

Thesis

'A Sartrian view on nudging'

Martijn van de Weerd

363627mw

Mentor: Attilia Ruzzene

Second reader: Paul Schuurman

Quand une fois la liberté a explosé dans une âme d'homme, les Dieux ne peuvent plus rien contre cet homme-là. Sartre, *Les mouches* (1943)

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Chapter 1. Preface

Nudging is a hot topic. It literally means ‘to boost’, where someone’s choice is boosted towards a choice that the one nudging wants. Guiding someone into your intended choice offers huge advantages for governmental policy. Of course, there are not only advantages of nudging, as we will see. But in the current debate, one tends to have very black-and-white thoughts about nudging, where one is either in favor or against nudging. As with many things, it is not that easy. The truth is somewhere in the middle.

Involvement by the recent developments in behavioral science insights and the increased interest in nudging, a report about nudging came out commissioned by the Dutch government called ‘De verleiding weerstaan’ and was written by van Staveren et al. I will refer to this document as ‘the report’. After the foundation of a behavioral insights team in England and even an executive order by Barack Obama about the urge of research into nudging in the end of 2015, nudging is finally on the governmental map in the Netherlands. This is a good decision, because many examples worldwide have proven nudging to be an effective tool in improving governmental policy.

The report written by van Staveren is not as black-and-white as many debates about nudging are, but still leaves open some areas where I do not fully agree. Because the purpose of this report is being a handout for coming policy decisions in the Netherlands about nudging, I want to discuss the areas where I do not fully agree by critically evaluating the report in a philosophical way, in order to contribute to future policy. With the many ethical restrictions on nudging, a philosophical view can offer interesting insights where the report falls short. In this way, a proper guideline can be written for future governmental policy. I will not write this guideline, but I will provide a philosophical view and some useful insights on the debate. Furthermore, I want to bring more nuanced remarks to the conclusions made in the report. This move is made in the conclusion chapter, because it is based on arguments made throughout the thesis.

There is not sufficient space in this paper to evaluate the whole report, so I will mainly focus on the parts where I think the report heads in the wrong direction and by doing this, leaves opportunities unused. In this paper, I intend to provide a stable and clear addition

for decision-making that is based on the report, my own evaluation, practical examples, and by relying to some extent on the work of Jean Paul Sartre.

The work of Sartre and his existentialism (*L'être et le néant*) will help me analyzing this report and hopefully offers interesting insights in the important discussion around nudging. Sartre provides insights about freedom in his fight against determinism. Freedom of choice and his thought on freedom itself, were important and an inspiration for big anti-authoritarian movements in the second half of the 20th century and can hopefully provide useful insights on the report, where freedom and responsibility are important aspects of the discussion about nudging.

The thesis is structured as follows. First, I will explain a little bit about nudging and the arguments against nudging in the current debate that are useful in my analysis of the report. Then, I will discuss the important pro nudging arguments that undermine most of the arguments against nudging and provide further arguments in favor of nudging. I will do this using practical examples and the legacy of Sartre. Finally, in the concluding chapter, I will evaluate the conclusions made in the report drawing on the arguments exposed in chapter two and three. The Dutch report establishes three conclusions. Based on my analysis, I'll argue that the three conclusion drawn in the report are to some extent misguided and need to be rectified: nudge is a much more fruitful and far less threatening policy tool than the current debate and the Dutch report suggest.

Because autonomy is a concept central to the debate about nudge and can be interpreted in many ways, I will try to explain and describe the kind of autonomy I am writing about in this thesis. In general, when the report talks about autonomy, it means the possibility to make a solid choice about the action he or she is going to take. This is the kind of autonomy I am writing about; the possibility and freedom for someone to make a solid choice about what to do, a conscious choice where one is able to take into account different possibilities. I am not writing about the fact that one can choose to be nudged or not. In most of the cases this is not possible, but I am not writing about this 'kind' of autonomy, because this kind of autonomy is not of any concern for my thesis. I am writing about the fact that whether one is nudged or not, the consequence is not a violation of autonomy; because one remains free to choose what action one wants to undertake. It might be the case that I cannot choose to be nudged (I cannot choose to be nudged by a

pee fly' in the middle of an urinal, it is stuck there by someone and I see it while peeing), but I'll still be autonomous, because I still have all the freedom to make a solid choice and there is no coercion involved (I can still pee on the ground next to the urinal if I want).

As said in the preface, nudging literally means to boost. The prevailing definition in the literature about nudging is the definition by Thaler and Sunstein (2012) where they call nudging 'any aspect of design that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives'.

The last two parts are important, excluding nudging from a lot of other governmental tools and will play an important role in my analysis later on. This distinction implies that a fine for example, which can have the same objective as a nudge, but is not a nudge because it changes economic incentives. Nudges are always choice preserving. Fines and penalties are not nudges because they change people's incentives and add costs to situations that were not there before (Selinger, 2011). Nudges can be seen, as Barack Obama writes in his letter, as nonfinancial incentives (<http://www.whitehouse.gov>). Nudges are changes in the decision-making context that take into account cognitive biases and our limited rationality, and help prompt us in subtle ways that often function below the level of our awareness to make decisions that leave us and usually our society better off (Selinger, 2011). It is mainly this 'below the level of our awareness' that makes some people suspicious about nudging.

To get an image of nudging, I will list up some examples of nudging currently successfully used by the Dutch government and some incentives that are not nudging. Repainting roadways with the consequence that people drive less fast is proved to be a successful nudge. Another successful nudge is providing a clean environment where people tend to deal with their environment in a better way and are inclined to throw garbage in a litterbin. Other examples are speed bumps and roundabouts to create a way of driving that benefits society. A way of influencing driving behavior that is not a nudge is for example the obligation to wear a seatbelt. This is not a nudge, because you will receive a fine when caught driving without a seatbelt. Nudges imposed by the Dutch tax authorities are also very effective; post-it on envelopes with the text 'don't forget your declaration' and counting off towards a date instead of just stating the date, are two of them (<http://www.nrc.nl>). These discussed nudges work and benefit society. Even though people already learnt to live with some nudges and recognize their beneficial influence, they resist a more pervasive use of nudges in other kind of matters. This seem paradoxical and nudges can help in even more pressing issues for society such as obesity

, smoking the (over) use of energy, and problems with debt. Smoking costs the Dutch society 30 billion annually and part of these costs can be overcome by nudging (medischcontact.nl).

There are roughly three different kinds of nudges and most kind of nudges are one of these or a derivative (van Staveren et al., 2014)

The first one is the default. This is the most far-reaching variant of nudging. This implies a change in the default option, a change in the choice that is the standard option. This type of nudging uses the tendency of people to maintain the status quo and delay real choices. The normative aspect of this option is that the default option refers to the standard, normal option, to be chosen by people without much risk attached. A famous example is the change of the standard soda option that the mayor of New York wanted to change. When someone orders soda, one has the tendency to order the normal sized one. If you change the capacity of the normal option, this tendency doesn't change despite the change in the amount offered in this option. This works to a certain extent. The mayor of New York wanted to change the standard size, thereby decreasing the amount of soda that people drink. Consider that nothing is prohibited here; people could drink how much they want for the same price, because the cups can be refilled.

Another example of this kind of nudge is the donor opt-in/out, which is currently a hot topic in Dutch politics. In the Netherlands, the standard option concerning donor registration is that a person is not a donor. One can of course become a donor, but only by changing the standard option and thus actively become a registered donor. This system is called 'opt-in'. The 'opt-out' system is the system where one is an organ donor by default. One can easily change the standard option by opting out. In both options, nothing is prohibited or forced upon. We will discuss these two options later on.

The second nudge is the stimulant. This type of nudge works with a reward system. This system works because one tends generally to avoid loss (sunk cost effect) and not always has a clear view on how to interpret costs (mental accounting). A good example of this type of nudge is the payment of a certain subsidy weekly instead of monthly without changing the overall amount of subsidy. In this way, it is easier for people to take in account and interpret costs. There is not always money involved in this type of nudge. Another form of the stimulant that I will refer to later on is social norming. In this case, the social norms are the thing stimulating one's behavior. People tend to behave in ways

that they believe other people approve of and avoid those behaviors they think others disapprove of. This social influence is based on the fundamental human need to be liked and accepted by others (Aarts, 2003). A good example of social norming is the tax authorities in England who add high percentage repayment statistics in the quarter of the receiver to the letters that they send. The repayment of taxpayers increased significantly because of the pressure felt by taxpayers as a consequence of these statistics (trouw.nl). The third type of nudge is called feedback. This nudge differs from a normal way of giving feedback in the fact that the feedback is given in a different time. As a consequent of the timing of the feedback, it is more effective. According to Sunstein (2013), the feedback should be notable and striking especially for the target group. The British tax authorities use this nudge regularly. In the letter sent to tax payers for example, was not only a statement about a possible fine in case of default, but also a picture of the type of car of the owner stating that he or she will also loose this car. The payments tripled consequently (van der Horst, 2013). Nudging seems to be a straight hit and useful addition to the tools of the government.

However, there are some morally problematic aspects in nudging and some practical implications that are used in the debate around nudging. I will now discuss the aspects of nudging that play an important role in the report 'de verleiding weerstaan' (hereafter to be called the report) and are considered as morally problematic. I will then show that several counterarguments can be raised and argue that the benefits of nudge more than compensates its shortcomings.

One argument against nudging in the report concentrates on the already mentioned social norming. It is argued that when a nudge implies social pressure on someone to make a certain decision, this pressure is coercive and there is no possibility of free choice. Tiemijer (2014) argues in the report that when the government succeeds in creating a feeling of social pressure, this can feel very oppressive. A very recent example of this phenomenon is the opposition against test where we are much better able to detect the Down syndrome. The question discussed in Dutch politics is whether this test should be available for every pregnant woman. The opposition argues that when everybody knows in front that his or her child has this syndrome and knows this in a stage where it is still possible to remove the embryo, people get coerced to remove it. The decrease of people

with the Down syndrome will implement a social norm and consequently coerces people to remove the embryo. It is thus argued that when people are nudged into a certain direction, this will impose a certain pressure on others that is coercive, just as the choice of having a baby with Down syndrome creates a social norm/pressure. I will discuss this in the next chapter.

In the Dutch newspaper NRC (March 2015) and in the report is written that an important issue in government policy is that it is difficult for the government to argue where to nudge and where not. What issues are more important than others? Drawing a line here is very difficult. The government has to argue that when they try to get people to eat healthier as a consequence of nudges, why it chooses this policy rather than imposing nudges about smoking cigarettes. The government cannot nudge everywhere so they have to make a choice and must be able to explain this choice. The opponents of nudging argue that, since it is difficult to draw a line about where to nudge, nudging should simply be forbidden.

Another argument of opponents of nudging is that nudges are not always in the interest of citizens and society. We can be nudged in a direction that is not in our best interest. We will be unaware of this direction (because this is how nudges work according to the opponents) and it can be harmful by the time we become aware of this. Furthermore, the interests of individuals and society are possibly conflicting. This has the consequence of the possible subordination or even neglecting of minorities and certain individuals. When certain normative conceptions or views are imposed, the majority will overrule minorities. Besides this, the government has absolutely no claim in deciding whose opinion or interests are less valuable than others. I will discuss these arguments of opponents in regard to the fundamentals of our democratic welfare state.

It is an often-heard argument against nudging that we just do not know enough about it and this is also important in the report. Nudging can have unwanted consequences, where there is a lack of sufficient research (van Staveren et al., 2014). Cultural differences for example, play an important role in the efficiency of nudging. Gender differences can also play an important role. Sound warnings are known to be more effective than visual warnings. In some of the high-end models of BMW, a verbal warning in case of excess speed was introduced. This however, was a female voice. Male drivers seemed to pay little

attention to a female voice that tells them that they were driving too fast (Selinger, 2011). This nudge was said to promote sexism in Germany and is thus a disadvantage of nudging. Because the effects of nudging can differ, there is also a chance of neglecting minorities or certain groups. The lack of sufficient research makes nudging more controversial. Even more, it is difficult to estimate the costs if there are possible unknown side effects.

An argument that is found in the report is that nudging uses biases in our thinking process that we are unaware of. This does not only implies the danger of begin guided in a direction that is not in our best interest as noted before, but also is a violation of our autonomy. This is about autonomy in another sense than will be commonly used in the report, namely that it exploits thinking biases that we are unaware of and in circumstances where we are not aware of being nudged. The 'scary' element, that is, we are unaware of the usage of thinking biases and irrationalities is a violation of our autonomy and basically comes down to manipulation. The government cannot decide what is the right choice for me. When the government nudges, it violates the autonomy, freedom, and even manipulates people.

Important to note here is that when the government uses nudging, it is completely different from other people or companies that nudge. The government has a monopoly on violence and it is a whole different actor in the nudge interaction, because it is more difficult to withdraw from governmental nudging than the nudging from other actors (van Staveren et al., 2014). This is an argument in the report against governmental nudging.

An important factor in governmental policy is transparency. We have the right to know what and why our representatives are doing what they are doing and this is a fundamental right. It is stated in the report that it is this lack of transparency that makes nudges controversial. Transparency makes nudging less productive, whereas nudging in the dark is more effective states Luc Bovens (2009). Once one knows that nudges are at play, the efficacy of nudges decreases. When the government paints the road as if it a speed bump and places a sign besides the road that you are being nudged, people will know that it is not a speed bump and react according to this. It is this need for transparency that almost bans the possibility of effective nudging. A government policy that is not transparent is unimaginable.

Chapter 3. Pro nudging

I will now discuss some important arguments in favor of nudging, where most of these arguments are conflicting with the discussed arguments against nudging. It might be useful to discuss Sartre in a nutshell beforehand; therefore I will already mention him in

this part of the thesis. This is useful, so the arguments in favor of nudging can be invigorated by some parts of Sartre's legacy.

Jean-Paul Charles Eymard Sartre (21/06/1905- 15/04/1980) was a French philosopher and is considered to be one of the founding fathers of the philosophy of existentialism. The catch phrase of this ideology was that existence precedes essence. This implies that because our existence precedes our essence, one cannot refer to circumstances in explaining behavior. It is our existence that precedes it and it is our existence that makes us responsible for our actions. 'We are condemned to be free', is what he says (Sartre, 2002). It is this responsibility that makes the world as it is and makes people human, a *pour-soi*. It is this responsibility that distinguishes us from objects, which lack responsibility in their being. They do not have the choice to become something that they are not. We as humans do have that choice.

Sartre explains this by referring to 'the law of being', where the ontological fundament of being of the *pour-soi* is being itself in the form of presence by itself. Meaning that itself does not coincide with itself, leaving room to escape its identity (Sartre, 2002). Things do not have the opportunity to escape their identity. When a marble rolls over a carpet, it is not the possibility of the marble to change its direction as a consequence of a crease in the carpet. Neither is it a possibility of the carpet to change the direction of the marble. A change in the direction of the marble rolling over the carpet can solely be synthetically determined by a witness as an external understanding. Things/objects, the *en-soi*, have only the possibility to be what they are, they coincide with themselves. It cannot be anything else where this is the case for the *pour-soi* ('law of being'). The nature of the *en-soi* is positivity, it appears in the world with the rise of human reality; the marble changing direction only because we are the witness determining this change (Sartre, 2002).

Sartre gives the example of a paper knife. If a person manufactures a paper knife, he has the concept of the paper knife in his mind before making it. At the same time, this paper knife is an article that can be produced in a certain way and serves a certain purpose, i.e. the purpose the manufacturer has in mind. It serves a definite purpose, for one cannot suppose that a man would produce a paper knife without knowing what it was for (Sartre, 2002). It can for example not be used as a normal knife; the dimensions and the sharpness differ too much from the ones of a normal knife. It can also not be used a scissor. The

mechanism of slicing differs too much from cutting and therefore the paper knife is not suitable to be used as a scissor. This makes the purpose of an en-soi not only definite, but its being is also limited.

The nature of the pour-soi is not positivity as it is the case with objects. Humans are aware of themselves and this is expressed in 'nothingness' or 'not'. This nothingness is in every relation between the nothingness and the objects, the en-soi. In every act of consciousness I am aware of something. When I look at a tree for example, I am not only aware of this tree, but I am also aware that I am not this tree. The nothingness thus comes into our world through the act of consciousness. The en-soi does not have the possibility of nothingness; 'The pour-soi is not and the en-soi cannot be' as Sartre writes in his book (Sartre, 2002). First of all, objects are not aware of themselves. Furthermore, they do not have the possibility to not be themselves as said before. They just are what they are and that is all they will be. That is what makes the en-soi the en-soi, where the pour-soi can be something else, because it has the possibility of not being something (being something else). This comes in the world through the act of consciousness, where humans can be aware of themselves. 'The pour-soi is nothing else than destructing the en-soi (Sartre, 2002). One must be aware that this nothingness is thus something inherent of the being of the pour-soi. In the situation where one can talk about objects, one can use the word not or nothingness in a way where this is not the same as the nothingness inherent in the pour-soi. 'The glass is not the chair' also uses this word, but the fundament of the negation in this phrase is not in the glass or chair. It is thus a different not, it is just a word used to link two objects to each other (Sartre, 2002).

Knowing this part of the intellectual legacy of Sartre, we can look at some arguments in favor of nudging that play an important role in the report and thereby refuting some important arguments against nudging from the report.

One argument against nudging I referred to in the first chapter is social norming. Briefly, this happens when a nudge produces social pressure on someone to make a certain decision, where the free choice does not exist anymore. An example of social norming is the fact that fewer people throw away their waste in the streets, because the streets are clean. This happens because people experience a social norm, namely handling garbage in a way that a clean street will be retained, as a consequence of the sight of the clean

street. As a consequence of this social norm, people think twice before they dump their waste in the streets. The effect does not occur because people do not dare to dump their waste anymore, but people just think over their actions of dumping as a consequence of the clean streets. There is no coercion involved here, because people can still dump their stuff in the streets if they want to. The behavioral insights team in England has installed a trial of social norming. In some neighborhoods, the discount for green products increases with the numbers of neighbors that sign up. The hypothesis imposed by this research is that apart from the effect of the discount itself, it is the awareness that others are installing energy improvements will in itself encourage joining in (Behavioral insights team, 2011). While there is no coercion involved in social norming, it can however be an effective tool for governmental policy.

One can also state that nudging is necessary to compensate for the amount that companies are nudging us, as I will argue in what follows. Commercial companies have been nudging customers since the beginning of marketing. With the growth of marketing to a billion dollar business, commercial companies have been using nudges to an increasing extent. The Decoy effect is a good example of the usage of commercial nudging. When someone wants to subscribe for something, the payment options are ranged in a certain way where the relative relation between those numbers influences the subscriber. Adding a third option can influence the choice a customer makes. Someone that does not really like healthy food is likely to choose the unhealthy option when choosing between a healthy product and an unhealthy product. However, when a third much healthier option than the initial one is added by the government, this person is more likely to choose for the initial healthy option. This option now seems less different concerning healthiness, because of the third option that is much healthier than the initial healthy one (Slaughter, 2011; Ariely, 2008).

Commercial companies often increase brand awareness through unconsciousness biases in videogames, movies, and many other cases. The effects on customers are huge, the amount of money spent in this specific marketing segment is tremendous, and the amount of unconscious mechanisms underlying these processes can at least be compared with nudging by the government (Mackay, 2009). An often-heard argument about this commercial nudging is that this nudging is different from governmental nudging as we saw in the chapter nudging and report. Not the nudging itself, but merely the agent

making use of nudge. The government is another agent because it has for instance a monopoly on violence. This is completely true; the government is a different agent in the nudging field than commercial companies. It might even be the case that commercial nudging is more justifiable because it is less intrusive or less far-reaching than governmental nudging. In the report it is stated that it is easier to not being influenced by commercial nudging than by governmental nudging. Off course, I argue that nudging does not influence your definite choice at all, so whether commercial or governmental influences your opinion or view does not even matter. But there is also no proof given for the statement in the report. The report refers to Frissen's book 'De staat van verschil' (2007) where he argues that the government should not strive for equalization of society, because this is outdated. The argument from the report that it is easier to neglect commercial nudging is randomly stated, not justified in any way and out of a remarkable book.

Either way, I want to defend the view that commercial nudging has detrimental effects on certain minorities and governmental nudging is necessary to protect those groups. Children for instance are less aware of the fact that companies are nudging and are thus more sensitive to nudges and commercials (Gorn, 1982; Boyland, 2011). Despite the fact that nudges cannot be coercive, commercial nudging can have bad effects on children (and other people sensitive to nudges) such as associating candies with happy feelings/pictures. Therefore, children need protection against commercial nudging even more than others do. Governmental nudging can protect against commercial nudging, as we will see.

Sartre would say that it is not necessary to protect people that are more vulnerable to commercial nudges, because everyone is free to make the choices he or she wants. In the end, everyone makes his own choice, thus also the people more vulnerable to nudges. But he does see differences between children and adults and this difference is important here. For Sartre, the difference lies in the fact that an adult knows exactly what to do to be something. He uses the example of a waiter. The adult pretending to be a waiter knows what to do to be a waiter; how to walk, how to hold the tray, what time to wake up. But he or she would never be a waiter in the way a glass is a glass, in the way that objects are. The glass will always be the glass and the adult not always a waiter, as discussed before. The adult plays to be a waiter to realize being a waiter and uses its body for this purpose. Children however, use their body in a different way. 'A child plays with its body to explore

it, the waiter plays with its state to realize it' (Sartre, 2002). Children use their body in a different way and hence are slightly different from adults. This distinction that Sartre makes between groups is also important to make regarding nudging. Children are an important group that are sensitive to nudges and therefore need protection.

Take for example food producer Mars. This company developed games where little children can play with M&M candies, where it is a kind of adventure game. It is known that McDonalds and Red Bull also use games to associate their products with happy feelings or pictures (fd.nl). Children are in general less aware of the commercial intentions and are therefore vulnerable when playing such 'innocent' games. The government must protect these children, because the companies will otherwise continue developing these kinds of games. The government cannot coerce the child to behave in a certain way, because nudges are not coercive, but it can certainly help a child in its behavior, for example by not associating candies with happy feelings.

There is an important role for law here to protect big groups like children to a certain age against these commercial nudges, but there are also smaller groups of people that are more sensitive to nudging like children are, because everyone reacts differently to nudges. As long as not everybody is the same and is not equally sensitive to commercial nudging, a contra force is needed in order to protect groups that are more sensitive. Regulation is a part of the solution, but also governmental nudging can be this contra force. Especially for certain minorities that are oversensitive to some nudges, there is an important role for governments to protect these minorities.

One of the arguments in the report against nudging, namely the possibility of different results of governmental nudging for different groups and the concerns about minorities, can also be used as an argument in favor of nudging as I will explain. The fact that people react differently to nudging is namely also an argument to protect minorities that are more vulnerable to nudges against commercial nudging (as we saw with the example of *children*). My estimation is here however, that the need to protect minorities is much more urgent than the concerns about different results of governmental nudging. I am not the designated person to consider one minority more or less valuable than another, but I wanted to bring in a little nuance here. The simple fact that we are talking about commercial nudging by sometimes stock-listed companies here cannot be neglected.

These kinds of companies want to sell as much as possible, where the government wants to protect people and can use nudges in doing so.

As just described above, the argument of subordination of minorities can also be used in favor of nudging, where minorities have to be protected against commercial nudging. But more importantly, the fact that the government can impose policy in the name of a majority to other people (an argument against nudging by the government) sounds like a fundamental aspect of democracy to me. What is described in the report, but neglected in the conclusion of the report, is the fact that the democratic state is also an instrument to achieve certain individual and collective goals. Behavior that is not in line with these goals must therefore be corrected. I regard this correction as legitimate if it is based on a parliamentary decision. I certainly understand that the more controversial a solution is for the electorate, the more difficult it is to get a parliamentary majority. However, the fact that such a majority is reached is sufficient to render these actions legitimate. It might be the case that it can be controversial, but that is a consideration that has to be taken in account when voting for a majority in parliament (Tiemeijer, 2014).

It is thus the very fundament of our democratic state that enables us to impose certain laws (and thus laws about nudging and nudges) and this argument is also important in obtaining a different view on the aspect of the nudging government. Whether the government is able to distinguish different causes and can make the call to nudge somewhere and not nudging in other places or about other topics (one of the counter arguments previously mentioned) is a matter of efficiency. The debate should be about whether the government is allowed to make these calls and nudges at all. It is the fundament of our democratic state that can answer this question. It is namely the case that when a majority in the parliament wants the government to nudge, the government is allowed to do so. Opponents should be aware of this.

Furthermore, nudging is a very cheap way of guiding behavior. Where it can be very costly to inform people about their behavior and about consequences of their behavior, a simple nudge is very effective. Compare the costs of actively informing men to a degree where men will decide to piss in the middle of an urinal to the costs of gluing a sticker of the well-known 'pee fly' in the middle of an urinal. There are cases where reported cleaning bills decrease up to 80 percent (Lawton, 2013). It might be the case that it is difficult to

estimate the exact costs of nudging for the government, but this does not necessarily make it as controversial as opponents would like us to believe. Strictly speaking, a lot of costs that the government bears are slightly different than estimated beforehand, but this does not make these costs controversial. In the Netherlands, there is a special day where the differences regarding the estimated and the real costs of the government are being discussed (Financieel Jaarverslag van het Rijk, 2014). These costs become controversial when the exact costs differ much from the estimated costs and become more controversial when this is combined with these costs being high. Surely, I admit that it is possible to have nudging costs differ from the estimations. But the fact that nudging costs much less than other ways to guide someone's behavior into the same direction, is an additional reason to regard it as a promising policy tool once its legitimacy has been established. In fact, one could argue about the difficulties of discussing certain issues based on prices. It is not easy to impose a certain price, for example on a healthy society. The government can also impose a certain policy, despite the fact that it is cost inefficient, because of the fact that this policy is justified, or has a symbolic significance.

Another argument in favor of nudging is that it is simply our wish to be nudged and therefore not a violation of our autonomy. One could argue that we do often want to be nudged in order to be autonomous in the sense of autonomy as being able to make solid choices yourself. This might seem a contradictory statement, but is not. Consider that in the current society we live in, we have to make choices all the time. There is plenty of scientific research about the fact that once we have more choice possibilities, one does not experience this as more freedom, but as a burden (Schwartz, 2004). We often like or maybe can benefit from the fact that the government and others limit these choice options. Take for example a walk through the supermarket. If the supermarket did not pick some best bread options for us to buy, but would let the options grow so as to satisfy everyone's preferences, the number of options would be countless. Furthermore, if the supermarket would not nudge our choices while having a range of bread-types that comprehend countless preferences, shopping would become very difficult. An example of a nudge would be placing the top 10 popular bread types on eye-height. This nudge will not coerce people to buy the eye-height bread, but help people making a choice. A simple visit to the supermarket in order to buy some bread, would become a tough job with

thousands of different bread types without nudges. All these types of bread seem attractive to some, but an overabundance of options may well lead to adverse consequences. Possible effects include a decrease in the motivation to choose, to commit to a choice, or to make any choice at all (Iyengar, 2004; 2000). This phenomenon has been referred to as 'choice overload' (Diehl, 2010), or 'over choice effect' (Gourville, 2005). As a consequence of a choice overload, our capacity of making a solid choice, and hence our autonomy, would be severely diminished exactly because of our limited cognitive capacity. To be able to make a solid choice yourself, to be able to be autonomous, it should be easier to make a choice. Otherwise we are not able to make a solid choice between all the choice options, to be autonomous. We get a decrease in motivation to choose or cannot commit to a choice as a consequence of the overload of choices. The same applies to the government. The government not influencing our choices would also result in an overload of choices that would have adverse consequences. One can argue thus, than not restricting or guiding our choices is a violation of our autonomy (in the sense of being able to make choices).

According to Sartre, the fact that one is always free and can make choices is also a burden for us. It is thus not only the fact that too many options can result in adverse consequences; also the fact that we can make all these choices is a burden. This can be seen as a precursor of the choice overload theory. 'The very presence of a constant responsibility in constantly having a choice, being able to make a choice, is heavy for us. We would gladly avoid this (Groot, 2015). When we try to escape this freedom, we decay in 'bad faith' according to Sartre (Sartre, 2002).

We can argue, as we have seen, that nudging could be necessary to be autonomous in the sense of being able to make a solid choice, but let's neglect this. The violation of our autonomy as described in chapter two is an important argument against nudging. But is this justified?

Autonomy comes from the Greek word *autonomía*, where it meant self-regulation. The word autonomy does not mean self-regulation anymore anno 2016, but is merely about having the freedom to determine one's own actions (the definition used in this paper). Sartre would say that we do have the freedom to determine our own actions and we will always have this freedom. 'Freedom is a permanent structure of human existence' (Sartre, 2002). We can do whatever we want and decide to do whatever we want, but actions have

consequences. I cannot drive 300 kilometer per hour on the highway if I want to without receiving a fine, or without loosing control of the wheel and crashing somewhere. I cannot drive while the traffic light is red without receiving a fine, and it is prohibited to walk naked in the streets. However, if I am willing to receive a fine or go to jail, I can do these things. The decision to accept (the risk of) having consequences of your actions is also completely your own decision. We are thus fully autonomous in the sense that we can decide to do anything we want if we decide that a risk of a possible consequence of our actions is worth taking. We are thus autonomous, but the government is trying to guide our decisions by fines and other tools. We want to decide what we want to do or what we do not want to do, and the government tries to influence these decisions by imposing consequences to our actions. It is in fact the case that we take into account the possibility of a fine while making the decision whether we want to drive while the traffic light is red or not. We consider the pros (earlier at work) and cons (possible fine or dangerous to other people and yourself) when driving while the traffic light is red and then we make the decision ourselves. The government trying to influence our decisions can be a good thing, and unambiguously so if the government action has been legitimized throughout a democratic process. Even if the government tries to nudge you in the direction of something really bad like it did in Germany and occupied countries before and during the second World War, you are responsible yourself for making that choice that choice once you gave your consent to its program and actions. No one is forcing you to agree on anti-Semitism views in the first place, so you are also for the consequences of these views once you joined or agreed with them. People are free in essence according to Sartre, and we cannot run away from this responsibility. Not even in extreme situations like this example, you are always free to say no or not agree with the occupier. This was a very important message of Sartre in post war France.

The most important reason to guide our actions towards the ones desirable for society is that some actions might be harmful to others in a broad context. Physically, financially, but also mentally. You cannot go running around the streets naked, because this will harm people in different ways. Therefore, it is the choice of the government to guide our choices by attaching consequences to some actions and we should be happy that they do so. Or do we want everybody to go running around in the streets naked if they like to do so?

Government thus interferes in our lives, but not only through fines. Look at the earlier used example of the clean street. While the government in the Netherlands will not give

you a fine for throwing your chewing gum on the street, it will be a good thing if people get nudged not to throw the chewing gum. In this way, cleaning costs can be hugely reduced with positive consequences for the whole society.

Even more, we are fine with the government interfering in our lives and guiding decisions by more far-reaching restrictions compared to nudging. The fines I talked about for driving when the traffic light is red are sky-high! So why do we not want the government to nudge our choices when it benefits society? Why are we fine with getting sky-high fines, but not with governmental nudging? This seems irrational.

We probably do not want the government to nudge, because we find it scary that it makes use of things that we are unaware of, such as biases in our thinking processes that we do not fully control. But this restriction does not harm your autonomy at all, where the report argues that it possibly does (van Staveren et al., 2014). It does not harm our autonomy in the sense that we still have the freedom to determine one's own actions, or behavior.

By definition, nudges leave open all possibilities, all choice options. The choice set remains intact. There is not a single example where it does not leave all the options open or is coercive because this is not how nudge works. Nudge only consists in tinkering with the choice architecture, that is, in re-arranging somehow the set of available options without any restrictions on the set itself. If you do not want to pee on the fly in the urinal, go ahead. If you do not want to file your tax return in time, go ahead. If you want to drink million liters of Cola in the MacDonald's tomorrow, go ahead. But if the government can decrease the amount of Cola that people drink every day in the MacDonald's by reducing the cup-size of default Cola, then it will benefit society enormously. The fact that the government does not change the choice options and leaves open the possibility to drink for example as much cola as you want, means that it does not harm autonomy or manipulates us in the sense of not being able to make a choice yourself. In the end, you can drive 300 kilometer per hour on the highway if you want to.

Moreover, consider that nudge does not operate in the vacuum. It intervenes where a choice architecture is already in place and the available options are already arranged somehow either deliberately or unintentionally. The point is that human behavior is already being guided, though mostly in directions that do not benefits the individual at all. Consider the Cola example. Someone, more or less deliberately, decided that the 'normal' size is the big one. Or, yet, someone already decided that candies will be displayed in the cafeteria where people are more likely to pick them. Thus, when nudging, the government

intervenes in a setting that already guides people behavior in a given direction. What the government does is trying to softly change that direction when it is detrimental to the individual well being.

In sum, nudging will therefore never leave us with a fragmented self, as Bovens (2009) argues. We are human and we decide for ourselves how much Cola we want to drink. We always have a choice, nudges just helps us making that choice. It can help to make a certain choice where there are possible too many choices to make a solid choice (choice overload), or nudges can try to guide our behavior leaving open all choice options. Sartre says that the fact that we as humans always have this freedom 'makes the responsibility of the pour-soi overwhelming' (Sartre, 2002). The fact that we have the possibility to make these choices makes us human. We therefore differ from objects that do not have this choice. Sartre says that 'we grasp ourselves only as a choice that we are making. But the freedom is simply the fact that this choice is unconditionally' (Sartre, 2002). It is realistic to add that a choice might become less an unconditional choice if there are things at stake like your own safety. Think of the choice of not giving up your wallet when you get robbed. But strictly speaking you always have the freedom to make a choice, 'Freedom is chained in the world as a free project in the direction of my goals'. One can even overcome every choice that is a threat by committing suicide or deserting. 'These ultimate possibilities belong to the possibilities that should always be taken in account if we have to face a specific situation' (Sartre, 2002). One is strictly speaking always free to make a choice. I can imagine that these are the ultimate solutions and one would prefer to avoid these options, but it indicates that one should not be too facile in the fact that our autonomy is easily limited.

Last useful note in this chapter is about the topic of discussions concerning nudging. People often do approve that the government is allowed to shape society in a way that they think benefits society by helping people making the right choice. Think about education in schools, about eating healthy food and the effect of drinking too much soda on health. When someone accepts this, but does not want the government to decide how much soda a cup must contain, one is thus not discussing whether the government is allowed to shape the world in this way. With the education about healthy lifestyle, the government also intervenes in a way that is obviously shaping conditions for optimal

choices. Discussions about nudging should be merely about the practical possibility for nudges to work cost efficiently and things like this.

Chapter 4. Conclusions

It is shortsighted to discuss the moral restrictions on nudging by referring to a violation of autonomy and freedom and disregard the disadvantage that freedom and autonomy can also bear. These concepts are often preferred to a healthy society or decreasing spillover costs, without sufficient attention to their disadvantages. In the current globalizing and emancipating world, we as individuals are just small spills in the big issues of our time. The freedom and autonomy that we have can be stifling. Harry Kunnemann talks about 'past the fat me', Gijs van Oenen (2014) calls it emancipatory fatigue, and Sartre already said that this freedom can work stifling. Sartre says that humans flee in 'the néant' as a consequence of the burden of freedom. It is not a foregone conclusion to place

autonomy and freedom above other things. I just wanted to mention this before continuing to the conclusions in the report.

Unreflected emotion plays a major role in the current debate concerning nudging and also slightly in this report. The starting point of the writer(s) in the report is not correct to start with. Significant is the phrase that the challenge for the government is to use nudges in a way that they will not make choices for citizens (van Staveren et al., 2014). Critical point is, as we have seen, that nudges will never make this choice for us. We are not robots, we are humans and we make choices ourselves. As Sartre said, we should take the responsibility of us making choices. For me, this should be the starting point in the discussion and the report.

In the report three conclusions are drawn. The first is that *politics and policymakers could prevent undesirable forms of paternalism and guarantee the freedom of citizens*. In the paper of Thaler and Sunstein (2003), paternalism is seen as a policy that is selected with the goal of influencing the choices of affected parties in a way that will make those parties better off. Better off of course, in the eyes of the government selecting the policy. If no coercion is involved, it can be seen as libertarian paternalism. Freedom of citizens is always guaranteed as we have seen, because all choice options remain available if the government nudges. In nudging therefore, paternalism is always libertarian paternalism (Thaler, 2003). How can influencing the choices in someone's best interest be bad if there is not coercion involved? This will only be the case if someone's best interest is evaluated wrongly by the party influencing the choices; the government. I think the government is better in guarding our interests than for example commercial parties influencing our choices, but also very often than ourselves. We need to have more faith in the capabilities and good intentions of the government! It is a simple fact that we can conclude that humans have restricted rationality or self-knowledge based on behavioral science. It is as a matter of fact that this restricted rationality or predicative rationality (van Staveren et al., 2014) makes nudges work. Even if you have no faith in the capability of the government in recognizing your best interest, there is no problem because you are not being forced. There is thus no need in preventing undesirable forms of paternalism or preventing a violation of the freedom of citizens, because this does not happen.

Second conclusion from the report is that *the government can prevent manipulation and guarantee an opt-out by using nudges to let citizens reflect on things and being transparent about nudging and the way nudging works*. I fully agree with the fact that it is a huge advantage if nudges make citizens reflect on things, but there is no way in which nudging manipulates as we have seen. The arguments in the report for manipulation is that it is not always possible to make a choice and because of the invisibility of the nudge itself. I think it is this scary element 'invisibility' along with the responsibility that comes with making your own choices that frightens people and makes them more resistant against nudging. This invisible element is scary, because people do not really know how this nudging works in our brains. As we saw before, the fact that someone cannot choose to be nudged is not to be overcome. People get even more frightened as a consequence of the responsibility that comes with the awareness that despite these nudges, we can still make our own choices without consequences within the framework of law. Responsibility is a burden as Sartre writes.

Being transparent about nudging is somewhat complicated. There is a good possibility that nudges do not work as well once we are transparent as when we nudge in the dark (Bovens, 2009). First of all, I have big faith in the democratic state I live in and have faith in the government doing things in a way that is best for the general cause. For me personally, being transparent is not always necessary, especially when it is obvious that someone's best interest is based on a huge misunderstanding and someone is helped by a push in the right direction. Take for example an imaginary world where two people refuse blood transfusion that they badly need. The first guy refuses the transfusion because he wrongly believes that he will get AIDS from the blood. The second guy refuses because it violates his religious beliefs. And suppose that in this imaginary world people can change attitude when they are being told that this blood comes from a specific animal that can scientifically not contain AIDS but is usable for humans. Would you tell these persons that this blood comes from this specific animal in order to help the first person overcoming his wrongly formed beliefs? If the first person changes his wrong beliefs and the second person will not change his religious beliefs and change attitude towards blood transfusion? Is it his own responsibility if the second person changes his attitude despite his religious beliefs and agrees with the blood transfusion? I think so (and Sartre would agree). However, it must be clear that especially concerning the second question it is arguable that this is ok. Nudging is far less intrusive and far-reaching than this example.

Third conclusion of the report is that *it is possible to prevent a technocratic government and guarantee democratic core-values by discussing the working and contemplated goals of nudging in public*. This is very clever, especially with a contentious subject as nudging. A good thing in the report is that it is made clear that there are some snags connected with nudging and I am of course not talking about the discussed irrationalities in this report like autonomy and the lack of taking responsibility for your own actions.

First of all, and this is the main valid argument against nudging, is the fact that there is not sufficient research done on the topic how nudges work and their effects. Especially when nudging is involved in topics where health or safety is involved like traffic. Stripes on the road pretending that there is a speed bump will consequently be followed by a slowdown in traffic speed. But there are some research papers indicating that when someone has consequently driven over the same stripes over and over again and knows that these stripes are not speed bumps, he or she will eventually increase speed (Selinger, 2011). This is of course a development that needs much more research. It is important to have solid research about nudging. Nudging can be a very effective instrument, but the effect of nudging differs per country and culture. Even more, effects can differ per person, where some nudges work and other do not (<http://economist.com>). It is for example known that the nudge of formative feedback works contra effective in groups with low intelligence. This topic needs to be more investigated and there are more comparable researches indicating comparable results.

Secondly, transparency. An excellent starting point could be the publicity principle mentioned by the philosopher Rawls (Rawls, 1999; van Staveren et al., 2014). Politicians and policymakers should be transparent in discussions in for example society and/or parliament about policy. It is not needed though to be transparent in the moment the nudge takes place. 'You are being nudged' signs along the roads at the start of a traffic roundabout would not be necessary and can decrease the effect of a particular nudge. But as been said, it should be subject of discussion and publicly accessible for people to find out why and where nudges take place. This will not only increase the support in society for nudging, but also prevents the government from becoming an institution that rules at great distance from the people they represent. This transparency along with an increased flow of information about irrationalities that can be expected will ultimately decrease the opponents of nudging. Eventually, nudging will be seen as a necessary and realistic forms

of help and legitimize governmental intervention. This, along with a supervisor where people can complain about nudging and gain information about the nudging by the government, is a democratic condition for government policy. These two things are important in prevailing nudging to become technocratic policy without sufficient attention for the values and opinions of the common people. In this way, the Netherlands could catch up with countries where people are less scared about nudging like the UK or Spain. The Netherlands could become a country with an opt-out for organ donation (like the UK and Spain). A country where people take responsibility for the freedom to choose an opt-out if they do not want to be an organ donor. If the norm is that everybody is donor and everybody knows this and it is unbelievably easy to become a non-donor by just a click on the button, then the 'negative consequences' of such a system (small effort to change donor status) does compensate for the increase in organs and the advantages of society (Rodriguez-Arias, 2010). Counter arguments like 'the government cannot choose about my organ donation' are completely irrelevant for the simple fact that you have an opt-out. It simply remains your own choice. With the opt-out accepted in the second chamber of the Netherlands in September 2016, more discussion on this topic can be expected. The British system where one must choose an option of being a donor or not when applying for a driving license can be a good start towards the donor opt-out system, if it will not pass the first chamber. This rule is expected to bring an extra one million donors over the course of the parliament (BIT) in England. This will open the path for a society where citizens are willing to overcome their fear for the sake of society. Or as Sartre said; 'Freedom grasps itself in the fear' (Sartre, 2002). When people overcome (irrational) fear of nudging, they will see that one always has the freedom to choose and determine their own actions.

I just wrote that along with a certain form of transparency, an increased flow of information about nudging will make it less controversial in the long run and this is a firm belief of me. The fact that the imposing nudges are controversial can be altered by sufficient education about nudging. Nowadays, it is controversial because people are not aware of what nudging exactly is; they just see it as a scary coercive thing that manipulates you in an unconscious way. Through education, people will realize that it not coercing and that it just a very helpful tool for the government in guiding behavior. The opponents can also decrease over time, where this was the case in many more controversial decisions in

the past. One striking example is the obligation to wear seatbelts. I mention this example because the arguments back in the days against this obligation were similar as current arguments against nudging. It was an attack on people's autonomy, where people should be able to decide for themselves if they want to wear a seatbelt or not. Counter argument and the most important reason to impose this obligating law was also the fact that people not wearing seatbelts causes damage for third parties, mainly in costs. The mandatory seatbelt wearing can thus be justified by reference to the public purse, for the benefit of the greater good (Ogus, 2004). It might be the case that this law was very much opposed in society because it was a direct attack on people's autonomy, but nowadays it is much less controversial. These kinds of laws become less opposed over time. (Feinberg, 1982). This example is even more striking, whereas you will receive a fine if you get caught not wearing a seatbelt, financial incentives are not playing a role in nudging.

As long as we live in a society where not everyone wants and does the same things, governmental intervention is necessary. Nudging is nothing more than a useful tool.

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