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Out of Sight, out of Mind: How Opportunity Cost Neglect Undermines Democracy

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OUT OF SIGHT, OUT OF MIND: HOW OPPORTUNITY COST NEGLECT UNDERMINES DEMOCRACY

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ABSTRACT

Every government program has an opportunity cost, which consists of the private and public goods that society must forgo to make the program possible. In evaluating government programs, rational voters would take opportunity costs into account. Unfortunately, opportunity costs are usually implicit, and psychologists have shown that decision makers tend to irrationally ignore implicit information while giving too much weight to salient situational elements. This Article presents evidence that the bias against implicit information causes voters to neglect the opportunity costs of government programs. The Article also explains for the first time the implications of opportunity cost neglect for democracy.

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Voters' neglect of opportunity costs has far-reaching consequences. Ignoring the sacrifices required by government programs makes them more appealing. As a result, opportunity cost neglect artificially increases the demand for government spending, tax expenditures, and regulation. In particular, the failure to consider opportunity costs helps explain why the federal government's budget is on an unsustainable path. Opportunity cost neglect causes voters to demand a high level of government spending even though they are unwilling to pay for it, which leads to chronic budget deficits.

Opportunity cost neglect also influences the government's choice of policy instruments. Voters tend to support policies that conceal tradeoffs. This explains why voters generally prefer tax expenditures to similar direct spending programs. It also explains why, despite economists' objections, voters prefer to address global warming through command-and-control regulations rather than a more efficient carbon tax.

In addition, voters' neglect of opportunity costs is relevant to the debate over the proper role of government. Legal scholars usually emphasize the market failures resulting from irrationality. They argue that irrational consumers make bad choices that justify paternalistic government intervention. But opportunity cost neglect and other failures of rationality also result in government failure. Irrational voters demand policies that they would otherwise oppose, which results in substantial damage to society. Consequently, contrary to conventional wisdom, irrationality arguably strengthens the case for limited government.

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INTRODUCTION

Psychological research meticulously documents human failings, including mental limitations and cognitive and emotional biases.[1] Legal scholars, including scholars in the behavioral law and economics movement, have used this research to justify paternalism.[2] In particular, these scholars challenge the rational actor model of conventional law and economics, including the notion that individuals act-

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[1] *E.g.*, Jeremy A. Blumenthal, *Emotional Paternalism*, 35 FLA. ST. U. L. REV. 1, 30-50 (2007); THOMAS GILOVICH ET AL., HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT (2002); Cass Sunstein, *Introduction*, *in* BEHAVIORAL LAW AND ECONOMICS 1, 1-10 (Cass Sunstein ed., 2000); Colin Camerer, *Individual Decision Making*, *in* THE HANDBOOK OF EXPERIMENTAL ECONOMICS 587, 587-703 (John Kagel & Alvin Roth eds., 1995).

[2] For an introduction to behavioral law and economics, see Christine Jolls et al., *A Behavioral Approach to Law and Economics*, *in* BEHAVIORAL LAW AND ECONOMICS 13, 13-58 (Cass Sunstein ed., 2000).

ing in a free market will make optimal decisions without government's help.[3] As a result, law journals have in recent years published a number of articles claiming that government should intervene in the market to save people from their own irrational choices.[4]

Because of their focus on market participants and paternalism, most legal scholars have overlooked the possibility that irrationality increases the risk of government failure.[5] By contrast, scholars in the emerging field of behavioral public choice conclude that irrationality often causes voters to favor policies that they would not otherwise support and that these policies are detrimental to the public interest.[6]

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[3] *Id.*

[4] *E.g.*, Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. PA. L. REV. 1 (2008); Jeremy A. Blumenthal, *Emotional Paternalism*, 35 FLA. ST. U. L. REV. 1, 30-50 (2007); Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. CHI. L. REV. 1159 (2003); Colin Camerer et al., *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism,"* 151 U. PA. L. REV. 1211 (2003); Jonathan Gruber, *Government Policy Toward Smoking: A View from Economics*, 3 YALE J. HEALTH POL'Y L. & ETHICS 119 (2002).

[5] Not all behavioral law and economics scholars have completely ignored the implications of irrationality for democracy. On the contrary, several of these scholars have made important contributions to the study of irrationality among voters, politicians, bureaucrats, and judges. *E.g.*, Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777 (2001); Cass Sunstein, *Cognition and Cost-Benefit Analysis*, 29 J. LEGAL STUD. 1059 (2000) [hereinafter, Sunstein, *Cost-Benefit Analysis*]; Timur Kuran & Cass Sunstein, *Availability Cascades and Risk Regulation*, 51 STAN. L. REV. 683 (1999). But the movement's primary focus has been on the ways in which irrationality causes markets to fail.

[6] *See generally* Slavisa Tasic, *The Modern Growth of Government Springs More from Ideas Than from Vested Interests*, 14 INDEP. REV. 549, 562-63 (2010) [hereinafter, Tasic, *Growth of Government*]; David Hirshleifer, *Psychological Bias as a Driver of Financial Regulation*, 14 EUROPEAN FIN. MGMT. 856 (2008); BRYAN CAPLAN, THE MYTH OF THE RATIONAL VOTER (2007). Although this article focuses on irrationality among voters, a related strand of literature focuses on irrationality among politicians and bureaucrats. *E.g.*, Gary Lucas, Jr., *Paternalism and Psychic Taxes: The Government's Use of Negative Emotions to Save Us from Ourselves*, 22 S. CAL. INTERDISC. L.J. 227, 290-95 (2013); Slavisa Tasic, *Are Regulators Rational?*, 17 J. DES ECONOMISTES ET DES ETUDES HUMAINES 1 (2011) [hereinafter, Tasic, *Are Regulators Rational?*]; Slavisa Tasic, *The Illusion of Regulatory Competence*, 21 CRITICAL REV. 423 (2009); Mario Rizzo & D. Glen Whitman, *Little*

Research in behavioral public choice counsels caution and a healthy skepticism toward government intervention. By ignoring this research, legal scholars risk exaggerating the appropriate scope of government as well as advocating policies that are politically unrealistic or even dangerous.

This Article contributes to the behavioral public choice literature by explaining for the first time how opportunity cost neglect, which is a particular failure of rationality, leads to government failure. The rational actor model assumes that prior to choosing an option, decision makers consider its opportunity cost, which is the highest valued alternative that the decision maker must forgo to pursue the option.[7] A rational consumer choosing between a $1,000 stereo and a $700 stereo would consider the best alternative use of the $300 that she could save by purchasing the cheaper stereo. If the best alternative is downloading $300 worth of music from iTunes, then the consumer would buy the more expensive stereo only if its enhanced features make it more desirable than the cheaper stereo plus the music downloads. This approach to decision making has considerable normative appeal. But several recent studies of consumer behavior suggest that people often fail to think this way.[8] Instead of focusing on forgone alternatives, people frequently restrict their attention to the focal option. They do not think about opportunity costs unless those costs are obvious from the context in which the decision is made. As a result, altering the context of a given decision by making opportunity costs more salient can change the outcome. Specifically, increasing the salience of opportunity costs generally makes particular

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Brother Is Watching You: New Paternalism on the Slippery Slopes, 51 ARIZ. L. REV. 685, 723-35 (2009); Edward L. Glaeser, *Paternalism and Psychology*, 73 U. CHI. L. REV. 133 (2006).

[7] *See infra* Part II.

[8] *See infra* Parts II and III.

purchase opportunities appear less desirable. This reduces the likelihood that consumers will spend money and increases the likelihood that when they do spend money, they will favor cheaper products over more expensive ones.

Although the existing literature focuses on consumers, opportunity cost neglect has important consequences for democracy. Systematic neglect of opportunity costs causes government policy to deviate from what it would be if voters were rational.

Because this Article is about voter irrationality, Part I describes in general terms how irrationality harms democracy. The remainder of the Article focuses specifically on opportunity cost neglect. Part II discusses the evidence of opportunity cost neglect among consumers and argues that certain findings in the consumer literature suggest that people are particularly unlikely to think about opportunity costs when acting in their capacity as voters. Part III explains how opportunity cost neglect influences the public policies that voters support. It also provides additional evidence that voters ignore opportunity costs. Part IV discusses factors that aggravate or mitigate the effects of opportunity cost neglect on public policy, including the importance of politicians and of voters' use of heuristics. Because opportunity cost neglect affects consumers as well as political actors, Part V considers whether it is more detrimental to the operation of the free market or to democracy.

To preview the conclusions, opportunity cost neglect has important implications. First, the public's demand for government spending is higher than it would be if voters were conscious of the opportunity cost in terms of forgone private goods. Also, because the public's support for government spending often stems from a failure to consider the requisite tradeoffs, voters frequently will refuse to support tax increases to pay for the spending that they demand. This helps explain chronic government budget deficits and why the federal government's budget is currently on an unsustainable path. In addition, voters will find tax expenditures, such as the home mortgage interest deduction, particularly appealing because tax expenditures reduce the salience of opportunity costs vis-a-vis direct spending programs.

Second, opportunity cost neglect affects voters' preferences regarding how the government should allocate any given level of public funds. For example, empirical evidence suggests that voters support more military spending than they would if they considered the opportunity cost in terms of forgone expenditures on other public goods.

Third, voters' demand for government regulation is artificially high because the opportunity costs of regulation are not obvious. In addition, opportunity cost neglect helps explain why voters mistakenly prefer command-and-control regulations, such as fuel economy standards, over more efficient corrective taxes, such as a carbon tax.

Fourth, because they often do not highlight opportunity costs, public opinion polls that ask about government spending and regulation do not elicit the responses that people would give if they were rational. Specifically, most polls overstate public support for government spending, tax expenditures, and regulation relative to what that support would be if people did not neglect implicit tradeoffs.

Fifth, the effects of opportunity cost neglect are exacerbated by certain other biases to which voters are prone, as well as voters' use of heuristics. For example, the government's use of low-salience taxes may cause voters to underestimate the actual dollar cost of government, in which case this error interacts with opportunity cost neglect to increase the size of government beyond the level that rational voters would support.

Sixth, the existence of opportunity cost neglect poses a significant challenge to scholars who have proposed policies that would increase support for government by making government's benefits more salient to voters.[9] Any tendency that voters have to underestimate the benefits of government will be partially, fully, or more than fully offset by the countervailing force of opportunity cost neglect, which causes government programs to appear less costly than they otherwise would.

Finally, voters' support for government programs results more from opportunity cost neglect than from careful consideration of the programs' benefits and costs. Moreover, while opportunity cost neglect probably impairs the operation of the free market, its adverse effects on government may be more severe. As a result, opportunity cost neglect provides a reason to evaluate proposals for government intervention with caution and skepticism. It also suggests the possibility that while the free market is imperfect, in some cases, it may be the lesser of two evils.

I. HOW VOTER IRRATIONALITY HARMS DEMOCRACY

Law and economics uses the rational actor model to analyze legal rules. According to that model, "[A]ll human behavior can be viewed as involving participants who maximize their utility from a stable set of preferences and accumulate an optimal amount of information and other inputs in a variety of markets."[10] In addition, rational actors have rational expectations, which means that they do not err systematically.[11] Since people are not omniscient and information is costly, they sometimes make mistaken predictions. But these mistakes are random and not biased in a particular direction.

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[9] *E.g.*, Yair Listokin & David Schizer, *I Like to Pay Taxes: Taxpayer Support for Government Spending and the Efficiency of the Tax System*, 66 TAX L. REV. 179 (2013).

[10] GARY BECKER, THE ECONOMIC APPROACH TO HUMAN BEHAVIOR 14 (1976).

[11] For a review of the literature on rational expectations, *see generally* STEVEN SHEFFRIN, RATIONAL EXPECTATIONS (2d ed., 1996). *See also* CAPLAN, *supra* note 6, at 98-99; Jolls et al., *supra* note 2, at 14-15.

While the rational actor model yields useful insights, substantial psychological research challenges the notion that the model accurately describes human decision making and predicts people's behavior.[12] In particular, psychologists and behavioral economists have shown that people suffer from biases that cause them to err systematically in certain circumstances.[13] Behavioral public choice examines the consequences of these findings for democracy.[14]

To fully appreciate how irrationality harms democracy, we first need to understand what motivates voters to support certain policies. Empirical evidence suggests that voters often support policies that they believe are in the public interest even if those policies do not align with their own self-interest narrowly construed.[15] In other words, people often vote altruistically.[16] For example, young people strongly support government programs for the elderly even if they themselves do not have elderly parents and do not expect to rely heavily on old-age programs when they retire.[17] Moreover, income

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[12] *See supra* note 1.

[13] *See supra* note 1.

[14] *See supra* note 6.

[15] *E.g.*, CAPLAN, *supra* note 6, at 148-51; Alan Blinder & Alan Krueger, *What Does the Public Know about Economic Policy, and How Does It Know It?*, 1 BROOKINGS PAPERS ON ECON. ACTIVITY 327, 362-86 (2004); Bryan Caplan, *Libertarianism against Economism: How Economists Misunderstand Voters and Why Libertarians Should Care*, 5 INDEP. REV. 539 (2001) [hereinafter Caplan, *Economism*]; Leonie Huddy et al., *Compassion v. Self-Interest: Support for Old-Age Programs among the Non-Elderly*, 22 POL. PSYCH. 443 (2001); Carolyn Funk, *The Dual Influence of Self-Interest and Societal Interest in Public Opinion*, 53 POLITICAL RESEARCH QUARTERLY 37, 52-54 (2000); LEIF LEWIN, SELF-INTEREST AND PUBLIC INTEREST IN WESTERN POLITICS 29-45 (1991); David Sears & Carolyn Funk, *Self-Interest in Americans' Political Opinions*, *in* BEYOND SELF-INTEREST 147, 147-70 (Jane Mansbridge ed., 1990); Jack Citrin & Donald Green, *The Self-Interest Motive in American Public Opinion*, 3 RESEARCH IN MICROPOLITICS 1, 10-17 (1990).

[16] CAPLAN, *supra* note 6, at 148-51; *see also* Tasic, *Growth of Government*, *supra* note 6, at 549, 558.

[17] Huddy et al., *supra* note 15, at 444, 451-62.

has a "remarkably small" effect on political party identification.[18] Many rich people are Democrats, and many poor people are Republicans, despite the perception that Democrats are more likely to raise taxes on the rich and give money to the poor.[19]

Altruistic voting flies in the face of conventional wisdom. Abundant evidence suggests that people are largely selfish.[20] For example, Americans give away only about two percent of their incomes to charity.[21] If people are generally selfish, then why would they become unselfish in the voting booth?

One possibility is that the personal consequences of many policy proposals are not salient to most voters, and "when the costs and benefits are obscure, support becomes increasingly unrelated to the personal 'price.'"[22] Consistent with this hypothesis, the few instances in which researchers have found that self-interest plays a significant role in voters' policy judgments generally involve proposals for which the personal consequences are "1. visible, 2. tangible, 3.

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[18] Caplan, *Economism, supra* note 15.

[19] For example, after controlling for race, income had very little influence over the decision to vote for Barack Obama or Mitt Romney in the 2012 election. Alan Abramowitz, *The Minimal Class Divide in American Politics: Why Growing Income Inequality Does Not Explain Partisan Polarization*, SABOTO'S CRYSTAL BALL (May 1, 2014), http://www.centerforpolitics.org/crystalball/articles/the-minimal-class-divide-in-american-politics/ ("African Americans, regardless of income, voted overwhelmingly for Barack Obama. Whites with family incomes of greater than $150,000 were only slightly more likely to vote for Mitt Romney than whites with family incomes of less than $30,000.").

[20] I generally agree with Bryan Caplan who, drawing upon evolutionary psychology, argues that "altruism toward blood relatives in proportion to shared genetic inheritance [is] an expression of self-interest." Caplan, *Economism, supra* note 15; *see also* RICHARD EPSTEIN, SIMPLE RULES FOR A COMPLEX WORLD 310-11 (1995) (making a similar argument).

[21] Suzanne Perry, *The Stubborn 2% Giving Rate*, CHRONICLE OF PHILANTHROPY, June 17, 2013, *available at* https://philanthropy.com/article/The-Stubborn-2-Giving-Rate/139811/.

[22] Citrin & Green, *supra* note 15, at 18.

large, and 4. certain."[23] For example, David Sears and Carolyn Funk review evidence that self-interest influences taxpayer support for tax cuts where the cuts are large and highly publicized and it is clear who will benefit.[24] Nonetheless, Sears and Funk conclude that the "public thinks about most political issues, most of the time, in a disinterested frame of mind."[25]

A second explanation for voter altruism stems from two facts. First, altruism is a consumption good that confers psychological and reputational benefits.[26] Second, in an election with many voters, the probability that one vote will decide the outcome is virtually zero.[27] As a result, altruism in voting has almost no personal cost to the individual voter. In Bryan Caplan's words, "Voting to raise your taxes by a thousand dollars when your probability of decisiveness is 1 in 100,000 has an expected cost of a penny."[28] So even if a particular voter is aware that a certain policy would affect him adversely, he may vote for a politician who favors that policy. Because his vote will not be decisive, he can obtain the benefits of acting altruistically without any personal sacrifice. Under these circumstances, "we should expect voters to 'stuff themselves' with moral rectitude," which likely explains why wealthy Hollywood actors support Democratic politicians who promise to increase their taxes substantially.[29] Voting for more redistribution allows people to acquire the benefits of altruism at a much lower personal cost than they would incur by actually donating their own money to charity.

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[23] Citrin & Green, *supra* note 15, at 18.
[24] Sears & Funk, *supra* note 15, at 159-70.
[25] Sears & Funk, *supra* note 15, at 170.
[26] CAPLAN, *supra* note 6, at 150.
[27] DENNIS MUELLER, PUBLIC CHOICE III 304-05 (2003).
[28] CAPLAN, *supra* note 6, at 150.
[29] CAPLAN, *supra* note 6, at 151.

If voters were rational, altruistic voting would generally have benign effects. To understand why, first recognize that altruistic voters support policies and politicians that they believe are best for society. So a democracy comprised of altruistic voters will maximize social welfare unless voters have mistaken beliefs about which policies and politicians are in fact best.[30]

Would rational voters mistake bad policies and politicians for good ones? Collecting and processing political information is costly, and as already noted, a single vote rarely decides an election. So rational voters generally have no incentive to become informed about politics and every incentive to remain "rationally ignorant."[31] In fact, empirical evidence confirms that many voters know little about politics and policy.[32] Because of their ignorance, rational voters might make mistakes about what policies and politicians to support.

At first glance, rational ignorance seems troubling for democracy. But the mistakes of rationally ignorant voters could very well be inconsequential.[33] Imagine an election between Candidate A and Candidate B, and assume that Candidate A is objectively better for the country as a whole. Rationally ignorant voters, if they vote at all, must guess randomly as to which candidate is best. But because the

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[30] CAPLAN, *supra* note 6, at 152.

[31] The literature on rational ignorance is vast. For a recent review, see ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER 62-89 (2013). For a textbook description of the concept, see JAMES GWARTNEY ET AL., MICROECONOMICS: PRIVATE AND PUBLIC CHOICE 113-14 (2010). Finally, for a recent critical review of the rational ignorance literature, see CAPLAN, *supra* note 6, at 94-113.

[32] *E.g.*, SOMIN, *supra* note 31, at 17-61; MICHAEL DELLI CARPINI & SCOTT KEETER, WHAT AMERICANS KNOW ABOUT POLITICS AND WHY IT MATTERS 62-104 (1996); Benjamin Page & Robert Shapiro, *The Rational Public and Democracy*, *in* RECONSIDERING THE DEMOCRATIC PUBLIC 35, 37-39 (George Marcus & Russell Hanson eds., 1993) [hereinafter Page & Shapiro I].

[33] DONALD WITTMAN, THE MYTH OF DEMOCRATIC FAILURE (1995); CAPLAN, *supra* note 6, at 6-9, 94-113.

guesses of rational voters are not biased in a particular direction, each voter has a 50 percent chance of selecting either candidate. So if the electorate is sufficiently large, the two candidates will split the vote equally. Fortunately, for various reasons, some voters happened to be informed. Perhaps political information is relevant to their jobs or they view politics as a hobby. As long as at least some voters are knowledgeable about politics and policy, they will be in a position to break the tie among those who are rationally ignorant. Informed voters will know that Candidate A is superior. They will vote accordingly, and the better candidate will win the election.

More generally, because rationality entails lack of systematic bias, the errors of rationally ignorant voters will be random and will tend to offset one another.[34] As a result, even if the informed voters constitute a small fraction of the electorate, they will have disproportionate power, and government policies generally should reflect their

[34] Because random errors tend to offset one another, many scholars claim that the collective judgment of a group of people (e.g., voters) will generally be accurate even if most of the individuals in the group are uninformed and error prone. This phenomenon is often referred to as the wisdom of crowds. For a recent review of the literature on the wisdom of crowds, see Simmons et al., *Intuitive Biases in Choice versus Estimation: Implications for the Wisdom of the Crowds*, 38 J. CONSUMER RESEARCH 1, 1-2 (2010). *See also* JAMES SUROWIEKI, THE WISDOM OF CROWDS (2004); Tom Hoffman, *Rationality Reconceived: The Mass Electorate and Democratic Theory*, 12 CRIT. REV. 459, 470 (1998); David Austen-Smith & Jeffrey Banks, *Information Aggregation, Rationality, and the Condorcet Jury Theorem*, 90 AM. POL. SCI. REV. 34, 34 (1996); WITTMAN, *supra* note 33, at 15-17; Page & Shapiro I, *supra* note 32, at 40-41; Krishna Ladha, *Condorcet's Jury Theorem in Light of de Finetti's Theorem: Majority-Rule Voting with Correlated Votes*, 10 SOC. CHOICE & WELFARE 69 (1993); S. Berg, *Condorcet's Jury Theorem, Dependency among Jurors*, 10 SOC. CHOICE & WELFARE 87 (1993); Philip Converse, *Popular Representation and the Distribution of Information*, *in* INFORMATION AND DEMOCRATIC PROCESSES 369, 377-85 (John Ferejohn & James Kuklinski eds., 1990). For critiques of the wisdom-of-crowds hypothesis, see SOMIN, *supra* note 31, at 110-17; Bryan Caplan, *Majorities against Utility: Implications of the Failure of the Miracle of Aggregation*, 26 Soc. Phil. & Pol'y 198 (2008) [hereinafter Caplan, *Majorities against Utility*]; and CAPLAN, *supra* note 6, at 6-9.

views.[35] In other words, democracy will deliver results favored by informed voters.

At this point, a critic of democracy might object that rationally ignorant voters will in fact be systematically biased because their ignorance makes them vulnerable to propaganda.[36] Perhaps powerful special interest groups aided by self-interested politicians and bureaucrats can trick voters into supporting policies that conflict with the public interest. But as long as they are rational, uninformed voters will be wary of political actors who have more information than they do and who might be motivated by self-interest. Uninformed voters will rationally discount propaganda so that special interest groups and politicians cannot easily deceive them.[37]

The preceding analysis suggests that as long as voters are rational, democracy can work well even if most voters are uninformed. Because they are generally altruistic, voters will support policies that they believe promote the public interest, and their rationality ensures that their policy judgments will not suffer from systematic errors.

This begs the question: are voters rational? If we define rationality to include a lack of systematic bias, then a substantial amount of evidence points to the conclusion that the answer is no. For instance, Bryan Caplan provides evidence that voters suffer from various biases, including "antiforeign bias, a tendency to underestimate the economic benefits of interaction with foreigners."[38] Antiforeign bias,

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[35] *See supra* note 34.

[36] For a summary of this argument, including citations to the relevant literature, see CAPLAN, *supra* note 6, at 103-04.

[37] CAPLAN, *supra* note 6, at 103-06; Reiner Eichenberger & Angel Serna, *Random Errors, Dirty Information, and Politics*, 86 PUB. CHOICE 137, 142 (1996) (arguing that "systematic errors [by voters] are inconsistent with rational expectations"); WITTMAN, *supra* note 33, at 15.

[38] CAPLAN, *supra* note 6, at 36 (italics omitted); Bryan Caplan, *Rational Ignorance versus Rational Irrationality*, 54 KYKLOS 3, 15-16 (2001) [hereinafter Caplan, *Rational Irrationality*].

which stems from a deep-rooted suspicion of those who are different from ourselves, causes voters to support tariffs and other protectionist policies that most economists believe reduce social welfare.[39] Another example involves the availability heuristic, which is the tendency to estimate the importance and frequency of an event based upon how easy it is to recall examples of it.[40] The availability heuristic biases the public in favor of policies that address problems that receive significant media attention, while neglecting problems that are less newsworthy but that are also more important.[41]

Voter irrationality is important because it skews elections and government policies in the wrong direction.[42] Returning to our hypothetical election, if uninformed voters are biased in favor of Candidate B, then the two candidates will not split the uninformed vote and the better candidate (Candidate A) may lose. In other words, despite their good intentions, altruistic voters may cause democracy to fail by introducing systematic bias into the policymaking process.[43]

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[39] In a survey of members of the American Economic Association, 87.5% agreed that the United States should eliminate tariffs and other trade barriers. Robert Whaples, *Do Economists Agree on Anything? Yes!*, 3 ECON. VOICE 1, 1 (2004).

[40] AMOS TVERSKY & DANIEL KAHNEMAN, *Judgment Under Uncertainty: Heuristics and Biases*, *in* JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 11 (Daniel Kahneman et al. eds., 1982).

[41] Hirshleifer, *supra* note 6, at 866-67; Kuran & Sunstein, *supra* note 5, at 718.

[42] CAPLAN, *supra* note 6, at 9-11.

[43] CAPLAN, *supra* note 6, at 152-53. I define government failure as the deviation of public policy from what it would be in a world populated by fully rational political actors (including voters). Although this definition suffices for the limited purposes of this article, I readily acknowledge its flaws. For example, the rational actor model generally assumes that people have a single set of fixed preferences. In reality, people's preferences may be subject to framing effects, time inconsistency, and similar forces. In other words, people may have multiple preference sets, in which case it

Bias among voters (whether informed or not) means that even if politicians generally give the public the policies it wants, government may fail to act in the public interest. The public's beliefs will be biased toward policies that voters would not support if they were rational. In other words, even though altruistic voters want the government to adopt policies that make society better off, irrationality causes them to support policies that have the opposite effect. For example, antiforeign bias causes voters to support tariffs because they mistakenly believe that tariffs constitute good policy. Also, unlike rational voters, irrational voters are gullible and susceptible to propaganda and deceptive forms of persuasion.[44] So voter irrationality creates an opportunity for politicians, bureaucrats, and special interest groups to take advantage of the public.

Evidence of irrationality among voters has led behavioral public choice scholars to conclude that voters often support policies that are not in the public interest. As a result, behavioral public choice justifies a healthy skepticism of government intervention, whether the intervention is motivated by conventional market failures or by a paternalistic desire to save people from their own bad decisions.[45]

II. Opportunity Cost Neglect among Consumers

This Article contributes to the behavioral public choice literature by presenting evidence that voters often neglect the opportunity costs of government programs and by explaining how this particular

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becomes difficult to determine their true preferences, including their policy preferences. In addition, public policy might not be welfare maximizing even if all political actors were rational.

[44] *See infra* Part IV.D.

[45] *E.g.*, Hirshleifer, *supra* note 6, at 856 ("[T]he behavioral approach in some ways *strengthens* the case for *laissez-faire*, and raises some new doubts about the value of regulation, because much regulation is driven by psychological bias—on the part of the *proponents*, not necessarily the regulated."); CAPLAN, *supra* note 6, at 195-97.

failure of rationality harms democracy. Because the existing literature on opportunity cost consideration focuses on consumers rather than voters, Section A of this Part discusses evidence of opportunity cost neglect with respect to consumption decisions and explains the psychological theory as to why it occurs. Section B describes factors that encourage consumers to consider opportunity costs spontaneously. Section C argues that certain findings in the consumer research suggest that people are particularly likely to ignore opportunity costs when deciding how to vote. I will present more direct evidence of voters' opportunity cost neglect in Part III.

A. Theory and Evidence

Economists often point out that prior to choosing an option, a rational decision maker will consider its opportunity cost, which is the highest valued alternative that the decision maker must forgo to pursue that option.[46] If a rational actor does not know every possible alternative and learning about them is costly, she will search for better alternatives until the expected cost of continuing the search outweighs the expected benefits.[47] But in the end, she will decide by comparing the focal option to its best known alternative. Moreover,

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[46] *E.g.*, N. GREGORY MANKIW, PRINCIPLES OF MICROECONOMICS 6 (4th ed., 2007) ("When making any decision . . . decision makers should be aware of the opportunity costs that accompany each possible action."); DAVID BESANKO & RONALD BRAEUTIGAM, MICROECONOMICS 223-27 (2nd ed., 2005); ARMEN ALCHIAN, COST, IN INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 404-15, 404 (1968) ("In economics, the cost of an event is the highest-valued opportunity necessarily foresaken."); JAMES BUCHANAN, COLLECTED WORKS OF JAMES M. BUCHANAN, VOL. 6, COST AND CHOICE: AN INQUIRY IN ECONOMIC THEORY (1969); *see also* Richard Larrick et al., *Who Uses the Cost-Benefit Rules of Choice? Implications for the Normative Status of Microeconomic Theory*, 56 ORG. BEHAVIOR & HUMAN DECISION PROCESSES 331, 334 (1993) [hereinafter Larrick et al. I].

[47] For a classic discussion of the economics of information, see George Stigler, *The Economics of Information*, 69 J. POL. ECON. 213 (1961).

for decisions that involve spending money, a rational actor should be able to readily identify the opportunity costs. As Erica Okada and Stephen Hoch explain, "Money has a readily exchangeable market, is highly liquid and fungible, and can be saved. A dollar is a dollar . . . and so what comes to mind as the next best use for money remains fairly constant across situations."[48]

Consistent with economists' claims about the normative appeal of considering opportunity costs, the evidence suggests that people who think about opportunity costs make better decisions. People who have a propensity to plan for the use of money (which may reflect greater consideration of opportunity costs) have higher credit scores than those who do not.[49] Moreover, Richard Larrick and his colleagues find that the use of cost-benefit reasoning, including considering opportunity costs, increases with intelligence and is associated with better grades in college and a higher salary.[50] Finally, experimental evidence suggests that considering opportunity costs leads people to make decisions that are consistent with the decisions they make when they have full information about all available purchase options.[51]

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[48] Erica Okada & Stephen Hoch, *Spending Time versus Spending Money*, 31 J. CONSUMER RESEARCH 313 (2004).

[49] John Lynch, Jr. et al., *A Generalizable Scale of Propensity to Plan: The Long and the Short of Planning for Time and Money*, 37 J. CONSUMER RESEARCH 108, 122-23, 125 (2010).

[50] Larrick et al. I, *supra* note 46, at 338-43.

[51] Stephen Spiller, *Opportunity Cost Consideration*, 38 J. CONSUMER RESEARCH 595, 600, 607 (2011). Spiller discusses the possibility that opportunity cost consideration may make consumers less happy. *Id.* at 606. Because it involves focusing on tradeoffs, considering opportunity costs may produce negative emotions by making each alternative appear worse than it would have absent the comparison. *Id.* While this may be true, it does not mean that ignoring opportunity costs leads to better decisions. The evidence presented in the text suggests the opposite. Instead, ignoring opportunity costs may be convenient in the short run but disastrous in the long run. *See id.* Regardless, this Article focuses on opportunity cost neglect among voters. Even if ignoring the opportunity costs of certain policies makes a particular voter happier, that does

Nonetheless, people often neglect opportunity costs, particularly if those costs are not obvious from the way in which a choice is framed. As a result, researchers have found that they are able to influence people's choices simply by manipulating the decision frame in a way that makes opportunity costs more salient.

Opportunity cost neglect is a specific instance of a more general phenomenon. When making decisions, people often passively accept the frame or characterization of the problem provided to them. They restrict their thoughts to salient situational elements, especially information explicitly presented.[52] People often ignore relevant information that remains implicit.

This means that when faced with a decision whether to buy a particular product, people frequently focus on the product itself rather than considering other options.[53] Restricting thoughts to the focal option can lead to a bad decision. In many cases, the focal option will have features that are predominantly positive either because the

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not mean that society will be better off. In fact, the opposite will be true because voters who ignore opportunity costs impose substantial social costs. *See infra* Part V.

[52] For reviews of the literature, see Spiller, *supra* note 51, at 596; Shane Frederick et al., *Opportunity Cost Neglect*, 36 J. CONSUMER RESEARCH 553, 553-54 (2009); and Daniel Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, 93 AM. ECON. REV. 1449, 1458-60 (2003). *See also*, Dennis Chong & James Druckman, *Framing Theory*, 10 ANN. REV. POL. SCI. 103 (2007) (discussing the influence of framing effects on public opinion).

Frederic Bastiat anticipated this particular insight of modern psychology over 160 years ago. *See* Frederic Bastiat, *That Which Is Seen, and That Which Is Not Seen*, *in* 1 THE BASTIAT COLLECTION 1 (Ludwig von Mises Institute, 2007).

[53] *See generally* Frederick et al., *supra* note 52; Steven Posavac et al., *Blissful Insularity: When Brands Are Judged in Isolation of Competitors*, 16 MKTG. LETTERS 87 (2005) [hereinafter *Blissful Insularity*]; Steven Posavac et al., *The Brand Positivity Effect: When Evaluation Confers Preference*, 31 J. CONSUMER RESEARCH 643 (2004) [hereinafter *Brand Positivity Effect*].

product itself is inherently attractive or because the seller's marketing techniques make it appear so.[54] As a result, consumers considering the focal option without reference to alternatives are biased in favor of it. In other words, they are more likely to purchase the focal option if they do not think about other uses of their money that may be superior.

Two types of evidence support the hypothesis that consumers often ignore implicit opportunity costs when making purchasing decisions.[55] The first is the fact that researchers are able to manipulate

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[54] Steven Posavac and his colleagues have identified a focal brand favorableness bias, which is related to opportunity cost neglect. When people consider a particular product brand in isolation, they judge it more favorably then if they consider it in connection with other brands of the same product. Posavac argues that the brand positivity effect results from selective hypothesis testing. Ideally, when evaluating an hypothesis, people would engage in comparative processing in which they consider all possible hypotheses and reach a conclusion. Instead, real people engage in selective processing, which is faster and less cognitively demanding. They evaluate only one focal hypothesis. Unfortunately, the evaluation is often biased because people search for information that supports the focal hypothesis and neglect information that rejects it, including competing hypotheses. Specific hypotheses that people consider are often prompted by the decision making context. Consumers are motivated to hold correct attitudes and make satisfying decisions so they are likely to evaluate products that catch their attention through hypothesis testing. Because consumers want to find good options, because most brands are good at performing their basic functions, and because brands are usually brought to consumers' attention through ads and packaging that are favorable, the consumer's hypothesis is likely to be that the focal brand is favorable. *Blissful Insularity*, *supra* note 53 and *Brand Positivity Effect*, *supra* note 53; *see also* David Sanbonmatsu et al., *Selective Hypothesis Testing*, 5 PSYCH. BULL. & REV. 197 (1998).

[55] There is also substantial evidence that people often neglect opportunity costs when making managerial decisions. *See generally* Sandra Vera-Munoz, *The Effects of Accounting Knowledge and Context on the Omission of Opportunity Costs in Resource Allocation Decisions*, 73 ACCOUNTING REV. 47 (1998); Gregory Northcraft & Margaret Neale, *Opportunity Costs and the Framing of Resource Allocation Decisions*, 37 ORG. BEHAVIOR & HUMAN DECISION PROCESSES 348 (1986); Robert Hoskin, *Opportunity Cost and Behavior*, 21 J. ACCOUNTING RESEARCH 78 (1983); Laurence Friedman & Bruce Neumann, *The Effects of Opportunity Costs on Project Investment Decisions: A Replication and Extension*, 18 J. ACCOUNTING RESEARCH 407 (1980); Bruce Neumann & Laurence Friedman, *Opportunity Costs: Further Evidence Through an Experimental Replication*, 16 J. ACCOUNTING

consumption choices by altering the decision frame in a way that prompts consideration of alternatives. For example, Steven Jones and his colleagues asked their subjects to decide whether they would use a $15 gift to buy a CD from one of their favorite bands.[56] Prior to making their decision, the researchers asked some subjects to generate alternative uses for the money, while other subjects were not asked about alternatives.[57] Jones found that subjects who were not asked to generate alternatives were substantially more likely to want to purchase the CD than those asked to generate alternatives.[58] In the absence of a specific instruction to consider the opportunity cost of buying the CD, many subjects apparently ignored the cost, which made the CD more attractive than it otherwise would have been.

RESEARCH 400 (1978); Selwyn Becker et al., *Opportunity Costs—An Experimental Approach*, J. ACCOUNTING RESEARCH 317 (1974). While these studies are not as relevant to this Article as those that focus on consumption decisions, the studies on managerial decision making provide additional evidence that people often fail to consider opportunity costs in a variety of circumstances.

[56] Several of the experiments discussed in this Part and in Part III, including Jones's experiment, involved hypothetical choices. Perhaps consumers are more likely to consider opportunity costs when choices are consequential because of greater incentives for doing so. Nonetheless, Shane Frederick's coffee mug experiment discussed in the text *infra* Part III.A.1 involved a consequential choice, not a hypothetical, and Frederick still found evidence of opportunity cost neglect. Similarly, Stephen Spiller has found evidence of opportunity cost neglect among real consumers outside the laboratory. *See infra* Part II.B.1.

In any event, the primary focus of this article is on opportunity cost neglect among voters, not consumers. Even if consumers become more likely to consider opportunity costs as the stakes increase, that would not tell us much about voters. A recurring theme throughout this Article is that because a single vote is unlikely to decide an election, voters have no incentive to think about the opportunity costs of government. In that sense, low-stakes experiments involving hypothetical scenarios do not differ substantially from the context in which people make voting decisions.

[57] Steven Jones et al., *Choices and Opportunities: Another Effect of Framing on Decisions*, 11 J. BEHAVIORAL DECISION MAKING 211, 220-22 (1998).

[58] *Id.* at 220-21.

In a similar experiment, Shane Frederick gave subjects two choices—either buy a video for $14.99 or not buy it.[59] For some subjects, the "not buy" option was worded as "Not buy this entertaining video;" but for others, the wording included the phrase "Keep the $14.99 for other purchases."[60] The latter decision frame, which Frederick used to cue consideration of opportunity costs, caused willingness to purchase to fall from 75% to 55%.[61]

Importantly, the rational actor model does not predict this disparity in behavior. The two decision frames in Frederick's experiment contain the same information. Even without an explicit reminder, a rational actor should recognize that "[n]ot buy[ing] this entertaining video" means "[k]eep[ing] the $14.99 for other purchases." Yet many of Frederick's subjects failed to make this seemingly obvious connection. This is consistent with the notion that decision makers frequently ignore implicit information, including opportunity costs.

The second type of evidence for opportunity cost neglect is experimental evidence that suggests that in making consumption decisions, people rarely think about outside goods. Frederick and his colleagues presented their subjects with a choice between a $1,000 stereo and a $700 stereo. They found that in the absence of a cue prompting them to do so, only 13% of subjects mentioned outside goods (e.g., "I'll have $300 left over for shopping for clothes") as a factor influencing their decision.[62] Similarly, Thomas Brown found that less than 10% of his study participants referred to outside goods

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[59] Frederick et al., *supra* note 52, at 554.
[60] Frederick et al., *supra* note 52, at 554-55.
[61] Frederick et al., *supra* note 52, at 554-55.
[62] Frederick et al., *supra* note 52, at 557.

when they were asked to describe how they determined their willingness to pay for certain items.[63]

B. Factors Contributing to Opportunity Cost Consideration

Consumers often neglect opportunity costs, but not always. The research on spontaneous consideration of opportunity costs is relevant to this Article because the circumstances that cause consumers to think about opportunity costs are generally absent from the voting context. This suggests that voters are particularly likely to ignore the opportunity costs of government programs.

Immediate Resource Constraints

People become more likely to consider opportunity costs when they face immediate resource constraints. Absent immediate resource constraints, any particular expenditure does not clearly entail sacrificing another purchase.[64] In other words, "the amount of money the consumer has at his disposal is vague so tradeoffs are rarely explicit."[65] But if money is tight, then the consumer must carefully consider which options to pursue and which to reject.[66] So immediate resource constraints supply the necessary incentive to force people to think about opportunity costs.

Stephen Spiller presents survey and experimental evidence consistent with this hypothesis. Spiller shows that the length of a person's pay cycle affects opportunity cost consideration.[67] Holding to-

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[63] Thomas Brown, *Loss Aversion without the Endowment Effect, and Other Explanations for the WTA-WTP Disparity*, 57 J. ECON. BEHAVIOR & ORG. 367, 373 (2005).

[64] Frederick et al., *supra* note 52, at 559.

[65] Frederick et al., *supra* note 52, at 559.

[66] Frederick et al., *supra* note 52, at 559.

[67] Spiller, *supra* note 51, at 598-601.

tal income constant, people with long pay cycles (e.g., monthly) receive larger paychecks than those with short pay cycles (e.g., weekly). So immediately after receiving their pay, those with longer pay cycles face reduced immediate resource constraints, and Spiller finds that they are also less likely than those with shorter pay cycles to consider opportunity costs when spending money.[68] Similarly, Spiller presents experimental evidence showing that subjects given a larger amount of money to spend are less likely to consider opportunity costs than subjects given a smaller amount of money.[69]

Accessibility

Spiller argues that opportunity costs become more accessible in two circumstances. The first is when consumers associate a resource with a typical use.[70] Spiller finds that people using a Starbucks gift card to make a purchase are more likely to think about alternative beverages that they might purchase than alternative foods.[71] People associate Starbucks with beverage purchases, so using the gift card triggers thoughts of beverage opportunity costs, but not of food opportunity costs.[72]

The second circumstance increasing accessibility occurs when a resource has limited uses.[73] Specifically, Spiller contends that consumers are more likely to consider opportunity costs when using gift cards that are associated with a narrow category of purchases than when using money.[74] Contrary to the conventional wisdom expressed above, alternative products do not come readily to mind

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[68] Spiller, *supra* note 51, at 598-601.
[69] Spiller, *supra* note 51, at 601-03.
[70] Spiller, *supra* note 51, at 597.
[71] Spiller, *supra* note 51, at 603-04.
[72] Spiller, *supra* note 51, at 603-04.
[73] Spiller, *supra* note 51, at 597.
[74] Spiller, *supra* note 51, at 597.

when thinking of money because money is tied to so many uses that it often does not prompt thoughts about any of those uses.[75] Spiller offers experimental evidence to support this claim, including evidence that people consider opportunity costs when using a Starbucks gift card but not when using a cash-like Visa gift card.[76] The Visa gift card does not make opportunity costs readily accessible because unlike the Starbucks card, people do not associate the Visa card with a particular type of purchase.

Economics Training

Researchers have found that training can be an effective tool for improving people's ability to reason.[77] In particular, Richard Larrick and his colleagues find that formal training in economics is associated with the use of cost-benefit rules in every-day decision making, including consideration of opportunity costs.[78]

C. What These Findings Suggest about Voters

If people sometimes act irrationally in their capacity as consumers, then we should not be surprised if they are even more irrational

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[75] Spiller, *supra* note 51, at 597.

[76] Spiller, *supra* note 51, at 604-05.

[77] For a review of the literature, see Richard P. Larrick, *Debiasing*, *in* BLACKWELL HANDBOOK OF JUDGMENT AND DECISIONMAKING 324 (Derek Koehler & Nigel Harvey eds., 2004).

[78] Richard Larrick et al., *Teaching the Use of Cost Benefit Reasoning in Everyday Life*, 1 PSYCH. SCI. 362, 365-66 (1990); Larrick et al. I, *supra* note 46, at 344 (1993).

In addition to those with economics training, people who have a general propensity to plan for the use of their money, e.g., by setting financial goals, are more likely to consider opportunity costs regardless of the particular circumstances of their decision. Spiller, *supra* note 51, at 596-97, 605; *see also* Frederick et al., *supra* note 52, at 558 (finding that "tightwads" who experience a greater "pain of paying" are less susceptible to opportunity cost manipulations and suggesting that this is because tightwads are more likely to consider opportunity costs that are not explicit).

in their capacity as voters. People make consumption decisions every day and consumers are often well informed about their options.[79] Moreover, consumption decisions have both immediate and long-term consequences for the consumer, giving him a strong incentive to overcome any irrational tendencies. On the other hand, voters are usually uninformed, a single vote is rarely decisive, and decisions about government policy are usually unfamiliar and difficult. Under these circumstances, irrationality in voting is likely common.[80]

Consistent with this hypothesis, certain findings related to consumers' neglect of opportunity costs suggest that people are particularly likely to ignore the opportunity costs of government programs. In the consumer research on opportunity costs, the primary finding is that if opportunity costs are implicit, then people are unlikely to consider them. For government programs, receipt of goods and services is often separated from payment, so the opportunities forgone to provide those goods and services are especially likely to remain implicit. In other words, the fact that payment and receipt of government goods and services are not contemporaneous reduces the likelihood that voters will think about opportunity costs.

People do sometimes think about implicit tradeoffs. But the factors that facilitate spontaneous consideration of opportunity costs are noticeably absent when it comes to voting. First, voters do not face

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[79] Steven Posavac and his colleagues find that consumers who are very familiar with a product category (e.g., first-class hotels) are less likely to exhibit focal brand favorableness bias, which is related to opportunity cost neglect. *Blissful Insularity*, *supra* note 53, at 93. The authors speculate that a consumer with substantial knowledge of a product category would likely be able to readily generate information about multiple alternatives. *Blissful Insularity*, *supra* note 53, at 92.

[80] *Cf.* JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 262 (1950) ("Thus the typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his real interests. He becomes a primitive again.").

immediate resource constraints. A voter can support politicians who promise to provide more government goods and services without jeopardizing other purchases that he (the voter) might make with his own funds. Since his vote will not decide the election, a particular voter's taxes will be the same regardless of which politicians and policies he supports.

Second, the opportunity costs of government programs are vague and inaccessible. Voters pay taxes with money. Unlike a Starbucks gift card, money is not a limited-use resource associated with a narrow category of purchases. Spending money often is not enough to trigger thoughts about alternative opportunities. The opportunity costs of government spending would likely be more salient if taxpayers paid their taxes using gift cards from their favorite stores rather than money. Moreover, even if paying taxes does sometimes cause voters to consider opportunity costs, the government may structure taxes in ways that reduce their salience.[81] If people are not aware of how much tax that they and their fellow citizens pay, then they cannot consider the opportunity costs of government programs even if they would otherwise be inclined to do so.

Finally, formal training in economics may ingrain the habit of considering opportunity costs. But most voters do not have economics training.

III. OPPORTUNITY COST NEGLECT AND VOTERS' POLICY PREFERENCES

This Part discusses how neglect of the opportunity costs of government programs influences the policies that voters support. It also provides additional evidence that voters ignore opportunity costs.

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[81] *See infra* IV.A.5.

Voters' failure to think about opportunity costs is important because substantial empirical evidence confirms that public opinion significantly influences government policy.[82]

A. GOVERNMENT SPENDING

With respect to government spending, considering opportunity costs would mean that instead of evaluating a spending proposal in isolation, voters would compare it with alternative uses of the money in question. What are the likely consequences if voters fail to think about alternatives to government spending? Will spending be too high relative to a world populated by rational voters? Will the government misallocate its funds? This Section addresses those questions.

Lessons from the Research on Consumer Spending

The consumer research on opportunity cost neglect is helpful in thinking about government spending. When consumers think about buying an otherwise appealing product (such as a new stereo), they tend to ignore the implicit opportunity costs of making the purchase. So, when researchers frame the decision to prompt consideration of opportunity costs, the probability that subjects will buy the product in question generally decreases. Recall that Steven Jones and his colleagues found that asking subjects to generate alternative uses for their money substantially reduced willingness to purchase a $15 CD.[83] Similarly, Shane Frederick and his colleagues found that they could substantially reduce subjects' willingness to purchase a video simply by mentioning that their failure to buy the video would allow subjects to keep the money for other purchases.[84]

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[82] See *infra* IV.B.
[83] Jones et al., *supra* note 57, at 220-21.
[84] Frederick et al., *supra* note 52, at 554.

Moreover, when prompted to consider opportunity costs, consumers become more likely to choose a cheaper option over a more expensive one. In one experiment, Frederick and his colleagues asked subjects to choose between a $1,000 stereo and a $700 stereo after first listing all of the advantages and disadvantages they could generate for each option.[85] For those subjects in the opportunity cost condition, Frederick worded the option to purchase the cheaper stereo in a way that made clear that doing so would leave the subject with $300. The researchers did not make this point explicit to subjects in the control condition. Frederick found that subjects in the opportunity cost condition were more likely to purchase the cheaper option. In addition, 30 percent of the subjects in the opportunity cost condition mentioned outside goods (e.g., "I'll have $300 left over for shopping for clothes") as a factor influencing their decision compared to only 13% of subjects in the control condition. And consideration of outside goods apparently did influence choice because "the mention of outside goods was a significant mediator of stereo choice."[86]

In another experiment, Frederick gave college students $10 and offered them a choice between a $10 coffee mug and one that cost $3.99.[87] For half the students, the description of the cheaper mug included the phrase "leaving you with an extra $6.01 in cash to spend on something else."[88] Including this phrase increased the percentage of students choosing the cheaper mug from 40% to 60%.[89]

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[85] Frederick et al, *supra* note 52, at 554.
[86] Frederick et al, *supra* note 52,at 557.
[87] Frederick et al, *supra* note 52, at 556.
[88] Frederick et al, *supra* note 52, at 556.
[89] At this point, a caveat is in order. Researchers have found that in some cases, thinking about alternative options may not reduce willingness to purchase the focal option and may even increase it. Specifically, if the alternatives considered are them-

In addition, there is evidence that people who regularly consider opportunity costs are better able to control their spending. Scott Rick

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selves unappealing, then thinking about them may not make the focal option less attractive. For example, in his stereo experiment, Frederick found that he could reduce the effects of mentioning the $300 savings from purchasing the cheaper stereo simply by suggesting that subjects might spend the money they saved on a weekend trip to Des Moines, Iowa (an obviously unattractive option). Frederick et al, *supra* note 52, at 558.

Nonetheless, the circumstances in which considering opportunity costs increases rather than reduces willingness to spend are likely very limited. The experiments finding this effect highlight unattractive alternatives or else otherwise artificially limit the alternatives that subjects are likely to consider. The Frederick experiment, for example, drew attention to a particularly unappealing option. *See also* Spiller, *supra* note 51, at 599-600 (finding that consumers who were presented with unappealing alternatives to the focal purchase option became more likely to purchase that option). In fact, a trip to Iowa was not the alternative that his subjects would have thought about if they were rational. The normatively appropriate option for them to consider would have been the best alternative use for the $300 that they would save by purchasing the cheaper stereo. Moreover, when researchers do not highlight unappealing options but instead simply prompt their subjects to think about alternatives that they themselves generate, people become less likely to purchase the focal option.

Another circumstance in which considering alternatives may increase willingness to spend involves situations in which the focal option is predominantly negative rather than positive. In one experiment, Steven Jones and his colleagues gave subjects a hypothetical scenario that concluded by asking them whether they would pay $1,000 to repair a broken down car. Subjects who were not asked to generate alternatives to repairing the car were less likely to choose the repair option than those asked to generate alternatives. Jones concluded that considering alternatives to a negative option makes it more attractive because many of the alternatives are also negative. Jones et al., *supra* note 57, at 219-23.

Although interesting, this finding does not undermine the conclusion that opportunity cost neglect will generally cause voters to irrationally support more government spending. The reason is that the public generally views spending on particular government programs in a predominately positive light, not a negative one. *See infra* Part III.A.2. In other words, spending money on government programs like Social Security and the military is more akin to buying a stereo than repairing a broken car. And when people face a predominantly positive option, such as spending on Social Security or buying a stereo, opportunity cost neglect increases the probability that they will select that option.

and his colleagues have developed a scale that measures the divergence between a person's actual and desired levels of spending.[90] Using this scale, Rick identifies as spendthrifts people who by their own admission have substantial difficulty controlling their spending. In his stereo experiment, Shane Frederick found that people who satisfy Rick's definition of spendthrifts were especially responsive to the manipulation of opportunity cost salience.[91] Simply adding the phrase "leaving you with $300 in cash" to the description of the cheaper stereo more than doubled the percentage of spendthrifts who chose it. Frederick suggests that spendthrifts are particularly prone to ignore implicit opportunity costs. As a result, increasing opportunity cost salience dramatically affects their purchasing decisions. If Frederick is correct, then we can conclude that consideration of opportunity costs leads to less spending; Rick found that spendthrifts are significantly less likely than other people to save money and more likely to have credit card debt.[92]

To summarize, the consumer research finds that people who consider opportunity costs are less likely to spend freely. Extrapolating from these results suggests that voters' neglect of opportunity costs increases support for government spending. Failing to think about tradeoffs makes government goods and services appear more desirable than they otherwise would.[93]

At this point, I should note that voters' tendency to neglect opportunity costs does not definitively prove that the current level of

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[90] *See generally* Scott Rick et al., *Tightwads and Spendthrifts*, 34 J. CONSUMER RESEARCH 767 (2008).

[91] Frederick et al., *supra* note 52, at 558.

[92] Rick et al., *supra* note 90, at 774-75.

[93] *Cf.* Sanbonmatsu, *supra* note 54, at 209 ("Findings in both the psychological and economics literatures indicate that the preference for a valued option may be inflated when the option is considered singularly or in isolation.")

government spending is too high relative to a world in which all voters are rational. Voters might suffer from other failures of rationality that counteract the effects of opportunity cost neglect. I address this possibility in Part IV. For now, my goal is simply to show that opportunity cost neglect is a real and powerful phenomenon that biases voters in favor of government spending.

Public Opinion Research on Government Spending

Opinion polls provide evidence consistent with the hypothesis that voters generally ignore the opportunity costs of government spending and that this increases the demand for it. The Pew Research Center periodically asks the public whether spending on certain government programs should increase, decrease, or stay the same. Pew consistently finds that large majorities (in some cases approaching 90% of respondents) support either maintaining or increasing spending on nearly all major government programs, including Social Security, health care, national defense, education, combating crime, environmental protection, and aid to the needy in the United States.[94]

In its 2013 poll, Pew found that even among Republicans, a majority supported cutting spending in only two of nineteen areas—aid to the world's needy and unemployment assistance—both of which constitute a small portion of the federal government's budget.[95] In other words, Pew found broad-based support for virtually every federal spending program, including strong support among people who identify with the political party that is generally associated with a desire to reduce government spending. This finding is particularly

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[94] PEW RESEARCH CENTER, AS SEQUESTER DEADLINE LOOMS, LITTLE SUPPORT FOR CUTTING MOST SPENDING 10 (2013) (surveying adults) [hereinafter PEW, SUPPORT FOR CUTTING SPENDING].

[95] *Id.* at 3.

surprising given that we live in an era in which the media and politicians frequently discuss the federal budget deficit and the need for either significant spending reductions or tax increases. Moreover, broad-based support for spending programs contradicts the notion that the federal budget deficit results from lack of agreement among Democrats and Republicans about what specific programs the government should cut. At least when it comes to particular programs, even Republican voters express little desire for less government. And this finding is not unique to the 2013 Pew poll. A recent review of public opinion research regarding attitudes toward government spending concluded the following:

> This research shows broad support for federal involvement in the provision of social goods and services. The idea that the government should play a role in providing housing for the poor, pensions for the elderly, education for all children, and a variety of other social benefits is popular with the public, even among Republicans and Conservatives.[96]

For purposes of this Article, Pew's questions about government spending are valuable because they do not contain cues that would prompt respondents to consider opportunity costs. As a result, we

[96] Christopher Faricy & Christopher Ellis, *Public Attitudes Toward Social Spending in the United States: The Difference between Direct Spending and Tax Expenditures*, 36 POL. BEHAVIOR 53, 56-57 (2014); *see also*, NATIONAL PUBLIC RADIO, KAISER FAMILY FOUNDATION, & HARVARD KENNEDY SCHOOL OF GOVERNMENT POLL, ATTITUDES TOWARD GOVERNMENT 18, 23 (2000), *available at* http:// kaiserfamilyfoundation.files.wordpress.com/2013/01/npr-kaiser-kennedy-school-poll-attitudes-toward-government.pdf (finding that a majority of adults had a favorable opinion of all seven federal government programs they were asked about and that large majorities favored the same or more federal government involvement in eight different areas ranging from ensuring clean air and water to setting minimum education standards for schools).

can compare the response to Pew's questions with other polls that are worded to bring tradeoffs to mind, in particular the many polls that ask whether the government should cut spending on certain programs to reduce the federal budget deficit. Polls that refer to deficit reduction generally find more support for spending cuts than Pew finds in its polls. For example, since 1994, support for cutting defense spending has ranged from 5% to 30% in Pew's polls.[97] But polls that focus attention on deficit reduction find as many as 64% of respondents supporting defense cuts.[98] Mentioning deficit reduction has a similar but less dramatic effect on support for cutting Medicare and Social Security.[99] This suggests that mentioning deficit reduction

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[97] PEW, SUPPORT FOR CUTTING SPENDING, *supra* note 96, at 11.

[98] PRINCETON SURVEY RESEARCH ASSOCIATES INT'L, NATIONAL JOURNAL POLL FINAL TOPLINE RESULTS, question CC5 (2013) (reporting that among adults, support for defense cuts in three polls between February 2012 and October 2013 ranged from 60% to 64%); CBS NEWS, AMERICANS' VIEWS OF WASHINGTON, THE PRESIDENT, AND THE BUDGET DEFICIT 13 (2013) (finding 38% of adults supporting defense cuts to reduce the deficit); PEW RESEARCH CENTER, DEEP DIVISIONS OVER DEBT REDUCTION PROPOSALS 7 (2012) (finding that 40% of adults favor defense spending cuts to reduce the national debt); CBS NEWS, THE LOOMING FISCAL CLIFF 12 (2012) (finding 42% of adults willing to consider defense cuts to reduce the deficit); WASHINGTON POST-ABC NEWS POLL, question 17b (2012), http://www.washingtonpost.com/wp-srv/politics/polls/post-abcpoll_20121216.html (reporting that among adults, in three polls in 2011 and 2012, support for cutting defense spending either to reduce the deficit or avert the fiscal cliff ranged from 42% to 43%); CBS NEWS, LOWERING THE DEFICIT AND MAKING SACRIFICES, question 52 (2011) (finding 52% of adults willing to consider defense cuts to reduce the deficit); JOHN M. HANSEN, INDIVIDUALS, INSTITUTIONS, AND PUBLIC PREFERENCES OVER PUBLIC FINANCE 515 (discussing the 1995 Pilot Study for the 1996 American National Election Study, which found that 55.4% of respondents favored cutting national defense to reduce the federal budget deficit).

[99] Between 1987 and 2013, Pew found that absent any mention of deficit reduction or other tradeoffs, support for cutting Social Security ranged from 3% to 12%. PEW, SUPPORT FOR CUTTING SPENDING, *supra* note 94, at 11. Similarly, between 1997 and 2013, Pew found that support for cutting Medicare ranged from 2% to 15%. *Id.* at 11-12. On the other hand, polls that ask about cutting spending specifically to achieve deficit reduction find somewhat greater openness to Social Security and Medicare cuts. PEW RESEARCH CENTER, OBAMA JOB APPROVAL SLIPS AS ECONOMIC PESSIMISM RISES 20 (2013) (reporting that in five polls taken between 2011 and 2013, between 32%

causes some respondents to think about opportunity costs, which in turn reduces their enthusiasm for government spending.[100]

An article by Eva Mueller published in 1963 provides additional evidence of voters' neglect of opportunity costs. Mueller analyzed the results of two surveys on government spending conducted in the early 1960s.[101] Mueller found that for five of fourteen major government programs a majority of respondents stated that government should increase spending.[102] In a follow-up question, respondents who stated that they preferred more spending on a particular program were asked if they would favor a spending increase even if it resulted in the government raising taxes. Consistent with the opportunity cost neglect hypothesis, mentioning the possibility of a tax increase dramatically reduced support for additional spending. In fact, not one program was popular enough that a majority was willing to fund additional spending on it by increasing taxes.[103] Moreover, Mueller ruled out the possibility that respondents wished to pay for

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and 35% of adults state that it is more important to reduce the budget deficit than to maintain spending on Social Security and Medicare); PRINCETON SURVEY RESEARCH ASSOCIATES INT'L, NATIONAL JOURNAL POLL FINAL TOPLINE RESULTS, question CC5 (2013) (reporting that among adults, support for Social Security cuts in three polls in 2012 and 2013 ranged from 21% to 22% and support for Medicare cuts ranged from 18% to 20%); CBS NEWS, AMERICANS' VIEWS OF WASHINGTON, THE PRESIDENT, AND THE BUDGET DEFICIT 13 (2013) (finding 18% of adults supporting cuts to Social Security and Medicare to reduce the deficit); MCCLATCHY-MARIST NAT'L POLL (2012) (finding that among registered voters, 23% support cutting Medicare).

[100] Although opportunity cost neglect probably explains the discrepancy between polls that ask about deficit reduction and polls that do not, other explanations are also possible. Perhaps people refuse to support spending cuts when responding to polls like the Pew poll because they do not know what the government will do with the money saved. Polls that specify that the government will use the money for deficit reduction eliminate this uncertainty, which might account for the change in responses.

[101] Eva Mueller, *Public Attitudes Toward Fiscal Programs*, 77 Q.J. ECON. 210, 213 (1963).

[102] *Id.* at 215.

[103] *Id.*

additional spending on their preferred programs by cutting other programs. This explanation was not consistent with the fact that respondents expressed very little support for cutting any program other than foreign aid.[104] When they were not prompted to think about tax increases, a majority of respondents (and in most cases a large majority) favored either maintaining or increasing spending on every other program.[105]

Opportunity cost neglect helps explain persistent government budget deficits. Voters strongly support particular spending programs and are generally unwilling to entertain the possibility of cutting those programs. But for many spending programs, public support is due largely to the public's failure to consider the sacrifices required to make the programs possible. Consistent with Mueller's findings, modern-day polls find broad-based support for virtually every spending program, but they also find that very few people support the substantial tax increases necessary to fund those programs without running a large deficit.[106] Strong demand for government spending accompanied by little willingness to pay for it results in chronic deficits.[107]

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[104] *Id.* at 222-23.

[105] *Id.* at 215. In fact, over 60% of respondents wished to cut spending on only one or fewer programs, and nearly 80% wished to cut spending on only two or fewer programs. *Id.* at 214.

[106] *E.g.*, PEW RESEARCH CENTER, IF NO DEAL IS STRUCK, FOUR-IN-TEN SAY LET THE SEQUESTER HAPPEN 3 (2013) (finding that only 19% of adults believe that deficit reduction proposals should focus only or mostly on increased taxes); *see also* Huddy et al., *supra* note 15, at 448 (noting that opinion poll data show strong support for maintaining or increasing Social Security and Medicare benefits, but little support for increased taxes to pay for them).

[107] My conclusion rests on the assumption that the public fails to fully appreciate that deficit financing implies future tax increases. In other words, in its decision making, the public weighs current taxes more heavily than equivalent future taxes necessitated by public debt. For reviews of the empirical evidence on this point, see David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political*

A recent study by Siona Listokin and her colleagues provides further evidence that highlighting the sacrifices required by government spending substantially reduces support for it. Listokin conducted a survey in which she asked participants how they would reduce the federal government's projected budget deficit by $900 billion (or about two-thirds of the projected deficit) in 2022.[108] Over 60% of the participants endorsed substantial reductions in military spending and non-defense spending, including spending on law enforcement and disaster relief.[109] This result differs starkly from the opinion research presented above, which generally shows little support for spending cuts of any kind.

More importantly, Listokin found that after failing to reach their deficit-reduction target, many respondents that initially rejected proposed spending cuts reconsidered and accepted them.[110] Listokin also found that people favor reducing the deficit through a combination of tax increases and spending cuts. This suggests that when tradeoffs are clear, people do not simply conclude that the government should reduce the deficit solely through tax increases while leaving spending intact. Taken together, Listokin's findings provide compelling evidence that people do not consider the opportunity costs of government spending unless the decision frame prompts them to do so. Moreover, when forced to consider tradeoffs, people

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Salience, 65 TAX L. REV. 19, 43-45 (2011) and Brian Dollery & Andrew Worthington, *The Empirical Analysis of Fiscal Illusion*, 10 J. ECON. SURVEYS 261, 290-93 (1996).

[108] Siona Listokin et al., *Americans' Preferences for Tax Increases and Spending Cuts*, 139 TAX NOTES 188, 188 (2013).

[109] *Id.* at 190. Listokin did not find strong support for reducing Social Security and Medicare benefits. *Id.* That said, the percentage of Listokin's respondents willing to make Medicare cuts (34%) is still higher than in most surveys that do not force participants to seriously consider tradeoffs.

[110] *Id.* at 191-92.

become willing to cut government programs that according to conventional wisdom, are politically untouchable.

While Listokin's study provides evidence that views about government spending change dramatically when tradeoffs are explicit, the survey could be criticized on the grounds that it requires participants to achieve a goal (significant deficit reduction) with which most voters may disagree. In other words, if required to cut the deficit, perhaps many voters would favor large spending cuts. But what if voters do not want to cut the deficit? In that case, voters might approve of the current state of affairs, which involves substantial spending, low taxes, and large deficits.

There are three problems with this criticism. First, an overwhelming majority of the public claims that the deficit is a problem that needs to be addressed.[111] Second, as already noted, a number of other polls also find majority support for cutting defense spending to reduce the deficit, and unlike Listokin's survey, these other polls do not require that respondents accept deficit reduction as a goal. Finally, even if the public favored it, indefinitely maintaining large and growing deficits is unsustainable.[112] While some economists favor brief periods of deficit spending to lift the economy out of a recession, chronic, large deficits can have devastating effects.[113] The Congressional Budget Office projects that absent significant spending reductions or tax increases, the federal budget deficit will swell in coming

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[111] *E.g.*, PEW RESEARCH CENTER, FOCUS MOSTLY ON SPENDING BUT KEEPING TAXES IN THE MIX 29 (2013) (finding that 70% of adults believe that it is essential for the President and Congress to pass major deficit reduction legislation in the near future) [hereinafter PEW, FOCUS MOSTLY ON SPENDING].

[112] *E.g.*, CONGRESSIONAL BUDGET OFFICE, THE 2013 LONG-TERM BUDGET OUTLOOK 6-10 (2013) ("CBO's analysis shows that under a wide range of possible assumptions about some key factors that influence federal spending and revenues, the budget is on an unsustainable path.").

[113] For a nontechnical discussion of the harmful effects of budget deficits, see *id.* at 4, 12-16.

years because of higher interest payments on government debt and increased spending on Social Security and health care.[114] Given this, Listokin's survey is useful. It suggests that when the public is forced to consider realistic options, it chooses a balanced approach to deficit reduction that includes substantial spending cuts as well as tax increases.

The opportunity cost neglect hypothesis finds additional support in a well-known paradox of public opinion. Pollsters often ask whether the government should cut spending. When the question is worded generally and without reference to specific programs, a large majority responds that it should.[115] Similarly, people believe that the government wastes vast sums of money.[116] Yet as we have seen, when asked about specific programs, large majorities, including most Republicans, favor maintaining or increasing spending on virtually every one.

Part of the explanation for this phenomenon is that opportunity cost neglect influences the public's responses to questions about specific government programs. Recall that when people are presented

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[114] *Id.* at 2-30, 81-89.

[115] For a recent example, see PEW, FOCUS MOSTLY ON SPENDING, *supra* note 111, at 3 (finding that 73% of adults believe that deficit reduction should focus only or mostly on spending cuts rather than tax increases). For a more detailed discussion of the public opinion paradox mentioned in the text, see generally William Jacoby, *Issue Framing and Public Opinion on Government Spending*, 44 AM. J. POL. SCI. 750 (2000).

[116] *E.g.*, ANDERSON ROBBINS RESEARCH & SHAW & CO. RESEARCH, FOX NEWS POLL, Question 21 (2013), http://www.foxnews.com/politics/interactive/2013/01/18/fox-news-poll-government-spending/ (finding that 49% of registered voters believe that we could eliminate most of the national debt by cutting waste and fraud from government and only 42% believe that significant debt reduction requires painful choices about taxes and spending); YOUGOV, HUFFINGTON POST POLL (2013), http://big.assets.huffingtonpost.com/wastetoplinesb.pdf (finding that 69% of adults believe that we could eliminate most of the national debt by cutting waste and fraud from government and only 22% believe that significant debt reduction requires painful choices about taxes and spending).

with a predominantly positive option, they become more likely to pursue it in the absence of cues that prompt consideration of opportunity costs. People perceive most government programs in a positive light, which explains their continued existence. In fact, many government programs have names (such as "veterans' benefits," "Social Security," and "national defense") that are likely to trigger a positive emotional response for most people. So when they consider whether the government should reduce spending on particular programs, people naturally forget the possibility of government waste or that the money in question might have better uses. In the abstract and without reference to tradeoffs, why would anyone oppose spending on "education" or "food and drug inspection?" On the other hand, generic questions about "government spending" do not provoke the same positive emotional response, which explains popular support for generic spending cuts.

Opportunity cost neglect also helps explain a different, but similarly perplexing finding of public opinion research. In response to its question about government spending, the Pew Research Center consistently finds that more than 85% of the public opposes spending cuts to Social Security and Medicare. When pollsters mention deficit reduction as the reason for cutting these two programs, support for cuts increases but only by a small amount.[117] Yet polls also find substantial support for specific types of Social Security and Medicare cuts, e.g., reducing benefits for high income recipients or delaying the retirement age.[118] So the polls suggest that people are taking po-

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[117] *See supra* note 99.

[118] *E.g.*, SELZER & CO., BLOOMBERG NEWS NATIONAL POLL 3 (2012) (finding that in order to reduce the deficit, a majority of adults favor reducing Social Security and Medicare benefits for high-income earners, 42% favor increasing the eligibility age for Medicare to 67, and 36% favor increasing the retirement age for Social Security to 69); CBS NEWS, LOWERING THE DEFICIT AND MAKING SACRIFICES, Questions 56 and 57

sitions that are logically inconsistent. How can the public favor specific cuts to Social Security and Medicare but also oppose cuts in general? One possibility is that poll questions that suggest specific cuts cause people to think about ways in which the government is wasting money better used elsewhere. It is easy to imagine better uses for tax dollars than providing pension and health care benefits to wealthy retirees.

The final piece of evidence that voters neglect the opportunity cost of government spending is found in research on the valuation of environmental goods (e.g., clean air, pristine wilderness, and preservation of animal species). When people state how much they are willing to pay to preserve and protect the environment, they often give unrealistically high amounts that would constitute a large part of their income.[119] Because most people find environmental goods appealing, judging a particular good in isolation without reference to alternatives leads to exaggerated valuations.[120] Consistent with the opportunity cost neglect hypothesis, when researchers make competing alternatives salient, people generally moderate their valuations of the focal environmental good.[121]

In sum, public opinion research suggests that when thinking about government spending programs, voters tend to ignore opportunity costs because those costs are implicit. Many voters consider

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(2011) (finding that in order to reduce the federal budget deficit, 63% of adults are willing to reduce Social Security benefits for high-income retirees and 43% are willing to raise the Social Security retirement age).

[119] Peter Diamond & Jerry Hausman, *On Contingent Values: Measurement of Nonuse Values, in* CONTINGENT VALUATION: A CRITICAL ASSESSMENT 3, 18-19 (Jerry Hausman ed., 1993).

[120] Sanbonmatsu, *supra* note 54, at 209.

[121] David Schkade & J. Payne, *Where Do the Numbers Come from? How People Respond to CV Questions, in* CONTINGENT VALUATION: A CRITICAL ASSESSMENT 273, 287-88 (Jerry Hausman ed., 1993).

opportunity costs only when pollsters and researchers construct questions in a way that prompts them to do so. Unfortunately, similar prompts do not exist in the voting booth. So opportunity cost neglect will influence the votes that people cast. In particular, opportunity cost neglect biases voters in favor of government spending, and they will demand more of it than they would if they considered the implicit tradeoffs involved.

Misallocation of Government Funds

In addition to increasing the overall demand for government spending, opportunity cost neglect may result in the misallocation of any given level of government funds. For example, the opportunity cost of military spending could be forgone private goods, or it could instead be forgone public goods. Imagine what the results would be for a poll question worded as follows: "Ten F-35 Joint Strike Fighter jets cost about the same amount to build as 49 elementary schools or 18 high schools. Should the federal government cancel an existing order for ten F-35 Fighters and give the money saved to state and local governments to build elementary and high schools?"[122] Based on the existing evidence of opportunity cost neglect, it seems likely

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[122] The Pentagon estimates that an F-35 Fighter purchased in 2019 (when the planes are scheduled for full-rate production) will cost $71.5 million, measured in 2012 dollars. This cost estimate does not include associated development and military construction costs. Andrea Shalal-Esa, *Pentagon Says F-35 Fighter Delayed, Costs Rise 4.3 Percent*, CHI. TRIBUNE, March 29, 2012, http:// articles.chicagotribune.com/2012-03-29/news/sns-rt-us-lockheed-fighterbre82t03r-20120329_1_f-35-costs-rise-pentagon-report. In 2012, the national median cost of a new high school was $38,200,000, and the median cost of a new elementary school was $14,488,337. PAUL ABRAMSON, 2013 ANNUAL SCHOOL CONSTRUCTION REPORT 7 (2013), http://www.peterli.com/spm/pdfs/SchoolConstructionReport2013.pdf.

that this type of question would measure substantially less enthusiasm for military spending than more generically worded questions that fail to mention tradeoffs.[123]

Siona Listokin's survey results suggest that opportunity cost neglect does in fact cause misallocation of government funds. Recall that Listokin gave her participants the task of reducing the federal government's projected 2022 budget deficit by $900 billion. Initially, many of her participants passed on various proposals to reduce the deficit. But when they failed to meet their target, they had to reconsider and make hard choices. Many participants who had originally declined ultimately endorsed proposals such as cutting defense spending. Yet, even after reconsideration, very few people were willing to cut Social Security and Medicare.[124] This suggests that when the decision frame makes tradeoffs explicit, voters will abandon support for the military and certain other programs in order to protect Social Security and Medicare. Unfortunately, unlike Listokin's participants, real-world voters do not have to grapple seriously with opportunity costs. So they continue to support spending on a number of activities, including military spending, without realizing that doing so jeopardizes the programs that they truly cherish.

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[123] The detailed question discussed in the text would provide many respondents with information that they did not previously possess, and this new information might cause some to change their responses. But absent irrationality, this fact alone would not change responses *in the aggregate*. Without detailed cost information, rational respondents would have to guess as to costs. Some would overestimate the cost of the F-35 Fighter relative to school construction and some would underestimate it. But on net, the estimates would not be biased.

[124] Listokin et al., *supra* note 108, at 191.

Opportunity Cost Neglect versus Rational Ignorance

Proponents of the rational actor model might dispute my claim that opportunity cost neglect among voters is a failure of rationality. They might insist instead that because a single vote rarely decides an election, voters recognize that thinking about the opportunity costs of government spending is pointless. In other words, what I refer to as opportunity cost neglect is simply a manifestation of rational ignorance.

This view is mistaken. Opportunity cost neglect differs from rational ignorance because the former results in systematic bias whereas the latter does not. Rationally ignorant voters might refuse to think about the opportunity costs of government programs, but that would not bias them in favor of more spending. On the contrary, these voters would either remain agnostic or else they would guess randomly as to whether current spending is too high or too low. Any random guesses would not be biased in a particular direction.

Opportunity cost neglect on the other hand involves systematic bias. All government programs entail tradeoffs. But because these tradeoffs are implicit, voters tend to ignore them. This causes government programs to appear more desirable than they otherwise would.

A recent study by Martin Baekgaard and his colleagues provides evidence against the rational ignorance hypothesis and in favor of systematic bias resulting from opportunity cost neglect.[125] Baekgaard conducted an experiment in Denmark that measured support for a proposed government program familiar to the Danish public.[126] In particular, Baekgaard asked his participants whether they

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[125] I thank the authors for giving me permission to cite their unpublished working paper. Please note that all of the findings presented in the text are preliminary.

[126] Martin Baekgaard et al., Causes of Fiscal Illusion: Lack of Information or Lack of Attention 13-14 (unpublished manuscript 2013).

would support a proposal for the municipal elderly care to offer an extra bath each week to the senior citizens that it services. Baekgaard randomly divided his participants into groups. The question posed to Group I did not refer at all to the program's cost. The question posed to Group II mentioned that the program would have a cost, but did not give a specific amount.

Baekgaard found a higher level of support for the proposal among participants in Group I, the group that was not prompted to consider cost.[127] Even though the fact that the program would have a cost should have been obvious to all participants, merely mentioning cost without specifying the amount was enough to reduce support among participants in Group II.[128]

Although opportunity cost neglect was not the focus of Baekgaard's study, the study's results provide support for the phenomenon. None of the participants in either group received any specific information about costs, so all of the participants had access to the same information. As a result, participants in Group I had no reason to be more supportive of the proposal than participants in Group II. Yet they were. Opportunity cost neglect explains why. Presented with an otherwise positive proposal that did not mention tradeoffs, the participants in Group I failed to consider the program's opportunity costs. Simply mentioning that the program would have a cost, though this should have been obvious to any rational observer, was apparently enough to cause at least some of the participants in Group II to think about alternative uses for the government's money. In other words, by failing to prompt consideration of tradeoffs, the decision frame presented to Group I biased participants

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[127] *Id.* at 14-16.
[128] *Id.*

in favor of the proposal. This bias would not have existed if the participants were rational. Even without prompting, rational participants would have recognized that the program would have a cost. Of course, they would have had to guess as to exactly what the cost might be. But guessing about unknown costs is rational; completely ignoring them is not.

B. Tax Expenditures

Assume that the government wants to redistribute income or to use subsidies to influence the allocation of resources in the economy. It can accomplish these tasks by raising taxes and increasing spending. Alternatively, it can create tax preferences (i.e., special income exclusions, deductions, or credits) that are available only to certain categories of taxpayers (e.g., low-income taxpayers) or to taxpayers engaged in particular activities (e.g., drilling for oil). Using tax preferences to reduce a person's tax bill has the same effect as giving that person cash raised by imposing taxes on other people. So tax policy scholars refer to tax preferences as tax expenditures. And they recognize that tax expenditures have to be paid for either through higher tax rates, deficit spending, or cuts to direct spending programs.

Because tax expenditures are similar to government spending, opportunity cost neglect will lead to more tax expenditures for the same reasons that it leads to more spending. Siona Listokin's survey provides support for this conclusion. Initially, a majority of Listokin's participants rejected eliminating the federal income tax deductions for state and local taxes and home mortgage interest as a way to cut the budget deficit.[129] But after failing to achieve their deficit reduction goal, many of Listokin's participants changed their position. Ultimately, Listokin found majority support for eliminating

[129] Listokin et al., *supra* note 108, at 190-92.

both deductions. When faced with a tight budget constraint, Listokin's participants abandoned two of the most popular tax expenditures to preserve funding for Social Security and Medicare, which they apparently valued more.

Moreover, tax expenditures may result in even greater opportunity cost neglect than do comparable direct spending programs. The reason is that the opportunity costs of tax expenditures are less salient than those of direct spending programs.[130] This largely explains why tax expenditures are so popular.[131]

If tax expenditures make opportunity costs even less salient than does direct spending, then increasing the salience of the opportunity costs involved should reduce support for tax expenditures even more dramatically than for similar direct spending. A recent working paper by Jake Haselswerdt and Brandon Bartels provides support for

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[130] *Cf.*, Faricy & Ellis, *supra* note 96, at 57 (noting that "many policy scholars are concerned about the relative lack of visibility and transparency of tax expenditure programs, and the resultant effects on how the public views such programs"); Gamage & Shanske, *supra* note 107, at 51-53 (reviewing evidence that tax expenditures are less "politically salient" than similar direct spending).

[131] Christopher Faricy and Christopher Ellis present experimental evidence showing that "support for social spending programs is generally higher when programs are presented as tax expenditures than when the exact same programs are presented as direct spending." Faricy & Ellis, *supra* note 96, at 71. Faricy and Ellis suggest that this is because the public, particularly Republicans, do not consider tax expenditures to be government programs in the same way as programs financed through direct expenditures. But opportunity cost neglect might also underlie this finding.

Note, however, that Faricy and Ellis included a cost estimate in the descriptions of the specific tax expenditures and spending programs that they presented to their subjects. The Haselswerdt-Bartels study discussed in the text suggests that this explicit reference to cost likely muted the effects of opportunity cost neglect on subjects' support for tax expenditures, which the subjects might otherwise have viewed as costless. In other words, Faricy's and Ellis's results might have shown an even larger disparity between support for tax expenditures and for similar direct spending programs if the researchers had not prompted their subjects to think about the cost of tax expenditures.

this hypothesis.[132] Haselswerdt and Bartels presented study participants with two scenarios.[133] In one scenario, the government helped people afford homes by allowing them to deduct home mortgage interest for tax purposes. In the other scenario, the government instead made cash payments to individuals who borrowed money to buy a home. Haselswerdt and Bartels informed some participants that the housing subsidy (whether mortgage interest deduction or cash grant) would add $390 billion to the national debt over the next four years. Other participants did not receive any cost information. Haselswerdt and Bartels found that the reference to the national debt reduced support for the home mortgage interest deduction even more than it reduced support for the comparable direct spending program.[134]

The likely explanation for this finding is that in the absence of cues to consider opportunity costs, many participants failed to do so. Referring to the subsidy's effect on the national debt triggered participants to think about opportunity costs, which reduced support for the proposal no matter what its form. But the effect was more dramatic for the home mortgage interest deduction because in the absence of cues, participants were more likely to ignore the opportunity cost of the deduction than of the cash grant. After all, it should be obvious to at least some people that cash grants would either add to the national debt or necessitate tax increases, and this alone might be sufficient to cause them to spontaneously consider alternative uses for the money.

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[132] Jake Haselswerdt & Brandon Bartels, Public Opinion, Policy Tools, and Policy Feedbacks (July 11, 2013) (unpublished manuscript) (on file with author). I thank the authors for giving me permission to cite to an unpublished draft of their paper. Please note that the findings discussed in the text are preliminary.

[133] *Id.* at 10-11.

[134] *Id.* at 13-14, 18-22.

C. Regulation

Some economists criticize certain regulations as ineffective, excessively costly, and inimical to economic growth.[135] But public opinion research finds that overwhelming majorities of the public support either increasing or maintaining the current level of regulation in many areas, including automobile safety, food and drug safety, cable television access and cost, and health care.[136]

In light of opportunity cost neglect, these findings are not surprising. Opportunity cost neglect will increase the demand for government regulation. As with tax expenditures, the salience of the opportunity costs of regulation is likely even lower than that for direct spending programs. At least some voters will recognize that government spending involves monetary outlays that the government must pay for through tax increases, additional borrowing, or cuts to other programs. This may lead those voters to consider opportunity costs. Government regulations on the other hand do not entail monetary outlays at least not on the part of the government. The outlays (if any) required to comply with regulations are made by regulated parties, who may be able to pass these costs on to consumers or others with whom they deal. This fact is unlikely to be obvious to voters

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[135] *E.g.*, CLIFFORD WINSTON, GOVERNMENT FAILURE VERSUS MARKET FAILURE (2006); Simeon Djankov et al., 117 *The Regulation of Entry*, Q.J. ECON. 1, 35 (2002) ("We find that heavier regulation of [business] entry is generally associated with greater corruption and a larger unofficial economy, but not with better quality of private and public goods. . . . Entry is regulated more heavily by less democratic governments [and the] principal beneficiaries appear to be the politicians and bureaucrats themselves.").

[136] Tasic, *Growth of Government*, *supra* note 6, at 553; NATIONAL PUBLIC RADIO, KAISER FAMILY FOUNDATION, & HARVARD KENNEDY SCHOOL OF GOVERNMENT POLL, *supra* note 96, at 23. As with public spending, people often oppose regulation in the abstract and answer yes to generic questions such as, "Does the government regulate business too much?". Yet the public favors particular types of regulation. CAPLAN, *supra* note 6, at 62-63.

who are considering in the abstract whether to support a particular regulation. Moreover, in some cases (e.g., bans on certain products), no monetary outlay occurs. So not only is the exact dollar cost of regulations difficult to determine, but the fact that regulations involve any cost at all remains implicit. These circumstances suggest the possibility for extreme opportunity cost neglect.[137]

Opportunity cost neglect helps explain why, despite the protestations of economists, the public is much more enthusiastic about addressing global warming through command-and-control regulations rather than a carbon tax. Command-and-control regulations, such as rules requiring car companies to produce more fuel-efficient cars,

[137] Richard Posner argues that regulation sometimes operates as a form of taxation. Richard Posner, *Taxation by Regulation*, 2 BELL J. ECON. & MGMT. SCI. 22 (1971). The government often mandates that a regulated firm provide a service to certain customers at below cost, and the firm generally makes up for the resulting loss by charging its other customers a higher price than they would otherwise pay. *Id.* at 29. The resulting "internal subsidization" can "be viewed as an exertion of state power whose purpose, like that of other taxes, is to compel members of the public to support a service that the market would provide at a reduced level, or not at all." *Id.* Posner points out that "[a] troubling characteristic of the internal subsidy is its low visibility, which impedes responsible review. The amounts and recipients of direct subsidies are ordinarily specifically stated, but this is not the case with internal subsidies." *Id.* at 43; *cf.* Gamage & Shanske, *supra* note 107, at 51-53 ("[V]oters may not appreciate the burdens imposed by regulation to the same degree as they would the burdens imposed by taxes, such that using regulation as a substitute for tax-financed spending may have less political salience.").

Similarly, Richard Epstein argues against redistribution via government-mandated benefits such as a requirement that employers provide health insurance to their employees or that landlords supply apartments at below-market rents. EPSTEIN, *supra* note 20, at 145-46. Epstein claims that this "technique of off-budget financing" undermines democratic accountability. EPSTEIN, *supra* note 20, at 145-46. Epstein argues instead that if the government provides these benefits at all, it should finance them out of general tax revenues. EPSTEIN, *supra* note 20, at 145-46. According to Epstein, "When the expenditures are made explicit through the budget process, the public is better able to make an informed choice about the costs and benefits of the program." EPSTEIN, *supra* note 20, at at 146.

have a significant drawback.[138] Specifically, regulations dictate which polluters must reduce carbon emissions and exactly how they must do so. Unfortunately, the polluters that the government targets may not be the ones that can abate emissions at the lowest cost. Similarly, the methods of abatement that the government selects may not be the least expensive available. A carbon tax would solve this problem by placing a price on carbon emissions. Polluters who find it less expensive to reduce emissions than to pay the tax would do so. Others would simply pay the tax. So pollution abatement is allocated to those polluters who find it cheapest. Additionally, the tax would provide polluters with an incentive to find cheaper ways to avoid emissions. In theory, the government could achieve the same level of emissions reduction with a carbon tax as with regulations but at a much lower social cost.

Despite this compelling logic, polls show that the public strongly supports global warming regulations and strongly opposes a carbon tax.[139] While a number of explanations are possible, opportunity cost

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[138] For a textbook discussion of the advantages of emissions fees, including carbon taxes, over command-and-control regulations, see HARVEY ROSEN & TED GAYER, PUBLIC FINANCE 86-88, 94-96 (8th ed., 2008).

[139] FREDERICK MAYER ET AL., AMERICANS THINK THE CLIMATE IS CHANGING AND SUPPORT SOME ACTIONS 2-4 (2013), *available at* http:// nicholasinstitute.duke.edu/sites/default/files/publications/ni_pb_13-01_0.pdf (finding that only 29% of adults strongly or somewhat favored a carbon tax, while over 60% strongly or somewhat favored regulations on power plants and factories and requiring car manufacturers to produce more fuel-efficient cars); Matthew Nisbet & Teresa Myers, *Twenty Years of Public Opinion about Global Warming*, 71 PUB. OPINION Q. 444, 460-68 (2007) (summarizing poll results that generally show strong support for government regulation in response to global warming, but much less support for taxes on electricity and gasoline); Anthony Leiserowitz, *Climate Change Risk Perception and Policy Preferences: The Role of Affect, Imagery, and Values*, 77 CLIMATIC CHANGE 45, 55-56 (2006) (finding strong support among Americans for carbon regulation, including increasing vehicle fuel economy standards, but finding strong opposition to reducing greenhouse gases through a gas tax or business energy tax).

neglect is very likely a major factor. For at least some voters, the words "carbon tax" probably bring to mind opportunity costs. After all, taxes entail sacrifice. On the other hand, the sacrifices, including price increases, that result from regulations imposed on power plants, factories, and car manufacturers are not as obvious.

In addition, opportunity cost neglect helps explain the perverse incentives faced by the Food and Drug Administration when it is approving new drugs for use in the United States. The FDA can make two types of errors in approving new drugs.[140] A Type I error occurs when the FDA approves a drug that is in fact unsafe. A Type II error occurs when the FDA does not approve a drug that is safe. A number of studies find that the FDA focuses too heavily on Type I errors.[141] In other words, it sometimes fails to approve drugs that are safe because of its excessive concern about approving drugs that are not safe.

The conventional explanation for the FDA's focus on Type I errors is risk aversion.[142] Agency bureaucrats know that the media, the public, and Congress will pay attention if an approved drug turns out to have unexpected side effects because those effects will be highly visible.[143] On the other hand, the public will generally defer to the FDA's judgment if it labels a drug as unsafe, and any Type II

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[140] Brief for Economists John Calfee et al. as Amici Curiae Supporting Appellants at 7, Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach, 495 F.3d 695 (2007) (No. 04-5350); RICHARD EPSTEIN, OVERDOSE: HOW EXCESSIVE GOVERNMENT REGULATION STIFLES PHARMACEUTICAL INNOVATION 116 (2006).

[141] For a review of the literature, see Brief for Economists John Calfee et al., *supra* note 140, at 10-12.

[142] Brief for Economists John Calfee et al., *supra* note 140, at 7-8; EPSTEIN, *supra* note 140, at 116-17.

[143] Brief for Economists John Calfee et al., *supra* note 140, at 9-10; EPSTEIN, *supra* note 140, at 116-17.

errors may go largely unnoticed.[144] To avoid negative publicity, FDA bureaucrats rationally decide to err on the side of caution.

This begs the question: Why do Type I errors capture the public's attention more than Type II errors? Opportunity cost neglect provides the explanation. The cost of not approving a safe drug is forgoing treatment of sick patients. This cost is implicit and not immediately obvious even to doctors and to patients who would otherwise benefit from the drug. But the costs of approving an unsafe drug include terrible side effects that no one can ignore.[145] These latter costs are more likely to draw attention from the media and the public.

For additional evidence of opportunity cost neglect with respect to government regulation, consider the finding by Nancy Kraus and her colleagues that over 60% of the public thinks that it can never be too expensive to reduce risks related to chemicals.[146] Requiring chemical companies to completely eliminate the risks of chemical exposure would involve enormous sacrifices. Not surprisingly, an overwhelming majority of toxicologists disagrees with the public on the issue.[147] Kraus's finding implies that many people simply fail to consider the tradeoffs that regulation requires.[148] Eliminating the risks of chemical exposure sounds like a great idea until you consider the opportunity costs. But because those costs are implicit, Kraus's survey participants failed to do that.

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[144] Brief for Economists John Calfee et al., *supra* note 140, at 9-10.

[145] EPSTEIN, *supra* note 140, at 116-17.

[146] Nancy Kraus et al., *Intuitive Toxicology: Expert and Lay Judgments of Chemical Risk*, 12 RISK ANALYSIS 215, 220-21 (1992).

[147] *Id.* at 221.

[148] In addition to opportunity cost neglect, the discrepancy between the public's views on chemical risk reduction and those of toxicologists stems from a difference in opinion about whether exposure to small amounts of potentially harmful chemicals can be safe. The public tends to think not, but toxicologists disagree. *Id.* at 217-20.

More generally, researchers have found strong evidence that cognitive and emotional biases exert significant influence over government regulation of risk. For example, several studies have found that people are sometimes willing to pay a premium to eliminate a certain risk even though the money could be better spent reducing, but not eliminating, some other risk.[149] Similarly, James Hamilton and W. Kip Viscusi found evidence that irrationality influences clean-up decisions by the Environmental Protection Agency related to hazardous waste sites.[150] As a result, the cost per cancer case averted varies dramatically from one contaminated site to another.[151] When irrationality affects risk regulation, opportunity cost neglect plays a role. Neglecting opportunity costs allows us as a society to indulge our irrational tendencies by blinding us to the required tradeoffs.

D. Note on Public Opinion Polls

Politicians and pundits frequently rely upon public opinion polls to determine what policies voters support.[152] But if the goal is to discern the policies that voters would prefer if they were rational, then most existing polls are highly misleading. They fail to elicit consideration of opportunity costs, which is crucial to rational decision making.

As an example of how polls can mislead, consider the Pew Research Center's polls on government spending discussed in subpart

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[149] Ilana Ritov et al., *Framing Effects in the Evaluation of Multiple Risk Reduction*, 6 J. RISK & UNCERTAINTY 145 (1993); W. Kip Viscusi et al., *An Investigation of the Rationality of Consumer Valuations of Multiple Health Risks*, 18 RAND J. ECON. 465 (1987).

[150] JAMES HAMILTON & W. KIP VISCUSI, CALCULATING RISKS? THE SPATIAL AND POLITICAL DIMENSIONS OF HAZARDOUS WASTE POLICY 139-55 (1999).

[151] *Id.* at 148-50.

[152] For a discussion of the influence of public opinion on government policy, see *infra* Part IV.B.

A of this Part. Those polls consistently show that voters support maintaining or increasing spending on virtually all government programs. Pundits sometimes argue that polls like the Pew polls prove that Americans like government. The problem is that Pew's questions on government spending do not force people to come to grips with the sacrifices that government programs require. Polls are more likely to be reliable when they ask explicitly about tradeoffs.[153]

Many pollsters seem to understand this point, and they have responded by modifying their polls. Specifically, the most popular method of eliciting consideration of tradeoffs is to ask a series of questions about whether the government should cut spending on particular programs to reduce the budget deficit. Although an improvement over the Pew polls, this technique is still not sufficient to produce careful consideration of opportunity costs. Many people mistakenly believe that the government can substantially reduce its budget deficit without difficult choices simply by eliminating wasteful expenditures.[154] So when a poll subject responds that government should not cut spending on a particular program to reduce the deficit, she may take that position only because of unrealistic views about deficit reduction.

To overcome this problem, pollsters must devise techniques that force participants to grapple seriously with the tradeoffs that government programs necessitate. Siona Listokin's survey illustrates how this can be accomplished. Listokin's participants had to make tough choices to eliminate $900 billion from the federal government's projected budget deficit in 2022. Based on Pew's polls, we might expect

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[153] See John Hansen, *Individuals, Institutions, and Public Preferences over Public Finance*, 92 AM. POL. SCI. REV. 513, 519 (1998) (arguing that polls that ask about tradeoffs "elicit more circumspect opinions on budgetary alternatives" because they "cause respondents to stop and think, at least momentarily").

[154] *See supra* note 116.

that Listokin's participants would oppose any significant spending cuts and opt instead to raise taxes. On the contrary, Listokin found that imposing a tight budget constraint substantially reduced support for many types of government spending as well as popular tax expenditures. Listokin forced her participants to take seriously a goal (deficit reduction) that an overwhelming majority of Americans claims to support. As a result, her findings arguably reflect more accurately than most other polls voters' true preferences for government spending.

That said, I recognize that most politicians do not read polls to discover the policies that rational voters would support. After all, part of the point of this Article is that because of opportunity cost neglect, real-world voters will mistakenly vote against politicians who support those policies. Since politicians care primarily about getting elected, they will find the Pew polls on government spending more helpful than the Listokin study. Yet this fact itself demonstrates that our democracy functions poorly.

IV. AGGRAVATING AND MITIGATING FACTORS

Part III analyzed the effects of opportunity cost neglect on voters' policy preferences. Voters may also suffer from other failures of rationality that aggravate or mitigate these effects. In addition, politicians and bureaucrats may influence public policy by shaping or ignoring voters' preferences. This Part discusses the policy implications of these complicating factors.

A. Voters' Other Biases and the Use of Heuristics

Opportunity cost neglect is not the only bias to which voters are prone. Voters suffer from other biases that influence public opinion. In addition, voters use certain heuristics to determine their policy preferences. This section discusses how certain biases and heuristics interact with opportunity cost neglect to shape voters' demand for public policy.

The Intentions Heuristic

As discussed in Part I, voters tend to support policies that they believe are in the public interest. But how do voters determine which policies fit that description? One way would be to conduct cost-benefit analyses focusing on the consequences of each proposal. Unfortunately, cost-benefit analysis does not come naturally or easily. It requires that voters become informed and consider difficult tradeoffs, an exercise that takes time and effort. Given that a single vote usually is not decisive, voters have no incentive to bother with such unpleasantness. Doing so yields no personal benefit.

Under these circumstances, rationally ignorant voters would recognize that they are too uninformed to thoroughly analyze policy proposals. They would also recognize that politicians who have more information than they do might use their informational advantage to advance the agenda of special interest groups that provide them with campaign contributions and other benefits. Thus, rationally ignorant voters would view proposals for government intervention with cautious skepticism, withholding support unless politicians clearly show that intervention is necessary.[155]

But irrational voters do not respond in this way. Instead, irrational voters often invoke the intentions heuristic and judge a policy based on the intentions of its advocates rather than on the policy's actual consequences.[156] The idea is that good results flow from good

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[155] CAPLAN, *supra* note 6, at 105-06.

[156] Jeffrey Friedman, *Popper, Weber, and Hayek: The Epistemology and Politics of Ignorance*, 17 CRITICAL REV. i, xix–xxi (2005); *see also*, Tasic, *Are Regulators Rational?*, *supra* note 6; WINSTON, *supra* note 135, at 2 ("[S]ome commentators and policymakers are outright dismissive of policy assessments based on cost-benefit analysis, apparently willing to substitute good intentions—or their own political agenda—for analysis.").

intentions and bad results flow from bad intentions.[157] While this heuristic functions well in certain settings, it may be deceptive when used outside the contexts in which it evolved.[158] Rather than admit that they are uninformed, voters may substitute the intentions heuristic for cost-benefit analysis allowing them to feel confident in the policies they support. The intentions heuristic also allows voters to embrace policies that make them feel good and that are consistent with their worldview while conveniently ignoring any implicit tradeoffs.[159] And if the intentions heuristic leads a voter astray, then so what? The error does not cost him personally.

The effects of the intentions heuristic will be similar to those of opportunity cost neglect. Proposals for more government spending, tax expenditures, and regulations are generally motivated by good intentions. If voters reflexively support these proposals based on the motives of their proponents and without considering the sacrifices that they require, the consequence will be greater demand for government in all its forms.

As an example, consider the Americans with Disabilities Act (ADA).[160] The ADA requires that employers provide reasonable accommodation to disabled employees and outlaws employment discrimination against disabled persons. The ADA was motivated by a desire to increase employment among people with disabilities. But by requiring expensive accommodations and making it more difficult to fire the disabled, the Act unintentionally increases the cost of

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157 Friedman, *supra* note 156, at xx.

158 Tasic, *Are Regulators Rational?*, *supra* note 6.

159 For a discussion of the related idea that voters have a quasi-religious devotion to certain beliefs because those beliefs are consistent with their political worldview, see CAPLAN, *supra* note 6, at 14-16.

160 Slavisa Tasic uses this and other examples to illustrate the intentions heuristic. Tasic, *Are Regulators Rational?*, *supra* note 6.

hiring them.[161] As a result, employment rates for disabled persons decreased after the ADA became law.[162] The adoption of a well-intentioned law that has unintended, adverse consequences illustrates the intentions heuristic at work. In addition, Sam Peltzman argues that even though there are more losers than winners under the ADA, the public does not call for repeal because the winners (disabled persons with jobs) know they are benefiting from the ADA, while the losers (disabled persons unable to find jobs) do not know that the ADA is the reason that they are out of work.[163]

The intentions heuristic and opportunity cost neglect also help explain an important political phenomenon identified by economists. In exchange for campaign contributions and other forms of political support, politicians often adopt laws that benefit special interest groups and harm the public.[164] For example, farm subsidies benefit farmers to the detriment of consumers and taxpayers.[165] Programs like the farm program effectively transfer money from one group (consumers or taxpayers) to another (producers or other special interests).[166] The puzzling aspect is that the transfers are usually structured in an inefficient way that distorts markets and creates a large

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[161] Sam Peltzman, *Regulation and the Wealth of Nations: The Connection between Government Regulation and Economic Progress*, 3 NEW PERSPECTIVES ON POL. ECON. 185, 192-94 (2007).

[162] Daron Acemoglu & Joshua Angrist, *Consequences of Employment Protection? The Case of the Americans with Disabilities Act*, 199 J. POL. ECON. 915, 948-50 (2001); Thomas DeLeire, *The Wage and Employment Effects of the Americans with Disabilities Act*, 35 J. HUMAN RESOURCES 693, 711 (2000).

[163] Peltzman, *supra* note 161, at 194.

[164] GWARTNEY ET AL., *supra* note 31, at 123-26; GORDON TULLOCK, THE ECONOMICS OF SPECIAL PRIVILEGE AND RENT SEEKING 18-22 (1989).

[165] DAVID BESANKO & RONALD BRAEUTIGAM, MICROECONOMICS 387-90 (2nd ed., 2005).

[166] *E.g.*, WINSTON, *supra* note 135, at 23 ("[C]ommodity price support programs basically amount to transfers from consumers to producers that generate annual net welfare losses of $3.0 billion to $12.4 billion.").

deadweight loss.[167] A deadweight loss exists when the harm to consumers and taxpayers outweighs the benefits to others, including special interests. The simplest and most efficient way to structure transfers is to impose a tax on the group targeted for harm and to transfer the money collected directly to target recipients.[168] A direct payment would minimize the deadweight loss, which could in turn benefit all affected parties. But instead of direct payments, the government often uses indirect and inefficient means to carry out the transfer, e.g., acreage limitations.

Why are direct payments so rare and inefficient transfers ubiquitous? The traditional explanation is that direct payments are "too raw" to be politically palatable.[169] In other words, a rationally ignorant public might be duped by cleverly disguised farm subsidies. But a direct transfer from consumers or taxpayers to special interest groups would be scandalous, particularly since many of the beneficiaries of programs like the farm program are large corporations and wealthy individuals.

While plausible, the economist Donald Wittman has criticized this explanation by arguing that it assumes what he believes is an unrealistic asymmetry.[170] The beneficiaries of inefficient transfers recognize them as a transfer (and therefore lobby in favor), but those who are harmed do not. Wittman argues that even if this were the case, then a political entrepreneur could profit by making those harmed by inefficient transfers aware of their error.

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[167] BESANKO & BRAEUTIGAM, *supra* note 165, at 387-90; TULLOCK, *supra* note 164, at 19-22.

[168] BESANKO & BRAEUTIGAM, *supra* note 165, at 387; TULLOCK, *supra* note 164, at 19-22.

[169] Tullock, *supra* note 164, at 19-24. For a review of the literature on inefficient transfers, see Stephen Coate & Stephen Morris, *On the Form of Transfers to Special Interests*, 103 J. POL. ECON. 1210, 1210-12 (1995).

[170] WITTMAN, *supra* note 33, at 34.

If we assume that voters are rational and unbiased, as Wittman does, then his critique has merit.[171] But if voters instead rely upon the intentions heuristic and are prone to neglect opportunity costs, then politicians and special interest groups will find inefficient transfers useful. They can market special interest legislation to voters by first cloaking it in public interest rhetoric. To economists, farm subsidies inefficiently transfer money from consumers and taxpayers to often wealthy farmers.[172] To politicians, farm subsidies protect the national interest by reducing food imports and ensuring "a safe and reliable food supply that is grown at home."[173] The latter description conveys that the subsidies are motivated by good intentions. Moreover, using inefficient transfers rather than direct payments accomplishes two objectives. First, it conceals the fact that the recipients are not always impoverished farmers struggling to get by, which is necessary so that politicians who support farm subsidies can claim to have good intentions. Second, it makes the opportunity cost of the transfers less salient.

And while Wittman is correct that a political entrepreneur might attempt to bring inefficient transfers to voters' attention, the odds of success are low. Voters have no personal incentive to investigate whether the benefits of inefficient transfers outweigh the costs. After all, one vote generally makes no difference. And convincing voters

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[171] *But see* Coate & Morris, *supra* note 169, at 1213 (arguing that "a combination of asymmetric information about policies and politicians can explain the choice of inefficient methods of redistribution in a world in which voters are rational").

[172] WINSTON, *supra* note 135, at 22 ("Generally, subsidies mainly go to big Agribusiness corporations and the richest farmers.").

[173] Boston.com, *Inside Washington: Farm Subsidies Staying Power*, http:// www.boston.com/business/articles/2010/11/14/inside_washington_farm_subsidies_staying_power/ (quoting Representative Vicky Hartzler of Missouri). If, as Bryan Caplan argues, voters suffer from antiforeign bias, then by drawing attention to the potential dangers of relying on imported food, Representative Hartzler's statement makes farm subsidies more appealing.

to change their intuitive views would involve overcoming powerful biases. In fact, if political entrepreneurs had succeeded in educating voters about inefficient transfers, then politicians who support them would lose nothing by discussing the transfers openly in frank terms.[174] Yet this is not what happens. If you have any remaining doubt, consider whether politicians would loudly proclaim that farm subsidies protect the domestic food supply if all voters were economists.[175]

Antimarket Bias

Bryan Caplan and Slavisa Tasic present evidence that voters suffer from antimarket bias, which is "a tendency to underestimate the economic benefits of the market mechanism."[176] Whereas economists generally view market exchanges as mutually beneficial to both buyer and seller, many noneconomists think of trade as a zero-sum game in which wealthy producers exploit consumers.[177]

Survey evidence shows that compared to the typical economist, the public is very suspicious of business and of the market's ability to produce socially beneficial outcomes.[178] Even after controlling for income, ideology, and certain other variables, the typical noneconomist is much more likely than the typical economist to believe that tax breaks for business significantly harm the economy; that business profits are too high; that top executives are paid too much; that in-

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[174] *See* Tullock, *supra* note 164, at 19-24.; *cf.* Hirshleifer, *supra* note 6, at 857 ("In a rational setting, the rhetoric of political discourse doesn't matter. I will argue instead that the form of political discourse is crucial.").

[175] In a survey of members of the American Economic Association, 85.2% favored eliminating agricultural subsidies. *See* Whaples, *supra* note 39, at 1.

[176] CAPLAN, *supra* note 6, at 30-36; *see also* Tasic, *Growth of Government*, *supra* note 6, at 554-58.

[177] Tasic, *Growth of Government*, *supra* note 6, at 556-67; CAPLAN, *supra* note 6, at 32.

[178] CAPLAN, *supra* note 6, at 50-93.

creases in gas prices result from oil companies trying to increase profits rather than from supply and demand; that the current price of gas is too high; and that trade agreements with other countries reduce jobs in the United States.[179]

Moreover, contrary to conventional wisdom, this antimarket view is not limited to liberal Democrats. Stephen Miller analyzed detailed empirical evidence on attitudes toward the free market and government regulation.[180] He found that while liberals are more likely to favor government intervention, "the differences between conservatives and liberals are often fairly small, and . . . most conservatives, too, are wary of free markets, bordering on being hostile to them—especially when it comes to particulars, rather than abstractions."[181] For example, 69% of conservatives believe that shareholders rather than workers receive too great a portion of profits; 65% believe that the government should control prices; 63% believe that the government should provide jobs and give aid to growing industries; 45% believe the government should support declining industries; 44% believe that business is too powerful; and 39% agree that workers and management are fundamentally at odds.[182]

The public's antimarket bias is in part an emotional response. As Caplan puts it, "seeing trade as disguised exploitation soothes those who dislike the market's outcome."[183] But suspicion of the market has cognitive origins as well.[184] Antimarket bias is a special case of

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[179] CAPLAN, *supra* note 6, at 50-93.

[180] Stephen Miller, *Conservatives and Liberals on Economics: Expected Differences, Surprising Similarities*, 19 CRITICAL REV. 47 (2007).

[181] *Id.* at 53.

[182] *Id.* at 53-54.

[183] CAPLAN, *supra* note 6, at 119.

[184] Slavisa Tasic discusses other possible sources of antimarket bias, including the possibility that it is grounded in the way humans evolved. Tasic, *Growth of Government*, *supra* note 6, at 554-58.

the intentions heuristic. The public does not trust the market because producers are selfishly motivated by the desire for profit.[185] The public believes that producers' greed leads them to take advantage of consumers by charging exorbitant prices for low quality products. Recognition of producers' bad intentions leads voters to demand government intervention.

The problem with the public's conception of markets is that it ignores the salutary effects of competition.[186] Competition limits the prices that producers can charge. Moreover, a firm that fleeces its customers will lose their business, reducing profits in the long run. In a competitive market, firms that offer low-cost products that consumers value secure higher profits than those that do the opposite. As a result, economists recognize that self-interested actions by individual market participants can produce substantial societal benefits.[187] Unfortunately, the public has not received the message. Instead, noneconomists often believe (erroneously) that the economy is dominated by monopolies and that firms can raise prices whenever business executives are feeling particularly greedy.[188]

Overconfidence in government is another likely source of anti-market bias. Because they do not understand the complexities of human behavior, voters are too quick to conclude that government can improve on the performance of the market.[189] The Dunning-Kruger effect is a cognitive bias that leads people with a superficial under-

[185] Tasic, *Are Regulators Rational?*, *supra* note 6; *see also* CAPLAN, *supra* note 6, at 30-33.

[186] CAPLAN, *supra* note 6, at 30-33.

[187] CAPLAN, *supra* note 6, at 32.

[188] CAPLAN, *supra* note 6, at 34-36; WINSTON, *supra* note 135, at 15 (summarizing evidence that the U.S. economy does not suffer "from any serious underlying anticompetitive problems").

[189] *Cf.* Tasic, *Are Regulators Rational?*, *supra* note 6 (arguing that regulators are overconfident in their ability to manage the economy).

standing of a subject to overestimate their competence and underestimate what they do not know.[190] Voters who have a superficial understanding of the economy falsely conclude that government intervention can easily and simply solve perceived problems with market outcomes. This helps explain why even after controlling for demographic characteristics, uninformed voters are more likely than informed voters to oppose market solutions and to favor more government.[191] As a group, informed voters apparently have a better understanding of what even liberal economists acknowledge: The market is complex, and government intervention often produces adverse, unintended consequences.[192]

Voters' antimarket bias exacerbates opportunity cost neglect. Antimarket bias makes government intervention seem more attractive. Unlike greedy firms that are trying to maximize profits, politicians proposing new spending programs, tax expenditures, and regulations seemingly have the best of intentions. Many government programs are ostensibly motivated by a desire to keep us healthy and safe and to help the poor. Voters' tendency to neglect opportunity

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[190] Justin Kruger and David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, 77 J. PERSONALITY AND SOC. PSYCH. 1121 (1999).

[191] Scott Althaus finds that informed voters are more likely than uninformed voters to support market solutions and to oppose government intervention. SCOTT ALTHAUS, COLLECTIVE PREFERENCES IN DEMOCRATIC POLITICS 111-17, 128-32 (2003) ("[F]ully informed opinion tends to be fiscally conservative when it comes to expanding domestic programs, to prefer free market solutions over government intervention to solve policy problems, to be less supportive of additional governmental intervention to protect the environment, and to prefer a smaller and less powerful federal government."). Althaus also finds that informed voters tend to be more progressive on social policy topics. In other words, informed voters tend to be more libertarian than uninformed voters.

[192] *See, e.g.*, JOSEPH STIGLITZ, ECONOMICS OF THE PUBLIC SECTOR 8-10 (3d ed., 2000).

costs complements this view of the world by concealing the tradeoffs that government intervention entails.

Action Bias

A rational actor focuses on decision outcomes.[193] So a rational actor will take action only if the expected consequences of doing so are better than the expected consequences of inaction. Real people, on the other hand, suffer from action bias, which is an irrational penchant for action.[194]

One cause of action bias is that taking action makes it easier to receive credit for bringing about a good outcome. Anthony Patt and Richard Zeckhauser presented experimental subjects with one of two scenarios.[195] In the first scenario, an environmental group had funds either to help a town install a treatment system to clean up a polluted river or to pay a new factory to install scrubbers that would preserve existing air quality, which was already good.[196] In the second scenario, the group could use its funds to help a town install a treatment system to protect a currently unpolluted river from an expected increase in water pollution or to pay an existing factory to install scrubbers to clean up polluted air.[197] Patt and Zeckhauser found that 68% of subjects faced with the first scenario recommended cleaning up the polluted river over maintaining air quality, which suggests that the subjects cared more about clean water than clean air. But when

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[193] *See* Anthony Patt & Richard Zeckhauser, *Action Bias and Environmental Decisions*, 21 J. RISK & UNCERTAINTY 45, 48 (2000).

[194] Michael Bar-Eli et al., *Action Bias among Elite Soccer Goal Keepers: The Case of Penalty Kicks*, 28 J. ECON. PSYCH. 606, 608 n.2 (2007); *see also,* Marcel Zeelenberg et al., *The Inaction Effect in the Psychology of Regret*, 82 J. PERSONALITY & SOCIAL PSYCH. 314, 317-24 (2002); Patt & Zeckhauser, *supra* note 193, at 45-47. For a discussion of action bias and government failure, *see* Tasic, *Are Regulators Rational?*, *supra* note 6.

[195] *See* Patt & Zeckhauser, *supra* note 193, at 55-59.

[196] *See* Patt & Zeckhauser, *supra* note 193, at 56.

[197] *See* Patt & Zeckhauser, *supra* note 193, at 56.

faced with the second scenario, the subjects split evenly between maintaining water quality and cleaning up the air, which suggests that the subjects cared equally about the two goals.[198] Patt and Zeckhauser reconcile these disparate findings by arguing that people are biased in favor of taking action when they can take credit for demonstrable gains.[199] Cleaning up dirty water or dirty air has an obvious positive impact that is easy to visualize. Maintaining water or air that is already clean does not. So subjects were biased in favor of clean up rather than preservation whether the dirty resource was water or air.

Notice also that opportunity cost neglect plays a key role in Patt and Zeckhauser's experiment. In both scenarios, taking action to clean up existing pollution in one area entails failing to avoid pollution in another area. Patt and Zeckhauser suggest that their subjects discounted the latter loss because unlike cleaning up pollution, protecting the environment from degradation avoids a nondemonstrable loss that is difficult to visualize.[200] In other words, the fact that the loss is indirect and implicit makes it easy to ignore.

A second cause of action bias is that in some cases, action seems more normal than inaction.[201] Therefore, if and when things turn out badly, someone who took action to prevent the bad outcome seems less blameworthy than someone who took no action.[202] This may be true even if the action taken actually made the bad outcome more likely. For example, Michael Bar-Eli and his colleagues found that in

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[198] *See* Patt & Zeckhauser, *supra* note 193, at 58.

[199] *See* Patt & Zeckhauser, *supra* note 193, at 50-56.

[200] *See* Patt & Zeckhauser, *supra* note 193, at 55, 64-65.

[201] In other cases, inaction seems more normal than action, which can lead to omission bias. For a review of the literature on omission bias, see Zeelenberg et al., *supra* note 194, at 314-15.

[202] Bar-Eli et al., *supra* note 194, at 614; Zeelenberg et al., *supra* note 194, at 317-24.

defending against a penalty kick, the optimal strategy for a soccer goalkeeper is to stay in the center of the goal, a strategy that can be viewed as inaction.[203] Yet even elite soccer goalkeepers almost always jump left or right.[204] Bar-Eli's survey of elite goalkeepers found that in defending against penalty kicks, the goalkeepers believe that jumping left or right rather than staying in the center is normal.[205] Moreover, 11 goalkeepers reported that they would feel worse if a goal were scored while they remained in the center rather than jumping, while only 4 indicated the opposite.[206] This is irrational given that staying in the center minimizes the probability of giving up a goal.[207]

Soccer penalty kicks are not the only situation in which taking action is the norm. Following a negative outcome, people often feel compelled to take action to improve future outcomes.[208] Doing something rather than doing nothing is the normal response to a bad outcome. Problems call for solutions, not inaction. So if one bad outcome is followed by another, people are more likely to feel regret

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[203] Bar-Eli et al., *supra* note 194, at 612-13. Staying in the center is the optimal strategy given the current distribution of kicks. If goalkeepers always stayed in the center, then kickers would eventually catch on and start aiming kicks away from the center. Goalkeepers would then need to change their strategy. Bar-Eli et al., *supra* note 194, at 616.

[204] Bar-Eli et al., *supra* note 194, at 612-13.

[205] Bar-Eli et al., *supra* note 194, at 614-15.

[206] Bar-Eli et al., *supra* note 194, at 614. In addition, fifteen goalkeepers gave the highest possible rating (10, "feel very bad") to all 3 possible scenarios (a goal being scored while jumping right, jumping left, or staying in the center), which made it impossible to compare their reactions among the 3 situations. Two goalkeepers gave the same rating (but less than 10) to all of the scenarios.

[207] Perhaps goalkeepers are not trying to minimize the possibility of a goal, but are instead trying to minimize the likelihood that coaches, teammates, and spectators will blame them for giving up a goal. This begs the question: why are observers more likely to blame a goalkeeper for staying in the center when that strategy maximizes the chances for success? Action bias provides the answer.

[208] Zeelenberg et al., *supra* note 194, at 317.

about the second bad outcome if they failed to take action in response to the first. For example, if a soccer team loses two games in a row, experimental subjects predict that the team's coach will regret the second loss more and feel more responsible for it if he failed to take action in response to the first loss.[209] This bias in favor of action is problematic because even after a bad outcome, inaction may be the best option.

Action bias and opportunity cost neglect may combine and lead to excessive government intervention. If some crisis occurs, action bias leads voters to demand government action despite the possibility that every possible government response may only make matters worse.[210] During a crisis, continued commitment to the free market seems like inaction rather than a possible solution. In addition, opportunity cost neglect makes potential government responses more appealing by concealing implicit tradeoffs that may be difficult to demonstrate or visualize.[211] Moreover, politicians are eager to supply legislation because taking action allows them to claim credit for addressing the problem. Politically, doing nothing is a nonstarter.

Consistent with this hypothesis, Robert Higgs shows that crises are a primary driver of government growth.[212] According to Higgs, "Under conditions widely agreed to constitute a national emergency

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[209] Zeelenberg et al., *supra* note 194, at 317-23.

[210] *Cf.* Hirshleifer, *supra* note 6, at 864 ("The public wants government to do something about problems, which implicitly assumes that a useful intervention exists.").

[211] *Cf.* Hirshleifer, *supra* note 6, at 859 ("[T]he costs of a regulation, though widely incurred, are often far less salient than the exceptional wrongdoings that incited it.").

[212] ROBERT HIGGS, CRISIS AND LEVIATHAN: CRITICAL EPISODES IN THE GROWTH OF AMERICAN GOVERNMENT (1987). Higgs defines government growth as a widening of the scope of the government's effective authority over economic decision making. *Id.* at 32.

. . . Americans both expect and desire the government to 'do something,' and to do it immediately."[213] And while the government often has the public's support when it responds to an emergency (whether real or imagined), politicians have frequently used crises to expand government beyond the scope that informed citizens would likely accept. Politicians have accomplished this by pursuing policies that conceal costs, e.g., drafting men into the military rather than paying soldiers a wage sufficient to persuade them to enlist voluntarily.[214] Moreover, when a crisis results in a new government program, the program's benefits become visible while its opportunity costs remain invisible.[215] As a result, many programs become entrenched and impossible to eliminate even though doing so would benefit society. In particular, the federal government's response to the two world wars and the Great Depression substantially and permanently increased

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[213] *Id.* at 63-64.

[214] *Id.* at 62-67. A popular method of concealing costs is to substitute elements of a command economy for the market economy. The military draft is an example. Similarly, during the Woodrow Wilson administration, Congress passed the Adamson Act, which temporarily required railroad companies to pay their employees an increased wage. Congress adopted the Act to avoid a nationwide strike threatened by the railroad employees. As an alternative measure, Congress could have supplemented the pay of the railroad employees using tax dollars. But this would have made the cost of the Act explicit and would have shifted the cost to taxpayers. *Id.* at 116-21. For further discussion of the use of regulation to conceal costs, see *supra* note 137.

[215] *See id.* at 69 ("People are less likely to object to an established policy, complete with an administrative bureaucracy and a group of dependent beneficiaries, than to an equally costly proposed policy.") Higgs also emphasizes that government programs created during a crisis become entrenched due to changes in prevailing ideology resulting from the crisis and the polity's experience with the programs. *Id.* at 67-74.

the scope and importance of the military-industrial complex, the federal income tax, the welfare state, agricultural policy, labor laws, and numerous other government activities and programs.[216]

The Availability Heuristic

The availability heuristic is the tendency to estimate the importance and frequency of an event based upon how easy it is to recall examples of it.[217] The availability heuristic causes people to overestimate risks that are particularly vivid and salient. The use of this heuristic can lead to availability cascades, which are "self-reinforcing process[es] of collective belief formation by which an expressed perception triggers a chain reaction that gives the perception increasing plausibility through its rising availability in public discourse."[218]

An availability cascade generally involves an informational component, which occurs because people who have limited information accept something as true based on the perception that others believe it. It also includes a reputational component, which occurs because people refuse to publicly express their doubts about a popular belief due to social pressure to conform.[219] Availability entrepreneurs, including members of special interest groups, sometimes try to trigger availability cascades to advance their agendas.[220]

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[216] *Id.* at 123-236. In addition, Higgs describes in detail how the world wars and the Great Depression produced changes in constitutional law that dramatically and permanently increased the government's power to interfere with private property rights and freedom of contract.

[217] Amos Tversky & Daniel Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, in JUDGMENT UNDER UNCERTAINTY: HEURISTICS AND BIASES 11 (Daniel Kahneman et al. eds., 1982).

[218] Kuran & Sunstein, *supra* note 5, at 683.

[219] Kuran & Sunstein, *supra* note 5, at 720-28.

[220] Kuran & Sunstein, *supra* note 5, at 713-14.

Availability cascades can result in mass scares about minor risks, especially if those risks are vivid and newsworthy. Examples include the public panics related to Alar, a pesticide used on apples, and the Love Canal chemical waste site.[221] Neither of these panics was based on scientific evidence of dangerous risks. Instead, the risks involved became greatly exaggerated in public discourse due largely to the efforts of availability entrepreneurs who worked to draw attention to them.[222]

Availability cascades and opportunity cost neglect may interact to increase the demand for regulation. During an availability cascade, the media will often tout a proposed governmental response to the risk in question, but the news coverage generally fails to mention the opportunity costs of intervention.[223] This causes government action to appear more desirable than it would if tradeoffs were explicit. Moreover, because availability cascades occur with respect to some risks but not others, the resulting pattern of regulation can appear nonsensical. For example, some regulations in the United States cost $10 million per life saved, while others cost $100,000 per life saved.[224] Similarly, nuclear power is popular and widespread in France but very limited in the United States, where it arouses considerable fear.[225]

[221] Kuran & Sunstein, *supra* note 5, at 691-701.
[222] Kuran & Sunstein, *supra* note 5, at 721.
[223] Kuran & Sunstein, *supra* note 5, at 691-701.
[224] Kuran & Sunstein, *supra* note 5, at 744; Sunstein, *Cost-Benefit Analysis*, *supra* note 5, at 1061-63.
[225] Kuran & Sunstein, *supra* note 5, at 745.

Tax Salience Effects

Many advocates of limited government have argued that the government's use of low-salience taxes causes voters to systematically underestimate the cost of government in dollar terms.[226] The idea is that politicians use complex tax structures, indirect taxes, and other deceptive techniques to hide the true cost of government and to make the government larger than voters would prefer if they were fully informed. Some empirical evidence is consistent with the hypothesis, but the studies generally cannot rule out alternative explanations.[227] For example, consistent with the hypothesis, some studies show that communities with complex tax systems tend to have larger public budgets. But this finding is also consistent with the notion that voters who prefer a large government also prefer a more complicated and diversified revenue system.[228]

In any event, tax salience effects and opportunity cost neglect are distinct phenomena. Any underestimation of the cost of government that results from low-salience taxes could be avoided simply by making each voter aware of exactly how much government costs in dollar terms. But this solution would not cure opportunity cost neglect. In experiments involving consumption decisions, people often fail to consider opportunity costs even when the dollar price of the focal option is clearly stated.[229] Similarly, presenting each voter with a summary of the government's budget or a report specifying how

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[226] For reviews of the literature on tax salience and the related concept of fiscal illusion, see Gamage & Shanske, *supra* note 107, at 33-54; MUELLER, *supra* note 27, at 527-29, and Dollery & Worthington, *supra* note 107.

[227] Dollery & Worthington, *supra* note 107, at 293-94; *see also* Gamage & Shanske, *supra* note 107, at 33-54;.

[228] Dollery & Worthington, *supra* note 107, at 270-71.

[229] *See supra* Part II.

much tax that he pays may cause some people to think about the opportunity costs of government programs, but the effect might not be dramatic. Facilitating widespread opportunity cost consideration might instead require explicitly referring to alternative uses of tax revenues.

Although they are different phenomena, distortions produced by low-salience taxes and opportunity cost neglect are related. If a voter underestimates his tax bill or the overall dollar cost of government, then even if he habitually considers opportunity costs, he will still underestimate the sacrifice required to make government programs possible. Moreover, low-salience taxes and opportunity cost neglect work in the same direction. They both artificially increase the demand for government.

Underestimation of Government's Benefits

While some scholars claim that voters underestimate the cost of government, others counter that voters underestimate government's benefits.[230] These scholars claim that the benefits of government are often distant in time, indirect, and otherwise nonobvious. As a result, voters may overlook them.

In a recent article, Yair Listokin and David Schizer go so far as to argue that the government should use marketing techniques to increase the salience of the benefits it provides.[231] Among other initiatives, Listokin and Schizer advocate advertising campaigns that trumpet popular government programs; placing slogans such as "Support our Troops" on tax forms; requiring tax software companies to generate "taxpayer receipts" that specify how much of a taxpayer's payment goes to national defense, education, and so forth;

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[230] *E.g.*, Gamage & Shanske, *supra* note 107, at 91-95; Anthony Downs, *Why the Government is Too Small in a Democracy*, 12 WORLD POL. 541 (1960).
[231] Listokin & Schizer, *supra* note 9.

and allowing taxpayers to designate the programs on which part of their tax dollars will be spent.[232]

Opportunity cost neglect presents an obvious challenge to those who want to increase the salience of government's benefits. If the goal is for the government to adopt policies that rational voters would support, then opportunity cost neglect and the tendency to underestimate government's benefits work in opposite directions.[233] Any tendency to underestimate government's benefits results in too little support for government. At the same time, opportunity cost neglect results in too much support for government. So whether voters are too supportive of government or not supportive enough is theoretically indeterminate.

Nonetheless, between 2009 and 2012 the federal government ran budget deficits totaling nearly $5.5 trillion, and the debt to GDP ratio has spiked to its highest level since the World War II era.[234] Moreover, absent substantial spending cuts or tax increases, the Congressional Budget Office projects even larger deficits in the future.[235] The federal government is on an unsustainable fiscal path that will require painful sacrifices that Americans do not currently appear willing to make.[236] Given this, pursuing policies that will increase the

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232 Listokin & Schizer, *supra* note 9, at 204-15.

233 *Cf.* Gregory Besharov, *Second-Best Considerations in Correcting Cognitive Biases*, 71 S. ECON. J. 12, 15–19 (2004) (arguing that departures from rationality do not always lead to suboptimal choices by consumers because one failure of rationality may offset another).

234 OFFICE OF MGMT. & BUDGET, HISTORICAL TABLES: FISCAL YEAR 2014 BUDGET OF THE U.S. GOVERNMENT 24-25 (2013); CBO, *supra* note 112, at 10 (2013). Over the next few years, the CBO expects the budget deficit to decline due to the improving economy, recent tax increases, and the waning effects of recessionary spending policies. But absent substantial changes in the law, the decline will be short lived. CBO, *supra* note 112, at 8-12.

235 CBO, *supra* note 112, at 8-12.

236 CBO, *supra* note 112, at 6.

demand for government programs seems inadvisable, particularly in the absence of evidence that the public will also assent to significantly higher taxes.[237]

In addition, the techniques that Listokin and Schizer propose for increasing the salience of government's benefits would mislead the public. People often passively accept the frame or characterization of the problem provided to them.[238] How voters perceive government spending will depend largely on how it is framed. Listokin and Schizer propose that the government frame its spending positively by describing spending categories in benign terms like "national defense," "job and family security," and "education and job training."[239] But critics of government spending could make an equally plausible claim for very different labels. For example, rather than notify a taxpayer of how much of his tax bill goes to pay for "national defense," a critic of military spending might favor the phrase "wasteful expenditures on unnecessary weapons" or "transfers to wealthy defense contractors." These labels would no doubt elicit a much different reaction than the labels that Listokin and Schizer propose. Yet we have no reason to believe that Listokin's and Schizer's labels are better in the sense that they will make public opinion more rational.

Listokin and Schizer endorse one tactic in particular that is especially troubling. They point out that charities often use phrases such as "for the cost of your morning coffee you could feed 8 children for one day."[240] They encourage the government to follow suit and use

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[237] In defense of Listokin and Schizer, their stated goal is reducing opposition to taxes rather than increasing demand for spending. Listokin & Schizer, *supra* note 9, at 180-81. Nonetheless, their proposals would clearly have the latter effect. As a result, I suspect that taking their advice would worsen rather than improve current fiscal problems. In any event, given the severity of those problems, the burden of proof should be on Listokin and Schizer to show otherwise.

[238] *See supra* Part II.A.

[239] Listokin & Schizer, *supra* note 9, at 195.

[240] Listokin & Schizer, *supra* note 9, at 194.

similar tactics to promote government programs. But the public already suffers from a general tendency to ignore opportunity costs. Actively minimizing the sacrifices required by government spending will exacerbate this problem. The solution to opportunity cost neglect is to find ways to get voters to consider the *best* alternatives to government action. Focusing the public's attention on trivial or unattractive alternatives like buying more coffee is deceptive. More generally, because people tend to focus on salient aspects of a decision, especially those factors made explicit by the decision frame, facilitating rational decision making requires presenting voters with a balanced description of government programs, including not only their benefits but also their opportunity costs.

B. Slack among Politicians and Bureaucrats

Up to this point, I have focused on voters' policy preferences, which are important because public opinion significantly influences government policy.[241] But in a representative democracy, politicians have some slack to deviate from the policies that voters would adopt in a direct democracy and to implement the politicians' own agenda. Public-spirited politicians might even use their slack to save an irrational public from itself. Because they are better educated than the typical voter, politicians and the experts on whom they rely are more likely than voters to engage in cost-benefit analysis, including thinking about the opportunity costs of government programs. Paradoxically, by refusing to give voters what they want, politicians might cause democracy to function better.

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[241] *E.g.*, SOMIN, *supra* note 31, at 6, 97; Blinder & Krueger, *supra* note 15, at 328; JAMES STIMSON, TIDES OF CONSENT (2004).

An important source of slack is the government bureaucracy. Voters may underestimate the ability of politicians to control administrative agencies.[242] If so, politicians who want to defy voters' wishes can delegate disagreeable decisions to the agencies and then plausibly deny responsibility.[243] So while it may be undemocratic, politicians could use the bureaucracy to subvert voters' irrational preferences and thereby facilitate more rational decision making.[244] In particular, because administrative agencies generally have to conduct cost-benefit analyses in connection with major regulatory actions,[245] they could limit the harm resulting from voters' opportunity cost neglect.

There are two major caveats to this analysis. First, politicians have some slack to implement their own agenda, but their capacity to defy voters' wishes is limited.[246] In particular, politicians probably

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[242] Bryan Caplan suggests that while politicians in fact have a good deal of control over the bureaucracy, voters irrationally underestimate how much control politicians have. CAPLAN, *supra* note 6, at 172-73. For a discussion of the many ways in which politicians can hold bureaucrats accountable, *see* JOHN MANNING & MATTHEW STEPHENSON, LEGISLATION AND REGULATION 406-544 (2d ed., 2013). In general, the public is not good at assessing which outcomes politicians control and which they do not. The public underestimates politicians' power in certain areas while also blaming politicians for events over which they exercise little influence. SOMIN, *supra* note 31, at 100-02.

[243] MANNING & STEPHENSON, *supra* note 242, at 353-54; CAPLAN, *supra* note 6, at 172-76.

[244] *See* CAPLAN, *supra* note 6, at 172-76; *cf.* Kuran & Sunstein, *supra* note 5, at 737 (arguing that politicians should ignore voters' demands for regulation when those demands are rooted in biased information and that they should instead defer to the fact findings of scientific experts).

[245] MANNING & STEPHENSON, *supra* note 242, at 513-32.

[246] CAPLAN, *supra* note 6, at 20, 172-76; Paul Burstein, *The Impact of Public Opinion on Public Policy*, 56 POL. RESEARCH Q. 29, 36 (2003) ("Public opinion affects policy three-quarters of the times its impact is gauged; its effect is of substantial policy importance at least a third of the time, and probably a fair amount more."); Brandice Canes-Wrone, *Out of Step, Out of Office, Electoral Accountability and House Member Voting*, 96 AM. POL. SCI. REV. 127, 138 (2002) ("[W]e show that, holding district ideology constant, in every election between 1956 and 1996 an incumbent's vote share decreased the more

have slack with respect to issues about which voters are indifferent. But on issues about which voters care deeply, they will identify and punish politicians who shirk.

Second, although politicians might use any slack that they possess to promote the public interest, they may also abuse it, e.g., by exchanging special interest legislation for campaign contributions.[247] Moreover, while politicians may generally be less susceptible than the public to certain failures of rationality, they are not immune. Politicians' irrationality may prevent them from identifying which policies are in the public interest.[248] For example, opportunity cost neglect helps explain why some politicians oppose regulatory reforms such as shutting down lightly used public transit routes or allowing transit authorities to reduce operating deficits by charging higher fares. Politicians often object to this type of reform on the ground that it will harm the poor.[249] In fact, the failure to adopt reforms that result in more efficient use of society's resources represents a missed opportunity to help the poor. In particular, the government could use the money saved through more efficient operation of public

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he voted with the extreme of his party [and] the probability [of reelection] decreases significantly as an incumbent's voting support for his party increases."); WITTMAN, *supra* note 33, at 20-30; *see also* Kuran & Sunstein, *supra* note 5, at 751-52 (discussing the pressure on congressmen to respond to the public's demand for legislation resulting from an availability cascade); *but see* Steven Levitt, *How Do Senators Vote? Disentangling the Role of Voter Preferences, Party Affiliation, and Senator Ideology*, 86 AM. ECON. REV. 425 (1996) (finding that for U.S. senators, "ideology is the primary determinant" of voting patterns, that "[l]ess than one quarter of the weight in the [senator's] decision function is devoted to voter preferences," and that voter preferences have more influence over senators in election years and when the senator holds a marginal seat).

[247] CAPLAN, *supra* note 6, at 180 ("Do what the public wants when it cares; take bids from interested parties when it doesn't.").

[248] *See supra* note 6.

[249] WINSTON, *supra* note 135, at 90.

transit to provide transportation vouchers for low-income travelers.[250]

Similarly, to the extent that politicians do in fact lack control over the bureaucracy, bureaucrats may pursue their own agenda even if it conflicts with the preferences of politicians and voters. As with politicians, bureaucrats could use this slack to promote the public interest by adopting socially beneficial rules that irrational voters might find objectionable. On the other hand, bureaucrats might instead be motivated to protect their jobs and salaries or to maximize the budget and power of their respective agencies.[251] Bureaucrats may also suffer from "tunnel vision,"[252] which is a form of opportunity cost neglect. Because they believe so strongly in their agency's mission, they may ignore competing interests and adopt rules that do more harm than good.

In sum, politicians and bureaucrats probably have some slack to deviate from voters' policy preferences, but their slack is limited. Additionally, politicians and bureaucrats may not use any slack that they have to promote the public interest. So, this slack does not significantly reduce concerns about voters' neglect of opportunity costs.

C. Mixed Policy/Outcome Preferences

My analysis up to this point has assumed that voters support candidates who share their policy preferences. In reality, voters also focus on outcomes in deciding how to vote.[253] This means that politicians seeking reelection will temper their desire to give voters the

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[250] WINSTON, *supra* note 135, at 90.

[251] For a review of several models of bureaucratic behavior, see MUELLER, *supra* note 27, at 359-80.

[252] MAXWELL STEARNS & TODD ZYWICKI, PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW 363-66 (2009).

[253] SOMIN, *supra* note 31, at 100-05; CAPLAN, *supra* note 6, at 158-60. Political scientists refer to voting based on outcomes as "retrospective voting." *See generally* Richard

policies that they want by avoiding policies that will lead to noticeably bad outcomes prior to the next election. In particular, politicians will want to avoid policies that do significant and immediate economic damage. As a result, if opportunity cost neglect causes voters to demand government spending, tax expenditures, and regulation that would noticeably and immediately harm the economy, then self-interested politicians will refuse to comply and thereby save the public from itself.

Recall that in her survey, Nancy Kraus found that 60% of people think that you can never spend too much money to reduce the risk associated with chemicals. Yet the government has not taken the dramatic steps necessary to eliminate chemical exposure. Why? One reason is that politicians understand that doing so would wreak havoc on the economy.[254] In this instance, keeping voters satisfied requires ignoring their misguided beliefs. It seems plausible then, that voters' focus on outcomes may temper the effects of opportunity cost neglect on public policy.

Nonetheless, a focus on policy outcomes does not render opportunity cost neglect harmless. Many government programs that voters demand due to opportunity cost neglect will produce bad out-

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Nadeau & Michael Lewis-Beck, *National Economic Voting in U.S. Presidential Elections*, 63 J. POL. 159 (2001); David Lanoue, *Retrospective Voting and Prospective Voting in Presidential-Year Elections*, 47 POL. RESEARCH Q. 193 (1994); Wayne Francis et al., *Retrospective Voting and Political Mobility*, 38 AM. J. POL. SCI. 999 (1994); Brad Lockerbie, *The Influence of Levels of Information on the Use of Prospective Evaluations*, 13 POL. BEHAVIOR 223 (1991). Illya Somin and Bryan Caplan criticize the notion that retrospective voting significantly improves democracy. They argue that voters are too uninformed to recognize which politicians are responsible for what outcomes; voters care about policy, not just outcomes; and voters have biased views as to what constitutes a good outcome, e.g., equating passing legislation as a good outcome regardless of consequences. SOMIN, *supra* note 31, at 100-05; CAPLAN, *supra* note 6, at 158-60.

[254] CAPLAN, *supra* note 6, at 162.

comes that are delayed in time or that are otherwise difficult to observe. For this reason, short-sighted politicians focused on the next election are likely to acquiesce in these policies.

To illustrate, consider again the evidence that people become less supportive of the military when they focus their attention on the necessary tradeoffs. It seems likely that opportunity cost neglect has caused the public to support billions (perhaps hundreds of billions) of dollars in defense spending that it otherwise would not have tolerated. If so, then opportunity cost neglect has led to a welfare-reducing misallocation of resources. Society has had and continues to have too many guns and too little butter relative to a world populated by voters unbiased by opportunity cost neglect. But the loss in welfare has not been obvious to most people. In a wealthy country like the United States, the effects, although possibly quite large, have not been devastating, at least not up to this point. Of course, over a long time period, the country has likely wasted significant resources on fruitless military efforts that many voters would not have supported had they focused on the required sacrifices.

D. Malleable Policy Preferences

If irrational voters support politicians whose policy preferences mirror their own, then democracy may fail to deliver policies that are in the public interest. But what if politicians can influence voters' policy preferences? In that case, public-spirited politicians might persuade voters that their biases cause them to mistakenly support policies that, though well-intentioned, are inconsistent with the public interest.[255] In other words, political competition might improve the quality of

[255] *Cf.* WITTMAN, *supra* note 33, at 10 (arguing that political entrepreneurs are rewarded for providing the public with new information).

democratic outcomes by making it advantageous for politicians to bring voters' irrational tendencies, including opportunity cost neglect, to their attention.

The problem with this argument is that politicians who draw attention to the opportunity costs of government programs bear the burden of overcoming voters' innate tendency to ignore implicit tradeoffs. A politician might point out that building a new F-35 Fighter requires forgoing numerous public elementary schools. He might hope to force the public to choose between the two options. But given that a single vote is not decisive, voters have no incentive to tolerate politicians who lecture them about tradeoffs.[256] On the contrary, they have every incentive to support politicians who pay lip service to both education and national defense and who falsely promise to promote both without painful sacrifices.[257]

In fact, opportunity cost neglect makes voters more susceptible to politicians' propaganda.[258] In particular, voters are biased in favor of politicians who promise to solve problems by framing proposals so that tradeoffs remain implicit. Politicians can promise to do more

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[256] *Cf.* CAPLAN, *supra* note 6, at 169 ("Economic issues are important to voters, but they do not want politicians with economic expertise—especially ones who lecture them and point out their confusions. Instead, the electoral process selects [lawyers] who are professionally trained to plead cases persuasively and *sincerely* regardless of their merits.").

[257] *Cf.* CAPLAN, *supra* note 6, at 166-69 (discussing politicians' incentive to pander to voter irrationalities because voters shoot the messenger).

[258] Bryan Caplan argues that irrationality makes voters susceptible to certain kinds of messages. For example, if evolution has left the typical person xenophobic, then voters will be open to propaganda that scapegoats foreigners. CAPLAN, *supra* note 6, at 178-79. My argument that voters are open to politicians who exploit opportunity cost neglect is based on similar logic. *See also* Hirshleifer, *supra* note 6, at 857 ("[C]ertain beliefs about regulation are especially good at exploiting psychological biases to attract attention and support.")

of everything. Alternatively, they can promise to balance the government's budget without pain by eliminating unspecified waste.[259] The tendency to neglect opportunity costs means that voters will not automatically fill in the gap and recognize that pursuing *x* means giving up *y*.

More generally, charismatic politicians might influence voters' policy preferences through faith and rhetoric. In other words, voters might change their policy preferences simply because they trust a politician ("I believe because *he* said it.") or because a politician is an eloquent orator ("I believe because he said it *so well*.").[260] In theory, a charismatic politician could use his political skills to persuade voters to adopt more rational policies.

But why fight that battle? Changing voters' minds would require overcoming the natural tendency to neglect opportunity costs.[261] Forcing voters to come to grips with the reality that tradeoffs are inevitable seems a herculean task for even the most gifted politician. If successful, the likely result would be ambivalence on the part of the electorate, not exactly a recipe for political success. For this reason, politicians who nobly address problems in a serious way are likely to lose elections to politicians who pander to the public's irrational demands.[262]

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[259] This message is likely to be especially appealing to Republican voters. *See, e.g.*, ANDERSON ROBBINS RESEARCH, *supra* note 118, at Question 21 (2013) (finding that 58% of Republicans believe that we could eliminate most of the national debt by cutting waste and fraud from government compared to only 42% of Democrats), http://www.foxnews.com/politics/interactive/2013/01/18/fox-news-poll-government-spending/.

[260] CAPLAN, *supra* note 6, at 169-72.

[261] *Cf.* Kuran & Sunstein, *supra* note 5, at 694-98 (discussing how the public panic over the Love Canal chemical waste site placed overwhelming pressure on political actors to comply with the public's call for action despite the lack of scientific evidence suggesting that the site was dangerous).

[262] *See* CAPLAN, *supra* note 6, at 180.

In fact, selection pressure favors politicians who, like voters, fail to consider the opportunity costs of the policies that they promote.[263] Not only will their message resonate, but these politicians will also appear more genuine than rational politicians who recognize tradeoffs but pretend otherwise in order to get elected.

My analysis clarifies why uninformed voters cannot rely on politicians for advice in the same way that lay people rely on experts in other fields. Donald Wittman has pointed out that people who know nothing about medicine can obtain good medical care by consulting a doctor.[264] Similarly, people who know nothing about predicting the weather can rely on an experienced weatherman. By analogy, Wittman argues that voters who know nothing about public policy can rely on trusted politicians. But the analogy is faulty. Doctors and weathermen have a strong incentive to tell the truth even if the truth is unpleasant. A doctor risks her reputation (and a lawsuit) if she protects her patients' feelings by refusing to disclose when they have cancer. A weatherman who always predicts sunshine will quickly be discovered as a fraud. But as long as his policies do not create an obvious and immediate disaster, a politician who never delivers bad news about required tradeoffs rarely faces consequences. By the time the public becomes aware of the adverse effects of excessive spending, tax expenditures, and regulation, the politicians who pursued these policies may be retired or otherwise able to plausibly deny responsibility. In fact, one consequence of excessive government intervention may be substantially slower economic growth, but the public will never become aware of this cost because it is hidden.

Examples from both the Bush and Obama administrations illustrate these points. In 2002 and 2003, President Bush imposed large

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[263] CAPLAN, *supra* note 6, at 19-20, 168.
[264] WITTMAN, *supra* note 33, at 57.

tariffs on imported steel.[265] Economists strongly oppose tariffs and similar restrictions on international trade.[266] Textbook economics demonstrates that tariffs produce a deadweight loss.[267] Their cost to consumers outweighs the benefits to producers in terms of profit and to the government in terms of revenue.[268] But in announcing the tariffs to the public, the President did not point out that they would harm consumers. Instead, the administration's press release stated the following: "This relief will help steel workers, communities that depend on steel, and the steel industry . . . without harming our economy."[269] Economists disagree, but politics required the President to conceal the required tradeoffs.

President Obama used a similar tactic to facilitate passage of the Patient Protection and Affordable Care Act. Prior to the Act's adoption, the President repeatedly stated in unqualified terms that people who liked their current health insurance policy would be able to keep

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265 Richard Stevenson & Elizabeth Becker, *After 21 Months, Bush Lifts Tariff on Steel Imports*, N.Y. Times, Dec. 5, 2003, http://www.nytimes.com/2003/12/05/us/after-21-months-bush-lifts-tariff-on-steel-imports.html; *see generally*, GARY HUFBAUER AND BEN GOODRICH, STEEL POLICY: THE GOOD, THE BAD, AND THE UGLY (2003), http://www.iie.com/publications/pb/pb03-1.pdf.

266 As noted above, a survey of members of the American Economic Association found that 87.5% agreed that the United States should eliminate tariffs and other trade barriers. Whaples, *supra* note 39, at 1.

267 BESANKO & BRAEUTIGAM, *supra* note 165, at 393-97; *see also* ROBERT CRANDALL, THE FUTILITY OF STEEL TRADE PROTECTION 9-21 (2002). For an economic analysis of the Bush steel tariffs published by a trade group critical of the tariffs, *see* JOSEPH FRANCOIS & LAURA BAUGHMAN, ESTIMATED ECONOMIC EFFECTS OF PROPOSED IMPORT RELIEF REMEDIES FOR STEEL (2001), http://www.citac.info/steeltaskforce/remedy/.

268 WINSTON, *supra* note 135, at 24 ("[A] large volume of empirical evidence indicates that trade protection has mainly generated gains to established U.S. industries that fall far short of the losses to consumers.").

269 Statement by the President, President Announces Temporary Safeguards by the Steel Industry, http://georgewbush-whitehouse.archives.gov/news/releases/2002/03/20020305-6.html.

it even if the Act became law.[270] Apparently, the President wanted to minimize the perception that the law would require significant sacrifices among the many people who liked their health insurance coverage.[271] In any event, shortly after the Act went into effect, insurance companies canceled many existing insurance policies.[272] The President's approval rating dropped precipitously and public support for the health law declined.[273] That the Act would result in canceled policies was foreseeable because the law itself makes certain types of policies illegal.[274] Moreover, prior to the Act's adoption, members of the Obama administration debated the veracity of the President's pledge and decided that it would be politically inconvenient for him to qualify his position and admit that some people would lose their existing coverage.[275]

Perhaps the President himself knew that his promise was misleading, or perhaps he simply failed to think through the Act's consequences. Either way, like the Bush steel tariff example, the incident

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[270] Colleen Nelson et al., *Aides Debated Obama Health-Care Coverage Promise*, WALL ST. J., Nov. 2, 2013, http://online.wsj.com/news/articles/SB10001424052702303843104579172002892623382.

[271] *See, e.g.*, John Harwood, *Don't Dare Call the Health Law "Redistribution,"* N.Y. TIMES, Nov. 23, 2013, http://www.nytimes.com/2013/11/24/us/dont-dare-call-the-health-law-redistribution.html.

[272] Carol Lee & Louise Radnofsky, *White House to Allow Insurers to Continue Canceled Health Plans*, WALL ST. J., Nov. 14, 2013, http://online.wsj.com/news/articles/SB10001424052702303789604579197733759439274.

[273] E.J. Dionne, Jr., *Obama Needs His Friends Back*, WASH. POST, Nov. 13, 2013, http://www.washingtonpost.com/opinions/ej-dionne-obama-needs-his-friends-back/2013/11/13/5ffe59b8-4c95-11e3-ac54-aa84301ced81_story.html; Gallup, Americans' Approval of Healthcare Law Declines (2013), http://www.gallup.com/poll/165863/americans-approval-healthcare-law-declines.aspx.

[274] Colleen Nelson & Peter Nicholas, *Obama Recalibrates "Keep Your Insurance" Pledge*, WALL ST. J., Nov. 5, 2013, http://online.wsj.com/ news/articles/SB10001424052702303661404579180251662058412; Nelson et al., *supra* note 270.

[275] Nelson et al., *supra* note 270.

reveals the political advantages of concealing tradeoffs from voters. Although the public ultimately found out the truth, the discovery came only after President Obama had secured reelection and passage of his signature legislation.

The fact that President Obama's promise turned out to be untrue does not necessarily mean that the Affordable Care Act is bad policy. Supporters of the Act might hold it up as an instance in which deceiving the public was justifiable because the public fails to appreciate the Act's benefits. I leave it up to the reader to assess the merits of that argument. My only point is that the President exploited opportunity cost neglect and marketed the law to voters by concealing its tradeoffs. Moreover, contrary to Donald Wittman's claims, voters can be surprised by important aspects of a particular law even when the law itself was the subject of intense public debate and even when its consequences were obvious to experts prior to passage.

V. OPPORTUNITY COST NEGLECT, THE FREE MARKET, AND LIMITED GOVERNMENT

We have seen that opportunity cost neglect causes voters to evaluate government programs without reference to implicit tradeoffs, which causes government spending, tax expenditures, and regulation to appear more desirable than they otherwise would. Opportunity cost neglect and other failures of rationality provide support for the proposition that the policies that voters actually support will deviate significantly from the policies that they would support if they were rational. In fact, some behavioral public choice scholars argue that contrary to conventional wisdom, irrationality strengthens the case for a free market in which the government plays only a limited role.[276]

[276] *See supra* note 6.

Nonetheless, skeptics of the free market might point out that irrationality affects consumers as well as voters. So how are we to know whether society will be better off with more government or less? This Article does not resolve that question definitively. However, I do believe that there are reasons to suspect that irrationality is more detrimental to democracy than to the free market.[277] To illustrate why, I will compare the consequences of consumers' neglect of opportunity costs with that of voters.

I do not deny that opportunity cost neglect probably impairs the functioning of the market. Just as voters tend to evaluate government programs without reference to implicit opportunity costs, consumers may evaluate consumer goods without considering the sacrifices that they entail. One consequence could be excessive consumer spending relative to a world in which consumers behaved rationally.[278]

Nonetheless, the negative effects of opportunity cost neglect are likely less severe for the free market than for democracy. Voters generally have less incentive to recognize their irrationality and to find ways to overcome it than do consumers who are making decisions that directly affect themselves.[279] In particular, as discussed in Part II, voters are less likely than consumers to think about opportunity costs. People are more likely to consider opportunity costs when

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[277] *Cf.* Hirshleifer, *supra* note 6, at 857 ("[A] behavioral approach suggests that even though markets work imperfectly, the political process usually works even worse."); CAPLAN, *supra* note 6, at 114-41 (arguing that people are particularly likely to act irrationally when voting because of the low private cost).

[278] *See supra* Part III.A.1.

[279] Glaeser, *supra* note 6, at 139-42 (citing evidence that increased incentives reduce cognitive errors and concluding that "political beliefs should be particularly erroneous because voters lack the incentives to learn the truth (after all one vote doesn't determine anything)"); Caplan, *Rational Irrationality*, *supra* note 38, at 14-20 (citing evidence that a low private cost increases irrationality).

they face immediate resource constraints. Many consumers face resource constraints that force them to think about tradeoffs, especially when they contemplate large purchases. Access to credit may relax resource constraints for some consumers, but consumer credit is limited. By contrast, because one vote is usually not decisive, voting for more government spending has no effect on a particular voter's tax bill. In other words, voters are completely unconstrained. From the perspective of each individual voter, a vote in favor of more government spending has no personal cost.

A second reason that opportunity cost neglect harms democracy more than the free market is that even if consumers ignore opportunity costs, other forces curb consumer spending. Unfortunately, these same forces do not curb government spending. For example, many consumers experience psychological pain when they pay for goods and services.[280] The pain of paying varies from person to person and is also influenced by situational factors such as the method of payment and whether the consumer believes that he is getting a good deal. In any event, the pain of paying reduces enjoyment of consumer goods and makes people less likely to buy them. In fact, because thinking about opportunity costs is a difficult cognitive task, people may consciously or unconsciously substitute the pain of paying as a method to keep spending under control.[281]

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[280] For discussions of the pain of paying, *see generally* Rick et al., *supra* note 90; Drazen Pralec & George Loewenstein, *The Red and the Black: Mental Accounting of Savings and Debt*, 17 MARKETING SCI. 4 (1998). *See also* George Loewenstein & Ted O'Donoghue, *"We Can Do This the Easy Way or the Hard Way": Negative Emotions, Self-Regulation, and the Law*, 73 CHI. L. REV. 183, 194-2000 (2006).

[281] Rick et al., *supra* note 90, at 768 ("If people relied solely on cognitively nebulous representations of forgone consumption, most people would likely spend compulsively [but] [o]ne way that consumers can solve this problem is the cultivation of negative emotions in response to the prospect of spending."); Loewenstein & O'Donoghue, *supra* note 280, at 195 (noting that the pain of paying serves "as a proxy for forgone consumption"); Pralec & Loewenstein, *supra* note 280, at 25 ("The functional

People may also feel negative emotions when they pay taxes, but these emotions are not likely to be an effective check on government spending. In consumer transactions, payment and receipt of the good are often tightly connected. This means that payment is particularly likely to reduce enjoyment of the good, which will in turn reduce purchases.[282] On the other hand, the payment of taxes generally is not closely connected with the receipt of government benefits, which has the effect of making government benefits seem free and therefore more enjoyable.[283]

The disconnect between taxes and government benefits may also make taxes particularly painful. Unlike payments for consumer goods, a tax payment is not clearly associated with the receipt of a benefit that can buffer the psychological burden imposed by the payment.[284] But this feature of taxation, while it no doubt increases people's hatred for taxes, does not necessarily reduce the demand for public goods. Again, the relationship between loathsome taxes and public goods is not always obvious so that people may not always draw the connection between support for government spending and higher taxes.

The preceding analysis helps explain why Republican voters take incongruous positions in opinion polls. Republicans claim to be concerned about the budget deficit. At the same time, they do not favor tax increases, and while they are less supportive of government spending than Democrats, Republicans too oppose spending cuts for

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role of the pain of payment is to counteract biases . . . that would otherwise lead to chronic overspending.").

[282] Pralec & Loewenstein, *supra* note 280, at 8-25.

[283] Pralec & Loewenstein, *supra* note 280, at 8-25.

[284] *Cf.* Pralec & Loewenstein, *supra* note 280, at 23 (discussing survey evidence that people dislike credit card debt more than other types of debt and explaining that this is because people regard payments on credit card debt as "a loathsome tax, divorced from specific consumption benefits").

nearly all government programs.[285] Apparently, Republicans' disdain for taxes curbs their appetite for government spending only to a very limited extent. The pain that Republicans experience when they pay taxes does not translate into support for significant spending cuts.

In addition, people do not pay taxes when they cast their votes. Any pain that voters feel when paying taxes may fade by the time they reach the voting booth. If so, it will not influence which politicians they support.

Moreover, even if the pain of paying taxes reduces support for government spending, it will not reduce support for regulations or tax expenditures. In fact, to the irrational voter, regulations and tax expenditures often serve as an attractive substitute for government spending. Action bias causes voters to demand that the government solve perceived problems. But some voters favor solutions that do not involve government spending because they associate more spending with more taxes, to which they have a strong aversion.[286] This phenomenon helps explain the high levels of public support for government regulation. It also helps explain why Republicans are especially likely to find government subsidies more appealing if they occur in the form of tax expenditures rather than direct spending.[287]

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[285] *See supra* Part III.A.2.

[286] *See* Gamage & Shanske, *supra* note 107, at 49-54 (reviewing the empirical evidence for "tax-label aversion").

[287] For experimental evidence that Republicans are more likely to support tax expenditures than similar direct spending programs, *see* Faricy & Ellis, *supra* note 96, at 71-72 ("[W]e find that the effects of the delivery-mechanism frame on support for social programs was conditioned by partisanship. The fact that the effects of the delivery-mechanism frame were stronger for Republicans than Democrats could serve as an explanation for why Republicans, generally opposed to the idea of 'big government,' also on balance report preferences for higher levels of government spending on specific social programs . . . . At least some Republicans might view tax expenditure policy as a way to have its policy cake and eat it, too: providing desirable social benefits while still adhering to the values of individual initiative and support for the

Republicans are particularly fond of government intervention that does not appear to require tax increases, and tax expenditures seem to fit the bill (unless you stop to consider the possibility that the government will make up for the lost revenue by increasing tax rates or by engaging in deficit spending, which necessitates future tax increases).

A third reason that opportunity cost neglect harms democracy more than the free market relates to the extent of the damage resulting from it. Consumers who ignore opportunity costs will spend excessively. They will buy too many goods and services and pay too much for them. But in the process, they will harm only themselves and perhaps their families. Voters who ignore opportunity costs will support too much government spending, which harms the entire country.[288] In particular, if people vote altruistically and support policies that they believe are in the public interest, then opportunity cost neglect will cause them to make choices for which the costs to society substantially outweigh the benefits.

To illustrate, imagine that a particular voter supports a war because its seemingly well-intentioned proponents claim that national security is at stake. The voter puts faith in politicians and pundits that he trusts and ignores the opportunity costs of military action. To this voter, war appears to be the best option, not only for himself but also for everyone else. In fact, he is wrong and the war's aggregate costs substantially exceed its benefits. If a majority of other voters

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private sector."). As discussed *supra* note 131, Republican support for tax expenditures may result partly from a failure to code tax expenditures as a government program. But the phenomenon also stems from opportunity cost neglect.

[288] *Cf.* Caplan, *Majorities against Utility*, *supra* note 34, at 207-08 (pointing out that "voting for bad policies has a built-in *negative externality*" because it hurts everyone); CAPLAN, *supra* note 6, at 145-47 (discussing how even mild irrationality among voters may have dramatic adverse effects on society).

make the same mistake and if democratic government gives voters what they want, then the country will go to war and society will suffer.[289] Each voter's miscalculation is magnified and affects not only him but the public generally, including those people who rationally oppose military action.

CONCLUSION

Legal scholars have generally used evidence of irrationality to bolster the argument for government intervention. This Article argues instead that irrationality may in fact strengthen the case for limited government. Market outcomes are not perfect, but government intervention will sometimes make matters worse. Because of irrationality, the policies that voters actually support will frequently diverge from the policies that voters would support if they were rational. So even if democracy delivers to voters the policies that they demand, government will often fail to act in the public interest. At the very least, irrationality in political processes justifies a cautious approach to government intervention and careful analysis of proposed policies on a case-by-case basis.

In particular, this Article argues that opportunity cost neglect adversely affects democracy. Voters tend to ignore the implicit tradeoffs associated with government spending, tax expenditures, and regulation. As a result, government programs have greater appeal than they otherwise would. When researchers and pollsters focus the public's attention on the sacrifices that government programs require, support for them declines substantially. Unfortunately, ac-

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[289] *Cf.* Caplan, *Rational Irrationality*, at 20 ("It is cheap for an individual to irrationally underestimate the costs of war, but if enough people buy this opinion the result could be disaster.").

tual voter behavior will not reflect careful consideration of opportunity costs. The circumstances that cause people to think about opportunity costs are absent from the voting context.

In addition, opportunity cost neglect interacts with other biases and with heuristics that voters sometimes invoke. On the one hand, the intentions heuristic, antimarket bias, action bias, the availability heuristic, and low-salience taxes tend to exacerbate the effects of opportunity cost neglect. On the other hand, any tendency among voters to underestimate the benefits of government will counteract their neglect of opportunity costs. Future research should focus on which of these forces exerts more influence over voters' policy preferences. In the meantime, opportunity cost neglect poses a significant challenge to those scholars who have proposed policies that would increase support for government by making its benefits more salient to voters.

Finally, the influence of politicians and bureaucrats over the policymaking process does not alleviate concerns about voters' opportunity cost neglect. Politicians and bureaucrats may have some slack to deviate from voters' policy preferences. But their slack is limited. In addition, politicians and bureaucrats may not use any slack that they possess to promote the public interest. They may instead succumb to the influence of special interest groups, or they may themselves suffer from failures of rationality, including opportunity cost neglect, that render their policy preferences just as flawed as those of the typical voter.