

First, the core notions that there is such a thing as “the modern liberal regulatory agenda” and that it is fundamentally about “imposing values” seem odd and misleading in some respects. And the problems here disrupt the synergy between the early chapters of the book, which seek to provide “a comprehensive survey of the differences between classical liberalism and modern liberalism regarding the proper scope of government” (p. viii), and the case studies that follow. The general arguments articulate more closely with the tax and transfer policies that Arnold sets aside as not amenable to conversion arguments, whereas the policies in the case studies arguably are 1) somewhat heterogeneous, not only topically but morally and politically as well; 2) not driven so much by fundamental conceptions of property as by pragmatic efforts to cope with market imperfections and collective action problems; and 3) often pursuant to broadly shared goals rather than to competing “values.” For example, when it comes to pharmaceutical regulation, all parties presumably would like to make all safe and effective drugs expeditiously available while minimizing the serious health hazards to people who unwittingly take dangerous drugs. The disputation arises over the best trade-offs to make at the level of second-best theory and over somewhat ideologically driven, divergent speculative claims about what would happen in the absence of regulation.

Second, I would argue that Arnold’s depiction of competing conceptions of property rights as the fundamental axis of disagreements between classical and modern liberals is misleading and eccentric (in the literal sense of being improperly centered). Few modern liberals, I believe, would actually embrace the claim of state sovereignty over the control and distribution of resources that Arnold repeatedly attributes to them. Even people like Rawls who take socioeconomic equality as the morally proper default position recognize the moral propriety of the “legitimate expectations” any society has to establish in order to govern the acquisition and distribution of wealth and productive assets; and these always and necessarily instantiate entitlements to unequal private holdings. Most modern liberals would go still further to 1) respect and endorse the proportional desert of unequal holdings, and 2) recognize the role of private property rights as instrumental to the important moral good of personal autonomy, the important economic good of prosperity, and the important political good of dispersed social power. Where they part company with classical liberals comes from 1) their keen awareness that, as even Robert Nozick concedes, neither established nor market distributions are deserved “all the way down”; 2) an insistence upon considerably more expansive conceptions of public goods and externalities than classical liberals try to enforce; and 3) their different understanding of the nature and moral lineaments of political associations in general and of democratic societies in particular.

It is the last of these disagreements, I would argue, that constitutes the genuine axis of the dispute between classical

and modern liberals over the proper scope of government—with the disputes over property rights and public goods derivative from and ancillary to it. And here, somewhat ironically, it is the so-called modern liberals who are the political philosophical conservatives. That is, they agree with Aristotle (and Mill, in his *Considerations on Representative Government*) that animals grazing on a hillside do not by virtue of this mere proximity constitute a political association worthy of the name. Similarly, they would endorse Burke’s appalled rejection of the notion that a political association should be conceived as akin to “some low trade in pepper or calico” and his affirmation that it instead embodies a partnership, animated by common goods and moral purposes, and extending over generations. In a good democratic society, they would finally argue, these animating purposes include a commitment to civic equality and to the creation of social arrangements that offer all citizens the real opportunity to pursue good and happy lives.

Tough Choices: Structured Paternalism and the Landscape of Choice. By Sigal R. Ben-Porath. Princeton:

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Contemporary liberal political theory has as one of its central tenets the rejection of state paternalism toward adults. A paternalistic state substitutes its own judgment for that of its subjects, for the good of the latter. The liberal objection to a paternalist state is that it infantilizes its subjects by treating them as if they do not know what is good for them, or as if they lacked autonomy. According to Sigal R. Ben-Porath, this categorical antipaternalism is based on an untenable reverence for unregulated choice.

The aim of *Tough Choices* is to critically examine the contemporary view of choice and to defend what Ben-Porath dubs “structured paternalism.” To develop an acceptable understanding of the proper balance between choice and state intervention, it is argued, we need to know how people actually go about choosing. The author believes that liberal political theory has failed to adequately incorporate insights from the empirical literature on choice and rationality, in particular the prospect theory developed by Amos Tversky and Daniel Kahneman. In place of the idealized understanding of choice and autonomy characteristic of liberal theory, Ben-Porath’s structured paternalism proceeds from the limited rationality of actual choices. She defends state intervention that increases the dual values of civic equality and well-being, over and above the irrational choices people often make for themselves.

The two first chapters of this well-organized and elegantly written book lay out the general theoretical framework. Chapters 3–6 deal with specific instances or cases of regulation of choice, from the intimate sphere and the case of children to cultural diversity and finally to school choice. In

terms of the overall theoretical framework, Ben-Porath argues that the state can and should structure “the landscape of choice” in such a way that the state achieves its paternalistic aims while the affected individuals retain their freedom of choice. From behavioral economics, we know that how individuals choose depends on how the options are presented to them. Thus, the state need not mandate one specific option; it can make individuals choose what it wants them to choose by structuring and framing choice. This argument is similar to the well-known argument for “libertarian paternalism” made by Cass Sunstein and Richard Thaler.

Many liberal arguments against paternalism refer to its coercive character, but according to Ben-Porath, this is a mistake. Following in the footsteps of Sunstein and Thaler, she maintains that, for example, default rules are not coercive and cannot be objected to as such. The idea of structured paternalism is to rely on similar forms of state intervention, which do not directly coerce citizens to choose a specific option but only “frame individual choice in a particular way or direct individuals to develop certain preferences . . . for their own good” (p. 24). But this argument ignores the fact that state regulations that structure choice are as coercive as laws that impose a particular choice. The rules Ben-Porath favors might be preferable because they enhance equality and well-being, but to say that there is no issue of coercion here is unconvincing.

The author is right to argue that in modern society, the state will always structure our choices and affect our preference formation. The pursuit of independence from state intervention is indeed a “phantom” (p. 32). But this is not quite the same as to have shown that paternalism is “unavoidable” (p. 24). It is a shortcoming of the book that it treats all state intervention under the heading of paternalism, and thus fails adequately to explain the forms of state intervention that antipaternalist liberals find justified. Ben-Porath also sometimes describes a paternalist policy merely as one that is “good for you.” But few liberals would disagree “that policy makers must keep in mind what is good for members of the relevant constituency when they design policies that invite choice” (p. 145). What the antipaternalist objects to is the state that disregards my own view of what is good for me and imposes *its* view of my good on me, against my will.

If we remove the coercive element from the definition of paternalism, as well as the point that there must be opposition between the understanding of well-being with reference to which the state justifies its policy and the affected constituency’s understanding of its own good, then of course “paternalism” will be less objectionable. But the question is whether Ben-Porath has amended the definition of paternalism so far from the common Kant and Mill-inspired one that it does not really make sense to present her argument as an argument against antiperfectionist liberalism. Indeed, her argument seems more relevant as a correction to the unreflective reverence for choice

characteristic of the American public debate than anything argued for by liberal political theorists.

It is a common view that paternalism is objectionable only with regard to adults and not to children. One of the interesting arguments of the book is that this dichotomy is too simple, and that we must investigate more fully the relevant distinctive factors between the two groups. According to Ben-Porath, we must seek to understand what characterizes childhood and respect the equal standing of children, rather than merely looking at childhood as a preparation for adulthood. While this is a compelling argument, it seems to me that she fails to notice that children also (if not only) must be prepared for adulthood.

While *Tough Choices* is presented as a defense of paternalism, it argues against some of its most common forms. This is because structured paternalism aims to recognize individual differences and cultural diversity. Thus, in the discussion of the regulation of intimacy, Ben-Porath emphasizes “the need to protect the plurality of forms in which identity is constructed and maintained through intimate choices” (p. 58). The state must limit itself to preventing destructive choices (leading to, e.g., unplanned pregnancy or abusive spousal relations), rather than imposing a specific conception of the good. The well-being that paternalist policies aim to secure is a threshold and a civic minimum that can be enforced against citizens’ own choices and preferences. The distinction between preventive paternalism that protects individuals against destructive choices and directive paternalism that mandates specific options is an important one.

Ben-Porath ties the civic minimum “to individuals’ well-being, and not primarily to their autonomy” (p. 20). She shares the view of, for example, William Galston that promoting autonomy is a threat to cultural diversity. The reason is that not all cultural groups value autonomy, and promoting it, for example, through education might undermine these groups’ way of life. It seems to me that Ben-Porath goes too far in her rejection of autonomy, and I am not sure it is compatible with the aim of structured paternalism, which is to give citizens “access to opportunities” and “enable . . . individuals to express their diverse preferences” (p. 40). Moreover, the book ignores the issue of education for citizenship, and thereby the relationship between democracy and paternalism. If schools do not promote autonomy, do citizens then have real opportunities, not merely as subjects of law but also for being authors of the paternalist policies?

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This book explores the relationship between governance and government. A unifying thread in the discussion is a