

WHO WANTS TO BE NUDGED?

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Abstract. Empirical studies have shown that people are less than rational decision makers. Instead of assessing all available options and choosing that which maximises welfare, people are heavily influenced by the way a choice is designed, i.e. presented to them. That is why Thaler and Sunstein, authors of *Nudge*, argue that choice designers have a special responsibility. They should try to find out which options maximise welfare, and then design choices such that people will be inclined to choose their welfare maximising option. Choice designers should thus act as libertarian paternalists: as paternalists, they gently nudge people towards better decisions; as libertarians, they respect freedom of choice. I criticise Thaler and Sunstein's approach as based on distorted views of both libertarianism and paternalism. Contrary to what the authors hold, a libertarian is not a person who advocates free choice as welfare-promoting, and an opponent of paternalism is not someone who denies that third parties could in principle improve other people's decisions. What is usually denied is that such an idealised notion of paternalism is feasible or desirable in practice. I hold that the improper use of the two terms does not invalidate all of the authors' arguments. It is nevertheless a source of frequent irritation and confusion.

IN 2008, the economist Richard H. Thaler and the law professor Cass R. Sunstein, both from the University of Chicago, had their popular science book *Nudge*⁸ published. In it, the authors set out to reconcile two seemingly contradicting concepts: libertarianism and paternalism. The libertarian paternalist, Thaler and Sunstein argue, is a *choice designer* who gently *nudges* people towards “better” decisions. The book turned out to be a huge popular success, and there is no doubt that many of its reported findings from behavioural economics are scientifically sound. I am nevertheless convinced that some of the authors’ key arguments are flawed. In the following, I first give an interpretation of what the authors try to do. I then provide a sweeping account of how they go about reaching their goals. This allows me to present my criticism, which I do in a third step. I hold that Thaler and Sunstein base their approach on distorted views of both libertarianism and paternalism.

It should be noted that this essay is not based on the book *Nudge* itself. Instead, I refer to Thaler and Sunstein’s views as presented in their two papers *Libertarian Paternalism* and *Libertarian Paternalism is Not an Oxymoron*, both of which were published in 2003 (in the *American Economic Review* and in *The University of Chicago Law Review*, respectively). I do not believe that the book adds to what is said in these two papers, though it may be richer in examples.

WHAT THALER AND SUNSTEIN SET OUT TO DO

In essence, Thaler and Sunstein’s goal is to provide a successful vindication of *libertarian paternalism*. A crucial figure in the world of lib-

⁸The full title of the book is *Nudge. Improving Decisions About Health, Wealth and Happiness*.

ertarian paternalism is the *choice designer*. He decides in which way to present different options to other people. The way in which the options are presented—what default option is chosen in an online form, for example, or which of the available options is listed first—is called a *choice design*. An important choice design we are confronted with as consumers is the store layout of our local supermarket.

Thaler and Sunstein note that intelligent choice design can contribute to human welfare. They then present *libertarian paternalism* as the mindset of the ideal choice designer. For less than ideal choice designers, the concept is supposed to provide guidance. Now how do the authors vindicate their approach? On the one hand, they try to establish that *libertarian paternalism* is not mainly a catchy term or even an oxymoron,⁹ but a meaningful idea, a concept that can be given content. On the other hand, the authors attempt to convince us that their idea does not only describe an approach that is *feasible in principle*, but one that is clearly *desirable in practice*, too: in combining the best of both worlds, libertarian paternalism has no substantial drawbacks. It has the potential to make many people better off, without making anyone genuinely worse off.

HOW THALER AND SUNSTEIN PROCEED

To structure the analysis, let us first look at the authors' working definitions of *libertarianism* and *paternalism*. What the authors mean by a *paternalist* they tell us explicitly: a *paternalist* is someone who implements choice designs or selects policies “with the goal of influencing the choices of affected parties in a way that will make those parties better off”¹⁰ (Thaler and Sunstein 2003 p.175). A paternalistic choice designer thinks that his considered guidance can make people better off, or, equiv-

⁹An oxymoron is a contradiction in terms (Sunstein and Thaler 2003).

¹⁰According to Thaler and Sunstein, whether an agent is actually made “better off” should be decided by measuring welfare “as objectively as possible” (2003 p.175). This idea the authors fail to substantiate (see criticism).

alently, that people would be worse off if it weren't for his actions.¹¹ The authors do not establish a similarly formal definition of *libertarianism*. Implicitly they seem to assume that a *libertarian* is a person who embraces freedom of choice because he believes that people choose rationally, i.e. in ways that maximise their welfare. At any rate, a libertarian has to believe "that people do a good job of making choices, or at least that they do a far better job than third parties could do" (p.176). If we follow the authors and apply their definitions of paternalism and libertarianism, the two theories appear irreconcilable indeed: libertarianism holds that people choose best when choosing for themselves, and paternalism holds that benevolent third parties can and thus obviously should improve people's choices. It seems that the two views can only be reconciled if at least one of them is shown to be wrong.

It shouldn't surprise us, then, that this is exactly what Thaler and Sunstein try to ascertain first and foremost. To them, libertarian paternalism is not an oxymoron because libertarianism is based on the "false assumption . . . that people always . . . make choices that are in their best interest" (Thaler and Sunstein 2003 p.175). They draw on a wide variety of impressive findings from behavioural economics and experimental psychology to show that people are *not* in general ideally rational agents. An ideally rational agent rates options solely according to the benefits they would provide him with *if chosen*; in his choice, he is neither influenced by the way the different options are presented to him nor by the fact that before enjoying any benefit at all, he actually has to make a choice. However, empirical studies have repeatedly shown that people are influenced by choice design, and that making decisions may

¹¹Note that Thaler and Sunstein's definition is narrower than the interpretation I offer: by their definition, a paternalist aims at making every single individual better off (and thus implicitly thinks this is possible). In my interpretation, a paternalist aims at making people better off on average. He recognises that some individuals may be worse off, but thinks that his intervention will promote aggregate welfare. In my opinion, it would be absurd for a paternalistic choice designer to believe that he can make every single individual better off with one generic choice design. He would have to hold that people's preferences are highly homogenous. In the more pragmatic part of their paper, Thaler and Sunstein (2003) recognise that a paternalistic choice designer's interventions will make some people worse off.

be costly (or beneficial) *by itself* (Sunstein and Thaler 2003).

Consider the phenomenon known as *status quo bias*. Empirical studies have shown that when a choice design includes a default option, people tend to stick with the default, whatever it is. As an example, Sunstein and Thaler tell us about employees' contributions to their pension funds. In the US, contribution is voluntary, so most companies use an *opt-in* choice design: by default, employees are not enrolled in any savings plan. They must complete an enrolment form to join the scheme. However, some companies have adopted an *opt-out* rule, where employees are by default enrolled in a savings plan and must actively choose to opt out. If companies implement opt-out instead of opt-in designs, participation rates for their saving schemes are substantially higher, for instance 86% vs. 49% (Sunstein and Thaler 2003 p.1172). Another well-known phenomenon Sunstein and Thaler mention is *framing*. *Framing* occurs when people choose different options depending on how someone else *frames* their decision situation for them. We are for example more likely to favour some medical treatment if we are told that "90% of the people who are given the treatment are still alive after two years" than if we are told that "10% of the people who are given the treatment will die within two years".

How can such phenomena be explained? First, we often lack expertise and knowledge, so we cannot assess a situation properly. We simply do not know which option would be best for us. Reaching an informed decision we are comfortable with can be a difficult and time-consuming process. To simplify the matter, we frequently rely on rules of thumb. Second, if we are not actually *required* to make a decision (e.g. because a default option exists), our laziness or "inertia" may get the better of us (Bovens 2008; Sunstein and Thaler 2003). Sometimes we procrastinate and postpone whatever seems tedious and does not require our immediate attention. Third, we sometimes have self-control problems: even though we think that eating less chocolate would improve our overall utility, we are too weak-willed to act accordingly.

Having established that people's decision making is not always rational, Thaler and Sunstein next assert the following: given that people are less than fully rational, in many cases a choice designer will *necessarily*

influence people's decisions, as there will frequently be simply no way of presenting choices neutrally. Thaler and Sunstein (2003) provide an illuminating illustration when they talk about the concerns of a company cafeteria director. Suppose this director discovers that the order in which she presents food options in her cafeteria greatly influences people's choices. If the cafeteria director is committed to free choice, she must feel quite desperate, for there is simply no "neutral" way in which to present the food. Whatever cafeteria layout she implements, she will influence people's choices, possibly in quite predictable ways. What should she do? Thaler and Sunstein tell the director—and everyone else—that whenever neutrality is not an option, choice design should be aimed at maximising people's welfare. The company cafeteria director should thus try to find out which food choices will maximise employees' welfare, and she should then arrange the food in a way that makes it most likely that people will choose their welfare-maximising choices. Note that the director should not reduce the choices she provided originally. Different people have different preferences, and may thus prefer different foods. People may also value choice intrinsically. The idea of a *nudge* is to promote welfare gently where some influence is inevitable anyway. According to Thaler and Sunstein it is a misconception "that paternalism always involves coercion" (p.175). This concludes the authors' vindication of libertarian paternalism; they believe to have shown that it is both conceivable and desirable. Libertarian paternalists advocate intelligent choice design aimed at promoting people's welfare whenever influencing people's choices cannot be avoided anyway. This is desirable because formally, people remain autonomous. Their set of available options need not change at all. For a hard-boiled libertarian who believes in ideally rational human agents, smart choice design is no impairment to freedom of choice. Everybody else should see that a less-than-ideal situation has been improved.

CRITICISM

Thaler and Sunstein define libertarianism in a way that seems at best unusual, and at worst illegitimate. A libertarian will usually value freedom of choice, but he will do so for reasons derived from more fundamental values which Thaler and Sunstein forget to mention. Also, his valuing freedom will be unconditional of its supposed welfare effects or of people's ability to choose rationally.¹² Libertarianism is a natural rights doctrine (Vallentyne 2009). Its most fundamental proposition is *full self-ownership*: as long as a person does not violate the rights of others, she has full moral property rights over herself. To this idea, libertarians add assumptions about "how the rest of the world is owned". They first define what constitutes rightful appropriation of natural resources and then ask how property, if rightfully owned, may legitimately be transferred (see for example Nozick 1974). Based on such principles, most libertarians argue that many of the powers of the modern welfare state cannot be justified because they violate people's rights (Vallentyne 2009). Whether people are made better off by such violations is as a matter of principle irrelevant—it cannot legitimise infringements.

Sure enough, Thaler and Sunstein's main focus is not the discussion of political theories. It is thus perfectly appropriate that they should simplify some matters in order to provide a lucid exposition of their key points. However, to say that *libertarian paternalism* is not an oxymoron because people are less than rational simply misses the point. Absolutely no libertarian I can conceive of would be led to change his political outlook simply because he learnt that people are not ideally rational agents (assuming he initially believed so). How about renaming Thaler and Sunstein's approach to *free choice paternalism*? Though somewhat less attractive as a term, could it save the authors' argument? In my opinion, it could not. Free choice advocates do not see freedom of choice merely

¹²Consider what F. A. Hayek says in his *Constitution of Liberty*: "We must recognize that we may be free and yet miserable. Liberty does not mean all good things, or the absence of all evils. It is true that to be free may mean freedom to starve, to make costly mistakes, or to run mortal risks" (Hayek 1960 p.18). Carter (2007) calls Hayek a "market-oriented libertarian".

as a suitable tool to maximise welfare. Thaler and Sunstein's failure to see this leads me to my second criticism. In my view, their account of paternalism is short-sighted and idealistic. Consider again Thaler and Sunstein's supposedly libertarian and admittedly false assumption that "almost all people, almost all of the time, make choices that are in their best interest or at the very least are better, by their own lights, than the choices that would be made by third parties" (Sunstein and Thaler 2003 p.1163). Advocates of free choice—or opponents of paternalism, more generally—don't necessarily hold the above to be true. Their view may be better summed up as follows: "People's autonomous choices are more likely to be in their interest than the choices that would repeatedly and systematically be made by third parties who are given the power to choose in other people's stead." Paternalism is feared mainly because positions of power are easily abused, and because it enables an especially perverted kind of power abuse: it allows the paternalist to disregard an individual's actual interests in favour of his "true" interests—which only the paternalist knows.¹³ It is ironic how Thaler and Sunstein deconstruct ideally rational decision makers while implicitly maintaining ideally benevolent choice designers. Even if Thaler and Sunstein were to agree that I have a point here, couldn't they argue that a choice designer is not prone to this danger? After all, he only decides how to present different options, he neither defines nor restricts them. Nor can he force anyone to choose in his spirit.¹⁴ It seems to me that with such an ar-

¹³For an illuminating exposition of this concern, see Isaiah Berlin's *Two Concepts of Liberty* (1969).

¹⁴Based on the choice designer's lack of formal coercive powers, Thaler and Sunstein choose to blur the boundary between public and private choice designers. To them, there is no fundamental difference between the two. This is not only deeply anti-libertarian from a theoretical perspective, but wrong from a practical perspective as well: *private* choice designers will usually and legitimately adopt some goal other than maximising the welfare of the individuals concerned. A company cafeteria director may wish to maximise employee productivity (given her budget constraints); a grocery store owner may wish to maximise profits. It is likely that there will be some positive correlation between these private goals and the interests of the individuals concerned. Positive correlation ensures that interaction is mutually beneficial and will thus be sustained. *Public* choice designers ought to be led by the guiding principle to maximise their citizen's welfare (in some democratically substantiated sense of the term). That is what they were appointed for, and that's

gument, Thaler and Sunstein would to a large extent undermine their own position. If libertarian paternalism is indeed important because of its potential to substantially improve people's decisions, then the choice designer's position must in effect be a powerful one, as his actions will affect other people's decisions.

Concerning paternalism, there are two further points of criticism I would like to raise. One point is pragmatic, the other one fundamental. Pragmatically, given ill-defined preferences it may be impossible to find out what makes people better off in any genuine sense of the term. If people don't know what maximises their welfare, a paternalist cannot "find out" what does; he can only come up with conjectures. The paternalistic choice designer has thus to rely on his own best judgment of the situation and on his own idea of "the good". Opponents of paternalism will therefore plausibly hold that the choice designer's idiosyncratic preferences and interests will influence his judgment—whether he is aware of it or not. Hence, we may say that a paternalistic choice designer at best imposes his sincerely held conception of the good on people who largely share it either way. At worst, he imposes some instrumental conception which best serves his narrowly defined interests and which is not shared by the people it is imposed upon.

The fundamental problem with paternalism becomes apparent if we—against all practical odds—allow for an ideally benevolent and omniscient choice designer. Even if someone were to effectively and efficiently promote our welfare, we may still prefer not to be nudged. We may think that the conscious steps we take to improve our decisions—our attempts to build self-control and resist temptation, our efforts to find principles for action we can wholeheartedly endorse, our reflections about what really matters to us—define us as persons and build our character (Bovens 2008). If making a decision were never a struggle, if someone nudged us into effortlessly choosing what's good for us, we might have trouble knowing who we really are. The loss of individual responsibility and the sense of infantilisation that come with truly successful paternalism are a steep price to pay for an increase in our wel-

what usually legitimises the powers they have.

fare.¹⁵

Thaler and Sunstein's flawed use of the terms *libertarianism* and *paternalism* is fairly annoying and somewhat misleading. What genuinely bothers me isn't the authors' loose use of the terms *as such*, however. Instead I am concerned about the careless attitude towards truth such a loose use expresses. It seems to me to exemplify that a careful substantiation of their arguments is of little importance to the authors; they simply don't care about properly discussing the implications of the heavily loaded terms they use. Basically, Thaler and Sunstein want to get a point across—"nudges are good". In my view, it is fine to have an agenda in an academic context if (i) you present it as such, (ii) you make your assumptions explicit, such that they may be critically debated, and (iii) based on your assumptions, you present valid arguments that support your conclusions. To quite some extent, that is not the route Thaler and Sunstein chose. Instead they often seem to have opted for some kind of marketing strategy, where what sounds good is included, and what is problematic is glossed over. In Harry Frankfurt's (1998) terminology, I hold that Thaler and Sunstein are guilty of *bullshitting*. For Frankfurt, the essence of bullshit is its "lack of connection to a concern with truth" (Frankfurt 1998 p.125). The bullshitter is "[indifferent] to how things really are". Bullshitting is diametrically opposed to the ideals of scientific enquiry. It undermines the status of truth as something worth aspiring to, and in doing so trivialises the aspiration itself by making it appear futile and misguided. Frankfurt notes:

Someone who lies and someone who tells the truth are playing on opposite sides, so to speak, of the same game. Each responds to the facts as he understands them, although the response of the one is guided by the authority of the truth, while the response of the other defies that authority and refuses to meet its demands. The bullshitter ignores these demands altogether. He does not reject the authority of the

¹⁵This welfare—the one successful paternalism could promote—would have to be based on a conception of the good I don't think I could endorse, as it would not properly appreciate values such as responsibility and knowledge of the self.

truth, as the liar does, and oppose himself to it. He pays no attention to it at all. By virtue of this, bullshit is a greater enemy of the truth than lies are (Frankfurt 1998 p.132) .

The exasperating fact that the authors are at times prone to bullshitting should not distract us from a much more positive upshot, however. It is evident that Thaler and Sunstein really are on to something: intelligent choice design influences people's choices. At least for public policy designers, a *nudge* is a novel kind of intervention that is seemingly non-intrusive, yet possibly highly effective. As such, it deserves a careful, "no-bullshit" exploration of probable risks and benefits.

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