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Does Sunstein and Thaler's Theory Have a Broad Scope?

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Abstract:

Sunstein and Thaler's theory aims to justify libertarian paternalism (LP), a particular version of paternalism which is in favor of policies that nudge people to choose in their own welfare-promoting direction. A normative ground of their theory for LP lies in understanding that human beings are devoid of rational capacities, as has been illuminated by many findings in cognitive psychology and behavioral economics. With this in hand, their theory goes so far as to endorse libertarian benevolence (LB), which is in favor of policies that nudge people to choose in a direction of promoting the welfare of third parties. In this paper, we examine whether this theory is broad enough so that LB can complement LP. To do so, we show the significance in their theory of a necessary (but implicitly presumed) condition for the LP- and LB-relevant cases, the condition of convergence. Since this condition is not easily met, the LP-relevant cases and especially the LB-relevant cases are much more limited than Sunstein and Thaler presume; the case of organ donation they regard as a typical LB-relevant case is exceptional. This seems a serious problem with

Sunstein and Thaler’s theory, since it is meant to have a broad scope in such a way that nudges can reasonably be applied to some LB cases.

Introduction

Cass Sunstein and Richard Thaler provide an extensive argument for what they call “libertarian paternalism” (hereafter LP). LP is a paternalist position, defined such that “a policy . . . counts as ‘paternalistic’ if it attempts to influence the choices of affected parties in a way that will make choosers better off” (Sunstein and Thaler 2003, 1162). This paternalism is “soft” paternalism, and is characterized as “weaker and essentially libertarian in the crucial sense that it preserves freedom of choice” (Sunstein 2014, 19).¹ Indeed, under the LP scheme, choices are not blocked; people are only “nudged” to choose a welfare-promoting option (Thaler and Sunstein 2008, 6). Under this scheme, individuals retain freedom of choice because they can “opt out” of the default rule. Hence in LP, the value of freedom of choice is respected even though

¹ Sunstein and Thaler’s use of the term “soft paternalism” differs from Gerald Dworkin’s famous (and often viewed as “standard”) definition of soft paternalism. Sunstein (2014, 20) makes a distinction between soft and hard paternalism in terms of the severity of the costs imposed upon people’s choices. In Dworkin (1988, 124), soft paternalism is defined as follows: “(1) Paternalism is sometimes justified, and (2) it is a necessary condition for such justification that the person for whom we are acting paternalistically is in some way not competent.” By contrast, hard paternalism is defined as the view that paternalism is sometimes justified even if the choice is fully voluntary (Dworkin 1988, 124; see also Feinberg 1977). This means that the voluntariness of people’s conduct influences whether paternalism is soft or hard, and that LP may be categorized as hard paternalism in the Dworkinian sense.

paternalistic interventions are promoted.

Notably, a normative ground for nudging policies in Sunstein and Thaler's theory lies in understanding that human beings are devoid of rational capacities, as has been illuminated by many findings in cognitive psychology and behavioral economics. Planners are then expected to intervene and guide people in the same direction their own preferences would lie approximately if formed when they were fully informed and rational. In this manner, the justification for nudging policies involves "the informed desire standard." What is distinct about Sunstein and Thaler's theory is that policies that nudge people to act "in the interest of vulnerable third parties" in light of the informed desire standard are proposed (Sunstein and Thaler 2003, 1162). They call this conception "libertarian benevolence" (hereafter LB). Since the issue is the welfare of third parties, and not of the choosers, their theory extends beyond paternalism.

In this paper, we examine whether Sunstein and Thaler's theory enjoys such a broad scope. In so doing, we focus on the essential feature of their theory: To defend LP and LB, Sunstein and Thaler claim that nudges can reasonably apply to certain policy-relevant cases. To illuminate the importance of this feature, we introduce the concepts of "LP-relevant cases" and "LB-relevant cases": LP-relevant cases are defined as cases in which the application of nudges is justifiable by the fact that it promotes the welfare of the nudged and LB-relevant cases as cases in which the application of nudges is

justifiable by the fact that it promotes the interest of vulnerable third parties.²

We show that, while there may be LP- and LB-relevant cases, these cases, especially the LB-relevant ones, are exceptional and thus the scope of their theory is not broader than that proposed by Sunstein and Thaler.

Two Essential Characteristics of Sunstein and Thaler's Theory

In their influential paper "Libertarian Paternalism Is Not an Oxymoron,"

Sunstein and Thaler famously claim:

Drawing on some well-established findings in behavioral economics and cognitive psychology, we emphasize the possibility that *in some cases individuals make inferior decisions in terms of their own welfare—decisions that they would change if they had complete information, unlimited cognitive abilities, and no lack of self-control*. In addition, *the notion of libertarian paternalism can be complemented by that of libertarian benevolence*, by which plan design features such as default rules, framing effects, and starting points are enlisted in the interest of vulnerable third parties (Sunstein and Thaler 2003, 1162; emphasis added).

² More precisely, we are defining LP- and LB-relevant cases as cases in which the application of nudges is justifiable *from Sunstein and Thaler's theoretical point of view* by LP considerations, because our paper purports to offer an internal critique of Sunstein's and Thaler's theory.

From the italicized passage, we can see two essential characteristics of Sunstein and Thaler’s theory. First, their theory avoids “chest-thumping abstractions and general propositions that are appealing but sometimes false” (Sunstein 2014, 165). Indeed, their theory is intended to apply only to certain circumstances where people are evidently prone to cognitive error and lack of self-control, which are suggested by findings in contemporary behavioral sciences (Sunstein and Thaler 2003, 1177-1181; Thaler and Sunstein 2008, 24-40). In their argument, the clear lack of fully pertinent information and rational capacity is used as a “heuristic device” to identify cases in which people make disadvantageous choices.³ As examples of such cases, they present certain people’s choices of cafeteria food at some organization such as a school, and certain people’s savings portfolio, such as employees’ participation in a 401(k) plan, because rational calculations of costs and risks for choice, even with relevant information, are required in these cases but they may hardly be realized (Sunstein and Thaler 2003, 1164-1170; Thaler and Sunstein 2008, 1-3, 114-119). These cases are Sunstein and Thaler’s favorite examples and also illustrate that their theory aims to provide policy recommendations.

³ We take this argument to overlap with John Rawls’s way of using the maximin rule as a heuristic device to see the plausibility of justifying the two principles of justice from the standpoint of the original position (Rawls 1971, 152-153). Just as the maximin argument helps us see the reasonableness of the inference from the original position, so the informed desire standard leads us to see the plausibility of justifying that a certain case is a LP- or LB-relevant case.

Second, it is important to note that Sunstein and Thaler also emphasize the broad scope of their theory by contending that LP can be complemented by LB: the use of nudges can be justified not only by LP considerations, but also LB considerations. LB claims that people ought to be nudged to make choices to promote the welfare of vulnerable third parties. LB thus involves cases that do not fit any standard definition of paternalism because the target of LB is the welfare of third parties, not of choosers (Sunstein and Thaler 2003, 1192-1193; see also Dworkin 1988: 121). Sunstein and Thaler offer the case of organ donation as a typical LB-relevant case, i.e., a case where nudges can reasonably be applied. Organ donation is the only such case they refer to in which, while the default rule is to donate organs after death, people are permitted to reject organ donation by registering their own driver's license to that effect, a policy adopted in many European countries (Sunstein and Thaler 2003, 1191; Thaler and Sunstein 2008, 188-189). The relevant default rules for organ donation significantly benefit many people who require an organ transplant, but do not directly benefit choosers since they may never have such a need. They then contend that the opt-out rule is better "simply because it should save a large number of lives without compromising any other important value" (Sunstein and Thaler 2003, 1193). It goes without saying that freedom of choice is such an important value.

If we highlight the first characteristic of Sunstein and Thaler's theory, it then may seem that they present LP simply as a mere policy proposal. However, if we pay heed to the second characteristic of their theory, their emphasis on

the applicability of nudges to LB-relevant cases underscores their ambition to show the broad scope of their theory. This is, we believe, why they stress that *LP can be complemented by LB*.

On the Existing Critiques of Sunstein and Thaler's Theory: Over the Informed Desire Standard

As can be seen, it is important for Sunstein and Thaler to demonstrate that nudges can reasonably be applied not only to some LP cases, but also to *some LB cases*. This entails that there are certain (possible) LP and LB cases in which nudges evidently and approximately satisfy people's fully informed and rational preferences: for nudges to be normatively justified in LP- and LB-relevant cases, they need to satisfy the "informed desire standard," i.e., they need to nudge the agent in the direction of the preferences he would have if he would be fully informed and rational (Smith 1994, ch. 5; Railton 2003, ch. 1; Parfit 2011, ch. 5).⁴ However, given the controversial nature of this

⁴ One might claim that the informed desire standard is not relevant to LB, because LB-motivated nudges are based on their contribution to the well-being of vulnerable third parties, independently of whether or not they fit with the preferences of the nudged. According to this view, for example, organ donation nudges would be justified because they benefit people who needs organs, independently of whether or not the organ "donor" wants or does not want to give his/her organs after his/her death. In response, first, Sunstein and Thaler (2003, 1192) takes the fact that people lack stable preferences with respect to organ donation as a reason for changing the default rule (see also note 6). Second, more importantly, if the preferences of the nudged were irrelevant in the LB-relevant cases, we cannot see why we should favor the opt-out proposal rather than simple paternalism.

particular standard, use of it by Sunstein and Thaler has attracted criticisms mainly in two respects: first, it is unclear what counts as full information and rational capacities (Sugden 2008, 232; Grüne-Yanoff (2012, 642-643). Second, it is unreasonable to presume that actual planners can act as ideal spectators who would be able to advise people in a manner that satisfies their preferences based on the “informed desire”: as a matter of fact, all humans—including planners—have cognitive limitations (Qizilbash 2012, 656-657).

In responding to the two problems, we should note that, by appealing to the informed desire standard, Sunstein and Thaler essentially propose a policy-oriented theory. For the purposes of Sunstein and Thaler, it is sufficient to show that some LP- and LB-relevant cases can reasonably be identified, such that the informed desire standard would evidently and approximately be met, were the paternalistic policies carried out. Hence, it is important to examine whether the cases raised by Sunstein and Thaler are truly LP- or LB-relevant cases and so the nudging policies fit with the informed desire standard in those cases.

From this perspective, existing critiques of Sunstein and Thaler’s appeal to the informed desire standard are not enough to reject their theory. Among others, Robert Sugden (2008, 239-247) challenges their appeal to the standard: A fundamental problem with Sunstein and Thaler’s theory is their failure to appreciate the virtue of market economy, the principle of mutual advantage. According to Sugden (2008, 236-239), the cafeteria example—which Sunstein and Thaler describe as a typical LP-relevant case—illustrates this failure.

Given that the cafeteria is a private institution, the directors reasonably change the display of fruits and vegetables to maximize their profit in response to signals provided by the market and through which the market can generate opportunities to gain mutual advantage. The point is that profit-seeking cafeteria can be reasonably guided by the maximization of their profit in the market, even though the directors or the government do not grasp people's stable preferences, i.e., their fully informed and rational preferences. It thus seems that regulating the cafeteria directors in the manner proposed by Sunstein and Thaler is not more welfare-promoting than market exchanges free of such interventions.⁵

Sugden takes this cafeteria case as a typical countercase against Sunstein and Thaler's justification of paternalism, since it represents their insensitivity to the principle of mutual advantage. However, we think that Sugden misses the point of Sunstein and Thaler's argument: as a matter of fact, they focus on "the cafeteria *at some organization* . . . for example, those in schools, dormitories, or some companies" (Sunstein and Thaler 2003, 1164-1165; emphasis added). In other words, the possible cafeteria Sunstein and Thaler treat as one of the LP-relevant cases is not purely a private one for which profit maximization achieves certainly an appropriate goal under the market pressure. In the case of the cafeteria listed above, it may be plausible to design some legal rules that direct the cafeteria directors to change the display of the served dishes in light

⁵ Note that Sugden (2008, 247) does not deny that there may be good reason to support paternalistic regulations.

of the customers' preferences that would be formed under all relevant facts. They involve the pertinent information about nutrients of the food, which may not be reflected through customers' choices in the cafeteria listed above.

Till Grüne-Yanoff (2012, 642-643) criticizes the informed desire standard from a slightly different perspective. He casts doubts upon the properties of fully informed and rational preferences, such that an individual's fully informed and rational preferences are not *his or her own* preferences, because they may lack their life experiences. In doing so, he takes the case of an employee's savings plan, or, more precisely, automatic enrolment in a 401(k); individual preferences over savings plans depend on their own life experiences that involve their own personal value(s). It then might seem that planners cannot respect each person's value(s) when adopting welfare-promoting policies, such as the governmental support of automatic enrolment in a 401(k), in light of the informed desire standard, since their fully informed and rational preferences appear to lack such properties. However, relevantly informed preferences about a 401(k) are based upon employees' life experiences, because their own evaluation of savings portfolios is sensitive to their life experiences so far. Concerning the case of a 401(k), the government should base the policies on the information and their preferences that are closely related to their experiences.

Let us turn to the problems with actual planners posed by Qizilbash. Sunstein and Thaler take this problem seriously and suggest that actual planners may track approximately what each person would rationally prefer

when fully informed by using “rules of thumb,” e.g., the method “that the majority would choose if explicit choices were required and revealed” (Sunstein and Thaler 2003, 1194). Unfortunately, methods of this kind are prone to error and so provide mistaken policy guidance, due to cognitive limitations (Qizilbash 2012, 654-657).

However, the cases raised by Sunstein and Thaler in which nudges can be justified are those in which the government can reasonably be expected to do better than individuals in light of the informed desire standard. Among them is the case of organ donation. In the case of organ donation, while donors bear almost no cost because organs are transplanted after their death, organ donation significantly benefits many people who need organ transplants. However, it is well-known that status quo bias evidently prevents them from registering as organ donors.⁶ At least in cases of this kind, we cannot simply advocate that people are the best judges in light of the informed desire standard, since people

⁶ According to an online experiment, the respondents’ choice for organ donation in the opt-out condition was close to that in the neutral condition under which the respondents are required to choose with no prior default (82% and 79%). This choice was chosen by a larger proportion of subjects than those who chose to be an organ donor in the opt-in condition (42%) (Johnson and Goldstein 2003, 1338; 2004, 1714-1715). A different survey in the UK shows that there is a discrepancy between the number of people who registered as organ donors (27%) and that of people who were willing to donate organs (90%) (Department of Health 2008; Schiavone, Anna, Mameli et al. 2014, 111). The important point is that we can reasonably explain the discrepancy in light of the status quo bias delineated by behavioral economics and cognitive psychology (Johnson and Goldstein 2003, 1338; Sunstein and Thaler 2003, 1192; Thaler and Sunstein 2008, 187-188). It thus seems that the case of organ donation fits with the informed desire standard.

are obviously shortsighted, less careful, and subject to the weakness of will in determining a choice. The government may be less likely to overlook long-term effects and may be more likely to comply with careful consideration given relevant information at least in those cases, for the job of public officials is to select the relevant policies “by assessing costs and benefits and by devoting careful thought to options and consequences” (Sunstein 2014, 120). The point is not that public officials are not immune to biases—in fact, this is far from the truth—but that such selections seem to evidently work well in the LP- and LB-relevant cases, because people are evidently prone to cognitive error and self-control in those cases. As Sunstein (2014, 117) argues, hence, we can reasonably say that “it is possible to identify cases in which people are better off if government is authorized to act paternalistically.”

What we have shown is that there are (possible) LP- and LB-relevant cases, i.e., cases that could fit with the informed desire standard. The existing critiques of Sunstein and Thaler’s use of the standard fail to see this. Since their theory uses the informed desire standard in this manner, the two main criticisms are not enough to reject their project.

The Condition of Convergence

In light of our replies to the two main criticisms, we can now construe Sunstein and Thaler’s theory as proposing two necessary conditions for LP- and LB-relevant cases:

Condition 1: the cases must be such that certain people tend to make

evidently inferior decisions, but we can reasonably expect that they would not do so if they had fully informed and rational preferences.

Condition 2: the cases must be such that planners can reasonably be expected to be able to carry out policies that approximately satisfy people's own fully informed and rational preferences.

So far, so good. But now we want to argue that the two conditions above are necessary but not sufficient conditions for the claim that proposed cases are the LP- and LB-relevant cases. Our contention is that, for the LP- and LB-relevant cases, a third necessary condition must be satisfied: *the prompted people would converge upon certain preferences were they fully informed and rational in the cases where the two conditions are met*. We call this condition "the condition of convergence."

Why is this condition necessary for the LP- and LB-relevant cases? The reason can be illuminated by what would happen if people's fully informed and rational preferences fail to converge in the apparently LP- and LB-relevant cases. In the apparently LP-relevant cases, if fully informed and rational preferences fail to converge, nudges will not be paternalistic because they will go against at least one person's welfare, given that welfare counts as the satisfaction of his or her own fully informed and rational preferences. In the apparently LB-relevant cases where fully informed and rational preferences fail to converge, nudges that move them to make a specific decision for vulnerable third parties will be far from benevolence-sensitive ones, at least for one

person.⁷ These can be called *theoretical* problems with non-convergence in LP and LB.

In addition to the theoretical problems, there are *practical* problems with non-convergence in LP and LB. Practically, policy decisions including LP and LB need to speak with one voice. Consider, for example, the case of public policy on smoking. We cannot nudge some people to smoke and other people not to smoke simultaneously, for it would not be feasible to set up a custom-made policy on smoking as a public policy.⁸ This may be strengthened by our common expectation regarding the integrity of public policy: public policy should be applied consistently to all people, even though any simple form of consistency may not be required. This practicality requirement of convergence is also essential in nudging policies because they are policies that encourage people to make a *specific* decision, such as opting for 401(k) as an employee's savings portfolio.

It becomes clear that the condition of convergence is necessary for the LP- and LB-relevant cases. To confirm this, let us examine the apparently LP- and LB-relevant cases where people's fully informed and rational preferences

⁷ To see this clearly, suppose that people's fully informed and rational preferences did not converge in the case of organ donation. Adopting the default rule to register as an organ donor would infringe upon at least one person's genuine will against organ donation after his or her death, identified with his or her rational decision under full information. This implies that such policies could not derive any normative force from his or her benevolent motive to donate organs.

⁸ It might seem that this argument runs counter to Sunstein's proposal of personalized paternalism (Sunstein 2014, 96-100). We will address this proposal below.

would seemingly converge. In apparently LP-relevant cases, planners encourage people in directions that promote their own individual welfare. Provided that their fully informed and rational preferences are of a self-interested sort, there may be some cases where those preferences would converge and thus nudging policies would be appropriate. For example, it may reasonably be expected that schoolchildren would not choose food of inferior quality or low nutrition if they formed their own preferences over their future states through rational deliberation and fully pertinent information, so some regulations on cafeteria foods in school seem to be endorsed by that reasonable expectation.

However, the LP-relevant cases may be more limited than Sunstein and Thaler claim. As an example, consider the case of a public policy on smoking. At first glance, it seems that nudging smokers away from tobacco risks can reasonably be espoused on grounds of our reasonable expectation regarding the convergence of people's own fully informed and rational preferences concerning smoking. However, since people who are about to die need not care about the negative effects of smoking on their future life, they can rationally choose to smoke now to improve their welfare.⁹ We can also imagine the case that a significant minority of people will continue to smoke, simply because they have other (but no less "perfectly" informed) risk preferences. These cases illustrate that such decisions would not be inferior even in light of their fully

⁹ The classic rational addiction model is consistent with the rational "last smoke" (see, e.g., Becker and Murphy 1988).

informed and rational preferences. We thus can reasonably doubt that the convergence would not occur in a typical paternalism-favored case, i.e., the smoking case.

The argument above may suggest extreme difficulties in finding some LB-relevant cases. Here again, LB is defined such that people are nudged to make a choice that promotes the welfare of vulnerable third parties. As has been seen above, Sunstein and Thaler present the case of organ donation as a *typical* LB-relevant case. It seems questionable that the proposed case of organ donation is truly representative of *some* LB-relevant cases because in that case, organs are transplanted into recipients *soon after the donor's death*. This makes it reasonably acceptable for fully informed and rational individuals to choose organ donation;¹⁰ while the interest of vulnerable third parties (organ recipients) are a primary factor in the formation of fully informed and rational preferences, donors' self-interest is not, simply because organs are transplanted after the donor's death. In other words, the donor's individual welfare is not involved in the formation of fully informed and rational preferences, unlike the case of live-donor liver transplantation in which donors normally incur healthcare costs. This means that even economic rationality would support the decision to register their organs to be donated after death, and thus implies that the case of organ donation is "ideal" as a LB-relevant case in the sense that

¹⁰ One might claim that some people have fully informed and rational desires not to have their posthumous tissues transplanted into other people, even though it is necessary for survival of the latter. This might be the case for people whose religious faith includes a world after death. For this point, see the argument in the next section.

people's preferences would converge on the choice for organ donation.

What can we then say about other possible LB cases? It seems reasonable to suppose that other LB cases are those in which fully informed and rational preferences would not converge. In the case of organ donation, the convergence can reasonably be expected because organ donation after death seems *costless* in terms of individual welfare. In contrast, benevolent acts for vulnerable third parties often involve sacrifices of individual self-interest, such as extensive aid for the poor. Provided that fully informed and rational preferences are sensitive to self-interest, people's decisions will converge upon non-benevolent acts: they will not give anything to the poor.¹¹ This leads us to conclude that Sunstein and Thaler's theory can merely cover the exceptionally LB-privileged case, i.e., the case of organ donation. We thus conclude that their ambition to demonstrate the broad scope of their theory by appealing to some LB-relevant cases is not successful.

Does the Idea of Personalized Approach Save the Broad Scope of Sunstein and Thaler's Theory?

In his recent book, Sunstein has become fully aware of the convergence problem and so has suggested the idea of *personalized paternalism* to mitigate

¹¹ It is worthwhile pointing out that on economic rationality, convergence upon non-benevolent acts occurs not only in the gift-giving case, but also in the "public goods provision" case, where the benevolent act can partially contribute to self-interest. It is the so-called "free-riding problem" in social dilemmas (see Olson 1965).

the potentially bad effects of LP on some people's welfare:

We can imagine highly personalized default rules, attempting to specify diverse rules for people in different circumstances. For savings plans, health insurance, and more, such approaches might draw on available information about people's own past choices or about which approach best suits different groups of people, and potentially each person, in the population. (Sunstein 2014, 99)

Were personalized paternalism a convincing proposal, our argument with recourse to the condition of convergence might be undermined.

Surely, we can undeniably imagine such highly personalized default rules. However, personalized paternalistic interventions are not feasible options as nudging policies at least in the present circumstances, since this renders the implementation problem much harder to solve; we can easily expect that the implementation cost of such policies, such as costs of designing various default rules and applying the right default rule to the targeted people, is much higher than that of one-size-fits-all policies.

Yet even setting aside the implementation problem, it seems doubtful that personalized paternalism assures the broad scope of Sunstein and Thaler's theory. Of course, we can examine whether the idea of personalized benevolence is useful in the LB-relevant cases. Since, as has been argued above, the case of organ donation is exceptionally ideal for Sunstein and Thaler's

theory, let us focus on the desirability of personalized approach in the case of organ donation. Recall that benevolent-sensitive policies by appealing to one-size-fits-all approach are endorsed in terms of the promotion of the interest of third parties. However, this policy direction seems to conflict with the idea of personalized benevolence. If some potential donors' informed and rational preferences were for a denial of organ donations after their death, which is sometimes the case depending on the donor's religious belief,¹² personalized benevolent policies should nudge them in a direction of the denial. Since it decreases the number of organ suppliers, it would thwart the aim of benevolent policies and so cannot fully satisfy the interest of people who are waiting for organ transplants, as compared to the one-size-fits-all approach to benevolence. It thus seems that personalized benevolence would not be successful in the case of organ donation, an exceptionally ideal case for Sunstein and Thaler's theory.

Concluding Remarks

Our argument focused on the policy-oriented feature of Sunstein and Thaler's theory. Their theory is meant to hold only in some cases. We thus attended to how their theory can identify LP- and LB-relevant cases. While we would admit that that there seem to be possible LP- and LB-relevant cases in which the two conditions with respect to the informed desire standard they have in mind can be met. However, Sunstein and Thaler fail to acknowledge an additional necessary condition for the LP- and LB-relevant case, i.e., the

¹² See note 10.

condition of convergence, and that satisfying this is indeed quite cumbersome. The condition of convergence is not easily met because we can reasonably expect people to hold individual, divergent preferences even in cases in which these preferences were formed rationally while fully informed. This is distinct in LB: they seem to be more limited than Sunstein and Thaler believe, since the proposed case of organ donation is exceptionally ideal as a LB-relevant case. While donors bear almost no cost in the case of organ donation, people would incur costs in most apparently LB-relevant cases. Some people are willing to bear these costs, while needless to say, others are not. In this respect, were they fully informed and rational, LB would not be a good option for planners. In addition, the idea of personalized paternalism may thwart the aim of benevolent policies, at least in the case of organ donation, an exceptionally ideal case for Sunstein and Thaler. We thus conclude that LP does not enjoy the broad scope in the manner proposed by Sunstein and Thaler.

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