The Choice Architecture of Choice Architecture: Toward a Non-paternalistic Nudge Policy

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October 2010

MIDDLEBURY COLLEGE ECONOMICS DISCUSSION PAPER NO. 10-36

DEPARTMENT OF ECONOMICS
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Abstract

The paper seeks to recast the goal of nudge policy from a goal of achieving a specific result determined by government or by behavioral economists to a goal of giving individuals as much power as is practical to decide the choice architecture they face. We call a nudge with such a giving individuals "power over choice mechanisms" goal a *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 architectures. We argue that non-paternalistic nudge policy fits much better with the values inherent in Classical liberalism than does libertarian paternalistic nudge policy.

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

JEL Code: D02, D60

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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 nudge policy 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. They argue that their nudge policies provide a way in using insights developed in behavioral economics into policy in a minimally intrusive way, arguing that their nudge policies meet libertarian paternalistic criteria. 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]

Nudge policies have not been supported by all economists; in fact, it has been attacked by some traditional economists as being just another form of government regulation and does not improve social welfare. Nudge policy advocates have responded in two ways. First, they argue that there are ways of distinguishing true or "normative" preferences, and thus of insuring that nudge policies improve social welfare. (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 affect consumers' and businesses' freedom to choose. This underlies their claim that such nudge policies meet a *libertarian paternalism* criterion and are welfare improving even by libertarian criteria.[2]

Neither response 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." The reality 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, don't need an elaborate philosophical

[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."

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 provides 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 should make a decision it sees as best for consumers. Such nudges can be justified by common sense. 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. Neither of these nudges involve government expanding its domain over people's choices. 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, and no libertarian paternalism justification is needed.[4]

A much broader range of behavioral economist's proposed policies go beyond choice architecture involving government programs or nudges on employees imposed voluntarily 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. Thaler and Sunstein's paternalistic nudge policy would require 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 "slight push" 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) They do not make it clear how those choices are to be self-judged, and in a num of their proposed nudges Thaler and Sunstein have assumed that government or behavioral economists are capable of making the judgment about what makes the consumer better off.

For example, Thaler and Sunstein implicitly assume that people would be better off with a choice architecture that encourages them to save more. By making this and similar assumptions, they are replacing their views for the consumer's views. Our argument is that the explicit goal of nudge policy in this case *should not be* to encourage

[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 the firm can hold costs down of being beneficent by choosing non-enrollment as the default option.

individuals to save more; rather it should be to give individuals the choice of whether they want a choice architecture that is more likely to encourage to save more. This is a subtle, but important, distinction that Thaler and Sunstein gloss over, and which underlies the difference between our non-paternalistic and their paternalistic nudge policy.

Their glossing over it is why their nudge policy has been appropriately criticized as not libertarian. Our solution to this is to remove the direct paternalism from the policy by slightly modify the goal of nudge policy. Government's goal in non-paternalistic nudge policy is *not* to influence consumers to make a "right" choice, but instead is to allow them to decide the choice architecture they desire. While this slight redefinition of goal certainly raises issues of its own, and does not totally solve the problem, it is, in our view, an approach more consistent with libertarianism than is the Thaler and Sunstein exposition of nudge policy.

Nudge Policies, Classical Liberalism and Non-paternalistic 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] 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 architectures that would allow people to make choices about choice architecture for themselves as far as is practically possible, before it turns to government.

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 "correct" or "true" preferences. Only the "correct" choice architecture will reveal the "correct" or "true" revealed preferences, so one cannot be separated from the other. This problem of the interconnection between choice architecture and "true" preferences 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.

[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 a 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, and that people have both a responsibility and a right to make these decisions for themselves It is that policy view that we believe captures the policy view of traditional economists today.

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, themselves, 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. This infinite regress cannot be avoided, and does not prevent a government that believes in Classical liberal ideas from trying to give individuals as much control over it can over the choice architecture they face. Doing precisely that is the policy that we believe is most consistent with the philosophy Thaler and Sunstein suggest is behind nudge policy. But that policy is not paternalistic. It is as minimally paternalistic as is practically possible, and we believe that a policy consistent with that should be called a *non-paternalistic classical liberal nudge policy*. It is achieved by making the explicit goal of the nudge policy giving people as much choice over choice architecture as is practically possible, and not as making them more likely to arrive at a particular preference that is determined by some outside group, however well meaning that group may be. Only this "giving people choice over choice architecture" goal will meet classical libertarian standards.

While implementing a non-paternalistic nudge policy will likely involve regulation of firms, since, through inertia and current laws, firms have exerted a much greater control over choice architecture than is consistent with a classical liberal conception of the way a market economy should work. Implementing a non-paternalistic nudge policy would not involve the government choosing a choice architecture. Instead, it would involve *indirect regulation of the decision process* rather than direct regulation of outcomes. For example, a non-paternalistic nudge policy would not require firms to structure choice architecture in a certain way. Instead it would require parties relevant to the decisions, such as firms, customers and employees, to collectively develop architectures that take all groups preferences about architecture into account in setting up choice architecture that directly affects them.

For firms, this policy offers more maneuverability than direct government regulation and also allows them to use their innovation and resources to satisfy consumers, and to differentiate themselves, in what can be regarded as competition for a market for a new good. Consumers, of course, are the big winners. In effect, the policy encourages a bottom-up regulation where consumers have more choice about the choice architecture they face. From a Classical liberal perspective such "choice of choice architecture" regulation and be justified by the lesser evil argument, since it will likely involve less pressure for paternalistic top-down regulation of market architecture. By giving the individual more explicit responsibility for the choice architecture he or she faces, one reduces the pressure for paternalistic measures. It is extending Friedman's "free to choose" argument to freedom of choice over choice mechanisms.

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

To provide an example of what we mean by non-paternalistic nudge policy and how it contrasts with libertarian 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-paternalistic nudge policy would involve choosing option 6:

6. Provide students with relevant information, and empower or burdened them, depending on your perspective, with the responsibility of explicitly making the choice about choice architecture themselves.

This option conveys the essence of a non-paternalistic nudge policy; it leaves the consumer the choice over choice architecture but designs institutional structures to get him or her the information, and establishes an architecture that provides the student the opportunity to reflect seriously on that choice.[6]

Our new preferred option 6 is very similar to their option 3, and if option 3 included the addendum “if architectures were in place that provided relevant information to students and provided a framework which encouraged the students to think seriously about it”, it would be identical. It recognizes that many choices are ambiguous so without specifying a choice architecture of the choice architecture within which students choose on their own, option 3 is meaningless. Option 6 makes it meaningful; the goal of a non-paternalistic nudge policy is to design choice architecture to make people think seriously about the choices they make, not to lead them to make any specific decision.

[6] Obviously, there is a paternalistic outside judgment here—the judgment that thinking seriously about choice is good, and in principle, this judgment should in principle also be subject to consumer choice. In practice it would probably be impossible; because of the infinite regress nature of the problem, there is no fully neutral position.

While our proposed modification changes the explicitly stated goal of nudge policy, we see it 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 always make it explicit that giving people greater freedom of choice over choice mechanisms is their primary goal.[7] Many of their suggestions involve giving consumers greater choice and awareness over choice architecture, especially where choice architecture can be tailored towards the individual. That's what makes them so appealing.

But they blend such non-paternalistic nudges with others that go beyond giving consumers greater choice and awareness of choice architecture. Their example of food placement was one example of a nudge that does not meet our non-paternalistic criteria. We suspect that one reason why they blend the two is that the decision about cafeteria food is complicated by the fact that a collective decision has to be made by students since it is impossible to have a separate choice architecture for each student in this example. Thus, the choice architecture has to be designed for the entire group. Determining a workable collective choice architecture to adequately reflect the views of a group involves all the problems of collective choice that have been discussed in the work of economists such as Amayta Sen (1970) and Albert Hirschman (1970). Such architectures are difficult to create, and involve serious problems and compromises by individuals within the collective. 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.

We don't know what choice architecture is best in this cafeteria example, 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.[8]

As a second example of where non-paternalistic nudge policy will differ from Thaler's and Sunstein's paternalistic nudge policy, consider the U.S. 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 "plain 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. A non-paternalistic nudge policy would not start with such a specific goal. Instead, its goal

[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 architectures.

[8] 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 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.

would be to set up architectures through which financial consumers could work with firms to decide what the nature of offered products would be.

Conclusion

A 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, and will have incentives to, discern people's "true" preferences, and will be able to set up choice architecture to direct people to make decisions that arrive at those true preferences. Non-paternalistic nudge policy holds that that assumption is unwarranted. There is no guarantee that government or behavioral economists can discover people's true preferences, and thus the goal of non-paternalistic nudge policy is to develop choice architectures that will be more likely to bring out people's true preferences than the current architecture. By changing the goal of nudge policy to empowering the consumer rather than doing what the government thinks is best for the consumer, it makes nudge power more compatible with classical liberalism, and thus more likely to find support among traditional economists.

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