

**Spontaneous Order and Positive Legislation:
Ruminating on Daniel Shapiro's Justification of the Welfare State**

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ABSTRACT

Daniel Shapiro's *Is the Welfare State Justified?* uses arguments and findings from social science to rebut various claims advanced by political philosophers in support of the welfare state. Shapiro considers four philosophical orientations that have been employed in support of the welfare state, after which he argues that the normative concerns articulated within those orientations would be better addressed through market-based arrangements. It should be noted, however, that Shapiro does not really reject the welfare state, for he accepts its teleological framework. Indeed, the main limitation of this thoughtful book resides in its failure to explore some of the relationships between teleological action and spontaneous ordering.

Keywords: welfare state, spontaneous order, law and legislation, polycentric political economy

JEL Codes: D6, D7, H4

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In his thoughtful and carefully constructed book, Daniel Shapiro (2007) uses arguments and findings from social science to rebut various claims advanced by political philosophers in support of the welfare state. He summarizes his claim thusly: “welfare state institutions fail to be justified when compared with viable, more market-based alternatives—specifically, private compulsory insurance and private charities” [p. 1]. The book starts by describing four philosophical orientations that have been employed to support the welfare state, with the remainder of the book offering a sequence of chapters which treat in turn medical care, old-age annuities, and means-tested payments (welfare in its narrow sense). For each of these three components of the welfare state, Shapiro seeks to explain why the present system of bureaucratically-based arrangements is inferior to a system of market-based arrangements. For each of the four philosophical orientations, Shapiro argues that their normative standards and concerns are better met through market-organized compulsion than through bureaucratically-organized compulsion.

Despite several remarks to the contrary, Shapiro does not seek to abandon the welfare state but seeks rather to make it work better. Shapiro embraces the teleology that accompanies the welfare state, wherein societal patterns are appraised against external standards, and seeks to show that market processes can be harnessed to the service of those standards more fully than bureaucratic processes would allow. Shapiro thus rejects the suzerainty of

spontaneously generated market ordering, wherein no normative significance would attach to such aggregate patterns as the distribution of income or the extent of insurance coverage. To the contrary, Shapiro holds that such patterns should be objects of policy action, and seeks to show that such patterns can be promoted more fully through market-based arrangements than through bureaucratic arrangements.

If there is any significant limitation in Shapiro's fine effort, it resides in a failure to explore some of the relationships between teleological action and spontaneous ordering. Carl Menger (1883) and Friedrich Hayek (1973) each noted that a spontaneously ordered process can generate social configurations that can have properties that many if not most or even possibly all people would consider undesirable. Thomas Schelling's (1978) treatment of spontaneous ordering processes explores several illustrations of this theme. Shapiro is traveling with such company, and he acquits himself well in that company even though he fails to probe some of the relationships between teleology and spontaneity. After opening with some brief commentary directly on Shapiro's argument, I explore with equal brevity how that argument might look when filtered through an analytical lens crafted by spontaneous order theory.

Shapiro's Claims and Arguments

Shapiro seeks to marry political philosophy and social science. Where political philosophy brings concern with the nature of the good life in human societies to the marriage, social science brings recognition that people and societies are as much subject to laws as are other mammals, social insects, and,

indeed, all of nature. A philosopher's dreams might be limited only by the creativity of his imagination, but human societies are as much subject to laws as are the tides, even though the laws that govern human societies are different from those that govern the tides.

Shapiro seeks to bring this marriage to bear on the welfare state; hence, normative arguments from political philosophy will have oomph only to the extent they are found to be feasible or plausible when filtered through the findings of social science. Shapiro describes this marriage as a means of avoiding the Nirvana fallacy, which otherwise allows science fiction to masquerade as science. To be sure, the articulation of law is difficult, complex, and contestable, so the distinction between science and fiction is subject to judgment and involves various margins of controversy. It is thus possible to accept Shapiro's desire to avoid the Nirvana fallacy while yet differing on just when that fallacy has been committed. Shapiro's effort to operate within the realm of feasibility brings to mind both James Buchanan's (1959) articulation of a similar orientation and Clarence Philbrook's (1953) caution about being overly concerned with feasibility.

Shapiro proposes that state-based enterprises be replaced with market-based enterprises with respect to all three components of the welfare state. Those market-based enterprises, however, would be financed by forced saving along with some modest provision for redistribution. Such proposals have, of course, been around for quite some time and Shapiro explains these proposals nicely. These proposals would not, however, abolish the welfare state but rather would change its mode of operation. Shapiro would maintain state compulsion, only he would channel that compulsion through market-based enterprises rather

than through state-based enterprises. His acceptance of state compulsion locates Shapiro as a proponent and not an antagonist of the welfare state, though one who advocates considerable reform in its mode of operation.

It is perhaps unfortunate that Shapiro expounds on the Nirvana fallacy, for this invites the thought that his approval of the welfare state is only pragmatic: if the welfare state won't go away, one might as well try to do the best one can with it. But Shapiro's support for the welfare state isn't pragmatic; it's supported by the philosophical principles he embraces. His opening sentence offers the supposition that "justice requires minimizing inequalities that arise through no choice or fault of one's own [p. 1]." This supposition allows collective judgments to trump the patterns generated by market interaction, and also brings into the foreground subtle and complex issues concerning the distinction between fate and choice. For instance, the family setting into which one is born is a matter of fate (what Shapiro calls brute luck) and not choice (what Shapiro calls option luck). Plato recognized this distinction in his call for the communal raising of children, a prospect that Aristotle noted would promote the equal neglect of all children. While Shapiro doesn't examine families and inheritance, the implications that stem from what he regards as unexceptional philosophical formulation should surely create cautionary if not skeptical posture toward those formulations. Such formulations necessarily incorporate planning into processes of spontaneous ordering. In selecting his point of departure, Shapiro embraces a welfare state by supporting policy efforts to make the outcomes of spontaneously ordered processes conform to some requirements of planning.

As a conceptual matter, any activity that a state can promote through a budgetary operation can be promoted as well through a market-based regulation. A state can tax-and-spend or it can regulate; the difference is just a second-order matter (which doesn't imply that it is insignificant). It is common practice for governments to require dog owners to have their dogs inoculated against rabies. Alternatively, governments could provide those inoculations through public veterinary clinics. On a larger scale, governments could pretty much eliminate spending on elementary and secondary education simply by requiring parents to send their children to state-approved schools. It would even be possible to mitigate some of the distributional consequences that might result by requiring people without children to help support neighboring children. Under either organizational format, there is state presence with respect to children and dogs. In both cases there is a rejection of the spontaneously ordered features of market-generated patterns because these are subordinated to some collectively expressed desires to which those patterns should conform.

There is tension between the market order and the welfare state, and this tension cannot be eliminated. The aggregate patterns that form through market interaction are simply objects to be observed and are not objects of any person's choice. Such patterns as the distribution of wealth or the organization of medical care and insurance are products of interaction among the members of society and are not products of some overarching plan; rather they are the unintended by-products of interaction among many plans. In contrast, the welfare state seeks to incorporate some vision of plan into the aggregate patterns that would otherwise emerge through societal interaction.

Islands of Planning within a Polycentric Sea

Shapiro's treatment of the welfare state raises some knotty questions concerning the relationship between those entities we denote as state and as market. It is conventional to denote state as an organization and market as an order. I might be excused for having partiality to the formulation in Wagner (2007), which treats state as an order inside of which many organizations participate. These considerations of order and organization point to two sets of issues concerning the incorporation of planning into polycentric processes. One set arises if state is conceptualized as an organization, the other set arises once state is recognized to denote an order or process and not an actor.

Even if state is treated as an organization, it does not have unlimited ability to create whatever aggregate pattern it might think desirable, for it is only one actor among many in society. The state exists only as an island of planning within a sea of polycentric interaction. A state might well create a compulsory program of medical savings accounts to be used to finance much medical expenditure. Yet subsequent patterns of medical expenditure will depend also on personal choices and interactions among choices that stand outside the jurisdiction of policy. To the extent policy measures induce changes in individual conduct, the resulting societal patterns will not be directly an object of policy choice. For instance, people who are forced to provide themselves with medical accounts when otherwise they might self-insure might respond by taking less care with respect actions that might affect future medical expenses.

Suppose that some people are observed to make negligible provision for medical care or old-age. Setting aside my skepticism about the philosophical arguments that Shapiro adduces in support of forced saving, I would note simply that policy injections will surely influence individual action, and not necessarily in ways that would be regarded as beneficial according to those philosophical arguments. For instance, there is surely some didactic value to the observation of failure and misery, as explained by James Fitzjames Stephen (1874). Provision for the future requires the exercise of faculties that would surely be exercised to a lesser extent under forced saving. Moreover, the consequences of failing to exercise such faculties are hidden, thereby restricting the prospect of social learning which misery and failure might otherwise create. I raise this possibility not to dispute Shapiro's position, but only to illustrate how injections of policy planning might have various untoward effects throughout the polycentric sea of human action and interaction.

Furthermore, once it is recognized that state denotes an order comprised of myriad participants, the teleological character of policy dissolves to a considerable extent and comes to resemble other products of polycentric processes. What are called collective or policy outcomes are not properly analogized to some consumer's choice, but rather reflect the same global incoherence that characterizes market outcomes: market outcomes do not reflect the maximization of some universal utility function, regardless of the large number of economists who have flirted with some such construction. It is the same with political processes. A philosopher, or an economist, could well

articulate some coherent program of mandatory health insurance. The coherence arises because it is the product of a single mind.

Policy, however, does not arise from contemplation in some academic's study; policy arises out of interaction among numerous interested participants who rarely if ever are on the same page, so to speak. The devil does truly reside in the details, as Shapiro recognizes in several places. Market-based medical insurance in the wake of state compulsion would surely differ in numerous ways from what might emerge within a context of genuine market ordering. The exact nature of those differences would depend on the confluence of various participating interested parties and would not correspond to any particular philosophical vision, any more than tax legislation corresponds to the vision of particular fiscal philosophers. To mention just one illustration, it is highly likely that the vendors who would operate under forced saving would be selected through some political process that would surely both govern eligibility to serve as a vendor and impose various restrictions and requirements on the types of products offered. What results might still be relatively close to what would have emerged under genuine market arrangements or it could be far removed; in either case it depends on how political processes proceed and not how philosophers reason.

It is common to treat the welfare state as denoting some coherent program or set of programs. For instance, academic discussion of the means-tested component of the welfare state almost universally proceeds in terms of a program of taxing the wealthy to subsidize the poor. One simple form of such a program is a demogrant scheme where a progressive tax on income would be

used to finance equal per capita transfers. This is a formulation that maps into the legend of Spartacus and his revolt. The trouble with this tale is that slaves don't possess the full array of talents required to organize effective pressure within polities. An army needs generals as well as privates, as well as intermediate ranks. It is notable in this respect that within US politics both parties receive support from within the lower portion of the income distribution, as well as that politicians and political operatives from both parties come from the upper portion. While conventional analysis reduces this part of the welfare state to a single program, the actual practice reveals multiple programs that address narrower and overlapping constituencies of supporters. This alternative line of analysis, moreover, fits into an orientation where transfers are vertical in character, reflecting the coalitional structure that supports those transfers, as noted in Wagner (2004).

In Conclusion

While I can't embrace the Shapiro's philosophically-based defense of the welfare state, I can certainly embrace it on pragmatic grounds. Shapiro's effort to marry normative concerns from political philosophy with positive analytics from social science is admirable. The only qualm I have in this respect is that in conceptualizing the state as an actor and not a process, he did not pursue his analytical program as fully as he might have.

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