Paternalism in the Marketplace: Should a Salesman be His Buyer's Keeper?

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The moral relationship between salespersons and their customers can range from *caveat emptor* to paternalism. We propose that between these extremes is a realistic professional ethic for sales that we will refer to as "limited paternalism."

At one extreme is *caveat emptor* – "let the buyer beware." We do not claim there is anything inherently immoral about such a position, only that it is no longer appropriate in our society. Games can be played by various rules, as long as all participants know those rules. When two old horse-traders tried to strike a bargain, it was understood that the seller could be assumed to misrepresent the condition of the animal and the buyer was warned to be on his guard. Perhaps this situation was not unfair since both participants knew the rules, entered into the agreement voluntarily, and had the opportunity to examine the merchandise. However, the contemporary consumer frequently purchases goods or services which he cannot be expected to judge for himself. The workings of an insurance policy are as mysterious to us as those of a VCR. A salesperson, with their superior understanding, is in such a position to exploit our ignorance that few of us would want to play the game if the rule of the marketplace were understood to be strictly "let the buyer beware."

At the other extreme is the practice of paternalism. A standard definition of paternalism is "the interference with a person's liberty of action justified by reasons referring exclusively to the welfare, good, happiness, needs, interests, or values of the person being coerced" (Dworkin, 1971). In other words, paternalism occurs when an individual, presumably in a position of superior knowledge, makes a decision for another person to uninformed decision that could be detrimental to him.

To claim that a salesperson is professionally required to inform customers fully about a product or service, to disclose fully all relevant information without hiding crucial stipulations in small print, to protect this other from some type of harm. Paternalism implies that the first person deprives the second of liberty of autonomy. This infraction on liberty is thought justified because, in the mind of the first person, it is "for his own good." Recently, a merchant refused to sell tropical fish to a patron because she felt he was not changing the water in his tank often enough. Although the merchant was infringing on the customer's liberty based on her superior knowledge, the interference was for his own good (and presumably the good of the fish). The merchant was being paternalistic.

Most of us expect paternalism in certain situations. If the service we are purchasing is an appendectomy, we typically allow the salesman (in this case the surgeon) a major role in deciding whether we need the service. We rely on the ethics of the profession to protect us from the possible exploitation. The old-fashioned physician considered such paternalism part of his role, but modern medicine emphasizes the patient's informed consent. The professionals use their superior knowledge to make the medical diagnosis, but they are expected to explain treatment options available to the patient so the latter can make the moral decision. Thus even in the most paternalistic of contexts we find that professionalism justifies only a limited paternalism.

This limited paternalism, which is typically an element in professionalism, applies when an individual in a position of superior knowledge has an active duty to explain the consequences of a decision. Here the "father-like" individual does not make the decision for the other. The only liberty that is violated is the freedom to be ignorant: the consumer is protected from all ascertain that they are aware of their needs and the degree to which the product or service will satisfy them, is to impose upon the salesperson the positive duty of limited paternalism. According to this standard a salesperson is, to a limited degree, "his buyer's keeper."

Consider the following example: A woman takes her car to an auto repair shop and tells the mechanic she needs a new muffler and exhaust pipes because her car makes too much noise. While examining the car, the mechanic concludes that the excessive noise occurs because there is a hole in the tail pipe. The mechanic was told to replace the exhaust pipes and the muffler. He has three options: (1) replace the exhaust pipes and the muffler as requested by the car's owner and collect (say) $90.00; (2) talk to the owner, refuse to do as requested since all that is needed is a $20.00 tail pipe; (3) talk to the owner, explain the situation, and let her decide for herself if she really wants to spend $70.00 more than is necessary to fix the car.

When confronted with this situation, many repairmen or auto parts salespersons would choose the first option: collect as much money as possible. This is perfectly legal since the car's owner did authorize complete replacement. Some perhaps would act paternalistically by following the second option: replace the tail pipe for $20.00, but refuse to replace the longer exhaust pipe and the muffler because it is not necessary. But now he has infringed on the owner's right to decide for herself. Perhaps the owner wanted to be absolutely certain that her exhaust system was perfect and would not need work again soon. Maybe she is rich and does not mind spending the extra money. In any case, it is her car, her money, and her decision. Option number three is the best ethical choice and the standard required for professional responsibility: the mechanic has a duty to inform the owner of facts of which she might not be aware since she is not the expert. The choice should be left to the owner.

But consider a different situation: a customer in a store that specializes in stereo equipment is consulting a salesperson about the specifications, quality and prices of amplifiers. The salesperson is considered an expert on all equipment available for sale in the showroom. After some deliberation, the customer tentatively decides he would like to own a Super Max amplifier. But before making the purchase, he asks the Salesperson one more question: "Is there anything else I should know about this particular model before giving you the cash?" Now, to the best of her knowledge, the salesperson has accurately communicated the advantages of the amplifier, told him the price – $400, and that this particular unit does meet his needs. However, she also knows that the same model is being sold at all appliance store across the street for only $350! Does our standard require that she tell the buyer about this possible savings? Clearly not. Although the salesperson was aware of the competitor's price, she did not withhold information that only an expert would know. Anyone could easily find out how much the amplifier sold for at the other stores. The knowledge was not part of the technical expertise that marks her as a professional and which the buyer was presumably relying upon. However, if she held back information, relevant to the decision, which a non-expert could not be expected to know, then her behavior would be unethical by our standard.

Nearly all "hard sell" techniques are unethical according to this standard. Many salespersons intentionally keep information from potential buyers. They try to sell the most expensive product a customer will buy without regard to the needs of that person. Granted, some revenue may be lost in the short term from telling customers the bad as well as the good about a product or service, but profits will increase in the long run. Once a salesperson earns a reputation for being "honest" – i.e., ethical, interested in mutual exchange to mutual advantage rather than exploitation – he will have more satisfied customers, more referrals, and, eventually, greater income from an overall increase in sales. Even where the policy might not profit the salesperson in a specific case, it is a rule which if generally followed would produce the greatest good for the greatest number. Furthermore, it treats the customer the way we ourselves would want to be treated; it is a rule we would agree to even if we didn't know whether we were going to be the salesperson or the customer; finally, it bases sales ethics on widely accepted standards of professionalism. Clearly it is consistent with our ordinary ethical assumptions.

NOTE

Gerald Dworkin: 1971, "Paternalism", in *Morality and Law,* ed. Richard Wasserstrom (Belmont, CA), p. 108.