



Libertarian Paternalism?

BY DONALD J. BOUDREAUX

Can paternalism and libertarianism be squared with each other? Two prominent scholars think so. University of Chicago law professor Cass Sunstein and University of Chicago economist Richard Thaler make a case for what they call “libertarian paternalism.” Here’s their argument.

A large body of experimental data, gathered mostly by behavioral psychologists and behavioral economists, shows that people’s preferences aren’t as concrete as mainstream (or even Austrian) economists suppose. An individual’s revealed preferences depend to a surprisingly large degree on the manner in which choices are presented to him. Of particular interest is the “status quo bias”—which exists if an individual’s preference for something is enhanced simply because that something exists.

For example, suppose when I am first hired I’m told I can sign up for a pension plan to which my employer will make matching contributions. Further suppose that all that I must do to sign up is to log on to my employer’s website, click a few buttons, and fill in a short and non-intrusive form. The status quo is that I’m not enrolled in the plan, but I can enroll very easily at low cost.

If I don’t sign up, the obvious conclusion is that I don’t want to sign up; for whatever reason, for me the benefits of the plan fall short of its costs. The economist would then predict that were I instead automatically enrolled in the plan with the option of easily opting out of it, I would indeed opt out.

But behavioral scientists find that this prediction likely would be mistaken. If I’m automatically signed up for the pension plan with the option of easily opting out, I’m unlikely to opt out even though I would not have

chosen to opt in had I *not* been enrolled.

I don’t here question the finding that people frequently exhibit status-quo bias. Let’s accept this finding as valid. Given that people do (for purposes of our analysis) have status-quo bias, what are the implications for economics and economic policy?

One obvious implication of status-quo bias is that each individual’s preferences are less his own and more the product of his external circumstances: if I must opt in to the pension plan, my preference is that I not participate in it; if I must opt out of the plan, my preference is that I do participate in it.

At first blush this apparent arbitrariness of personal preferences poses a real challenge to classical-liberal theory and policy. If people’s wants are so heavily determined by the status quo, then we cannot conclude that the existing pattern of options open to consumers, and consumers’ choices among these options, are superior to other feasible options and choices.

One response for the classical liberal is to point out that the observed choices that individuals make are still the choices of the individuals making them. So what if people generally stick with the status quo, whatever it may be? Sticking with the status quo is still a choice deserving respect.

Here’s where Sunstein and Thaler’s idea of “libertarian paternalism” enters. They say in effect, “No! The status quo itself inevitably is the result of someone’s choice. And that someone is often the state. Indeed, the state typically cannot avoid determining what the status quo will be. So because the state cannot avoid

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choosing a status quo, it ought to choose the one that is best for people. (That's the paternalism part.) In addition, though, the state should permit individuals easily to opt out of the status quo. (That's the libertarian part.)”

Before I register my objection to Sunstein and Thaler's idea, I first commend their refreshing willingness to allow individuals to opt out of behaviors and settings. I would object much less strenuously to Social Security and Medicare, for example, if I could easily opt out of those programs. Presumably, Sunstein and Thaler would give me and others that freedom.

But what of Sunstein and Thaler's theoretical claim that “paternalism is inevitable” because the status quo inevitably is chosen by government? As they put it, “governments . . . have to provide starting points of one or another kind; this is not avoidable.” It's here that I depart from these scholars. Their view—which Sunstein champions in many of his writings—is that society ultimately is the product of government design.

No Special Role

This claim is wrong. Government plays no special role in building society. True, at its best it helps to enforce the laws that are vital for society to exist—laws against unprovoked intrusions into the lives and properties of other people. Government, however, doesn't create these laws. (If your legislature accidentally repealed the statute that prohibits murder in your state, would murder then be legal in any meaningful sense?) Nor is government the only enforcer of such laws. Regardless of your opinion of the efficacy of vigilante justice, there is no denying that persons who offend a community's sense of justice typically are punished by the private actions of members of that community.

Modern governments also build roads, airports, schools, post offices, and other pieces of infrastructure. Infrastructure, of course, is necessary. But as with law

itself, both theory and history teach that infrastructure can be supplied quite effectively by private market forces.

Unplanned Result

The fact is that society, even in our world of big government, is the unplanned, organic result of the actions of millions upon millions of people, sometimes acting individually and sometimes acting as members of groups, such as churches, firms, and government. Government's role, when it acts wisely and justly, is of no special importance. It makes no more sense to say that government “determines” the course of our lives than it does to say that farmers or carpenters or physicians determine the course of our lives. Each makes an important contribution, but not a contribution that is prior to, or more fundamental than, any of the contributions made by others. (Ironically, because no person or other institution rivals governments' power to destroy, governments' only truly unique role is found in its power to diminish people's wealth and freedoms.)

So while we all agree that government should operate as sensibly and as unobtrusively as possible, the same is true for every other institution in society. Obviously, at any point these institutions will offer us certain options. But even if we suffer a status-quo bias, a market society's vast decentralization ensures that any seriously harmful status quo will be displaced by a status quo that better encourages people to make wise choices.

A good status quo need not emerge from conscious, paternalistic designs. Instead, it will result from the competition over time of different institutions in society. A status quo that prompts better individual choices will displace one that prompts worse choices. Of course, no one can *prove* to everyone's satisfaction that such competition will improve the status quo—but, surely, no one can prove that intellectuals or politicians can “paternalistically” outperform such competition at discovering what the status quo should be.

