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by Cass R. Sunstein**

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Book Note: Why Nudge?: The Politics of Libertarian Paternalism, by Cass R. Sunstein

Book Note**WHY NUDGE? THE POLITICS OF LIBERTARIAN PATERNALISM, by Cass R. Sunstein¹**

DAN ADLER

WHAT IS THE LEGITIMATE SCOPE of government intervention into individual decision-making? In *Why Nudge? The Politics of Libertarian Paternalism*, Sunstein defends the novel claim that governments ought to influence—or nudge—individuals into making choices that help them best achieve their desired goals. This book serves as a companion to the earlier text he co-wrote with Richard H. Thaler which outlines how failures in human reasoning contribute to suboptimal decision-making in the context of healthcare, financial planning, and other public policy issues.²

This book is divided into six main parts. The Introduction outlines one very influential principle for determining the legitimate scope of government intervention. This is John Stuart Mill's harm principle, which states simply that "[u]nless there is harm to others, the government cannot exercise power over people."³ In defense of this principle, Sunstein points out the intuitive appeal of the epistemic argument: Each individual best knows his or her preferences, and so can best identify his or her ends and the best means of obtaining them.⁴

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1. (New Haven: Yale University Press, 2014) 208 pages.
 2. Richard H Thaler & Cass R Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, revised ed (New Haven: Yale University Press, 2008).
 3. *Supra* note 1 at 4.
 4. *Ibid* at 7.

Chapter one presents an empirical challenge to the epistemic argument. Drawing on Daniel Kahneman's research⁵ and the findings in *Nudge*⁶, Sunstein outlines the range of errors in human decision-making, including caring more about events or outcomes that will occur sooner rather than later⁷; ignoring features of a product or activity that are not salient⁸; making unrealistically optimistic predictions about one's own behaviour and future prospects⁹; and making predictions about probabilities based on the ease with which a related event or example comes to mind.¹⁰ These errors prevent individuals from obtaining their chosen ends—resulting in what Sunstein refers to as “behavioural market failures.”¹¹

Given that Mill's harm principle does not account for these phenomena,¹² Sunstein argues that government intervention can correct behavioural market failures. Chapter two defends a type of government intervention called libertarian paternalism. It is a form of *soft* paternalism (in contrast to *hard*), which attempts to influence individual choices without imposing material costs.¹³ It is also a form of *means* paternalism (in contrast to *ends*), which attempts to influence only those actions individuals take to achieve their chosen aims.¹⁴ By combining these features, libertarian paternalism holds that governments should design public policy in such a way that guides individual decision-making to avoid the errors in reasoning that prevent people from attaining their chosen ends.

Chapter three defends one moral argument in favour of libertarian paternalism: It can improve people's lives.¹⁵ Sunstein persuasively shows that objections to this claim are refuted empirically by the frequency of behavioural market failures.¹⁶ Chapter four defends a second moral argument in defense of libertarian paternalism: It preserves and enhances individual autonomy and

5. For a comprehensive overview of his findings, see Daniel Kahneman, *Thinking, Fast and Slow* (New York: Farrar, Straus & Giroux, 2011). See also Dan Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions*, revised ed (New York: HarperCollins Publishers, 2010).

6. Thaler & Sunstein, *supra* note 2.

7. *Supra* note 1 at 35.

8. *Ibid* at 40.

9. *Ibid* at 45.

10. *Ibid* at 48.

11. *Ibid* at 16.

12. *Ibid* at 81-82.

13. *Ibid* at 58.

14. *Ibid* at 68-69.

15. *Ibid* at 87.

16. *Ibid* at 108.

freedom of choice.¹⁷ It does so because of the inevitability of choice architecture. This refers to the context in which individual decision-making takes place,¹⁸ which is characterized by the ordering or physical arrangement of different choices, and the presence of default choices. Choice architecture can be designed in a way that helps people pursue the ends they choose.¹⁹

Finally, chapter five considers some of the practical challenges posed by the implementation of paternalistic governmental policies. First, governments must be transparent about when and how they are designing paternalistic policies.²⁰ Second, there must be mechanisms to prevent abuses of power, which includes a requirement that it be easy for individuals to act against whatever paternalistic policies aim to achieve.²¹ Finally, the application of paternalistic policies should not interfere too stringently with individuals' pursuit of pleasurable or meaningful, albeit risky, activities.²² Though these are important considerations, Sunstein successfully shows that they do not seriously undermine the potential benefits of libertarian paternalism.

Sunstein masterfully weaves together emerging research in behavioural economics with some of the most fundamental issues in moral philosophy. He colours his study with vivid examples of real world problems, producing a book that is highly readable and oftentimes quite funny. Still, its arguments are forceful and persuasive, leaving the reader with no doubt of the importance of the issues—for policymakers, lawmakers, and indeed for the public at large.

17. *Ibid* at 123.

18. *Ibid* at 14.

19. *Ibid* at 128-31, 37-38.

20. *Ibid* at 144.

21. *Ibid* at 151.

22. *Ibid* at 154-55.

