

POLICY PARADOX:
THE ART OF POLITICAL
DECISION MAKING 

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*For Jim
somewhere always,
alone among the noise and policies of summer*

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merable audiences to my study for the writing of this book—students, colleagues, former teachers, intellectual and political adversaries, and even, I confess, the MacArthur Foundation talent scouts. I thank them all for their eager ears, in absentia. None of them, however, was as impressed and enthusiastic as my grandmother, Celia E. Stone, who died long before I began *Policy Paradox*. She used to read my school and college papers and talk with me about them, and she was a fabulous audience. She made me want to write for people like her. She was intelligent, and, though unable to continue her schooling beyond high school, keenly interested in ideas. Whenever I write, I always put her in front row center.

As for thanking Jim Morone, leave that to me. (I can't let you disturb him anyway, since he's either writing *Sin*, or sleeping it off, or virtuously laying in our wood supply for next winter.) We have been privileged to share the writing life as precious few people ever do, and though *Policy Paradox* is no doubt better as a result, the whys and ways of my thanks to him are best reserved for a private realm, one where the scissors are real and their main job is creating bouquets for him.

Lempster, New Hampshire
July 1996

The visual paradox on the cover is from a lithograph by Josef Albers. In this and other works in the series, Albers uses nothing but straight lines to create illusions of volume and space. In his own words,

Solid volume shifts to open space and open space to volume. Masses moving at first to one side may suddenly appear to be moving to the opposite side, or in another direction. Likewise, upward acts also as downward, forward as backward, and verticals function as horizontals. . . . Black lines produce gray tones, and, for sensitive eyes, even color.

Thus we cannot remain in a single viewpoint, we need more for the sake of free vision.

—from *Despite Straight Lines*

I can't imagine a better metaphor for *Policy Paradox* and give my thanks to the Josef and Anni Albers Foundation for permission to reproduce the print.

Introduction

Paradoxes are nothing but trouble. They violate the most elementary principle of logic: Something cannot be two different things at once. Two contradictory interpretations cannot both be true. A paradox is just such an impossible situation, and political life is full of them. Consider some examples.

LOSING IS WINNING

When the Republicans gained control of the House of Representatives after the 1994 midterm elections, passing a balanced-budget amendment to the U.S. Constitution was tops on their legislative agenda. Republicans had long criticized Democrats for profligate government spending and high deficits. Getting a constitutional amendment to require a balanced budget would be a powerful legal weapon they could use to cut government programs drastically. Early in 1995, it looked like both houses of Congress would pass the budget amendment easily. As time got closer to a Senate vote in March, however, the Republicans didn't seem to have the 67 votes necessary to pass a constitutional amendment. Senator Bob Dole, the Republican majority leader, kept postponing the vote, hoping to pick up more support, but eventually he brought the bill to a vote without having 67 votes lined up. Why would he bring the matter to a vote, knowing that the Republicans would fail to pass it? On the eve of the vote, he explained:

"We really win if we win, but we may also win if we lose."¹

After the vote, the headlines were unanimous: "Senate Rejects Amendment on Balancing the Budget; Close Vote is Blow to GOP," went the *New York Times*' verdict. "GOP is Loser on Budget Amendment," echoed the *Boston Globe*.² What did Dole mean by claiming that a loss could be a victory?

Politicians always have at least two goals. First is a policy goal—whatever program or proposal they would like to see accomplished or defeated, whatever problem they would like to see solved. Perhaps even more important, though, is a political goal. Politicians always want to preserve their power, or gain enough power, to be able to accomplish their policy goals. Even though a defeat of the balanced budget amendment was a loss for Republicans' policy goal, Dole thought it might be a gain for Republicans' political strength. (So, apparently, did the *New York Times*, whose sub-headline read "Risk to Democrats.") Republican leaders acknowledged that they had lost a constitutional device that would have helped them immensely in redeeming their campaign pledge to enact the "Contract with America." But they also saw some important political gains. Senator Orrin Hatch, the chief sponsor of the amendment, called the vote "a clear delineation between the parties." A Republican pollster explained how the vote might help Republican candidates in the next Congressional election: "It lays out the differences as sharply as we could want them: We want to cut spending, and they don't."³ Dole, already campaigning for the Presidency, used the occasion to lambaste President Clinton for "abdicating his responsibility" to control federal deficits, while Republicans in both houses talked about making Democrats pay at the polls in the next election. "As far as I'm concerned," Newt Gingrich crowed, it's like a fork in chess. They can give us a victory today; they can give us a victory in November '96."⁴

¹Quoted in Jill Zuckman, "No Voting, More Anger on Budget," *Boston Globe*, March 2, 1995, p. 1.

²Both headlines on front page, *New York Times*, March 3, 1995; *Boston Globe*, March 5, 1995.

³Quotations in "GOP Is Loser on Budget Amendment," *Boston Globe*, March 5, 1995, p. 1.

⁴Quotation from "Senate Rejects Amendment on Balanced Budget," *New York Times*, March 3, 1995, p. A1.

PARADES: RECREATION OR SPEECH?

An Irish gay and lesbian group wanted to march in Boston's annual Saint Patrick's day parade. The organizers of the parade wanted to stop them. The gay and lesbian group said a parade is a public recreational event, and therefore, civil rights law protected them against discrimination in public accommodations. The parade organizers claimed a parade is an expression of beliefs, really an act of speech. Their right to say what they wanted—by excluding from the parade those with a different message—should be protected by the First Amendment. Is a parade a public recreational event or an act of self-expression? Might it be both? What would you do if you were a justice on the Supreme Court and had to decide one way or the other?⁵

FOR OR AGAINST WELFARE?

When asked about public spending on welfare, 48 percent of Americans say it should be cut. But when asked about spending on programs for poor children, 47 percent say it should be increased, and only 9 percent want cuts.⁶

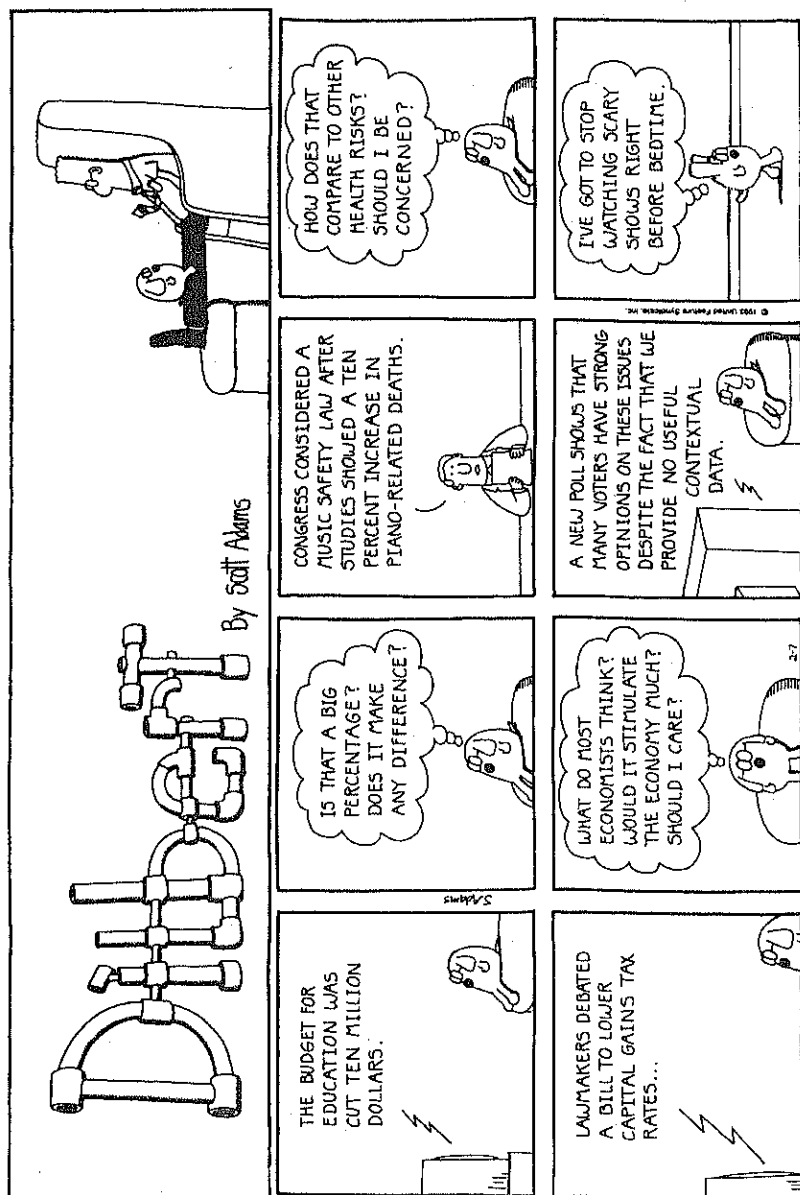
Do Americans want to enlarge or curtail welfare spending? It all depends on how the question is framed.

ENEMIES OR ALLIES?

The Food and Drug Administration (FDA) regulates the testing and marketing of new pharmaceutical drugs. For decades, drug manufacturers have complained that the regulations make developing new drugs excessively costly and painfully slow. Thanks to the FDA, they have argued, the pharmaceutical industry is hardly profitable anymore, and the U.S. has lost its lead as the world's innovator of medical miracles. Drug companies have consistently wanted the FDA off their backs. When, however, the Republican party finally took control of the

⁵Linda Greenhouse, "High Court Lets Parade in Boston Bar Homosexuals," *New York Times*, June 20, 1995, p. A1.

⁶Jason DeParle, "Despising Welfare, Pitying Its Young," *New York Times*, December 18, 1994, p. E5.



House in 1995 and prepared to privatize most of the functions of the FDA, the pharmaceutical manufacturers were the first to rush to the FDA's defense.

Why the sudden turnabout? At one level, an industry and its regulatory agency are adversaries. One is a watchdog for the other, a guardian of the public interest against exploitation by those with more narrow self-interests. At another level, though, regulators and the regulated always have a symbiotic relationship. They depend on each other. Without an industry to regulate, the regulatory agency would be out of business. And, in the case of drug manufacturing, without the seal of government approval for its drugs, the industry would lose the "world's confidence in the superiority of American drugs," and the American public's confidence in the safety and efficacy of drugs. "We are for a strong F.D.A.," said the head of the Health Industry Manufacturers' Association. "They are our credibility."⁷

In politics, as in life, many relationships are simultaneously adversarial and symbiotic.

WHICH CAME FIRST—THE PROBLEM OR THE SOLUTION?

In the 1950s, a federal program for mass transit was proposed as a solution to urban congestion. Subways and buses were presented as a more efficient means of transportation than private cars. In the late 1960s, environmental protection was the word of the day, and mass transit advocates peddled subways and buses as a way to reduce automobile pollution. Then with the OPEC oil embargo of 1972, Washington's attention was riveted by the energy crisis, and mass transit was sold as an energy-saving alternative to private automobiles. Was this a case of three problems for which mass transit just happened to be a solution, or a constant solution adapting to a changing problem?⁸

BABIES: PRODUCT OR SERVICE?

New reproductive technologies have fundamentally changed the way people can have babies and create families. "Baby M" was born in

⁷ Philip J. Hiltz, "FDA Becomes Target of Empowered Groups," *New York Times*, Feb. 12, 1995, p. 24.

⁸ John Kingdon, *Agendas, Alternatives and Public Policies* (Boston: Little Brown, 1984), p. 181.

1986 as the result of a contract between William Stern and Marybeth Whitehead, both married, though not to each other. The contract provided for Mrs. Whitehead to be artificially inseminated with Mr. Stern's sperm, to bring the baby to term in her womb, and then to give the baby to Mr. and Mrs. Stern to raise as their child. In return, Mr. Stern would pay Mrs. Whitehead \$10,000, plus expenses.

After the birth, Mrs. Whitehead decided she wanted to keep the baby, who was, after all, her biological daughter. The case went to court. Although the immediate issue was who would win the right to raise "Baby M," the policy question on everybody's mind was whether the courts should recognize and enforce surrogate motherhood contracts. Most states prohibit the sale of babies in their adoption laws. So the question of paramount importance was whether a surrogate motherhood contract is a contract for the sale of a baby or for a socially useful service.

On the one hand, Mrs. Whitehead could be seen as renting her womb. Like any professional service provider, she agreed to observe high standards of practice—in this case, prenatal care. According to the contract, she would not drink, smoke, or take drugs, and she would follow medical advice. Like any physical laborer, she was selling the use of her body for a productive purpose. By her own and the Sterns' account, she was altruistically helping to create a child for a couple who could not have their own.

On the other hand, Mrs. Whitehead could be seen as producing and selling a baby. She underwent artificial insemination in anticipation of a fee—no fee, no baby. She agreed to have amniocentesis and to have an abortion if the test showed any defects not acceptable to Mr. Stern. She agreed to accept a lower fee if the baby were born with any mental or physical handicaps—low-value baby, low price.

Is a surrogate motherhood contract for a service or for a baby?

How can we make sense of a world where such paradoxes occur? In an age of science, of human mastery over the innermost and outermost realms, how are we to deal with situations that will not observe the elementary rules of scientific decorum? Can we make public policy behave?

The fields of political science, public administration, law, and policy analysis have shared a common mission of rescuing public policy from the irrationalities and indignities of politics, hoping to make policy instead with rational, analytical, and scientific methods. This endeavor is what I call "the rationality project," and it has been a core part of

American political culture almost since the beginning. The project began with James Madison's effort to "cure the mischiefs of faction" with proper constitutional design, thereby assuring that government policy would be protected from the self-interested motives of tyrannous majorities.⁹ In the 1870s, Christopher Columbus Langdell, dean of the Harvard Law School, undertook to take the politics out of law by reforming legal training. Law was a science, he proclaimed, to be studied by examining appellate court decisions as specimens and distilling their common essence into a system of principles. There was no need for either students or professors to gain practical experience.

At the turn of the twentieth century, the rationality project was taken up in spades by the Progressive reformers, who removed policy-making authority from elected bodies and gave it to expert regulatory commissions and professional city managers, in an effort to render policy making more scientific and less political. The quest for an apolitical science of government continues in the twentieth century with Herbert Simon's search for a "science of administration," Harold Lasswell's dream of a "science of policy forming and execution," and the current effort of universities, foundations, and government to foster a profession of policy scientists.

This book has two aims. First, I argue that the rationality project misses the point of politics. Moreover, it is an impossible dream. From inside the rationality project, politics looks messy, foolish, erratic, and inexplicable. Events, actions, and ideas in the political world seem to leap outside the categories that logic and rationality offer. In the rationality project, the categories of analysis are somehow above politics or outside it. Rationality purports to offer a correct vantage point, from which we can judge the goodness of the real world.

I argue, instead, that the very categories of thought underlying rational analysis are themselves a kind of paradox, defined in political struggle. They do not exist before or without politics, and because they are necessarily abstract (they are categories of *thought*, after all), they can have multiple meanings. Thus, analysis is itself a creature of politics; it is strategically crafted argument, designed to create ambiguities and paradoxes and to resolve them in a particular direction. (This much is certainly awfully abstract for now, but each of the subsequent chapters is designed to show very concretely how one analytic category of politics and policy is a constantly evolving political creation.)

Beyond demonstrating this central misconception of the rationality

⁹This was the argument of his *Federalist Paper No. 10*, about which more is said in Chapters 10 and 15.

project, my second aim is to derive a kind of political analysis that makes sense of policy paradoxes such as the ones depicted above. I seek to create a framework in which such phenomena, the ordinary situations of politics, do not have to be explained away as extraordinary, written off as irrational, dismissed as folly, or disparaged as "pure politics." Unfortunately, much of the literature about public policy proceeds from the idea that policy making in practice deviates from some hypothetical standards of good policy making, and that there is thus something fundamentally wrong with politics. In creating an alternative mode of political analysis, I start from the belief that politics is a creative and valuable feature of social existence.

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

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

This model of rational behavior is so pervasive it is a staple of check-out-counter magazines and self-help books. For all of its intuitive appeal, however, the rational decision-making model utterly fails to explain Bob Dole's thinking or behavior at the time of the balanced budget amendment vote. Did he attain his objective or didn't he? Did he win or lose? Worse, the model could not help formulate political advice for Dole beforehand, for if we accept his reasoning that he wins either way, then it doesn't matter which way the vote goes and he should just sit back and enjoy the play. Of course, Dole was not only reasoning when he claimed that losing was winning. He was also trying to manipulate how the outcome of the vote would be perceived and how it would influence future political contests between the Republicans and the Democrats. In fact, all the Republican credit-claiming and victory speeches upon losing the vote suggest that politicians have a great deal of control over interpretations of events, and that the political analyst who wants to choose a wise course of action should focus less on assessing the objective consequences of actions and more on how the interpretations will go. If politicians can attain their objectives by portraying themselves as having attained them, then they should be studying portraiture, not cost-benefit analysis.

A model of political reason ought to account for the possibilities of changing one's objectives, of pursuing contradictory objectives simultaneously, of winning by appearing to lose and turning loss into an appearance of victory, and most unusual, of attaining objectives by portraying oneself as having attained them. Throughout this book, I develop a model of political reasoning quite different from the model of rational decision making. Political reasoning is reasoning by metaphor and analogy. It is trying to get others to see a situation as one thing rather than another. For example, parades can be seen as public recreational events, or as collective marches to express an idea. Each vision constructs a different political contest, and invokes a different set of rules for resolving the conflict. Babies created under surrogate motherhood contracts are a phenomenon quite unlike anything we already know. The situation is not exactly like professional service, not exactly like wage labor, not exactly like a contract for pork bellies, not exactly like a custody dispute between divorced parents, and not exactly like an adoption contract. Legislatures and courts deal with the issue by asking, "Of the things that surrogate motherhood isn't, which is it most like?"

Political reasoning is metaphor-making and category-making, but not just for beauty's sake or for insight's sake. It is strategic portrayal for persuasion's sake, and ultimately for policy's sake. This concept of political reason is developed and illustrated throughout the book, and I take up the idea directly again in the last chapter.

The *model of society* underlying the contemporary rationality project is the market. Society is viewed as a collection of autonomous, rational decision makers who have no community life. Their interactions consist entirely of trading with one another to maximize their individual well-being. They each have objectives or preferences, they each compare alternative ways of attaining their objectives, and they each choose the way that yields the most satisfaction. They maximize their self-interest through rational calculation. The market model and the rational decision-making model are thus very closely related.

The market model is not restricted to things we usually consider markets, that is, to systems where goods and services are bought and sold. Electoral voting, the behavior of legislators, political leadership, the size of the welfare rolls, and even marriage have all been explained in terms of the maximization of self-interest through rational calculation. The market model posits that individuals have relatively fixed, independent preferences for goods, services, and policies. In real socie-

ties, where people are psychologically and materially dependent, where they are connected through emotional bonds, traditions, and social groups, their preferences are based on loyalties and comparisons of images. How people define their preferences depends to a large extent on how choices are presented to them and by whom. They want greater welfare spending when it is called helping poor children, but not when it is called welfare. Sometimes, as in the case of "Baby M," they are not quite sure what they are buying and selling, or whether they have engaged in a sale at all.

In place of the model of society as a market, I construct a model of society as a political community (Part I). Chapter 1, "The Market and the Polis," sets forth the fundamental elements of human behavior and social life that I take to be axiomatic, and contrasts them with the axioms of the market model. I start with a model of political community, or "polis," because I began my own intellectual odyssey in this territory with a simple reflection: Both policy and thinking about policy are produced in political communities.

The observation may be trite, but it has radical consequences for a field of inquiry that has been dominated by a conception of society as a market. To take just one example, the market model of society envisions societal welfare as the aggregate of individuals' situations. All behavior is explained as people striving to maximize their own self-interest. The market model therefore gives us no way to talk about how people fight over visions of the public interest or the nature of the community—the truly significant political questions underlying policy choices.

Traditional Policy
 The *model of policy making* in the rationality project is a production model, where policy is created in a fairly orderly sequence of stages, almost as if on an assembly line. Many political scientists, in fact, speak of "assembling the elements" of policy. An issue is "placed on the agenda," and a problem gets defined. It moves through the legislative and executive branches of government, where alternative solutions are proposed, analyzed, legitimized, selected, and refined. A solution is implemented by the executive agencies and constantly challenged and revised by interested actors, perhaps using the judicial branch. And finally, if the policy-making process is managerially sophisticated, it provides a means of evaluating and revising implemented solutions.

So conceived, the policy-making process parallels the cognitive steps of the rational model of decision making. Government becomes a rational decision maker writ large—albeit not a very proficient one. Much of the political science literature in this genre is devoted to

understanding where and how good policy gets derailed in the process of production. This model of policy making as rational problem solving cannot explain why sometimes policy solutions go looking for problems. It cannot tell us why solutions, such as privatizing the FDA's drug evaluation, turn into problems. It only tells us things are working "backward" or poorly.

The production model fails to capture what I see as the essence of policy making in political communities: the struggle over ideas/Ideas are a medium of exchange and a mode of influence even more powerful than money and votes and guns. Shared meanings motivate people to action and meld individual striving into collective action. Ideas are at the center of all political conflict. Policy making, in turn, is a constant struggle over the criteria for classification, the boundaries of categories, and the definition of ideals that guide the way people behave.

Chapters 2 through 15 examine the constituent ideas of policy and policy analysis in light of their construction in a political community. Each idea is an argument, or more accurately, a collection of arguments in favor of different ways of seeing the world. Every chapter is devoted to showing how there are multiple understandings of what appears to be a single concept, how these understandings are created, and how they are manipulated as part of political strategy. Revealing the hidden arguments embedded in each concept illuminates, and may help resolve, the surface conflicts.

The reader would certainly be justified in asking why I chose the particular set of ideas included here. The broad architecture of the book takes its shape from the notion of a policy issue implied in the rationality project: We have a goal; we have problem, which is a discrepancy between the goal and reality; and we seek a solution to erase the discrepancy. Parts II, III, and IV correspond to the three parts of this framework: goals, problems, and solutions.

As I demonstrate throughout the book, the political careers of most policy issues are not nearly so simple as this three-part formula would suggest. For example, people do not always perceive a goal first and then look for disparities between the goal and the status quo. Often, they see a problem first, which triggers a search for solutions and statement of goals. Or, they see a solution first, then formulate a problem that requires their solution (and their services). Nevertheless, I use this framework because it expresses a logic of problem solving that is widespread in the policy analysis literature and because it parallels the models of rational decision making and the policy-making process.

Part II is about goals—not the specific goals of particular policy

Simple to the core

Policy making path on ideas

X

J

issues, such as expanding health insurance coverage or lowering health care costs, but the enduring values of community life that give rise to controversy over particular policies: equity, efficiency, security, and liberty. These values are "motherhood issues": everyone is for them when they are stated abstractly, but the fight begins as soon as we ask what people mean by them. These values not only express goals, but also serve as the standards we use to evaluate existing situations and policy proposals.

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

There might well have been other ideas in the section on goals. Justice, privacy, social obligation, and democracy come to mind. Equity, efficiency, security, and liberty begged more insistently for political analysis only because, sadly, they are invoked more often as criteria in policy analysis. Once having read this book, the reader will have no trouble seeing some of the paradoxes in other criteria.

Part III is about problems and about how we know there is a disparity between social goals and the current state of affairs. There are many modes of defining problems in policy discourse, and each mode is like a language within which people offer and defend conflicting interpretations. "Symbols" and "Numbers" are about verbal and numerical languages, respectively, and both examine devices of symbolic representation within those languages. We also define problems in terms of what causes them ("Causes"), who is lined up on each side ("Interests"), or what kind of choice they pose ("Decisions"). Here, too, I might have chosen other categories; for example, one could examine problem formulation according to different disciplines, such as economics, law, political science, or ethics. I did not choose that framework because it would only perpetuate the somewhat artificial divisions of academia, and the categories I did choose seem to me a better representation of modes of discourse in political life.

Part IV is about solutions, or more accurately, about the temporary

resolutions of conflict. These chapters start from the assumption that all policies involve deliberate attempts to change people's behavior, and each chapter in this section deals with a mechanism for bringing about such change—creating incentives and penalties ("Inducements"), mandating rules ("Rules"), informing and persuading ("Facts"), stipulating rights and duties ("Rights"), and reorganizing authority ("Powers").

The common theme of this part is that policy instruments are not just tools, each with its own function and its own appropriateness for certain kinds of jobs. In the standard political science model of the policy-making process, policy solutions are decided upon and then implemented, though things usually go awry at the implementation stage. The task of the analyst is to figure out which is the right or best tool to use, and then to fix mistakes when things don't go as planned. I argue, instead, that each type of policy instrument is a kind of political arena, with its peculiar ground rules, within which political conflicts are continued. Each mode of social regulation draws lines around what people may and may not do and how they may or may not treat each other. But these boundaries are constantly contested, either because they are ambiguous and do not settle conflicts, or because they allocate benefits and burdens to the people on either side, or both. Boundaries become real and acquire their meaning in political struggles. The job of the analyst, in this view, is to understand the rules of the game well enough to know the standard moves and have a repertoire of effective countermoves.

If deep down inside, you are a rationalist, you might want to know whether the topics covered by the chapters are "exhaustive" and "mutually exclusive." They are most assuredly not. Our categories of thought and modes of argument are intertwined and not easily delineated. That is one reason, I shall argue, why we have and always will have politics. Then, too, I remind you that I am trying to demonstrate precisely that essential political concepts are paradoxes. They have contradictory meanings that by formal logic ought to be mutually exclusive but by political logic are not. I do hope, however, that my categories at least provide a useful way to divide up an intellectual territory for exploration, and at best provide a new way of seeing it.

As for whether my categories are exhaustive, I can only plead the quintessential political defense: I had to draw the line somewhere.