Slippery-Slope Logic, Applied to Health Care

By RICHARD H. THALER

Published: May 12, 2012

THERE are lots of important things to worry about these days: terrorism, the economy, climate change and, for Yankee fans, the loss of Mariano Rivera. But worry is a scarce commodity. Even a mother — Jewish or not — can’t worry about everything. So it is important that we limit our worries to real as opposed to imaginary risks.

One pernicious category of imaginary risks involves those created by users of the dreaded “slippery slope” arguments. Such arguments are dangerous because they are popular, versatile and often convincing, yet completely fallacious. Worse, they are creeping into an arena that should be above this sort of thing: the Supreme Court, in its deliberations on health care reform.

There is a DirecTV ad that humorously illustrates the basic form of the slippery-slope argument. A foreboding announcer intones a list of syllogisms that are enacted on screen: “When your cable company puts you on hold, you get angry. When you get angry, you go blow off steam. When you go blow off steam, accidents happen.” Later, we reach the finale: “You wake up in a roadside ditch. Don’t wake up in a roadside ditch.”

Although this ad is intended to be funny, arguments that make no more sense can and do affect public policy. The idea is that while Policy X may be acceptable, it will inevitably lead to the terrible Outcome Y, so it is vital that we prevent Policy X from ever being enacted. The problem is that such arguments are often made without any evidence that doing X makes Y more likely, much less inevitable. What percentage of people who are left on hold on the telephone end up in a roadside ditch?

The anecdotal track record of people making slippery-slope predictions in the political domain is replete with bad forecasts. An opponent of women’s suffrage once predicted that giving women the right to vote would create a “race of masculine women and effeminate men and the mating of these would result in the procreation of a race of degenerates.”
Another opponent, noting that women represent more than half the population, predicted that allowing women to vote would mean that all our political leaders would soon be women. For the record, women now hold 17 percent of the seats in Congress.

Of course, it sometimes happens that society takes successive steps in one direction. Although women don’t control the government, there is thankfully much more gender — and racial — equality now than a century ago. But I think that few would be tempted to compare the pace of that progress with that of an skier on a downhill training run.

Eugene Volokh, a legal scholar at the University of California, Los Angeles, has written extensively on the theoretical mechanisms that could cause such effects. But he rightly notes that the topic “cries out for empirical research” to determine whether slope risk is predictable. Such research does not exist, he says, perhaps because it is so hard to do.

ONE reason for the lack of conclusive research is that a society evolves slowly, and it can be impossible to attribute any particular change to the initial step that sent us sliding. Additional complications arise because our laws and norms often ebb and flow. The passage of Prohibition did not start us down some puritanical slippery slope, for example. Instead, Americans noticed that it was bad policy and repealed it.

Michael Klarman, the Harvard legal historian, has even argued that court cases can create what he calls a backlash. The idea is that some law or legal ruling creates such a stir that people rise up and push things back further away from the initial starting point. In this case the slope is up, not down.

Given how flimsy slippery-slope arguments can be, it is downright scary that they might play an important role in the Supreme Court decision on the new health care law. The case before the court is whether it is constitutional for the federal government to penalize people who fail to buy health insurance.

As everyone concedes, we can’t include the popular rule that forbids insurance companies from discriminating against people with pre-existing conditions unless we encourage nearly everyone to buy health insurance. Although most legal scholars seem to think that the law is constitutional, there is considerable question about whether the Supreme Court will rule that way. And the slippery-slope arguments being used here are just wacky.

Consider these now-famous comments about broccoli from Justice Antonin G. Scalia during the oral arguments. “Everybody has to buy food sooner or later, so you define the market as food,” he said. “Therefore, everybody is in the market. Therefore, you can make people buy
broccoli.” Showing remarkable restraint, he did not mention anything about ending up in a roadside ditch.

Justice Scalia is arguing that if the court lets Congress create a mandate to buy health insurance, nothing could stop Congress from passing laws requiring everyone to buy broccoli and to join a gym. He and Chief Justice John G. Roberts Jr. were asking the solicitor general to explain what the principle would be to stop the government from going so far. If the law stands, Justice Roberts suggested, “it seems to me that we can’t say there are limitations on what Congress can do under its commerce power.” He added, “Given the significant deference we accord to Congress in this area, all bets are off, and you could regulate that market in any rational way.”

Please stop! The very fact that a slippery slope is being cited as grounds for declaring the law unconstitutional — despite that “significant deference” usually given to laws passed by Congress — tells you all that you need to know about the argument’s validity. Can anyone imagine Congress passing a broccoli mandate law, much less the court allowing it to take effect?

The irony is that Justices Roberts and Scalia are warning of a risk that they and their colleagues have the power to prevent. Surely, the justices have the conceptual resources to draw a distinction between the health care market and the market for broccoli. And even if they don’t, then all the briefs, the zillions of blog posts and a generation’s worth of economic literature can help them.

More generally, we would be better off as a society if we could collectively agree to ignore all slippery-slope arguments that aren’t accompanied by evidence that said slope exists. If you are opposed to a policy, state your case based on the merits — not on the imagined risk of what else might happen down the road. The path of that road is so unpredictable that it may even produce a U-turn.

Richard H. Thaler is a professor of economics and behavioral science at the Booth School of Business at the University of Chicago.

A version of this article appeared in print on May 13, 2012, on page BU6 of the New York edition with the headline: Slippery-Slope Logic, Applied to Health Care.