

A Libertarian Assessment of Nudges

Master Thesis Philosophy

Author: Joris Fischer (3534480)

Thesis Supervisor: Jos Philips

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Abstract

Currently there is a lively debate about the acceptability of 'nudges', but it is often not clear what exactly is meant by a nudge or what it is that it is supposed to do. Advocates of nudging, Sunstein and Thaler, suggest that nudges might even be acceptable to libertarians. However, without first clearly defining what a nudge is and how it affects people it is hard to argue its merits and issues. In this thesis I offer a conceptual analysis of both nudging and libertarianism in order to provide some much needed clarity in the ongoing debate. When both concepts are clearly defined and properly understood they are more compatible than they might seem on first glance. To inform my inquiry into the nature of nudges and libertarianism I make use of findings from the field of social cognition.

Keywords

Libertarianism, nudge, Sunstein & Thaler, cognitive processes, freedom of choice.

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1. Introduction

Research over the past four decades in the field of behavioral science overturns a long held misconception about human beings: that we are perfect rational agents who make logical and informed decisions that are in our own best interest. As it turns out, human beings are not the perfect rational agents they were believed to be. Instead, people often make choices that are contrary to their own best interest. Cass R. Sunstein and Richard H. Thaler (henceforth: S&T) use this discovery to argue for what they call *nudging*. A nudge, according to S&T, is an intentional change to the way in which choices are presented to people in an effort to steer them towards more beneficial choices, as judged by themselves. Importantly, “to count as a mere nudge, the intervention must be easy and cheap to avoid. Nudges are not mandates.”¹ Through the use of nudges, they argue, one can significantly influence the choices people make and thus *steer* people towards choices that are in their own best interest while still respecting their freedom to choose. As such, S&T suggest that nudges should be acceptable even to libertarians. Furthermore, they claim that the government can and should improve people’s lives through the application of nudges while at the same time still respect everyone’s freedom to choose.²

Currently nudging strategies are slowly being adopted into public policy both in the US and in Europe based on recent findings in behavioral science.³ However, not everyone is as keen about the application of nudges as S&T are. There is an ongoing lively debate about the acceptability of nudging, but it is often not clear what is meant by a nudge or what it is that it is supposed to do. This only serves to dilute the discussion. As a result proponents of nudging claim that nudges can even help improve people’s ability to make conscious choices, while opponents argue the exact opposite.⁴ S&T suggest nudges might even be acceptable to libertarians but without first analyzing both the concept of nudging as well as libertarianism it is hard to argue either way.

The Issues with Nudging

When S&T say they wish to preserve the individual’s freedom to choose they draw upon a basic libertarian idea: the idea that people should be able to live their life according to their own choices, whether others agree with those choices or not. Succinctly defined:

“The political philosophy that is called libertarianism (from the Latin *libertas*, liberty) is the doctrine that every person is the owner of his own life, and that no one is the owner of anyone else’s life; and that consequently every human being has the right to act in accordance with his own choices, unless those actions infringe on the equal liberty of other human beings to act in accordance with their choices.”⁵

¹ Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven & London: Yale University Press, 2008). 6.

² Thaler, *Nudge*, 8.

³ Evan Nesterak, “Head of White House ‘Nudge Unit’ Maya Shankar Speaks about Newly Formed Social and Behavioral Sciences Team.”

<http://thepsychreport.com/current-events/head-of-white-house-nudge-unit-maya-shankar-speaks-about-newly-formed-us-social-and-behavioral-sciences-team/> (accessed June 23, 2015).

⁴ Raad voor Maatschappelijke Ontwikkeling (RMO), *De verleiding weerstaan: Grenzen aan beïnvloeding van gedrag door de overheid*, by Irene van Staveren e.a., (Den Haag 2014), 11.

⁵ John Hospers. “What Libertarianism Is,” in *The Libertarian Alternative: Essays in Social and Political Philosophy*, ed. Tibor R. Machan. (N.p: Nelson-Hall, 1974). 1.

To many people this is an appealing idea, but why? According to them this freedom matters because people wish to live their lives according to their own reasons, to be in control of their own lives, to be treated as a person and not as a mere object.⁶ In doing so, people can take responsibility for their own successes and their own failings. By taking away people's freedom to choose for themselves they are being used as if they were mere things. As a result the choices they make cannot be said to be their own. This idea of people who act out of their own volition and thus carry responsibility for their actions is the core of libertarian thought. It is individuals that make choices and carry responsibility for their actions as moral agents. Failing to respect the individual's freedom to choose means one is failing to respect that individual as a human being who is not just an object but rather a subject. In the words of libertarian Charles Murray: "Libertarianism is a vision of how people [...] may endow their lives with meaning- living according to their deepest beliefs and taking responsibility for the consequences of their actions."⁷ So in order to treat someone as a person who lives his own life according to his own volition he must be able to do what he wishes to do, he must be able to exercise his will and thus be free to choose. If one makes choices *for* the individual one is treating him as a mere object instead of a human being, and that is exactly what worries the opponents of nudging.

My Goal

It is this libertarian ideal that is at the core of most of the objections against nudging. Opponents of nudging argue that nudges do not allow people to make their own choices but instead are being manipulated, that is to say that a nudge influences people to make choices they would not make without the intervention of a nudge. In this thesis it will be my aim to ascertain whether nudges and libertarianism really are as much at odds with each other as opponents of nudging make it seem. I will inquire whether nudges allow people to live a life of their own choosing or whether they merely manipulate them into making certain choices. In order to determine whether people are still capable of living a life of their own choosing when influenced by nudges I will use libertarian philosophy as a reference. The main question of my thesis will be as follows: *Are nudges acceptable from a libertarian point of view?* If it turns out that nudges respect people's freedom to choose then that would mean that even libertarians who value individual freedom so highly can come to accept nudges. Consequently, there should also be a larger basis for accepting the practice of nudging. Throughout this thesis it will become clear what exactly a nudge is and what it is not. Furthermore, it will also become apparent what it means to be free to choose and what is required to respect that freedom from a libertarian point of view. It is thus my aim to improve upon the ongoing debate by providing a conceptual analysis of both nudging and libertarianism. When properly understood, they might not be as mutually exclusive as is currently believed.

Methodology

In order to answer the main question of this thesis I will do a conceptual analysis of both nudging and libertarianism with the goal of creating clear definitions. My aim is not to simply posit working definitions, but to identify the key elements essential to these two concepts. I will start by examining nudge theory as originally presented by S&T followed by a critical examination of their claims. After identifying the necessary and sufficient components of a nudge I will formulate my own definition to be used throughout the remainder of this thesis.

⁶ Jan Narveson, *The Libertarian Idea* (Ontario: Broadview Press, 2001). 14.

⁷ Charles Murray, *What It Means to Be a Libertarian: A Personal Interpretation* (New York: Broadway Books, 1997). Conclusion.

Specifically, I will employ findings from the field of social cognition⁸ to guide my inquiry into the true nature of a nudge.

In chapter three I will focus my attention on libertarianism. To examine whether nudges allow people to make their own choices and can truly be accepted from a libertarian standpoint it is important to first discuss in greater detail what libertarianism is all about. Here I will ask what it means for an individual to be free to choose in the eyes of a libertarian. In similar vein to chapter two I will start by presenting the general libertarian idea in order to determine what it is that matters to libertarians. The central question in this chapter is: when do people still have the ability to choose for themselves from a libertarian point of view? In order to answer this question I will introduce and compare two different libertarian interpretations of what is needed to respect people's ability to choose for themselves. To aid my inquiry I will again utilize findings from the field of social cognition to discuss different sorts of influences and their acceptability from a libertarian standpoint. It is important to mention that my inquiry into the libertarian requirements for respecting an individual's freedom to choose is independent from my inquiry into the nature of a nudge in chapter two, as I wish to prevent any sort of tautology.

My next step will be to determine whether nudges as I have defined them in chapter two are compatible with the libertarian requirements for individual freedom outlined in chapter three. In chapter four I will do just that. As mentioned earlier, the debate about nudging is for a large part centered on a government application of nudges. It is for this reason that I will also discuss what my findings mean for a possible application of nudges in government policy. If one is serious about respecting the libertarian freedom to choose there are some limits to the application of nudges.

Finally, I will come to the conclusion that nudges *are* acceptable from a libertarian point of view. When both nudges and libertarianism are properly defined there should be no conflict. Nudges *do* allow people the freedom to choose for themselves and cannot force people into making choices they would not normally make without nudges. What differentiates nudges from other sorts of influences is that they trigger shallow cognitive processes that allow people to resist their influence. What is essential to libertarians is that people have a choice; that they are able to choose otherwise in order to be regarded as free. Nudges do just that, they steer people towards certain choices while still granting them the opportunity to resist their influence and as such, libertarians should have no objections to nudging.

⁸ "Social cognition is a conceptual and empirical approach to understanding social psychological topics by investigating the cognitive underpinnings of whatever social phenomenon is being studied. That is, its focus is on an analysis of how information is processed, stored, represented in memory, and subsequently used in perceiving and interacting with the social world." David L. Hamilton (Ed.), *Social Cognition: Key Reading in Social Psychology* (Psychology Press, 2005).

2. Nudging Analyzed

As it stands the term nudge as it is defined by S&T can refer to any number of influences, not all of which I would call nudges. In order to remedy this problem I will critically examine the concept of nudging, its issues and its implications with the goal of creating a clear definition. My aim is not to simply posit a working definition, but to identify the key elements that make up a nudge in order to arrive at a definition that shows what a nudge is and what it is not. I will start by examining nudge theory as originally presented by S&T followed by a critical examination of their claims. After identifying the key components of a nudge I will formulate my own definition to be used throughout the remainder of this thesis. Once I have a clear definition of a nudge it is possible to determine whether or not libertarians can also come to accept them.

2.1 Nudging: A General Idea

S&T make their case for nudging by referencing some recent findings in studies about human behavior. It was long believed that humans were unbiased rational thinkers and choosers. As it turns out, this is not at all the case. A plethora of studies now show that humans are not the perfect rational and unbiased choosers people believed them to be. Instead, humans are biased and flawed. What this means is that it is incredibly important to mind the way in which options are presented to people as this presentation can have a big impact on the choices people make. The way in which choices are presented is what S&T have called the *choice architecture*. A *choice architect* is anyone who “organizes the context in which people make decisions.”⁹ Whether you are a doctor presenting various treatment options to a patient or if you are a parent describing possible educational options to your child, you are a choice architect. Intentional or not, the manner in which options are presented can greatly influence the choices that people make. It is this fact that leads S&T to argue for what they call *nudges*. They argue that if scientific research teaches us that human beings are biased, flawed and easily influenced then we can use this knowledge to help steer them towards more beneficial decisions. We can nudge. So what exactly constitutes a nudge according to S&T?

“A nudge, as we will use the term, is any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives. To count as a mere nudge, the intervention must be easy and cheap to avoid. Nudges are not mandates. Putting the fruit at eye level counts as a nudge. Banning junk food does not.”¹⁰

Two things are important to note here. First, a nudge seeks to alter an individual’s behavior in a specific and predictable way. Second, to qualify as a nudge it must be easy and cheap to avoid. According to S&T a nudge therefore *steers* people towards the more healthy food option, but does not force this healthy option on them. If they so desire, people should still be able to opt for the unhealthy food option. Herein lies the essence of what S&T have called a nudge.

While this may sound promising, a few key factors still remain unclear. As stated by S&T a nudge seeks to alter the behavior of people in a predictable way. What this means is that the choice architects do not agree with the choices the individual would make without their help and thus

⁹ Thaler, *Nudge*, 3.

¹⁰ Thaler, *Nudge*, 6.

seek to influence them to make a different, and as S&T argue, a ‘better’ choice through nudges. The choice architect may point to all the recent research that shows that people often make less than optimal decisions, but he still needs to argue why he is in any position to make ‘better’ choices than the individual that is being nudged. Perhaps more importantly, the choice architect needs to show that the individual is able to easily avoid the intervention as S&T claim nudges do. Allowing people the chance to easily avoid the influence matters because it means you are acknowledging them as individuals that are capable of acting on their own volition and who carry responsibility for their own choices. If nudges do not allow people to easily avoid their influence then a nudge is no different from a mere paternalistic intervention.¹¹ S&T argue that a nudge is a modest form of paternalism since it does not force a specific choice onto the individual. If people want to smoke, drink or eat unhealthy they are still free to do so, at least according to S&T. But are people *really* still free to do as they wish when nudged as S&T claim? Furthermore, they do not go into detail as to what exactly counts as a nudge. According to S&T’s description of a nudge nearly any intervention that seeks to alter someone’s behavior can count as a nudge. As a result, the term nudge can and is used in a variety of different contexts with different connotations which causes the term to lose its value.¹² For this reason it is important to further examine the concept of nudging in order to come up with a more suitable definition of nudging to be used throughout the remainder of this thesis. Based off of the description of a nudge that S&T provide I will seek to determine all the necessary and sufficient conditions of a nudge. I aim to examine the issues and implications of a nudges and contrast these with other forms of influence in order to further define what it is to nudge. In the next section I will discuss what can and what cannot count as a genuine nudge.

2.2 What Counts as a Nudge?

So what exactly counts as a nudge? According to the definition and examples used by S&T a wide variety of interventions ranging from giving advice to presenting people with information can count as nudges. As Daniel Hausman and Brynn Welch argue, not all of these examples should count as nudges. For example, simply providing people with information should not be seen as a form of nudging.¹³ I agree with them, there is more to nudging than that. Moreover, as Evan Selinger and Kyle Powys Whyte point out: “while all nudges necessarily work with predictable biases, not every application of behavioral economics can qualify as genuine nudging.”¹⁴

Yashar Saghai has also struggled with this very issue. Saghai tries to salvage the concept of nudging and starts by presenting a more technical definition of a nudge that best matches S&T’s view: “For [S&T], A nudges B when A makes it more likely that B will [X], by triggering B’s automatic cognitive processes, while preserving B’s freedom of choice”¹⁵ A nudge thus seeks to influence people to do something by appealing to their automatic cognitive processes while still

¹¹ Paternalism is a government’s or individual’s interference with other persons, regardless of their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm. <http://plato.stanford.edu/entries/paternalism/> (accessed June 23, 2015)

¹² Evan Selinger, Kyle Powys Whyte. “What Counts as a Nudge?” *The American Journal of Bioethics* 12-2 (2012), 12.

¹³ Daniel M. Hausman, Brynn Welch, “Debate: To Nudge or Not to Nudge,” *The Journal of Political Philosophy* 18- 1 (2010), 127.

¹⁴ Selinger, Whyte, “What Counts as a Nudge?”, 11.

¹⁵ Yashar Saghai, “Salvaging the concept of nudge,” in *Journal of Medical Ethics Online* (February 2013) <http://jme.bmj.com/content/early/2013/02/19/medethics-2012-100727.long> (accessed June 23, 2015) 1.

being committed to preserving their ability to avoid the influence. The automatic cognitive processes mentioned here refer to a range of biases and rules of thumb that people use to make their decisions, which are often faulty as shown by S&T. To illustrate S&T use the following example: “A cafeteria manager places healthy food at eye-level at the beginning of the food queue. Unhealthy food comes last and is least visible. The customer is then more likely to purchase healthy food.” Saghai makes two important points. First, a nudge seeks to influence a person to do X. Second, to do so it makes use of automatic cognitive processes. After all, it is these automatic cognitive processes that S&T use to argue for nudging in the first place. As research shows these processes usually get in the way of people making “better” choices. Instead, S&T argue, these processes can and should be used to help people make “better” choices, as judged by themselves. Enter nudging. However, what remains to be seen is whether nudges truly are easy and cheap to avoid as S&T claim. This is an important question, because if nudges cannot easily be avoided then they are essentially no different from hard paternalistic interventions that force certain choices onto people. The fact that nudges make use of certain automatic processes begs the question how such an intervention can still preserve freedom of choice. In the next section I will proceed to discuss these issues.

2.3 Avoiding Nudges

The next question then becomes: in what sense are nudges easy and cheap to avoid? It does not seem to be enough to say that a person is able to easily avoid the nudge simply because no other options are foreclosed. A person needs to be able to *resist* certain influences in order to make his own choices. If people are unable to resist certain influences then it is hard to argue that any choices they make as a result of those influences are still their own. This is one of the issues that Mark White has with nudges. In the case of nudging, White argues, my choosing is being made a mere means, albeit to my own ends. When nudged the individual is not consulted by the choice architect that is manipulating the choice architecture. To respect a person’s ability to choose for themselves one needs to allow them to agree or disagree with proposed options. White argues that the choice architect merely *presumes* that the individual would consent to a specific choice architecture because it is created with the individual’s best interests in mind. Nowhere does the individual who is subject to the nudge get a chance to express either their approval or disapproval. White concludes:

“As such, there is no role for true agency or choice in economic models of decision-making—the person never *makes* a choice or decision, as her choice or decision is predetermined by the factors influencing it. If there is no true choice, the ‘agent’ has no autonomy, and therefore no dignity in the sense used herein. She is a machine, or a simple animal, never actually choosing how to act, merely reacting to external and internal influences.”¹⁶

The point here is that nudges do *not* allow people to make a real choice or decision. The choice architect manipulates the choice architecture so that the individual who is doing the choosing is merely reacting to the way in which choices are presented. Therefore the individual who is doing the choosing makes no real decision of their own. As White states, they are merely being treated as a machine whose buttons are being pushed in a specific manner to get the desired

¹⁶ Mark D. White. “Behavioral Law and Economics: The Assault on Consent, Will, and Dignity,” in *New Essays on Philosophy, Politics & Economics: Integration and Common Research Projects*, ed. Gerald Gaus, Christi Favor, and Julian Lamont, 201-224. (Stanford: Stanford University Press, 2010). 16.

outcome. Whether the desired outcome is in the individual's best interest does not matter, what matters is that the individual's ability to choose for themselves is not respected. This concern is also shared by Luc Bovens, who argues that:

"There is something less than fully autonomous about the patterns of decision-making that *Nudge* taps into. When we are subject to the mechanisms that are studied in 'the science of choice', then we are not fully in control of our actions. When I am presented with full knowledge, then I tend to self-correct my agency. It seems that I was acting on a rule with which I cannot identify."¹⁷

Therefore, a nudge does not allow the individual to determine their own interests and instead substitutes the choice architect's interests for their own. White thus claims that nudges manipulate individuals into choosing what the choice architect has intended thereby failing to treat them as beings who are more than capable of discerning their own interests. This concern of White is also shared by Jeremy Waldron who asks: "In a world where most choices are influenced by nudges, what becomes of the self-respect a person has for their own actions and choices? In such a world, their choices cannot be said to be completely their own. Even if the individual does not object to the choices they made because of nudges, can they still take responsibility for those choices since they were so dependent on the nudge influence?"¹⁸ These are serious concerns that need to be discussed if I am to find a suitable definition of a nudge.

Being Able To Resist

White and Waldron raise a valid concern, one that is also recognized by Saghai. As a result Saghai argues that what matters is that a person is *able to resist* those influences.¹⁹ To their credit, S&T do mention that to count as a mere nudge, the intervention must be easy and cheap to avoid. A nudge, as they describe it, is not a mandate. Banning junk for example and thus forcing the healthy food option onto people does not count as a nudge. What is important then, is that individuals are able to easily avoid the nudge if they so please. In this sense, S&T argue, people are still "free to choose."²⁰ Whether or not people are able to easily and cheaply avoid a nudge is of great importance since that is one of its key selling points. If people are not in a position to easily avoid the nudge then a nudge is no different from other forms of influence that force certain choices onto people.

So then what does it mean for a nudge to be easy and cheap to avoid? By being cheap to avoid a person must be able to not only resist the nudge, but also be able to choose differently than intended at little to no extra cost. To illustrate, in the cafeteria example people are still able to get their junk food if they wish. The only minor inconvenience or cost is that they might need to bend over to reach it as opposed to the easy accessible healthy food. If people would have to fill out a stack of forms to get their bag of chips then the nudge would no longer be cheap to avoid. But what does it mean for a nudge to be easy to avoid, to resist its influence? This is where things get a bit more complicated. As mentioned earlier, nudges seek to alter behavior in a

¹⁷ Luc Bovens, "The Ethics of *Nudge*," in *Preference Change: Approaches from Philosophy, Economics and Psychology*, ed. Till Grüne-Yanoff, Sven Ove Hansson, 207-219. (Berlin/New York: Springer, 2009). 4.

¹⁸ Jeremy Waldron, "It's all for your own good," in *The New York Review of Books* (October 2014) <http://www.nybooks.com/articles/archives/2014/oct/09/cass-sunstein-its-all-your-own-good/> (accessed June 23, 2015) 4.

¹⁹ Saghai, "Salvaging the concept of nudge," 2

²⁰ Thaler, *Nudge*, 6.

predictable way by appealing to *automatic* cognitive processes. If nudges really are easy to avoid then they would not be able to alter behavior in such a predictable way. The main issue here is whether or not nudges truly allow people to make their own decisions or if they merely manipulate people into making certain choices by appealing to automatic cognitive processes as White fears. To summarize: "Choice-set preservation is a necessary condition, but not a sufficient condition, for the preservation of freedom of choice. Interference with a person's choices may occur without recourse to coercion. An influence does not sufficiently preserve freedom of choice if we are unable to easily resist it."²¹ Merely providing people with different options is not enough to preserve their freedom, more is needed. Being able to resist the influence of a nudge is thus an important and integral part of a nudge. What I aim to find out next is when a person is still able to resist a certain kind of influence and to determine where a nudge fits in.

Responding to Different Kinds of Influences

Can a person really resist a nudge that appeals to automatic cognitive processes? If a person cannot resist that kind of a nudge, then it is hard to claim that a person is still able to avoid its influence. If I want to determine whether or not a person can resist a nudge it is important to first determine what kind of influence a nudge is. To this end it is important to understand how different automatic processes work and to differentiate between various kinds. In order to determine what kind of influence a nudge is I am borrowing a schema from social cognition²² created by social psychologists Susan Fiske and Shelley Taylor.²³ As I have paraphrased it, this schema shows a variety of responses to different influences ranging from fully automatic responses to fully controlled responses. It cannot be the case that a nudge only elicits a fully automatic response because that would mean that a nudge is not easy to avoid since fully automatic responses are unintentional, uncontrollable and happen outside of awareness. A nudge cannot elicit a fully controlled response either since it makes use of certain automatic cognitive processes as I have argued previously. So what exactly *is* a nudge? Before jumping to any conclusions I would like to have a look at the following kinds of responses to various influences:

²¹ Saghai, "Salvaging the concept of nudge," 2.

²² "Social cognition is a conceptual and empirical approach to understanding social psychological topics by investigating the cognitive underpinnings of whatever social phenomenon is being studied. That is, its focus is on an analysis of how information is processed, stored, represented in memory, and subsequently used in perceiving and interacting with the social world."

David L. Hamilton (Ed.), *Social Cognition: Key Reading in Social Psychology* (Psychology Press, 2005).

²³ Susan T. Fiske and Shelley E. Taylor. *Social Cognition: From Brains to Culture* (London: Sage Publications, 2013). 37.

Table 1. Variety of automatic and controlled responses in reaction to external influences

Kind of response	Definition
Fully controlled response	Intentional responses with conscious awareness. The individual is aware of the influence and responds consciously.
Conscious will response	Experienced when a thought precedes, fits, and explains subsequent action.
Intentional response	The individual is aware he has multiple options and chooses a specific response.
Goal-dependent automatic response	The individual has a certain goal and starts the process in order to reach that goal. Once the process is started the individual loses awareness.
Conscious influence response	The individual is aware of the influence but not aware of its effects on his own responses.
Subliminally conscious response	The influence registers on the individual's senses but the individual is unaware of it or the effect that it has on his responses.
Fully automatic response	Unintentional, uncontrollable, efficient responses that happen outside of awareness.

On one side of the spectrum there are fully automatic responses while on the other side there are fully controlled responses. A nudge does not elicit a fully automatic response nor does it evoke a fully controlled response. A nudge seems to be something in between those two opposites. So what exactly happens when people are exposed to a nudge? Does a nudge trigger a subliminally conscious response? That does not seem to be the case either. A nudge is more than a subliminal message that is only noticed subconsciously, as it does not try to operate entirely outside of consciousness. If it would, it would not be easy to avoid as no one would ever be in a position to be aware of its influence. Is the person who is being nudged then consciously aware of the influence of a nudge? Not quite. While S&T argue that people must be *able to* recognize when they are being nudged, that does not mean that people are usually aware of a nudge. It merely means that they must be able to find a nudge if they are looking for one. A nudge also does not seem to be an instance of conscious will. As described, conscious will requires that a thought precedes, fits, and explains the subsequent action. Nudges circumvent rational deliberation by appealing to automatic cognitive processes therefore a nudge does not trigger a conscious will response. As stated by S&T a key component to nudging is that it is not a mandate, it does not try to foreclose other options. Could this mean that a nudge evokes an intentional response? The person being nudged is aware that they have multiple options to choose from. As mentioned earlier what is essential to a nudge is that no other options are foreclosed. There is however still a difference between a nudge and an intentional response. In the case of an intentional response as opposed to a nudge people choose a *specific* response. A nudge does not put people in a position where they actively weigh the different options and then determine the best possible choice for their intended purpose. As previously mentioned, nudges trigger certain automatic cognitive processes. Therefore a nudge also seems to be different from an intentional response.

Nudge: A Goal-Dependent Automatic Response

This leaves one last option on this spectrum: goal-dependent automatic responses. Goal-driven automatic responses lie midway along the range of relatively automatic processes and relatively

controlled processes.²⁴ People respond with goal-dependent automaticity when they have a certain goal in mind and start a process to reach that goal. However, after a person has started the process to reach a specific goal they lose awareness of the process itself. “A [simple] example would be someone at a party asking about your research, whereupon you launch into a standardized automatic account more suited to your thesis committee than to a prospective romantic interest.”²⁵ What this example tells us is that as soon as people determine that a certain process leads to one of their goals they lose awareness of the process to reach that goal. As S&T show through all the different research, this process is one that causes people to rely on (often mistaken) rules of thumb or heuristics. These types of mental “short-cuts” are there to help people make easier decisions without requiring their full attention when tackling familiar tasks. In practice however, these “short-cuts” also do as much harm as they do good as is shown by the research cited by S&T. What often happens is that people mistakenly believe that doing X will lead to their goal Z, when in fact doing X will lead to Y and not their intended goal Z.

It seems as though a nudge is best characterized by the goal-dependent automatic process it elicits. A nudge makes use of both automatic cognitive processes as well as some (shallow) controlled cognitive processes. Determining one’s goals involves controlled processes. However, once an individual determines that a certain action will lead to a predetermined goal the individual loses awareness of the process to reach that goal. What this means is that a nudge only works if it correctly speaks to a person’s goals. For example, a nudge could not influence someone whose goal it is to stay healthy to buy a pack of cigarettes. Seeing packs of cigarettes prominently displayed might remind someone of their health goals but it cannot force them to buy those cigarettes if they are determined to stay healthy. It might entice an ex-smoker to buy a pack, but not before bringing to their attention the reason why they quit in the first place. My point is that a nudge does not get people to blindly follow a specific influence because it also triggers attention-bringing shallow cognitive processes that Saghai mentions. A person only switches back from these shallow cognitive processes to automatic cognitive processes when they have determined that it leads to one of their determined goals. What a nudge can do is point to other or different options to reach certain goals and thereby trigger people to reevaluate their goals. For example, by putting only healthy foods at eye level in a store people may be triggered to consider going for a healthier food option, even if they were previously only interested in junk food. They may realize that they already had too much junk food that day and instead opt to go for a healthier option. Similarly a person could also decide against that healthy food option because they already had a healthy meal earlier that day. The point is that a nudge can trigger people to reassess their goals.

Shallow Cognitive Processes

I believe I can now return to the original question: can a person really resist a nudge that appeals to automatic cognitive processes? It appears as though the question is misleading, as a nudge seems to appeal not only to automatic cognitive processes but also to (shallow) controlled cognitive processes. If a nudge *only* triggered automatic cognitive processes it would be no different from other types of influences and it would indeed be hard to argue that a person would still be in a position to resist its influences. There is however an element of conscious control involved in reevaluating one’s goals. Saghai argues that while nudges may appeal to

²⁴ Fiske, *Social Cognition*, 38.

²⁵ Fiske, *Social Cognition*, 38.

certain cognitive processes that bypass conscious deliberation, this does not automatically mean that people are not able to resist the nudge.²⁶ To make his case Saghai makes an important amendment to the definition of nudging, one that I am inclined to agree with. Saghai suggests: “Replacing the idea of ‘automatic cognitive processes’ by that of ‘shallow cognitive processes’. [...]. This amendment matters because the conditions for easy resistibility vary depending on whether deliberation is entirely or partly bypassed.”²⁷ As I have just argued there is an important difference between influences that rely entirely on automatic cognitive processes and influences that also rely on some controlled cognitive processes. A nudge not only triggers automatic cognitive processes but it also triggers some shallow (controlled) cognitive processes.

If deliberation is entirely bypassed, then a person is unable to resist the influence and it should not be called a nudge. In order for an influence to be classified as a nudge people must be triggered to use at least some shallow cognitive processes so that they have a chance to resist the influence. To add to his argument Saghai mentions that: “There is sufficient psychological evidence to believe that attention-bringing capacities can be activated even when an influence is ‘covert’, that is, unannounced, and therefore not explicitly indicated to the influencee. Unconscious preattentive monitoring processes monitor the output of various cognitive processes and alert the conscious attention to anomalies.”²⁸ What this means is that even activating a shallow cognitive process is enough for a person to question the nudge’s intention and consequently resist it if they disagree with it. As I have just shown, goal-dependent automatic responses do just that. A nudge can bring certain goals to one’s attention, as is the case in the earlier supermarket example, but it cannot force those goals onto people. What a nudge can do is bring certain goals, like eating healthy, to people’s attention by displaying healthy items in prominent positions. This strategic placement of items is enough to trigger shallow cognitive processes in people which allow them to reassess what it is they desire. Consequently people are able to decide whether to go along with the influence or not. What matters is that people are able to resist the influence if they wish to, and triggering these shallow cognitive processes is what allows them to do so. For this reason, any influences that are not easily resistible, such as subliminal messages that trigger only automatic cognitive processes, should not be called nudges. As long as people are able to resist a nudge they are still able to make their own choices.

What has become clear in this section is that it matters a great deal what sort of a response an influence elicits. In order for an influence to count as a nudge people must be able to resist its influence. In order to resist the nudge’s influence it must trigger more than just automatic cognitive processes, it must trigger shallow cognitive processes as well. Now that I have a better understanding of the necessary conditions of a nudge it is possible to formulate a preliminary definition of a nudge in the following section.

2.4 Nudging Revised: A Preliminary Definition

So what *does* count as a nudge? I have argued that a nudge is not the same as providing someone with more information in an attempt to influence their decision. That is simply a matter of informing people and appealing to their rational capacities. Nor is a nudge a completely covert

²⁶ Saghai, “Salvaging the concept of nudge,” 2.

²⁷ Saghai, “Salvaging the concept of nudge,” 3.

²⁸ Saghai, “Salvaging the concept of nudge,” 3.

intervention that bypasses all rational capacities in an attempt to influence the individual without their knowledge. A nudge is something in between those two extremes. A nudge does seek to influence people's choices by altering the choice architecture in order to steer them into a certain direction and it does so by making use of known human behavioral tendencies. The difference between a nudge and say a subliminal message lies in their intention. Something like a subliminal message purposefully circumvents rational deliberation in an attempt to produce a singular outcome. While a nudge may make use of certain human tendencies it is still committed to providing the individual with the opportunity to resist the influence. This quality also differentiates a nudge from other influences like subliminal messages that solely target automatic cognitive processes. While the influence of nudges can be resisted, they are not the same as simply providing someone with new information in an attempt to appeal to their rational capacities. In this sense a nudge is not the same as providing someone with reasons to do or not to do a certain thing, as it does not make the same appeal to rational capacities. To summarize: a nudge seeks to influence people's decisions, but it does not do so by appealing to people's rational capacities, nor does it completely try to circumvent the decision making process. While a nudge does seek to influence people's choices, it is committed to preserving that choice. In order for people to have a choice, they must be able to resist the nudge's influence.²⁹ As long as the nudge does not entirely bypass deliberation people still have the opportunity to resist its influence. For people to have an opportunity to resist the influence of a nudge it must trigger a person's shallow cognitive processes. Combining all these elements I suggest the following definition of a nudge:

A nudge is any intervention in the choice architecture that seeks to influence the behavior of people while still providing them with the opportunity to resist this influence by triggering shallow cognitive processes.

Brynn Welch does caution against such a definition of a nudge when he responds to Saghai's amendment to nudges by arguing that: "[That] definition restricts the class of nudges to those influences aimed at *countering* an individual's preferences."³⁰ What Welch is getting at here is that a person is only triggered to deliberate when the nudge counters an existing preference. If there are no preexisting preferences or strong beliefs then the individual is not in a position to resist the nudge. Welch continues: "After all, Thaler and Sunstein's defense of what they call nudges, such as the Save More Tomorrow plan, is that nudges merely get us to do what we would choose for ourselves if we were not subject to predictable errors in reasoning."³¹ Therefore, Welch argues, nudges refer to a broader class of influences than the amendment that Saghai makes.

I disagree with Welch on this matter. It is true that in cases where people do not have existing preferences they are less able to resist the nudge. However, that simply means that they are not opposed to the direction they are being nudged in. No one has a strong opinion about everything. No matter who, in some areas one has to defer their judgement and thus rely on heuristics or rules of thumb. What really matters is that a nudge cannot compel people to make

²⁹ It should be noted here that the notion of what is needed to preserve people's choice when nudged is not necessarily the same as what libertarians believe is needed in order to respect people's freedom to choose. In chapter three I will explore and discuss libertarian interpretations of the freedom to choose.

³⁰ Brynn F. Welch, "Shifting the concept of nudge," in *Journal of Medical Ethics Online* (February 2013) <http://jme.bmj.com/content/early/2013/03/01/medethics-2012-101111> (accessed June 23, 2015)

³¹ Welch, "Shifting the concept of nudge."

choices they would otherwise never make after rational deliberation. For example, a vegetarian would never want to suddenly start eating meat because of a nudge. The point is that nudges must not force decisions or opinions onto people that would be contrary to their beliefs. This is an understandable concern as no one would want to be influenced to do things they would not want to do. A nudge might steer someone towards a general direction but it should never force them, and that is exactly what separates a nudge from methods like subliminal messaging that are aimed at circumventing a person's volition. As such, what matters is the potential to resist the nudge's influence. As long as a people are able to determine when a nudge is steering them in a direction they would rather not go in, they retain the ability to make up their own minds.

2.5 The Intent of a Nudge

In many instances people simply do not have well defined or clear preferences. In my opinion, the main goal of a nudge is to help make people's lives just a bit easier by taking away the burden of rational deliberation where they do not already have strong beliefs or clearly defined preferences. Often people are unable or simply unwilling to expend the time and effort needed to come to the most rational decision. In fact, providing people with an overwhelming amount of information and choices can paralyze people paradoxically causing them to make even less informed decisions.³² As I see it, the goal of a nudge is to help people make easier choices while still allowing them the opportunity to figure it out for themselves. The goal of a nudge is not to ensure that people make the most rational decision as if they were uninhibited by errors in reasoning as S&T claim. As I see it, the purpose of a nudge is to help make people's lives just a little bit easier while still respecting their ability to resist the nudge's influence. An important part of the nudge is therefore the intention behind it. A nudge has an element of beneficence to it; it is supposed to benefit the person that is being nudged. It is this quality of beneficence that separates it from other methods of influencing people which are not aimed at helping the people affected, such as commercial advertisements.³³ So what exactly does it mean for a nudge to help people make easier choices? What S&T have shown is that people often make less than optimal choices when pursuing their goals. This is because people often rely on mistaken heuristics and rules of thumb. The following example showcases a problem nudges might be able to fix.

Take Bob for example. Bob is a simple man. He likes spending time with his family, and he loves the ocean. His dream is to one day own a small boat which he can use to take fishing trips and spend some quality time with his loving family. Bob wants to retire comfortably at the age of 67 so he has the time, and importantly, the resources to enjoy his dream. However, Bob drives garbage truck and is not good with finances, nor does he wish to be. Bob simply wants to drive his garbage truck, watch his favorite sport, spend time with his family and retire when he is 67. In order for Bob to retire comfortably and achieve his dream of owning (and keeping) a little boat at 67 he has to choose between different retirement plans. The problem is that Bob does not have the will nor the capacity to choose between the different retirement plans in order to select the plan that best suits his needs. Maintaining a boat costs quite a bit of money and Bob

³² Liraz Margalit, "The Psychology of Choice," (October 2014) <https://www.psychologytoday.com/blog/behind-online-behavior/201410/the-psychology-choice> (accessed June 23, 2015).

³³ Tom Beauchamp, "The Principle of Beneficence in Applied Ethics," in *The Stanford Encyclopedia of Philosophy* (Winter 2013 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/win2013/entries/principle-beneficence/> (accessed June 23, 2015).

needs to select a specific plan that allows him to do just that. In the end Bob chooses a certain retirement plan because it just so happens to be the same one that is used by his favorite sports team, not because it is best suited to his needs. As a result Bob may not get to retire at 67 because he chose the wrong retirement plan for his needs, at the very least he has to give up on his dream of owning a boat.

Whatever someone's goals may be, they would like to reach them. It is in cases like this where a nudge could help people make not only easier choices but also choices that generally better suit their needs. For example, Bob's employer who has been listening for years to Bob's dreams of owning a boat is in a prime position to nudge Bob towards one of the retirement plans that would cater to his needs. Presenting Bob with arguments might not be as effective as a nudge because he might not have ability to understand those arguments or he might simply be too proud to accept them. In cases like this a nudge would be the perfect solution. Instead of presenting Bob with a random and overwhelming choice of retirement plans, a well-placed nudge could remind Bob that he needs to select a retirement plan that would allow him a bit more luxury when he is retired, like a boat. Merely changing the wording or the order in which retirement plans are presented might trigger Bob's shallow cognitive processes and cause him to factor in the added expense of owning and maintaining a boat. As a result Bob chooses a retirement plan fit for his needs, not because he rationally weighed all the different options but because it simply mentioned boats. This way nudges could help countless people like Bob to not experience the stress that is involved in figuring things out for themselves to which they are not suited. The select few people who *do* have the will and the capacity to figure things out for themselves are still able to recognize when they are nudged in a direction that they do not wish to go and consequently are able to resist the influence. As I see it, a nudge clearly has the intent of helping the person that is being nudged. It is this intention, this aspect of beneficence that differentiates a nudge from, for example, private business endeavors to influence people for personal gain. A nudge is thus characterized not only by its commitment to easy resistibility, but also by its intention to help the person who is making a choice. For this reason I would like to make one final amendment to my earlier definition of a nudge:

A nudge is any *beneficent* intervention in the choice architecture that seeks to influence the behavior of people while still providing them with the opportunity to resist this influence by triggering shallow cognitive processes.

By adding the intentional aspect of a nudge to the definition it is my aim to make a clear distinction between a nudge and other kinds of influences that are not aimed at helping the people they target. Instead of claiming that nudges help people make the decisions they would make if they were without faults like S&T do, I would merely say that the intent of nudges is to help people make easier choices. I think it is a step too far to claim that a choice architect is (always) able to determine what people would do or choose if they were without faults and nudge accordingly. What I do agree with however is that there is a clear *intention* to help the people that are shown to make less than optimal decisions. It is this beneficent intention that is instrumental to a nudge. Combined with a commitment to easy resistibility a nudge can improve the lives of many without forcing any ideas or decisions onto them. Throughout the rest of this thesis I will examine whether this definition of a nudge is one that is acceptable to libertarians.

3. Libertarianism and the Freedom to Choose

In the previous chapter I have identified and discussed several key aspects of a nudge, one of which is its necessary condition of easy resistibility. In order to arrive at an answer to the main question of this thesis, whether nudges are acceptable from a libertarian point of view, it is important that I first determine what exactly libertarianism is all about. To this end I will introduce and discuss libertarianism, a philosophy committed to protecting the freedom of the individual. In similar vein to the previous chapter I will first identify and then discuss key components to libertarianism relevant to my inquiry. While a large part of libertarian philosophy centers on property rights, that is not what I am interested in.³⁴ Instead I am interested in the central libertarian commitment to respecting individuals and protecting their freedom. It is the libertarian belief that people are more than capable to live their own lives and should be allowed to do so. I will ask what it is that libertarians require in order for people to live their lives according to their own choices. I am thus attempting to discern the fundamental idea behind the libertarian philosophy. In similar vein to the previous chapter I will attempt to identify what is and what is not part of libertarianism by discussing several implications of key notions.

I will start by presenting the general libertarian idea and will argue why this is an idea that matters according to libertarians. Next I will determine what it exactly means to a libertarian to respect someone's freedom to choose for themselves. Specifically, I will inquire what sorts of outside influences are acceptable from a libertarian point of view. While it is clear that libertarians care deeply about respecting and protecting people's freedom to live a life of their choosing it is not clear what it means to respect and protect that freedom. To this end I will examine different kinds of influences in order to determine which kinds sufficiently respect people's freedom to choose in the eyes of libertarians. Once I have a clear picture of what kinds of influences are acceptable to a libertarian I can compare those to nudges in the next chapter. In this chapter my main goal is to identify the sorts of influences that sufficiently respect people's freedom to choose for themselves in the eyes of libertarians. While I argue that libertarians generally share the same basic ideas they can however disagree on what it means to respect those ideas. As a result they can have a difference of opinion on the role of government. Since a large part of the debate on nudging is centered on a government application of them I believe it is important to discern and discuss two libertarian interpretations of the role of government. In the final section of this chapter I will discuss and compare a more modest with a stricter libertarian interpretation of the role of government.

3.1 Libertarianism: The General Idea

For libertarians³⁵ freedom of choice matters because people wish to live their lives according to their own reasons, to be treated as a person not as a mere object. In doing so, people can take

³⁴ A substantial part of libertarianism philosophy is concerned with the (rightful) acquisition and use of property. While this is an interesting subject, it is of little concern to my current inquiry. What I am interested in is the underlying libertarian idea. From there I can determine what it means to a libertarian to respect people's freedom with regard to outside influences.

³⁵ It needs to be mentioned that the term libertarianism is used in different contexts with varying meanings. For now I merely wish to focus on the general idea behind libertarianism. In subsequent sections I will argue for a more specific interpretation of the general idea that is presented here.

responsibility for their own successes and their own failings. What matters is that people are, broadly speaking, in charge of their own life. By taking away people's freedom to choose for themselves they are being treated as if they were mere objects. This sentiment is perhaps best captured in the words of Isaiah Berlin when he speaks of liberty³⁶:

"I wish to be the instrument of my own, not of other men's, acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer - deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realising them."³⁷

This idea of an individual who acts out of their own volition and thus carries responsibility for their actions is the core of libertarian thought. It is individuals that make choices and carry responsibility for their actions as moral agents. Failing to respect the individuals' freedom to choose means one is failing to respect those individuals as human beings who are not just objects but rather subjects, capable of living their own life according to *their own* reasons.³⁸ So in order to fully respect the people as free individuals they must be able to do what they want to do, they must be able to exercise their will and thus be free to choose. For people to be free to choose they must be allowed to make their own choices. If one makes choices *for* the people one is treating them as mere objects instead of beings that are capable of making their own choices and carry responsibility for them. To summarize the core of libertarian thought in the words of libertarian John Hospers: "Central to libertarianism [...] is the doctrine that by right every individual is the master of his own life. We all have the right to live as we choose, as long as we don't infringe on the rights of others to live as they choose."³⁹

Non-interference

What matters to a libertarian is that people are able to live their own lives and in order for them to do so they must be free from interference.⁴⁰ It is important to mention here that there is an important difference between *protecting* people's freedom as opposed to *promoting* people's freedom. To be free from interference is to say that a person must not be restricted in their ability to do a certain thing by *other* people. This is an important distinction to make as for example: "an aged person's inability to run a mile cannot be regarded (except in rare circumstances) as a lack of liberty; consequently, only an inability like that of a person restricted by law from voting -an inability for which other persons are morally responsible by their interference- can ordinarily be regarded as a lack of liberty."⁴¹ What this means is that my inability to sprout wings and fly cannot be regarded as a lack of liberty, even if I really wished I could fly. If however *someone* does not allow me to board an airplane then that would be considered interference with my liberty. What matters to libertarians is whether or not other people are the cause of my inability to do a certain thing in order to count as interference.

³⁶ It is important to mention that Berlin does not describe libertarianism in this quote, he speaks of liberty. I am merely using his words since I feel they best characterize the libertarian sentiment.

³⁷ Isaiah Berlin, "Two Concepts of Liberty," in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969). 8.

³⁸ Narveson, *The Libertarian Idea*, 14.

³⁹ Hospers, "What Libertarianism Is," 1.

⁴⁰ James P. Sterba, "Neo-Libertarianism," *American Philosophical Quarterly* 15-2 (1978), 116.

⁴¹ Sterba, "Neo-Libertarianism," 116.

Furthermore, libertarians believe that it is not up to others to help me grow wings and fly no matter how much I wish it. Libertarians only believe that no one should interfere with *my* attempts at growing wings so that I may fly. It is not up to others to promote my freedom; they must merely stay out of my way. Two things are thus important to note. First, libertarians believe that people must not be interfered with by *other* people. Second, there is a difference between respecting someone's freedom and promoting it. Libertarians only ask that people's freedom is respected not promoted.

3.2 Respecting Libertarian Freedom

Now that I have a better understanding of what it is that libertarians value I need to determine what it means to respect those values. Libertarians clearly value individual freedom but what still remains unclear is how one should go about respecting that freedom. What matters most to a libertarian is that people are able to live their lives according to their own reasons without the interference of others. What is of importance to a libertarian is that nothing must *impede* with the exercise of the will of the individual.⁴² There are various ways to interfere with the exercise of one's will. What still remains to be seen is what sorts of influences count as interference in the eyes of a libertarian. I will first discuss a stricter libertarian notion of what is required in order to be regarded as free from interference presented by Mark White followed by a more modest account defended by Jan Narveson.

Free from Influences

Mark White believes that in order for an individual to truly make their own decisions they need to be free from both internal as well as external influences.⁴³ White argues that if one is serious about respecting people's freedom to choose one should refrain from interfering with their choices at all. Even if it can be shown that individuals often make decisions that are not in their best interest that is no reason to treat them as "young children or the insane."⁴⁴ White argues that it is unethical to manipulate choices in such a manner that it undermines the individual's ability to make their own choice. The mere fact that people sometimes make less than optimal decisions does not justify violating their freedom, even if that violation occurs with the best intentions. White continues that even "If there is evidence that the way options are presented affects choice independent of the options themselves, respect for dignity would require that manipulation be avoided, not embraced. Policymakers only manipulate choice when they disapprove of the choices made, and we have seen that there is no logical or normative basis for doing that, absent the consent of the choosers themselves."⁴⁵ White argues that if one is really serious about respecting the freedom owed to individuals one should avoid manipulating choices unless one has the consent of the choosers themselves. Getting the choosers' consent would guarantee they remain free to choose considering they would have to reflect upon their own reasons, thereby reaffirming their own interests. But is requiring someone's consent in order to respect their freedom a realistic goal? I do not believe that it is.

⁴² Narveson, *The Libertarian Idea*, 12.

⁴³ White, *Behavioral Law and Economics*, 12-13.

⁴⁴ White citing: Immanuel Kant, *Grounding for the Metaphysics of Morals*, trans. James W. Ellington (Indianapolis: Hackett Publishing Co., 1785/1993), Ak. 400-402, 440-441. (All citations of Kant's works will give the standard Akademie pagination, available in all reputable translations.)

⁴⁵ White, *Behavioral Law and Economics*, 20.

Free Despite Influences

White would rather see that choices not be manipulated at all, at least not without people's consent, in order to respect their freedom. Ideally White would see people free from both internal as well as external influences so that they may truly live according to their own reasons. To some this might be an appealing idea, but is it attainable? The idea of an individual who acts solely out of their own volition might be just that, an idea. What does it mean to have a will that is truly one's own in a world where everyone is influenced by others and their environment? In a world where people are bombarded with advertisements and different opinions from people around the globe it is hard gauge what truly counts as one's own volition. Libertarian Jan Narveson also recognized this:

"Individuals make their decisions, do their choosing and deliberating, on the basis of values largely if not entirely absorbed from the surrounding society. Their very personalities are defined by relation to their peers, their acquaintances, their loved ones, and so on. It is not to be supposed that individuals must be, as a rather misplaced metaphor has it, 'atomic.'"⁴⁶

I believe Narveson makes a good point. White sets an unrealistic goal when he says that in order for people to truly make their own decisions they must be free from both internal as well as external influences. Saghai also addresses this issue: "We may care for freedom of choice without thinking that every human interaction is an assault on freedom and human dignity unless it has been expressly consented to. Such a standard would rule out the most trivial human informal practices."⁴⁷ The point is that it is hard to cling to the ideal of an individual who is free from any and all influences and is completely free to choose for themselves. Requiring people's consent would severely restrict human interactions. If anything, S&T show through their countless examples from recent scientific research how people are easily influenced by the way in which options are presented to them. Presenting options in a neutral or unmanipulated fashion as White suggests would not increase people's freedom to choose. They would merely be influenced in different, unpredictable ways. For example, presenting options in a numerical order might lead most people to choose the first option. Not because it is the option that they truly want, but simply because it is the first. Presenting various options in one way or another will affect the choices people make; it is a mistake to believe that there is some neutral design that allows people to make unbiased decisions based solely on their own true interests. What this means is that White's ideal of the individual who must be completely free from internal as well as external influences in order to be free to choose might need to be adjusted.

What matters to libertarians and to White is that the individual is treated as a being that is capable of making their own decisions and is therefore free to choose. I agree with this sentiment. Whether the individual makes choices that are not always in their best interest does not matter. What is important is that the individual is allowed to make their *own* decisions, whether they may be "good" or "bad". Contrary to White I believe that in order to respect people's freedom to choose in a meaningful sense one does not always require their consent. As such, I would like to define the libertarian account of individual freedom as people's ability to make up their own mind *despite* the many external factors that influence their decision. This means that libertarians recognize that people are influenced on a daily basis by what they see,

⁴⁶ Narveson, *The Libertarian Idea*, 16.

⁴⁷ Saghai, "Salvaging the concept of nudge," 2.

hear and read.⁴⁸ However, this does not mean that libertarians do not recognize the individual as free. While it is true that people are influenced, libertarians also maintain that in the end it is the people themselves who choose which influences to follow and in that sense they remain free to choose. So in order for people to be free in the eyes of a libertarian they must be able to choose which influences they follow and which ones they disregard. To illustrate, it is okay for me to watch advertisements as long as I am still able to do otherwise. The idea that people “could have done otherwise” is a key element in the libertarian argument.⁴⁹ If people could not have done otherwise that simply means that they were not free in their choices.⁵⁰

In the world as we know it, the idea of a person who is completely free from influences and thus makes completely free choices is unattainable. People’s identities are forged through the countless things that influence them, what matters is that they are able to decide whether or not to go along with a certain influence. I might see an advertisement that is trying to get me to buy a burger at a fast food restaurant but in the end it is still up to me to decide if I want to actually buy that burger. I can decide not to buy that burger because I am not hungry, or because I want something else to eat. Similarly I could have various reasons for buying that burger. Whatever the reasons, all that matters to libertarians is that they are *my* reasons. As long as I am able to make up my own mind and not blindly follow some external influence I remain free in the eyes of a libertarian. This idea is perhaps best captured by Leibniz who said that external influences may “incline the will without necessitating it.”⁵¹ What this means is that influences are not necessarily a bad thing, as long as people are still able to resist them. But when exactly is a person still able to resist a certain influence? Under what circumstances could a person still have done otherwise? And when is a person no longer able to do and choose otherwise? The important question now becomes: when exactly does someone truly make choices according to their own reasons and not just because they were influenced to do a certain thing? In the next section I will seek to answer these questions.

3.3 What it Means to Have a Choice

In this section I wish to determine when a choice is truly someone’s own in the eyes of a libertarian. Whether or not people still could have done otherwise depends on the effect a certain influence has on them. For this reason it is important to understand various kinds of influences and the way that they affect people. To this end I would like to use the same table as was used in chapter two, albeit for different reasons. In chapter two I tried to determine what sort of response a nudge produces in order to further classify a nudge and differentiate it from other kinds of influences. In this chapter however I am interested to examine when a person can still be said to have a choice in the eyes of a libertarian. What is important to libertarians is that

⁴⁸ Sterba, “Neo-Libertarianism,” 116.

⁴⁹ “Could Have Done Otherwise,” <http://www.informationphilosopher.com/freedom/otherwise.htm> (accessed June 23, 2015).

⁵⁰ What it means for a person to be free depends for a large part on one’s ideas about determinism. There is still a rich debate among philosophers and theologians alike about determinism and its implications for free will. While this is an interesting subject, it is a debate that is beyond the scope of this thesis. What I am interested in is the libertarian idea on what it means for a person to be free.

⁵¹ Gottfried Wilhelm Leibniz. *Theodicy: Essays on the Goodness of God, the Freedom of Man and the Origin of Evil*, ed. Austin Farrer, trans. E.M. Huggard, <http://www.gutenberg.org/files/17147/17147-h/17147-h.htm> (accessed June 23, 2015), Chicago, Illinois: Open Court, 1985.

people are still able to make their *own* choices instead of falling to some outside influence. To determine whether or not a certain influence, like a nudge, constitutes an interference with the exercise of one’s will depends on how it affects one’s critical faculties.⁵² It would, for example, be hard to argue that influences which only trigger subconscious automatic cognitive processes allow people the same freedom of choice as influences that trigger conscious and controlled cognitive processes. What I am interested in, then, is up to which point a libertarian would still agree that a certain influence allows people to make their own choice instead of their choice being a knee-jerk reaction to some external influence. In order to determine when a libertarian believes that person is still able to choose for themselves and not just because they were influenced to do a certain thing I want to use the following schema:

Table 1. Variety of automatic and controlled responses in reaction to external influences

Kind of response	Definition
Fully controlled response	Intentional responses with conscious awareness. The individual is aware of the influence and responds consciously.
Conscious will response	Experienced when a thought precedes, fits, and explains subsequent action.
Intentional response	The individual is aware he has multiple options and chooses a specific response.
Goal-dependent automatic response	The individual has a certain goal and starts the process in order to reach that goal. Once the process is started the individual loses awareness.
Conscious influence response	The individual is aware of the influence but not aware of its effects on his own responses.
Subliminally conscious response	The influence registers on the individual’s senses but the individual is unaware of it or the effect that it has on his responses.
Fully automatic response	Unintentional, uncontrollable, efficient responses that happen outside of awareness.

This schema shows a broad range of responses to different kinds of external influences. On one end of the spectrum there are fully automatic responses to influences. These kinds of responses are unintentional, uncontrollable and happen outside of awareness. In these cases it is impossible for a person to “have done otherwise” because there is never a chance to, a person’s critical faculties are never being triggered. A good example of such a response is when someone accidentally touches a scolding hot pan and quickly pulls away their hand in a knee-jerk reaction. It is safe to say that libertarians would not condone intentional⁵³ external influences that elicit such a response as the person affected makes no conscious choice, they merely respond unintentionally and uncontrollably. On the other end of the schema there are fully controlled responses to external influences. These sorts of responses are conscious and intentional. In these cases the individual makes a conscious choice and thus could have done otherwise. Importantly, one’s critical faculties are being triggered. Influences that trigger fully controlled

⁵² Narveson, *The Libertarian Idea*, 172.

⁵³ It is important to mention the intentional aspect of the external influences here. I am interested in intentional influences between people, not random external influences that occur unintentionally. As mentioned in a previous footnote, I am not currently discussing determinism and free will in general as that is beyond the scope of this thesis. What I am interested in are what sorts of intentional influences count as interference in the eyes of libertarians who are all about protecting the individual from forms of interference.

responses thereby seem to be acceptable from a libertarian point of view, as it is still left up to the individual to make up their own mind as opposed to blindly reacting to the influence.

Where things get interesting is in the middle of this spectrum of responses. I will briefly discuss the other kinds of responses in order to determine which kinds are still acceptable to a libertarian. What would a libertarian say about a subliminally conscious response? People respond as such when they are both unaware of the influence and of their own response to it. The influence is registered by people's senses but it never enters conscious thought. It is safe to say that similar to the fully automatic response libertarians would not condone any intentional influence that triggers such a response as the person affected could not have done otherwise because they remain unaware of both the influence and their own response to it. Where things get a bit more interesting is when people *are* aware of the external influence, as is the case with conscious influence responses. As implied by the name, in this scenario people are consciously aware of the external influence. But is being aware of the influence enough for a libertarian? What matters is if they are in a position where they could have done otherwise, meaning that they could have responded differently to the influence. That does not seem to be the case, as the people influenced are unaware of the effect that it has on their own response. So long as they remain unaware of the effect that the influence has on their own responses it is hard to argue that such a response is still a response of their own choosing. After all, the effect of such an influence remains a mystery to the person being influenced. In this case the individual does not *choose* to respond in a certain way, he merely does.

Goal-dependent Automatic Responses or Better

So what about *goal-dependent automatic responses*? Can such a response still be said to be of one's own choosing? In order to yield such a response people have to be prompted to think about their own goals, and the process of assessing and forming goals is a conscious one. Once a person believes that a specific process will achieve one of their goals they will start that process and subsequently lose awareness of the process itself. It is however impossible to elicit such a response when the influence does not trigger the individual to reassess their goals. A goal-dependent automatic response thus only occurs when someone briefly thinks about their goals and thus thinks about their own reasons for doing a certain thing. While it is true that a person loses awareness of the activated process once it has been started, it is possible that this person could have done otherwise. What is important to a libertarian is that moment of choice and whether or not one could have chosen otherwise. In order for a person to lose awareness after starting a process they first need to determine whether or not the following process could possibly lead to one of their predetermined goals. It could very well have been the case that a person has different goals from the one that the external influence is trying to push. In that case a person might be triggered to quickly reaffirm their goals but they would not go along with the external influence. It should be mentioned that this process of reassessing one's goals is not the same as entering into a full-blown rational deliberation weighing the different pros and cons. The processes of quickly assessing one's goals is akin to a short stop on your way through the supermarket when you spot a certain product that you like but which is not on your shopping list. You might pause for one or two seconds before deciding to either move along to the next item on your shopping list or to go ahead and take that product anyway. The act of assessing one's goals in this fashion is probably best described as a shallow cognitive process. A person might pause for a moment before continuing whatever automatic process they were doing. It is however best characterized as a shallow process because it is different from launching into a

full-blown rational deliberation. This means that it *is* possible for a person to resist an external influence that elicits a goal-dependent automatic response. If goal-dependent automatic responses are acceptable to libertarians then that also means that *intentional* as well as *conscious will responses* are acceptable as these kinds of responses allow people an even greater amount of conscious control over their decisions. As a result people are even less likely to blindly follow a specific influence. What this means is that any external influence that triggers goal-dependent automatic responses is acceptable to libertarians as they still provide people with the possibility to choose otherwise.

Put differently, people need to be able to resist a certain influence in order for them to have an actual choice and to regard them as free individuals. If people are unable to do anything except to follow a specific influence then there is never any choice to begin with. If that is the case then people are no different from machines whose buttons are being pushed to produce a specific outcome. As mentioned earlier, libertarians do accept that people are influenced by a lot of things but that does not mean that they do not see the individual as free. Libertarians believe that people are free *despite* the many things that influence them, and in order for that to be the case they need to be able to resist those influences if they so choose. This should sound familiar since easy resistibility is also a requirement of nudges as discussed in the previous chapter. What this means is that in order to have a choice, to be able to choose otherwise, one needs to be able to resist a certain influence. A nudge as described by S&T is not a mandate; it should leave people free to choose. For this reason people should be able to resist a nudge. Libertarians wish to preserve and respect people's freedom to choose and to do so they must also be able to resist external influences. Once an intentional influence no longer allows people to do anything but follow it, a person's freedom is no longer respected. It is thus starting to look like libertarians should be able to accept nudges by definition based on how both concepts are defined, but more on that in chapter four.

As I have argued what is important to libertarians is that people are able to live their lives according to their own reasons. To do so, they must be able to choose for themselves and thus not be interfered with. As long as people have the ability to determine their own interests and act accordingly then a libertarian should have no qualms about external influences, but is this really the case? In the next section I will discuss two different libertarian notions on the role of government.

3.4 Libertarians on the Role of Government

Since I am interested to find out whether libertarians can come to accept the practice of nudging it is important to also discuss their stance on government, as a great deal of the debate around the acceptability of nudging stems from worries about a government application of nudges. As mentioned in the introduction, the practice of nudging is currently finding its way into government policies in the west. It is for this reason that I believe it is important to also discuss the government aspect of things. Furthermore, libertarianism is known for the belief that the government should play only a limited role. In this section I wish to present the libertarian view on the role of government. In chapter four I will discuss how this view affects the libertarian acceptance of government applied nudges.

In the previous sections it became clear why it is that libertarians value freedom so highly and what it means to respect that freedom. One prominent element of the libertarian philosophy is the commitment to non-interference from external influences. This also means that people must not only be free from the interference of other individuals but also free from any interference by the government.⁵⁴ A consequence of the libertarian stance on the protection of the individual's freedom is therefore a limited government. Generally speaking, the government should mostly be concerned with the protection of the individual's freedom and stay out of their way. What people do with their lives is up to them, provided they do not interfere with the freedom of others. Libertarians believe that the main role of government is to protect the individual as opposed to actively help them achieve their goals.

As I mentioned at the start of this chapter, while I recognize some libertarian values as fundamental to libertarianism there are different interpretations on what it means to respect those values. Daniel Moseley notes: "Libertarians often debate among themselves and with others about the central commitments of libertarianism. Someone might reasonably worry that the intensity and frequency of disagreement concerning the use of the term 'libertarian' renders it too ambiguous and vague to be used in a helpful manner."⁵⁵ In order to avoid this very issue I will discern and discuss two interpretations of libertarianism relevant to my inquiry. Specifically, what I am interested in is the libertarian commitment to the individual's freedom to choose and its consequence for government. If I am to determine if libertarianism can accept nudges I need to first have a clear picture of the libertarian stance on the role of government. I have argued that the general and guiding libertarian idea is that people must be free to do what they wish to do. Libertarians do however disagree on what exactly is needed in order to be free to do what one wishes to do and what the role of the government is in that respect. This is where I will make a distinction between what I will call *modest libertarianism* and *strict libertarianism*. These forms of libertarianism differ in important aspects on their view on the role of government. This difference is relevant because it affects the libertarian assessment of nudges and its possible application which I will discuss at greater length in chapter four.

Modest Libertarianism

While libertarianism in general is committed to a limited government, modest libertarians however, do recognize that the government is in a good position to address *some* of society's problems. Contrary to what I will describe as strict libertarianism, modest libertarians believe that the government should provide *some* basic social services and public goods.⁵⁶ To quote (modest) libertarian Milton Friedman on this topic:

"Government may enable us at times to accomplish jointly what we would find difficult or expensive to accomplish severally. However, any such use of government is fraught with danger. We should not and cannot avoid using government in this way. But there should be a clear and large balance of advantage before we do."⁵⁷

⁵⁴ Jason Brennan, *Libertarianism: What Everyone Needs to Know* (New York: Oxford University Press, 2012). 34.

⁵⁵ Moseley, what is libertarianism, 2.

⁵⁶ Brennan, *Libertarianism*, 19-20.

⁵⁷ Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 2002). 2-3.

Modest libertarianism does allow for *the possibility* of government interventions, albeit in a limited capacity. Friedman does caution against blindly turning towards government. At the very least, there should be clear benefits when the government is used to tackle certain tasks. Above all, modest libertarians argue that one should respect people's freedom "because doing so tends to produce good consequences. They believe freedom is the soil in which virtue, culture, scientific progress and prosperity best grow."⁵⁸

Strict Libertarianism

More so than modest libertarians, strict libertarians believe that the government should play a minimal role. The only role of the government is to ensure that people's freedom is not interfered with. For this reason, strict libertarians tend to believe that governments should provide a bare minimum of services to ensure the people's freedom such as a court system, military protection and police. These are all functions with the main goal of safeguarding the individual's freedom from either domestic or foreign influences.⁵⁹ What I have called strict libertarianism includes philosophers such as Robert Nozick and Eric Mack. Contrary to the modest libertarian view that the government can help society by providing some social services and public goods, strict libertarianism is committed to the notion that the role of government should be a minimal one centered on protecting individual freedom. Strict libertarians believe that providing social services or public goods is not the task of a government. As Robert Nozick argued in his book: *Anarchy, State, and Utopia*: "respect for individual rights is the key standard for assessing [government] action and, hence, that the only legitimate [government] is a minimal [government] that restricts its activities to the protection of the rights of life, liberty, property, and contract."⁶⁰

Opting for a Moderate Interpretation

So why is it important to mention these different libertarian interpretations on the role of government? Because whether one subscribes to a more modest libertarian interpretation on the role of government or a strict libertarian interpretation determines what one believes the role of government should be which regard to nudging, something which I will discuss in greater detail in chapter four. What should be apparent from the description of the strict libertarian notion on the role of government is that any government interventions that go beyond merely protecting the rights of individuals would not be acceptable. This would of course include any government application of nudges. Since I am also interested in potential applications of nudges I will adopt the modest libertarian position on the role of government, as this would still leave open the possibility of at least some government application of nudges. If I were to adopt the strict libertarian standpoint then there would be no room left for debate because their stance on the role of government is too strict. It is for this reason that I opt to use the modest account of libertarianism.

⁵⁸ Brennan, *Libertarianism*, 21.

⁵⁹ Brennan, *Libertarianism*, 21.

⁶⁰ Eric Mack, "Robert Nozick's Political Philosophy," in *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edition), ed. Edward N. Zalta, <http://plato.stanford.edu/archives/sum2015/entries/nozick-political> (accessed June 23, 2015).

4. Reconciling Nudges and Libertarianism

I set out to answer the question whether or not libertarians can accept nudges. In order to answer this question it was necessary to first analyze and understand both nudges and libertarianism. In chapter two I critically examined the concept of nudging in order to determine what counts as a nudge and what does not. I did so to avoid any confusion about the term nudge and thereby separate nudges from other kinds of influences. In chapter three I explored the libertarian idea and specifically the libertarian notion of individual freedom. Here I determined the kinds of influences that sufficiently respect people's freedom to choose for themselves in the eyes of libertarians. Now that I have determined what a nudge is and what sorts of influences libertarianism can accept, it seems as though libertarianism should be able to accept nudges by definition.

4.1 Nudges that Respect Libertarian Freedom (to Choose)?

Now that I have settled on a definition of a nudge as well as the central commitment of libertarianism and a means of determining if the libertarian requirement for respecting an individual's freedom of choice is met, it is possible to see if the two are compatible. I have defined a nudge in the following manner:

A nudge is any beneficent intervention in the choice architecture that seeks to influence the behavior of people while still providing them with the opportunity to resist this influence by triggering shallow cognitive processes.

I have argued that the goal of a nudge is not to help people make choices as if they were perfectly rational beings who are not subject to human flaws as S&T have claimed. Instead nudges are there to help make people's lives just a little bit easier by taking away the burden of rational deliberation if they do not already have strong beliefs or clearly defined preferences. In many instances people are unable or simply unwilling to expend the time and effort needed to come to the most rational decision. In these cases a nudge seems to be the perfect tool to help people make easier choices while still allowing them to figure it all out for themselves if they so choose. I have also argued that a key component of a nudge is its commitment to easy resistibility in order to differentiate it from other types of influences. To determine what it means for a nudge to be easy to resist I have used findings from the field of social psychology. I have argued that nudges elicit what are called goal-dependent automatic responses. These sorts of responses use both automatic cognitive processes as well as controlled and conscious cognitive processes which are best described as shallow cognitive processes. Triggering these shallow cognitive processes allows people the opportunity to reassess what it is they want and subsequently choose to either accept or reject a certain influence. It is these shallow cognitive processes that make it possible for people to resist the influence of a nudge if they are so inclined.

In order to ascertain whether nudges as I have presented them are acceptable from a libertarian point of view I have examined and discussed what it is that libertarians are committed to. I have argued that the central libertarian commitment is to allow people the freedom to live a life of their own choosing and in order to do so they need to be free to choose for themselves. Importantly, people should not to be interfered with by others in their choices. What this means is that a person must have been able to have chosen otherwise in a given situation. In similar

vein to chapter two I asked what it means exactly for a person to be able to choose for themselves. To this end I again turned to findings in social psychology. I asked what sorts of influences still allowed people to choose for themselves as opposed to blindly following a certain influence. Here I concluded that influences that elicit a goal-dependent automatic response still respect the libertarian requirement for people to choose otherwise. In order for people to be able to choose otherwise they need to be able to resist external influences and starting from goal-dependent automatic responses to influences this seems to be the case.

By now the answer to the following question should become clear: do nudges respect the individual freedom that libertarians value so much? Yes, nudges respect the individual freedom that is valued so highly by libertarians. As I have argued, failing to respect that freedom means one is failing to treat people as beings capable of making their own decisions, which amounts to treating them as mere objects. As a result people are not capable of living a life of their own choosing. As I have defined it, a nudge seeks to influence the choices people make while still providing them with the opportunity to resist this influence. As long as people are able to easily resist the nudge, as I have argued in chapter two, it can be said that they maintain the ability to determine their own interests instead of blindly following the nudge's influence. In other words, people have the ability to choose otherwise when nudged and that is exactly what libertarians value. For this reason a nudge does not count as interference in the eyes of a libertarian and people are still able to make their own choices. What matters to libertarians is that people are able to live their lives according to their own reasons and I have shown that a nudge does just that. The shallow cognitive processes triggered by a nudge are enough to guarantee that people make their own choices instead of mindlessly reacting to external influences. Therefore I believe that libertarians should have no issue with a nudge as I have defined it. Nudges respect people's freedom to choose for themselves.

4.2 Some Considerations

I have argued that a nudge is characterized by its beneficent intent; this is what separates it from other sorts of influences that are aimed at some personal goal on the part of the person who is doing the influencing. But this beneficent intent is exactly what might worry libertarians. Libertarians are committed to *protecting* people from interfering with their freedoms as opposed to promoting them. I have argued that nudges sufficiently respect people's freedom to choose in the eyes of a libertarian. By recognizing that people are not 'atomic', to put it in Narveson's terms, one can still nudge people into a general direction as long as they still have the ability to resist that influence. I have argued that this is enough to respect and protect the freedom that libertarians value so highly. It is however possible that some strict libertarians might not agree with what I believe is needed to respect someone's freedom. As discussed previously, Mark White believes that respect for an individual's freedom requires that one does not interfere with them or their choices at all. Ideally people should be free from as many influences as possible to ensure they live a life of their own choosing. Any interference that does more than simply protect people from possible infringements upon their freedom would thus not be allowed. Consequently nudges would not be allowed either because they have an element of beneficence to them.

I have rejected this stricter libertarian interpretation of what it means to respect people's freedom because I believe it is an unrealistic and unattainable one. Firstly this ideal does not

seem to match our current understanding of how people function. As was previously mentioned it is impossible for people to be completely free from both internal as well as external influences. No individual is 'atomic'. Secondly this strict libertarian interpretation severely limits interpersonal interactions to a point where it is hard to imagine what those would even look like. As such even the most basic human interactions could be construed as an assault on someone's freedom. It is hard to imagine how such a world would even work. It is however important to recognize that there is another way of interpreting what it means to a libertarian to respect people's freedom but I believe that it still needs to show why it is a viable alternative to the one that I have argued for.

4.3 Who Nudges? Libertarian Concerns with Government Discussed

Before coming to a more substantial conclusion about nudges it is important to ask: who nudges? Up until now I have been focused on nudges themselves and the people who are affected by those nudges but I have not yet asked who it is that is doing the nudging. Nudges can be used by a variety of people in different settings. It is not yet clear that libertarians would accept all forms of nudges. For instance, a parent could nudge their child but as mentioned in an earlier example, an employer could also nudge its employees. S&T argue that the government should use nudges to help create more effective public policies. Politicians seem to agree with S&T as they slowly incorporate nudges into government policy. While a libertarian might have no problems with a parent nudging their child, they might have some reservations about a government nudging its citizens. As mentioned in chapter three, libertarians believe that the role of government should be limited. Even on the modest libertarian account that *might* allow for some basic social services and public goods, there needs to be a clear and large balance of advantages. This means that one needs to show that nudges can and will provide some clear benefits if used by the government.

The Question of Competence

Libertarianism in general is very skeptical of many government interventions because they argue that usually government is not the most efficient at providing solutions to various issues. More often than not the free market is much better suited to provide whatever it is that is needed. For this reason libertarianism is critical of many government interventions that do more than safeguard the freedom of individuals. Before (modest) libertarians would accept government nudges it first needs to be shown that the government is competent enough to nudge its citizens. This issue of competence is not limited to government alone. Anyone who wishes to nudge others first needs to show why they are in a better position to make choices than the person who is being nudged.

Jeremy Waldron also finds fault in a government that wants to get involved in nudging. Waldron says that Sunstein is more than happy to point out the many errors in human decision-making in order to argue in favor of the application of nudges. What Sunstein fails to do, however, is to show why a government would do any better than individuals at avoiding these human flaws. Waldron says that Sunstein "offers little more than reassurance that there actually are good-hearted and competent folks like himself in government."⁶¹ In order to argue that the government should get into the business of nudging one needs to first show that it is more than competent to do so. Similarly Joseph Heath argues that:

⁶¹ Waldron, "It's all for your own good," 3.

“[...] from a public policy perspective, the discovery that human decision-making is flawed in some way is neither here nor there. As such, it certainly does not speak in favour of [government] action – until some reason is given to think that the [government] will be able to correct it (and that the individuals working for the [government], in charge of formulating a solution, will not be subject to the same biases, or worse).”⁶²

After all, the stakes are much higher when a government tries to nudge countless people as opposed to a parent nudging its child. A small mistake on grand scale can have great consequences. Just like the modest libertarian’s insistence on a clear and large balance of advantages before turning towards government interventions, Waldron first wants to see the question of government competence answered.

I believe that this is a valid and serious concern. The last thing that anyone wants to see is a poorly executed application of government nudging that does more harm than it does good. There is however reason to believe that the government is competent enough to ensure nudges are applied properly. That reason is *scaffolding*, to borrow a technical term from Joseph Heath. Basically, scaffolding refers to several environmental tools that businesses, or the government in this case, have in place to help avoid certain human flaws or allows them to work around them. To borrow an example used by Joseph Heath, we often write things down in order to remember them, like a phone number. Even a small string of digits is often too much to remember for a short period of time but we can overcome this limitation by writing it down.⁶³ Through the use of environmental scaffolding people are able to work around certain human shortcomings. In the same manner a government is better equipped than a single individual to tackle certain tasks because they have more extensive scaffolding to fall back on. Take an apothecary for instance. In order to prevent people taking home the wrong kind of medication with possibly fatal consequences they have a system in place where at least three people check to see if a person is getting the right kind and quantity of medicine. This system is in place simply because people sometimes make mistakes. These environmental tools thus help people work around known human flaws. In the same way a government can prevent being subject to the same errors in judgement that an individual is subject to, because it has access to more extensive scaffolding than an individual would.

This means that if the government has the right tools and safeguards in place coupled with the expertise of individuals on the subject of nudging, then the government should be able to competently apply nudges in a satisfactory manner. This would then also satisfy the modest libertarian insistence on a clear and large balance of advantages when turning to the government for solutions. However, in order to get the libertarian approval for a government application of nudges more is needed than environmental scaffolding. There is a limit to what libertarians would accept.

The Limit of Government Nudges

As I have argued, modest libertarianism does allow for government nudges that can provide some social services or public goods, provided there are clear benefits and their execution is done competently. There is however a limit. While modest libertarianism does support some

⁶² Joseph Heath, “Waldron, Sunstein and nudge paternalism,” (October 2014)

<http://induecourse.ca/waldron-sunstein-and-nudge-paternalism/> (accessed June 23, 2015).

⁶³ Joseph Heath, *Enlightenment 2.0: Restoring Sanity to Our Politics, Our Economy, and Our Lives* (Toronto: HarperCollins Publishers, 2014). 61.

government interventions it is important that they do not interfere with the freedom of individuals that libertarianism values so highly. Jeremy Waldron worries that government nudges might do just that: “In nudge-world, retailers would have to be ‘motivated’ to make the small diet beverage the default option and banned from messing with the choice architecture for their own benefit. Soft paternalism for the consumer might therefore presuppose hard regulation for the retailer.”⁶⁴ Waldron’s worry is that in order to impose certain types of nudges private businesses have to be forced to change the way they present their products. For example, in order to promote healthier lifestyle choices through nudges the government might impose a specific way of presenting healthy food options in supermarkets. This would however limit the retailer’s ability to present his products as he chooses and thus interferes with his freedom.⁶⁵ This is something that is hard for a libertarian to accept. A libertarian would only condone the use of force when it is used to ensure that people’s freedom is not interfered with. What would however be acceptable is if the government only institutes those nudges in public spaces. In this way private businesses are still free to do as they wish and the government can make use of nudges while still insisting on everyone’s freedom. A government nudge applied thusly would then be no different from a private business who orders their items to suit their specific needs. The only difference being that a government nudge is beneficent in its intention while private businesses are generally out for their own benefit. Since libertarians insist that people’s freedoms are not to be interfered with nudges might need to be restricted to government run facilities or public spaces. Of course private businesses can still choose to implement certain government nudges but only if they consent to them. The moment force is used is the moment libertarians no longer approve.

⁶⁴ Waldron, “It’s all for your own good,” 2.

⁶⁵ Wetenschappelijke Raad voor het Regeringsbeleid (WRR), *Met kennis van gedrag beleid maken*, by J.A. Knottnerus e.a., (Amsterdam University Press, Amsterdam 2014), 93.

5. Conclusion

Are nudges acceptable from a libertarian point of view? In order to arrive at an answer to this question I started by first critically examining the concept of a nudge. Without first clearly defining what a nudge is and how it affects people it is hard to argue its merits and issues. As it turns out the concept of a nudge is not well defined and as a result it is used with different connotations and in a wide variety of contexts. To avoid confusion I examined the concept of a nudge and have come up with my own definition which I have used throughout the rest of this thesis. I have argued that key components of a nudge are its commitment to easy resistibility and its beneficent intent. As such, I have suggested the following definition:

A nudge is any beneficent intervention in the choice architecture that seeks to influence the behavior of people while still providing them with the opportunity to resist this influence by triggering shallow cognitive processes.

My next step was to explore the concept of libertarianism. I have argued that the central commitment of libertarianism is to allow people the freedom to live a life of their own choosing. In order to respect that freedom they must not be interfered with. Not interfering with people's choices is what allows people to live their own lives. I then asked when people still have the ability to choose for themselves in the eyes of a libertarian. What matters to libertarians is not that people are completely free from all influences but that they are able to resist those influences, enough so that they are able to make their own choices. I have argued that influences that trigger goal-dependent automatic responses still answer libertarian requirements.

In chapter four I compared my definition of a nudge with the previously established libertarian requirements. What matters most to libertarians is that people are sufficiently free from interference and thus free to choose for themselves so that they are able to live their own lives. I believe a nudge as I have defined it answers that requirement. A defining quality of a nudge is that it should allow people to resist its influence so that they do not blindly follow it, which is what separates it from other kinds of influences. Libertarians object only to those influences that interfere with people's ability to make up their own minds. For this reason libertarians would not accept any influences that would make it impossible for the person who is influenced to resist them. Importantly, a person must be able to have done otherwise. What this means is that, starting from goal-dependent automatic responses to influences, a person *is able* to have done otherwise because they would be in a position to resist the influence. In the case of a goal-dependent response to influences a person uses not only automatic processes but also some controlled processes. Consequently this allows people to resist those influences that are contrary to their own goals. From this I can conclude that that a nudge conforms to the libertarian standards set for freedom of choice. Furthermore, a nudge as I have defined it only respects libertarian freedom as opposed to promote it. This means that a nudge is acceptable to libertarians not only from an empirical point of view but also from a conceptual one. Given that individual freedom is not violated, modest libertarianism would even allow for a government application of nudges provided there are clear and large benefits and minimum risks involved.

To summarize, libertarians should be able to agree that nudges as I have defined them respect people's freedom to choose. When nudged people are able to resist its influence and are thus

able to choose for themselves and live out their lives as they please. Furthermore, modest libertarians should in principle also be able to accept to a government application of nudges provided that there are clear benefits and low risks. I would thus conclude: yes, nudges are acceptable from a libertarian point of view.

What this conceptual analysis of nudges has shown is that an important part of a nudge is the goal and intent behind the nudge. Insights into the workings of a nudge are essential to understanding what it is that a nudge does. There are other possible behavioral techniques that might behave similarly to a nudge as I have defined it but trigger subtle differences in responses from people. If one wishes to discuss the acceptability of nudges or other types of influences one first needs to a good understanding of how they affect people. It is important to recognize that the effects that different kinds of influences have on people have an important bearing on the acceptance of such practices.

Some important and interesting questions remain however. What has become clear in this thesis is that there is an important difference between protecting and promoting people's freedom. The questions one needs to ask is: what is it that a nudge is supposed to do? What is the role of a government in that aspect? Depending on how one answers these questions a "nudge" can look very different from what I have described in this thesis. Nevertheless, I believe nudges are here to stay and that there still is a great deal more that can and will be said about them. I am curious to see other and novel approaches to the subject of nudging as well as its application in everyday life.

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