

A Debate on the Behavioural Limits of the State

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Introduction

Behavioural public policy is a relatively new, but now substantive, subfield of public policy. It encompasses the theoretical and conceptual development, and associated application, of how behavioural science can inform the design of public policies, interventions and institutions. To date, this subfield has been dominated by hard and, particularly, soft paternalistic policy frameworks, at least in terms of the rhetoric.ⁱ Much criticism has been waged against those frameworks for a number of reasons: for example, in relation to how effective their associated interventions are likely to be in addressing the challenges that modern societies face; on whether their associated interventions are indeed informed by novel behavioural science findings (and even where they are, the robustness of those findings is often questioned); and that paternalistic approaches are overly statist, and that there thus ought to be more consideration of how behavioural science might be used to inform policy from a liberal perspective. The counterargument to this last concern is that by allowing people to “go their own way” if they so wish, soft paternalism protects the individual autonomy that is so prized by liberals, but one might contend that the hidden intentions that underpin many soft paternalistic interventions render them even more statist than more open, easily challengeable, hard forms of paternalism.

With these thoughts and questions in mind – i.e. on the normative consideration of how behavioural science should, and should not, inform public policy – I hosted a number of symposia on the appropriate “behavioural limits of the state” through the London School of Economics and Political Science in the Spring of 2022. Mario Rizzo, Nick Chater, Cass Sunstein, Peter Boettke & Christopher Coyne and I presented papers under this general theme at those symposia, and their (and my) articles comprise this special section of the journal. A summary of their arguments, and how they relate to each other, is now given.

Summary of the Arguments

Rizzo’s main line of argument, informed by construal-level theory, is that the so-called behavioural biases in human reasoning are eroded with greater psychological distance from events, with “distance” defined in temporal, spatial, hypothetical or social terms. Consequently, according to Rizzo, when an abstract rule of law is created and applied, these factors will be distant, and thus a rule-governed polity, with individual decision-makers who are ordinarily influenced by cognitive biases, will be less subject to the effect of these biases.

Rizzo also contends that when biased decision-making occurs it is more problematic in public officials than in those acting in a private capacity, because the former impose externalities on third parties, whereas the latter impose costs principally upon themselves.ⁱⁱ But the answer to ameliorating biased decision-making wherever it persists in a distant, abstract, rule-governed public polity is not to fine-tune those rules, because regulators may not have enough relevant knowledge of a particular problem to improve their interventions.

By “improving” decision-making, Rizzo appears to be referring to consistency in choice, and he details a range of the so-called behavioural biases, such as the availability and sunk cost biases and loss aversion, to illustrate how public officials may often fail in this regard. Although he alludes briefly to the possible benefits lost from ignoring local information, the greater consistency in decision-making by following general abstract laws, for him, outweighs that concern, which puts him at odds with Chater.

Chater acknowledges that there are inter and intrapersonal preference inconsistencies, which can lead to a single individual expressing mutually incompatible support for different policies. Moreover, he suggests that people may have incorrect beliefs about the consequences of state power, which can lead them to support policies that they later reject.ⁱⁱⁱ In the absence of a negotiating mechanism that avoids one party imposing their preferences on others, these inconsistencies, Chater contends, pose a serious challenge for contractarians.

Chater thus proposes a locally-driven process of agreement that decides on the appropriate limits of the state, one issue at a time, rather than through either a high-level abstract process of agreement, or by simply accepting that existing arrangements, perhaps decided-upon long ago, remain legitimate. For Chater, local, contextual, cultural factors should underpin a social contract, which allows for the possibility of paternalistic intervention, if the “people” decide that the state, in some circumstances, ought to save them from themselves.^{iv}

This paternalistic allowance is likely to be embraced by Sunstein, but here he poses the question of whether people should have a right not to be manipulated.^v Sunstein suggests that a statement or action is manipulative when it undercuts the capacity for people to think reflectively and deliberatively when making their choices, which may be the case for some advertising and marketing strategies that trigger identifiable behavioural biases.

Sunstein proposes that some acts of manipulation can be considered wrong on both Kantian and welfarist grounds. For Kantians, manipulation is not respectful to choosers, as it takes away their agency and undermines their autonomy; for many welfarists, the chooser is the person best placed to determine his or her own welfare, not some outside manipulator, no matter how well-intentioned.^{vi} Sunstein intimates, however, that the scope of unacceptable manipulation is not easily defined, and that many acts that might be considered manipulative by, say, a parent or a lover, enrich lives; but he suggests that the worst “dark patterns” – of behavioural science being used to manipulate people into doing things that they do not want to do – are a form of theft. He contends, therefore, that manipulative acts ought to be considered on a case-by-case basis, and that state regulators should focus on the most harmful cases.^{vii}

Like all other authors in this special section, Boettke and Coyne acknowledge that individuals, from a rational choice perspective, are highly imperfect, and that when they deviate from pure self-interest they are vulnerable to manipulation, deception and opportunism. Resonating with Sunstein, they focus upon the limits that ought to be placed upon the state with respect to the marketing and advertising industry. Boettke and Coyne are, however, circumspect of any claim that advertising ought to be regulated to negate its manipulative tendencies.^{viii} Instead, they argue that these types of market failure can be viewed as steps in an ongoing process of “becoming” that enables imperfect human actors to acquire knowledge, to adjust and to coordinate with one another; that the market facilitates a process that enables people to flourish, rather than being a straightforward mechanism to achieve immediate optimum welfare.

To reiterate, Boettke and Coyne acknowledge that manipulators are omnipresent, but they argue that advertising effects are short-lived and that, ultimately, consumer satisfaction drives purchasing patterns. Their approach thus has a Hayekian – or perhaps even Misesian – flavour. While sharing many of their liberal sentiments, and while opposed to behaviourally-informed paternalistic state intervention, I argue in my article for a more Millian approach to

behavioural public policy. Affording people a great deal of freedom is a perspective that I condone, yet I recognise that, left unchecked, this opens up opportunities for egoistic exploitation. Therefore, in common with some of the remarks made by Sunstein, I contend that there is a legitimate role for the state to regulate against the behavioural influences being used to inform self-interested actions by one party that impose harms on others.

I agree with Boettke and Coyne that advertising can be useful to all parties, with it sometimes used to inform and aid mutual exchange, and serves to get products noticed in a crowded marketplace. I am less certain, however, that all advertising effects are short-lived, or that behavioural-informed manipulative advertising cannot impose substantial and sustained harms on consumers (for example, when used by particular sectors of the financial services and gambling industries). I argue, like Sunstein, that regulators should consider such manipulations on a case-by-case basis, to adjudge whether some threshold of acceptability has been breached. Occasionally, to analogise, one needs a dose of antibiotics to rid oneself of an infection; its' harmful effects will not subside if left alone.

Conclusion

The articles included in this special section touch on some of the most profound questions not just in behavioural public policy, but in public policy in general. Namely, whether state actors should remain psychologically distant from the specific contextual features of their actions so as to limit the inconsistencies in their decision making, or whether we recognise those inconsistencies as inevitable and thus try to form social contracts at a more tailored local level; whether the state curbs manipulative actions by certain interests or whether we accept those tactics as a useful means by which consumers and citizens can learn and develop; whether we monitor and curtail the creeping power of the state to intervene in individual lives, or whether we accept that the state can use the behavioural influences to inform paternalistic interventions in the pursuit of outcomes-based welfare; and whether the state should limit itself to externality concerns, at most. The disagreements embedded in these questions are central to any consideration of the behavioural limits of the state, and they are unlikely to be resolved anytime soon.

References

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Notes

ⁱ Much confusion permeates the field in practice, because a great many people misleadingly align non-paternalistic, externality-focussed interventions with those paternalistic frameworks.

ⁱⁱ Private actors can of course impose huge costs on others, on which more later.

ⁱⁱⁱ Using an illustrative example that currently resonates, Chater refers to an otherwise liberal person's support for an authoritarian measure to tackle a crisis that is unrevoked after the crisis has ended.

^{iv} Whether "paternalistic" interventions that are autonomously chosen by those targeted for behaviour change can indeed be categorised as paternalistic is a big question that will have to be addressed elsewhere.

^v Sunstein holds the view that most soft paternalistic nudge interventions are not manipulative.

^{vi} Sunstein notes that welfarists would allow manipulation if its welfare benefits clearly outweigh its welfare costs, and many non-welfarists will acknowledge that some forms of manipulation are trivial.

^{vii} Sunstein's proposal that regulators in this domain, perhaps at the super-regional or national level, focus on identifying the worst examples of self-interested manipulation on a case-by-case basis is one with which I concur in my article in this issue. This is different to the case-by-case efforts to agree upon localised social contracts, proposed by Chater.

^{viii} Boettke and Coyne suggest that the state has more scope to manipulate citizens than does the marketing industry to manipulate consumers. This is because the concerns of the state are further removed from people's knowledge and interests than the concerns that those same people have in relation to their private economic and social outcomes. There are parallels here with Chater's contention that people often have incorrect beliefs about the consequences of state power. Therefore, the state has more opportunity to manipulate, and indeed in some quarters may be exercising those opportunities to an ever greater extent, as witnessed in recent years by the likes of Donald Trump and Boris Johnson using, in essence, behavioural tactics to gain support from unlikely constituencies.