

Law and Human Flourishing: Happiness, Affective Neuroscience, and Paternalism

Peter H. Huang, Temple University

This paper analyzes this question: in which decision-making environments, are there categories of paternalism that are justifiable by considerations of an individual's own ex post reported experienced happiness or subjective well-being? Recent affective neuroscientific data provides evidence of a disjunction between two brain systems: wanting and liking. This gap between wanting and liking supplies a scientific language for normative and positive theories of paternalism. There is a growing body of evidence that people make systematic mistakes in predictions about what will make them happy in the future. This paper examines policy consequences of such empirical findings in affective neuroscience, happiness research, and positive psychology for a recent debate among some behavioral economists and legal scholars about when and whether paternalism is desirable or justifiable. Much of this debate focuses on people being subject to cognitive biases and utilizing heuristics as rationales for some type of paternalism. A noteworthy exception to such cognitively-based paternalism is a recent consideration of emotional paternalism. Instead of stressing cognitive mechanisms of bounded rationality, this paper highlights alternative roles that affect, emotions, and moods play in helping or hindering learning and markets to close gaps between wanting and learning.

Peter H. Huang
Harold E. Kohn Chair Professor of Law
James Beasley Law School
Temple University
1719 N. Broad Street
Philadelphia, PA 19122
E-mail: peter.huang@temple.edu
Phone: (215) 204-9836
Fax: (215) 204-1185
SSRN author page: <http://papers.ssrn.com/author=94039>