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Statist Quo Bias

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A COMMENT ON: RICHARD H. THALER AND CASS R. SUNSTEIN. 2003. LIBERTARIAN PATERNALISM. *AMERICAN ECONOMIC REVIEW (AEA PAPERS AND PROCEEDINGS)* 93(2): 175-79.

[ABSTRACT, KEYWORDS, JEL CODES](#)

LIBERTARIANISM (OR CLASSICAL LIBERALISM) POSES SERIOUS intellectual challenges to conventional political sensibilities and institutions. Libertarianism says that occupational licensing, central banking, the postal monopoly, drug prohibition, and government schooling shouldn't exist. In establishment forums, people rarely address directly the libertarian challenge, but it lurks in the background. Both sympathizers and opponents speak and behave in ways that are significantly influenced by the libertarian challenge.

When establishment actors do openly address libertarianism the performance is often curious. We hear that libertarians favor the cash nexus, perfect competition, social atomism, social Darwinism, Republicans, and profits for McDonalds and GM. We also hear that libertarians assume that people are rational.

Consider Richard Thaler and Cass Sunstein's "Libertarian Paternalism," a brief, invited conference paper included in the May 2003 issue of the *American Economic Review (Papers and Proceedings)*. They begin:

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Many economists are libertarians and consider the term “paternalism” to be derogatory. Most would think that the phrase libertarian paternalism is an oxymoron. The modest goal of this essay is to encourage economists to rethink their views on paternalism. (Thaler and Sunstein 2003, 175)

The authors describe libertarian paternalism as the taking of actions in which “no coercion is involved” and “with the goal of influencing the choices of affected parties in a way that will make those parties better off” (175). One of their primary examples is the placement of dessert in a cafeteria:

Consider the problem facing the director of a company cafeteria who discovers that the order in which food is arranged influences the choices people make. . . . Putting the fruit before the desserts is a fairly mild intervention. A more intrusive step would be to place the desserts in another location altogether, so that diners have to get up and get a dessert after they have finished the rest of their meal. This step raises the transaction costs of eating dessert, and according to standard economic analysis the proposal is unattractive: it seems to make dessert-eaters worse off and no one better off. But once self-control costs are incorporated, we can see that some diners would prefer this arrangement, namely, those who would eat a dessert if it were put in front of them but would resist temptation if given a little help. (Thaler and Sunstein 2003, 175, 177)

I gather that, in my job as a teacher, I practice libertarian paternalism when I make certain readings required rather than optional. Thaler and Sunstein do not discuss policy issues that do involve coercion like drug prohibition, anti-smoking laws, and Social Security levies. The paper is actually about things like dessert placement.

But it seems odd to drag the terms “libertarian” and “paternalism” into matters like dessert placement. What they speak of could be more accurately, if less provocatively, addressed using such terms as benevolence, discipline, delegation, propriety, help, cooperation, and so on. The terms “libertarian” and “paternalism” reside naturally in discussions of *political* affairs and particularly in issues involving coercive government policy. The *paternalism* entry of *The Blackwell Encyclopaedia of Political Thought* begins: “In

modern use the term usually refers to those laws and public policies *which restrict the freedom* of persons in order that their interests may be better served” (Weale 1991, 367-68, italics added). It seems to me that Thaler and Sunstein pull “libertarian” and “paternalism” out of their normal context just to create an oxymoronic gimmick. If Thaler and Sunstein were to proceed with this kind of gimmick, we could anticipate the following papers:

“Libertarian Socialism”: A paper pointing out that sometimes patrons at a Chinese restaurant may decide to order a number of dishes and share them in common.

“Libertarian Communism”: A paper pointing out that sometimes adults such as the Jesuits at Santa Clara University live and eat and work together within a nexus of private property and voluntary association.

“Libertarian *Dirigisme*”: A paper pointing out that executives centrally plan the basic skeleton of activities at the worksite.

“Libertarian Interventionism”: A paper pointing out that condominium associations involve restrictions on members’ activities.

“Libertarian Repression”: A paper pointing out that, as described in Schelling (1984), individuals control their own behavior by repressing, subduing, or annihilating certain subordinate selves.

To motivate “Libertarian Paternalism,” Thaler and Sunstein say that “the anti-paternalistic fervor expressed by many economists” is based on a false assumption:

The false assumption is that people always (usually?) make choices that are in their best interest. (Thaler and Sunstein 2003, 175)

Thus, the authors suggest that libertarian sensibilities are based on a belief that, free of coercion, man acts in his (expected) best interest. Thaler and Sunstein cite the Surgeon General’s report on obesity, academic studies of retirement-savings decisions, and various experimental studies to reject the idea that man always acts in his best interest.

Thaler and Sunstein do not quote or mention a single libertarian thinker.¹ Since the eighteenth century, the classical liberal tradition has, indeed, had a rationalistic strain that posits man as a highly integrated will that acts purposively through time. That tradition has sometimes badly over-emphasized such ideas, even by claiming foundationalist or axiomatic status for them.² But this hyper-rationalistic strain, which corners itself into saying that we cannot make any ethically relevant distinction between the consumer surplus from crack-cocaine and the consumer surplus from orange juice, is really just a strain. Virtually all classical liberals since the eighteenth century would readily say otherwise.

Many works in the classical liberal tradition have started with the idea that man is a creature highly prone to developing bad habits and prejudices, to feeling remorse, and to engaging in self-reform, that man is a creature trying to figure out who he is and should be. Many works argue that liberty accords people ownership of their story, including their errors and vices, and thereby allows them to learn the contours of action, experience, and consequence; that liberty makes experience more meaningful; that liberty leaves the one who is most naturally concerned to act on his knowledge and to negotiate the limitations of his knowledge; that liberty engenders the institutions, practices, and attitudes that heighten the individual's discovery of the worthiness of actions and of ways to refine his habits and control his impulses; that liberty affirms the dignity³ of the

¹ In the longer version of the paper (Sunstein and Thaler 2003), they bring up Mill in a footnote and explain why autonomy issues are not considered in the paper.

² In the past century, these views are represented notably by the praxeology tradition of Ludwig von Mises and especially the libertarian polymath Murray Rothbard. Mises (1966, 11-29) sets out purposive human action as a scientific foundation, but the formulation leaves doors wide open for saying that a lot of human behavior is not "purposive action." The subjunctive condition—in so far as man is an integrated will acting through time—is effectively dropped by Rothbard (1956 and 1962), who blithely goes on to make claims that seem to say that in all cases non-coerced human behavior advances that person's (expected) interest (e.g., 1956, 250). He and his followers have indeed used such 100-percent claims in erecting moral axioms that purportedly justify libertarianism, and have made statements to the effect that there is no ethically relevant difference between the consumer surplus from crack-cocaine and the consumer surplus from orange juice. For example, Walter Block (1976, 42) writes that, in reducing the market price, "the much reviled drug dealer . . . must be considered the heroic figure." Incidentally, Rothbard (1956, 225) highlights Irving Fisher and Frank A. Fetter as early American economists who maintained that man always acts so as to advance his (expected) interest.

³ I encourage experimentalists and model-builders to try to devise experiments and models to help define, measure, and operationalize dignity. However, we should recognize that their inability to do so would not mean that dignity is not important or meaningful. Some keys are not under those lamp-posts.

human being. Older works that develop such themes include John Milton (1644), Wilhelm von Humboldt ([1791]), T. B. Macaulay (various works), John Stuart Mill ([1859]), Lysander Spooner ([1875]), Auberon Herbert (1978), Albert Jay Nock ([1924]), Frank H. Knight (1951, esp. 13, 17-18), and Friedrich Hayek (1948a and 1967a). More recent libertarian writings in this vein include Buchanan (1979), Szasz (1963), Murray (1988), Klein (1992, 1997).⁴ On libertarianism not being *100 percent* opposed to coercive paternalism, see Hospers (1980).

Like the idea that man maximizes his material payoffs, the idea that he always chooses in his best interest in a strong sense is a canard. In a polar opposite sense, he never chooses in his best interest. Both poles are silly abstractions, and all the really meaningful discourse lies between them, recognizing that the expression “best interest” is probably not in our better interest.

Yet some people suppose that other people—who are rarely ever identified—actually believe the idea that man always chooses in his best interest. The canard probably arises from the journal-article practice among Neoclassical economists of treating the human being as a mathematical apparatus. That practice is of a piece with the scientific intellectual tendencies that Hayek devoted his life to combating. In his essay “Individualism: True and False,” Hayek propounds what he calls true individualism, “which regards man not as highly rational and intelligent but as a very irrational and fallible being, whose individual errors are corrected only in the course of a social process, and which aims at making the best of a very imperfect material” (1948a, 9). Hayek explains that the Scottish enlightenment philosophers did not view human behavior as optimization: “It would be nearer the truth to say that in their view man was by nature lazy and indolent, improvident and wasteful, and that it was only by the force of circumstances that he could be made to behave economically or carefully to adjust his means to his ends” (11). Hayek adds: “[I]he famous presumption that each man knows his interests best . . . is neither plausible nor necessary for the [true] individualist’s [policy] conclusions” (15).

Ronald Coase concurs with Hayek’s reading of the Scottish enlightenment and Hayek’s assessment of the libertarian position. Coase concluded his essay, “Adam Smith’s View of Man” ([1976]) with the following sentences:

⁴ Of course, there are other arguments. One is the constitutional focal point. Who is to say what people’s “best interest” really is? Once the government coerced people for their own good, the “protections” multiplied, fulfilling Tocqueville’s prophesy of paternalistic despotism (see the last seven chapters of *Democracy in America*). A firm stand would consecrate a barrier against the Pandora’s Box of coercive “help.”

Smith would not have thought it sensible to treat man as a rational utility-maximiser. He thinks of man as he actually is: dominated, it is true, by self-love but not without some concern for others, able to reason but not necessarily in such a way as to reach the right conclusion, seeing the outcomes of his actions but through a veil of self-delusion. No doubt modern psychologists have added a great deal, some of it correct, to this eighteenth-century view of human nature. But if one is willing to accept Adam Smith's view of man as containing, if not the whole truth, at least a large part of it, realisation that his thought has a much broader foundation than is commonly assumed makes his argument for economic freedom more powerful and his conclusions more persuasive. (Coase [1976], 116)

Thus, in pinning hyper-rationalism on libertarianism, Thaler and Sunstein neglect that the premier libertarian theorists Adam Smith and Friedrich Hayek made human ignorance, error, and frailty the cornerstone of their thought.

In twentieth-century economics, a sustained effort to make a place in economics for error and self-reproach has come from those working in the Hayekian tradition. They incorporate ideas of error and misinterpretation into the economic theory of the market process⁵ and into the theory of government behavior.⁶ Those libertarians have worked to incorporate human frailty into economic ideas.

⁵ E.g., Kirzner (1979). Kirzner's project has been to make entrepreneurship a working part of economic theory. In his system, the theoretical inverse of entrepreneurship is error. Kirzner sometimes associates self-reproach, remorse or regret with error. For example, he uses the term reproach seven times in three pages (1979, 128-30), and writes of blaming oneself for having erred as essential to error (1985, 56). Klein (1999) employs a multiple-self framework and explicitly makes self-reproach (or would-be self-reproach) the essential feature of error (65-69).

⁶ Hayek ([1967b], 184), Ikeda (1997 and 2003), Boettke and Lopez (2002), and Klein (1994). In a related vein, the libertarian economist Bryan Caplan has parsed "rational ignorance" in politics, to distinguish "rational irrationality," the idea being that many people are led by incentives not only to ignore information but also to adopt foolish political interpretations (Caplan 2001). That Caplan would describe mass foolishness as "rational," however, as well as leave us wondering about the seemingly implied distinction between "rational irrationality" and "irrational irrationality," leaves his work a curious mixture of traditions.

And then there is the work on how the demand for quality and safety *assurance* creates opportunities to profit (in a broad sense) by supplying assurance.⁷ Far from assuming that people never err, this literature takes as its starting point people's vulnerabilities and frailties, and their demand to find agents, knowers, and middlemen whom they can trust to help them with decisions.

So the immediate problem in "Libertarian Paternalism" is the fatuity of its declared motivation. Very few libertarians have maintained what Thaler and Sunstein suggest they maintain, and, indeed, many of the leading theorists have worked with ideas in line with what Thaler and Sunstein have to say about man's nature. Thaler and Sunstein are forcing an open door.

But a careful reading of Thaler and Sunstein's paper detects a deeper problem that tells the real story.

Above I provided a quotation about dessert placement in the company cafeteria. Immediately following the sentences quoted above, Thaler and Sunstein continue:

To the extent that the dessert location is not hard to find, and no choice is forbidden, this approach meets libertarian muster. (Thaler and Sunstein 2003, 177)

Thaler and Sunstein make no elaboration. They seem to be saying that if the cafeteria director were to put the desserts in a hard-to-find place, or to eliminate desserts altogether, then this form of paternalism would no longer meet libertarian muster. Elsewhere Thaler and Sunstein repeatedly associate libertarianism with the absence of coercion. In the quoted sentence they are either departing from that association or they mean to suggest that it would be coercive to make hard to find or eliminate the desserts. That suggestion is of course at variance with the commonly understood distinction between voluntary and coercive action. Unless there is a pretty clear obligation to have desserts conveniently available, the dessert policy, whatever it be, is not a matter of coercion—just as not displaying fresh flowers would not be coercion. If Thaler and Sunstein believe otherwise, they must be employing some other, idiosyncratic distinction between coercive and noncoercive actions that would hold the absence or removal of dessert to be a form of coercion. I doubt that they could make that distinction at all coherent.

⁷ See the papers and bibliography in Klein (1997 and 2002), and Hayek (1948b, 97).

It is likely that the authors simply wish to reject the distinction between voluntary and coercive action upon which the very idea of libertarianism is based. For Sunstein's part, he makes it amply clear in his book with Stephen Holmes (Holmes and Sunstein 1999) that he rejects the formulations that are basic to libertarian ideas. Holmes and Sunstein hold that the nation-state is a voluntary organization (210), that the rules issuing from the government are voluntarily entered into like a corporation's bylaws (217), that libertarian ideas of liberty are just "fairy tales" (216), and that, as the title of their first chapter declares, "All Rights Are Positive." In their social democrat worldview, all things are owned, fundamentally and ultimately, by the government, and any decentralized exercise of property rights or contract is undertaken by its authorized delegation. "Private property [is] a creation of state action," (66) "laws [enable property holders] to acquire and hold what is 'theirs'" (230). The quotation marks on "theirs" are there to tell us: That car you drive everyday is really the property of the state; we just let you think it's yours.

With the Sunstein of Holmes and Sunstein (1999) in mind, it is no great surprise that in discussing dessert policy Thaler and Sunstein muddy the focal distinction between voluntary and coercive action. They can use "libertarian" and "paternalism" in discussing dessert policy because they reject the key distinctions between governmental and nongovernmental affairs. My reading of what is really going on in "Libertarian Paternalism" is that they use the term libertarian disingenuously. I believe they seek to dispose of libertarianism by speaking in a way that upsets libertarianism's key semantics, but without making clear that that is what they are doing, much less challenging those semantics directly.

During the last third of the nineteenth century in Britain the terms "freedom," "liberty," and "liberal" were quite deliberately transformed, under the influence of Hegelian idealism, by thinkers like T.H. Green, A. Toynbee, B. Bosanquet, D.G. Ritchie, J.A. Hobson, and L.T. Hobhouse and came to mean something at odds with what they had meant for Mill, Spencer, Bright, Gladstone, and Morley. Once subverted, classical liberalism is now reinvigorated by libertarianism. Now we see efforts to muddy the term "libertarian." A Federal Reserve Bank conference in 2003 arranged for Thaler and Sunstein to present a longer version of their paper and for Alicia H. Munnell of Boston College to comment. Professor Munnell, who has lately coauthored a Brookings book on retirement-savings plans (Munnell and Sunden 2003), entitles her remarks "A Non-libertarian Paternalist's Reaction." She strongly endorses Thaler and Sunstein, adds evidence of people acting ignorantly or foolishly in their

retirement-savings decisions, and explicitly propounds both the paternalist and redistributive rationales for mandatory Social Security levies. (Incidentally, she refers to mandatory Social Security levies as “*real* paternalism” (her emphasis, 7).) She ends her comment: “[Thaler and Sunstein’s] ‘libertarian paternalism’ approach may serve as a bridge between the libertarians on the right and the New Deal traditionalists on the left, and that bridge could help rebuild the national consensus on social and economic policy.” I am sure that this “bridge” would never approach the libertarian shore—it is of course nonsensical to speak of bridging libertarianism and the New Deal. Rather, the establishment social democrats would like to keep real libertarians away from the deliberations yet declare that libertarianism has been represented in the new “consensus.”

What, then, are we to make of “Libertarian Paternalism”? I suggest that Thaler and Sunstein suffer from deep biases. They sense the challenge of libertarian ideas, but react in a way that is anchored in the political status quo and their own commitments to certain ideological ideas and values.

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