CHAPTER 1
INTRODUCTION

You are a serious, well-educated voter. You read print and online media, listen to the views of opinion leaders and organizations that you trust, discuss current events informally with interested friends, and generally try to keep up with current events. You want to participate responsibly in the democratic process through which the policies that govern us are formed, but you find this difficult. Busy with your family, work, and other private commitments, you don’t have much spare time to navigate the daunting complexity of the substantive policy issues. Social groups and peer pressure urge you to take clear positions on these issues. You might feel more comfortable if you could conscientiously do so. But you feel uneasy in taking firm positions on these important issues because, in all honesty, you know that you haven’t given them all that much thought or done your homework. So what is a conscientious but understandably distracted citizen like you to do?

I wrote this book for you. It is about hard public issues and how Americans should think about them before deciding where they stand. The success of our deliberative democracy—in which We the People and our representatives really do decide how such issues are resolved—depends on citizens’ knowing what they are talking and voting about.
What makes an issue hard? Why are some issues getting even harder, while others seem to become easier?* Is more public debate on hard issues needed? What do I mean by clear thinking about issues? What is the quality of today’s debates? How much must citizens know about the issues in order to think clearly about them, and how realistic is this? What can this book hope to contribute to these debates?

This chapter answers these questions in general, and the chapters that follow get down to specifics. But which ones? The list of domestic policy† decisions on which Americans sharply disagree with one another—in the voting booth and in conversations—is very long. No single person could explicate most of them. To do so would require far more knowledge, technical skill, time, and patience than any individual (certainly this one) possesses.

The reader’s patience is short, so I focus my analysis on five domestic policy issues: poverty; immigration; campaign finance; affirmative action; and conflicts between religious and secular values. Why these? Reasonable people will disagree about the most important issues facing the nation. The first—poverty—is an enduring challenge to the American dream. The next two—immigration and campaign finance—are perennially controversial, especially during election campaigns. The debate over affirmative action remains as robust as ever, even after the U.S. Supreme Court upheld its constitutionality in 2016. (The Court did not endorse its policy merits and the decision was a narrow one, limited—as the majority emphasized—to Texas’s “sui generis” plan.) The final issue, which I shall call “religious accommodation” as a shorthand, has always been controversial in our public life, and its prominence today is especially high in light of two recent Supreme Court decisions, discussed in chapter 6.

Each of the five is a very hard issue according to the criteria I present immediately below—although some of them are more hotly de-

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* An example is wage supplements for the working poor, which are now widely accepted as a better way to increase their incomes than raising the minimum wage. I discuss this issue in chapter 2.
† A policy is a statement of goals; a program is an instrument for implementing a policy. Generally, I shall use the terms interchangeably.

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bated, affect more people, are more politically sensitive, and raise more basic constitutional issues than others. And some issues that I do not analyze here are even harder and arguably more consequential—for example, climate change and the financing and delivery of health care—are more complicated. But trying to compare the hardness of different public issues (rather than of, say, different minerals) is a fool’s errand. Each of the five vitally affects our democracy and society. We have argued about all of them for so long that their contours are relatively well defined and thus amenable to the kind of close analysis presented in this book. And the analytical structure that I use to dissect each of them invites the reader to apply it to other issues not considered here.

WHAT MAKES AN ISSUE HARD?

In my usage, an issue is hard to the extent that the following characteristics are inherent to it: Hard issues also have external or contingent aspects (e.g., political conditions, timing, leadership, unexpected events, international developments).

- It is a public and federal issue. Government institutions, especially at the federal level, play an important role in resolving it through the political process and in embodying it in public law. In contrast, most issues never make it on to the public agenda at all.¹
- It is highly salient to a large number of people. This means that they care deeply, passionately, and perhaps even militantly about it. People tend to have at least provisional opinions or intuitions about where they stand on it when it enters their world.
- It constitutes an ensemble of interrelated disputed questions. We may try to treat the issue as if it were analytically discrete or self-contained, but in reality its knot of questions interact in complicated, opaque, and hard-to-disentangle ways.
- It is historically inflected, bearing the strong imprint of earlier struggles that continue to haunt current debates, affect the
terms of discussion, and perhaps limit the menu of future options.

- It consists in part of complex empirical disputes that our existing knowledge cannot authoritatively resolve and on which even the experts are usually divided. Hard issues, moreover, often are subject to a “meta” empirical issue—i.e., whether the empirical disputes have in fact been settled or are instead still open to dispute. Efforts to persuade the public that a given issue is or is not still open to serious, responsible debate is a high-stakes game played by competing interests. Climate change is probably the clearest current example.* Reformers typically cite a looming crisis that must be addressed immediately, while those who favor the status quo or emphasize our ignorance or uncertainty usually favor delay, urging more deliberation, better information, and thus a more durable public consensus.

- It is embedded in normative disputes. The contested values are usually widely held and deeply felt by their proponents. Depending on the nature and content of these values, they may be more or less sensitive or tractable to empirical facts that might (or might not) seem relevant to them. Thus, people who employ a utilitarian framework that values a particular policy according to its consequences (often measured by its costs and benefits) will want to know which conditions cause which effects (among other empirical facts) before they choose a preferred policy or action. In contrast, others may assess the desirability of a policy or action deontologically—i.e., in light of whether it conforms to preexisting rules or precepts while according less (or no) significance to such empirical contingencies.

The complexity and passion surrounding normative disputes often make them seem intractable. In a democratic society, they can be re-

* Although climate change is a highly divisive issue, research suggests that people become more polarized, not less, as their capacity for understanding scientific evidence and their open-mindedness increases. Dan Kahan and Jonathan Corbin, “A Note on the Perverse Effects of Actively Open-Minded Thinking on Climate-Change Polarization,” *Research and Politics* (in press).

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solved, if at all, only through compromise in which the competing values are traded off against one another, or by decentralizing disputes so that different jurisdictions may reach different results without the need for any overarching national solution. Values may compete with one another in at least two ways. Most commonly, pursuing goal A in fact entails some sacrifice of goal B (and vice versa). Such value conflicts, moreover, often reflect quite different worldviews so that those who hold them will tend to disagree about many other important issues, including the factual claims that underlie the values.

Occasionally, however, a normative dispute is so basic that it essentially forecloses any reasoned debate on empirical issues or even on value trade-offs. Abortion, I believe, is an example, which is one reason why I do not include it here. If one strongly believes that life begins at conception (or alternatively, that a woman’s control of her body and right to choose how it is used are absolute), then abortion is murder (or alternatively, a basic right of personal autonomy), and there really isn’t much more to talk about, except perhaps at the edges of the issue-space (e.g., narrow exceptions, or differentiating among trimesters). Similarly, many if not most opponents of capital punishment believe that it is simply immoral for the state to take life, although many opponents also object on other, more empirical grounds (e.g., uncertainty and arbitrariness).

Issues of this kind often implicate not merely differences in perspective but competing worldviews. Those who hold them may be especially unwilling, or even epistemologically unable, to yield or compromise on them because too much of their sense of reality or morality seems to be at stake. Indeed, such issues cause such people to perceive and interpret factual evidence in ways that conform to or reinforce that worldview. Scholars have approached this interpretive phenomenon in different ways.*

* Dan Kahan calls it “cultural cognition.” He posits two cultures: “hierarchical” and “egalitarian,” and with co-authors has tested it empirically on a wide range of policy issues with important factual components—from gun control to vaccine use to date rape. E.g., Dan Kahan, “Fixing the Communications Failure,” 463 Nature 296–97 (2010). For a meth-
Some issues are normatively divisive for a particular reason that makes them even harder to resolve. This occurs when people harbor strong views but either conceal or sanitize them out of fear that they will be stigmatized as socially abhorrent. People with racist or homophobic views, for example, are often reluctant to acknowledge them. Opponents of affirmative action often fear being accused of racism by its advocates. Conservatives may depict critics of aggressive foreign policies as unpatriotic, critics of Israel as anti-Semitic, and critics of tough police practices as soft-on-crime apologists for social disorder. Such tactics are part and parcel of robust, sharp-elbowed debate in a society deeply committed to free speech. There really is no good remedy for this other than greater self-restraint and tolerance. But when such fears cause the timorous (who probably include all of us at times) to pull their punches, retreat from public fora, or misrepresent their views when asked for them, the public debate is deformed and people's true positions on issues become more difficult to gauge.

- Analyzing a hard issue requires drawing relatively fine distinctions, which the general public may find difficult to understand or accept. As we shall see, legal doctrine tends to multiply such distinctions over time in response to new, often unanticipated factual situations that arise. These new situations might be covered by existing rule A but might (as some will plausibly argue) be covered better by existing or new rule B. Policy makers and judges, like other people, must decide which distinctions to make and how to formulate them. In the policy process, new distinctions are often added to earlier ones, which makes the policy ever more technical and complex but also, hopefully, more responsive to emerging social needs.

• **Institutional density** makes it harder to both understand and solve issues.* By this, I mean the number of agencies, levels of government, civil society groups, and private markets interacting in a particular issue-space.

• Hard issues confront *particularly severe constraints on policy solutions*. Any genuine solutions (not mere patches or temporary fixes) are likely to be very costly. Sometimes, these costs are not only large (for example, Medicare and Social Security reforms) but cannot be easily concealed from the likely cost-bearers, hard as politicians may try.† Knowing who will ultimately pay affects political conflict, particularly where the conflict seems zero-sum. Budgetary issues are often of this type, but so are policies that may trigger status conflicts that cause one group to feel diminished in social esteem by the rise of another. Immigration, affirmative action, and demands for religious accommodation can trigger feelings of this kind. But for most hard issues, the constraints are not only fiscal or even political. Sometimes they are moral (as with antipoverty policies). Legal rules, including constitutional ones, may foreclose certain solutions, as we shall see in several of the chapters that follow—especially campaign finance, religious accommodation, and affirmative action.

**WHY ARE SOME HARD ISSUES GETTING EVEN HARDER?**

Public policy disputes seem to be getting more protracted, more impervious to reasoned debate, and their solutions more elusive. This impression is difficult to prove definitively because we lack clear gauges: The characteristics that make issues hard are largely quali-

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* Eric Biber reminds us that a *dearth* of institutions can also make complex problems that much harder to solve. But his example, climate change, suggests that what he has in mind is a dearth of *authoritative* institutions capable of negotiating and resolving conflicts among governments and countless private actors throughout the world.

† In an earlier book, I identified six political techniques for concealing or obscuring such costs: ignoring them, disguising them, deferring them, shifting them, treating a resource as if it were free, and delegating key decisions to agencies. *Why Government Fails So Often, and How It Can Do Better* (2014), pp. 137–38.
tative and resist measurement. We must also bridle our tendency to imagine a past “golden age” of consensus and high-toned debate, just as we should not assume that today’s policy struggles are nastier, more politicized, more irrational, and more polarized than in earlier times. The belief in such a harmonious past betrays more ignorance about our history than insight about our current challenges. The sharp, sometimes violent divisions documented by American historians throughout our history belie such a fantasy. Abraham Lincoln, long sainted in our collective national memory, was in his own time vilified in the most intemperate, despicable terms. Although the period between World War II and the Vietnam War now seems unusually harmonious (except for the McCarthy era), that was abnormal. Arguably, the 1800 presidential election was uglier than 2016’s.

Still, some features of our contemporary policy-making context do make many issues harder to understand and resolve. In one sense, today’s hard issues are harder almost by definition: We have already picked some of the lower-hanging fruit—policy changes that over time came to be widely seen as morally compelled—leaving us twenty-first-century Americans to debate issues that have not yet achieved that consensus (if they ever will). My point, emphatically, is not that universal suffrage, safety net entitlements, antidiscrimination laws, environmental and consumer protection programs, and labor rights came easily. Far from it; they were extraordinarily hard issues at the time, resolved only after protracted political and cultural struggle—and, in some cases, widespread violence. Even today when these policies’ basic parameters seem fairly well settled, bitter conflict continues over their precise contours. Efforts to roll them back continue, albeit nonviolently.

Perhaps as time passes, many of the hard issues that roil today’s Americans will seem more tractable than now appears possible—for example, the cultural conflicts over same-sex marriage and transgender rights, discussed in chapter 6—but powerful arguments exist on all sides of hard issues. By some measures, our politics really is more polarized than at any time since the post–Civil War era, at least in the
U.S. Congress. Even issues not now on the political agenda seem more contested today than since World War II. Even though today’s policy makers can access much better social data and analytical tools for answering the underlying factual and normative questions, a wider gap exists between what we know* and what we now realize we need to know in order to frame sound policy. Poverty is perhaps the clearest example of this “policy-knowledge gap.” As chapter 2 shows, we now know far more about how to measure it and about its causes, effects, types, remedies, lessons from other developed societies, and much else, but we also know more about what we don’t know—but need to learn—in order to remedy it wisely. For the hard issues discussed in this book, some of the most basic, policy-relevant facts are elusive and difficult to grasp for epistemological reasons that confound even the most scrupulous, well-intentioned efforts.

Today’s hard issues are also harder than before because institutional density (discussed above) has increased dramatically. The vast profusion of laws and regulations has clotted the veins of decision and action in almost every field, and the courts are more active in reviewing and shaping policy than ever before. Consider just two examples of this greater institutional/legal density. Infrastructure projects that created our present way of life are almost impossible to execute today within any reasonable parameters of cost and time.† And more than six years after Dodd-Frank was enacted, many statutorily required regulations had not yet been issued, while some of those that were issued were fiercely contested and in some cases rolled back for imposing crushing regulatory costs on smaller institutions. The higher stakes in such decisions have multiplied the cost of negotiating political bargains among the more numerous and diverse Washington-based interest groups, lobbyists, and stakeholders—some with veto

* As Mark Twain put it, “What gets us into trouble is not what we don’t know, it’s what we know for sure that just ain’t so.”

power but all prepared to weigh in on how issues should be framed and resolved.

The post-1960 proliferation of rights—social welfare entitlements and antidiscrimination remedies, for example—has also “hardened” issues. By rights, I mean claims that explicitly trump competing views and interests, with legally enforceable sanctions. But in practice, they do more than this, also rendering the competing claims illegitimate in a sense. De-legitimating the opposition tends to impoverish political discourse, in several ways: suppressing deeply felt meanings that society needs to apprehend (even if it rejects them), blocking social pressures that seek release and respect, and forcing them underground, as it were, where mutual understanding and accommodation are more difficult to achieve and may now even be illegal. And because this density of rights fills in so much more of the issue-space where interests and social accommodations were once debated, it reduces the leeway that a diverse society needs to navigate such politically-contested terrain.

Our society has become more difficult to govern in other ways. A better-educated, more sophisticated, and cosmopolitan citizenry tends to be more opinionated and less deferential to all forms of authority, including political leadership. Their confidence and self-assertion may cause resentment by their less elite compatriots who increasingly retreat from voting and other political activity that could defend their interests and perhaps improve policy outcomes. Trust in non-military institutions—Congress, the Supreme Court, the presidency, candidates for high office, religious entities, and markets—has declined markedly, creating additional barriers to issue resolution. This disaffection saps public confidence in the very possibility of viable solutions. After all, the thinking goes, if none of those institutions can solve problems, there is little hope for effectively addressing them. Mistrust also reduces politicians’ ability to assemble and legitimate the power necessary to overcome the inertia that is probably the most decisive force in politics. As chapter 5 explains, the parties traditionally performed this function by framing issues, organizing alternative remedies, taking a more long-term view, and appealing to the median voter, but they have been systematically weakened. This has left us
with a more chaotic, free-wheeling, volatile, and polarized politics. And with much of the public’s energy siphoned off by cultural and technological distractions, the remaining energy is that much harder to concentrate and mobilize in order to resolve hard issues and change policy.

Many other factors make hard issues even harder today. Globalization and increased foreign competition, for example, constrain policy choice in the fields of immigration (chapter 3) and to a lesser extent poverty (chapter 2), as well as in many other important issue-areas such as taxation, financial regulation, trade, and antitrust.* A perpetual news cycle and ubiquitous social media inhibit deliberation, confidentiality, compromise, and deal-making. Likewise, some “good government” measures—for example, the elimination of congressional earmarks, the decentralization of power within Congress, “sunshine laws,” and term limits—have made it harder to strike enduring political bargains. And a strong case can be made (as we shall see in chapter 4) that the often well-intended campaign finance reforms enacted since the 1970s have contributed to the same rigidifying, polarizing effects on our politics.

DO WE NEED MORE PUBLIC DEBATE ON HARD ISSUES?

People hoping to stimulate more discussion of some issue (or who want to see it resolved in a particular way) often call for a “public debate” on it. (Indeed, I just used the term!) Presidents Clinton and Obama, for example, each advocated a public debate on race relations following some notable incident or development. Similarly, many have urged that a public debate on inequality is long overdue. As I write, many editorialists call for more public debate on reducing sexual assaults on campus and elsewhere. What do they mean by the term?

In truth, all the issues discussed in this book are debated by the public all the time. These debates occur in countless forms and ven-

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* As Richard Buxbaum has noted, globalization has also multiplied the number and types of international fora in which policy issues in the United States may be shaped, making them that much harder to resolve in most cases.
ues, many of them opaque to outsiders: conversations within families and among neighbors, friends, colleagues, and strangers; traditional media (TV, radio, newspapers, magazines, books) and Internet postings on countless websites; school and college classrooms; church sermons; hearings and interactions among legislators at all levels of government; civic and trade associations; and within people’s minds, as they ponder what they have heard, imagined, seen, thought, and remembered. These remarkably diffuse viewpoints on such issues bubble up, down, and across through osmotic, low-visibility processes of information, communication, and influence. Those who assert that we lack a genuine public debate evidently entertain a very crabbed conception of what such a debate is and of how it shapes citizens’ consciousness. (Often, the real anxiety prompting such assertions is that too many other Americans disagree with them about these issues, and that further instruction and persuasion are therefore needed.) It is in the nature of hard issues that they seldom can be resolved finally and conclusively. This is true even of Supreme Court decisions such as _Roe v. Wade_ which purport to settle an issue once and for all but instead intensify the debate over it.

The fact that hard policy issues like those discussed in this book are continually being debated says nothing, of course, about the quality of these debates—and specifically, about how well they meet our democracy’s need to resolve these issues wisely. Daniel Yankelovich, a leading expert on public opinion, has usefully distinguished between mass opinion (the poor-quality, volatile public opinion often captured in polls), and public judgment (a more mature public opinion marked by citizens’ reflection and responsibility). Now surfeited with mass opinion, we desperately need more public judgment.

**WHAT DO I MEAN BY CLEAR THINKING ABOUT HARD ISSUES?**

My main purpose in this book is to help Americans _think_ more clearly about hard public issues. My method is to present my analyses of the five hard issues I have selected, analyses that I hope exemplify clear thinking.
What do I mean by this? Clear thinking about policy issues entails five elements or criteria:

- It rests upon *factual information* that is accurate, timely, and relevant to each important aspect of the question under consideration.
- It identifies the relevant *values* held by the public.
- It analyzes the likely *consequences* of various policy alternatives that might improve the conditions in question.
- It identifies the *trade-offs* implicated by the relevant facts, values, and options.
- It prefers the policy that is (a) most *cost-effective* (i.e., that achieves a social good at the lowest cost, or achieves the most good at a given cost); and (b) most *implementable* in light of the institutional, administrative, political, legal, and social obstacles to achieving that goal in the real world.\(^{10}\)

Some readers may object to these criteria as excessively and unrealistically technocratic for all but the relative handful of Americans who spend their lives in universities and think tanks and who have the time, training, information, and inclination to analyze public issues in this way. I call this the *intellectual capacity objection* to this kind of means-end rationality. It is a serious objection, which I shall take up shortly.

Some readers may also entertain what amounts to a *moral objection* to this kind of reasoning; they doubt whether it is right to think about complex human issues in this way. I believe that this moral critique is quite wrong. Obviously, one cannot think clearly about a hard issue without considering the values affected by it. No value is served by ignoring the facts about how different courses of action will affect it. Ignorance about the actual relation between means and ends is more likely to undermine those ends—whatever they may be—than to advance them. Yet taking values seriously enough to analyze the trade-offs that pursuing them entails is essential to truly understanding those values: knowing what they are, how they interact with other values, and thus how much we truly care about them. If one truly wills an end, it has been said, then one must will the necessary means to
that end. Morally speaking, then, one should ascertain what those means are—which costs and trade-offs they necessarily entail—before embracing the end or value to which the means is instrumental.

As we shall see in the chapters that follow, it is precisely this means-end relationship that clear thinking can help us see. Indeed, as Paul Krugman observes, “a commitment to facing hard choices as opposed to taking the easy way out [is] an important value in itself.” Means-end rationality is desirable even when we concede the intellectual capacity objection and our need to “muddle through” with a more limited form of rationality given the real-world constraints of limited analytical resources and politics. Decisions about hard issues cannot be perfectly rational, but clear thinking can improve them.

Clear thinking focuses not only on means-end rationality but also on the processes for deciding which policies to adopt. A democratically effective process must be broadly participatory from the grassroots up; be likely to yield correct answers to the questions put to it and thus approach the truth of the matter; facilitate compromise among affected groups; be considered legitimate even by those who don’t get their way; and reveal the necessary trade-offs. Federal policy making—generally and comparatively speaking—scores quite well on the process values of participation, truth-seeking, compromise, and legitimacy, while often scoring poorly on the decisions’ substantive merits.

Process also matters because we live not in a pure democracy but in a representative one where accountability to “We the People” is paramount and where a constantly evolving public debate moves seamlessly, almost invisibly, back and forth between officials and the rest of us. In reality, officials enjoy some “political slack” or leeway and do not always follow public opinion. They know that most voters are ill-informed about public issues and that many citizens do not even vote. Political parties and legislative voting rules also can be used to increase political slack for officials, and policies almost always give

* This is the term used by Charles Lindblom in his seminal model of complex decision making, “The Science of Muddling Through,” 19 Public Administration Review 79 (1959).
them hard-to-control discretion. This slack is desirable to an extent. We should neither want nor expect our officials to act as mere automatons, simply registering citizen preferences. The hope is that we elect them because we think that they have superior judgment in political and policy matters, know more about how government actually works, are embedded in institutions designed to encourage deliberation, and are skilled at negotiation and compromise under conditions that voters cannot easily monitor and anticipate. Edmund Burke famously told his Bristol constituents that he would “betray” them if he sacrificed his “judgment” to their “opinion”—a much-needed antidote to the pandering that is all too common among today’s politicians.15

WHAT IS THE QUALITY OF TODAY’S PUBLIC DEBATE ON HARD ISSUES?

Public debate on hard issues today is woefully deficient, which is why I have gone to the trouble to write this book. This deficiency largely reflects the public’s ignorance about such issues and the obstacles they would have to overcome in order to dispel that ignorance. Studies of what voters know about the important issues of the day invariably find egregious levels of ignorance about the most basic facts.* Having found that only 50 percent of citizens correctly answer seven out of ten questions on the citizenship exam compared with 97.5 percent of those seeking naturalization, the Foss Institute has convinced a growing number of states to make passage of a test of such knowledge a prerequisite for high school graduation.16

Some analysts, while conceding this inattention and ignorance, dismiss these findings on various grounds: that voters’ ignorance is actually rational because they use “information shortcuts” such as party identification, endorsements by opinion leaders, and other cues to decide whom to vote for; that the most ignorant citizens don’t

* This ignorance is by no means limited to policy issues. Even more remarkable is the fact that most Americans profess strong religious convictions but appear to know little about the most basic religious ideas and facts. For examples, see Peter H. Schuck, Diversity in America: Keeping Government at a Safe Distance (2003), pp. 269–70.
bother to vote at all; that aggregating large numbers of voters substi-
tutes the “wisdom of crowds” for widespread ignorance; that they vote
the same way they would vote if they were better informed; that they
are well enough informed about how well they are doing to vote ra-
tionally; and that even if none of these explanations produces rational
voting, this irrationality does not affect electoral outcomes. Political
scientist Larry Bartels refutes each of these “rationalizations” of ir-
rational voting behavior, showing that such behavior indeed affects
many important electoral and policy outcomes.17

Another reason for citizens’ ignorance is that they get much of
their information about public issues directly or indirectly from gov-
ernment officials, yet Americans increasingly lack trust in these offi-
cials to tell the truth, do the right thing, or faithfully represent their
interests. Opinion polls show that a large share of the population ac-
cepts conspiracy theories based on a belief that the government has
intentionally lied or covered up the truth—for example, with regard
to the Kennedy and Martin Luther King assassinations, the Okla-
ahoma City and 9/11 bombings, WMDs in Iraq, President Obama’s
birthplace, and many others.18 (The 2016 presidential election cam-
paign is probably deepening this belief in conspiracies.) Convinced
that officials fabricate the facts, such voters would have to go to great
lengths to inform themselves independently of the government—a
costly expedition that few of them seem likely to undertake.

But it is not only conspiracy theorists who doubt the government’s
versions of the facts. In reality, our government sometimes does lie to
us, and engages in what comedian Stephen Colbert terms “truthi-
ness”—and not just in national security matters where obfuscation is
sometimes necessary.

The populist belief that ordinary people are more trustworthy
than elites is another important source of mistrust. Rooted in our
history and social practice,* populism tends to flatter ordinary citi-
zens’ intuitions—their “commonsense” beliefs—about public issues

* Suspicion of elites seems to be growing elsewhere as well. See Neil Irwin, “Scotland’s
Independence Vote Shows a Global Crisis of the Elites,” New York Times, September 18,
2014.
that are in fact highly complex and can only be understood through careful study and analysis. Politicians often pander to this populist strain: “The people against the interests” is a prominent trope in almost all political campaigns, and both the Republican and Democratic candidates for the presidency in 2016 used this trope constantly even though both are themselves wealthy elites. Moreover, candidates often use populist demonology to focus voters’ attention on a policy proposal’s provenance rather than on its merits. This tactic encourages the use of ad hominem arguments which assume that all one really needs to know to assess a fact or position is who is advancing it on behalf of which group. The idea that we are known by the company we keep is better advice to our children than to those wishing to assess policy proposals. Such mental shortcuts are tempting—like any simplistic process, they reduce our decision costs—but clear thinking requires more rigor and effort.

Adding to people’s ignorance about public issues are certain patterns of irrationality in the face of facts. Four sources of this irrationality are well established in the experimental psychology and behavioral law-and-economics literatures. These sources are: (1) cognitive biases and logical errors; (2) predictably incoherent judgments; (3) a propensity to assess objective evidence so as to maintain consistency with preexisting cultural or ideological commitments; and (4) deeply rooted moral schema that have this same distorting effect.19 These systematic distortions have a radical and quite disturbing implication revealed by many tests of “cultural cognition” on many policy issues: The more people know about the facts bearing on an issue, the more polarized and unyielding both sides may become.20

This discussion by no means exhausts the reasons for the public’s ignorance about hard policy issues. For example, I have not discussed here the problem of information costs,21 the role of interest groups in strategically deploying often misleading information and influence,22 unequal access to information,23 or changing patterns of communication and consumption of information on public affairs.24 Chapter 5 will note the declining deference by ignorant voters to better-informed political professionals. But the main points should by now be clear:
Citizens do not yet know what they need to know in order to make informed decisions about hard issues. This ignorance significantly affects outcomes, it cannot easily be overcome, and it places the quality of government decisions at grave risk. Indeed, the wonder is that public policy is not even worse than it is.

**HOW MUCH MUST CITIZENS KNOW IN ORDER TO THINK CLEARLY, AND HOW REALISTIC IS THIS?**

This brings us to a difficult question that I foreshadowed earlier: What can we realistically expect people to know or learn about hard issues? The health of a liberal polity like ours—indeed, its very survival—depends on a large body of citizens actively engaging with public questions, deliberating about them, selecting representatives to resolve them, and then holding those representatives accountable. This need for constant civic engagement is perhaps greater in America than in other liberal democracies where governing elites tend to enjoy greater insulation and deference from public opinion and thus enjoy a freer rein.

The obstacles to attaining this civic engagement are immense. Despite many reformers’ efforts to promote more deliberation and genteel debate, American politics is more like a gigantic, endless wrestling match with few if any rules—war without the violence. Americans are busy with other activities in the market and civil society, and their minds are occupied by many matters other than policy and politics; in this sense, at least, their ignorance may well be rational. They are not policy wonks—and judging by how they spend their time, they do not want to be. People who have studied the so-called policy sciences (economics, politics, public administration, law, sociology, etc.) in any depth are a minority of even the well-educated. Much issue-relevant information is inevitably technical and boring. Unfamiliar, difficult concepts may be needed to understand and deliberate about the issue. Not only is there no clear remedy for the public’s ignorance, inattention, and insouciance; as we saw, many would deny that this is even a problem.
If one believes, as I and many others do, that public ignorance about hard issues poses a genuine and growing dilemma for our democracy, then our condition is unquestionably grave. Many thoughtful commentators have recognized this challenge, but no solution seems fully adequate to it. One approach, discussed in chapter 5, is to encourage more structured, carefully designed deliberations by citizens before elections. Another is for citizens and officials to rely more on experts who possess specialized training in the relevant policy areas, yet, as noted earlier, the experts often disagree and the public tends to mistrust them anyway. A third, technological approach is the proliferation of websites that can better inform the public about these issues—but of course citizens need to be interested and conversant enough to search the Web for them in the first place. A fourth—a hardy perennial with many conservatives—is to shrink government’s responsibilities and thus the number of hard issues that must be resolved publicly. But as I have explained elsewhere, conservative administrations have actually presided over a steady expansion of government, a pattern that for structural reasons seems likely to continue. Finally, we can continue a status quo in which voters defer to politicians and parties that specialize in such issues and over time have built reputations for identifying and representing the public interest. But the deep disillusionment of voters with the parties and politicians so evident in the 2016 election campaign suggests that even this familiar approach is losing ground.

WHAT CAN THIS BOOK HOPE TO CONTRIBUTE?

In the end, there simply is no substitute for a well-informed electorate concerning public affairs. My goal here is to encourage clear thinking about the five hard issues analyzed in this book and, by extension, about other issues not discussed here. I must emphasize that clear thinking about policy issues is not the same as support for specific outcomes. In truth, I do not much care where readers come out on these issues so long as they approach them with what I have called clear thinking. Precisely because these are all hard issues, plausible
arguments can be mustered on various sides, arguments that we should want our fellow citizens to ponder before reaching their own conclusions.

This distinction between how we should think about issues and where we should come out on them might seem disingenuous. After all, I do not write on a blank slate but rather have opinions on these issues (many published elsewhere) that I have reached only after careful study. In the case of affirmative action (chapter 4), for example, my own analyses have brought me to firm conclusions on the issue not only about how people should think about it but also on how I think they should come out in the end.* At the same time, I also believe that reasonable people can—and manifestly do—take a different view. As we have seen, this is part of what makes an issue hard in the first place.

My views on the merits of the four other issues considered here, however, are far less firm. Indeed, it was partly a desire to learn more about them that prompted me to undertake this project. Even though I have taught and written about immigration (chapter 3) for more than thirty years, I am less tendentious about it. Immigration, as I shall explain, raises a complex, vexing, and multifaceted set of policy issues. Although my previous work on immigration informs those issues, it leaves some of them unresolved for me.28 The other issues considered here—poverty (chapter 2), campaign finance (chapter 5), and religious accommodation (chapter 6)—are relatively unexplored territory for me. But while I am more agnostic about policy outcomes in these areas, I am convinced—and shall try to persuade the reader—that some ways of thinking about them and their policy implications are more coherent, rigorous, and persuasive than others.

Our democracy is an ongoing experiment—about citizens’ ability and willingness to inform themselves and to think clearly and carefully enough to govern themselves wisely. Certainly, there are reasons

*I shall not keep the reader in suspense. I conclude that affirmative action on behalf of blacks is constitutional—but poor public policy. Preferences for other groups are even less justified. See chapter 5.
to despair. Winston Churchill, although a committed democrat, used his signature puckishness to mock our civic ignorance: “The greatest argument against democracy is a five-minute conversation with the average voter.” Another danger signal is a World Values Survey indicating that young Americans are less and less committed to the most basic liberal democratic values. Yet there are also reasons, both theoretical and practical, to think that America’s experiment in self-government has succeeded well enough to justify my optimism that we can improve its performance, citizen by conscientious citizen. This book’s raison d’être is that there is no good alternative to such an effort.

THE STRUCTURE OF EACH CHAPTER

Each chapter is designed to help the reader understand the hard issue featured there by mapping and then analyzing it. Each begins by presenting the issue’s context—the relevant history, law, institutions, politics, and public opinion. Next, it disaggregates the issue into its main components. Beginning with key definitional and measurement questions (as in the case of poverty), it then elaborates the competing norms invoked by different groups and identifies the key factual claims and uncertainties. (Those who dominate public debates on these issues often suppress or ignore these uncertainties, either deliberately or because of their own ignorance.) Finally, each chapter discusses and assesses the main policy proposals on the table in that area. Be forewarned: As a self-styled “militant moderate,” I am more inclined toward incremental policy changes than radical ones. This is particularly so in areas where constitutional issues may well be implicated—for example, campaign finance, religious accommodation, and affirmative action. But all five issues are sufficiently complex that, the more radical the change is, the more we can assume that unforeseen and possibly irreversible consequences will ensue.

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To analyze hard issues is, well, hard work. It demands a lot from readers and will likely challenge their intuitions and assumptions about these problems. But the potential payoff is great: a deeper understanding of our complex social reality and some of our knottiest domestic policy problems. I hope that this will help my readers to become more enlightened, engaged citizens.