

# INFANTILIZATION BY REGULATION

*Like helicopter parenting, government policies to protect people from “cognitive biases” risk stunting their ability to avoid and handle mistakes.*

◆ BY JONATHAN KLICK AND GREG MITCHELL

In the 2001 cinema classic *Bubble Boy*, Jake Gyllenhaal’s character, Jimmy, is forced by his mother to live inside a system of plastic tubes and bubbles, ostensibly because he was born without immunities. After the woman he loves leaves town to marry another man, Jimmy builds a portable bubble, escapes from his parents’ home, and follows his love from California to Niagara Falls to declare his feelings at her wedding. In the film’s climax, Jimmy removes his bubble, indicating that he would rather embrace his love and die than stay locked in his protective dome. However, it turns out he didn’t need the bubble at all; it was just part of an elaborate effort by his mother to protect him from the ubiquitous dangers in the world outside the bubble.

Stories of overprotective mothers and overbearing fathers are funny in the movies. In real life, paternalism rarely goes to such extremes. However, the protective impulse comes naturally to most parents. Recognizing the potential to take this impulse too far, folk wisdom traditionally cautioned moms and dads against trying to live their children’s lives for them. According to this wisdom, making their own mistakes (and suffering through the consequences) is essential to children’s development.

In addition to the practical benefits, philosophers such as John Stuart Mill believed this kind of mistake-based learning is central to the autonomy of—and even the value of—human beings in general. Protecting individuals from making mistakes, in Mill’s account, robs them of the opportunity to genuinely flourish. Choices made in a context where only prescribed options are available do little to exercise the skills needed to make choices in general. Also, ex post protecting an individual from the consequences of freely made choices has the potential to limit the incentive to develop the capacity to make choices. These “protec-

tions” serve to keep a person in developmental infancy. Beyond that, if a person isn’t allowed to own his failures, how can it make sense to credit him with his successes? Because of this, according to Mill, the overly protected person is unfairly limited.

Somewhere along the line, this model of human flourishing and the associated method of parenting fell out of favor. Parental involvement moved from setting and enforcing outer limits, to micromanaging free time and play dates, to fixing mistakes, to the proverbial helicopter parenting we see today. Not only has this kind of parenting become acceptable; it may well constitute the current normative expectation of what constitutes a good parent. Parents who allow their children to walk home alone without adult supervision prompt calls to the police and child protective services, and leaving children alone in a safe and comfortable car in a store parking lot is viewed as negligence or worse.

While causality is always difficult to isolate, it is hard not to notice the correlation between this parenting approach and the calls for trigger warnings and safe spaces breaking out on modern college campuses. What started out as funny anecdotes of parents scheduling their kids’ classes and meeting with professors to discuss their children’s grades has evolved into sad stories of parents attending their kids’ job interviews and negotiating benefits packages for adult children who apparently aren’t equipped to do these things on their own.

While outsiders may write these stories off as apocryphal, one of us actually received a message from an administrator at his law school that a student’s father had called the dean’s office to complain that a test was unfair and his child should not have received the grade awarded. Never mind that the student had not come to plead the case personally; never mind that law school grades are generally distributed according to a fixed curve such that not everyone can be ranked above average; never mind that law students tend to be in their mid-20s and in three years’ time will be working as lawyers handling real problems with real consequences; all that

mattered was that his child had gotten a “B,” which clearly was not right. Fortunately, in this case, the administrator’s comments on the matter expressed bemusement rather than condemnation.

What’s worse are the signs that the students themselves appear to view these actions not with embarrassment, but instead take them as being completely justified, if not fully expected. In the discussions of “microaggressions” and spaces that are safe from encountering differing viewpoints, instead of relying on the traditional self-help that was previously prized in academic environments—namely, reasoned arguments and spirited rhetoric—students increasingly call for school administrators to save them with speech codes, dedicated spaces reserved for like-minded individuals, and more punitive measures when dissenters don’t fall in line. In addition to stunting the growth of the complaining students who, through the requested campus protections, are never taught to counter opposing viewpoints respectfully but forcefully (to say nothing of the possibility of discovering that one’s own viewpoint, no matter how special, is nevertheless sometimes wrong), the dissenters are also robbed

of the lessons that come from passionate intellectual discourse.

#### GOVERNMENT IN PLACE OF PARENTS

As disquieting as this development among children and child-like college students is, we fear that it is related to a broader development that has gone largely unnoticed. To make matters worse, while one can, in principle, break free of parents or avoid the campus green, the unnoticed development often has no exit option because it comes in the form of government laws and regulations that have been suggested and adopted using explicitly paternalistic justifications.

This paternalism, while taking a departure from the usual academic justifications for policy (i.e., to internalize externalities and provide public goods), dresses itself up in language that suggests the regulations are merely helping people make choices they really want to make anyway. To further downplay the patronizing attitudes motivating this so-called libertarian paternalism, its proponents insist that individuals can opt out if the regulation is not right for them. Both of these claims are problematic, as we discuss below.



## MARKETS &amp; MORALITY

However, even putting these concerns aside, this paternalism poses the same concerns as traditional paternalism: specifically, a retardation of an individual's capacity to learn from his mistakes. We dubbed this perverse result "cognitive hazard" in a 2006 law review article. Our term plays on the related concept of moral hazard, which captures the idea that when someone is protected from the costs of a bad decision, the incentive to invest in precautions against making a bad decision is muted. When government insulates individuals from the consequences and costs of their short-sighted planning and impulsive choices, and from the challenges of fending off hucksters and dealing with one's mistakes, individuals have little incentive to do things differently in the future and little ability to learn how to navigate the dangers and uncertainties of life. And they are likely to develop a greater sense of entitlement to more protection, a lower sense of agency and self-efficacy, and a greater willingness to blame others for their own problems.

Our concerns about cognitive hazards have only grown since 2006, as governments and other organizations' taste for paternalism has increased. Many private institutions have adopted for their employees programs inspired by libertarian paternalism, such as automatic enrollment in retirement plans with automatic annual increases in contributions unless an employee opts out. President Obama recently put in place a new behavioral science unit modeled after the United Kingdom's "nudge unit," a unit that ostensibly has already embarked on ways of helping citizens avoid bad choices and bad behavior. State and local governments have also gotten in on the act, for example by nudging people away from the consumption of high-calorie foods.

We are already seeing the consequences of a generation of helicopter parenting. Studies of parenting style and child development find that "overparenting" is associated with lower family satisfaction and a greater sense of entitlement, lower levels of self-worth, ineffective coping skills and greater anxiety, more depression and less life satisfaction, lower self-efficacy and greater alienation, greater difficulty in interpersonal relationships, and lower levels of physical activity. We worry even more about the consequences of a generation of helicopter governance.

To be clear, parents should be there to ensure infants and children do not seriously harm themselves as they develop. The parents of well-adjusted, autonomous kids provide developmentally appropriate guidance. They do not complete homework assignments for the kids, attribute every bad grade to the teacher, or monitor a child's every waking moment. Likewise, there is a role for government in the protection of its citizens. Externalities exist and markets are often not perfect. But even the most hovering and smothering government cannot prevent every externality or instance of market exploitation. In a free society, citizens must be equipped to deal with problems on their own. Government's role is to facilitate effective self-governance and redress illegal conduct rather than take advantage of citizens' irrationalities to nudge or shove them in the directions that government experts deem best.

Some see libertarian paternalism as less threatening to liberal

democracy than old-fashioned paternalism because regulations animated by this new ethos leave room for freedom of choice. We see libertarian paternalism as particularly threatening because this paternalist explicitly seeks to nudge irrational citizens toward choices that the paternalist deems best and away from choices that the citizens may have regretted.

Rational citizens may well maintain their freedom of choice under libertarian paternalist regulations, but those are not the people who need to learn from their mistakes. Irrational citizens—the ones who would sign up for gym memberships they will never use or pay \$5 for an extended warranty on a \$20 electronics product without reading the fine print that renders the warranty virtually worthless—will never experience the consequences of those actions. Regret can be a useful emotion.

Our simple message is this: To develop a sense of agency and self-efficacy, citizens must be allowed to make mistakes—lots of them—just as our children do. Government should be there to help when those mistakes are hard to overcome, and governments will understandably choose—just as parents do—to limit the risk of some potentially catastrophic or fatal mistakes. But the new paternalists need to ask whether protecting people from wasting a bit of money on an impulse purchase or from the consequences of failing to read a contract carefully are worth the long-term costs of those protections. In some cases, they may be, but there is no reason to assume this will generally be the case.

### THE NEW PATERNALISM

The origins of the new paternalism come from the field of behavioral economics. Traditionally, economics takes a subjective view of preferences: people's choices are believed to reflect their true underlying preferences. Given that, individuals are assumed to maximize their own welfare by making their own choices.

To justify public policy interventions from an economic perspective, it is necessary to either invoke a redistributionist objective or identify some market failure that creates a wedge between individual welfare maximization and the collective good. These failures generally boil down to externalities. If someone drives too fast because he only considers his own costs and benefits without fully taking into account the risk his reckless driving imposes on others, tort liability may be needed to induce the driver to include others' welfare in his decision process. In the case of public goods, a given individual's provision of some goods bestows benefits on others that are not considered when the individual provides it. In some cases, this will lead to under-provision of the good. In extreme cases, the good may not be provided at all, even if it would generate large aggregate benefits, as each individual who expects to benefit from the good hopes one of the other beneficiaries will provide it first. In both of these scenarios, public intervention may be required to induce private decisionmakers to internalize the external effects of their decisions.

Behavioral economists, however, posit that individuals often make systematic mistakes that cause a gap between their own pref-

erences and their resulting choices. This gap means that welfare may not be maximized through unfettered individual choice, even when there are no externalities. The behavioral economists came to these conclusions based on what they regard as more plausible assumptions about human behavior, validated to some extent by empirical evidence coming primarily from laboratory experiments but sometimes from field experiments or observational studies.

For example, behavioral economists cite evidence that individuals sign up for gym memberships but then predictably do not use the gym regularly or maybe not at all. This provides evidence, the story goes, that people are not acting optimally because they systematically overestimate their likelihood of working out. These economists reason that the biased individuals should be protected from entering into the long-term contracts offered by the gym or must be provided with additional incentives to follow through on their exercise plans. To these economists, it seems inconceivable that an individual would rationally buy something he is unlikely

focus on regulations that merely set default rules from which any individual may opt out if the paternalists' choice does not match the regulated individual's true preferences (or that encourage but do not require certain behaviors).

Neither of these arguments removes our concerns about the new paternalism. First, the argument that we will only nudge people in directions that they wish their ideal selves would go suffers from a lack of empirical or theoretical justification. Nudges are rarely based on asking people what they wish they would do or asking people to reflect on their real preferences and goals. Either approach is problematic when viewed through a behavioral economics lens. Under the common behavioral assumption that preferences are constructed rather than consulted, preferences are malleable and subject to situational influences: how and when we measure preferences will, to a large extent, determine the content of those preferences. Lacking any theory setting out the conditions under which "true" preferences can be separated from "false"

preferences, the empirical approach is not feasible. Instead, nudges are typically based on judgments by a person in power, often with a social scientist whispering in her ear, about how people should behave to achieve some seemingly uncontroversial goal, such as a healthier body weight or more retirement savings. Thus, some elite's objective theory of welfare becomes the basis for the direction in which people are nudged.

Setting aside the problem that experts and elites can fall prey to irrationalities

and biases of their own, the justification for substituting elite preferences for those of individual citizens is that nudges only nudge, they do not mandate choices or proscribe options. When the cafeteria buffet is arranged to downplay the attractiveness and availability of sweet deserts, the determined diner can still indulge; it is just a little harder to do so. When the student loan recipient is defaulted into one type of payment plan rather than another, the student can still opt for another plan. Who could complain about that?

Our concern remains because the new paternalist's nudges are designed to take advantage of the cognitive and motivational limitations of individuals: it is expected that many people will not exercise freedom of choice to go in a different direction. Rather, the explicit hope is that well-designed nudges will be sticky: nudgers try to manipulate citizens just like savvy companies try to, but the nudgers supposedly have the best interests of the electorate at heart rather than increasing bottom-line profits. What this means is that nudgers will set the preferences for many people when they set the default. If the logic behind libertarian paternalism is correct, then whoever controls how information is presented and how default rules are set controls how people behave.

This also means that well-designed nudges will channel people in ways that make them wealthy, healthy, and more dependent on

*The new paternalists argue that people must be protected from their choices or at least "nudged" toward better ones through regulations designed to discourage people from spending money in ways the paternalists consider a waste.*

to use. Anyone who has sat through the individual consultation that many gyms require to start a new membership may argue that the option value of being able to use the gym for the foreseeable future (however slim that chance might be) without ever having to go through the consultation again (and being reminded of how slim you might not be) exceeds the few hundred dollars the membership costs. Be that as it may, situations like this lead the new paternalists to argue that people must be protected from their choices or at least nudged toward better ones through regulations designed to avoid spending money on gym memberships and other goods and services that will be a waste of money for many.

We are not fully persuaded by these claims of irrational behavior, but for the purpose of this article we take the behavioral economists' evidence as given. This leaves us with a problem: how to determine which decisions would be in a person's best interests. Traditional paternalists have no trouble simply inserting their own preferences into the regulations, though it's generally unclear why their preferences, applied across a general population, should be considered superior to people's individual choices. The new paternalists, on the other hand, insist that they continue to value individuals' liberty to make choices for themselves in two ways. First, they suggest that, somehow, they can arrive at choices that further individuals' own interests. Second, they claim to

## MARKETS &amp; MORALITY

government. Ironically, if a nudge is poorly designed and does not make the irrational electorate sufficiently wealthy and healthy to stifle complaints, then much of our concern about nudges fades away because the nudged will be motivated to consider other options and learn how to deal with the bad choices they were induced to make. But if the nudger does a good job of making choices that keep the irrational satisfied and complacent, then he will also create an electorate that is deprived of opportunities to learn their true preferences through trial and error and, most importantly, to develop the skills needed to navigate their lives and handle tough choices on their own.

**MORAL AND COGNITIVE HAZARDS**

Moral hazard is the well-known economic idea that when individuals do not bear the full cost of their risky behavior, they will engage in more of the behavior than they would if they did bear the full cost. Similarly, if some precautionary investment reduces the cost of the risky behavior, an individual who bears less than the full cost of the behavior is less likely to invest in the precaution than someone who bears the full cost of the behavior. For example, an individual who purchases premium gas for the car he owns is generally less likely to pay for premium gas in a rental car, even if the premium gas is equally beneficial in both cars. Such a situation can lead to inefficiencies if the total benefit of the precaution is greater than the total cost of the precaution. Even though purchasing the premium gas in the rental car would improve total welfare, the gains in improved engine life and long-run performance would not accrue to the person buying the premium gas (i.e., the renter who will only have the car for the weekend).

Paternalistic regulations that protect individuals from the bad outcomes of their choices limit the incentive of individuals to make good choices. While this moral hazard can be costly, we actually are more concerned with the potential long-run effects of paternalism on an individual's decisionmaking capital stock. That is, if people build their decisionmaking capacity by making decisions, learning from both their successes and failures, paternalistic policies have the potential to significantly limit this learning-by-doing process. Whether the policies preempt decisionmaking altogether, rig the deck in favor of the paternalist's preferred outcome, or undo the decision after the fact, the edifying decisionmaking feedback loop is broken. This arrested development may extend beyond the domain covered by the paternalistic policy, as there is some evidence that decisionmaking competence generalizes across different contexts.

As an illustration of our concern, take the case of the endowment effect (or status quo bias), in which the value an individual places on an object differs substantially depending upon whether the object is currently owned by that individual. In scores of experimental studies, researchers find that the willingness of an individual to pay for an object is systematically lower than the amount that individual is willing to accept to part with the

very same object. Behavioral economics research on the endowment effect has led regulators to examine consumer protection measures to protect individuals from being "exploited" on the basis of this bias.

However, research by University of Chicago economist John List suggests that individuals who engage in frequent trading activities are less likely to exhibit behavior consistent with the endowment effect (or any gap between the price they are willing to pay to acquire a good and the price they are willing to accept to sell the good). From a cognitive capital standpoint, it is particularly striking that List finds that this experience pays dividends across different markets and institutional settings.

We resist, however, a narrow definition of citizen competence and agency based on the standard economic model of rationality. Many people do learn to be more rational in the narrow economic sense when they are held accountable for their judgments and decisions and when they receive feedback on what they did wrong in previous situations. And although it is not the case for every irrationality observed by behavioral economists, when people have skin in the game they tend to pay more attention and avoid simple errors.

The quality that we fear will be lost with more and more nudging is practical knowledge about one's own preferences, capabilities, limitations, and problem-solving skills. This is the kind of knowledge you get from being burned once (or perhaps twice) by an attractive but misleading ad or packaging, from forcing yourself to do your own taxes, and from forgetting to turn in an assignment or make a payment on time. Satisficing—knowing what choice will be good enough—is often a more adaptive approach than trying to maximize outcomes. Knowing what is good enough for you requires individual experience.

**IS OUR TITLE OVER THE TOP?**

Yes, we admit the title of this article is hyperbolic. We don't really believe we are on the verge of creating a nation of infantile citizens who cannot fend for themselves. But we do believe that many paternalistic policies and regulations are being proposed or put in place without due consideration of the benefits of experience—even negative experience—or with enough worry about perverse effects.

Many of the new programs that we see implemented on our campuses, such as emailing students to remind them to sign up for new-student orientation and other pre-matriculation requirements, look a lot like the kind of behavior we would expect to see from a helicopter parent. These prompts seem to help a small percentage of students enroll in college who would not otherwise have done so, but we worry that students who need such prompts won't be able to navigate the demands of college life without a benevolent Big Brother constantly sending reminder emails. More important, valuable life lessons may be lost by the students who were saved the hassle of missing a deadline and then either having to fix their mistake or live with it.

With the rise of libertarian paternalism has come greater acceptance of the view that citizens often fail to act in their best interests and that it is the government's job to put a stop to that. In this mindset, the market is a predator rather than a check on stupid mistakes. If the behavioral assumptions behind libertarian paternalism gain widespread acceptance among policymakers, then we should prepare for an onslaught of nudges and shoves. And every time a nudge is adopted, an opportunity for learning and individual development is lost. Perhaps the gains from intervention will be sufficient to justify the opportunity cost, but those costs should be included in the cost-benefit analysis. Too often only the predicted benefits are considered, while the attendant long-term costs go unseen. R

#### READINGS

- "American Attitudes toward Nudges," by Janice Y. Jung and Barbara A. Mellers. *Judgment and Decision Making*, Vol. 11, No. 1 (January 2016).
- "Debiasing Decisions: Improved Decision Making With a Single Training Intervention," by Carey K. Morewedge, Haewon Yoon, Irene Scopelliti, Carl W. Symborski, James H. Korris, and Karim S. Kassam. *Policy Insights from the Behavioral and Brain Sciences*, Vol. 2, No. 1 (October 2015).
- "Does Market Experience Eliminate Market Anomalies?" by John List. *Quarterly Journal of Economics*, Vol. 118, No. 1 (2003).
- "Government Regulation of Irrationality: Moral and Cognitive Hazards," by Jonathan Klick and Gregory Mitchell. *Minnesota Law Review*, Vol. 90, No. 6 (2006).
- "Helicopter Parenting: The Effect of an Overbearing Caregiving Style on Peer Attachment and Self-Efficacy," by Daniel J. van Ingen, Stacy R. Freiheit, Jesse A. Steinfeldt, Linda L. Moore, David J. Wimer, Adelle D. Knutt, Samantha Scapinello, and Amber Roberts. *Journal of College Counseling*, Vol. 18, No. 1 (April 2015).
- "Helping or Hovering? The Effects of Helicopter Parenting on College Students' Well-Being," by Holly H. Schiffman, Miriam Liss, Haley Miles-McLean, Katherine A. Geary, Mindy J. Erchull, and Taryn Tashner. *Journal of Child and Family Studies*, Vol. 23, No. 3 (April 2014).
- "Hyper-Parenting Is Negatively Associated with Physical Activity among 7–12 Year-Olds," by Ian Janssen. *Preventive Medicine*, Vol. 73 (2015).
- "Is Hovering Smothering or Loving? An Examination of Parental Warmth as a Moderator of Relations Between Helicopter Parenting and Emerging Adults' Indices of Adjustment," by Larry J. Nelson, Laura M. Padilla-Walker, and Matthew G. Nielson. *Emerging Adulthood*, Vol. 3, No. 4 (August 2015).
- "Maximizers versus Satisficers: Decision-Making Styles, Competence, and Outcomes," by Andrew M. Parker, Wändi Bruine de Bruin, and Baruch Fischhoff. *Judgment and Decision Making*, Vol. 2, No. 6 (December 2007).
- "Neoclassical Theory versus Prospect Theory: Evidence from the Marketplace," by John List. *Econometrica*, Vol. 72, No. 2 (2004).
- "Overparenting Is Associated with Child Problems and a Critical Family Environment," by Chris Segrin, Michelle Givertz, Paulina Swaitkowski, and Neil Montgomery. *Journal of Child and Family Studies*, Vol. 24, No. 2 (February 2015).
- "Parent and Child Traits Associated with Overparenting," by Chris Segrin, Alesia Wozidlo, Michelle Givertz, and Neil Montgomery. *Journal of Social and Clinical Psychology*, Vol. 32, No. 6 (June 2013).
- "The Association between Overparenting, Parent-Child Communication, and Entitlement and Adaptive Traits in Adult Children," by Chris Segrin, Alesia Wozidlo, Michelle Givertz, Amy Bauer, and Melissa Taylor Murphy. *Family Relations*, Vol. 61, No. 2 (April 2012).
- "The Effects of Financial Incentives in Experiments: A Review and Capital-Labor-Production Framework," by Colin F. Camerer and Robin M. Hogarth. *Journal of Risk and Uncertainty*, Vol. 19, No. 1 (December 1999).

# Regulation

CATO  
INSTITUTE

#### EDITOR

PETER VAN DOREN

#### MANAGING EDITOR

THOMAS A. FIREY

#### EDITORIAL ASSISTANT

NICK ZAIAC

#### DESIGN AND LAYOUT

DAVID HERBICK DESIGN

#### CIRCULATION MANAGER

ALAN PETERSON

#### EDITORIAL ADVISORY BOARD

CHRISTOPHER C. DEMUTH  
*Distinguished Fellow, Hudson Institute*

SUSAN E. DUDLEY  
*Research Professor and Director of the Regulatory Studies Center, George Washington University*

WILLIAM A. FISCHEL  
*Professor of Economics, Dartmouth College*

H.E. FRECH III  
*Professor of Economics, University of California, Santa Barbara*

ROBERT W. HAHN  
*Professor and Director of Economics, Smith School, Oxford University*

SCOTT E. HARRINGTON  
*Alan B. Miller Professor, Wharton School, University of Pennsylvania*

JAMES J. HECKMAN  
*Henry Schultz Distinguished Service Professor of Economics, University of Chicago*

ANDREW N. KLEIT  
*MICASU Faculty Fellow, Pennsylvania State University*

MICHAEL C. MUNGER  
*Professor of Political Science, Duke University*

ROBERT H. NELSON  
*Professor of Public Affairs, University of Maryland*

SAM PELTZMAN  
*Ralph and Dorothy Keller Distinguished Service Professor Emeritus of Economics, University of Chicago*

GEORGE L. PRIEST  
*John M. Olin Professor of Law and Economics, Yale Law School*

PAUL H. RUBIN  
*Professor of Economics and Law, Emory University*

JANE S. SHAW  
*Board Member, John William Pope Center for Higher Education Policy*

RICHARD L. STROUP  
*Professor Emeritus of Economics, Montana State University*

W. KIP VISCUSI  
*University Distinguished Professor of Law, Economics, and Management, Vanderbilt University*

RICHARD WILSON  
*Mallinckrodt Professor of Physics, Harvard University*

CLIFFORD WINSTON  
*Senior Fellow in Economic Studies, Brookings Institution*

BENJAMIN ZYCHER  
*John G. Searle Chair, American Enterprise Institute*

#### PUBLISHER

PETER GOETTLER  
*President and CEO, Cato Institute*

REGULATION was first published in July 1977 "because the extension of regulation is piecemeal, the sources and targets diverse, the language complex and often opaque, and the volume overwhelming." REGULATION is devoted to analyzing the implications of government regulatory policy and its effects on our public and private endeavors.