

Nudging towards Rationality?

*A Foucauldian Analysis of the Use of Power
and Government Intervention*

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1 Introduction

As citizens are confronted with an increasing amount of individual decisions of great complexity within their lives, modern welfare states often consider to relieve people of this burden and to intervene paternalistically. The concept of “libertarian paternalism”, introduced by economist Richard Thaler and legal scholar Cass Sunstein in an article (Thaler & Sunstein 2003) and in their prominent book “Nudge: Improving decisions about health, wealth, and happiness” (Thaler & Sunstein 2008) invigorated the academic debate on the necessity and the boundaries of paternalistic interventions by public authorities (Henderson 2014: 268). Within their work they argue that, in situations of decision, humans are subject to multiple biases possibly causing them to act against their own preferences. In consequence, it is proposed to promote rational decisions, both seemingly beneficial for the individual citizen and the welfare state, via the deliberate modification of choice architecture, namely via “nudges” (Thaler & Sunstein 2008: 3). Thaler and Sunstein’s nudge theory promoting the application of insights of behavioural economics onto public policy has received a lot of attention in the academic sphere, since, due to its interdisciplinary approach, scholars of numerous areas of research (Baron 2010: 224) have taken interest in it.

This paper aims at analysing the way of exercising power that is associated with the technique of nudging by applying a Foucauldian framework and by examining the corresponding literature on nudging. There are good reasons to regard the emergence of nudging as a major change within the nature of state interventions. In contrast to formerly existent, more direct state interventions, nudging does not simply aim to e.g. impose costs to produce a specific behaviour, but does intend to influence inner thought processes and human rationality. If citizens are being nudged towards more rational behaviour, it has to be examined whose rationality it is that is being promoted or even enforced. In case nudging indeed is capable of subliminally altering human rationality according to the preferences of policy-makers or the state, this technique will bear considerable ramifications: on the one side it would prove itself to be a technique of great interest for policy-makers due to its extent of regulative power, on the other side it would be seen as a practice associated with severe ethical objections. As it will be pointed out more in detail, nudging already is becoming a popular technique, applied in numerous policy fields such as customer policy, environmental policy or health policy. As nudging

as a government technique is becoming increasingly popular, a question that draws particular interest is:

How do nudges exercise power and how can this be associated with the profound process of state intervention? Is nudging as a policy becoming a hegemonic practice?

In order to conduct such an examination, Michel Foucault's work on governmentality proves itself suitable as the analytical framework, since it investigates both the way in which governments proceed to create citizens best suited to fulfil those government's policies and the way human rationality is subliminally influenced and even shaped. Governmentality refers to the act of a government "educating desires and configuring habits, aspirations and beliefs" (Li 2007: 275) in order to determine the behaviour of citizens while maintaining their subjective perception of autonomy and self-serving choices. Since Foucault's work offers an unique view on such indirect and even subliminal modes of government, it is self-evident that his framework and his concepts are most valuable tools in order to assess the way in which nudges do exercise power. Therefore, Foucauldian concepts such as governmentality, biopower, subjectivation and discourse will be used to analyse the way in which nudges do exercise power and the way government intervenes with its citizens' choices.

But how can the mode of operation of nudges be assessed? A comprehensive examination of the practical application of nudge theory within government policies would be an unsuitable approach to answer these questions. First, the tremendous amount of different nudges applied within policy would not allow the identification of common features and traits. Second, this research centres on cognitive processes, notions of liberty, rationality and autonomy as well as on ulterior strategies of government, which cannot be studied by examining applications of nudge theory within reality. Instead, an analysis of Thaler and Sunstein's theory of nudging and the corresponding literature on nudging will provide valuable insights regarding the exercise of power via nudging and the nature of government intervention. By not only focussing on the original publication on nudge theory, but incorporating the academic discussion on nudging, research will be able to grasp a wider range of interpretations and views regarding this technique. This research will systematically analyse the scientific literature on nudging in order to provide a Foucauldian view on this new technique of government intervention.

Furthermore this literature review will contribute to answering the question whether nudging as a policy technique is becoming hegemonic within the sphere of policy-making. Acting on the assumption that a predominant view regarding nudging within the scientific sphere shapes the application of nudging within the sphere of actual policy-making, a possible emerging hegemony of nudging within the field of policy techniques may be identified by examining the academic debate on nudging. Are publications regarding nudging characterized by a certain consensus or predominant judgement? How is the rationality of humans and the issue of interfering with the individual freedom of choice evaluated? In order to detect possible prevailing opinions, views and statements, the most influential publications concerning nudging will be analysed. These ‘most influential’ publications will be accessed via the academic online search engine “Google Scholar” and will be selected according to their rank within this search engine.

This paper will be structured as follows: after briefly depicting examples of the advancing application of nudging within the political sphere, the theoretical context of nudging and nudge theory itself, as proposed by Thaler and Sunstein’s “Nudge: Improving decisions about health, wealth, and happiness” (Thaler & Sunstein 2008), will be outlined. Then the main analytical Foucauldian tools and concepts for the analysis will be presented. After these descriptive and theoretical sections the methodology of the subsequent systematized literature review on nudging will be stated, in order to then conduct aforesaid analysis. The analysis attempts to examine the way in which nudges do exercise power, the way nudges are associated with the profound process of state intervention and whether nudging is becoming a hegemonic practice.

2 Political Relevance of Nudging

Even though the main publication of Thaler and Sunstein has only been published less than ten years ago (Thaler & Sunstein 2008), nudging already has been established in the sphere of actual policy-making. As the mode of operation of single nudges will be depicted in part 3.2 in more detail, this section will focus on perceivable efforts of states and organisations to promote the application and to further research on nudging.

The establishment of a multiplicity of correspondent governmental institutions and units in Western industrial nations may be interpreted as an impact of nudge theory. Not only the formation of the “Behavioural Insights Team” (BIT) in 2010 in Great Britain (Ly & Soman 2013: 13), but also the recruitment of behavioural scientists in British, American,

French and German ministries and agencies indicate a growing interest of public policy-makers to broaden their range of policy-instruments (Oullier 2013). Especially the BIT enjoys a popular position within the sphere of policy makers, since its activities resulted in cost savings for the British government of over £300 million compared to the £30 million budget of the team (Ly & Soman 2013: 13). The author Sunstein himself serves as another example of the impact of nudge theory, since after his publication he has been appointed as administrator of the US-American Office of Information and Regulatory Affairs being directly responsible for the transmission of his insights into public policy (Ly & Soman 2013: 14).

The application of such methods is not limited to national agencies, but can as well be found in European institutions such as the European Commission's Directorate General for Health and Consumers (Oullier 2013). Nudging proves to be increasingly prevalent within the EU as for example policies like the introduction of "Key Information Documents", supporting future private investors by providing information about complex finance products, are executed (Ly & Soman 2013: 18). The literature on nudging is of special interest for the European Union, since the future of the implication of nudging policies depends on the way nudging is perceived by the respective decision-makers within administration and within parliament. Being confronted with a growing population, increasing societal costs for social and medical services and budgetary constraints almost any political system may find interest in a technique that promises beneficial behavioural change without noteworthy costs.

3 Theoretical framework

3.1 Theoretical Context of "Nudge Theory"

Since statements and the literature on nudging cannot be interpreted without examining the respective context, the research field of paternalism will be addressed before illustrating Thaler and Sunstein's theory. As the debate on the distinctive features of "hard", "soft" or "libertarian" paternalism already is being carried out to a great extent (Henderson 2014: 268), only a short differentiation between the concepts will be given within this paper. In general paternalism can be understood as a concept designating "intervention in a person's liberty of action which should serve that person's good, but takes place against or without her will" (Fateh-Moghadam & Gutmann 2014: 384). However such

interventions can differ in severity and in the extent of intrusion into individual autonomy. Therefore, this concept is differentiated into “hard” or “non-autonomy-oriented paternalism”, that holds restrictions of individual autonomy legitimate, and “soft” or “autonomy-oriented paternalism”, that recognizes individual autonomy in decisions and aspires to preserve it (Fateh-Moghadam & Gutmann: 385). This differentiation is of controversial nature as it is contested how individual autonomy can be measured at all, to what extent individual autonomy is restricted by soft paternalism and whether it can be qualified as paternalism at all.

In addition to these labels of paternalism, the seemingly contradictory term of “libertarian paternalism” was introduced as a variation of soft paternalism (Thaler & Sunstein 2003). As a combination of libertarianism, focussing on freedom of choice and the preservation of liberty, and paternalism, advocating the legitimacy of interventions in citizen autonomy for the individual and general good, libertarian paternalism can be understood as a “relatively weak, soft and nonintrusive type of paternalism” (Thaler & Sunstein 2008: 5), without any explicit blocking of options of the individual¹. However, it is debatable whether libertarian paternalism automatically leads to a decrease in government intervention, as it may be interpreted as a two-sided criticism of modern governments (Baron 2010: 225), decreasing intervention when replacing other forms of paternalism yet increasing intervention when creating nudges in new fields. But what are the assumptions that may lead to Thaler & Sunstein’s proposal of libertarian paternalism and moreover to the concept of nudging?

3.2 The Theory of Nudging

Within their works on libertarian paternalism Thaler and Sunstein avert from the popular neoclassical assumption of the “homo oeconomicus” (Thaler & Sunstein 2008: 7), being characterised by fixed preferences, full information, self-interest, reactivity to restrictions, utility maximization and therefore unlimited rationality (Dehling & Schubert 2011: 31). Yet, instead of relying on given alternative ideas of man, such as the “homo sociologicus” (Dehling & Schubert 2011: 31) the authors create an own idea of man

¹ Thus “Libertarian Paternalism” is characterized by an even minor intensity of intervention than other forms of soft paternalism such as “classic soft paternalism”, intervening in order to prevent non-voluntary self-inflicted harm, “procedural paternalism”, ending its intervention as soon as it is known that the individual is acting autonomously and “endangerment-paternalism”, preventing possible self-inflicted harm (Fateh-Moghadam & Gutmann 2014: 385).

with a division between “Econs” and “Humans”. These terms no longer refer to characters of heuristic fiction but to actual individuals within the real world. An individual may qualify as an econ, if they consistently perform “unbiased forecasts” and are not “systematically wrong” regarding their decisions (Thaler & Sunstein 2008: 7). Humans in contrast are defined by their tendency to make “biased” forecasts and decisions.

But what is this differentiation based on? Thaler & Sunstein’s distinction between econs and humans clearly focuses on the cognitive and rational capacity of individuals. At this point they integrate psychological research by presenting two different cognitive systems, namely the “Automatic System”, based on intuition and uncontrolled, effortless mental activity, and the “Reflective System”, predicated on controlled efforts and slow deductive thinking (Thaler & Sunstein 2008: 20). While econs only rely on their reflective system, humans often exclusively confide in their automatic system, since the effort of always using the reflective system is not compatible with living a common life. Deliberating in order to come to a fully rational decision can be time consuming and impossible in certain situations. Therefore, the majority of individuals will in the majority of situations act like a human.

Frequently relying on the automatic system bears certain consequences. Even though the intuition of the automatic system often seems to promise quick and also good decisions and forecasts, it is as well prone to systematic errors, such as “Anchoring”, “Availability”, “Representativeness”, “Overconfidence”, “Loss Aversion”, “Status Quo Bias” and “Framing” (Thaler & Sunstein 2008: 23-37). Furthermore several social biases accrue, namely “Doing What Others Do / Herding” or the “Spotlight Effect” (Thaler & Sunstein 2008: 55-65). Anchoring describes the process of humans trying to assess an unknown value by comparing it with a known value and then adjusting it (Thaler & Sunstein 2008: 23). However humans tend to choose inappropriate anchors and to adjust at a nearly random scale, resulting in poor estimations. The heuristic of availability describes the phenomenon of humans assessing “the likelihood of risks by asking how readily examples come to mind” (Thaler & Sunstein 2008: 25), leading to a severely biased evaluation of risk and in consequence to irrational risk-related behaviour. Irrational behaviour can also be a result of humans being prone to identify patterns in random outcomes and to make illogical conclusions based on these patterns, a bias which is called representativeness (Thaler & Sunstein 2008: 27). Even though being an amicable trait, optimism or overconfidence may overrule human rationality, especially in issues like self-assessment, and may lead to serious misestimations (Thaler & Sunstein

2008: 31). The intuitively reproducible bias that Thaler and Sunstein describe as loss aversion refers to the tendency of humans to dislike losses more than to like gains, hinting at a nonlinear relationship regarding personal welfare (Thaler & Sunstein 2008: 33). One of the most influential biases the authors present is the status quo bias, which can easily be explained as humans’ “tendency to stick with their current situation” (Thaler & Sunstein 2008: 34). The last relevant bias that will be depicted is the phenomenon of framing. Through different wordings and ways of conveying information humans can be influenced towards a certain idea or choice (Thaler & Sunstein 2008: 36). In contrast to these biases entrenched in individual processes, social biases are rooted in the interaction of individuals within groups. Herding / Doing What Others Do refers to the tendency of humans to defy evidence of their own senses due to the influence of other individuals within a group, based on a simple desire for conformity and to not have to face the disapproval of the group (Thaler & Sunstein 2008: 56). The spotlight effect describes the insight that humans, due to an excessive estimation of the degree of other people’s attention, may tend towards conformist behaviour if they have the feeling of being observed (Thaler & Sunstein 2008: 60).

Interestingly, Thaler and Sunstein’s distinction does not only attempt to depict a general idea of man, but also specifies different ways of thinking and decision-making dependent on cognitive capacities and the given conditions. This environment of choice is coined by the authors with the term “Choice Architecture”, describing the “context in which people make decisions” (Thaler & Sunstein 2008: 3). Choice architects are persons deliberately modifying the context in which humans make decisions in order to achieve certain results. According to the authors the main aim of these modifications, which they call nudges, is to create a choice architecture that allows humans to rely on their intuition instead of punishing decisions not based on reflective thinking (Thaler & Sunstein 2008: 22).

“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.” (Thaler & Sunstein 2008: 6)

A nudge therefore will be defined by following criteria:

- (A) Aspect of choice architecture
- (B) Predictable alteration of behaviour
- (C) No exclusion of options
- (D) No significant changes regarding economic incentives
- (E) No high costs imposed by intervention
- (F) Assured possibility to avoid intervention

Such a nudge is helpful in a multiplicity of specific situations which I will illustrate with the aid of a few examples. First to mention, the authors claim that humans are prone to “dynamically inconsistent behaviour” (Thaler & Sunstein 2008: 41). This trait shows itself in situations in which individual preferences deviate from the preferences existent prior to the situation, e.g. a self-imposed plan of dieting and the actual behaviour of overeating at a buffet². However, humans are not left defenceless against these flaws: they can apply internal self-control strategies like mental restrictions on the use of money. Such a self-control strategy could be for example the use of different money jars for specific spending purposes (Thaler & Sunstein 2008: 50).

The mode of operation of nudges may be compared to the logic of these internal self-control strategies one applies more or less successfully to him-/herself. Nudges are designed to both nullify negative effects of cognitive biases and to serve as external self-control strategies. At this point it has to be clarified when and how to use a nudge. According to Thaler and Sunstein nudges are in general necessary if conditions for a rational decision are not met. If benefits and costs of a choice are separated in time, if choices are complex, if there is no opportunity of ‘practicing’ certain choices, if there is no feedback or if the individual’s preferences are unclear, such a situation arises (Thaler & Sunstein 2008: 73-76)³. Since, based on the authors’ assumptions, the majority of people usually acts human and is prone to irrational behaviour, prices will no longer indicate quality and humans will be making bad deals (Thaler & Sunstein 2008: 78).

² Another trait often resulting in decisions dissenting from individual preferences is the phenomenon of “mindless choosing”, which can be detected in seemingly trivial issues like eating snacks, leading to choices made in some kind of “automatic pilot” mode (Thaler & Sunstein 2008: 43).

³ The free market competition as a solution to these problems, as a liberal advocate may propose, is however opposed by the authors, who claim that if there are too many customers acting irrational, the ‘cleansing power’ of the market will dissolve (Thaler & Sunstein 2008: 78).

Due to the inaptitude of the market to assist humans with their irrationality, the authors expect choice architects to help them by promoting appropriate choice architecture within the public and private sector. In order to depict the mode of operation of nudges, the most frequently used types will be presented.

How can human behaviour be influenced via the modification of choice architecture? Principally, nudges have human biases in mind and try to exploit them in favour of the citizen's benefit. The establishment of a default option, as possibly the most popular nudge, aims at profiting from the status quo bias and from loss aversion. When structuring choices like e.g. designs of retirement plans, the installation of a default as the most common and recommended option has an astounding influence on the choices humans make (Thaler & Sunstein 2008: 83). Due to the fear of committing a mistake leading to costs and due to a general inertia, humans tend to stick with the default instead of making an own alternative choice. In addition to recommending an option, the default determines a standard choice that is applied in case the individual does not express a preference⁴. Installing a default especially helps humans in situations in which there are complex choices. The nudge of giving feedback is designed to provide humans the opportunity to learn from their decisions (Thaler & Sunstein 2008: 90), by directly administering information about a prior choice. Another nudge related to the provision of information is the technique of mapping choices. As the authors claim that humans often are unable to link choices to possible welfare outcomes, a more thorough depiction of the consequences of the decision may resolve the question which option would serve the individual's welfare the best (Thaler & Sunstein 2008: 91).

3.3 Foucauldian analytical concepts

In general this paper aims at analysing the nudge concept and the corresponding literature within a Foucauldian framework. This framework is chosen as Foucault's work comprises a multiplicity of ideas regarding the often subliminal mode of operation of power, the rationality of the state and its interventions and the government of a population that may be associated with nudges. Furthermore, his concept of "discourse" may offer both insights regarding the mode of operation of social nudges and may allow the assessment of predominant opinions within a certain academic sphere. As the extent of

⁴ The opposite of constructing a default would be the model of required choice (Thaler & Sunstein 2008: 86), in which humans were being obliged to make a decision.

Foucault's work on governmentality, the state and power is enormous, this overview will outline only the most important concepts and publications.

3.3.1 Governmentality and Biopower

According to Foucault, governmentality is understood as the

“[...] ensemble formed by institutions, procedures, analyses and reflections, calculations and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument.” (Sennelart 2007: 108).

Even though this definition appears to be complex, it is comprehensible provided that the several single elements are clarified. As these elements of governmentality cannot be understood isolated from each other, there will first be a short general outline of governmentality before the concepts are explained in detail.

As the term may already hint at, the relevant actor of this concept is the government, however in a holistic interpretation, including all of its institutions and procedures that citizens are subjected to. These citizens, as a group, are defined as a population, being the source of the productive strength of the state that yet has to be “efficiently trained, divided up, distributed and fixed” (Sennelart 2007: 69). This rationality of the state, focusing on the improvement of the wealth of the nation, the growth of the population and its subsistence, is called political economy (Vasilache 2014: 30). The technical instrument of the apparatus of security can be illustrated as an intervention of the state, that does not openly prohibit certain unwanted behaviour, but strongly discourages it via the use of “adjacent, detective, medical and psychological techniques” while encouraging beneficial behaviour (Sennelart 2007: 6).

How can this concept of governmentality be put into a wider context of government intervention? Foucault offers a thorough explanation of how the way in which states do exercise power has developed. Within a historical analogy of the emergence and transformation of states too extensive to elaborate within this paper, Foucault differentiated between power within an archaic system, disciplinary power within a modern system and the power of control within a contemporary system (Sennelart 2007: 6). While the

first system incorporates prohibitions by the state often accompanied with heavy punishment in order to achieve a deterrent effect, the modern system relies on means of discipline such as a pre-given code for crime-punishment combination and mechanisms of surveillance and coercion (Sennelart 2007: 6).

Since a restriction is clearly given in case of prohibitions, it has to be questioned whether these interventions are performed for the citizen's welfare, against or even without their will. According to Foucault, disciplinary mechanisms of modern nation states are justified by the rationality of the "reason of state" (Peters 2006: 38) with the aim of promoting its central object of rule, the population and its wealth. This administration of the population is described with the term of "biopower", defined as the

"set of mechanisms which the basic biological features of the human species became the object of a political strategy, of a general strategy of power; or, (...), how, (...), modern Western societies took on board the fundamental fact that human beings are a species." (Sennelart 2007: 1).

Biopower is not only exercised by the state via the use of disciplinary mechanisms, but also by using the contemporary system and its apparatuses of security (Sennelart 2007: 6). Foucault explains that, by using this third system, the state does complement his existing legal and juridical interventions with these apparatuses of security created upon statistics and a cost-benefit calculation of these measures and aimed at "surveillance, diagnosis, and the possible transformation of individuals" (Sennelart 2007: 5). Contrary to mechanisms of discipline, these interventions are developed to impact citizens less visible and less openly restrictive and therefore do contain a smaller potential for conflict and rejection, as they "do not attempt, at least not primarily or in a fundamental way, to make use of a relationship of obedience (...)" (Sennelart 2007: 9, 65). Instead of exogenously regulating social or economic processes via legislation, apparatuses of security try to grasp phenomena at the level of their "nature" or "effective reality" (Sennelart 2007: 44), in order to then use elements of their composition to regulate them. Moreover, Foucault highlights the centrifugal character of the system of security, ever expanding into new fields apart from economics and social policy, such as psychology, behaviour or consumption (Sennelart 2007: 44).

3.3.2 *Subjectivation, Discourse and Power*

When observing the way in which the state exercises power, Foucault's framework makes it indispensable to explore the nature of man, namely of the citizen to be influenced. According to Foucault, external influence, namely power, does not affect pre-given subjects, but initially creates subjects within a comprehensive and continuous process of constitution, the “subjectivation” (Flügel-Martinsen 2014: 52). Contrary to the instrumental definition of power as “the ability of an individual or group to achieve their own goals or aims when others are trying to prevent them from realising them” provided by Weber (Flügel-Martinsen 2014: 45), and to the definition of power as a constructive force and a space for human opportunities provided by Arendt (Flügel-Martinsen 2014: 46), Foucault does constitute power combining aspects of repression and constitution. Power therefore does not subdue existent subjects, but creates such subjects by subordinating them, associating subjectivation and submission. Foucault does not attempt to distinguish characteristics of power in general, but proposes different mechanisms through which power may be exercised (Sennelart 2007: 2). One important aspect of power is that it is separated from the term of total control or coercion. According to him, the term of power means

“that ‘the other’ (the one over whom power is exercised) be thoroughly recognized and maintained to the very end as a person who acts; and that, faced with a relation of power, a whole field of responses, reactions, results, and possible inventions may open up.” (Foucault (1982) cited by Li (2007): 276).

Therefore, power can only be exercised, if the individual does still have the capacity to act. This is a crucial notion, since within the analysis it has to be examined whether this capacity is existent or not.

Power may also be exercised via the process of discourse. Within this work discourses are understood as systems of statements, in which statements are subject to the rules of the very system they originate from (Bevc 2007: 296). Even though multiple discourses exist within thematic fields, there usually is one predominant discourse suppressing other forms of interpretation leading to sanctions for nonconformist behaviour and statements (Bevc 2007: 297). Discourses are structured and formed by preceding social prac-

tices, namely the formation of subjects, of terms, of the speaker activity, and of strategies, deciding which statement is going to be possible or authorized (Bevc 2007: 298). Within this discourse, humans as subjects act as elements of a greater context of rules, yet participating in the process and constituting objects of knowledge (Bevc 2007: 299). Since discourses are “complex communicative events” (Van Dijk 2005: 356), not only the content of contributions, but also the structures of text and the use of a specific terminology have to be regarded. Publications that do not share specific basic assumptions or a certain vocabulary may be discarded as not relevant before even being taken serious. Terminology may also strengthen the confirmability of certain arguments, for example by depicting techniques with a well-meaning or a pejorative vocabulary.

3.3.3 Rationality, Autonomy and Liberty

When referring to the terms of rationality, autonomy and liberty, these concepts are neither originally nor exclusively associated with the theoretician Foucault, yet they are implicitly dealt with to a noteworthy extent within his works. With respect to the question regarding the use of power they are of utmost importance, since the research question implies research on these concepts. If nudging does influence choices subliminally, but does it consistent with the citizens’ genuine preferences, it will be questionable whether the individual’s rationality is improved, cherished or even overruled. It has to be examined whose rationality it is that is being enforced or promoted, the rationality of the individual or of the state. Or is the state even able to shape individual rationality and preferences in a way that would enforce its own rationality onto the individual citizen? If the state was capable of such an exercise of power, would it still be appropriate to speak of individual autonomy or freedom of choice? Also, would nudging, contrary to what is stated by its libertarian paternalist originators Thaler and Sunstein, restrict individual liberties, even provided that there is no exclusion of choices?

Before illustrating academic views on these terms, it is helpful to provide a basic understanding of these concepts in order to be able to identify specific deviating interpretations. In common use the term rationality is described as the “quality of being agreeable to reason” (Merriam-Webster 2015a) while being rational means being “in accordance with reason or logic” (Oxford Dictionaries 2015a). Autonomy is usually described as “the state of existing or acting separately from others” (Merriam-Webster 2015b) and furthermore as the “right or condition of self-government” (Oxford Dictionaries 2015b).

Liberty is customarily understood as “the state of being free within society from oppressive restrictions imposed by authority on one’s behaviour or political views” (Oxford Dictionaries 2015c). Alternatively, and more generally speaking, liberty describes “the state or condition of people who are able to act and speak freely” (Merriam-Webster 2015c).

Rationality within Foucauldian theory is not a concept limited to individual citizens. There furthermore is a rationality of the state, a governmental rationality, that has an own structure of preferences that is pursued. As mentioned earlier, the main preferences of a rationally acting government are the improvement of the wealth of the nation, the growth of the population and its subsistence; a logic that is summarized by the term of the political economy. Governmental rationality also includes a critical element, namely the assumption that an excess of government activity aimed at pursuing these goals may have counterproductive effects (Foucault 2004: 29). Thus, governmental rationality always has to be understood as a form of self-limiting rationality, closely linked to the term of liberalism, that may be defined as the acknowledgement of the necessity of the limitation of government intervention (Foucault 2004: 40).

Due to his concept of the subjectivation of the individual via exogenous influences, the libertarian notion of an individual with a perfectly autonomous decision-making process is ruled out. In general the Foucauldian framework of governmentality does not pay much attention to the specific terms of autonomy and liberty. Yet Foucault opines that the preservation or enhancement of individual liberty via non-oppressive government interventions, or “politics of *laisser-faire*” (Sennelart 2007: 41), is pursued in modern national states. Rather than speaking of liberty, he mentions the ideology of liberalism, namely “acting so that reality develops, goes its way, and follows its own course according to the laws, principles, and mechanisms of reality itself” (Sennelart 2007: 48). Freedom itself is not seen as an inalienable human value, but as “nothing else but the correlative of the deployment of apparatuses of security” (Sennelart 2007: 48), therefore only as a means of effective government. This liberty, that ought to be preserved by apparatuses of security, however is only of a mere formal nature and not to be compared to more substantial notions of liberty that incorporate the idea of autonomy.

4 Research design

The objective of this previous section was to provide a contextual basis for the following analysis by outlining the topic of nudging and relevant concepts of Foucauldian theory, stating the starting point of the systematized review of the scientific literature on the implications of nudging regarding the exercise of power, the topic of state intervention and hegemony (Swartz-Shea & Yanow 2012: 35).

Since not only Thaler and Sunstein but, in reaction to their publication, many other scholars engaged in working on nudge theory, both the original work and the corresponding literature on nudging has to be investigated in order to assess the exercise of power via nudges and the paradigm of government intervention. The systematized literature review also aims at identifying possible “discursive formations” within the scientific community. A “discursive formation” is created if statements regularly repeat certain assumptions or thoughts and is characterized by a certain degree of stability” (Bevc 2007: 299)⁵. As regarding the topic of nudging the possible impact of the scientific debate and the points of application of the theory have been identified, it will be the task of this research to further define and characterize the assumptions, views and argumentative chains conveyed via the prominent scientific literature on nudging.

There are good reasons for investigating academic contributions of researchers regarding the concept of nudging. As within the Foucauldian framework it is assumed that discourse does constitute society, statements articulated on the micro-level by individual researchers may have an impact on the macro-level of political power exercised via government policies. This transfer from the micro- to the macro- level is in this case achieved via the link between a group and its members (Van Dijk 2005: 354). If not only individual researchers, but a broad majority of the scientific community concerned with nudging does support certain views and assumptions or the concept itself in general, the group may exercise a hegemonic power and these views may be transferred to other fields such as to the work of governmental public policy-makers. The control of the scientific discourse by a predominant group of researchers would represent a noteworthy resource of power that can be used for the manipulation of people’s thoughts and

⁵ Within this study such a discursive formation will be understood as a, throughout the selected sources, repeatedly emerging assumption, argument or conclusion concerning the way in which nudges do exercise power. These assumptions, arguments or conclusions can be defined as statements being “things said that privilege particular ways of seeing and codify certain practices (Graham 2005: 10).

thus for the dispersion of a certain political agenda (Van Dijk 2005: 355). By shaping discourse via social power, a dominant group of researchers may indirectly implement its political view into “laws, rules, norms, habits and even a quite general consensus” (Van Dijk 2005: 355). This perspective on power is compatible with Foucault’s conception within which “power was developed and exercised through the control of knowledge and that powerful interests created and maintained particular discourses to minimize any challenge from others also interested in these forms of knowledge” (Vromen 2010: 264).

As earlier stated this research utilizes the concepts of liberty, autonomy and rationality as search terms for its acquisition of sources. This choice was made since statements regarding these concepts will offer insights leading to an answer to the research question concerning the way nudges do exercise power and the way states do perform interventions. For numerous reasons, these terms of rationality, autonomy and liberty are of great importance for the analysis of the debate on nudging. First, it has to be examined what kind of state or government is engaged in nudging, whether it is a neutral institution or whether it does have an own rationality and own preferences. Within this context, the aforementioned concept of biopower is relevant, since it may be argued that the final ambitions for a state to apply nudging techniques may resemble those of biopower. Secondly, it has to be investigated to what extent the behaviour of the individual citizen is influenced and whether there is any room left for notions of autonomy and liberty. With respect to exogenous influences, the process of altering choice architecture may lead to a subjectivation of individuals via nudges. It is questionable whether the nudged individual still maintains his/her capacity to act. Third, within a broader context of government intervention, it has to be examined whether nudging is a technique that may complement already existent restrictive measures or whether it entirely substitutes hard government intervention and becomes a hegemonic practice. This question coincides with the already depicted area of conflict between hard paternalism, soft paternalism, libertarian paternalism and libertarianism.

Therefore, Thaler and Sunstein’s publication and its academic responses will be examined via a systematized literature review of these critiques, examining the way of how nudges do exercise power and the way in which the discussion on nudging is characterized. With regard to the latter question, it has to be examined whether the literature on nudging including the initial work of Thaler and Sunstein exhibits a certain contingency regarding basic assumptions, argumentative chains and ethical judgements. Applied to

the topic of nudging it will be examined how the predominant discourse on this topic is characterized. This logic of inquiry may be described as “abductive reasoning” (Swartz-Shea & Yanow 2012: 27), conducting qualitative research in a more circular-spiral pattern around a certain puzzle or phenomenon (Swartz-Shea & Yanow 2012: 28).

As this research does not claim to encompass the given literature in its totality, sources are selected on the basis of their relevancy within the academic sphere. This relevancy is measured with the help of the academic search engine “Google Scholar. Multiple searches for keywords like “Nudge”, “Rationality” or “Liberty”⁶ are performed and best ranking articles are selected based on the ranking algorithm of Google Scholar, incorporating “where it was published, who it was written by, as well as how often and how recently it has been cited in other scholarly literature” (Google Scholar 2015). Even though Google Scholar is often accused of not offering accurate search limitation features (Shultz 2007: 444) it will serve as the basis of the source selection since it represents the most easily accessible entry providing a balanced method of ranking publications and access to an abundance of free documents (Schultz 2007: 442).

Thaler and Sunstein’s “Nudge: Improving decisions about health, wealth, and happiness” (Thaler & Sunstein 2008) and the other selected sources⁷ will be analysed regarding the exercise of power via nudging, the topic of government intervention and the possible hegemony of nudging. Even though the search terms only incorporate the concepts of rationality, autonomy and liberty, it has to be clarified that the aforementioned categories of biopower, subjectivation and apparatuses of security will be dealt with as well within the analysis. The latter terms however are not of frequent use within the prominent literature on nudging, therefore using those as search terms in order to assess sources would not be reasonable.

This research also aims at elaborating predominant assumptions and opinions within the discourse on nudging. However, this examination should be seen as a non-linear and more open-ended process since interpretive research draws on “field engagements that

⁶ Searches on Google Scholar were performed with the search words “Nudge” and “Nudging” as well as with the combination of words “Nudge+Rationality”, “Nudge+Liberty”, “Nudging+Rationality”, “Nudging+Liberty”, “Nudging+Autonomy” and “Nudge+Autonomy”. The search also was limited on the timespan of 2008-2015 since 2008, as the year within which the concept of *Nudging* was initially stated, serves as the starting point of the debate. In order to select the most relevant contributions, the first five highest ranked search results were analysed. The non-consideration sources with a primarily medicinal, environmental or agricultural focus or of sources with less than 10 citations is applied in order to exclude non-relevant contributions from research. The search results and rules are depicted within Appendix A.

⁷ The selected sources are depicted within a list in Annex B. In addition to Thaler and Sunstein’s foundational publication, 13 other publications were selected based on the earlier explained selection method.

the researcher cannot fully anticipate or know ahead of time” (Swartz-Shea & Yanow 2012: 34).

5 Systematized Literature Review

This research centres on the exercise of power via nudges and the topic of government intervention as well as on the views of the academic sphere regarding its ethical permissibility. Within the thirteen selected academic replies, authors evaluate Thaler and Sunstein’s concepts of nudging and libertarian paternalism, debating the assumptions the theory is based upon, interpreting the mode of operation of nudges and often delivering a judgement regarding their permissibility. As all sources (excluding the original work on nudging) of this literature review were published reaction to Thaler and Sunstein’s publication, the views conveyed within these publications naturally deviate from the original theory, since a total consent would not lead to any publication at all. The majority of analysed articles and books therefore can be interpreted as criticism towards the proposed technique and its theory of libertarian paternalism. However several contributions are written as reactions to formerly published replies and may even be interpreted as texts supporting or defending Thaler and Sunstein’s concept. As will be clarified within the subsequent analysis, the question of approval or disapproval heavily depends on the respective opinion regarding the way nudges do exercise power. As a comprehensive depiction of all mentioned statements, arguments, terms and deductions would neither be quantitatively possible nor reveal any given discursive formation or predominant opinion, publications sharing common lines of reasoning will be assigned to two main groups according to common lines of argumentation. The views of these groups on Thaler and Sunstein’s concept of nudging will first be depicted, then their findings will be set into context with the Foucauldian framework.

5.1 Libertarian Critique

As Thaler and Sunstein’s “Nudge: Improving decisions about health, wealth, and happiness” (Thaler & Sunstein 2008) attempts to promote an alternative way of policy, combining elements of paternalism and libertarianism to what they call libertarian paternalism, supporters of both ideological camps are addressed to an extraordinary extent.

Especially supporters of libertarianism provide the largest share of the selected publications, as I classified eight out of thirteen publications as libertarian critiques of nudging. Apart from the earlier mentioned short definition of libertarianism, provided by Thaler and Sunstein, the term libertarianism can be described as “a political philosophy that affirms the rights of individuals to liberty, to acquire, keep, and exchange their holdings, and considers the protection of individual rights the primary role for the state” (SEP 2015). Another trait of libertarianism to be highlighted is a focus on negative liberty as the “absence of forcible interference from other agents when one attempts to do things” (SEP 2015). Based on this definition and within the context of nudging one may already estimate the way criticism is directed by this group. Nudging is interpreted numerous times as being too paternalistic and furthermore restrictive regarding individual liberty.

This judgement is based on numerous reasons. To begin with, basic assumptions of Thaler and Sunstein regarding rationality are questioned. Instead of postulating a systematically bounded rationality of citizens, the authors Hausmann and Welch speak of “imperfections of human decision-making abilities” (Hausmann & Welch 2010: 124) and “flaws in human decision-making” (Hausmann & Welch 2010: 128). These expressions can be interpreted as a rejection of the twofold differentiation of on the one side humans with a limited rationality and on the other side econs with full rationality. Alternatively, it is argued that biases do not lead to deviations from a pre-existent “true preferences” (Amir & Lobel 2008: 2107), but actually may be “rational determinants of choice” (Hausmann & Welch 2010: 124). Within this context, decisions made according to true preferences are understood as fully rational choices performed without biases, but with “perfect information, unimpaired cognitive ability and complete self-control” (Sugden 2009: 370). Sugden concludes that there are no such true preferences, since all of these conditions mentioned afore do not have objective definitions (Sugden 2009: 370). Consequently, Thaler and Sunstein’s concept of the econ as a rational agent again is challenged, as within reality it would not be possible to universally define what individuals would want, given full rationality. Another advance against Thaler and Sunstein’s assumption of humans and econs is expressed by Oliver, who is questioning whether the human “limitations on attention, information, cognitive ability and self-control” are absent from an econ’s “deliberative decision making” (Oliver 2013: 10).

An alternative trail of thought, averting from constructing “true preferences” is offered via the “axiom of revealed preferences – the proposition that people’s actions usually

reflect their preferences” (Amir & Lobel 2008: 2121). Instead of speculating about possible underlying preference structures, policy-makers should simply accept performed choices as expressions of individuals’ interests, as “the best approximation of what a person really wants, (...) may in fact be given by what they choose” (Oliver 2013: 11). Another line of reasoning is stating that it is, in general and especially for choice architects who are human themselves, not possible to perceive such true interests, even if those would exist, claiming that Thaler and Sunstein do “provide very little guidance about how she [the choice architect] is to discover those judgements” (Sugden 2009: 367). Oliver puts into question the way choice architects could possibly assess deliberate decisions of individuals, if these didn’t even get to deliberate themselves (Oliver 2013: 3), stressing the importance of the process leading to rational decisions. The authors are also accused of failing to show “that those people are making bad choices *as judged by themselves*” (Sugden 2009: 371). It is argued that since there is no econ as a rational agent within every individual, attempts of policy-makers to assess decisions of such an entity do inevitably lead to policies “substitut[ing] the policy maker’s judgment of what is good for that of the agent” (Hausmann & Welch 2010: 129).

With this claim one does arrive at the formerly given definition of paternalism, being an “intervention in a person’s liberty of action which should serve that person’s good, but takes place against or without her will” (Fateh-Moghadam & Gutmann 2014: 384). If an individual for example does value the freedom to make mistakes, a nudge dissuading him/her from this behaviour would express a general preference of rationality over the freedom of choice (Amir & Lobel 2008: 2120). Supporters of Thaler and Sunstein’s nudging concept are accused of promoting rationality as a worthy, if not the highest cause itself, not considering that the preferences nudged persons may deviate from that view (Amir & Lobel 2008: 2120).

Concerning the topic of liberty, libertarian critique does show a variety of differing views, ranging from the claim that nudges necessarily do infringe upon liberty to the statement that they may, but do not have to violate liberty. It is stated that, for example, the setting of defaults itself would convey a certain normative message (Amir & Lobel 2008: 2121). This view is supported by Desai, declaring that defaults “are generally designed to match what the choice architects believe to be the choice most people would have made if they made a choice at all” (Desai 2011: 271)⁸. Nudges such as “Save More

⁸ However his claim that the lack of willpower, that Thaler and Sunstein ascribe to humans, is primarily a phenomenon of “Americans over the past twenty to twenty-five years” (Desai 2011: 274) seems

Tomorrow” (Thaler & Sunstein 2008: 103) may be accused of encouraging a clear and subjective opinion regarding the question of how money should be invested.

Such an influence is not referred to as open coercion, but via the term of manipulation, defined as a technique that “does not interfere with a person’s options” but instead “perverts the way that person reaches decisions, forms preferences or adopts goals” (Wilkinson 2013: 344). But not every exogenous influence on the decision-making process is regarded as manipulation: to qualify as manipulation, an intervention has to involve an intentional actor causing or encouraging a decision leading to a process within which rational persons would not want to make decisions (Wilkinson 2013: 345). Instead of Thaler and Sunstein’s benign expression of nudge, Wilkinson and other authors of the group of libertarian critics use the negatively connoted term of manipulation, an influence that “subverts and insults a person’s autonomous decision-making” (Wilkinson 2013: 345), depicting a strong rejection of such state-led interventions.

Nudges are yet not necessarily seen as manipulative: if there is a genuine escape clause, that is, “if the nudger sincerely wants the targets not to act in the nudged way if the nudging is unsuitable for them” (Wilkinson 2013: 354), the nudge is not manipulative. However the suppression of biases is seen sceptically, as it is suspected that this suppression might have unintended effects that may result in “a myriad of new predictable and unpredictable rational and irrational behaviours” (Amir & Lobel 2008: 2116). It has to be added that some authors such as Hausmann and Welch are aware of the pejorative connotation and therefore use the term “shaping” (Hausmann & Welch 2010: 129) analogously.

The term autonomy, frequently used as a more far-reaching category than the mere freedom of choice, is defined by Hausman and Welch as “the control an individual has over his or her own evaluations and choices” (Hausmann & Welch 2010: 128). The term of autonomy differs within this context from the notion of liberty, as it is not only merely concerned with the preservation of a set of choices, but with the nature of the decision-making process itself. If behaviour change is induced with any means but rational persuasion, for example by subliminally conveying information, “their autonomy is diminished” (Hausmann & Welch 2010: 128). With a terminology close to Foucault, Bovens asserts that “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” (Bovens 2009: 4). Being subject

unsustainable, since it is only supported by data on past U.S. savings rates. Savings rates do not seem to be a suitable foundation for making claims about human willpower.

to a foreign influence or power is seen very critical, as nudging may bear a possible long-term effect of infantilisation (Bovens 2009: 11). Within an environment that increasingly rules out the possibility of making mistakes, it is no longer necessary to either engage in deliberation or to train the own capacity of judgement. The development of an individual's character itself is considered endangered, as non-autonomous preference changes via nudges, induced by choice architects, may lead to an incoherent preference structure. Bovens coins this phenomenon as the creation of persons with a “fragmented self”, “incapable of taking their lives in their own hands” (Bovens 2009: 14). Interestingly, Bovens acknowledges that via the influence of structural factors such as choice architecture it is possible to undermine autonomous decision making.

5.2 Anti-Libertarian / Deliberative Critique

The second group to be analysed, consisting of the remaining five authors, may be described as “Anti-Libertarian” or “Deliberative”. They explicitly negate the line of reasoning offered in libertarian critiques, concluding either with a stance for the concept of nudging or with a different critique against it, often including notions of empowerment. Regarding human rationality, these critics partly acknowledge Thaler and Sunstein’s assumptions regarding the nature of man, stating that “humans regularly make systematic and predictable errors of judgement” (Smith & McPherson 2009: 324). However, this judgement is not only oriented towards the maximization of individual welfare, but may also incorporate moral considerations (Smith & McPherson 2009: 327). Contrary to the libertarian authors in the section depicted afore, Smith and McPherson take a different stance and claim that certain nudges may actually promote individual liberty. Dismissing a merely negative definition of liberty, they differentiate between formal liberty, being the “absence of formal constraints on an individual’s options”, and substantive liberty, describing the “opportunity for autonomous reflection” (Smith & McPherson 2009: 330), proposing a more positive and more far-reaching definition. Individuals therefore have substantial liberty “if they have the time (...) to reflect on their goals and aspirations and engage in practical reasoning and action toward the same (Smith & McPherson 2009: 330). In order for a nudge to be promoting substantive liberty, it has to effectively enhance people’s “opportunity or capability of autonomous reflection” (Smith & McPherson 2009: 331). Thus, nudges have to actually empower individuals, encouraging autonomous deliberation. If a nudge however only focuses on

increasing an individual's welfare without such an empowering element, it is evaluated as a paternalistic restriction of liberty.

Saghai falls in line with the claim that nudges may preserve liberty, yet he decides to use the more narrow term of "freedom of choice" (Saghai 2013: 488). In order to do so, nudges do not only need to preserve the pre-existent set of choices, but also have to fulfil the "condition of substantial non-control" (Saghai 2013: 489). This condition is fulfilled if the nudge is effortlessly or at least easily resistible, thus being a technique that counteracts biases but still does not include coercion. If this resistibility however is not given, the nudge is considered to be controlling and thus restricting individual freedom of choice. In other words, if this condition of substantial non-control was not given, a nudge would no longer only coercing power, but full control or direct coercion.

Tom Goodwin's publication "Why We Should Reject Nudge" (Goodwin 2012) displays a critique that does deny Thaler and Sunstein's nudging concept its liberty-preserving character. He directly contests the libertarian conception of negative freedom and highlights its negligence of matters such as human "lack of awareness, false consciousness, repression or other internal factors of this kind" (Goodwin 2012: 88). This disregard leads to a conception of freedom that does not consider the element of empowerment. Without such an element, nudges are deemed to be manipulative attempts to exploit biased decision-making (Goodwin 2012: 86).

Included within the second group is a faction of authors with a highly optimistic view regarding the nature of man and an alternative concept to nudge, namely "Think" (John & Smith 2009). They act on the assumption of knowledge-hungry individuals, eager to learn to process more information and attempting to enhance their own capacity of reflection and judgement (John et al. 2013: 19). Given enough time, information and an appropriate environment, citizens may come to the optimal judgement for themselves and others (John & Smith 2009: 11). Hence, empowering individuals in order to enable them to make good decisions by themselves is the main goal of the "Think" strategy. For deliberative critics, the process of decision-making has a noteworthy impact on the final choice. Regarding the topic of rationality they state that instead of focusing on pre-existent preferences, the way in which preferences are shaped in processes should be at the centre of attention (John & Smith 2009: 12). Instead of aiming to restrict the amount of foreign influences on the person making a decision, deliberative views on nudging propose the promotion of deliberation between citizens, since "democratic deliberation has the capacity to lessen the problem of bounded rationality" (John & Smith 2009: 13).

Autonomy is not interpreted as the absence of foreign influences, but via an “educational effect” initiated via contact and deliberation with other individuals (John et al. 2013: 364). Contrary to the assumption of fixed preferences the deliberative critics illustrate a “transformation of (often ill-informed) preferences via mutually supported deliberation” (John et al. 2013: 364).

5.3 Contextualisation of the Results

In order to put the results gained from the analysis of the academic replies to Thaler and Sunstein’s publication into context, the questions derived from the theoretical framework, namely Foucault’s conception of power, government intervention and hegemony will be answered.

I. How do nudges exercise power?

Within their publication, Thaler and Sunstein frequently mention the “gentle power of nudges” (Thaler & Sunstein 2008: 8) or “nudging power” (Thaler & Sunstein 2008: 35), without providing a definition of this power themselves. Yet their definition of a nudge offers insights into the kind of power the authors have contemplated. Nudges may not exclude options, impose high costs, or change significantly economic incentives. Furthermore there always has to be a possibility of avoiding the intervention.

Given these conditions, nudges do not qualify as disciplinary techniques associated with an archaic or modern system of state intervention, since nudges are neither based on severe punishment as a deterrent nor on codified relations of crime and punishment. Nudges rather qualify as apparatuses of security of the contemporary system. This is because, based on previously performed considerations or statistics, choice architects implement nudges such as defaults in order to transform the choice environment of individuals (Sennelart 2007: 5). Instead of dictating ideological objectives based on fictitious assumptions such as the homo oeconomicus, nudges claim to work with the humans as they are existent within the real world, or as Foucault expresses it “the effective reality” (Sennelart 2007: 44).

How do nudges, as apparatuses of security, in consequence exercise power? According to Foucault, power incorporates elements of both repression and constitution, both subjectivation and submission. Thaler and Sunstein would reject acknowledging a process

of subjectivation within nudging, as they assume that within every individual there is an econ and that therefore an objective rationality exists and just has to be triggered. Instead of assuming numerous ways and directions in which the rationality of an individual can be shaped, they only acknowledge a linear axis of humans and econs, along which rationality can be upgraded.

Libertarian critics however contest this assumption of the existence of true preferences or an objectively existent rationality and go in line with Foucault's concept of subjectivation, claiming that an individual's rationality is influenced via nudging. However, throughout the libertarian replies to Thaler and Sunstein's publication, it is only denied that there is an objectively existent human rationality. They do not attempt to explain the nature of human rationality in a structuralist way, as Foucault does, or in any other way. It may be argued that libertarian critique is particularly based on the assumptions of Parson's theory of social action, interpreting the actions of individuals mainly as a "process in the actor-situation system which has motivational significance to the individual actor" (Sociology-Guide 2015). Highlighting voluntaristic instead of structural factors, libertarian critics promote an image of individual rationality as a kind of black box, since there is no noteworthy account on the way these voluntarily made decisions are made.

Another criterion of the definition of a nudge is the trait of leading to a predictable alteration of behaviour. Does nudging lead to such predictable outcomes? Contrary to libertarian authors, anti-libertarian critics see nudging as a technique that is capable to not just disturb, but to constructively shape individual decision making. Via nudge-induced deliberation, the rationality of the individual within a situation of decision is assumed to be shaped. Within the Foucauldian framework, this deliberation however represents a process that is initiated by exogenous factors or actors and that does not function as an empowering stimulus for inner cognitive processes, but as a significant outside influence leading to subjectivation.

Nudges incorporating deliberation among citizens may also be interpreted as instruments of discursive power. When entering a process of deliberation, individuals are confronted with a multiplicity of other opinions. Even though it is stated that deliberation would not incorporate exploiting relations of power or taking sides, power is exercised within such a process. Deliberative processes usually contain numerous rules that are designed to make the deliberation fair, open for all and constructive. These rules and procedures however are fit to sharply distinguish allowed and desired statements and

views from undesired and not permitted ones. If these assumptions hold to be true, even deliberative and empowering nudges do exercise rationality-constituting power on citizens. In conclusion the constructive and constitutive trait of power exercised via nudges is evident. This ascertainment leads to the questions whether nudging does as well include an element of submission, leading to a violation of liberty and autonomy, and to whom citizens are submitted which will be answered within the subsequent section.

II. How can the exercise of power via nudging be associated with the more far-reaching process of state intervention?

The concept of paternalism includes an “intervention in a person’s liberty of action which should serve that person’s good, but takes place against or without her will” (Fateh-Moghadam & Gutmann 2014: 384). Thaler and Sunstein locate their technique of nudging within the concept of libertarian paternalism, aiming at increasing individual welfare without blocking any options. According to them, nudges can be applied by almost any public or private actor, on every level and extent. When used by policy-makers, nudges usually are targeted on groups of people, namely a certain population. Thaler and Sunstein however do not state any ulterior political goals that government may pursue by applying nudging other than enabling “better governance” (Thaler & Sunstein 2008: 14). This better governance is again characterized as less “in the way of government coercion and constraint” (Thaler & Sunstein 2008: 14) and both smaller and more modest than previous modes of government. Thus, they are only referring to the way power is exercised by the government and not to ulterior goals.

However, through the academic replies to nudge theory, it became evident that the technique of nudging is accused to promote a distinct political agenda. By endorsing maximization of rationality within individual choices as an objective with an intrinsic value, nudging no longer qualifies as a neutral, governance-enhancing tool. Yet, as a pre-given and objective rationality of the individual is negated within Foucauldian theory, it has to be clarified which subjective rationality is promoted by nudging. It is not the subjective and individual rationality of the citizen, but the governmental reason of the state that should be promoted to be decisive in citizens’ situations of choice. I argue that via nudging, a governmental rationality driven by the logic of political economy, aiming at the improvement of health, wealth and the subsistence of its population, is promoted.

This statement rests on several chains of thought. First, nudges such as the setting of defaults do convey a certain normative message. Within their examples, people usually are nudged towards a more healthy, environmentally-friendly or financially sustainable behaviour. Even though it is argued by Thaler and Sunstein, that such nudges mainly are beneficial for the individual being nudged, it has to be considered that there are nudges that do not bear any direct benefit for the individual. A nudge like “Don’t mess with Texas!” (Thaler and Sunstein 2008: 60), broadcasting a slogan addressing the local pride of citizens to reduce littering, does not lead to individual benefits⁹. Rather, via nudging ulterior government motives aiming at the whole nation or population were pursued. As apparatuses of security, nudges are capable of enhancing the formerly mainly legalistic administration of the population. Since fallible humans, as described by Thaler and Sunstein, do not qualify as citizens well suited to fulfil government policies of political economy, the government attempts to create satisfactory citizens via nudging. However these ‘new’ citizens are not provided with an enhanced, own rationality but with the imposed government rationality. Being administered and being instrumentalised for the greater good of the population, the element of submission of nudges is visible. Nudging being a technique of Libertarian Paternalism therefore does violate individual liberty and autonomy.

III. Is nudging as a policy becoming a hegemonic practice?

After reviewing the most popular contributions to the debate on nudging it becomes apparent that there is no broad consensus within the scientific community regarding the interpretation of the exercise of power of nudges. Libertarian critique interprets nudging mainly as a disturbance of originally autonomous decision-making processes and therefore as a violation of individual liberty. This group has a highly critical stance towards the idea of man proposed by Thaler and Sunstein and instead highlights the difficulty of exogenously defining and measuring rationality. Liberty, often defined by the absence of foreign influences, seems to be endangered by nudges, if they do not fulfil strict conditions stated by the theoreticians. Libertarian critics share a similar language, as they warn of the manipulative and paternalistic traits that nudges may bear.

⁹ At this point the chance of infantilisation of citizens being nudged even displays serious negative consequences for the individual.

Anti-libertarian and deliberative replies as well do not exuberantly support the application of nudging techniques, but have a more positive stance. They base their criticism on a positive definition of liberty, highlighting the necessity of nudges being empowering and leading to autonomous deliberation. Especially deliberative authors support the application of nudges, given they include an element of empowerment.

To conclude, the prominent replies to Thaler and Sunstein's publication do primarily discourage the extension of nudging techniques due to concerns about violations of liberty and autonomy. This may in consequence exercise a negative influence on the application of nudging techniques within the sphere of policy-makers. It has to be admitted though that both the spread of nudging institutions as well as Foucauldian theory indicate the opposite: on the one hand governmental organizations engaged in nudging are established on a regular basis, as depicted in section 2. On the other hand the analysis of the power of nudges revealed an enormous potential for government intervention. Nudges are no policy techniques that will replace legalistic measures of discipline. However they bear a higher potential of influencing citizens, as they proceed subliminally and therefore are more difficult to avoid.

6 Conclusion

This paper aimed at answering the questions in which way nudges do exercise power and how this can be associated with the profound process of state intervention. Furthermore it was examined whether nudging as a policy is becoming a hegemonic practice. Research was conducted via a comprehensive review of the literature on nudging and the theory of Michel Foucault, focussing on the interrelations of nudges, rationality, liberty and autonomy.

The results show that nudges do exercise power in a complex way, combining submission and subjectivation. Individuals are not merely nudged towards a more rational decision, their rationality is re-shaped by an exogenous force. Furthermore nudges containing elements of deliberation are capable of exercising discursive power. Due to these various ways of exercising power, the idea of nudges increasing or enhancing individual liberty or autonomy has to be discarded. Thus, via nudging government is able to shape individual rationality according to its own goals of political economy, namely enhancing the health, wealth and subsistence of its population. Even though the welfare of individuals may be increased by nudging, the ulterior process of government intervention is the

instrumentalisation of citizens for greater benefit of population. The question regarding a possible hegemony of the technique of nudging within the sphere of government activity could be answered without further research. As the literature review revealed, the majority of prominent authors associated with the topic of nudging bears severe ethical objections and concerns about the violation of individual liberty and autonomy. Hence, it may be stated that due to this primarily negative attitude of the scientific sphere the spread of nudging within the actual policy-making sphere will be limited. The theory of Michél Foucault however expresses the expectation that states will permanently extend their apparatuses of control. The spread of nudging techniques within the sphere of policy-makers speaks in favour of this assumption. Further research and implemented policy of the subsequent years will hopefully provide an answer to the question of a hegemony of nudging.

The limits of this paper are likewise the basis for possible further research. It has to be mentioned that the original publication of Thaler and Sunstein, promoting the technique of nudging, is of far greater publicity than its critiques, as it has been cited more often than all the replies analysed within this paper combined. As approval of the application of nudging only seldom leads to a publication expressing this support, other research methods have to be employed in order to assess this matter. For the sake of clearly valid statements regarding a possible hegemony of nudging the sphere of policy-makers has to be examined. Possible further research could be conducted by quantitatively investigating whether there is an increase of the implementation of nudging techniques. In addition a more detailed inquiry focussing on the differences between specific nudges regarding the exercise of power would definitely result in most interesting insights. Finally, interdisciplinary research integrating more psychological insights regarding the effect of nudges on the automatic or reflective system of human rationality would lead to interesting findings.

7 References

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8 Appendix

Appendix A: Search Results Google Scholar

The search items used for the systematized literature review were

1. Nudge
2. Nudge+Rationality
3. Nudging+Rationality
4. Nudging+Liberty
5. Nudging+Autonomy
6. Nudge+Liberty

In order to encompass the most influential contributions within the literature on *Nudging*, for each search term the five highest ranking results were selected for analysis. In order to limit the amount of sources to a processible extent and to only consider publications that may be of relevance within the discourse, further rules were deployed. Only sources published between 2008 and 2015 will be incorporated, as before 2008 the concept of *Nudging* did not yet exist. In addition, publications with a mainly medicinal, environmental or agricultural focus that do not engage in the topics mentioned above will be excluded. Finally, publications with less than 10 citations were not considered within this study, as their academic importance within discourse can be seen as negligible.

Search Item 1: Nudge

Excluded:

- Sekido & Lovell-Badge (2009): Sex determination and SRY: down to a wink and a nudge (201 citations)

1	Thaler & Sunstein (2008): Nudge: Improving decisions about health, wealth and happiness	5327 citations (05.08.2015)	Accessible
2	Hausmann & Welch (2010): Debate: To Nudge or Not to Nudge	129 citations (05.08.2015)	Accessible
3	Amir & Lobel (2008): Stumble, Predict, Nudge: How Behavioural Economics Informs Law and Policy	97 citations (05.08.2015)	Accessible
4	Bovens, L. (2009): The Ethics of Nudge	71 citations (05.08.2015)	Accessible
5	John, P; Smith, G; Stoker, G (2009): Nudge nudge, think think	67 citations (05.08.2015)	Accessible

Search Item 2: Nudge + rationality

Excluded:

- /

1	Hausmann & Welch (2010): Debate: To Nudge or Not to Nudge	129 citations (05.08.2015)	Accessible
2	Amir & Lobel (2008): Stumble, Predict, Nudge: How Behavioural Economics Informs Law and Policy	97 citations (05.08.2015)	Accessible
3	Bovens, L. (2009): The Ethics of Nudge	71 citations (05.08.2015)	Accessible
4	John, P; Smith, G; Stoker, G (2009): Nudge nudge, think think: two strategies for changing civic behaviour	67 citations (05.08.2015)	Accessible
5	Sugden, R. (2009): a review of nudge: improving decisions about health, wealth and happiness by Richard H. Thaler and Cass R. Sunstein	44 citations (05.08.2015)	Accessible

Search Item 3: Nudging + rationality

Excluded:

- Cohen, S. (2013): Nudging and informed consent. (29 citations)

1	Sugden, R. (2009): On nudging: a review of nudge: improving decisions about health, wealth and happiness by Richard H. Thaler and Cass R. Sunstein	44 citations (05.08.2015)	Accessible
2	Wilkinson, T.M. (2012): Nudging and Manipulation	30 citations (05.08.2015)	Accessible
3	No more publications > 10 citations		

Search Item 4: Nudging + liberty

Excluded:

- Marteau & Ogilvie (2011): Judging nudging: can nudging improve population health? (107 citations)
- Burgess, A. (2012): Nudging Healthy Lifestyles: The UK Experiments with the Behavioural Alternative to Regulation and the Market. (29 citations)

1	Desai, A.C. (2011): Libertarian Paternalism, Externalities, and the “Spirit of Liberty”: How Thaler and Sunstein are Nudging Us toward an “Overlapping Consensus”	18 citations	Accessible
2	Oliver, Adam (2013): From Nudging to Budging: Using Behavioural Economics to Inform Public Sector Policy	18 citations	Accessible
3	Smith, M., McPherson, S. (2009): Nudging for Equality: Values in Libertarian Paternalism	10 citations	Accessible
4	No more publications > 10 citations		

Search Item 5: Nudging + autonomy

Excluded:

- Burgess, A. (2012): Nudging Healthy Lifestyles: The UK Experiments with the Behavioural Alternative to Regulation and the Market. (29 citations)
- Cohen, S. (2013): Nudging and informed consent. (29 citations)

1	Wilkinson, T.M. (2012): Nudging and Manipulation	30 citations (05.08.2015)	Accessible
2	No more publications > 10 citations		

Search Item 6: Nudge + liberty

Excluded:

- Baker, T.; Lytton, T. (2010): Allowing Patients to Waive the Right to Sue for Medical Malpractice: A Response to Thaler and Sunstein. (21 citations)

1	Hausmann & Welch (2010): Debate: To Nudge or Not to Nudge	129 citations (05.08.2015)	Accessible
2	Saghai, Y. (2013): Salvaging the concept of nudge	25 citations (05.08.2015)	Accessible
3	Goodwin, T. (2012): Why we should reject ‘nudge’	23 citations (05.08.2015)	Accessible
4	Schlag, P. (2010): Nudge, choice architecture, and libertarian paternalism	21 citations (05.08.2015)	Accessible
5	No more publications > 10 citations		

Appendix B: Literature Review Items and Categorization

Item	Category
1. Thaler, R. & Sunstein, C. (2008): Nudge: Improving decisions about health, wealth, and happiness	Original work
2. Hausman, D. M. & Welch, B. (2010): Debate. To Nudge or not to Nudge	Libertarian Critique
3. Amir, O. & Lobel, O. (2008): Stumble, Predict, Nudge: How Behavioural Economics Informs Law and Policy	Libertarian Critique
4. Bovens, L. (2009): The Ethics of Nudge	Libertarian Critique
5. John et al. (2013): Nudge, nudge, think, think: Experimenting with ways to change civic behavior	Anti-Libertarian / Deliberative Critique
6. John, P. & Smith, G. (2009): Nudge, nudge, think, think: Two Strategies for Changing Civic Behaviour	Anti-Libertarian / Deliberative Critique
7. Sugden, R. (2009): On Nudging. A Review of Nudge: Improving Decisions About Health, Wealth and Happiness by Richard H. Thaler and Cass R. Sunstein	Libertarian Critique
8. Wilkinson, T. M. (2013): Nudging and Manipulation	Libertarian Critique
9. Desai, A. C. (2011): Libertarian Paternalism, Externalities and the “Spirit of Liberty”	Libertarian Critique
10. Oliver, A. (2013): From Nudging to Budgeting: Using Behavioural Economics to Inform Public Sector Policy	Libertarian Critique
11. Smith, M. & McPherson, M. (2009): Nudging for Equality: Values in Libertarian Paternalism	Anti-libertarian / Deliberative Critique
12. Saghai, Y. (2013): Salvaging the concept of nudge	Anti-libertarian / Deliberative Critique
13. Goodwin, T. (2012): Why We Should Reject ‘Nudge’	Anti-libertarian / Deliberative Critique
14. Schlag, P. (2010): Nudge, Choice Architecture, and Libertarian Paternalism	Libertarian Critique