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SOME NOODGING ABOUT NUDGING

Four questions about libertarian paternalism.

BY JOHN HASNAS

In the introduction to their 2008 book *Nudge*, Richard Thaler and Cass Sunstein write:

> Please do not confuse nudge with noodge. As William Safire has explained in his "On Language" column in the *New York Times Magazine* (October 8, 2000), the "Yiddishism noodge" is "a noun meaning 'pest, annoying nag, persistent complainer.' ... To nudge is 'to push mildly or poke gently in the ribs, especially with the elbow.' One who nudges in that manner—'to alert, remind, or mildly warn another'—is a far *geshrei* from a noodge with his incessant, bothersome whining."

As one who grew up in a Yiddish-speaking family, I am very familiar with the word "noodge." As a child and a youth, my parents continually admonished me to "stop being such a noodge." Rather than comply with this admonition, I pursued degrees in law and philosophy so that I could noodge on a professional basis. The present essay reflects this career choice.

I am not as familiar with the word "nudge" when it is employed as an economic or public policy term of art. I know, of course, that a nudge is a gentle push, something that can be benign, as when it is applied to the back of my daughter's bicycle seat while she is learning to ride, or less so, as when it is applied to the back of my business rival while he is leaning out for a better view into the Grand Canyon. But I take it that Thaler and Sunstein are employing the term in a more metaphorical sense when advocating the nudge as policy. Therefore, before I can noodge, I need a better understanding of what they mean by "nudge."

They explain that a "nudge, as we will use the term, is any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly

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changing their economic incentives." This would be somewhat obtuse had they not previously explained that a "choice architect has the responsibility for organizing the context in which people make decisions." To nudge, then, is to design the context in which individuals make decisions so as to influence their behavior without eliminating any options and without employing direct economic penalties or payments to do so.

To the uninitiated, this may seem mysterious. What tools does one have if one can neither eliminate options nor change economic incentives? How can a "choice architect" influence another's behavior if the architect cannot prohibit or financially penalize or reward particular choices? Thaler and Sunstein's answer is that he or she may utilize knowledge of human psychology to make it more likely that individuals will decide one way rather than another.

Recent psychological research has shown that human beings have several built-in heuristics (that is, rules of thumb) that influence the way they make decisions. These mental shortcuts create systematic biases that affect both human judgment and choice. Human *judgment* is influenced by *anchoring*—extrapolating from a known although possibly irrelevant starting point; *availability*—making judgments on the basis of how easy future events are to imagine or assimilate into what one can retrieve from memory; and *representativeness*—basing judgments on how well something corresponds to one's image or stereotype of that thing. Human *choice* is influenced by *unrealistic optimism* or the "Lake Woebegon effect"—most people's belief that they are above average; *loss aversion* or the *endowment effect*—feeling the loss of something one has more intensely than the gain of something one does not have; *status quo bias*—most people's tendency to stick with their current situation; and *framing*—the way in which problems are stated and choices are presented. Thaler and Sunstein argue that choice

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architects can and should take these biases into consideration in creating the context in which decisions are made so as to influence individuals to decide one way rather than another.

They illustrate this use of psychology with the example of a school cafeteria. The cafeteria manager must decide how the food should be displayed to the students who pass through the line. Placing healthier foods at eye level and in the foreground and less healthy foods in more difficult to see or reach locations makes it more likely that the students will select the healthier foods. By arranging the food in this way, the manager can "nudge" the students into making healthier selections without prohibiting any of the students' choices.

Thaler and Sunstein describe the use of psychological knowledge to influence choice—to "nudge"—as "libertarian paternalism." Nudging is paternalistic because its end is to enhance the welfare of the parties whose behavior is being influenced. The school cafeteria manager is acting to improve the diets of the students making the selections. It is libertarian because the means it employs to influence behavior are not coercive. The students are still free to eat anything they want. As Thaler and Sunstein explain it,

> The libertarian aspect of our strategies lies in the straightforward insistence that, in general, people should be free to do what they like—and to opt out of undesirable arrangements if they want to do so.... The paternalistic aspect lies in the claim that it is legitimate for choice architects to try to influence people's behavior in order to make their lives longer, healthier, and better.

This quick review supplies us with an adequate definition of nudging for present purposes. When used as a public policy or economic term of art, "nudging" refers to a program of libertarian paternalism in which individuals choose freely within a decisional context that has been consciously designed to make it more likely that they will choose in a way that enhances their own welfare.

With this understanding, in the next few sections I offer a professional noodge's questions about such nudges.

LIBERTARIAN PATERNALISM OR LIBERTARIAN *PATERNALISM*?

My first noodge is to ask whether the emphasis is on the adjective—*libertarian* paternalism—or on the noun—libertarian *paternalism*. If the former, then the term would refer to the practice of creating decisional default conditions designed to help individuals better realize *their own autonomously determined ends*—that is, their own conception of personal welfare. If the latter, then the term would refer to the practice of creating decisional default conditions designed to make it more likely that individuals act so as to promote *an externally determined conception of personal welfare*—that is, a conception of welfare determined by those doing the nudging.

Libertarian paternalism is a program designed to help individuals overcome the cognitive biases that interfere with their ability to realize their own ends. As such, it would employ the type of choice architecture that an individual would willingly accept, if not actually design for himself or herself, if he or she were aware of the psychological dynamics. The classic example of such an arrangement is Ulysses having himself tied to the mast so that he can listen to the Sirens' songs without being drawn to his doom.

Libertarian paternalism ostensibly allows individuals to make free choices within a decisional context that has been consciously designed to make it more likely they will choose in a way that enhances their own welfare.

Libertarian *paternalism*, in contrast, involves a type of choice architecture that an individual could regard with indifference or hostility. In cases in which the nudgers' conception of what is good for the subject corresponds with the subject's own conception of what is good for himself or herself, there is no problem. But if the subject is either indifferent toward the nudger's conception of the subject's good or has a conception that is at odds with that of the nudger, the subject may not welcome the nudge. An example of this type of nudging might be the way my father would put my mother's cigarettes in inconvenient places and "forget" to pick up new packs on his way home from work when my mother, who had no real desire to quit smoking, was pregnant.

Thaler and Sunstein frequently employ language that suggests that they are advocating *libertarian* paternalism. For example, they state that "in our understanding, a policy is 'paternalistic' if it tries to influence choices in a way that will make choosers better off, *as judged by themselves*" and that "so long as people are not choosing perfectly, some changes in the choice architecture could make their lives go better (as judged by their own preferences, not those of some bureaucrat)." They, themselves, invoke the example of Ulysses and the Sirens in explaining the nature of nudging.

However, most of the time they write as though nudging constitutes libertarian *paternalism*. For example, they initially describe nudging as a program designed "to make [people's] lives longer, healthier, and better." Similarly, in their 2003 *University of Chicago Law Review* article "Libertarian Paternalism Is Not an Oxymoron," they identify the goal of their program to be welfare enhancement simpliciter, stating, "We urge that such rules should be chosen with the explicit goal of improving the welfare of the people affected by them." They argue that "programs should be

designed using a type of welfare analysis, one in which a serious attempt is made to measure the costs and benefits of outcomes," and that "the goal should be to avoid random, inadvertent, arbitrary, or harmful effects and to produce a situation that is likely to promote people's welfare, *suitably defined*"—language that clearly suggests that they are employing an objective conception of what is good for individuals.

One would think that Thaler and Sunstein would necessarily be using an objective conception of "the good" given the methodological approach they are employing, that of behavioral economics. With its focus on "context effects," behavioral economics is methodologically skeptical of the existence of antecedently existing individual preferences. Behavioral economists, according to Thaler and Sunstein,

> suggest that preferences are not the well-defined sets of indifference curves represented in microeconomics textbooks. They are often ill-defined, highly malleable, and dependent on the context in which they are elicited.... Behavioral economists refer to the process by which people make choices with ill-defined preferences as "constructing preferences."

Indeed, they explicitly subscribe to this skepticism, stating:

> Our emphasis is on the fact that in many domains, people lack clear, stable, or well-ordered preferences. What they choose is strongly influenced by details of the context in which they make their choice, for example default rules, framing effects (that is, the wording of possible options), and starting points. These contextual influences render the very meaning of the term "preferences" unclear.

But if individual preferences are often constructed in the process of making decisions, then nudging cannot be designed to help individuals better realize their autonomously determined, preexisting preferences because, by hypothesis, such preferences frequently do not exist. Hence, one would assume that Thaler and Sunstein cannot be advocating *libertarian* paternalism.

So, should we dismiss all language that implies that nudging is designed to promote individuals' welfare "as judged by themselves" or "as judged by their own preferences"? Perhaps, but then again, perhaps not; at least not until after considering my second noodge.

IS NUDGING ETHICALLY JUSTIFIED?

Thaler and Sunstein clearly believe that nudging can escape the main ethical objection to the traditional forms of paternalism, which is that they are coercive. Paternalism typically involves restricting someone's liberty for the ostensible purpose of enhancing that person's well-being. Coercion is applied to an individual for the individual's own good. However, liberalism requires an ethical justification for the application of coercion to individuals. The main objection to paternalism is that the promotion of an individual's own good is not an adequate ethical justification for the use of coercion against that person.

Thaler and Sunstein believe that nudging is not subject to this objection. Nudging, as they define it, is limited to efforts to influence choice "without forbidding any options." When a person is subject to a nudge, that person's "choices are not blocked or fenced off," they explain. Hence, because individuals are always "free to opt out of specified arrangements if they choose to do so," Thaler and Sunstein contend that nudging does not restrain individual liberty and therefore is not coercive. And, "since no coercion is involved, we think that [nudging] should be acceptable even to those who most embrace freedom of choice."

One might object, however, that under certain circumstances, nudging can be coercive. The more expensive or arduous it becomes to opt out of a nudge, the more coercive the nudge becomes. As the costs of opting out rise, they approach a point at which the nudge becomes indistinguishable from a ban. At this point, the nudge is just as coercive as the traditional forms of paternalism.

Thaler and Sunstein recognize that as the transaction costs to opt out of a nudge rise, the nudge becomes more paternalistic and less libertarian. But they are emphatic that they are advocating only nudges that are easily and cheaply avoided. They explain that although

> we do not have a clear definition of "easily avoided,"... we hold up "one-click" paternalism to be as close as we can get with existing technology.... Our goal is to allow people to go their own way at the lowest possible cost.

Thus, they argue that the type of nudging that they are advocating does not run afoul of the liberal presumption against the use of coercion.

On the surface, this appears to be a perfectly adequate answer to the objection. Yet, there may still be trouble lurking below, as we shall soon see. But for now, let's consider whether there are any other ethical objections to nudging.

I can think of two potential objections that can be fairly easily dismissed. The first derives from the assumption discussed above, that Thaler and Sunstein are advocating libertarian *paternalism*, in which the choice architecture is designed to promote an externally determined conception of personal welfare—specifically, a conception of welfare determined by those doing the nudging. But what reason is there to believe that the conception of the good selected by the nudgers is the right one? Thaler and Sunstein clearly assume that increasing healthful living and financial responsibility are goods that should be promoted. This is a reasonable assumption in the contemporary cultural milieu. However, at another time or in another culture, such concerns would be regarded as inconsequential compared to that of preparing one's soul for the next world. As a result, one could object to nudging on the ground that it unjustifiably privileges the nudgers' conception of the good over that of others. Further, one might fear that if the nudging turns out to be highly effective because most people are too indifferent or inattentive to opt out and the nudgers have

selected the wrong conception of the good, then the nudging will render society a less virtuous place.

I do not believe that this is a very damaging objection to Thaler and Sunstein's project. In fact, it is not really an objection to nudging at all, but rather a generic objection to paternalism per se. All efforts designed to increase individuals' welfare (other than the *libertarian* paternalism discussed above) must be designed to promote some objectively defined conception of the good. Thaler and Sunstein advance nudging as superior to all other such efforts specifically because it allows individuals to easily reject the particular conception of the good that the nudgers seek to advance. Indeed, this objection really only applies to nudging by government because, presumably, private parties are entitled to arrange their businesses and other activities to promote whatever conception of the good they favor. But unless government is limited to the functions of the libertarian night watchman state or strictly adheres to a Rawlsian conception of neutrality, public policy will always advance some party's conception of the good. Hence, this objection is not an objection to nudging as much as it is an objection to all governmental efforts to enhance welfare.

A second objection to nudging *by the government* has been raised by public choice economists Kip Viscusi and Ted Gayer. They are skeptical of the government's ability to use nudges to increase personal welfare because (1) "as behavioral agents themselves, regulators are not immune from the psychological biases that affect ordinary people," and (2) "policymakers are subject to public choice incentives that could further lead to policies that reduce welfare, and indeed could lead to the misuse of behavioral findings by regulators in order to enhance regulatory control or favor the influence of powerful special interests over the interests of public welfare." Thus, these scholars question the use of nudging by governmental agencies on practical grounds.

But this objection is no more damaging to Thaler and Sunstein's project than the first one. Like the first, it is not really an objection to nudging as much as a generic public choice critique of government regulation. Public choice scholars criticize government regulatory efforts to cure market failures that fail to consider the prospects for government failure—that is, that fail to consider the way governmental agencies actually function in the real world. To the extent that public policy proposals for nudging fail to consider the prospects for government failure, they would be objectionable; but that is not because they are programs of nudging, but because they are *poorly crafted* programs of nudging. Indeed, Sunstein himself recognizes that this is an important issue in creating effective public policies, and supports the development of "behavioral public choice theory."

But although these two objections may miss the mark, a third one is more on target. This objection, which applies regardless of whether nudging is being employed as public policy or by private parties, suggests that it may be unethically deceptive. Recall that if nudging is understood as libertarian *paternalism*, there can be a divergence between the nudger's and nudgee's conception of the good such that the nudgee would be indifferent or hostile to the nudge. When this is the case, the effectiveness of the nudge is inversely proportional to its transparency. The more covert the nudge—the less the nudgees are aware of it—the less likely they are to opt out. Conversely, the more transparent the nudge—the clearer it is to the nudgees that they are being nudged in a direction they either are indifferent toward or actively do not want to go—the more likely they are to opt out. This creates an incentive for the nudgers, who wish to increase the nudgees' welfare as they understand it, to advertise what they are doing as little as possible.

But as the nudges become more covert, the process becomes more deceptive. Thaler and Sunstein claim that their brand of libertarian paternalism is superior to the traditional forms of paternalism because it is not coercive, i.e., it does not override individual autonomy. But deception is unethical for the same reason that coercion is. It is an indirect means of doing what coercion does directly, which is to cause the targets to act in a way that they would not act of their own free will. Coercion and deception are merely alternative means of overriding individual autonomy.

This suggests that when nudging is sufficiently covert—when it crosses the line into deception—it is unethical for the same reason that traditional paternalism is unethical. Both improperly override the autonomy of their subjects. The distinction between them is that traditional paternalism overrides individual autonomy directly by employing coercion while covert nudging overrides individual autonomy indirectly by employing deception. Thus, when nudging is sufficiently covert, the fact that it is not coercive avails it naught. It nevertheless runs afoul of the liberal injunction to respect autonomy.

Thaler and Sunstein recognize the force of this objection. They agree that covert nudging is on an ethical par with lying and thus "treats people as means, not as ends." Thus, they argue that nudging should always be transparent. Appealing to John Rawls' publicity principle that "bans government from selecting a policy that it would not be able or willing to defend publicly to its own citizens," they assert that "we think that the publicity principle is a good guideline for constraining and implementing nudges, in both the public and private sectors."

Is this an adequate answer to the objection? On a theoretical level, yes, but as a practical matter, the answer is not as clear. Theoretically, it is perfectly legitimate for Thaler and Sunstein to limit their advocacy to *transparent* nudges, which are not unethically deceptive. This is an adequate response, however, only if there is good reason to believe that the limits will be respected in practice. But nudgers are people who are convinced that they are doing good. They are nudging because they genuinely believe that they are making the world a better place by doing so. Their awareness that the more transparent the nudging, the less good they can do creates a tension between their commitment to the transparency principle and the cause they are serving. There is good reason to believe that the people most interested in nudging are likely to be the people least committed to upholding the transparency

principle. Thus, although transparent nudging may be ethically acceptable, there is great need for caution in its implementation. In the real world, it may be extremely difficult to effectively ban covert nudging.

Note that this observation can mean trouble for Thaler and Sunstein's claim that they advocate only non-coercive, low opt-out cost nudging. For once again, the more easily avoided the nudge, the less effective it is, and thus the more incentive there is for zealous, well-meaning nudgers to increase the costs of avoiding the nudge. And once again, this suggests that in the real world it may be difficult to limit nudging to the easily avoided, "one click" opt-out variety that Thaler and Sunstein advocate.

But let us assume for the moment that these implementation issues can be overcome—that there is a way to ensure that those empowered to nudge pursue only low opt-out cost, transparent nudges. An interesting implication of adhering to these limitations is that Thaler and Sunstein's libertarian *paternalism* would begin to approach *libertarian* paternalism. This is because the more transparent the nudges become, the more aware of the nudging the subjects become. And the more aware of the nudging the subjects become, the more likely it becomes that those whose conception of welfare differs from that of the nudgers opt out. If enough subjects opt out, then eventually the only ones being nudged will be those whose conception of welfare matches that of the nudgers. At that point, the nudging would be doing nothing more than helping individuals overcome the cognitive biases that interfere with their ability to realize their own ends. Hence, the nudging would be *libertarian* paternalism, and Thaler and Sunstein's claim that nudging promotes individuals' welfare "as judged by themselves" or "as judged by their own preferences" would not be inappropriate.

What are we to make of this? (Recall that when functioning in my capacity as a professional noodge, my job is to raise annoying questions, not to answer them.) It appears that the more clearly ethically justified nudging is, the more libertarian it becomes. Perfectly ethical nudging does little or nothing to promote any objectively defined conception of the good. So if Thaler and Sunstein's program is perfectly realized according to their own desiderata, then it is an almost purely libertarian program.

But is this really what they mean to promote?

If not—if they really want to promote some objectively defined conception of the good—then don't they have to recommend less transparent nudges with higher opt-out costs? But in doing so, wouldn't they be undermining their own argument that nudging is ethically unobjectionable? It appears that if the goal of a program of nudging is to realize some objectively defined conception of the good, then the ethical acceptability of the program is inversely proportional to its effectiveness.

So, which is the case? Are Thaler and Sunstein (the latter being the former administrator of President Obama's Office of Information and Regulatory Affairs) really libertarian heroes, or are they subconsciously (or consciously) relying on the motivation of the nudgers to do good to cause them to depart from the transparent, low opt-out cost model of nudging?

If the goal of a program of nudging is to realize some objectively defined conception of the good, then the ethical acceptability of the program is inversely proportional to its effectiveness.

SHOULD WE BE NUDGING POLITICIANS?

Let's assume that Thaler and Sunstein can overcome all ethical objections to nudging. In *Nudge*, they argue that both businesses and governmental agencies should nudge private individuals. But if nudging really is such a good idea, why should it be so limited in application? Why not apply it to politicians and bureaucrats as well?

In Chapter 4 of *Nudge*, entitled "When Do We Need a Nudge?" Thaler and Sunstein set out the choice conditions under which nudging would be most appropriate and beneficial. The first of these is that the choices and their consequences be separated in time. These would be choices involving investment goods (goods for which "the costs are borne immediately, but the benefits are delayed") and sinful goods (goods for which "we get the pleasure now and suffer the consequences later"). The second condition is that the choices be difficult ones for which there are no readily available technological aids or shortcuts. Third, the choices should be ones that individuals do not make frequently, so it is difficult for them to gain expertise through practice and experience. Examples of this would include purchasing a house or car, as opposed to grocery shopping. Fourth, the choice should be one for which individuals do not receive clear and immediate feedback, which is typical of choices involving long-term processes and projects. Finally, the choices should be ones that "people have a hard time predicting how their choices will end up affecting their lives."

Now consider that political representatives and other government agents continually face choices that fulfill all of these conditions. In the first place, political decisions almost always involve choices that are separated in time from their consequences. Decisions about whether to increase taxes, cut spending, or raise interest rates require bearing short-term costs for long-term benefits, and thus are decisions about what Thaler and Sunstein call investment goods. Decisions about whether to engage in

deficit spending, increase welfare benefits, or pass an economic stimulus provide benefits in the present that must be paid for in the future, and thus are decisions about what Thaler and Sunstein call sinful goods. In addition, politicians always face choices in which they may either reap short-term electoral benefits or suffer short-term electoral costs—they may gain or lose votes in the next election—for making decisions whose real-world benefits or costs may be apparent only at a much later time.

Secondly, the choices politicians and bureaucrats are called on to make are almost always difficult ones. Decisions that can affect the welfare of millions of people are rarely simple ones, and the need for congressional hearings and expert testimony attests to the absence of any technological aids or shortcuts for making them.

Third, political choices are typically unique ones that depend on constantly changing societal conditions. Politicians and bureaucrats are continually called on to decide how to resolve new societal problems that have not been previously addressed. Although experienced politicians may become practiced in moving legislation through the political mechanism, they do not get the type of practice that comes from repeatedly making similar substantive decisions. The politicians' task is much more like purchasing a home than buying groceries.

Fourth, political choices never generate immediate feedback (other than in terms of public reaction and voting behavior, which are not relevant metrics) and even the remote feedback is rarely clear. Because economic and other large-scale societal decisions involve so many variables, the success or failure of any particular policy prescription is almost always a matter of contention.

Finally, political choices are, by definition, difficult to translate into experience. Given the complexity of the social considerations political agents must address, even the most carefully crafted policy proposal is likely to generate a host of unanticipated consequences. To say that politicians and bureaucrats will have a hard time accurately predicting how their choices will end up affecting members of society would be something of an understatement.

This suggests that politicians and other government agents are good candidates for nudging. Indeed, they appear to be prime candidates for the ethically unobjectionable *libertarian* paternalism version in which the nudge is designed to advance the subject's own subjectively defined values. Politicians and other government agents almost universally profess desires to promote the common good, to be able to compromise and work effectively with others who hold differing viewpoints, and to give all parties a fair hearing. And yet they often find themselves making choices that thwart those objectives because of the influence of short-term electoral pressures, the demands of party politics, the need to raise money to fund their campaigns, and the distorting effect of lobbying on their access to unbiased empirical information. Given this, why not design political choice architecture to increase the likelihood that political agents make choices that advance their stated goals? Why not nudge them in the direction that they say they want to go?

As a first example, consider that, whether for good or ill, the contemporary federal and state governments often make investments in private industries. The idea behind this must be that the success of the selected industries or companies will be good for society as a whole. For example, the U.S. Department of Energy currently runs an advanced technology manufacturing program that provides direct loans and loan guarantees to companies developing "clean" energy technology. For this program to achieve its goals, it must support the companies most likely to successfully develop and market such technology. However, the decisionmaking acumen of Energy Department officials tasked with choosing the companies to receive loans and loan guarantees was called into question when Solyndra, the recipient of a $536 million loan guarantee, went bankrupt in 2011 and Fisker Automotive, the recipient of a $529 million loan guarantee, filed for bankruptcy in 2013. It was suggested that the decisions, which should have been based on the companies' prospects for success on the market, were unduly influenced by the political connections of those running the companies.

Can we alter the choice architecture of those who invest the public's money to make politically influenced decisions less likely? Perhaps. How about tying the personal compensation of those making the investment decision directly to success of the firms in which he or she is investing the public's money? This need not be a particularly arduous requirement. Perhaps each public official authorized to make investment decisions could be offered a yearly bonus that must be invested in any company or companies that the official selects to receive taxpayer funds. At some point in the future, the official would collect either the augmented or reduced proceeds of the escrow account as his or her bonus. This proposal is not coercive. It does not reduce the officials' investment discretion, and it could be structured to allow them to opt out simply by forgoing the bonus and returning to the status quo ante.

The requirement that those making investment decisions for others have some personal value at risk has already been approved by Congress. The Dodd-Frank Act requires those who create asset-backed securities to retain at least 5% of the credit risk associated with those securities. Since 2010, it has been federal policy to discourage financial institutions from taking foolish risks by requiring them to have some "skin in the game." But if this is a good way to discourage poor investments by private parties, isn't it also a good way to discourage poor investments by government officials? Aren't government officials who are required to invest some of their personal capital along with the taxpayers' funds more likely to exercise diligence about the economic fundamentals of the investment and less likely to be influenced by political or ideological considerations? Wouldn't this nudge make it more likely that government officials act in ways that accomplish the government's stated goals?

For another example, consider politicians' oft-stated desire for comity and cooperation with those of the opposing party. Yet, electoral pressures often influence them to make choices

that do not advance that goal. In a polarized electorate in which compromise can be viewed as a lack of commitment to principle and cooperating with the opposing party can lead to a primary challenge, politicians will often be influenced to make decisions that are at odds with their desire for comity.

Can we use choice architecture to make it more likely that politicians' actual choices conform to their own expressed desire for cooperation? It would seem so. What if we redrew all congressional districts to make them as close to evenly divided between Democratic and Republican constituents as possible? There is nothing coercive about such a proposal. Politicians would still be entirely free to decide whether they want to run for office and where they wish to do so. But wouldn't this arrangement nudge political representatives toward more cooperative behavior?

In a similar vein, many people believe that politicians' ability to make choices that advance the common good is undermined by the influence of money in politics. The great expense involved in running for and remaining in office means that political representatives are susceptible to undue influence by large donors or bundlers who supply the resources they need to conduct their campaigns. After all, politicians are human beings who, like all of us, have a psychological bias toward those who are supportive of them. But such donors and groups may represent special interests whose projects are not consistent with pursuit of the common good.

Is there a way to use choice architecture to reduce any such undue influence without restricting anyone's freedom of speech or right to petition the government? Perhaps. For instance, lawmakers could adopt a default rule requiring that all donations to political campaigns be made through a central clearing house that would accept the donations and dispense them to the candidates without identifying the donor, as Ian Ayres has suggested in these pages. (See "Should Campaign Donors Be Identified?" Summer 2001.) Requiring politicians to accept donations only through such a clearing house and reject donations from those who identify themselves would essentially convert all campaign contributions into anonymous donations. This would go a long way toward eliminating any undue influence of special interests without restricting any party's freedom to financially support whichever candidate he or she thinks best. Further, politicians could be permitted to opt out of the clearing house procedure if they were willing to brave the public relations consequences of doing so. Wouldn't such a nudge make it more likely that politicians would make the unbiased decisions to achieve the common good that they say they want to make?

As a final example, consider the claim that politicians' ability to make choices that advance the common good is reduced by the "politicization of science." This is because, like everyone else, politicians are subject to confirmation bias—the tendency to search for, interpret, favor, and recall information in a way that confirms one's antecedently held beliefs. Thus, when politicians and their staff seek scientific information on which to base their policy proposals, they tend to discover, trust, and cite scientific sources and studies that support their established ideological positions.

Can we use choice architecture to combat politicians' confirmation bias? Why not? Congress could create a "scientific research pool" staffed by researchers with a diverse range of ideological commitments or no ideological commitments at all. Members of Congress could then refer any questions about science that are relevant to their current policy considerations to the pool for investigation. Pool researchers would be randomly and anonymously assigned to work on the requests, which when completed would be reported back to the representative that made the request. This process would reduce the effect of ideology on the scientific analysis as much as possible. No politician would be forced to utilize the science pool. Anyone could opt out if he or she is willing to sacrifice the scientific credibility that comes with utilizing the more objective resource. In this way, we could nudge political representatives to make policy choices on a sounder scientific basis.

Politicians and other government agents continually face difficult and unique choices that produce temporally remote consequences, provide little or no clear feedback, and are not easily translated into experience. As such, they appear to be precisely the type of people whom Thaler and Sunstein believe can most benefit from nudges. So, if nudging really is such a good idea, why limit it to private individuals? Why not apply it to governmental decisionmaking as well? Shouldn't we be designing our political choice architecture in a way that will nudge politicians and other government agents to make decisions that are more in line with their professed desire to fairly represent their constituents and work civilly with their colleagues to advance the common good?

That brings me to my final noodge.

IS NUDGING OLD WINE IN NEW GLASSES?

Some 167 years ago, Frédéric Bastiat addressed the difficulty of making good decisions when the decision and its consequences are widely separated in time. In his essay "What Is Seen and What Is Not Seen," he noted the natural human tendency to focus on the short-term effects of a decision at the expense of its more remote consequences. He explained:

> In the economic sphere an act, a habit, an institution, a law produces not only one effect, but a series of effects. Of these effects, the first alone is immediate; it appears simultaneously with its cause; it is seen. The other effects emerge only subsequently; they are not seen; we are fortunate if we foresee them.

He then warned us against acting like the bad economist who "confines himself to the visible effect" rather than the good economist who "takes into account both the effect that can be seen and those effects that must be foreseen":

> For it almost always happens that when the immediate consequence is favorable, the later consequences are disastrous, and vice versa. Whence it follows that the bad economist pursues a

> small present good that will be followed by a great evil to come, while the good economist pursues a great good to come, at the risk of a small present evil.

Bastiat further warned us that the danger of such short-sightedness is not limited to the economic sphere:

> The same thing, of course, is true of health and morals. Often, the sweeter the first fruit of a habit, the more bitter are its later fruits: for example, debauchery, sloth, prodigality. When a man is impressed by the effect that is seen and has not yet learned to discern the effects that are not seen, he indulges in deplorable habits, not only through natural inclination, but deliberately.

And indeed, Bastiat even suggests a psychological explanation for the tendency, finding that it arises from

> man's necessarily painful evolution. Ignorance surrounds him at his cradle; therefore, he regulates his acts according to their first consequences, the only ones that, in his infancy, he can see. It is only after a long time that he learns to take account of the others.

These observations at least suggest that the fact that human beings are subject to "cognitive biases" that can cause them to make decisions inconsistent with their stated goals is not a recent discovery.

Thomas Hobbes seems to have had a good understanding of both the Lake Wobegon effect and the confirmation bias when he explained that one of the things that make human beings doubt their relative equality is

> a vain conceit of one's own wisdom, which almost all men think they have in a greater degree than the vulgar—that is than all men but themselves and a few others whom, by fame or for concurring with themselves, they approve. For such is the nature of men that howsoever they may acknowledge many others to be more witty or more eloquent or more learned, yet they will hardly believe there be many so wise as themselves; for they see their own wit at hand and other men's at a distance.

Similarly, John Locke seems to appreciate the distinction between actual human behavior and that ascribed to the coldly rational actors that Thaler and Sunstein label "Econs" when he notes,

> Though the law of nature be plain and intelligible to all rational creatures; yet men being biassed by their interest, as well as ignorant for want of study of it, are not apt to allow of it as a law binding to them in the application of it to their particular cases.

If there is one thing that the drafters of the U.S. Constitution appreciated intimately, it is the way that actual human decision-making can produce results at odds with the ideals that are being pursued. For example, in *Federalist* #10, James Madison points out:

> As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves.

So is nudging really a new idea? What is the U.S. Constitution if not a highly sophisticated example of choice architecture? Aware that human beings invested with political power are often swayed by personal and political influences to make decisions at odds with the goals of the larger political system—aware that "enlightened statesmen will not always be at the helm"—the Framers attempted to create a governmental structure that made it more likely that politicians would make decisions that are consistent with the values underlying the new government. What is the vaunted system of checks and balances if not choice architecture designed to nudge politicians away from decisions that undermine the individual rights of citizens or are inconsistent with the common good?

The British experience had taught the Framers that there was no way to force those with political power to respect the rights of individuals and act only for the common good. Hence, the best that they could do would be to create a political choice architecture that would nudge them in that direction. The separation of federal power among the three branches, the division of power between the state and federal governments, and the enumeration of a limited set of powers for the federal government were all designed to make it less likely that the political decisionmakers in the new government would engage in the type of oppressive or biased decisions that gave rise to the American Revolution. Surely, this is the most famous example of choice architecture the world has ever known. So, perhaps the Founding Fathers were prototypical behavioral economists.

If so, they were not notably successful ones. Given the massive growth and biased use of federal power between 1789 and today, one can only hope that the current generation of nudgers is more successful than its intellectual forebears.

Wait. Was that last comment a polemical cheap shot reflective of my underlying ideological perspective that is best expunged? I suspect so because, while writing it, I seemed to hear my mother's voice saying, "Ugh, you're such a noodge."

She's right, of course, so I will leave it in. *R*

READINGS

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