

## **Beyond coercion, manipulation, and indoctrination: how nudges can be legitimate in terms of autonomy**

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Like any intervention in private life, nudges generate autonomy concerns. After all, behind welfare benefits, there may be spurious reasons. In this paper, I intend to analyze the criticism directed to nudges based on autonomy.

First of all, in my conception, autonomy is linked to the ability to determine one's own notion of good life. A person, in this vision, "endowed with freedom, must seek to build, for herself, his norms, according to her conception of good and righteous" (Stancioli, 2010, p. 84).<sup>1</sup> This construction is the exercise of autonomy of the will and is guided by certain values that constitute personality. At the same time, in a manner similar to Engelen and Nys (2020), it is pertinent to present the distinction between autonomy and autocracy. According to Paul Guyer (2003, p. 91), for Kant, autonomy would be put into practice by the development of what he calls autocracy, which would be the authority to compel the mind to strengthen the authority of moral law over individual conduct. This distinction is relevant because determining the purposes that are important to you (autonomy) is different from actually motivating oneself according to those purposes to accomplish them (autocracy) (Engelen & Nys, 2020).

Established those theoretical premises, it is possible to analyze the criticism of nudges based on autonomy. Nudges are explicitly paternalists. They change choices by exploiting the causal mechanisms underlying choices. Due to these characteristics, there are concerns related to autonomy, which can be

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<sup>1</sup> Freely translated from Portuguese.

gathered in five groups: i) limitation of freedom of choice; ii) disregard for the rationality of the agent; iii) alienation of the agent; iv) slippery slope and domination through nudges; and v) paternalism that requires choosing.

The first criticism argues that nudges would reduce people freedom of choice (Grüne-Yanoff, 2012; Rebonato, 2014). Nudges are, in essence, non-coercive measures. Despite this, Sunstein (2016, p. 64) recognizes that some nudges represent at least a burden to people. If freedom of choice is severely reduced, there could be a risk of coercion (Vugts et al., 2020, p. 8).

The second criticism admits that nudges can respect people's freedom of choice. However, since policy-makers exploit biases, they would not treat people as rational human beings, and, as a result, would infantilize them (Hausman & Welch, 2010, p. 131; Saint-Paul, 2011, p. 153; Schmidt & Engelen, 2020, p. 5; Waldron, 2014; Wright & Ginsburg, 2012, p. 38). The risk, in this case would not be coercion, but manipulation (Vugts et al., 2020, p. 9).

A third concern involves the possibility of this public policy strategy to shape preferences and values of individuals subjected to it. In other words, when nudged, individuals would no longer be the "authors" of their choices, which would no longer reflect their autonomous desires (Baldwin, 2014, p. 846; Bovens, 2009, p. 212; Hausman & Welch, 2010; Schmidt & Engelen, 2020, p. 4). The threat in this case would be indoctrination, which would cause people to endorse ideas and values that are not really their own (Vugts et al., 2020, p. 11).

The fourth concern involves, in a first aspect, the idea of the slippery slope. This argument states that if nudges are accepted, it would certainly be likely that clearly intrusive interventions would follow (Saint-Paul, 2011, p. 149; Thaler & Sunstein, 2009, p. 239; Wright & Ginsburg, 2012, p. 48). In another perspective, some authors emphasizes that nudges can be used to expand traditional forms of government control over individuals in order to discipline them through their own apparently free choices (Jones et al., 2011; Leggett, 2014). The concern, in this case,

is that nudges could become a tool that facilitates the domination of individuals by government (Schmidt & Engelen, 2020, p. 7).

Finally, there is a concern with the requirement that people actively decide. Sunstein (2015a, p. 113–114) argues that some people choose not to choose and can do so through an active choice that delegates their own choice to a third party. Despite this, public and private institutions promote and requires active choice. In such a case, there may be a choice-requiring paternalism.

The analysis of the aforementioned criticisms shows, first, that the critics usually start from distinct concepts of autonomy to formulate their criticism (Vugts et al., 2020). Moreover, despite Sunstein's remarkable effort to address these criticisms<sup>2</sup>, two problems cause the debate to reach a stalemate. Firstly, Sunstein starts from a nudge concept that is often too broad. Within this concept, there are measures that do not generate any ethical concern. In another perspective, as Engelen and Nys (2020) exposed, Sunstein ends up basing his defense of nudge on autocracy. Indeed, if nudges are an effective form of *means-oriented paternalism*, they will only contribute to people having greater capacity to empirically accomplish the ends they aim for. Autonomy, however, requires that people establish these ends according to their own notion of good living. If nudges change the preferences of individuals in a subreptitious way, autonomy will be impaired.

If nudges steer people to a direction contrary to their own preferences can this strategy be legitimate? Understanding the perimeters established by autonomy, in the terminology adopted by Engelen and Nys (2020), can help alleviate some concerns. As these authors state, even if an individual does not have an established preference – for example, whether or not he is an organ donor –, there are values with which he cares, and which constitute who he is. These values establish the basis on which the preferences of individuals are formed in

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<sup>2</sup> See, *e.g.*, (Sunstein, 2015b, 2015c, 2016).

more specific circumstances. In other words, autonomy establishes a perimeter within which multiple preferences and specific decisions are acceptable. According to Engelen and Nys, nudges would rarely exceed the limits set by that perimeter. Even if the individual goes through changes in his specific preferences, it is quite reasonable to assume that he will remain making decisions that conform to the values, concerns and interests that constitute his personality.

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