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Exposé: Constructing and governing the behavioural subject in the European Union

> *This, it seems to me, is what characterizes liberal rationality: how to model government, the art of government, how to [found] the principle of rationalization of the art of government on the rational behavior of those who are governed.* (*@FoucaultBirthBiopolitics2008:312*)

This MA thesis investigates the construction of a *behavioural subject* vis–à-vis behavioural policy in the EU's policies and research.

Over the last years, behaviour has become a focal point of governance for two main reasons: first, the behavioural sciences have emerged as a crucial reference in government, its rationalization, and its policy; second, as the technics of digital behaviour modification have potentiated and proliferated, concerns about their impinging on manipulation and autonomy have precipitated regulatory initiatives. The European Union presents an example of an institution simultaeneously implementing behavioural insights and seeking to curtail their effects.

This project patterns itself after and addresses problematics raised in Foucault's work, especially the*History of Governmentality*. As a provisional hypothesis, it suggests that behaviour constitutes itself as a new object of government, made knowable in its own regularities, targeted through an array of possible techniques, and integrated with extant problematics and techniques (cf @FoucaultSecurityTerritoryPopulation2009:104–105).

Background

Although many of the ideas characteristic of contemporary 'behavioural insights' trace back to Simon's concept of bounded rationality, the fervor for applying behavioural sciences to policy ignited decades later with Sunstein and Thaler's publication of *Nudge*. The eponymous concept refers to "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." It conjures a vision of "libertarian paternalism" promising to square the circle between respecting individual freedom of choice while improving aggregate outcomes by exploiting the irrationalities and cognitive biases discovered by behavioural economics

In the aftermath of the book's publication, governments around the world rapidly set up 'behavioural insights' units, tasking them with measuring policy outcomes as well as implementing and designing policies. Additionally, a burgeoning ecosystem of think tanks and consulting agencies complements these public sector institutions (@FaisalNaruNow200BI2018).

These institutions' precipitation by and association with the book has resulted in some terminological ambiguity, such as a commonplace conflation of 'nudging' with the broad array of behaviourally-informed techniques. In fact, behavioural interventions can take a variety of forms, including the use of mandates or coercion as in 'shoving' and 'budging' (@OliverNudgingshovingbudging2015). At the same time, the gathering or production of behavioural insights need not necessarily entail intervention at all; in the first instance, these sciences merely make visible a new object of knowledge, behaviour.

Common fields of application for public sector behavioural insights include health policy, environmental policy, welfare, consumer protection, taxation, and education. However, commercial actors, too, reap the fruits of the behavioural sciences, especially within the fields of product design and advertising (@GuntnerLessonsfrontline2019). Here, though, the behavioural insights have less to do with the 'gentle paternalism' of nudge theory's orientation toward the individual's (assumed) interest but rather maximize the firm's profit. In this vein, "behavioural design" has become a core corporate competence in building "mind monopolies" intent on capturing "customer lifetime value" (@EyalHookedHowbuild2014).

Digital environments present a particularly fertile ground for behavioural interevention due to the inherent mutability of virtually all aspects of the choice architecture – i.e., the user interface. Moreover, while Sunstein and Thaler's articulation of nudges applies equally to a wide target population, individual tracking potentially reduces n to 1. Thus, "Big Data algorithmic techniques exert behavioural influence through the hyperpersonalisation of individuals' informational choice environments" (@YeungHypernudgeBigData2017), adding a qualitatively new dimension to behaviour modification by way of "at scale" exploitation of individual cognitive deficiencies via access to a "precognitive layer of behaviour" (@KalpokasPersonalisationEmotionNudging2019; @SaetraWhennudgecomes2019).

Growing awareness of this granular 'behavioural grip' and its consequences – ranging from the addictive nature of social networking apps (@Lesliescientistswhomake2016; @HernNevergethigh2018) coupled with targeted advertisting over algorithmic management techniques (@CaloTakingEconomyUber2017) to the ostensible manipulation of democratic processes (@ZuiderveenBorgesiusOnlinePoliticalMicrotargeting2018; @ZaroualiUsingPersonalityProfilingAlgorithm2020) has occassioned a popular, civil, and political backlash. In this light, a consensus may be coalescing around the idea that "in specific areas, regulation needs to become behaviourally informed not to 'nudge' citizens but to offer a 'counter-nudging' force against the exploitative use of behavioural insights by market actors" (@AlemannoEmergenceBehaviouralPolicyMaking2015:3).

Problem

The behavioural sciences seem to repudiate the assumption of individual rationality underlying liberalism and especially neoliberalism. Thus*Nudge* declares that people "are not homo economicus; they are homo sapiens" ([@ThalerNudgeimprovingdecisions2008](:6–7)) . For an art of government that "found[s]" or "models" its "principle of rationalization ... on the rational behavior of those who are governed" ([@FoucaultBirthBiopolitics2008](:312)) such a redefinition raises the spectre of a foundational epistemic undermining or at least incompatibility.

The *History of Governmentality* features a similar constellation – that of the two "absolutely heterogeneous" subjects of the 18th century: the "legal subject" of "juridical will", divided in itself and in a relation of transcendence to this split, opposite the economic subject of "irreducible ... interest", "situated in ... an indefinite field of immanence" ([@FoucaultBirthBiopolitics2008](:277)). These two subjects are governed by two "logics", two "mechanisms", have "essentially different relationship[s] with political power", "the foundation and ... the legitimate exercise of power" (276). Perhaps a similar dynamic is unfolding between the avatars of rationality and irrationality vis-à-vis the foundation of governmental rationalization.

At the same time: notwithstanding the near-diammetrical tension between Simon's bounding of rationality, foundational to behvaioural economics, and Becker's radicalization of rationality (see e.g. [@BeckerTheoryRationalAddiction1988](), neoliberal economization par excellence, the two programs share some remarkable commonalities. First, the extension of an "economic grid of intelligibility" ([@FoucaultBirthBiopolitics2008](:240;246–248)) to the analysis of non-economic life and behavioural economics share an – at least overlapping – conceptual space, albeit with mirrored gestures or vectors. Second, Becker's redefinition of rationality as "consistent maximization of a well-ordered function" ([@BeckerIrrationalBehaviorEconomic1962](:1)) is isomorphic to the predictably exploitable irrationality uncovered by behavioural economics. Third, Foucault notes that *homo oeconomicus* " becomes the correlate of a governmentality which will act on the environment and systematically modify its variables" (271) and moreover that behavioural techniques (270) adapt well to this task – it is not far from here to choice architecture.

Research questions

- What kind of subject/s is/are constructed in this discourse? (What capacities, modes of reflection, motivations, forms of desire, or volition does it ascribe to subjects?)
- Do these texts present particular rationalities of governing? How does these relate to the questions of the subject?
- What knowledges are mobilised or called upon?

- Does this material present a coherent discourse or logic, or multiple, in tension with one another?
- How does this logic / do these logics relate to those laid out in Foucault's work, especially *The History of Governmentality*?

Methodology & material

In the *History of Governmentality,* Foucault attempts "to grasp the level of reflection in the practice of government and on the practice of government;" "the art of governing," "the reasoned way of governing": "government's consciousness of itself." This approach informs the project at hand, but there are divergences.

Notably, Foucault explains that he "ha[s] not studied and do[es] not want to study the development of real governmental practice by determining the particular situations it deals with, the problems raised, the tactics chosen, the instruments employed, forged, or remodeled, and so forth", i.e., "the way in which governors really governed." Yet he also states that the object of his investigation – "the way in which this practice … was conceptualized both within and outside of government" – is "anyway as close as possible to governmental practice" (2).

In comparison to the governmentality lectures, this project goes a step closer to the "real governmental practice". There are two main 'points of entry' to the material – 1.: EU knowledge and procedures for behavioural policy; 2.: the von der Leyen EC Digital Strategy – which correspond to the two reasons cited above for the behavioural focus of governmental practice. Effectively 'between' these two points are the Commission's working documents / Impact Assessments – which apply (among other things) the behavioural procedures (1.) to the digital strategy (2.).

➡️ First, **the European Union's procedures for and studies on behaviourally-informing policy**, which provide a snapshot of the incorporation of the behavioural sciences throughout the policy cycle and of the rationalization of the practice of governing in accordance with their image. These consist of:

- EU 'Better Regulation' procedures
  - European Commission. (2021a). *Better Regulation Toolbox*. European Commission. https://ec.europa.eu/info/sites/default/files/br_toolbox-nov_2021_en_0.pdf
  - European Commission. (2021b). *Better Regulation Guidelines* (Commission Staff Working Document SWD(2021) 305 final). European Commission. https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf
- EU Studies / reports on implementing behavioural policy:

- Dessart, F. J., Sousa Lourenço, J., Rafael Almeida, S., & Ciriolo, E. (2016). *Behavioural insights applied to policy: Application to specific policy issues and collaboration at EU level* (Workshop Report No. JRC101966; EUR 28504). Joint Research Centre, European Commission; Publications Office of the European Union. https://data.europa.eu/doi/10.2760/267723

- Lourenço, J. S., Ciriolo, E., Almeida, S. R., & Troussard, X. (2016). *Behavioural insights applied to policy: European report 2016.* (Report JRC 100146; EUR 27726 EN; Science for Policy). Joint Research Centre, European Commission; Publications Office of the European Union. https://doi.org/10.2760/903938

- van Bavel, R., Herrmann, B., Esposito, G., & Proestakis, A. (2013). *Applying behavioural sciences to EU policy-making* (Scientific and Policy Report JRC83284 EUR 26033 EN; Science for Policy). Joint Research Centre, European Commission; Publications Office of the European Union. https://data.europa.eu/doi/10.2788/4659

- van Bavel, R., & Dessart, F. J. (2018). *The case for qualitative methods in behavioural studies for EU policy-making.* Joint Research Centre, European Commission; Publications Office of the European Union. https://doi.org/10.2760/861402

➡️ Second, the **von der Leyen Commission's digital strategy**, in particular with regards to its repeated emphasis on user autonomy and protection from manipulation in digital spaces (referencing, for instance, social networks, recommender systems, and platform-mediated work). It instantiates a "counter-nudge" or "budge" agenda in response to the proliferation of behaviour-modification technics. It consists of:

- European Commission. (2021, October 21). *The Digital Services Act package*. Policies: Digital Strategy. https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package

- Proposal for a Regulation // on a Single Market For Digital Services (**Digital Services Act**) and amending Directive 2000/31/EC, no. COM(2020) 825 final; 2020/0361(COD), European Parliament; European Council (2020). https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-european-parliament-and-council-single-market-digital-services-digital-services

  - European Commission, Commission Staff. (2020). *Impact Assessment Accompanying the Document Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and Amending Directive 2000/31/EC , SWD/2020/348 final* [Commission Staff Working Document]. Publications Office of the European Union. http://op.europa.eu/en/publication-detail/-/publication/5ebd61c9-3f82-11eb-b27b-01aa75ed71a1/language-en/format-PDF

- Proposal for a Regulation // on contestable and fair markets in the digital sector (**Digital Markets Act**), no. COM/2020/842 final; 2020/0374(COD), European Parliament; European Council (2020). https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A842%3AFIN

  - European Commission, Commission Staff. (2020). *Impact Assessment Accompanying the document Proposal for a Regulation of the European Parliament and of the Council*

on contestable and fair markets in the digital sector (Digital Markets Act) {COM(2020) 842 final}—{SEC(2020) 437 final}—{SWD(2020) 364 final} [Commission Staff Working Document]. European Commission. https://op.europa.eu/en/publication-detail/-/publication/57a5679e-3f85-11eb-b27b-01aa75ed71a1

- Proposal for a Decision: **Establishing the 2030 Policy Programme "Path to the Digital Decade"**, no. COM(2021) 574 final; 2021/0293(COD), European Parliament; European Council (2021). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0574

  - European Commission. (2021). *Accompanying the document Proposal for a Decision of the European Parliament and of the Council establishing the 2030 Policy Programme "Path to the Digital Decade" {COM(2021) 574 final}* (Commission Staff Working Document SWD(2021) 247 final). European Commission. https://digital-strategy.ec.europa.eu/en/library/staff-working-document-policy-programme-path-digital-decade

- European Commission. (2022). ***European Declaration on Digital Rights and Principles for the Digital Decade*** (Communication COM(2022) 28 final). European Commission. https://ec.europa.eu/newsroom/dae/redirection/document/82703

Literature review

behavioural subject literature review

- With their concept of "neuroliberalism", Whitehead et al. advance a three-dimensional "framework" for "evaluating the cumulative impacts of the behavioural, psychological, and neuro sciences on the governmental targeting of more-than-rational life."

  - First, neuroliberalism refers to a theoretical project that repudiates the "*necessary myth* of human rationality" foundational for neoliberalism (635), positing "new theories of human subjectivity" (637);

  - Second, it names a series of knowledges and practices patching neoliberal governance, both in "key areas of *front line* public policy" as well as back-end policy design and evaluation (636–637);

  - Third, they use this delineation of 'neuroliberalism' as the conceptual basis for a "critical framework" or "theory" (637) of these emerging practices, one which they explicitly position, in reference to Foucault's work, as "an adapted form of neoliberal governmentality ... informed by new theories of both the self and the state" (638).

- With his concept of "psychopolitics", Byung-Chul Han refers to this broad set of technologies of power that "influence actions on [a] pre-reflexive level" by "means of psychological programming and steering" (@HanPsychopoliticsneoliberalismnew2017:48;79). In this sense, he pushes concepts inspired by Foucault's works on discipline, biopolitics, and governmentality as well as Deleuze's text on control societies into the direction of Agamben's and Lazzarato's

arguments on the ostensibly "desubjectifying" effects of recent technocapitalist arrangements ([@AgambenWhatApparatus2009](); [@LazzaratoSignsmachinescapitalism2014]()).

- ([@StieglerBiopowerpsychopowerlogic]())