants invariably confessed their "crimes against the State," as warranting a footnote on human rights violations. The atrocities committed by communist régimes are now well documented. See Stéphane Courtois, Nicolas Werth, Jean-Louis Panne, Andrej Paczowski, Karel Bartosek, and Jean-Louis Namolin, *The Black Book of Communism: Crimes, Terror, Repression* (Cambridge, Mass.: Harvard University Press, M. Kramer & J. Murphy transl., 1999). The reception of this book in the West is suggestive. It caused a furor in France when it first appeared in 1997, and in the United States, while it received a favorable review in the *New York Times* and the *Wall Street Journal* (see reviews in www.hup.harvard.edu/reviews), it was ignored by *National Public Radio*, *The New York Review of Books* (a venue *de rigueur* for mainstream United States intellectuals,) and the major networks. For a discussion of the favorable attitude of literary intellectuals towards communism throughout many decades, see Hilton Kramer, *The Twilight of Intellectuals* (Chicago: Ivan Dee Pub., 2000). See also Paul Johnson, *Modern Times* (New York: Harper Collins, rev. ed., 1991), esp. pp. 544-547. We cite Paul Johnson's work to make a point. When we mention his work to historians, we sometimes receive hushed replies suggesting that, for some reason, he should not be cited. We were never able to pinpoint the reason, except for vague dismissals of Johnson as a "right-winger" and a "conservative." This is yet another instance of the bootstrap argument (Chapter 3, Section 3), here reinforced by the "sending the correct signals" form of discourse failure that we will shortly diagnose in this Section. It does not matter whether or not Johnson is right in his claim that Western intellectuals condoned communist crimes: you just don't cite him, and if you do, you are a "right-winger" in every respect. We disagree with many of Johnson's views (such as his belief in the contribution of religion to human freedom, and his attempt to link British analytical philosophy to an alleged decline in British culture and values), but we regard reluctance to address the facts he reports about intellectuals and communism as unwarranted. For a discussion of the bias in favor of "socialist" régimes and against the West in the United Nations' treatment of human rights, see Jack Donnelly, "Human Rights at the United Nations 1955-1985," *International Studies Quarterly*, vol. 32, 1988, pp. 275-303.

⁶⁷ There are many examples of this. See, e.g., Joel Eldestein, "The Future of Democracy in Cuba," *Latin American Perspectives*, v. 22, No. 4, 1995, pp 7-26. In the acknowledgements note he thanks the "people of Cuba, appreciating their struggle for national dignity and independence and their revolutionary efforts to create a just, self-governing society in which human solidarity is a cardinal virtue." *Id.*, p. 7.

⁶⁸ Many Western intellectuals have consistently derided efforts to draw moral distinctions between the West (especially the United States) and the Soviet Union, calling those efforts "conservative" or "right-wing." See, e.g., Michael Frisch, "American History and the Structures of Collective Memory: A Modest Exercise in Empirical Iconography," *The Journal of American History*, vol. 75 No. 4, March 1989, p. 1153. This is another telling example of discourse failure in the form of bootstrap argument. Frisch identifies Jeanne Kirkpatrick as holding the view that we should make moral distinctions between the West and the USSR, and then cites a *New York Times* reference where the view is classified as conservative. The implication is, of course, that if someone as "right-wing" as Kirkpatrick holds that view, then anyone who criticizes the USSR has to be a right-winger too.

⁶⁹ Thus, the issue is not left versus right, or laissez-faire capitalism versus the welfare state or non-totalitarian forms of socialism. Indeed, there were a number of intellectuals from the left who, to their

these intellectuals recanted even after the massive evidence of gross human rights violations under communist rule became easily available.

How can this gross distortion be explained?⁷⁰ A well-known game-theoretical model may help. Consider the rational course of action for each driver in the absence of rules of the road. Initially, some of them will drive on the left while others will drive on the right. As soon as a driver perceives that a majority, however tiny it may be, of drivers is circulating on the left, she will do likewise in order to reduce the probability of suffering an accident. Moreover, her joining the majority reinforces other drivers' reasons to drive on the left. After a while, virtually all drivers circulate on the left.⁷¹

We think the intellectuals we are discussing were playing an analogous game of coordination. It is well known that in many academic and intellectual circles it became increasingly fashionable since the sixties to flirt with Marxism and cognate anti-capitalist views. Even today, other things being equal, it is easier to get an academic position if one is a vocal critic of capitalism than if one is a vocal conservative or libertarian. For that reason, in many (not all) academic circles within the humanities and social sciences⁷² job candidates have an obvious disincentive to publicly take positions, such as anticommunism, that may make them less desirable, so they believe, in the eyes of academic employers. If someone is seeking an academic job and believes that most members of hiring committees are unsympathetic to conservatism or to free markets, he may fear that voicing anticommunist views will automatically link him, in the eyes of the committee, to positions generally shunned by the academic world. He risks being tagged as a McCarthyist, conservative, libertarian, supporter of Ronald Reagan, Margaret Thatcher, or George W. Bush, or of similar stances lumped together under the rubric "right-wing views." It is not that the candidate or the hiring committees would, if asked, condone the crimes of communism. Rather, the rational, self-interested candidate will send those signals that *set her views apart from* the disfavored ones. This is why she will not volunteer views that may be perceived as *major themes* within the disfavored positions. Thus, someone who denounces, say, the Soviet Gulag, is sending a message that overlaps with that of "right-wingers," and so faces a competitive disadvantage vis-à-vis candidates who provide hiring committees with no evidence of being "on the wrong side" on other issues. This explains why both candidates and committees *would, if pressed*, condemn the Gulag as well. They send the right signals (in terms of their own careers, or such perquisites as invitations to conferences and research grants) without paying the cost of blatant inconsistency with mainstream liberal values: after all, they show their willingness to condemn communism (only under contextual pressures, in order to avoid the impression that their opposition to communism is part of a "right-wing" outlook). An exactly symmetrical matrix of payoffs explains the frequency of *spontaneous* anti-capitalist stances, i.e. even in the absence of contextual pressures. Candidates, then, signal their reliability *in this sense* by refraining from comments about

credit, denounced the crimes of communism. The analysis in the text is confined to a high proportion of *human-rights* intellectuals who ignored those crimes.

⁷⁰ For a discussion of the cost of dissent in non-academic contexts, see Cass R. Sunstein, *Why Societies Need Dissent* (Cambridge, Mass.: Harvard University Press, 2003), pp. 39-73.

⁷¹ See Robert Sugden, *The Economics of Rights, Co-operation and Welfare* (Oxford: Basil Blackwell, 1986), pp. 34-54.

⁷² In the remainder of this discussion, we assume this qualification on humanities and social sciences, except when the context requires otherwise.

communism and thus, by implication, reassuring their convergence toward the safe, left-of-center, dominant view. People who signal in this way must have a readily available term for referring to *all* the positions disfavored in academia, especially if that term has negative connotations in that particular setting—in the present example, “conservatism” and “right-wing views” have served this purpose well. Of course, one consequence of these dynamics is to blur the differences between the various doctrines that are lumped together: witness the distortion involved in assimilating libertarianism to conservatism.⁷³

This process is self-reinforcing and independent, within a broad range, of the particular mix of ideological and merit-oriented motivations that each committee member may have. The candidate knows that, for whatever reason, the average committee leans to the left, and wants to maximize his chances of getting the job offer. Of course, the specific predictions of this analysis will turn on data about institutional structures. Thus, if hiring committees include non-tenured members, the incidence of left-of-center votes, and correlatively of left-of-center candidates, will be higher. The incentive structure is reversed in those few places where right-wingers have the upper hand. Moreover, the model allows for places where ideological considerations play *absolutely no* role in the appointment process. There may well be reliable signals of sheer academic competence that are ideologically neutral. We speculate, however, that those cases will be infrequent, given the above convergence-towards-majority mechanisms and the difficulties in disentangling ideological from academic assessments.⁷⁴ We conjecture, in short, that the failure to comment on the crimes of communism in contexts where such reference would have been relevant is largely a response to the above incentives.

It is at this point legitimate to ask why most academics endorse left-of-center positions *in the first place*. The answer is by no means self-evident. One reason, we conjecture, may well be internal to scientific inquiry, that is, the honest balance of reasons for and against various views. Thus, after the end of World War II, Keynesian economics and the burgeoning theory of market failure were generally taken to support strong regulation of economic activity. Now once the academy reached, *for these internal reasons*, a left-of-center coordination point, subsequent *incentives* to converge on that same point emerge, in accordance with the game-theoretical mechanisms outlined above. It is simply irrational to deviate.

Another reason is the effect on academia of the forms of discourse failure that pervade society at large. The most simplistic left-of-center views, those that tend to be aired in public, are usually affected by discourse failure, especially those critical of free markets. A main reason is that many of these simplistic anti-market positions rely on vivid assumptions that are discredited by serious economic theory. Many academics, in

⁷³ The differences are strong indeed. Consider how sharply libertarians and conservatives disagree, inter alia, on the following issues: adult drug use and traffic, the role of the state in promoting religion and communitarian values, barriers to immigration, trade policy, bans on pornography and prostitution, censorship on allegedly offensive speech. The list should be expanded if, as is frequently the case, “conservatism” is another name for policies favored by Republicans in the United States; in this sense, conservatives, but not libertarians, favor many forms of regulation of markets that libertarians reject.

⁷⁴ The formal theory of political coalitions demonstrates that the optimal strategy for the political careerist is sometimes to support relatively small minoritarian coalitions. For example, sometimes smaller minorities defeat larger minorities in the competition for political power. See Robert Cooter, *The Strategic Constitution* (Princeton: Princeton University Press, 2000), pp. 73-77. Mutatis mutandis, the same is true for the academic careerist.

particular those not trained in economics (e.g., literature professors) tend to endorse those views. Of course, this charge does not extend to academics who defend left-of-center-views with respectable arguments. These scholars are, however, only a fraction of the academic world. There are, of course, many bad right-wing arguments as well, but they are *not* picked up by the typical academic.

It is symptomatic that the most reliable anti-market arguments, and also the least invoked *by non-economists*, rest on opaque, invisible-hand theories, such as the theory of market failure.⁷⁵ Our analysis explains why anti-market views are less common today among economists and other social scientists specialized in the formulation and testing of invisible-hand theories—in short, among those familiar with theories that make transparent the costs of political decisions. Accordingly, we should expect the deviation to the left to be greater among, say, literature professors than among economists. The source of discourse failure we identify in this section (i.e., the cost of dissenting) presupposes majoritarian academic coalitions formed in virtue of the general mechanisms of discourse failure percolating from society at large.

Finally, many people might end up in the academy because they had anti-capitalist views to begin with, and perhaps regarded the academic world as a refuge from the capitalist or business world they so much despise. They might regard their choice as a way to remain true to their principles. Intellectually gifted libertarian or conservatives, on the other hand, would not have qualms about joining the capitalist workforce. This self-selection would explain the deviation of intellectuals to the left in the first place.⁷⁶ But once an initial imbalance towards the left is reached, our analysis explains its perpetuation. In other words, a comprehensive game-theoretical model of ideological shares in academia should not only make room for the cost of dissenting but also for self-selection mechanisms.

Given our assumption that people are sensitive to the personal costs and benefits of their choices, it may seem puzzling that those intellectuals rarely pointed out flaws in communist regimes during times when a large segment of the citizenry had anticommunist sentiments. Indeed, they often succeeded in projecting themselves, in the educated public's eye, as proud dissenters, especially during periods of conservative administrations, such as Ronald Reagan's and Margaret Thatcher's.⁷⁷

The coordination model outlined above dissolves this puzzle. The electorate at large is not the intellectual careerist's constituency. Rather, it is composed of those who, primarily in the academic and related environments, hold the key to the intellectual's

⁷⁵ It is less clear how much discourse failure affects views sometimes classified as “left-of-center” in non-economic issues, such as abortion and capital punishment. All will depend on how the agent formulates the argument, that is, to what extent she passes The Display Test that we will introduce in Chapter 5, section 1.

⁷⁶ We are grateful to Lynn Roseberry for this idea.

⁷⁷ Use of the rhetoric of dissent can be very misleading. Consider the grotesque example of Fidel Castro's portraying the Cuban people as *rebell*ing against the might of American imperialism. This rhetoric is in tune with the regime's officially being named as *la Revolución* and Che Guevara's being portrayed as the symbol of rebellion and social criticism. This rhetoric is displayed in Castro's long speeches in Plaza de la Revolución, La Havana, addressed to crowds who obediently clap when cued by “revolutionary guards,” who also take attendance. All of this occurs while vocal *dissenters* are either shot, imprisoned, or in exile. So powerful is this rhetoric that many young people in liberal democracies wear T-shirts with the image of Che Guevara as a symbol of dissent. The payoffs matrix that we diagnose next in the text explains away this apparent anomaly, common to many dictatorships: the rhetoric of dissenting with outsiders (“anti-imperialism”) serves to eradicate internal dissent (“traitors”).

success. The model also explains why many of those intellectuals felt no pressure to revise their idyllic views about communism even after the disclosure of massive evidence of crimes against humanity. Although their failure to recant earned them the indictment of hypocrisy, sometimes leveled by conservative commentators with wide audiences, this was hardly a loss to them, given the matrix of payoffs to which they reacted. What mattered to them was that an openly anticommunist stance may have weakened the loyalty signal to the *relevant* constituencies. In particular, young academics who privately may well abhor the crimes of communism, nonetheless want to avoid an anti-communist stance that may weaken their perceived commitment to a number of *other* left-of-center positions: after all, only right-wingers are openly anticommunist. In short, softness towards communism works as a package signal: it allows people to avoid any identification with a number of causes and positions, loosely associated with anticommunism, that are unpopular among academics.

It may be useful to compare our explanation of why academics lean to the left with Nozick's.⁷⁸ Nozick claims that intellectuals in the humanities and the social sciences (he calls them "wordsmiths") have anti-capitalist views because they resent the fact that society does not fully reward their talents. He observes that those intellectuals were recognized and praised during their schooling, where they experienced a structured system of rewards for intellectual merit. But, of course, in a market society merit is not rewarded as such; rather, rewards are a function of how much others demand, for whatever reason, what we have to offer. According to Nozick, then, intellectuals become disgruntled with the market because, so they think, it fails to reward them in the way they have become accustomed to during their school years. When they leave school and join the work force, they experience a downward mobility in terms of social esteem. To make things worse, they see others succeed who they know are intellectually less deserving (because they did not do as well as them in school).

Nozick may be on to something here. It is not uncommon for intellectuals to downplay and even despise rich people who are unable to chatter about spiritual, artistic, or similar matters. We think, however, that our explanation improves on Nozick's for the following reasons. If Nozick were right, we would expect wordsmiths to be left-leaning uniformly across different disciplines, since all of them are similarly affected by the downward social mobility he describes. As we pointed out, however, we see less incidence of left-of-center views among, say, economists than among, say, experts in literature or cultural studies, and we saw how our model explains this: those trained in identifying the hidden costs of social policies are less likely to be affected by the discourse failure that characterizes many anti-capitalist positions. Moreover, Nozick explains the tendency to the left among intellectuals as the result of resentment: they perceive their downward mobility as undeserved, and naturally regard egalitarian policies as the means of redressing such injustice. But this is somewhat farfetched in modern societies where intellectuals, after all, have quite privileged positions, as Nozick concedes.⁷⁹ Our explanation does not rely on resentment or other emotions. It is tempting to point to those emotions to explain why people adopt egalitarian positions, but this move has an ad hoc flavor. We conjecture instead that many intellectuals stand to gain by leaning to the left, and suggest testable implications of this hypothesis (in terms of, e.g.,

⁷⁸ See Robert Nozick, *Socratic Puzzles* (Cambridge: Harvard University Press, 1997), pp. 280-295.

⁷⁹ *Ibid.*, pp. 280-81.

the higher incidence of ideologically disfavored positions among tenured and non-tenured faculty). Our model explains the ostensible behavior of academics in terms of tangible gains and losses: positions, salaries, grants, and other academic perquisites that define the pay-offs in the game that academic careerists are playing. How much envy and resentment pull in the same direction is a question we do not address.

As we pointed out, our analysis does not exclude the possibility of a demand for academic products free of discourse failure. This need not be the result of agents primarily motivated by the attainment of knowledge. Consider someone who wants to engage in serious study of tax policy with the aim of landing a high-paying job in government. We can easily imagine that he would be of little use in that position unless he could help the government choose, among alternative tax policies, that which furthers its electoral goals. There is little room for discourse failure here: he needs to understand the opaque, highly complex consequences of those policies.⁸⁰

Is this dismal portrayal of the motivations behind academics' political leanings consistent with our claim that there is such a thing as reliable social science? Views free from discourse failure require concern with sound argument. Yet, it may be objected, our story about the ideological patterns observed in academia apparently depicts academic careerists as people concerned with things other than the truth. It seems we cannot have it both ways.

The inconsistency is illusory, though. Most, if not all, ideal deliberation takes place in academic, elitist settings. This is consistent with many academics' simultaneously sending the ideological signals explained by the above game-theoretical framework. These two activities are easily severable. One might imagine grotesque examples of this kind of behavior, such as a writer discussing abstract philosophical conceptions of equality and dropping a passing reference to the hideous policies of George W. Bush. Similarly, we can imagine someone involved in right-wing circles finding a place to criticize Bill Clinton in a highly analytical discussion of Locke's theory of property rights. Our point here is that the theoretical discourse in these cases, subject to the critical scrutiny of peers and so free from discourse failure, is conceptually and pragmatically *severable* from the ideological signals that he sends. Therefore, the general assessment that academics lean to the political left is consistent with the existence of a demand for truth-sensitive academic products, that is, products non-incidentally free from discourse failure.

There are, of course, more obvious forms of discourse failure in academia. Legal academics, for example, frequently switch back and forth between academia and government. Thus, it is not uncommon for international law professors to aspire to an appointment in an international organization or in the federal government. This is a favored practice in law schools. Yet whatever merits this practice may have, it begets discourse failure among legal academics.⁸¹ Similar distortions occur when legal academics are seeking a judicial appointment, given that those appointments are made through the political process. Law professors thus motivated will shape their scholarly

⁸⁰ For an illuminating analysis of why people may deliberately give *false* advise to others in order to maximize the chances of giving correct advise in the long run, see Stephen Morris, "Political Correctness," *Journal of Political Economy*, vol. 109, No. 2 (April 2001), pp. 231-265.

⁸¹ See Fernando R. Tesón, "International Law," in P. Cane and M. Tushnet (eds.), *The Oxford Handbook of Legal Studies* (Oxford: Oxford University Press, 2003), pp. 941-947.

views in a manner calculated to please decisive ideological coalitions. It is apparent that such incentives should be taken into account, in addition to those described above, in any detailed model of discourse failure in academia.
