

**“The Choice Architecture of Choice Architecture:
Toward a Nonpaternalistic Nudge Policy”**

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Abstract

The goal of nudge policy is generally presented as assisting people in finding their “true” preferences. Supporters argue that nudge policies meet a libertarian paternalism criterion. This claim has provoked complaints that nudge policies are unacceptably paternalistic. This paper suggests that by changing the explicit goal of nudge policy to a goal of *making the choice of choice mechanism an explicit decision variable of the subgroup being affected by the nudge* one can have a non-paternalistic nudge policy that better fits with the values inherent in Classical liberalism. The goal of non-paternalistic nudge policy is *not* to achieve a better result as seen by government or by behavioral economists. The goal of non-paternalistic nudge policy is to achieve a better result as seen by the agents being nudged as revealed through their choices of choice mechanisms. Examples are given of how nonpaternalistic nudge policy will and will not differ from paternalistic nudge policy.

Key words: libertarian, paternalism, nudge policy, choice architecture, behavioral economics

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Behavioral economics adds a new dimension to economic policy; it allows for the possibility of influencing people's decisions through a change in the choice architecture they face. The work of Richard Thaler and Cass Sunstein (2003a, 2003b, 2008) is probably the best known, and in their book *Nudge*, they have popularized the concept of *nudge* policy as a description for behavioral economic policy. Nudge policies have won widespread popular acclaim and have been discussed in popular outlets such as *The New York Times* (2009), *Time* (Grunwald, 2008) and *Newsweek* (Will, 2009) among others, which all report that nudge policies are being incorporated into government policy.¹

Behavioral economic policy is not supported by all economists; in fact, it has been attacked by more traditional economists as being just another form of government regulation. Nudge policy advocates have responded in two ways. First, they argue that there are ways of distinguishing true or "normative" preferences. (Choi, Laibson, Madrian and Metrick, 2003; Beshears, Choi, Laibson, and Madrian, 2008). Second, they impose limits on choice architecture policy so that the policies only minimally effect consumers' and businesses' freedom to choose, and thus that nudge policies meet a *libertarian paternalism* criterion.²

Neither has been fully successful in convincing critics. While most economists agree that behavioral economists have shown that people have preferences that are influenced by choice architecture, many are not convinced that behavioral economists can discern "true" preferences. (See, for example, Becker and Murphy, 1988). Similarly, the libertarian paternalism justification for nudge policies has been unconvincing to critics. Posner, for example calls "libertarian paternalism" an oxymoron, and sees Thaler more as a "paternalist with a velvet glove." A second problem is that only a small set of policies that behavioral economists advocate fall under a strict definition of a libertarian paternalistic nudge, and those that do, often don't need an elaborate philosophical justification involving paternalism; they can be justified by common sense and classical liberal views alone.

For example, consider the nudge concerning the default option that government provide for people when they enroll in a government health insurance plan. Since some choice architecture must be chosen by government, it seems reasonable that government

¹ Sunstein has also been appointed the head of the Office of Information and Regulatory Affairs, which conducts analysis and oversees the development and implementation of government regulation.

² They describe libertarian paternalistic nudge policies as policies that seek "to expand or maintain freedom of choice as far as possible."

should make a decision it sees as best for consumers. It is certainly better than the alternative of choosing a program that the government does not believe is in the consumer's interest. Alternatively, think of Austan Goolsbee's automatic filled out tax return proposal (2006).³ This nudge is paternalistic only in the sense that government is looking out for people's welfare. The same reasoning holds in reference to nudge policies that firms can voluntarily choose to implement. If a firm voluntarily wants to provide their employees with a savings default option that behavioral economists believe will make its employees better off, then it seems reasonable that it do so.⁴

A much broader range of behavioral economist's proposed policies go beyond choice architecture involving government programs and voluntary nudges by businesses. These involve non-voluntary nudges on the part of firms, and might be better classified as a "slight pushes." In these cases, the firm, not the consumer or the employee, is currently making the choice about choice architecture. Nudge policy is requiring firms to change that choice architecture to a choice architecture that behavioral economists believe will be better at letting people's "true" preferences be met. From the point of view of the firm, this is not a nudge; this is a government regulation. It is in such policies where the issue of paternalism enters in because in order to undertake the push, government has to assume that it, based on advice by behavioral economists, knows what is best for the individual. Thaler and Sunstein see this paternalism as justified because the goal of the policy is "to influence choice in a way that will make choosers better off, as judged by themselves." (Thaler and Sunstein, p. 8)

An example of a behavioral policy that involves a push is the proposal for financial protection (which includes limits on information in fine print among other things) embodied in the Financial Protection Agency Act. This proposal involves non-voluntary regulatory changes imposed on the firms. Firms are being pushed to undertake actions that they may well not want to take in order to encourage individuals to make different decisions than they are making under the current choice architecture.

One of the reasons that push policy is so contentious policy is that behavioral economist's insights about such things as default options influencing behavior are not new, but have been long recognized by firms. These insights have been incorporated into the existing choice architecture in a way that takes advantage of people's behavioral quirks to the firm's advantage. Many of the current hidden nudges in the current system exist because they were beneficial for some firms. Does one really think that it is an accident that many of the qualifications to financial products show up in the fine print? It is in regard to these push policies that the paternalistic objection to nudge policy comes

³ This nudge involves the IRS providing citizens with a fully filled out form which can, but need not be used.

⁴ In many cases, the firm's interests in making a decision about choice architecture will likely differ from that of the subgroup which is being affected by the default option, which means that they will not want to make a change voluntarily. For example, a firm that provides with a matching grant for a savings program might be better off if it chooses a choice architecture where fewer employees choose to enroll in it; since the firm can seem beneficent, and those employees who strongly care can take advantage of the policy, but can hold costs down of being beneficent by choosing non-enrollment as the default option.

through most strongly. Essentially what behavioral economists are proposing is to replace the firm's control over choice architecture with government control.

Critics of nudge policy have pointed to a number of problems with the justification of nudge policy. Gary Becker and Kevin Murphy (1988) have argued that what behavioral economists regard as poor decisions may not be poor decisions. Other critics of nudge policy such as Edward Glaeser (2006) and Richard Posner (2009), have argued that government is subject to the same biases as individuals, so it is unclear under which choice architecture consumers or society would be better off. Who are behavioral economists to say that government will better reflect people's true preferences. While most economists would agree that behavioral economists have shown that over a range of decisions, people have what might be called ambiguous preferences, and that preferences can not be ranked independently of the choice architecture in which they are presented to people, far fewer would agree that having government determine how to guide those ambiguous preferences by determining the choice architecture is good policy.

Behavioral economists are only now beginning to deal systematically with the questions of whether behavioral economists have identified people's true preferences, and whether government will choose to implement choice architecture that is more likely to bring out people's true preferences. Behavioral economists have implicitly assumed that government (with the help of behavioral economists) should be the one making decisions for consumers about choice architecture and that firms will want to nudge employees and consumers in ways that government and behavioral economists find most beneficial. It is this aspect of nudge policy that is the paternalistic part of the proposals. To support such policies one must believe that government will make decisions about choice architecture that better captures people's true preferences than will firms operating in a real-world competitive system.

It is that assumption that behavioral economists have not justified to critics. Our argument in this paper is that nudge policy does not need to make that assumption and hence does not need to be paternalistic. The reason why is that there is an alternative way to implement nudge policies that avoids paternalism. This alternative method of implementation changes what one sees as the goal of nudge policy. Instead of seeing the goal of nudge policy as achieving a certain predetermined choice that is implicitly assumed to be better for someone, it makes the goal of nudge policy to open up the choice mechanism so that *the choice of choice mechanism* is an explicit decision variable of the subgroup being affected by a nudge. What we are proposing is what might be called non-paternalistic nudge policy. The goal of non-paternalistic nudge policy is *not* to achieve a better result as seen by government or by behavioral economists. The goal of non-paternalistic nudge policy is to achieve a better result as seen by the agents being nudged as revealed through their choices of choice mechanisms.

Nudge Policies, Classical Liberalism and Nonpaternalistic Nudges

Nudge policies that are determined by government are by nature paternalistic, and are subject to all the criticisms that can be mounted against any paternalistic policy. In a Classical liberal framework, government interventions, can only be justified as a last

resort.⁵ In critics', such as Richard Posner's view, libertarian paternalism is an oxymoron. This does, however, not mean that the classical liberal position would rule out all government intervention; it only means that it would first search for mechanisms that would allow people to make choices about choice architecture for themselves as far as is practically possible, before it turned to government. A nonpaternalistic implementation of nudge policy would follow this Classical liberal approach.

To see our argument, it is helpful to think of the general policy problem that behavioral economists have posed to the theory of economic policy. By explicitly recognizing that choice architecture influences choices, they have recognized that, when revealed choices are influenced by choice architecture, economic policy must make decisions about the choice architecture that best brings out people's "true" preferences. That is a major change, and advance in our understanding of applied economic policy. This problem has not been addressed by economic theorists before because they have assumed away ambiguous preferences, and thus have studied a model in which people's revealed preferences are their true preferences.

The natural Classical liberal theoretical answer to the problem of ambiguous choice is to let people choose the choice architecture in which they make choices. The problem with that answer is that those metadecisions on choice architectures would be made in some context, which means that people also have to make decisions on the choice architecture of the choice architecture as well. In fact, the same argument can be carried through ad infinitum, making the theoretical problem of who is to determine what way to nudge an infinite regress.⁶

We do not attempt to answer this question theoretically. The goal of this paper is to suggest a practical solution to the problem that we believe is consistent with the philosophy behind nudge policy. We call our practical solution a *non-paternalistic classical liberal nudge policy*. It is achieved by making the explicit goal of the nudge policy giving people as much choice as is practically possible, and not as making them more likely to arrive at a particular solution. In our view, non-paternalistic nudge policy will help eliminate a major complaint of critics of the traditional economic critics of nudge policies.

⁵ Terminology such as libertarian and paternalism are value-laden. We find it more useful to discuss policies in relation to Classical liberalism, by which we mean the approach of economists such as John Stuart Mill.

In *On Liberty*, John Stuart Mill argues that "with respect to his own feelings, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else," and that since government decisions "must be grounded on general assumptions," "which may altogether be wrong" or if right "misapplied to individual cases" by outsiders, governments should keep out of trying to make decisions for people where these decisions do not impinge on the liberties of others (Mill 1869). This view, in our view, captures the essence of classical liberalism—that people know their own feelings and preferences better than anyone else. It is that policy view that we believe captures the policy view of traditional economists today.

⁶ One could possibly solve the theoretical problem though some type of asymptotic limit which reduced the level of ambiguity at each level of metadecisions sufficiently. We leave such issues to theorists.

While implementing non-paternalistic nudge policy will likely involve regulation of firms, it should not be seen as direct regulation by government. It involves indirect regulation affecting procedure, rather than direct regulation about outcomes. For example, the regulation it would involve would not require firms to structure choice architecture in a certain way. Instead it would require firms to take their employee's or their customer's choice into account in setting up choice architecture that directly affects them. The actual regulations will come from a type of bottom-up regulation where the consumer regulates the choice architecture the firm imposes on the consumer. The advantage of such regulation from a Classical liberal perspective is that it will likely involve less pressure for paternalistic top-down regulation of market architecture.

Some Thoughts on Designing a Workable Choice Architecture for Choice Architecture:

To provide an example of what we mean by non-paternalistic nudge policy, let us consider the example of cafeteria food placement that Thaler and Sunstein use to introduce the concept of nudge policy. In their example, Carolyn, a hypothetical director of food services for a large city school system, is making a choice about choice architecture for the students. They present five possible options that Carolyn received as suggestions from her friends and coworkers. These options were:

1. Arrange the food to make the students best off, all things considered.
2. Choose the food order at random.
3. Try to arrange the food to get the kids to pick the same foods they would choose on their own.
4. Maximize the sales of the items from the suppliers that are willing to offer the largest bribes.
5. Maximize profits, period. (Thaler and Sunstein 2008, Pg. 2)

Notice that all the options involve Carolyn making some decision for the students. They argue that if you choose option 1 you are supporting their nudge policy. We do not support option 1, and do not believe it meets a classical liberal criterion. Instead, our non-paternalist nudge policy would involve choosing a sixth option, an option in which students are provided with relevant information and are empowered to make the choice about choice architecture themselves. That option conveys the essence of our non-paternalistic nudge policy.

While it changes the explicitly stated goal of nudge policy, we see our proposal as a friendly amendment to nudge policy and to applied behavioral economics work. It primarily involves a change in the way nudge policies are thought about and presented. Many of Thaler and Sunstein's examples of nudge policy already are non-paternalistic

nudge policies; they just don't make it explicit that that is their goal⁷. Most of their nudges that fit our non-paternalistic specification involve cases in which choice architecture can be tailored for the individual. For example, their nudge that default options on online forms be tailored for individual preferences would be classified as non-paternalistic.

The example of food placement does not meet our non-paternalistic criteria. We suspect that the reason why is that the decision is complicated by the fact that a collective decision has to be made since it is impossible to have a separate choice architecture for individuals in this example. Thus, the choice architecture has to be designed for the entire group. Determining a workable collective choice architecture to reflect the views of a group involves all the problems of collective choice that have been discussed in the work of economists such as Amartya Sen (1970) and Albert Hirschman (1970); it is difficult, but doable. We argue that these are precisely the type of problems that behavioral economic policy should be concerning itself with when dealing with choice architecture that cannot be tailored for the individual. By not dealing with these problems, they make it look as if they support paternalism. If behavioral economists focus on designing policies to give people more control over choice mechanisms, rather than giving government control over those choice mechanisms, they will likely get more support from traditional economists.

Let us explain the type of issues we believe applied policy economists should be considering in reference to the cafeteria choice. There are many possible choice mechanisms through which students can collectively choose their desired choice architecture policy. For example, the student council could choose, or the choices could be presented to students, and then they could be allowed to vote. To make that vote meaningful, before students are allowed to vote they could be required to show that they have studied the issue by passing a test on the consequences of the various choices. They could even be introduced to the concept of choice architecture and Classical liberalism as part of their civics course. The study of the choice of choice architecture could even become a unifying theme of a variety of their choices. It could be integrated into their health class, their government class, and even their math class, where they could consider paradoxes of voting and difficulties with collective choice mechanisms.⁸

We don't know what choice architecture is best in this case, and our goal here is not to argue for any particular choice architecture; it is simply to argue that this is what a Classical liberal behavioral policy would involve. A classical liberal policy would advocate that students should be allowed to make decisions about policies that would affect them as far as is practically possible.⁹

⁷ Similarly, some of the methods that Beshears, Choi, Laibson and Madrian (2008) present as methods by which behavioral economists can discover people's "true" preferences can be seen as methods of giving people choice over choice mechanisms.

⁸ The choice that students are allowed to make could even be carried back further in the choice architecture framework, and students could be empowered to come up with their preferred choice architecture to decide the choice architecture.

⁹ The fact that students are doing the deciding here raises the question of at what age paternalism should end and individual freedom of choice should begin. While our view is that even young students could

Letting the affected group design the choice architecture policy removes the paternalism from the nudge. It also, we believe, makes it more likely that the nudges will be effective. The fact that students are being empowered to make the decisions themselves means that they are more likely to be happier with a decision than otherwise. They are also more likely to recognize the way in which choice architecture affects them, and carry that recognition to other aspects of their life.

As a second example of where non-paternalistic nudge policy will differ from Thaler's and Sunstein's paternalistic nudge policy, consider the Consumer Financial Protection Agency Act of 2009. That act incorporates a variety of nudges that behavioral economists believe would better serve customers. For example, one nudge would offer sellers of financial instrument safe harbor from being sued if they offered a "plane vanilla" product "designed to be read in less than three minutes." The goal of this nudge is to eliminate much of the fine print that currently is in financial products. Our non-paternalistic nudge policy would not have as its direct goal any such specific rule about financial instruments. Instead, it's goal would be to set up mechanisms through which the financial consumers themselves could work with firms to decide what the nature of the offered products would be.

Such a mechanism might be the establishment of a set of consumer juries which, once people have shown themselves sufficiently knowledgeable in the issues, they could be eligible to serve on. These consumer juries could work jointly with firms to determine whether a plane vanilla product should exist and of what it would consist. They could hear testimony from behavioral economists and others about the advantages and disadvantages of different choice architectures. Multiple juries could be developed, and these juries could be used to determine what people think are their true preferences.

True, such a mechanism would still involve government involvement in setting up that structure so that views of all relevant parties are considered, but it would not assume that government knew what was best for people. It would establish mechanisms in which relevant parties directly decided what is best for them. If setting up such empowering choice mechanisms of choice mechanisms proves impossible, then one may fall back on using government to implement such policies, as behavioral economists currently do. But in a non-paternalistic nudge policy relying on government is only a practical solution to difficult collective choice problems, not a first best approach.

Conclusion

Non-paternalistic nudge policy is not a panacea; it involves many of the complications and difficult judgments that paternalistic nudge policies have avoided by the assumption that government and behavioral economists can discern people's true preferences and will want to, and be able to, set up choice architecture to direct people to make decisions that arrive at their true preferences. By changing to goal of the policy to be empowering the consumer rather than doing what the government thinks is best for the

benefit from being involved in the choice, the specific example is not one that we want to defend in this paper. We use this as an example only.

consumer, it makes nudge power more compatible with classical liberalism, and thus more likely to find support among traditional economists.

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