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Commentary: Shooting on an Arrow, and the Downplay of Regulatory Economics

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ABSTRACT: *This brief review discussion raises additional regulatory ideas to those offered by 2017 Nobel Prize winning economist Richard Thaler, and philosophically and pragmatically argues that his winning of the award was more political than economic, especially in terms of the legislation offered that followed. The article then uses work from other economists, such as Coase, and Friedman, and Arrow, to theorize that in total there are at least four different categories of regulation currently identified. And, humans have yet to invent or recognize all possible avenues for using "libertarian paternalism," Thaler's neologism for social regulation. The article offers a number of real world, contemporary examples falling under such a philosophical umbrella, while discussing their possible benefits and short-comings. The paper overall argues that human society on the whole has been slow to create more solutions for unwanted or incentivized economic behavior, in the application of such philosophical theories to policies by regulators.*

Key words*: Behavior, Incentives, Libertarian paternalism, Nobel prize, Regulations, Thaler, Transaction costs.*

1. Introduction

Richard Thaler won the Nobel Prize in Economics in 2017, an award given out since 1969, for creating a sub-field of regulatory economics, meant to alter peoples' behavior, which he called "libertarian paternalism" (Press Release, 2017). While Thaler and Sunstein (2021) wrote the final version of his seminal work, *Nudge*, along with his earlier versions, with legal scholar Cass Sunstein, this article will focus mostly on Thaler, due to his role as an economist. With seemingly an impressive name, the title for Thaler's field simply referred to society guiding consumers in the same way that parents benevolently guide their children. Originally, "liberalism" meant a government "hands off" approach, until the works of the Great Depression economist John Maynard Keynes led to a redefinition of this word to mean the opposite: government involvement in the economy. Afterwards, the word "libertarian" emerged to mean less state involvement. But Thaler's prime and central idea was that firms, public or private, should place X signs ("arrows") in toilets to encourage those using them to be more accurate, "shooting" at them, thus creating less debris for the maintenance crew. Since then, little new, meaningful discussion of regulations has begun. This article therefore suggests what has already been known, that the Nobel Prize in Economics, as well as in other sciences, is given out largely for political purposes, and not on the quality or originality of work. Dr. Thaler's philosophy has had little "staying power" in the field beyond the ideas of the previous decade. The purpose, and/or hypothesis of this paper, then, is to evaluate the quality of Thaler's main ideas, explain their short-comings, and offer ways in which they could be more substantive. An historical and philosophical approach will be used to evaluate Thaler's work.

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2. Materials- Philosophical

The concepts of paternalism, and libertarian paternalism, are, as being somewhat unconfined to economics, largely philosophical, psychological, legal, and educational topics of writing. The concept of liberalism is hundreds of years old, while paternalism for public policy became popular in the West in the 1960's with its "Welfare State," and also in countries like Africa, with strongmen who tried to guide failing states. The idea was that the government should take care of its people strongly, like a father, from the Latin word *pater*. Thaler's "liberal paternalism" is meant to offer incentives to "nudge" behavior.

However, paternalism's philosophy truly originated with the economist John Stuart Mill in Great Britain in the 1830's and onwards. Mill though, according to legal scholar Francesco Biondo, wrote that "a liberal state [was] justified in coercing people only when their decisions are not entirely voluntary or cause harm to others" (Biondo, 2005). This is referred to a Mill's "do no harm" principle. Biondo analyzed how the two ideas of liberalism, or freedom, and paternalism, or government involvement in the economy, could be reconciled, writing that "despite a long critical tradition … there is a perfectionism that is liberal and anti-paternalistic" (Biondo, 2005). Following this, Dworkin (1972) used the term "soft paternalism" (Glod, 2013) which was little different from Thaler's ideas to come, and in Raz (1986) penned *Morality of Freedom*, which offered a moral justification for political policies, going back to Mill.

Many of the examples of such writers, Thaler included, involve ideas relating from automatic contributions to saving accounts (Kimball, 2018) to placing healthy foods eye-level in public cafeterias. More recent innovations have involved "attracting police recruits and reducing unnecessary antibiotic prescriptions," to writing "must read" on envelopes, similar to so-called retail politics (Explainer, 2019). But, the justification is never given why regulators should be more concerned about peoples' health or savings rather than focusing on other issues? (Biondo, 2005). This relates to the concept of philosopher John Rawl's "veil of ignorance," that given your own values, and an original lack of knowledge about your place in the world, one must not impose your will on others, and be careful of not discriminating (Original Position, 2022).

Analyst James Harkin claims that Thaler's ideas are not new, and that they were even conceived of beforehand in a book by Gladwell (2002) entitled *The Tipping Point*. Harkin draws many comparisons in policies meant to "tip" with those meant to "nudge," in the former case an example being policies used by the police to arrest those committing small crimes in order to prevent larger crimes in the future. But, Harkin argues that these policies only worked because of a societal change in culture, and that "nudges" only "[promise] a magic bullet for social problems," whereas the authors of *Nudge*, Thaler and Sunstein, would have been better off "rolling up their sleeves and doing something big" (Harkin, 2008).

Thaler and Sunstein themselves actually thought that there ideas would be better understood within "a decade," (Fusaro & Sperling-Magro, 2021) but his has not necessarily been the case. While indeed there have been 400 groups organized by global governments and think tanks to come up with new ideas, mainly in the United States, Great Britain, Denmark, Germany, and Belgium (Junghans, Cheung, & De Ridder, 2015) and, whereas the Obama administration and the Cameron administration in Great Britain did enlist the two as "advisors," there have been very few ideas produced. The exception might be perhaps the idea of making organ donations upon car accidents an automatic policy, unless an individual "opts out," which ultimately failed to pass in most U.S. states (Pietrangelo, 2017). Instead, it seems that there has been a greater movement over the last decade in favor of less regulations, such as the decriminalization or legalization of marijuana in many parts of the U.S (Fusaro & Sperling-Magro, 2021). Conservative pundit George F. Will opined that there was some sort of grand "theory" that needed further understanding, such as by President Obama, to create policies. While Will criticized "nanny-state liberals," he might have noted that Thaler's proposals consisted of a great deal of government involvement (Will, 2008). In another 2008 article, analyst Adam Thierer comments about Thaler and Sunstein, writing, "no dah, right?", about the simplicity of their work, and, "who … made them the nudgers in chief!?" (Thierer, 2008). Thierer calls Thaler and Sunstein "absurd and horrendously elitist," and "libertarian paternalism" an "oxymoron" that is devoid of critical meaning (Thierer, 2008). Ben-Porah (2010) published a book outlining a philosophy of "structured paternalism," very similar to Thaler's work, which spoke of the careless mistakes of adults. She writes also about how behavior can have different effects in the short-term, bringing happiness, but harmful effects in the long-term. In a similar way, parents try to guide their children for the long-term, but if consumers are unaware or indifferent to the choices they are making, then can libertarian paternalism truly succeed? (Morton, 2010). Moreover, with more people buying less healthy, but higher priced, items in a pubic cafeteria, it might generate more in

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sales and taxes, and thus government revenue, that could also be used to benefit society. Or, less healthy goods might provide more satisfaction to consumers who are already healthy and are looking for a tastier treat. These in economics are referred to as "externalities," or unintended consequences. In Glod (2013) introduced the terms "neutral paternalism" and "commonsense paternalism" to offer that paternalism is often based on normative (or opinionated) standards that are not always shared by everyone equally. Then, in a 2015 study, Great British researchers found that the public in their country were largely unaware of the concept of "libertarian paternalism." However, the citizens largely found the concept to be favorable, provided that they were given the reasoning behind the policy (Junghans et al., 2015). In another 2015 article, Hanna (2015) argued that critics of libertarian paternalism were wrong in the sense that that Thaler and Sunstein had written that it was "inevitable" that a country has to provide choices to its people in some way or fashion, which has come to be known as the choice "architecture" (Hanna, 2015). Additionally, in 2015, legal scholar (Cornell, 2015) wrote that "The idea here isn't anything new. One might say that Thaler and Sunstein are just summarizing the main insight of behavioral psychologists and economists" (Cornell, 2015). He continues, writing that human beings are "influenced by all sorts of small, seemingly irrelevant details" (Cornell, 2015). Cornell then opines, "A number of commentators on Thaler and Sunstein's book have noted their discomfort with the idea of nudging," because it "has a Big Brother element," referring to Orwell (1949), whose book was entitled *1984* (Cornell, 2015). He mentions certain laws like seat belts, whereas other economists have found that seat belts actually have a contrarian effect by leading drivers to feel overconfident and drive faster; perchance, with eating more cafeteria food, workers would exercise less: so-called "details" (Mankiw, 2015). Following the award of the Nobel Prize, there has been little more discernable work written on his award or on the subject as a whole. However, Thaler felt the need to clarify his works by writing in *The New York Times,* writing that "libertarian paternalism" should only be used for "good purposes," and not "phishing" or "evil nudging," (Thaler, 2015). Korhonen (2020) writes as an example that telemarketers offer a free trial, which you can "cancel" at any time. It is well known that stores arrange goods in order to appeal to consumer's time constraints, and it is likely that advertisements and sales on the Internet do too. Yale University economist (Shiller & Akerlof, 2016) about markets not being free, but full of traps, which Kenneth Galbraith had warned of years ago. But, what is "good" for one person or firm may be "bad" for another, normatively speaking. It must be accepted that humans are not always rational in consumer decision-making, and that this human flaw must be accounted for. This is especially considering that humans sometimes only have so much time to make decisions. Humans often rely on gut decision making, which might result in a small economic loss, rather than do calculations, which might save time and result in economic gains.

3. Materials- Empirical

While Richard Thaler offered many ideas in his writings, and while he coined the term "libertarian paternalism," which, as we have seen from the literature review was predated by many years, it is questionable if his body of work, which consists of only one book on the subject, and only eighty-five articles (most economists produce hundreds), mostly written with others, and many ones on bizarre topics like game shows (which is interesting, but questionable for a Nobel Prize) (IDEAS/RePEc, 2022) was worthy of the award in Economics. It indeed has been a trend that the award has often been political, with the award tending to go to conservatives (in the modern sense) economists in the 1970's (Milton Friedman won in 1976), Robert Lucas won in 1995 (albeit belatedly), to liberal economists (in the modern sense) in the 2000's- Joseph Stiglitz won in 2001, and Paul Krugman won in 2008 (List of Nobel Memorial Prize Laureates in Economics, 2022). While Thaler did have other ideas than just placing healthier foods closer to eye-level in public cafeterias, it would seem that a plausible reason that he won in 2017 was for the Academy to perhaps make a political point. This has been seen to happen in voting of the Nobel Committees in the past, not only in political areas, but also in economics, and, ostensibly, all fields, ever more-so in recent years (Mitra, 2016).

Seemingly, Thaler, as part of his theory, also created the idea that car drivers should be automatically registered as organ donors when they obtain their license, without first being asked their religious beliefs. Such a proposal also fell under his umbrella of "libertarian paternalism." While many Protestant worshippers, if told Thaler's idea, would eagerly sign on to Thaler's cause, many Catholics and other more "conservative" religious worshippers might be opposed. The Nobel Committee is awarded from Sweden, primarily a Protestant country. Thaler's idea of regarding organs not only runs counter to the belief systems of many Catholics, but it runs counter to "free market economists," who support the idea of free choices without

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regulatory interference. Thaler's organ idea also drew protest from some groups when it gained political steam in actual state governments in the United States several years after the prize was awarded.

In addition to his bathroom theory, Thaler, in his book, *Nudge*, makes many other dubious claims, showing that he has little understanding of ordinary life, an important application in economics. This is especially true with "sports management" becoming a widespread field now offered by colleges and popular amongst students. Thaler suggests that shooting basketball players cannot have a "hot hand," writing instead that the law of averages simply allows some players to make more shots in a row (Thaler & Sunstein, 2021). But, anyone who has played sports know that sometimes, you or another player can indeed have a "hot hand," because: you or they may be having a better day than any other day, simply because of playing on more rest, a thought process may be different on that day, one may be playing with more confidence given how the mind or the body feels, and so forth. To say that it is impossible to have a "hot hand" simply shows an ignorance of life, which includes economics, as defined by Alfred Marshal in the late 1800's. Would people always be equally accurate shooting for Thaler's X, one might ask, introduced in the introduction part of this paper?

4. Methods

Here, a brief summary of historical examples are provided in the context in which Thaler presented his work, in order to offer more creative, yet philosophically-based, ideas in the Results section. Truly, and unfortunately, Thaler's award did not ignite a larger philosophical or creative debate within the field of economics, over a broader subject. By the year 2016, some authors, such as Heinig (2016) were already suggesting that the era of libertarian paternalism in economics was already over and that the work needed "revisiting." The subject that is the important issue is that of "regulations."

Thaler would have been better to combine and/or compare and contrast his ideas with regulatory economics. Historically, in the early 20th Century, as societies grew larger, more dispersed, and impersonal, a regulation movement evolved in the United States, and certain other parts of the developed world. This movement arranged that in order to obtain a job, or to solve disputes among feuding consumers, regulations and certifications of qualifications arose, to ensure professionalism and counter unwanted behaviors.

Continuing with this history approach, mid-century, American economist Milton Friedman launched a movement in the United States to counter this surge in regulations, holding instead that the free market would be able to spread by "word of mouth" the abilities of professionals. There would not be a need for regulations or certificates. Friedman began to offer philosophically-based examples, and he became even more convinced of his ideas after having a dinner conversation with Professor Ronald Coase of Harvard University. Coase convinced Friedman of what became known as the "Coase Theorem" for regulations (Arnold, 1998). Coase's theorem holds that feuding parties over the "externality" (or side-effect) of one consumer, such as that of a barking dog in a park, can be "regulated" simply through a one-to-one negotiations of citizens: one person pays the other to compensate for the dog. Still, the prevailing idea of "transactions costs" would suggest that if every citizen had to make a personal, one-to-one agreement with another person over every time a dog barks, that such "negotiations" would waste so much time and inefficiency that simply a regulation would make the most sense. Friedman's idea was better suited for more communal, underdeveloped, and personal societies, but possible solutions exist to reach the goal of lesser regulation. In the Results sections, it is suggested that a combination of Thaler's, Friedman's, and Coase's philosophical ideas could be used to create solutions for the barking dog problem, the "X" case, and other examples.

5. Results

Given this background, philosophically-based, yet pragmatic and creative solutions are here provided. It is philosophized that more "free market" ideas exist regarding Friedman's dog example, which Thaler might have addressed, and could be used by the state. For example, the state could set a standard fee regarding how much a dog-adverse individual must pay a dog owner. This fee would be an average of how much people would be willing to pay and not be adjusted to each person's individual utility, as Kenneth Arrow's "impossibility theorem" showed, which is discussed later. Or, perhaps, non-dog-lovers could form a "union" to "chip in" to pay the amounts. However, the dog-adverse person will show up at the park repeatedly, in essence being a "bully," forcing the dog owner to pay every single time. The dog owner then stops going to the park, which is a negative outcome. The two could then agree to how much the dog-owner has to be paid each time they go to the park, which would require even greater transaction costs in setting the schedule of

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when each will go the park (Pressman, 2014). This scenario is also an example of adverse selection, if one party knows more information than the other. Dog owners might collect, and even exchange, information about when non-dog owners, who dislike dog barking, go the park, or vice-versa. And, again it would lead to "bullying" by the dog owner, with "bullying" being an entirely interesting topic left to future, modern economic research.

Another possible, efficient solution, discerned from the prior example, would be for the government to charge a fee for everyone using the park, which would be a disincentive for the dog-owning person to go, although aggregating individuals' utility to determine the fee might be problematic. And, the dog-owner could still charge an extra "fee" from the dog-adverse person, unless this was prohibited in using the park. Still, the fee could be used to maintain the park itself, along with enforcing its regulations. Perhaps it would be possible to regulate sections of the park as a "dog section" or "non-dog section." Maybe there are other incentives to stop dog barking not yet invented. There may not be one right or best answer, as Arrow would show, but Thaler and Sunstein (2021) in *Nudge*, offers few creative ideas of his own for such situations.

Nevertheless, while Thaler's ideas seemed to have stalled, the kind of society that Friedman and Coase envisioned has to some extent come true, through societal and technological evolution. This can be observed with the Internet, and, in more recent years, with movie rating systems like "Rotten Tomatoes"; the rating systems for Uber (a taxi) drivers; as well as rating systems online for virtually every profession, from doctors and dentists, to lawyers and even teachers, to products and services online, to magazines like *Consumer Reports*. Even still, in a large, developed society, it would seem most accurate to have professional regulators to expertly grant certifications for jobs than rely on private citizens, who could be inaccurate, and even malicious; but, the combination of the two, both having a professional regulator, as well as outlets, such as the Internet, for comments, would seem to maximize professionalism as well information available to customers.

This idea of a dually-regulated economy, that is, both by the government and by private citizens, seems most efficient. The idea is actually not new, but was conceptualized by Kenneth Arrow (mentioned earlier) in the 1970's. Arrow greatly furthered the debate over regulations, by showing that they did not always lead to or prevent monopolies, but were the only way to avoid chaos. Some patients might prefer A to B to C, other B to C to A, and still others C to A to B, thus an "impossible" societal measure. In other words, for a society to determine which doctor is best is nearly impossible, such that healthcare plans should either have high co-payments, convince patients to behave in less risky health ways, or, that there should be greater government involvement in healthcare to prevent those with low risks from dropping out. But, his work was so overly esoteric that it led only to more philosophical debate, about how consumers are irrational, and, in terms of evolution, are "creatures of habit." Thus, little practical dialogue emerged, until the Affordable Care Act was introduced by President Obama (Pressman, 2014) but which did not seem to benefit from the works of Thaler.

Milton Friedman (already mentioned) once explained that regulations meant to control costs actually raise prices. He found that prices were higher than if free market forces were left alone. Therefore, the conversation that Thaler might have inspired was that there seem to be to analyze prices for four different options in each regulatory case. Four different types of regulation are identified here: competition, my self-termed social regulation ("libertarian paternalism"), "regulated competition" (a term introduced here), and total, or total lack of, regulation. It should not be the goal in every instance to oppose government regulation simply because it is a "regulation," but to look for the most efficient means of solving the externality without imposing one's will on another, one's freedom (the right to pursue happiness/utility), so that all benefit to the greatest amount possible, to the best extent that such "benefit" can be measured. This is considering the fact that laws and rules themselves can be bureaucratic, and can themselves take "transaction costs" to create. Consider the following examples, which are explained below:

Table 1. Example: Competition social regulation (Lib. Pat.) regulated competition total Reg./No Reg.

	Competition	Social Reg. (Liberal Pat.)	Reg. Competition	Total Reg./No Reg.
1	Dog owners charge	Disincentivize dogs	Fee to use parks	No dogs/non-dog parks
2	Sue for millions	Disincentivize reputations	Tort cap law	System of fines/No reg.
3	Costs for each firm	Disincentivize pollution	Cap and trade	No pollution, taxes, or/ no reg.
4	Charges for bathrooms	Arrow in toilets, or signs	Public fees for toilets	No public use/ no reg.
5	Some firms- no cakes	Reputations are hurt	Fee to make cakes	Everyone makes cakes

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In example 1), the issue in question is about dog-barking in parks. In 2), the issue is over medical malpractice. In 3), the issue is over regulations concerning environmental pollution by firms, in which case, they might be encouraged by the government to buy or sell "units of pollution," which could be "capped," thus called "cap and trade." In 4), the issue is over cleanliness of bathrooms, again. In 5), the issue in question is whether or not cake sellers should be required to sell cakes to gay or lesbian weddings, if the cake makers themselves are opposed to such lifestyles, whereas their reputations might be hurt and boycotts organized in protest. No regulation versus competition refers to other political-cultural norms that come about via the latter. There may not always be an incentive to socially regulate, with "libertarian paternalism," but humans will slowly continue to come up with and identify or invent new tools. But, as Rizzo and Whitman wrote, philosophically critiquing Thaler, "libertarian paternalism," which analyzes behavior, needs to be looked at as a whole with other types of regulations (a merging of regulation and behavioral theories), because by itself it "neglects nonstandard preferences, experimentation, and self-discovery" (Rizzo & Whitman, 2020).

6. Discussion

As society has become larger and more impersonal, transaction costs have increased, giving more incentives to adhere to some form of regulations. Regulations, though, can have negative externalities themselves, by taking away freedom and dignity; that is, unless some combination is used. In the classic dog example, there could be signs placed guiding how to settle disputes- money is not paid to enforce the law through police, but through the free market. Rather than "defunding the police," U.S. states could have more neighborhood watch groups; and for bathrooms, there could be signs asking people to use bathrooms more cleanly, perchance even detailing the clean-up cost, or a fee as in Europe, though this could backlash into less cleanliness. One example of "regulated competition" is the Better Business Bureau, which is not legally binding, but helps diffuse issues before taking them through a legal process.

Another example of a "societal regulation" could be using public boards like "Rotten Tomatoes" to "warn" people about bad movies, though attempting to collect meaningful opinions and not random thoughts of author Thomas Friedman's so-called "electronic herd." Furthermore, an example of better government regulating would be if job boards would have to take down old ads, to improve efficiency, so that job hunters do not spend hours applying for jobs that have been posted for years, already filled. Conceivably, in the Covid-19 era, when the government is not trusted, "nudging" vaccinations might be more effective than mandates. Lastly, while credit scores are an excellent way of rating individuals, as well as the credit worthiness of the bonds issued by countries, the newest form of bond ratings score bonds based on the environmental quality of projects for which such loans are used for.

7. Conclusion

The preceding examples of regulations can be considered as nudging, to encourage society to work more skillfully and efficiently. With such "social regulations" like "word of mouth," or Thaler's "libertarian paternalism," though, there are also other dangers, one example being hurting professionals' reputations through posting comments to social media, as the charges might not be correct or accurate. Therefore, even for places of comments, it might be necessary to regulate the comments, as they could be malicious or spread rumors. But, if censorship arises, even with someone like Elon Musk or others in control of "Twitter," individuals could use one organization to fight the other. And, when it comes to "social regulation" with athletes, Hollywood stars, and large businesses getting involved with popular issues, such as denying All Star Games because of voting laws, laws on abortion, or laws on homosexuality, etc., the issues become highly politicized and might have too large an effect on the entertainment or sports industries themselves. Over time, musicians or actors might come to feel that taking political stances hurt their brand as a business, such that this trend needs to be reconsidered.

In total, there may not be a single answer for all situations that maximize everyone's utility, as Arrow argued. Many "social regulations" like X's in toilets have yet to be invented or identified as humans and "technology" continue to evolve, with few new examples to point to over the last five years. But, instead of igniting a debate about such regulations, that is, about the different kinds identified here, the Nobel Prize awarded to Dr. Thaler has done little of the sort, and went largely unquestioned. While your author is not a huge proponent of regulations, he does indeed recognize that they are often necessary. Yet in an age of

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monopolization, the Nobel Prize committee could have waited for more ideas from "liberal paternalism" to develop. And, an award to an economist who has researched regulations more applicably would have been more deserving. Coase (1961), Friedman (1962), and Arrow (1970), who all won the award, wrote extensively on their theories. So did Daniel Kahneman, who wrote comprehensively on psychology, about how there is an automatic reflex in the brain, and a deeper, more rational part (Marshall, 2022). There are many other such brilliant economists, from all backgrounds and from all parts of the world. Rather, the Academy fell victim to a smaller, unoriginal subfield and to pseudo-intellectualism. Instead, in essence, regulatory and behavioral economics were flushed away, so to speak, rather than shooting for new theories or practical incentives to help explain the most efficient ways to improve peoples' lives, which in this way would be truly be like "shooting on an arrow." Let us hope for such a future evolution.

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