Forum
Cass R. Sunstein's "nudge science"

Issues with choice architecture, environmental ethics, and globalization

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ABSTRACT. **Cass R. Sunstein's book *The Ethics of Influence* appears to have three ideological features notable for purposes of this essay. The book emphasizes choice architecture (and related notions such as nudges and defaults), which should be ethically scrutinized to guard against ethical abuses and to assist us in ethically desirable uses of scientific psychology and behavioral economics. (1) This particular book focuses more on scrutinizing nation-state government than on corporate activities. (2) This book focuses more on domestically directed governmental action than on externally directed governmental action. (3) This book focuses more on certain developed liberal democracies than on the more comprehensive global situation. Sunstein is especially interested in environmental issues, particularly energy policy, global warming, and climate change. This essay argues that Sunstein's conceptual scheme can be fruitfully expanded to progress toward a normative environmental ethics that can be integrated with the insights of global political economy.**

Key words: Choice, climate, globalization, energy, political economy

In his valuable book *The Ethics of Influence: Government in the Age of Behavioral Science*, Cass R. Sunstein is interested in ethical questions about choice architecture, nudges, and defaults.[1] These are notions assumed in this essay to be sufficiently clear from an associated introductory commentary by Ronald F. White. The ethical concerns that Sunstein addresses reflect the core areas to which nation-states have applied psychology and behavioral economics to develop domestic policies that influence behavior. For Sunstein, governments should, while influencing behavior, respect citizen welfare, autonomy, dignity, and self-government.[2] In this essay, I focus on examples from climate change and global warming.

This essay addresses some issues about choice architecture and values in both national and global contexts. Sunstein is plainly interested in strategies to formulate and implement energy policy in order to address issues of global warming and climate change generally. This interest defines a main problem area that this discussion analyzes as a concrete example.[3]

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The nation-state and inward public policy

As noted, Sunstein worries most about governmental influence. He is more concerned about government than, say, for-profit corporate structuring of superficially free, voluntary consumer choices, though he is obviously well aware of problems with corporations, too. This emphasis appears to be one major feature of his ideology. In contrast, the particular normative "political economy" stance outlined here tends to emphasize the indissoluble relations between government, that is, the state ("politics"), and the economy (even a "free market" economy) more than Sunstein does. Such political economy tends to worry about how economic trends, including market phenomena, are enabled to operate by politics. Also, economic factors often need to be invoked to account for particular political phenomena. (Consider the increase in overt fossil-fuel corporate influence in U.S. politics and the economy, and

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foreign policy, after the 2016 national elections: think Rex Tillerson as secretary of state and Scott Pruitt as Head Administrator of the Environmental Protection Agency) Governmental-corporate cronyism is a concern from a variety of normative standpoints.

There is another feature of Sunstein's ideological outlook that is worth mentioning. Government can exert influence on energy and the environment by acting on extranational situations, or (a rough distinction) state influence can be directed inward. Early on, Sunstein briefly praises John Stuart Mill's "great book" *On Liberty*. That is a book expressive of a liberal empiricist tradition that Sunstein is arguably extending and, to some extent, seeking to strengthen through repairs while also supplementing its ethical resources.[4] In *On Liberty*, Mill is chiefly concerned about how domestic control places limits on the individual in society (with respect to some societies, such as Great Britain and the United States) via coercive penalties of law or public opinion and sentiment.

Mill is concerned about limiting, in an ethically principled way, authority or control by society (individually or collectively) over the individual. Such authority or control, he understands, may operate through public opinion and sentiment, as well as by legal penalties. Mill seems to consider the yoke of public opinion/sentiment as possibly greater in England than that of law and government. That would suggest that avoiding objectionable coercion and manipulation in particular national contexts might be better enhanced by taking a stance against some public opinion and sentiment rather than limiting government influence. (What, then, would be the complex implications for weighing surveys of popular attitudes studied by Sunstein?)

But, as noted, in *On Liberty* Mill is, like Sunstein, primarily discussing domestic matters within certain influential nation-states, such as England and the United States. Sunstein's book, like *On Liberty*, focuses on the state as a potentially valuable influence that is, nonetheless, also a potential threat to liberty. Sunstein regards nudges and defaults (which are noncoercive but may be manipulative) as potentially valuable influences that can be put to justifiable use. Sunstein sees that nudges and defaults, too (like coercion), need to be monitored with ethical care so that the uses of choice architecture directed at individuals, particularly by nation-states (i.e., directed at citizens of nation-states), do not become oppressive. But what about externally directed, international influence?

Thus, Sunstein is mainly concerned with the nation-state in its domestic operations, and specifically "developed" putatively liberal-democratic nation-states at that, particularly Germany, the United States, and the United Kingdom. This is a third feature of Sunstein's overall discussion: an emphasis on certain influential "developed" countries.

Sunstein is positioned ideologically as an advocate of constructive, even activist democratic government. Possibly the rest of the globe, in his view, should follow the lead of influential democracies. He does not, in this book, raise many questions, ethical or not, about the influence of such liberal democracies on people or governments in other (often less powerful) countries.

Possibilities for extending Sunstein's ideas about choice architecture

This commentary might be mistakenly interpreted as critical of three ideological limitations in Sunstein's approach, but in fact it is something different. This commentary may be better regarded as a friendly attempt (as the author conceives it) to extend or expand Sunstein's ideas.

One obvious reason for concern about the political economy of globalization is the increasing influence of multinational corporations on the "internal" regulatory policies and foreign relations of nation-states, which might otherwise appear (misleadingly) to be mainly matters of intra-nation-state "governmental" or citizen decision-making. An expansive approach requires supplementing much psychology and behavioral economics of the sort that Sunstein emphasizes with more ideas from the normative ethics of the global political economy.

Sunstein insists (rightly) that choice architecture is "inevitable."[5] In describing choice architecture, Sunstein says it may be planned or more spontaneous, but not necessarily assembled over time. Here, he instances law, using mainly Anglo-American examples. He refers to domestic utilities (e.g., in Germany), corporations, and other organizations both global and international, such as the United Nations (UN), the World Bank, and the Organisation for Economic Co-operation and Development. But it is mainly government influencing its domestic population that concerns him. Usually this is nation-state government or its regional subdivisions. Since the book was developed in conjunction with a conference in Germany, the illustrative emphasis on German environmental and energy issues is not

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surprising.[6] However, the selective emphasis is an ethical limitation in its concerns as well as a sign of reasonable scholarly modesty in scope and strategic focus.

Germany may well be among the more admirable countries in noncoercively pursuing internal energy strategies that would improve prospects for minimizing carbon impacts on the atmosphere. But without the cooperation of (or emulation by) other polluting countries, Germany's contribution to averting the biggest threats of global warming will be insufficient to avoid the very negative atmospheric impacts of global warming around the world. Global warming is a global problem, after all. What might Germany (alone or in tandem with other nation-states, possibly partly in conjunction with supranational organizations such as the European Union or UN) do that would legitimately (in an ethical-political-economic sense) induce other countries to improve their energy use strategies? Consider defaults and nudges (in this analogous sense) brought to bear in influencing, from outside, a nation-state's choice architecture.[7,8]

For example, Leif Wenar, in his book *Blood Oil*, emphasizes the philosophical articulation and practical implementation of ethical principles that arguably should guide the future of reform of international and global institutions. This is particularly about reform of lucrative trade in natural resources such as oil and about the pragmatic correction of global arrangements (in the political economy) that support authoritarian and corrupt governments out of economic self-interest. To repeat, this reform takes words but also reforming deeds, and reforming practices, on a global stage. The articulation of principles in Wenar's view needs to be supplemented with exercises of both "power" and "counterpower." Publicity documenting abuses and public reasoning (i.e., discussion about reform principles, in the spirit of Wenar) may originate globally but are analogous to some of the nation-state inward-directed phenomena that Sunstein would identify as nudges. There might be internationally significant publicity with information and principles as mentioned, for example.

In some cases, uses of hard or soft power on the global stage might seem to be (or be) brazenly internationally coercive or manipulative (whether paternalistic or not), in some cases nontransparent, or unaccountable. It would sometimes seem to be possible, for example, for less "developed" countries to complain legitimately about pressures by more developed countries on environmentally problematic choices by less developed, or, more specifically, "least developed countries" (LDCs). Some background on the definition and current global status of LDCs can be gained from studying the activities of the United Nations Development Programme (see http://www.undp.org). More developed countries sometimes do not justifiably accommodate some of the genuine economic and societal developmental challenges of LDCs.[9,10]

Global analogies and choice architecture

Sunstein's framework could fruitfully suggest parallels involving interactions among nation-states and supranational organizations that exercise global influence, more specifically involving global political economy. There might be other globalized or transnational organizations that could use default- and nudge-like influences on nation-states (or other targets). The UN, for example, might issue policy statements that would not literally coerce or even manipulate a country but would contribute to inducing compliance by suggestion. The 1987 Brundtland Report that defined "sustainable development" and the 2015 revised UN Sustainable Development Goals are not (obviously) coercive, but they are somewhat influential (perhaps in nudge/default sorts of ways) on the behavior of countries, corporations, nonprofits, and individuals.[11,12] Similarly, the European Union (heavily influenced by Germany) can nudge and use default-like choice architecture to influence its member nations. The values used to assess such influences may often be analogous to the value concepts invoked by Sunstein but probably would need to be adjusted and supplemented to deal with the global examples.

For Sunstein, a "nudge" must not be based much on "material incentives," so it would presumably be a step beyond nudging to seek to inflict economic sanctions or losses on countries because of their disregard of the effects of fossil fuels on global warming. (Alternatively, the notion of "nudge" might be modified for globalized contexts, to allow for the inclusion of economic pressures and incentives.[13]) Public criticisms, however, delivered by one nation-state (or some of its citizens) or international organization to another nation-state might sometimes qualify as analogous to the types of nudges discussed by Sunstein, without material incentives. An example would be global criticism of the plans announced in June 2017 by the Donald Trump administration to withdraw from the 2015 Paris climate accord.

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The importance of globalization in understanding choice architecture

All this expands but does not negate the importance of Sunstein's emphasis on "choice architecture" and on nudges or "default rules." Sunstein remarks that "the environmental context is an important and illuminating one" and so proceeds to "undertake a kind of case study, focusing on possible uses and abuses of choice architecture about environmental issues." He wishes to avoid the trap of abstraction, and issues about energy and the environment are his main detailed illustrative example. Sunstein refers to climate change, air pollution, water pollution, and waste.[14] Sunstein notes, in partial support of some defaults or nudges, that "[w]hen the automatic choice is not green, it might well take a great deal of work for people to identify and to select environmentally preferable approaches. Even when that work seems relatively easy, people may not do it (in part because of inertia and procrastination), and the results may include both economic and environmental harm."[15] In the concluding paragraphs of his key late chapter on environmental protection, he writes, "In important contexts, outcomes are harmful to the environment and to the economy, not because consumers have actively chosen to impose these harms, but because of the relevant choice architecture."[16] This may well be true, but choice architecture in the global sense encompasses and transcends the nation-state or regional policy level. Sunstein then also claims, "Well-chosen default rules, attentive to the full set of costs and benefits, are likely to emerge as a significant contributor to efforts to protect human health and the environmental — potentially more effective, in many cases, than either information and education or substantial economic incentives. In an era in which public officials all over the world are focusing on the problem of climate change, green defaults deserve serious and sustained attention."[17] Yes, mostly true. However, a broader global political economy dimension is essential to frame the issues optimally.

Environmental strategy must be globally institutionalized

The problems of climate change and global warming require timely action on a scale that it seems cannot be adequately addressed through a combination of nation-state "inward-directed" nudges and default strategies in selected liberal democracies such as the United States, Germany, and the United Kingdom. Valuable as such strategies might be, much more is required to deal with climate change. This essay has been preoccupied with showing that Sunstein's conceptual scheme about environmental issues would better be extended for a more global outlook.

Psychology and behavioral economics might (it is proposed here) be combined with and supplemented by a normative ethics of political economy that has global scope. Political economy (with its long history and varied normative orientations) could be unconstrained by limited nation-state perspectives in its analysis of global energy markets, environmental impacts, the wider context shaping "consumer choice," international relations, and so on. Political economy in some of its versions can critique governmental-corporate cronyism. This is particularly important in a world in which, currently, "private" multinational corporate power, often operating in tandem with selected influential self-styled democratic nation-states, creates huge problems for (sometimes democratic or aspiring democratic) nation-states and their inhabitants about energy policy, global warming, and climate change generally.

References

1. C. R. Sunstein, *The Ethics of Influence: Government in the Age of Behavioral Science* (New York: Cambridge University Press, 2016).

2. Sunstein, p. 3.

3. Sunstein, chap. 7, "Green by Default? Ethical Challenges for Environmental Protection," pp. 159–186.

4. Sunstein, p. 3.

5. Sunstein, p. 12.

6. Sunstein, pp. viii, 1–2, 5–6, 9–10, 17, 70, 119–120, 133–134, 147–148, 164–166, 168, 171.

7. Sunstein, pp. 26–27. In a list of nudges, Sunstein mentions "disclosure of factual information" and refers to various communications that include value judgments. This appears to be analogous to international discourse that includes exposure of facts about human rights abuses, supplemented by ethical principles along with the justification of such principles.

8. One interesting account including reference to various analogous forms of global and international influence, some nudge-like, subsequently discussed here (though very briefly) is in Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (Oxford: Oxford University Press, 2016).

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9. For more specific discussion of the concept of "least developed countries," see United Nations, Development Policy & Analysis Division, https://www.un.org/development/desa/dpad/least-developed-country-category.html (accessed February 27, 2018).

10. Issues about "the right to development" in relation to the LDCs are discussed on the website of the UN Office of the High Commissioner on Human Rights, http://www.ohchr.org/EN/Issues/Development/Pages/LDCIVconferenceandRighttoDevelopment.aspx (accessed February 27, 2018).

11. *Our Common Future: World Commission on Environment and Development* (Brundtland Report) (Oxford: Oxford University Press, 1987), http://www.un-documents.net/our-common-future.pdf (accessed February 27, 2018).

12. For the 2015 Sustainable Development Goals, see http://www.un.org/sustainabledevelopment/sustainable-development-goals/ (accessed February 27, 2018).

13. Sunstein, p. 21.

14. Sunstein, p. 159.

15. Sunstein, p. 185.

16. Sunstein, p. 186.

17. Sunstein, p. 186.

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