Governments: don't 'nudge' us, convince us

Karen Horn explains why the craze for "libertarian paternalism" isn't as benign as its proponents insist.

Karen Horn

The book *Nudge*, published by Cass Sunstein and Richard Thaler in 2008, came as a godsend for politicians. Here they were at last, the much hoped-for theoretical underpinnings of government action that might even overcome fierce libertarian resistance. It is no coincidence that the two scholars – a law and economics professor and a behavioural economist – have called their approach "libertarian paternalism". This book doesn't expand on the familiar jeremiads about market failure, lack of social justice or the multitude of moral deficiencies of capitalism, which are usually drawn upon to justify state intervention. Quite to the contrary, the authors expressly endorse the classical liberal paradigm of methodological individualism and the normative premise of free choice.

They claim that government has to intervene precisely on these grounds: people need help in order to choose not only freely, but well, in their own eyes. They must be assisted to overcome their short-sightedness, exaggerated loss-aversion, over-optimism, laziness, status quo preference, framing biases and all those other irrationalities. Fallible as man is, we're full of behavioural "anomalies" of the sort, so that there should be plenty of reasons for a paternalist government to assist us. Quite obviously, "libertarian paternalism" is only a more sophisticated name for "nannying". The concept made its way into practical politics immediately. Just to name a few, there are "Nudge units" working in the US White House, for the UK Cabinet Office, in the French tax administration – and as of last week, at the German Chancellery, counting three experts. The objective: Effective governing.

The authors were clever enough to emphasize that none of these interventions should ever be coercive. That's the allegedly libertarian part of their argument. Government should "nudge" people only in order for them to do what is in their own best interest, and this, by a visible hand, would also help solving social prisoner's dilemma situations. By altering the "standard setting", government should place people in a position that automatically involves an obligation. Young folks systematically forget to save for their old age, for example? Well, create a mandatory savings plan system for everybody, a system that they could of course opt out of if they really don't like it. Isn't that most reasonable? It would be better for them, because sufficient coverage is what they would want if they weren't short-sighted, wouldn't they? It would also be better for society, because it would prevent the taxpayer from having to step in once it will be too late for the individual to take action. Sure. But note: This system only works if people indeed turn out too lazy to draw the exit option.

In another highly topical case, the imposed obligation involves much more than just money. It concerns people's property rights in themselves and in their own bodies. This case is about organ donations. In order to qualify as a potential donor in case of a lethal accident, you usually need to have signed an organ donator's pass proving your willingness. Many people however avoid the mere thought of what will happen to their dead bodies one day, and thus don't even consider signing such a pass. A dramatic scarcity of transplantable organs is the result. In Switzerland, for example, no more than 14 people in one million decide to potentially donate after being brain-dead. Last week, the Swiss parliament voted on a proposal to inverse the system: If you don't actively opt out by signing a document to that effect, you have implicitly agreed to donate. Austria already has such an inversed system, and only 0.2 percent of the Austrian population have opted out. Conundrum solved?

Yes, but at an awfully high price. By making a similar decision, the Swiss parliament would have socialized each and

every citizen's property rights in their own bodies, including those of future generations – a right which, according to a widely accepted ethical tradition in the footstep of, among others, the English philosopher John Locke (1632-1704), should be inalienable. And again, a system of this kind is built on the assumption that people are indeed too scared, too lazy or too clueless to make up their minds on the issue. If the "standard setting" is "yes", chances are good that they won't switch it to "no" and opt out – for the simple reason that this topic is so troubling, so awkward, so emotionally challenging. The threshold is too high. Instead of enabling people to make better-informed personal choices, in their own and each other's interest, perhaps by providing them with good additional information and respectful assistance, the social dilemma is thus solved by means of a ruse. If that isn't wicked! The Swiss deputies didn't want to cross this bridge.

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If nudging is nevertheless the political order of the day, as it seems, government should at least make them less nasty, less intrusive and less dispossessing. To solve the organ scarcity dilemma, which clearly is a fact, the Swiss economist Charles B. Blankart has brought up the idea of a system based on strict reciprocity: only those people who are ready to potentially donate should be entitled to receive organs in case of their own need. But what if it were "easy" for a sick and needy recipient to sign his donator's pass because he well knew that his organs wouldn't be wanted once the day came, so that he ran no "risk"? How could such free-riding be avoided? If some standards of equivalence are needed to make the mutuality work, who should determine them? No, this isn't a solution either.

Sunstein and Thaler's new bicycle in town really needs some serene soft-pedalling if we want to keep government action within the boundaries designated by the adjective "libertarian". Why not begin by providing information that would enable people to make what they would themselves consider more rational choices? Not in the manipulative style of the photographs that the EU will place on cigarette packs next year, but in terms of serious, accessible information? Why wait for people to come across the painful issue by some unpleasant hazard of life? Why not simply ask them – nicely? In a 2013 trial, the UK Nudge unit found that a slogan alluding to reciprocity would work best, adding another estimated 100,000 donors a year to the existing list: "If you needed an organ transplant, would you have one? If so, please help others." No expropriation, no cheating, no blackmailing. Perfect.

Such a simple, polite, non-coercive and rather non-intrusive approach may also be useful in less existential matters. People don't get enough insurance? Just seek to improve risk literacy by providing unbiased, well-presented information. Or consider creating a funny information video and posting it on the Internet, using its viral potential, as US president Barack Obama just did. People don't switch to more ecological energies, even though it would be to their financial benefit? Why not send them a friendly letter providing a correct price comparison; that might get them started. People tend to wash their laundry all at the same time? Install the meter in such a way that they will be able to really see the effect of peak-load. If they still don't adapt, tough luck.

The base-line is: There is absolutely no excuse for taking away essential civil and property rights. The fact that governments are democratically elected, which is fortunately the rule in Western countries, can't soften this verdict. Democratic majority decisions annihilating everybody's essential individual rights would be plain illegitimate. They certainly wouldn't deserve the label "libertarian". And if such policies were paternalist, you'd better be an orphan. All government can legitimately do, on behalf of the citizens, is to explain and ask. Manners help: "Effective governing" can be that simple.

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