

The problem with nudge policies is that they threaten our freedom to choose to act well

By The Author

*At the heart of the debate about nudge policy is a debate about the freedom to choose. Some would argue that the freedom to act according to one's own wishes without any external coercion is essential. The state, on the other hand, would do best to point out that by accepting to live in our current liberal state we already accept that the state can (and even should) coerce us for our own good. Instead, writes **Paula Zoido-Oses**, the real issue with nudges is that they pose a threat to the only principle that makes us feel at ease with our acceptance of the state as a coercive power: the right to dissent*



Cass Sunstein, the author of 'Nudge' (Credit: Truthout.org, CC BY NC SA)

The government's use of the [Behavioural Insights Team](#) (better known as the Nudge Unit) has sparked a debate about freedom on why we value it. Some people consider nudge policies unethical because, at least to an extent, they serve to 'brainwash' their intended target. Nudge detractors oppose them even if they agree with the policies they are trying to implement. The problem with nudges is thus not one of ends, but of means. Against this, nudge defenders argue that because nudges preserve individual's freedom of choice, they represent an ideal alternative to classic means of coercion for liberal governments that want to help their citizens without curtailing their liberty.

Unlike with classic coercive policies that restrict the behaviour of citizens by means of threatening them with fines or imprisonment, nudges allow individuals to act in ways contrary to those expected by policy makers with no further penal consequences. However what both nudge detractors and defenders do not seem to realise is that as members of liberal democratic societies we already agreed – and long ago – to be coerced *for our own good* by the state. Freedom of choice *per se* is not what matters. The problem lies somewhere else- namely in the fact that nudge policies threaten the right to dissent of citizens. A constructive public discussion on the subject leading to real policy changes can only happen once both sides are fully aware of this.

On a basic level, the current debate regarding nudges can be seen as boiling down to a confrontation between two views of liberty: liberty as intrinsically valuable versus liberty as instrumentally valuable. These two understandings of freedom can also be paralleled to the dichotomy made famous by Isaiah Berlin of negative

versus positive liberty. If we understand liberty as negative liberty or intrinsically valuable – that is to say, what matters is the freedom to act according to one's own wishes without any external coercion, because choosing freely is always choosing well –, then nudge policies are unethical even if the final choice is ours. This objection makes sense from a logical point of view: if we were just as free to choose after being affected by a nudge as we were before, then there would not be a point to the nudge at all.

If nudges are effective then surely they must affect us in some way. To make this reasoning clearer, a good example would be to imagine a 'super-nudge' that is 100% effective and manages to modify the behaviour of all individuals without fail, making them choose according to the nudger's agenda. Seen from this perspective, it becomes clear that nudges do in fact mould our behaviour in accordance with the policy maker's agenda. Does this reasoning change if the nudge is only effective in a smaller percentage of the cases? The answer is no: nudges are in fact 100% effective for those cases in which they work, for they effectively manage to change behaviour. The question, then, is not whether the nudge affects our liberty in its more basic sense. The question is whether this tampering with our liberty is acceptable or not, and why.

In order to effectively argue in favour of nudge policies, the state must openly recognise its commitment to positive liberty and its view of freedom as instrumentally valuable. If we ever speak of 'free' or 'liberal' states is not because they do not coerce our freedom, but because we allow them to do so insofar as they do it just to the extent we consider necessary for the maximization of other goods that we consider valuable. For example, we accept the threat of jail for failing to school children or for tax evasion because we consider the benefits of education and wealth redistribution as goods more valuable than the good of being able to choose whether or not to have those things. In other words, in a liberal state scenario freedom is not valuable for its own sake but insofar as it is a means of achieving other things we regard as desirable or beneficial –which may even include a certain measure of negative or intrinsic freedom in certain occasions.

The state could easily use that argument – that by accepting to live in our current liberal state we already accept that the state can (and even should) coerce us *for our own good* – to justify the use of nudges. If we are willing to support certain coercive state policies such as the ones already mentioned because we agree in that they increase our welfare and even our freedom, rejecting nudges because we think that it is better to choose badly than not to choose at all is completely inconsistent. If nudges are cheaper, more efficient and gentler than classic straightforward means of state coercion, why should we not have them?

Nudge policies seem problematic not because we oppose the role of the state as a coercive power or because we reject the notion of freedom as instrumentally valuable. Nudges pose a threat to the only principle that makes us feel at ease with our acceptance of the state as a coercive power: the right to dissent. The reason we want to have a choice between sending our children to school or facing jail is not because we believe that going to jail and having uneducated children is always a better choice if freely chosen. The reason we want to have that choice is because we can imagine a situation in which going to jail can be the better alternative to a policy we disagree with – and not only insofar as it represents an exercise of our free will. The problem with nudge policies is not that they threaten our freedom to choose to act badly; the problem is that they threaten our freedom to choose to act well.

The basic premise of democratic states is that citizens accept the rule of law only to the extent that they can choose the law as well, either directly or indirectly. For this to happen, not only representative governments are needed, but also the right to dissent of citizens when in disagreement with any given policy or law. Whereas with traditional means of law-enforcement this is always a possibility, with nudges the right to dissent begins to fade, for we cannot control our exposure to them nor the way in which they affect us. Against this some argue that insofar as we elect the parties that decide which nudges to implement, we are already agreeing to the nudge and we do not need to be informed about them or even have a choice on whether to be affected by them or not.

There are three ways in which this argument is problematic. First, we can imagine that at times the state may not implement nudges with the aim of helping the citizens, but in its own interest. Second, if we admit that conceptions of the good can be plural –which seems an undeniable fact of contemporary western societies, such as happens in the UK, and one of the main justifications for representative democracies-, even if the state only nudges citizens with the aim of improving their lives, the state's understanding of what constitutes a good life and that of the citizens –including its own voters- may differ greatly at times. And the third argument, which is painfully obvious,

is that the fact that one party governs does not imply that all the citizens have voted it, and therefore they may want to choose not to be nudged in certain directions. That is to say, even where a party has been democratically elected the citizenship still has a right to be informed when new policies are introduced, and above all they should always have the last say on whether they want to comply with a given law. And when citizens decide to reject a given law they should be able to express their disagreement. This is the right to dissent.

While nudges do not necessarily eliminate the right to dissent, they clearly threaten it for the reasons exposed above –and more so when they are being designed and implemented without regulation outside the government. This, and not the fact that nudges tamper with our basic negative liberty, is the main reason why so many are uncomfortable with the idea of being nudged by the state. If the state wants its citizens to feel at ease with nudges being widely used as policy-enforcing mechanisms, they should stop arguing the inarguable –that they are not coercive-, and instead focus in finding means of guaranteeing that whichever nudges they choose to use do not interfere with the right to dissent of citizens.

Possible ways of doing this include the adoption of regulating mechanisms such as the creation of specific laws or expert committees that could control the scope and role of nudges, and step in whenever conflict with the right to dissent was suspected. In the same way, nudge detractors could also benefit greatly from moving the debate away from the issue of state coercion and closer to that of regulation of nudges, highlighting the threat that nudges and their power to modify our behaviour without our prior consent pose to the right to dissent. After all, arguing that nudges are wrong because they curtail our freedom to misbehave seems a lot harder than explaining an understandable refusal to let the state be the only judge of what constitutes the ‘better’ choice.

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