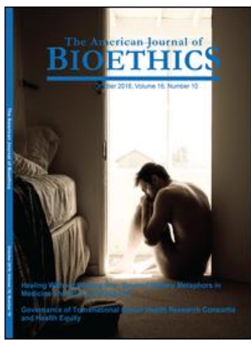

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Nudging and the Ecological and Social Roots of Human Agency

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Those crafting health care policies must struggle with the dire medical reality that nearly 22 people die every day while waiting for an organ transplant (U.S. Department of Health and Human Services [DHHS] 2016). MacKay and Robinson's (2016) article addresses ethical questions raised by the ways different choice architectures present people with options concerning how they might help improve this situation by donating their own organs after they die. Their main conclusions are that all four choice architectures that they consider are *pro tanto* morally wrong, and that each fails, ultimately, because it does not respect the autonomy of those being presented with the choice.

For the sake of a clean dialectic, we advance an argument we are tempted but not yet fully convinced by, or at least formulate our response in terms that are starker than we would otherwise. We take the conclusion that none of the four considered choice architectures is morally permissible to be unacceptable, and so interpret the argument that produced it as a *reductio ad absurdum*. Consequently, we attempt to identify which premise in the authors' line of reasoning is the culprit that leads to the unacceptable conclusion.

COERCION AND DEFAULT RULES

That none of the four options for asking people about organ donation js morally acceptable strikes us as implausible. While the final assessment as *pro tanto* morally deficient is uniform across all four options, their flaws divide them into two categories: those that are putatively coercive and those that use a form of putatively reason-bypassing nonargumentative influence.

The authors find fault in mandated active choice (MAC) options for being coercive. More specifically, they object to the fact that MACs "require" people "to register as organ donors or not" (9) and impose sanctions on those failing to meet this obligation. Here we think MacKay and Robinson overplay their hand. In general, categorizing as "coercion" the mere act of addressing someone with a question is a stretch of the intuitive concept. Describing MACs as also "forcing" (10) people to choose between preestablished response options can lessen this impression, but we think even this description is misleading. After all, one doesn't absolutely have to answer the question if one doesn't want to, for example, on pain of incarceration or death. There is no forcing in this case, but rather a (to us, reasonable) trade-off: One has the option to not answer, but exercising that option is not without consequences. One can refuse, and live without a driver's license. That's the price one pays; such is the way of society, life lived with the comforts and benefits of a social contract. Perhaps merely answering such questions carries some cost—though we do not share the libertarian flavored intuition the authors express, and would resist saying that the cost was a moral one. But describing as "coercion" the fact that claiming one privilege (e.g., getting a driver's license) is conditional on merely having to answer a question extends the concept of coercion beyond its useful limits.

Moving on to the other three nudges, MacKay and Robinson point out that voluntary active choice (VAC), opt-in, and opt-out varieties all employ a particular default rule that frames how questions and options about organ donation are put to people, and that specifies (often implicitly) what happens if people remain passive, making no active change to the frame. Policymakers like default rules because they have predictable influence over collective outcomes. At the individual level, psychologists are still debating which cognitive mechanisms mediate the influence of what types of nudges, and how. MacKay and Robinson criticize these three nudges for the kind of influence they allegedly exert, seeing it as a threat to our autonomy; it is, they claim, reason-bypassing and nonargumentative. While we reject this characterization as overly simplified (e.g., human reason, rationality, and argumentation are not confined to the slow, deliberate, linguistic, propositional, explicit, or syllogistic, and may not even have evolved to arrive at truth or make good decisions, but to do something more social, namely, persuade [Mercier and Sperber 2011]), we instead elaborate on another point. As the authors recognize, psychological details about how and how much a default rule influences individual-level decision making are relevant to their argument. However, many of those psychological details remain murky.

For instance, if the putatively autonomy-corrupting power of default rules stemmed, as MacKay and Robinson's criticism suggests, from a lack of transparency, or from how they evaded the awareness or rational

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capacities of the decisions makers they were presented to, we should expect that when the presence of those rules and details about how they operate are made explicit in the choice architecture itself, or when choosers are preinformed about those details, the effectiveness of the nudge would drop off. Even on MacKay and Robinson's austere conception of reason, reason would be addressed rather than bypassed by such additions. However, Lowenstein and colleagues (2015) report results contrary to this expectation. In a study concerning decisions about advanced medical directives, they show that "fuller disclosure of a nudge could potentially be achieved with little or no negative impact on the effectiveness of the intervention" (36). In other words, the effectiveness of a nudge is not a simple function of its bypassing reason, but is more complicated, and potentially less morally objectionable, even on MacKay and Robinson's own terms. Obviously, this study is not the last word, but it calls into question the quick dismissal of nudges based on simple pictures of how they engage, or fail to engage, certain parts of our psychology.

MORAL ECOLOGY AND THE SOCIALITY OF AGENCY

Beyond these more specific objections, we believe the picture of autonomy and agency that MacKay and Robinson work with represents the reductio premise from which their argument's (to us) unacceptable conclusion ultimately flows. We thus end by sketching an alternative way to conceive of agency that is finding traction in the work of philosophers attuned to recent advances in empirical moral psychology, and that highlights the deeply ecological and social roots of human autonomy.

MacKay and Robinson work with an "intentionally generic ... conception of autonomy that emphasizes the role of critical or rational reflection" (7). This, with the rest of their discussion, places great emphasis and value on explicit, internal cogitation, and suggests a pristine image of autonomy as a state that an individual agent possesses, and realizes most fully and purely when she is alone, perhaps in a quiet room, undisturbed by social interactions, safely protected from corrupting environmental influences. Others have marshaled evidence against the family of "reflectivist" views of agency associated with MacKay and Robinson's reflection-based conception of autonomy, arguing that such views do not accurately capture how people's values and preferences are expressed in their behaviors, and so would have the undesirable result of making instances of autonomous action and genuine agency empirically extremely rare (Doris 2015). The alternatives are messier, but a range of recent empirical work illustrates ways in which human behavior, including moral behavior, is dialogic, and deeply relies on situational, environmental, cultural and social factors (Doris and Nichols 2012). Central to this picture are social norms, especially those that govern the practices of holding people morally responsible for behaviors (Washington and Kelly 2016). These help make up the "moral ecology," that part of the cultural and cognitive niche that help support and enable action and guide exercises of responsible agency (Vargas 2013).

Closer to home here, bioethicists have built the canon of autonomy on a pillar of individualism and on its successful expression as resistance to outside influences. However, work in the feminist tradition also militates against the view that "optimal moral reasoning' is realized against social inputs, and suggests that complex moral cognition and multifaceted policy analysis emerge as a function of our sociality (Beever and Morar 2016). It also suggests that our moral judgments, our values, and autonomy are typically better expressed when they are socially embedded. This view is built on a revised conception of human nature that deemphasizes the importance of explicit deliberation, but also recognizes the extent to which human agents themselves extend beyond biological and cognitive boundaries as "distributed, hybrid-problem solving ensembles" (Clark 2007) for whom autonomy largely amounts to managing, calibrating, and refining the niches in which they live.

The relevant upshot of all this is that agency and autonomy are intrinsically social, and are often built with, and are inseparable from, interactions with others that take place in cultural environments and moral ecologies that we ourselves construct. We unavoidably operate in the midst of all sorts of environmental and social influences; as Sunstein (2014) puts it, "Nature itself nudges; so does the weather; so do customs and traditions; so do spontaneous orders and invisible hands. The private sector inevitably nudges, as does the government" (1). These influences, we suggest, do not corrupt or compromise our agency and autonomy; they help create and sustain them, and navigating those influences is what autonomy and agency are for. Anyway, there is no escaping them, so better to use this slowly dawning understanding of our selves and situation not just to distract and titillate, but to promote some worthwhile ends as well. ■

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Rights, Nudging, and the Good of Others

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The main ethical issue in debates over "nudging" is whether the autonomy infringement involved in exploiting common decision-making heuristics and human biases—setting the default a certain way to exploit status quo bias, presenting information just-so to exploit framing effects, and so on—is outweighed by the good likely to result, either to the chooser or to others, from these nudges. The most interesting cases in this debate involve nudges that influence choosers below their level of conscious awareness and that appear to be manipulative. Too often in discussions of these cases, and of nudging via default setting in particular, conversation is stymied by the assumption that all ways of exploiting defaults are ethically on a par, infringing autonomy to the same degree. Because we must make something the default (which after all is just what the chooser gets if she or he does nothing), we cannot avoid influencing choosers via status quo bias. So, the story goes, we might as well set the default and exploit status quo bias in ways that do the most good.

The main virtue of the target article is to expose this line of argument as too quick (cf. Gelinas and Miller 2013). MacKay and Robinson (2016) argue persuasively that not all choices about where to set the default in organ donation policy infringe autonomy to the same degree and that different ways of setting the default may vary in their degree of ethical objectionableness (in their terms, *pro tanto* wrongness). In particular, while recognizing that opt-in and opt-out policies involve similar autonomy infringements, MacKay and Robinson argue that the tactic most commonly used to avoid nudging in this context—forced or "mandated active choice" (MAC)—is, although a form of coercion, less disrespectful of autonomy than approaches that employ a hidden default rule. They also suggest that presenting people with the opportunity to make a choice about donation status while employing a default rule if they decline to choose (what they call "voluntary active choice" or VAC), while more worrying than MAC, may be less objectionable than opt-in and opt-out policies. This latter claim is plausible given that VAC strategies make the relevant choice explicit and invite choosers to reflect on their preferences, thereby minimizing the influence of the default. I find MacKay and Robinson persuasive on these points and think they deserve significant credit for showing that not all default settings in organ donation policy are ethically the same. In what follows, I assume their analysis and attempt to further advance the debate.

As MacKay and Robinson rightly note, determining the ethical status of different approaches to default setting is necessary but not sufficient for settling the debate over which organ donation policy is all-things-considered ethically permissible or best. Even if a particular organ donation policy infringes autonomy and is to some extent ethically objectionable, it may (on all but the most austere of ethical theories) nonetheless be justifiable or best, as long as the badness of the autonomy infringement is offset by the goods it makes possible.

In this light there are two important questions. First, are any of the more objectionable approaches to default setting—and, let us assume, an opt-out approach in particular—likely to result in more organ donations than less objectionable approaches like MAC or VAC? If so, and second, would the increased goods of organ donation under a

1. Whether we should adopt MAC or VAC will in turn depend on whether (the more objectionable) VAC is likely to result in more organ donations than (the less objectionable) MAC and whether the increased goods associated with this increase in donations offsets VAC's greater ethical objectionableness.

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