Introduction: The argument

We are too fat, we are too much in debt, and we save too little for the future. This is no news – it is something that Americans hear almost every day. The question is what can be done about it. The most common answer is that, first, we should exhort ourselves to be better: we should remind one another that eating too much of the wrong thing will make our lives shorter and more painful; should write admonitory op eds about how our failure to save will cost us individually and as a society; should, generally, tell ourselves things that by and large we already know. Second, we should simply exert more willpower to make ourselves do what we have been persuaded is right. The trouble with these two strategies, and generally with attempts to bring about change through education and persuasion, is that they aren't very effective. In this book I recommend that we turn to a better approach, which is simply to save people from themselves by making certain courses of action illegal. We should, for example, ban cigarettes; ban trans-fats; require restaurants to reduce portion sizes to less elephantine dimensions; increase required savings, and control how much debt individuals can run up.

This is not a popular view. It is said that to control people's choices in such ways fails to respect their autonomy, because we interfere with their ability to direct their lives according to their own reasoning. If some people choose poorly, that is unfortunate for them, but it is their own responsibility, and interfering, even with the most benevolent intent and the most beneficent effect, ignores that these are rational agents who have the right to make their own choices. I argue that, in fact, autonomy is not all that valuable; not valuable enough to offset what we lose by leaving people to their own autonomous choices. The truth is that we don't reason very well, and in many cases there is no justification for leaving us to struggle with our own inabilities and to suffer the consequences. Those who say we should respect autonomy by letting people hurt themselves irreparably do not, on my view, show as much respect for

human value as they purport to. The common rationale for letting people choose poorly is that autonomy requires that people suffer the results of their own actions, for good or ill, but here respect becomes a justification for inhumanity: the principle that those who fail deserve to fail isn't one that is geared to support equality and mutual respect. What we need to do is to help one another avoid mistakes so that we may all end up where we want to be.

Writers since de Tocqueville have argued that the value we hold most dear is our liberty. In today's language, he might say we value our autonomy, our ability to order our lives according to our decisions. That we should respect autonomy is taken as obvious – it is taken to be the only way to manifest our belief that all people have intrinsic value. While we may interfere with people when they harm others – when they interfere with others' autonomy by imposing actions on them that they don't want – we are held, for the most part, to be morally bound to allow people to choose when it comes to determining how they themselves want to live. These claims, I hold, are false. Whether or not we actually care about autonomy as much as some political thinkers believe is open to question; however, if it is true that autonomy is what we hold most dear, it should not be, at least in the way that this is generally interpreted. In this book I argue that the ground for valuing liberty is the claim that we are pre-eminently rational agents, each of us well suited to determining what goes in our own life. There is ample evidence, however, from the fields of psychology and behavioral economics, that in many situations this is simply not true. The incidence of irrationality is much higher than our Enlightenment tradition has given us to believe, and keeps us from making the decisions we need to reach our goals. The ground for respecting autonomy is shaky.

However, psychologists and behavioral economists, while drawing attention to the nature of our cognitive deficits, have hesitated to draw conclusions from this that would radically alter the way we design government. It may be that they just don't see normative suggestions as their job; or, they may fear that such suggestions would justify governments that aren't democratic, that take the power of self-governance entirely away. Such a fear, though, is misguided. The existence of cognitive deficits does suggest a need for different sorts of legislation, but there is nothing in the existence of widely shared weaknesses in reasoning to suggest that one group should have power over others. These cognitive deficits are a general human phenomenon, not the peculiar property of one kind of person, so there is nothing to justify giving one group power over others on an autocratic basis. What we need is a democratically elected government,

but one in which the government is allowed to pass legislation that protects citizens from themselves, just as we now allow legislation to protect us from others. I argue for the justifiability of coercive paternalism, for laws that force people to do what is good for them.

This book, thus, supports the use of coercion in what we normally think of as people's personal lives. This is something, I argue, that we are familiar with and which we often accept. If the person next to me is about to swallow a gulp of anti-freeze in the belief that it is an anti-freeze-colored sports drink, I will intervene. If I tell him it is anti-freeze, and he refuses to believe me, I will still intervene. If I have to grab his arm and pull it away from his mouth I will do that, even though his first reaction is likely to be one of indignation. The thesis of this book is that situations abound which are, in essence, the same. We should save people from doing things that are gravely bad for them when they do that only as a result of an error in thinking. Rather than suggest that individuals roam the planet interfering with each other's lives in a chaotic and inefficient fashion, however, I argue that the government should intervene in cases of obvious harm and should prevent certain actions from being taken. I argue for paternalistic laws, and more specifically, paternalism of the sort that forces people to act, or refrain from acting, according to their best interests.

Ideally, of course, the best way to save people from the results of error would simply be to inform them of their mistakes. When it comes to drinking anti-freeze, this might work: if we had time, we could convince the other person that it is really anti-freeze, not Gatorade, and the drinker would put the glass down. In other situations, though, the solution is not so simple. Not all cognitive errors can be mended by convincing people of the relevant facts. If we were perfectly rational then this might be effective, but part of the argument of this book is that we are not perfectly rational, and given this, the methods that would be effective for those clear-eyed, clear-thinking individuals we sometimes imagine ourselves to be won't actually work for us. Sometimes no amount of public education can get someone to realize, in a sufficiently vivid sense, the potential dangers of his course of behavior. If public education were effective, we would have no new smokers, but we do.

Some people will accept that education itself is often not sufficient to change people's behavior, but will argue that the best course of action is not coercion but a milder form of paternalism. We can provide incentives for not smoking, for example, by having better insurance rates for those who don't smoke, and provide disincentives by making cigarettes really expensive. There is no doubt that this has some effect. We see, though,

that once again it doesn't have enough effect – the present rate of smoking among adults in the US is about 20 percent. That could be worse, but it could also be much better. Even though it's a good bet that the majority of those who smoke wish they didn't, incentivizing good actions, and discouraging bad ones, just isn't effective enough. Smokers typically wish they hadn't started, but the only way to have stopped them would be something we don't now embrace – coercive paternalism, where people are forced to do the right thing, or, in this case, prevented from doing the wrong one. Sometimes the only way to stop someone from making a terrible mistake is to intervene and prevent him from choosing freely.

As I say, this is an idea that is in some contexts very familiar. Letting the friend drink the anti-freeze on the grounds that, after all, it was his decision and it would be disrespectful to intervene with the judgment of a competent adult, strikes any sane person as a piece of gratuitous cruelty. It is not respectful of the value of humans to let one proceed in an error that will cost him his life. This case is easy, because we know the person in question suffers from simple ignorance – if we have time to convince him that the drink is anti-freeze, he would put it down. He wouldn't want it once he accepts the facts. Other cases are more complicated but also yield the conclusion that interference is justified. We accept the fact of prescription medicines, even though a person could presumably take the time to do research on whatever drug he contemplates taking. Prescriptions aren't required because the need for medication arises only in emergency situations where we have no time to apprise citizens of the facts. Rather, we seem to think that medicine is complicated and that most people don't have the expertise to decide on their own medication, even if, indeed, they read lots on the Internet about their own symptoms and the medicine they think may cure it. They can't really understand the facts they are presented with. Thus, we require that you meet with an expert and get his imprimatur before you have access to what you want.

These cases are relatively uncontroversial. The question is how, and whether, the reasoning that justifies our acceptance of paternalism in these cases can be extended to other situations where at present we do not accept paternalism, especially not in the form of government restrictions. The thrust of most thinkers on paternalism has been how to stop the extension of paternalism, how to find a cut-off line that clearly shows when paternalism is, and when it is not, acceptable, and furthermore a cut-off line that firmly keeps paternalism out of all but a very few decisions. Most people accept that it is implausible that we should do without paternalism entirely, but also fear a world in which too many of

our actions are restricted on a paternalistic basis. Joel Feinberg, in his highly regarded *Harm to Self*, argued that paternalism is permissible when an action is involuntary, but not when it is voluntary, but describes involuntary actions in a way that makes many acts we normally would call voluntary, involuntary – including those where the actors are quite willing to perform the act in question but are perhaps not thinking very clearly. Others have argued that the dividing line should be between those who are mentally competent and those who are not, but once again this proves to be less than an entirely clear division – surely some of us who are generally competent have, at times, thought in just those ways that are typical of the incompetent. Others accept paternalism, whatever the state of the agent, if the harm that will come from his action is sufficiently great and sufficiently immediate – thus, we see widespread acceptance of seat belt laws, even for adults who are sober, rational, competent, and so on, because they so clearly prevent great harms in circumstances where there is no other way to stave off the damage that will otherwise ensue. Yet, it is not clear why other harms, equally severe but following less immediately on the dangerous act (like eventual cancer from the ingestion of carcinogens) shouldn't rate paternalistic intervention equally. And, it is hard to isolate what exact degree of harm is required to justify the paternalistic intervention – should it only be the prospect of death that allows us to intervene? Brain damage? Paralysis? Typically, those who allow paternalistic intervention in cases like seat belts or motorcycle helmets don't provide even a general theory of what the cut-off line should be, yet continue to think there should be a cut-off line that limits intervention to a very few cases.

There have been similar efforts, and similar difficulties, in differentiating between so-called "hard" paternalism and "soft" paternalism. This is actually a twofold distinction (or, attempt at a distinction). The terms "hard" and "soft" may differentiate between the methods used to induce paternalistic actions, where hard paternalism, like the one I promote here, advocates making some actions impossible, and soft paternalism merely recommends incentivizing certain preferable options, as discussed above. Or, the terms may be used to differentiate the content of the actions the paternalist promotes – the soft paternalist merely imposes what the agent would want if informed, while the hard paternalist may impose actions the agent would not want even if aware of the facts. Those who try to discover distinctions between the justification of more and less intrusive methods of interference, and those who try to distinguish between what an agent would want if informed versus what he would not want even if

informed, generally have a hard time in delimiting which actions belong to one category and which to the other. If it is all right to disincentivize smoking by making it prohibitively expensive – thus effectively preventing people from smoking because they can't afford it – why is it wrong to simply make it illegal, when both have the same net effect? The former is thought of as a "soft" method, and thus relatively unobjectionable, and the latter as a "hard" method, and thus disrespectful of autonomy; but defending the permissibility of the first against the impermissibility of the second proves to be difficult.

The same is true for differentiating hard and soft forms of paternalism when this designates the difference between forcing people to do what they would want to do, if informed, and forcing them to do what they would not want to do, even if they were informed. The difference between being informed and not being informed proves hard to tie down, as we will see in Chapter 1. Are you informed if the bare facts are laid before you? Or do you not count as informed unless you somehow "appreciate" those facts? One justification for motorcycle helmet laws is that people would want helmets if they were properly informed about the danger of riding without them, yet many who choose not to use them are quite aware that it increases their risk of grave injury. The argument for nonetheless imposing their use is that such people just don't really appreciate the dangers – they don't fully grasp how likely an injury is, or don't vividly imagine what their life will be like following such an injury. They are in the colloquially familiar place where they "sort of know" the relevant facts. It's a familiar area because we live most of our lives there. What, then, counts as being informed? This is needed to justify a moral distinction between hard and soft paternalism in this second sense, and yet a neutral account of what it means to be informed is unavailable. A clear dividing line is hard to find.

I think it is hard to defend cut-off points in these cases because no such natural division exists. There is no identifiable point at which we go from being purely rational thinkers to completely irrational ones, or from acting entirely involuntarily to acting voluntarily. There is no clear distinction between disincentivizing an action and simply making it impossible to perform. There is no consensus on what it means to be informed, because there are differences of degree, rather than kind, between many states of being informed and many states of ignorance. Rather than trying to demarcate a (typically very small) area in which paternalism is permitted and a large area in which it is not, we should accept that we may often need help. In all these theories, a natural division

between permissible and impermissible paternalism is hard to find – because, I will argue, no division exists other than that provided by a cost–benefit analysis. What makes paternalism permissible is not a function of the intrinsic features of the situations as much as how much some interventions costs us, both in terms of psychological burden and social ones. In some cases, paternalistic measures are worth the costs of intervention; in others, they are not, and that is the only determinant of acceptability. When they will give us more than they take away, we should recognize this and accept that it is justified to help people in these situations to avoid costly errors.

In short, paternalism is more often justified than we normally think. We know now that we are intractably irrational, and that this can't be rectified by simple care and introspection. We have already revised our view of human agency, following Marx, Freud, and the philosophical insights of feminism. What we see now, in light of contemporary psychology and behavioral economics, is that some further revision is necessary. This is not the end of the world, because it doesn't augur a general change in how we actually think in specific contexts. It recommends a recognition of the ways in which we actually think, and a response to that in the way we help one another through certain sorts of decisions. To the extent that there are disadvantages to paternalism, these lie in its side effects: the danger that there will be unintended drawbacks to its implementation. These dangers, though, while real, are typically overstated. All systems of law are capable of misuse if we are not careful about the circumstances of their administration and attentive to the content of specific regulations. Historically, we have discovered that the benefits are worth the costs, including the costs we must incur to apply laws effectively, and the costs that accrue on those occasions when we fail to take sufficient care in the justice and the efficacy of their implementation. The same is true of paternalistic laws: making good paternalistic laws is work, and when we fail this will do harm – but on the whole they will aid us far more than they hurt us.

OUTLINE OF CHAPTERS

In the chapter that follows I review the by now well-known evidence of our own irrationality in making decisions, and argue that the most plausible response to this new information is the greater acceptability of coercive paternalism. I look at the two most popular alternatives to coercive paternalism, which both leave us with our present level of

personal liberty: liberalism, generally our present system, where we rely on education to improve people's decision making; and libertarian paternalism, where we leave people the liberties they now have but try to "nudge" or manipulate them in unconscious ways into making the decisions that are most beneficial. Liberalism is the view expressed by the practices we are most familiar with – it is typically expressed as a view that people should be left to make their own decisions unimpeded by interference. The role of government, to the extent it has one, is to try to guarantee freedom of action, to eliminate disinformation, and, in some cases, provide helpful information. Thus, we are allowed to smoke if we want, but cigarette companies should not be able to deceive us about the dangers of smoking, and the government will positively try to educate us about its dangers. This, I will argue, has been shown to be an ineffective way of helping people make good decisions – it's what has allowed the United States to be a nation of unhealthy and indebted citizens, despite the resources at its command.

An alternative, libertarian paternalism, has been effectively championed by Cass Sunstein and Richard Thaler, and I discuss their views and the problems that remain once libertarian paternalism has been deployed. Libertarian paternalists recognize our array of cognitive failings, and recommend that we try to affect people's behaviors not simply by rational argumentation, since that is too often ineffective, but by using their own biases to push them into making beneficial choices. Given that we have a tendency to accept the status quo, regardless of its merit, we should, for example, make sure that the status quo option is the best for us where that is possible. The argument of libertarian paternalists is that since they do not eliminate options – that is, people still have the freedom to choose badly – they respect autonomy; at the same time, given the nudges introduced into the choice situations, they are more likely to choose the beneficial outcome. I argue that insofar as libertarian paternalism is manipulative, it fails to capture the intuition that we should respect people's capacity to make rational choices; at the same time, it fails to give us the results that we want, because people can still have the options to pursue bad courses of action – they can still smoke, or run up intractable debt, or fail to save any money. It gives us, in a sense, the worst of both worlds.

Coercive paternalism, on the other hand, simply takes certain options away. This does not respect people's ability to choose well for themselves, since the coercive paternalist thinks that in many cases there is no such ability. On the other hand, it does result in beneficial outcomes. With coercive paternalism, for example, smoking would simply be illegal. Since

so many choose poorly, that is, choose to smoke even when they are nudged in the opposite direction, the best thing to do is simply to take that option away. I argue that while coercive paternalism does posit a different view of human rationality than that upon which we normally like to congratulate ourselves, this is not disrespectful. It is not disrespectful to accurately estimate someone's abilities, and to respond to those appropriately. If anything, coercive paternalism manifests respect for the value of human lives by trying to help people live fruitful lives in which they are able to achieve their own ultimate goals.

In Chapters 2 and 3 I look at the argument that paternalism, however beneficial in particular instances, will inevitably have long-term psychological costs. In Chapter 2 I discuss John Stuart Mill's much respected argument that paternalistic legislation will inevitably undercut individuality. In *On Liberty* Mill famously argued that paternalistic laws would allow a monolithic and conservative society to impose its mores on everyone in that society, with the result that there would be no variation in human character or in human values. With this uniformity, we would decline, as a society, into enervated decadence, and as individuals would find ourselves unable to experience more than the most tepid satisfaction in anything.

I argue that Mill failed to adequately reckon with human psychology, as we now know it to be. While Mill thought that without an oppressive society to drum us into submission we would develop in genuine and distinctive ways, the truth is that we have a natural, even biological, tendency towards social conformity. We want to agree with other people, and we want to be like other people, even if other people do nothing to foist their values upon us. We may, in fact, need positive help to overcome our own tendencies to conform, and to fight our desire to accept the opinions of other people without regard for their truth. Furthermore, Mill overestimated the degree to which we would, if left to our own devices, actively and effectively pursue our own happiness. Mill assumes that if someone is unhappy, and free to change his ways, he will do what he needs to in order to improve his situation. He doesn't take into consideration a number of things: one, of course, is the poor instrumental reasoning discussed in Chapter 1. Further, he underestimates the power of inertia and the resistance people have to recognizing that a particular course of action that they are engaged in actually is making them worse off. Left to our own devices, free of pressure to do otherwise, we often continue to dig ourselves into a deeper and deeper pit, wondering the while why we haven't yet succeeded in getting out.

Since we do better at estimating efficacy when we are in a relatively objective position, government, insofar as those in it are not the ones who are at present tempted by the rewards of the poor decision, can intervene in ways that help us reach our own, individual goals better than we would do if left to our own devices. It can help to free us of the conformity of social opinion. One case in which government aids in the development of individuality is in education, where we are forced to learn critical skills, as well as facts that may be at variance with the beliefs of a closed, conservative community. Government legislation can, furthermore, shake us from our entrenched and destructive ways of living, changing traditions that are unhealthy and leading us to practices that make us better off even according to our own lights. Lastly, I argue that help of this sort will not, as has been suggested, result in infantilization, a disproportionate reliance on others to make our decisions for us that prevents us from developing our own critical skills. On the contrary, as Aristotle recognized, the more we make good decisions, even guided by others, the better we get at making good decisions. We will become better at choosing wisely with the help of paternalistic legislation.

In Chapter 3 I look at another possible area of psychological loss: the dangers of alienation and inauthenticity. Even if government legislation is intended to make us better in every way, it is possible that the accretion of even positive steps will leave us feeling the victims of too much control. It may not matter what the rules are, if simply having too many rules is bad for us. Some social critics fear that this is likely to result in either of two things: a sense of alienation, where we feel that we are no longer in control of our lives and resent that, becoming alienated from government and indeed all of society; or, perhaps worse, inauthenticity, where we enthusiastically accept government control only because we can no longer discern what we, individually, actually want. Both of these are bad, in their distinctive ways, and may furthermore result in what Mill feared – a loss of affect, an inability to feel anything very deeply.

I argue that while these are popularly imagined responses to totalitarianism, nothing in paternalism predicts totalitarianism. Paternalism is intended, by definition, to benefit those who are subject to it, and one relevant factor is obviously the psychological response to rules. The adoption of paternalism will require that we undertake a cost–benefit analysis as to whether or not it is worth interfering in people's behavior, and one major element of cost is the feelings of those who are imposed upon.

That said, it is obviously true that paternalistic regulation will regulate. Certain paths will be closed. However, this in itself does not threaten to