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# Logical Analysis and History of Philosophy

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immer gleich gut erfüllt. Der Artikel über Unendlichkeit ist oberflächlicher als die anderen; der Artikel über Wahrheit geht an einigen Stellen sehr schnell vor; der historische Abriss von Walter Hoering ist lässig geschrieben, und man kann ihn für zu lässig geschrieben halten. Die Abbildungen in Ede Zimmermanns Artikel sind zum Teil falsch und damit – selbst wenn wir ihre gestalterische Qualität außer Acht lassen – nicht, wie sie sein sollten. Fehler wie die in den Abbildungen sind allerdings nicht besonders verwirrend; sie lassen sich leicht feststellen und korrigieren. Trotz solcher Mängel macht das Buch klar, dass die Entwicklung logischer Formalismen eine philosophische Forschungsmethode ist und dass Formalisierungen und die Entwicklung von Formalismen vom Philosophen nicht einfach delegiert werden können. Damit erfüllt das Buch seinen Zweck.

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Cass R. Sunstein: *Laws of Fear: Beyond the Precautionary Principle*. Cambridge: Cambridge University Press, 2005, ISBN: 0-521-61512-7; £15.99, EUR 24,60 (Paperback); 226 pages

Cass R. Sunstein's new book is the written version of the Seeley Lectures he delivered at Cambridge University in March 2004. Sunstein's main goal in the book is to make a case against the idea that regulation should aim at protecting people from potential harms, even if regulators do not know the magnitude of the risks associated with those harms. This idea is expressed by the Precautionary Principle – a principle which, in the last couple of decades, has become increasingly influential in regulatory policy all over the world.

The case against the Precautionary Principle is developed in the first part of the book. The second part argues for a more suitable framework for risk regulation. Along the way, Sunstein draws heavily from recent research in risk management, psychology, and behavioral economics; he also presents a wealth of examples and illustrations. For the reader unfamiliar with these fields, parts of the book can be read as useful surveys.

Chapter 1 begins by reconstructing the Precautionary Principle from examples of real-world legislation and law. It points out that the principle has weaker and stronger forms. In its weakest forms, all it suggests is that regulation may be desirable even if there is no conclusive evidence of the real magnitudes of the risks. In its stronger forms, the principle may require that a "margin of safety" is built into policies, or that an activity should be prohibited until its safety is demonstrated beyond doubt, or that prohibitions are justified even if there is no conclusive evidence that the risks associated with the activity are real.

Sunstein's objection to the Precautionary Principle is that it is incoherent and paralyzing, at least in its stronger forms. It is incoherent because the steps to reduce some particular risk lead to the rise of other risks. There are always "risks on all sides": if regulators prohibit an activity, other risks arise (or remain unaddressed). Thus, the principle proscribes the regulatory prohibition which it is supposed to prescribe. This way, the principle is paralyzing because it gives no recommendations at all: it prohibits the very steps that it requires.

To use a couple of Sunstein's many examples, if regulators take a precautionary approach towards medical advances, they protect people from the possible harms of insufficiently tested technologies or drugs – but at the same time they fail to prevent the harms which could be decreased by the introduction of new drugs and technologies. If we close down nuclear power plants, we have to find some other source of energy – but the alternatives will almost certainly increase or create other hazards. In economic terms, the Precautionary Principle requires to allocate resources to decrease the risks of significant harms, while it would seem to prohibit these very expenditures because they lead to increased risks elsewhere.

Why does the principle nevertheless seem attractive to many people as well as governments, courts, and international institutions? Sunstein suggests in Chapters 2 and 3 that the answer has to do with certain features of human cognition: the principle is attractive only because people tend to focus narrowly on some risks and ignore others.

When people make judgments about risks, they often simplify their task by using the availability heuristic: they judge the probability of a harmful outcome on the basis of how easy it is to recall examples. If a certain hazard is cognitively available, people will tend to believe that precautions should be taken against it, while they may ignore other hazards or the risks associated with regulation itself. Moreover, people sometimes neglect probabilities altogether: they may be excessively concerned with hazards whose probabilities do not warrant such attention.

The effects of these (and other) heuristics are exacerbated when powerful emotions are involved. Normally, people ignore low-level hazards, keeping them “off-screen” in order to feel safe in their daily lives, and this may be not irrational at all. But when intense emotions, and particularly fear is involved, worst-case scenarios come “on-screen” and people start to overestimate the low magnitudes of their probability. People gripped by fear tend to focus on worst-case scenarios with little regard to their real likelihood. But this is not all. As Chapter 4 explains, risk perception is also influenced by social and cultural factors. Representative anecdotes about hazards can spread quickly as people share them informally, and they tend to become more salient and amplified in social interactions. Such “cascade effects” are especially potent if the anecdotes are about emotionally vivid hazards, and the media can be particularly effective in starting and accelerating them. Group polarization plays a similar role. After discussion, members of a group can easily end up with more extreme versions of the views they initially hold. Polarization is especially likely if fear is involved. Once again, media coverage is often instrumental in polarizing opinions, which in turn increases the demand for regulation. Interest groups and politicians know this, and they compete for creating such effects to advance their own interests.

Once we recognize that judgments about risks are influenced by cognitive, emotional, and social factors, the incoherence of the Precautionary Principle becomes apparent and its appeal vanishes. What approach to risk regulation should we adopt in its stead? Sunstein argues for a three-component framework. First, he proposes an Anti-Catastrophe Principle for potentially catastrophic risks with unknown probabilities. Second, he provides a qualified defense of cost-benefit analysis. Third, when people are insufficiently (or excessively) fearful, he advocates libertarian paternalism, a view that compels regulators to promote people’s welfare while respecting their freedom of choice.

Chapter 5 discusses the Anti-Catastrophe Principle which regulators should use if there are potentially catastrophic outcomes to which probabilities cannot be assigned. In Sunstein’s view, this principle addresses the concerns of those who favor precautions; but since it is narrower, it avoids the paralysis the Precautionary Principle, if taken seriously, can lead to. The author defends his principle on the basis of the maximin decision rule – although there are so many qualifications that one wonders whether the principle ultimately addresses the concerns of those who favor precautions. In order to invoke the Anti-Catastrophe Principle, regulators have to take into account the full range of social risks and social costs, they have to choose the most cost-effective regulatory tool, and they have to be sensitive to the distribution of the burdens and benefits of regulation. The effect of public fear must also be taken into account, since fear has its own costs.

Moreover, the views of the public and the regulators may often differ about what a catastrophe is. After all, “catastrophe” is not a value-neutral term. Many people agree that global warming by 4.5° C by the end of the century (the most pessimistic current estimate) would be a catastrophe, but there might be substantial disagreement about warming by 2° C.

As we move from harms which are uncontroversially catastrophic, governments increasingly need to weigh the costs and benefits of different forms of regulation, since consensus about the desirable course of action will be increasingly difficult to achieve.

The next two chapters expand upon this theme. Chapter 6 defends cost-benefit analysis by arguing that it should be used to correct for distortions in risk assessment due to the availability heuristic, probability neglect, and other biases. It is indispensable for clarifying the necessary trade-offs involved in any piece of regulation and bringing the full range of risks “onscreen.” But cost-benefit analysis should not be the only tool for risk management. A democratic society may decide to pursue other objectives besides efficiency. Nevertheless, cost-benefit analysis enables regulators to place values on risky outcomes by mapping how citizens evaluate those risks.

The problem is aggregating those valuations, since different people value risks differently. On the one hand, cost-benefit analysis is all too often based on simple calculations of the value of statistical life, yielding uniform evaluations of risks across different groups. On the other hand, if regulators work with more fine-grained data, the following problem arises. People’s willingness to pay, on which calculations of value of life are based, is influenced by their wealth. The poor and the rich, or citizens of poor and rich countries, value risks differently. Hence cost-benefit analysis may seem to entail that the value of different people’s lives are different. To many people, this seems morally repugnant. Chapter 7 addresses the worry that regulation which concerns the rich will place higher monetary values on the lives of the rich than regulation which concerns the poor. Suppose, for the moment, that people’s preferences are an appropriate indicator of their welfare, and that those who benefit from some purported piece of regulation also bear its costs. Given these assumptions, government does not benefit people by requiring that they pay some uniform or independently set amount for the reduction of some risk; indeed, this would violate their autonomy. If this yields objectionably low values of life for the worse off, the problem should be addressed by redistribution – for example, by influencing people’s willingness to pay through subsidies.

Properly understood, cost-benefit analysis does not entail that the lives of the rich are more valuable than the lives of the poor. Rather, its use enables regulators to respect the principle that nobody should be forced to pay more for the elimination of a risk than they are willing to pay. In real life, of course, those who enjoy the benefits of regulation are not always those who bear the costs. In these cases, distributional considerations may play a role.

There are complicated further issues here which Sunstein does not address. Perhaps on the level of abstraction he writes these can be put aside, but it would nevertheless be interesting to learn more about the trade offs between distributional considerations on the one hand, and costs and benefits, on the other. If the better off pay for the reduction of a risk whose costs the worse off are not willing to (or cannot) cover, does that amount to a forced exchange as well? How do distributional considerations work in international problems? Do people in the developed world have a moral duty to subsidize people in poor countries, given that their willingness to pay is insufficient for global hazards? Are those people or nations who create or contribute to a risk responsible for reducing it?

The other assumption – that people’s preferences are an appropriate indicator of their welfare – is equally important, not the least because it is often false. What should regulators do when people have distorted preferences, lack information, steeply discount the future or neglect probabilities? Chapter 8, co-written with Richard Thaler, presents an account of libertarian paternalism, a view that gives guidelines for regulatory policy in such circumstances. The idea is that regulators should introduce programs and policies which influence people’s preferences while maintain the possibility of opting out. For example, employers can set the default choice among saving plans such that those people who would not choose in

accordance with their long-term interests are more likely to make the “appropriate” choice, while they can opt out from the default plan if they want to. Such a plan has a paternalistic element, since its explicit aim is promoting people’s welfare (given that most people simply choose the default option), and it also has a libertarian element, since it maintains freedom of choice by allowing people to opt out. Indeed, selecting a default choice is inevitable in many situations, and default options, as well as anchoring and framing effects (which arise from the way the alternatives are presented), shape preferences – especially if people do not have well-formed *ex ante* preferences.

One may, however, wonder about the paternalistic element of libertarian paternalism. If providing default options is inevitable, then selecting the option which is likely to benefit people the most as the default does not seem to be paternalistic policy – it merely seems to be sensible policy. After all, on most definitions of paternalism, it involves interference with a person’s freedom of choice or at least disregarding the person’s judgment; in the authors’ version, however, freedom of choice is preserved by the libertarian component, and the person often has not yet made a judgment or, if she has, the regulator’s judgment is not substituted for her own.

Prodding people in the right direction when they are insufficiently concerned with some risk or their future welfare works because people will often be unmotivated to reject the default choice and seek alternatives. But this strategy is much less likely to work when people are excessively concerned with some hazard. People gripped by fear are unlikely to be unmotivated enough to accept the default option even if it would advance their interests; on the contrary, they may be willing to incur costs to choose what is ultimately bad for them. Given the book’s emphasis on the effects of heuristics, biases, and social dynamics in risk perception, it remains unclear how libertarian paternalists would deal with such cases.

One thing Sunstein mentions is the role of political institutions and the government in educating the public about risks. From the Introduction on, he repeatedly emphasizes that his ideal is some form of deliberative democracy. A government that aspires to this ideal aims to dispel fear when it is baseless, but acts when a risk is serious. But contrary to what the reader might expect, public discussion and consensus-seeking do not take centre stage. In fact, educating the public may sometimes be undesirable. For instance, Sunstein suggests that risk disclosure policies may raise alarm instead of contributing to more informed decisions; if people are excessively concerned with some hazard, then the best reaction may be to change the subject; and the idea that people should be provided the information to be able to choose can be counterproductive. Perhaps the most important of the very few shortcomings of Sunstein’s book is the lack of discussion of the “deliberative” component of his ideal of deliberative democracy. To be fair, the final chapter addresses the relation of fear and liberty, although primarily in the context of national security. Fear may lead the public to put up with intrusions on civil liberties, especially if the government is selective in choosing which intrusions to introduce. Policies which affect only a small part of the public are particularly dangerous, since the usual political checks and balances will not be triggered. But here again, Sunstein is mainly concerned with the role of courts, with little discussion of public deliberation.

Sunstein’s book nevertheless remains an important contribution to the increasingly pressing debate on fear, risk, and the law, and it will be read profitably by anyone interested in these issues. It also presents ideas for approaching problems in moral and political philosophy from a new perspective, thus it is likely to serve as a starting point for many future discussions in these fields.

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