

# The Volokh Conspiracy

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## “The Rise of the New Paternalism”

Eugene Volokh • April 5, 2010 1:40 pm

My friend Prof. Glen Whitman writes about this — as well as about slippery slopes — in *Cato Unbound*.

Categories: Uncategorized

### 52 Comments

1. ***PersonFromPorlock*** says:

I don't disagree with Prof. Whitman, but the article is really pretty ho-hum. There are dangers that 'soft' paternalism will harden over time? That the bureaucrats will merely replace the public's irrational prejudices with their own? Send for Captain Renault!

It doesn't matter *why* the social engineers want the state to be the 'parent' to the People's 'child', the fact is that such a relationship is flatly incompatible with the notion of popular sovereignty.

Quote

April 5, 2010, 2:45 pm

2. ***David V*** says:

**PersonFromPorlock:** It doesn't matter why the social engineers want the state to be the 'parent' to the People's 'child', the fact is that such a relationship is flatly incompatible

with the notion of popular sovereignty.

Ok— this I want further clarification on. I get what you are saying, I am asking for clarification out of the world of theory. How can true popular sovereignty possibly exist in a condition where the consent to be governed is also true?

Quote

April 5, 2010, 3:02 pm

3. **Allan Walstad says:**

I need more time to digest it, but on first scan it looks like a very good article. There's the slippery slope, there's the question of why we should expect what comes out of the political process to be any less distorted than the choices people make on their own, and there's the perennial myopia of creating more political power levers without worrying sufficiently about who's going to use those power levers for what purposes 10 or 50 years from now.

Quote

April 5, 2010, 3:23 pm

4. **David V says:**

**Allan Walstad:** the question of why we should expect what comes out of the political process to be any less distorted than the choices people make on their own

Isn't that what the Framers had in mind with setting up the government? A set of buffers to the whim of the moment? If we are on a slippery slope, we have been since inception, even since the inception of any government.

Quote

April 5, 2010, 3:28 pm

5. **Allan Walstad says:**

David V: Yeah, I'd try to avoid greasing the skids any farther.

Quote

April 5, 2010, 3:31 pm

6. **troll\_dc2 says:**

Having been giving some thought recently to the claimed deleterious consequences of "social engineering," I find it odd that

no one (at least in the material that I have seen) has discussed one of the largest and most expensive social-engineering projects in our society, which is the tax deduction for mortgage interest. It promotes home ownership by making it cheaper than it otherwise would be, thus giving a nudge to people whose budgets would not otherwise allow them to buy a home. By encouraging ownership over rental, it also contributes to suburban sprawl and hurts cities.

It is not clear that tying so much of our resources up in housing is the best public policy to follow. Moreover, a lot of people, even those who could afford to buy without the deduction, might well decide not to do so without the deduction. In any event, this is social engineering at work—using public rules to influence private decisionmaking.

Quote

April 5, 2010, 3:38 pm

7. **David V says:**

**Allan Walstad:** David V: Yeah, I'd try to avoid greasing the skids any farther.

Are you saying you believe, give the current facts of existence on this tiny little ball, we need no government?

Quote

April 5, 2010, 3:39 pm

8. **R. Nebblesworth says:**

The entire point of his article comes down to the final few sentences: building a "slope-resistant" framework instead of a "paternalism-generating" framework. But there's nothing in there about what a 'slope-resistant framework' is. Is there an article about that forthcoming? What does a slope-resistant framework look like?

Quote

April 5, 2010, 3:53 pm

9. **David V says:**

**R. Nebblesworth:** The entire point of his article comes down to the final few sentences: building a "slope-resistant" framework instead of a "paternalism-generating" framework. But there's nothing in there about what a 'slope-resistant framework' is. Is there an article about that forthcoming? What does a slope-resistant framework look like?

That's kind of where I'm going. I don't think there can be one. It'd be like denying that markets are irrational or saying that markets here are 'free'.

Quote

April 5, 2010, 4:01 pm

10. ***SuperSkeptic*** says:

**PersonFromPorlock:** It doesn't matter why the social engineers want the state to be the 'parent' to the People's 'child', the fact is that such a relationship is flatly incompatible with the notion of popular sovereignty.

So is all government then, no?

Quote

April 5, 2010, 4:04 pm

11. ***SuperSkeptic*** says:

Isn't a "slope-resistant framework" a Constitution?

Quote

April 5, 2010, 4:05 pm

12. ***troll\_dc2*** says:

PersonFromPorlock: It doesn't matter *why* the social engineers want the state to be the 'parent' to the People's 'child', the fact is that such a relationship is flatly incompatible with the notion of popular sovereignty.

This assertion is, flatly, nothing but hot air. A lot of the policies that we have adopted are "incompatible with the notion of popular sovereignty"—tax increases, free-trade agreements, bank bailouts, undeclared warfare, and so on. Whether right or wrong, they would flunk a popularity poll at some point, and they would also affect society at least as much as policies that are dubbed to constitute "social engineering."

In fact, it is hard to think of a public policy that does not incorporate some elements of social engineering. It seems to me that that the proper discussion should be over what is good social engineering and what is bad social engineering.

Quote

April 5, 2010, 4:10 pm

13. **Anonsters says:**

**troll\_dc2:** In fact, it is hard to think of a public policy that does not incorporate some elements of social engineering. It seems to me that that the proper discussion should be over what is good social engineering and what is bad social engineering.

Good social engineering is the social engineering I like. Bad social engineering is the social engineering I don't like.

Problems solved!

/Sarcastro'd.

Quote

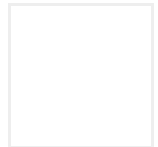
April 5, 2010, 4:18 pm

14. **troll\_dc2 says:**

Anonsters: and how do you determine what you like?

Quote

April 5, 2010, 4:20 pm

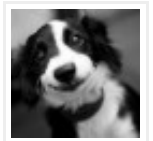
15. **Anonsters says:**

**troll\_dc2:** Anonsters: and how do you determine what you like?

If it tastes like cheesecake, I like it.

Quote

April 5, 2010, 4:22 pm

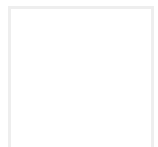
16. **SuperSkeptic says:**

**troll\_dc2:** Anonsters: and how do you determine what you like?

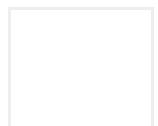
Pick your favorite philosopher...and/or grab a gun....

Quote

April 5, 2010, 4:22 pm

17. **Malvolio says:**

**troll\_dc2:** the tax deduction for mortgage interest [...]



promotes home ownership by making it cheaper than it otherwise would be, thus giving a nudge to people whose budgets would not otherwise allow them to buy a home.

That just isn't true. The deduction causes *higher* (nominal) home prices, since the seller knows about the deduction, as do the prospective buyers who are competing for purchasing a home. The higher prices eat up most of the value of the deduction.

The equivalent is true, BTW, of college loans and grants.

Quote

April 5, 2010, 4:23 pm

18. ***SuperSkeptic*** says:

I mean vote! Vote! Democracy!

Quote

April 5, 2010, 4:23 pm

19. ***troll\_dc2*** says:

Malvolio, you may be right in terms of economics, but the deduction still acts as an incentive. The sense of an incentive may be irrational, but I have seen it in operation.

Quote

April 5, 2010, 4:27 pm

20. ***David V*** says:

**Anonsters:** If it tastes like cheesecake, I like it.

Black Forrest cheesecake?

Quote

April 5, 2010, 4:35 pm

21. ***Anonsters*** says:

**David V:** Black Forrest cheesecake

The adulteration of pure, plain cheesecake is a crime against humanity.

Quote



April 5, 2010, 4:40 pm

22. ***troll\_dc2 says:***

**Anonsters:** The adulteration of pure, plain cheesecake is a crime against humanity.

Perhaps that was a form of antisocial engineering.

Quote

April 5, 2010, 5:01 pm

23. ***David Schwartz says:***

Malvolio: I don't think that's quite true. I would expect the buyer and the seller to split the tax benefit. In fact, if the seller kept all the benefit, then the buyer is also buying the ability to reap that benefit when he sells — so the benefit would still go to the buyer. ;)

The effect is that financed home ownership is cheaper compared to other possible solutions, such as renting a home from someone who has paid it off. People will tend to finance their homes more than they would have, and part of that benefit would go to home sellers. That is, arrangements that involve paying more interest on a home loan would be preferred in the market over those that don't.

However, it is not a zero-sum game. There is a tax benefit to be apportioned among those who owned or will own homes.

Quote

April 5, 2010, 5:13 pm

24. ***PersonFromPorlock says:***

**David V:** Ok— this I want further clarification on. I get what you are saying, I am asking for clarification out of the world of theory. How can true popular sovereignty possibly exist in a condition where the consent to be governed is also true?

The power of the sovereign is the power to destroy; because the People can withdraw their consent to be governed, destroying the government's legitimacy if not its actual substance, they remain sovereign.

Quote

April 5, 2010, 5:18 pm

25. ***Davidicus says:***

David Schwartz, it manifests in higher home price (seller) and a greater willingness to pay a higher price (buyer). There is no conscious decision regarding allocation nor must there be.

Quote

April 5, 2010, 5:22 pm

26. **David V says:**

**PersonFromPorlock:** because the People can withdraw their consent to be governed

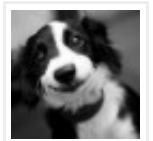
In the real world, in the US, how would(does) this manifest?

Quote

April 5, 2010, 5:58 pm

27. **Anonsters says:**

**David V:** In the real world, in the US, how would(does) this manifest?



It's not like the right of revolution has been preserved, so I'm interested in hearing people's answers to this one.

Quote

April 5, 2010, 6:25 pm

28. **Arthur Kirkland says:**

Is the New Paternalism worse than the Old Paternalism (marijuana, sexual preference, Blue Laws, abortion, censorship, "God" in the pledge)? Should we address the Old Paternalism, whose slopes have already slipped, first?

Quote

April 5, 2010, 6:29 pm

29. **BC says:**

**David V:** In the real world, in the US, how would(does) this manifest?

Probably like this. Over and over and over again.

Quote



April 5, 2010, 6:40 pm

30. **PersonFromPorlock says:**

**Anonsters:** It's not like the right of revolution has been preserved, so I'm interested in hearing people's answers to this one.

There's as much 'right of revolution' as there ever was: just be sure to win. Even short of a shooting war, the Constitution allows for the states' forcing a constitutional convention which could, in principle, dissolve the Union.

*Article V*

*The Congress...on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which...shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress*

Quote

April 5, 2010, 6:43 pm

31. **byomtov says:**

David Schwartz,

*The effect is that financed home ownership is cheaper compared to other possible solutions, such as renting a home from someone who has paid it off.*

There is a somewhat counterintuitive argument that the mortgage interest deduction actually just puts the homeowner on an equal footing with the renter.

Even though a renter doesn't get an interest deduction(1) the landlord does, not to mention deductions the homeowner **doesn't** get, like maintenance costs, depreciation, and even utilities included in the rent. Surely some of this tax benefit flows through to the tenant in the form of lower rents.

(1) Even if the building is paid for, there is an implicit deduction of the interest the landlord would have earned on the cash put into the building.

Quote

April 5, 2010, 6:57 pm

32. **Anonsters says:**



**PersonFromPorlock:** Even short of a shooting war, the Constitution allows for the states' forcing a constitutional convention which could, in principle, dissolve the Union.

That's not really a revolution, though, is it? It's just a constitutional convention. I was going to add that I thought that would be the closest thing to "revocation of consent."

**PersonFromPorlock:** There's as much 'right of revolution' as there ever was: just be sure to win.

I'm wondering if anyone really thinks there are any *plausible* scenarios in which random people could revolt and take on the collective force of the U.S. military and win.

(Note, for answering the above, the emphasis on "plausible.")

Quote

April 5, 2010, 7:00 pm

33. **ShelbyC says:**

**byomtov:** Even though a renter doesn't get an interest deduction(1) the landlord does, not to mention deductions the homeowner doesn't get, like maintenance costs, depreciation, and even utilities included in the rent. Surely some of this tax benefit flows through to the tenant in the form of lower rents.

But those are costs that the renter doesn't deduct, so he's paying the same taxes the homeowner is.

Quote

April 5, 2010, 7:06 pm

34. **David Schwartz says:**

Byomtov: I don't think so. Higher home prices benefit both the buyer and the seller. The seller gets more money, the buyer gets more money when he in turn sells. Higher home prices, as far as I can tell, provide no benefit whatsoever to the renter, and in fact just result in higher rental prices.

Davidicus: I agree. Costs are almost never consciously allocated but automatically allocated by the market. If it costs more to make something, prices will rise. How far they will rise will depend on all kinds of details about how that product competes with others in the market, but the market's machinations will automatically assign that rise to buyers and sellers as appropriate. A specific agreement to allocate the cost change is the exception.

## Quote

April 5, 2010, 7:13 pm

35. **Davidicus says:**

I was referring to your statement, "I don't think that's quite true. I would expect the buyer and the seller to split the tax benefit."

As a result of the tax benefit, more people are positioned to afford any given home which leads to marketwide greater demand and higher prices.

## Quote

April 5, 2010, 7:29 pm

36. **Dan Lavatan says:**

With respect to paternalism I think we just need to insist that the first round of paternalist proposals include the right to opt out of Social Security, Medicare, and Unemployment taxation in exchange for a waiver of any benefits under those programs. It would be nice if there were credits for waiving corporate imposed accidental dismemberment/disability insurance.

The mortgage interest deduction mainly benefits banks who charge a higher interest rate. Higher home prices benefit the political cronies who leach off the resulting higher property taxes; inhabitants would be better off with more affordable homes.

## Quote

April 5, 2010, 7:32 pm

37. **BC says:**

**Anonsters:** I'm wondering if anyone really thinks there are any *plausible* scenarios in which random people could revolt and take on the collective force of the U.S. military and win. (Note, for answering the above, the emphasis on "plausible.")

Anything is plausible, or implausible, depending on how you constrain the hypothetical. Sure, it's completely implausible that you and your neighborhood watch association, armed with deer rifles and handguns, would "win" a traditional, straight-up engagement out in the open with the U.S. 1st Cavalry's 2BCT. By the same token, it's completely plausible that a popular uprising consisting of half or more of the citizenry could deal a defection-depleted U.S. military a sufficient number of setbacks to force the political class to the bargaining table, notwithstanding the asymmetries of the conflict.

Define your scenario.

Quote

April 5, 2010, 7:58 pm

38. ***SuperSkeptic*** says:

**Davidicus:** As a result of the tax benefit, more people are positioned to afford any given home which leads to marketwide greater demand and higher prices.

But that doesn't seem like an unintended consequence; I was under the impression (and I'm not a homeowner) that most government regulations — from zoning to the tax deductions in dispute — were consciously designed to prop up prices in homes.

Quote

April 5, 2010, 8:05 pm

39. ***byomtov*** says:

Shelby,

*But those are costs that the renter doesn't deduct, so he's paying the same taxes the homeowner is.*

No, he doesn't deduct them directly, but the fact that the landlord does lowers the rent the tenant pays. IOW, the deductions the landlord takes lower the landlord's costs, and this affects the rent charged.

David Schwartz,

I don't follow. You seem to be saying the deduction is a wash as between buyer and seller, because the buyer is ultimately a seller. Why that invalidates my argument about rental rates is not clear to me.

Quote

April 5, 2010, 8:06 pm

40. ***ShelbyC*** says:

**byomtov:** No, he doesn't deduct them directly, but the fact that the landlord does lowers the rent the tenant pays. IOW, the deductions the landlord takes lower the landlord's costs, and this affects the rent charged.

If a homeowner spends \$100 a month on maintenance, he pays that with after tax dollars. If a landlord pays the same \$100 a month, he pays no

taxes, and passes that \$100 to the tenant, who pays it in after tax dollars, same as the homeowner. If the landlord didn't get the deduction, he'd have to pass \$100 plus his tax rate to the tenant, and the tenant would be worse off.

Quote

April 5, 2010, 8:14 pm

41. **ShelbyC says:**

**Anonsters:** I'm wondering if anyone really thinks there are any plausible scenarios in which random people could revolt and take on the collective force of the U.S. military and win.

yes, any scenario that involves the military (or portions thereof) refusing to fight, or siding with the people.

Quote

April 5, 2010, 8:21 pm

42. **Fedya says:**

I thought the mortgage deduction was only for your residences, not for rental property. (That, and there's a cap on it.) I'd think that a lot of rental property wouldn't be subject to the mortgage deduction.

Quote

April 5, 2010, 8:31 pm

43. **David V says:**

**BC:** By the same token, it's completely plausible that a popular uprising consisting of half or more of the citizenry could deal a defection-depleted U.S. military a sufficient number of setbacks to force the political class to the bargaining table,

I will have to disagree. Within a state, maybe somewhat plausible, but given the sheer size of the population in the US, I have to say that it is not plausible. And my opinion comes from the idea that the overwhelming majority is completely fine with a paternal relationship with the government, regardless of whether it is right or wrong. It has been sold as 'being good' for so long (centuries) that getting 1/2 of the US to go along with such a massive change is out of the realm of possibility.

Quote

April 5, 2010, 8:39 pm

44. **ShelbyC says:**

**Fedya:** I thought the mortgage deduction was only for your residences, not for rental property. (That, and there's a cap on it.) I'd think that a lot of rental property wouldn't be subject to the mortgage deduction.

Not a tax pro, but I'd imagine most interest would be deductible as a business expense of some sort, no?

Quote

April 5, 2010, 8:40 pm

45. **Allan Walstad says:**

From several hours ago (sorry):

David V says:

Allan Walstad: David V: Yeah, I'd try to avoid greasing the skids any farther.

Are you saying you believe, give the current facts of existence on this tiny little ball, we need no government?

That wasn't what I said. I would like the scope and expense of coercive government to shrink by a long way, then let's see after that. By not greasing the skids any farther I just meant not expanding the scope of government paternalism.

troll\_dc2: I oppose the mortgage interest deduction. But the reason we have all those loopholes lies in the political game-playing that goes along with high taxes in the first place. Abolish the income tax and all those loopholes go with it.

SuperSkeptic says:

Isn't a "slope-resistant framework" a Constitution?

A constitution if you can keep it, man.

Quote

April 5, 2010, 8:41 pm

46. **PersonFromPorlock says:**

**Anonsters:** I'm wondering if anyone really thinks there are any plausible scenarios in which random people could revolt and take on the collective force of the U.S. military and win.

(Note, for answering the above, the emphasis on "plausible.")

Considering the events in the Soviet Bloc of twenty years ago, I'd say there are scenarios which are not merely plausible but time-tested.

Quote

April 5, 2010, 10:22 pm

47. **Randy says:**



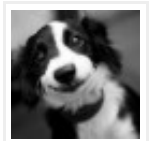
The mortgage interest deduction is an interesting one, but the question remains WHY we have it. Why should homeowner's get a deduction? In the first place, it skews the market — and it's debatable as to who actually gets the benefit. We know that the loser is the government, because it loses tax revenue. That means the revenue has to be made up somewhere else, and so the renter loses both ways — no tax deduction, and higher taxes to recover the lost revenue.

As for paternalism, we have a host of zoning laws that actually prevent the type of housing patterns many Americans would like — dense urban living patterns, or at least higher density than one house per half acre. It adds to our costs of living through more energy use, forced automobile ownership (try living in the burbs without one) and lose of time in commuting and doing chores.

Quote

April 5, 2010, 10:27 pm

48. **Anonsters says:**



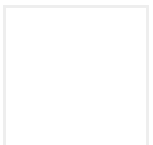
**PersonFromPorlock:** Considering the events in the Soviet Bloc of twenty years ago, I'd say there are scenarios which are not merely plausible but time-tested.

Do you think the U.S. government is plausibly comparable to the Soviet government?

Quote

April 5, 2010, 10:36 pm

49. **David Schwartz says:**



**byomtov:** I don't follow. You seem to be saying the deduction is a wash as between buyer and seller, because the buyer is ultimately a seller. Why that invalidates my argument about rental rates is not clear to me.

Because a renter is neither a buyer nor a seller. The net effect of the

allocation of the tax benefit is that home prices are higher, which hurts the renter. Not all rental properties are mortgaged, and owner-occupied homes are advantaged as well.

**Davidicus:** As a result of the tax benefit, more people are positioned to afford any given home which leads to marketwide greater demand and higher prices.

I guess I'm not sure what we disagree about. Do you agree that the buyer and the seller split the tax benefit? And that it's not a zero sum game — both the buyer and seller can benefit?

Quote

April 6, 2010, 4:12 am

50. ***David M. Nieporent says:***

**Randy:** That means the revenue has to be made up somewhere else,

No, it doesn't. That claim assumes that there's a fixed number of things the government wants to do, and so if tax revenues drop in one area, they need to be "made up" elsewhere. In reality, the government simply wants to spend as much as it takes in.

As for paternalism, we have a host of zoning laws that actually prevent the type of housing patterns many Americans would like — dense urban living patterns, or at least higher density than one house per half acre.

No; the latter is the housing pattern that many Americans would like. That's the reason for the zoning laws — because so many people want that pattern that they want to move to suburbs that have it, but if they do, then they destroy the pattern.

If so many people wanted high density housing, then there would be new construction in that pattern, in places where it hasn't yet been zoned out. And the people who live in those places would be happy to see more people move in.

Quote

April 6, 2010, 5:44 am

51. ***The Volokh Conspiracy » Blog Archive » "The Rise of the New ... / Information Security Resources says:***

[...] here: The Volokh Conspiracy » Blog Archive » "The Rise of the New ... AKPC\_IDS += "609,";Popularity: unranked [...]

April 6, 2010, 6:15 am



52. **Mark Anderson says:**

The concept that old school paternalism isn't alive, well, and flourishing on the Far Right and in the Tea Party Movement is asinine. It's hiding its male WASPishness under a bush, but it is still there.

And the Left is just as guilty through this standards doublespeak that they throw out.

Either way you look at it, it is like dating someone who tells you that you are perfect and, then, tries to change you.

Quote

April 6, 2010, 8:32 am