

THE RIGHT TO MENTAL AUTONOMY ITS NATURE AND SCOPE

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LET US SUPPOSE that you are an anti-vaxxer who has decided against receiving any of the effective COVID-19 vaccinations. Suppose further that your flight has been delayed and that you are sleeping in the departure lounge of an airport. I sneak up on you and deploy my transcranial magnetic stimulation (TMS) technology to interfere with your mind. This technology works by emitting magnetic fields that induce electrical events in your brain. Let us suppose that I implant a desire in you to get vaccinated against COVID-19.¹ After you land at your destination airport, you immediately rush to get vaccinated.

Intuitively, I have wronged you here. But how? I have not harmed you. If anything, I have made your life better: you now have antibodies against COVID-19. One promising explanation of the wrongness of this action is that my action was wrong because it violated your right to bodily autonomy. After all, I induced electrical events in your brain without your consent. And your brain is clearly part of your body and thus falls under the protection of your right to bodily autonomy. In this way then, through appeal to your right to bodily autonomy, we can seek to explain the wrongness of my action of using a TMS device to induce in your mind a desire to get vaccinated.

But this explanation has struck many as being incomplete.² How so? Well, suppose I used my TMS device not to interfere with your thinking, but rather to induce a bowel movement in you—perhaps by surreptitiously waving it over your stomach while you were sleeping.³ Intuitively, I have again wronged you in so acting. And, very plausibly, the wrongness of my action should again be explained through an appeal to your right to bodily autonomy. I have violated

- 1 Of course, TMS technology does not allow such precise interventions as the implantation of a desire. For better or worse, such interventions remain firmly in the realm of science fiction. (If the reader prefers, please substitute all instances of “TMS technology” or “TMS device” for instances of “sci-fi ray gun” or similar).
- 2 Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity.”
- 3 As far as I am aware, TMS cannot be used to induce a bowel movement. But let us suppose, for the sake of inducing some relevant moral intuitions, that it can be.

your right to bodily autonomy by inducing physical events in your bowels without your consent with my TMS device—events that, in turn, triggered a bowel movement. This latter action of mine seems *less wrong* than my former action (of using my TMS device to implant a desire in you to get vaccinated), but both my actions, it seems, are equally severe violations of your right to bodily autonomy. After all, in each case, I induce events in your body without your consent by waving my TMS device over you. Consequently, it looks to follow that something else must explain the *additional* wrongness of my former act of interfering with your mind, something over and above the violation of your right to bodily autonomy.

The most natural explanation, I contend, of this extra wrongness is that my former action, but not my latter one, violated your right to mental autonomy—that is, your right against significant, nonconsensual interference with your mind.⁴ Only you have the right to *directly* change your thinking about any arbitrary matter or to directly change your plans of action. I cannot permissibly attempt to change your mind without your consent by using TMS—or some other sci-fi method of mind control—to directly change your beliefs, desires, or intentions.⁵ Such actions violate your right to mental autonomy—often in addition to their violating your right to bodily autonomy. This, I suggest, is why my former action of interfering with your mind is more wrong than my latter action, which interferes only with the functioning of your body.

A number of moral philosophers and legal scholars have now recognized the existence of a natural, or moral, right to mental autonomy and called for its legal recognition.⁶ This right is standardly characterized as your right against significant, nonconsensual interference with your mind. It is your right to make up your own mind for yourself, so to speak. But the precise scope of this right remains thus far undertheorized: What limits does this right place on the morally permissible ways of influencing someone's thinking? What ways of seeking to change someone's mind manifest appropriate respect for their right to mental autonomy? Why would it be permissible for me to attempt to change

4 Bublitz and Merkel, "Crimes against Minds"; Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity."

5 Ienca and Andorno, "Towards New Human Rights in the Age of Neuroscience and Neurotechnology"; Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity."

6 Bublitz and Merkel, "Crimes against Minds"; Bublitz, "Means Matter"; Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity." The right to mental autonomy is also known as "the right to mental self-determination" (Bublitz and Merkel, "Crimes against Minds"), "the right to cognitive liberty" (Ienca and Andorno, "Towards New Human Rights in the Age of Neuroscience and Neurotechnology"), and "the right to mental integrity" (Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity").

your mind about policy *P* by presenting you (nonconsensually, even) with the reasons for favoring policy *P*, but impermissible for me to change your mind about *P* by zapping you with my TMS mind control device?

Here I make the case that the right to mental autonomy is to be correctly analyzed as the right to form attitudes in light of reasons. You form an attitude *autonomously* just when you form it in light of reasons.⁷ Consequently, I contend, we should think that the right to mental autonomy just is the right to form attitudes in light of reasons. Once understood this way, we can see why this right protects its holder against all (nonconsensual) “nonrational” interventions on their thinking—including, but not limited to, nonconsensual neurosurgery, pharmacological manipulations, sci-fi mind control, subliminal messaging, and non-reason-giving advertising or nudging. Rather, the only fully permissible ways to seek to influence someone’s thinking—those ways that do not violate the right to mental autonomy—are through methods that seek to engage their rational faculties. This result, I claim, accords with our moral intuitions—our ultimate data in this region of philosophical space.⁸

The structure of the rest of this paper goes like this: in section 1, I argue that there is good reason to believe that we (adult humans) possess a natural, or moral, right to mental autonomy. Then, in section 2, I make my case that this right can be correctly analyzed as the right to form attitudes in light of reasons and investigate the precise limits that this right places on the morally permissible ways of influencing someone’s thinking. Last, in section 3, I consider various problematic cases that might be thought to pose a challenge for my analysis.

1. A RIGHT TO MENTAL AUTONOMY?

Why think that we possess a natural, or moral, right to mental autonomy—a right to make up our minds for ourselves?

First, a couple of distinctions: I am here concerned only with a natural, or moral, right to mental autonomy, not the legal recognition of such a right—that is, a *legal right* to mental autonomy. We rational agents possess natural or moral rights. This has been recognized by many moral philosophers.⁹ For example, according to Locke, we have natural rights to—among other things—life, liberty, and the ownership of property.¹⁰ Robert Nozick put it like this:

7 Velleman, “What Happens When Someone Acts?”; Korsgaard, *Self-Constitution*.

8 Kagan, *Normative Ethics*.

9 Nozick, *Anarchy, State, and Utopia*; Thomson, *Realm of Rights*; Raz, “On the Nature of Rights.”

10 Locke, *Two Treatises of Civil Government*.

“Individuals have rights and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do.”¹¹

We possess these natural or moral rights in virtue of our natures—for example, our humanity, or our rationality, or the fact that, as sentient beings, we have interests.¹² Even in a state of nature, we humans would possess such rights. We do not have them because there is some bill of rights, or constitution, that declares that we possess them. No—their existence is independent of any such legal pronouncement or ruling. For many moral philosophers, natural rights play an important role in our understanding of moral reality; in particular, they explain wrongdoings.¹³ Why was it wrong for Lee Harvey Oswald to assassinate JFK? Because JFK possessed a right to life, and by killing him, Oswald violated this right. But it would not have been wrong for Oswald to swat an annoying fly at that very same moment in 1963, causing its death, since flies do not possess a right to life.

In contrast, legal rights are artifacts of the state.¹⁴ We possess them simply because the correct governmental body has decreed that we possess them. As a British citizen, former prime minister David Cameron possesses a legal right to reside in the United Kingdom that former president Bill Clinton, a citizen of the United States only, lacks. Cameron possesses this right of residence because the British state has decreed that part of what it is to be a British citizen is to possess such a right. In a state of nature, there would be no legal rights. In contrast with natural rights, there are either no or more limited necessary connections between legal rights and morality or wrongdoings. Natural rights and legal rights can (and have) come apart. For example, in Nazi Germany, the state stripped Jewish people of the legal recognition of some of their (natural) property rights. Although these people still possessed a moral right to this property, they no longer—according to the German state—had any legal right to it. I shall not be concerned here with the legal right to mental autonomy. However, it should be noted that a number of legal scholars and moral philosophers have already called for its recognition by the law.¹⁵

We should also distinguish between the negative and positive dimensions of a (natural) right.¹⁶ Rights correlate with duties: if I have a right to *X*, then you

11 Nozick, *Anarchy, State, and Utopia*, ix.

12 Raz, “On the Nature of Rights”; Markovits, *Moral Reason*.

13 Nozick, *Anarchy, State, and Utopia*; Thomson, *The Realm of Rights*.

14 Hart, *The Concept of Law*.

15 Bublitz and Merkel, “Crimes against Minds”; Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity.”

16 Narveson, *The Libertarian Idea*.

have a duty to abstain from preventing me from attaining *X* or, if appropriately situated, a duty to assist me in attaining *X*. The former duty corresponds to the negative component of my right to *X*, the latter duty with the positive component of my right. JFK's right to life entailed a duty on the part of all third parties to abstain from killing him. This corresponds to the negative component of his right to life. But his right to life also entailed an obligation on appropriately situated others to get him medical attention once he had been shot. This corresponds to the positive aspect of his right to life.

The right to mental autonomy, under investigation here, has positive and negative dimensions. This has already been recognized by those moral philosophers and legal scholars who have written about this right.¹⁷ Most discussion of our right to mental autonomy has focused on its negative component. This should be apparent from its standard characterization as our right against significant, nonconsensual interference with our minds. This negative component of our right to mental autonomy entails (something like) a duty on the part of third parties to abstain from engaging in significant, nonconsensual interventions in our minds. But this right also has a positive dimension characterized by Bublitz and Merkel as the "freedom to self-determine one's inner realm, e.g., the content of one's thoughts, consciousness or any other mental phenomena."¹⁸ This aspect of your right very plausibly corresponds to a duty on the part of appropriately situated others—for example, educators or mental health professionals—to assist you in mentally self-determining.

Back to our initial question: Why think that we possess a natural right to mental autonomy? The case of TMS-ing the anti-vaxxer, with which I began this paper, gives us strong reason, I believe, to hold that this is the case. Recall that in the example, I used TMS technology to nonconsensually implant a desire to get vaccinated against COVID-19 into your mind while you were asleep. Intuitively, I have wronged you in so acting. In general, wrongdoings are explained by natural rights violations.¹⁹ Granting this, we should think that I have violated (at least) one of your natural rights in so acting.

But which right? As I noted before, I have not harmed you by inserting this desire into your mind. It is an easily satisfiable desire, one that causes you no suffering and is quickly extinguished once you go and get vaccinated against COVID-19. Consequently, we cannot say that I have violated your right against being harmed. One promising explanation of the wrongness of this action is

17 Bublitz and Merkel, "Crimes against Minds"; Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity."

18 Bublitz and Merkel, "Crimes against Minds," 60.

19 Nozick, *Anarchy, State, and Utopia*; Thomson, *Realm of Rights*.

that my action was wrong because it violated your right to bodily autonomy. After all, I directly influenced the functioning of your brain with the electromagnetic waves my TMS device emits. Very plausibly, this constitutes a violation of your right to bodily autonomy: your brain is clearly part of your body. When granting that the mind is (something like) the functioning of the brain, all direct manipulations of the mind are going to involve interventions in brain function. Consequently, it looks like we can explain the wrongness of my action of inserting a desire into your mind with my TMS device simply through appeal to your right to bodily autonomy.

Nevertheless, it is still natural to think that I wronged you in some way that is “over and above” the wrong I committed by interfering with the functioning of your brain. There is some residual wrongdoing, so to speak, that is left unaccounted for if we try to explain the wrongness of my action simply through appeal to this violation of your bodily autonomy. If I use my TMS device to (harmlessly) zap your bowels, such that you suddenly need to go to the toilet, then I have done something wrong. But, intuitively, I have done something *less wrong* than when I interfere with your thinking with my TMS device. When I zap your bowels, I have violated your right to bodily autonomy but not your right to mental autonomy. The extra, or residual, wrongdoing that is left over in my act of inserting a desire into your mind, once we subtract out my violation of your right to bodily autonomy, is, I contend, a separate violation of your distinct right to mental autonomy. The most complete explanation of the “full wrongness” of my action, I believe, is that my action was wrong, not simply because it violated your right to bodily autonomy, but also because it violated a distinctive natural right to mental autonomy—a right against significant, nonconsensual interference with your mind—that you possess.²⁰ In this way, then, we are warranted in positing a natural right to mental autonomy as part of the best explanation of the wrongness of my act of inserting a desire into your mind without your consent.

On this point, Douglas and Forsberg contrast the case of a barista who, seeing that one of her regular customers looks a little down, surreptitiously slips into his coffee a mild, fast-acting *antidepressant* that lifts his mood for several hours with the case of a barista who, seeing that one of her regular customers is a little wheezy, covertly slips into his coffee a mild, fast-acting *anti-asthmatic medication* that makes his breathing somewhat easier for several hours.²¹ Intuitively, benevolently spiking someone’s coffee with an antidepressant is *prima*

20 Bublitz and Merkel, “Crimes against Minds”; Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity.”

21 Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity,” 188.

facie more wrong than benevolently spiking it with a similarly mild anti-asthmatic medication.²² But we cannot explain this moral difference through an appeal to the right to bodily autonomy: each intervention involves a similar degree of bodily interference. The best explanation, it seems, of it being more wrong to covertly slip someone an antidepressant than an anti-asthmatic is that people possess a right to mental autonomy over and above their right to bodily autonomy and that the antidepressant, but not the anti-asthmatic, interferes with the person's mind, violating this right to mental autonomy.

In their "Crimes against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination," the *locus classicus* for all recent discussions of the right to mental autonomy, Bublitz and Merkel catalog a range of hypothetical cases that collectively constitute further strong evidence that we have a natural right to mental autonomy.²³ Their first case concerns a struggling restaurant that spikes customers' drinks with a chemical—a low dose of ghrelin that increases their feeling of being hungry but that otherwise has no discernible effects—such that they order more food, thereby increasing the restaurant's revenue. Intuitively, this kind of manipulation is wrong, and wrongdoings are explained by rights violations.²⁴ The most natural explanation of the wrongfulness of this action, it seems to me, is that it violated the customers' rights to mental autonomy. Other cases they describe include the use of subliminal messaging by an online store and the covert nonconsensual modulation of brain activity, leading to wild mood swings, using an implanted deep brain stimulator electrode.²⁵ In each such case, although there is plausibly some violation of bodily autonomy since the brain (at least) is nonconsensually influenced, there is nevertheless still a need to invoke a distinctive right to mental autonomy to fully explain the wrongness of the described actions. This constitutes further reason, I think, to posit a natural right to mental autonomy.

2. THE NATURE AND SCOPE OF THE RIGHT TO MENTAL AUTONOMY

Let us suppose that we do indeed possess a natural right to mental autonomy—as a number of moral philosophers and legal scholars have been professing.²⁶ Important questions still remain. In particular, the question of the exact *scope*

22 Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity."

23 Bublitz and Merkel, "Crimes against Minds."

24 Nozick, *Anarchy, State, and Utopia*; Thomson, *Realm of Rights*.

25 Bublitz and Merkel, "Crimes against Minds," 58–59.

26 Bublitz and Merkel, "Crimes against Minds"; Ienca and Andorno, "Towards New Human Rights in the Age of Neuroscience and Neurotechnology"; Douglas and Forsberg, "Three Rationales for a Legal Right to Mental Integrity."

of this right still stands: What limits does the right place on the morally permissible ways of influencing someone's thinking? What ways of seeking to change someone's mind manifest appropriate respect for their right to mental autonomy? What makes some ways of influencing someone's thinking—rational argumentation, say—permissible, but other ways—pharmacological manipulation—impermissible? In the rest of this paper, I investigate this matter and develop an account. I should say in advance that my proposal is very much intended to be understood as a *working* account—not as a definitive statement, but rather as a proposal that serves as a good “first pass” that will (most likely) need to be refined in later work.

The standard characterization of the right to mental autonomy is that it is your right against significant, nonconsensual interference with your mind.²⁷ There is something going for this characterization: just as there are ways of influencing someone else's body that are so trivial that they do not count as violating their right to bodily autonomy—for example, waving your hands around near someone's arm such that it causes the hairs on their arm to quiver—there may, plausibly enough, be ways of nonconsensually influencing someone's mind that are so trivial they do not count as violating their right to mental autonomy.²⁸

Nevertheless, this analysis is lacking in certain key respects. First, it is quite obscure what counts as a significant, nonconsensual intervention on, or interference with, someone's mind. This characterization does not really help us to partition the permissible ways of influencing someone's thinking from the impermissible ways. Second, there are plausible counterexamples. For example, there is nothing even *prima facie* wrong, or wrong-making, about changing someone's mind on some important topic by (nonconsensually) presenting them with compelling arguments—say, by suddenly and loudly proclaiming your argument on a soapbox on a bustling street such that they cannot help but hear them. You have not violated anyone's right to mental autonomy by so acting, but this looks to count as a significant, nonconsensual intervention on their mind. Consequently, it seems that the right to mental autonomy cannot be correctly analyzed simply as the right against significant, nonconsensual interference with your mind. There must be more to the right to mental autonomy than this.

In their 2014 paper “Crimes against Minds,” Bublitz and Merkel offer an alternative analysis of this right. (Bublitz further discusses this account in his 2020 paper, “Why Means Matter.”) They suggest that we can understand

27 Bublitz and Merkel, “Crimes against Minds”; Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity.”

28 Douglas and Forsberg, “Three Rationales for a Legal Right to Mental Integrity.”

the scope of the right to mental autonomy by first distinguishing between *direct* and *indirect* interventions on the mind. Direct interventions include changing someone's mind through the use of TMS, direct brain stimulation, or psychoactive substances. In contrast, rational persuasion counts among the indirect interventions. Bublitz and Merkel characterize this distinction in the following way:

Direct interventions are those working directly on the brain ... whereas indirect interventions are somehow more remote—mediated, as it were, by internal processes on the part of the addressee. Tentatively, indirect ... interventions are those stimuli which are perceived sensually ... and pass through the mind of the person, being processed by a host of psychological mechanisms. Thus, conscious communication in all its forms is an indirect intervention. By contrast, direct ... interventions are stimuli reaching the brain by other routes than sensual perception.... Roughly one could say that *indirect interventions are inputs into the cognitive machinery our minds are adapted to process, whereas direct interventions change the cognitive machinery itself.*²⁹

Bublitz and Merkel then suggest that this distinction carves at the normative joints with respect to the scope of our right to mental autonomy. Roughly speaking, direct interventions on our minds violate our right to mental autonomy; indirect ones do not. In their words: “Prima facie, indirect interventions are permissible, direct ones not.”³⁰ A virtue of this account is that it correctly classes your act of changing someone's mind on an important topic by (non-consensually) presenting them with compelling arguments—an indirect intervention—as permissible and as not violating their right to mental autonomy. Likewise, it correctly classes the barista's action of improving her customer's mood by spiking his coffee with anti-depressants—a direct intervention on his thinking—as impermissible.

However, as the authors themselves acknowledge, this analysis of the right to mental autonomy is problematic. Most pertinently, manipulating someone's mind with subliminal messaging counts as an *indirect* intervention on their thinking. But it is still morally wrong. Consider, for example, Bublitz and Merkel's own example of subliminal influence:

An online store shows Flash movies to customers which subliminally prime brand C and cause customers to evaluate C more positively.³¹

29 Bublitz and Merket, “Crimes against Minds,” 69–70 (emphasis added).

30 Bublitz and Merkel, “Crimes against Minds,” 73.

31 Bublitz and Merkel, “Crimes against Minds.”

While stimuli are not powerful enough to create completely new desires, they tip the scales of inclined customers toward *C*'s product. While overall sales remain constant, *C*'s products are increasingly bought.³²

Here, viewers are being caused to evaluate *C* more positively by the prime they unconsciously perceive—very plausibly, via the familiarity bias.³³ Intuitively, there is something morally objectionable about seeking to influence consumers' choices in this kind of way. Further evidence for this comes from the furor over market researcher James Vicary's 1957 claim that he had caused an 18.1 percent increase in Coca-Cola sales and a 57.8 percent increase in popcorn sales by inserting single frames saying "Drink Coca-Cola" and "Eat Popcorn" into a movie. According to Vicary, these frames were presented so briefly that they could not have been consciously perceived—rather, they had their behavioral effects subliminally. Although these results turned out to be fabricated, Vicary's claim still led to a moral panic among the general public at the time, with calls to ban subliminal advertising that have persisted to the present day.³⁴ Granting the veracity of these moral intuitions, it follows that Bublitz and Merkel's distinction between direct and indirect interventions is not carving at the normative joints with respect to articulating the scope of our right to mental autonomy.³⁵ This right can be violated by indirect interventions on our thinking just as it can be by direct ones. In this way, then, we can see why the right to mental autonomy cannot be correctly analyzed simply as our right not to be subject to direct interventions on our minds.

Another example of an intervention on people's minds that is indirect but nevertheless morally wrong is brainwashing. As I write, the government of China is imprisoning many thousands of Uighur people in "transformation through education" camps, in which Uighur people are brainwashed into accepting tenets and ideals endorsed by the Chinese State and repudiating their own culture.³⁶ Of course, the wrongs committed here by the Chinese State are many and various. They include, among their number, violations of the right to liberty, the right to bodily autonomy, and the right to life.³⁷ But there is also a clear violation of the imprisoned Uighur people's right to mental autonomy: the brainwashing they undergo is an attempt by the Chinese State to change their beliefs, desires, and intentions through a nonrational process. For example, detainees are forced to

32 Bublitz and Merkel, "Crimes against Minds," 58.

33 Chartrand, Huber, Shiv, and Tanner, "Nonconscious Goals and Consumer Choice."

34 O'Barr, "'Subliminal' Advertising."

35 Bublitz and Merkel, "Crimes against Minds."

36 Haitiwaji, "Our Souls Are Dead."

37 BBC News, "Who are the Uyghurs?"

repeatedly sing songs declaring their love for the Communist Party of China and, more generally, to outwardly conform to the behavioral ideals preferred by the Chinese State—no doubt in the hope that this will lead to detainees adjusting their attitudes to fit (or rationalize) these behaviors. Irrespective of whether this brainwashing is successful, it is still an attempt to modify and control people's thinking. The conduct of the Chinese State is clearly morally wrong and is an attempt to violate the detainees' right to mental autonomy. But their interventions on the Uighur peoples' thinking are indirect, according to Bublitz and Merkel's classification.³⁸ This constitutes further reason to hold that the right to mental autonomy cannot be correctly analyzed simply as our right not to be subject to direct interventions on our minds.³⁹

But how should we understand it? My proposal here is that the right to mental autonomy should be analyzed as the right to form attitudes in light of reasons. The permissible ways of causing someone to form attitude *A* are partitioned from the impermissible ways by the fact that they involve presenting the person in question with reasons for forming attitude *A*. If someone possesses a right to mental autonomy, then the only morally permissible way to attempt to change that person's mind (say, to cause them to believe that *p*, to desire that *q*, or to pursue end *E*) is to present them with normative reasons for so changing their mind—for example, by presenting them with decisive evidence that *p* is true, or by informing them of sufficient reasons for desiring that *q* or for pursuing end *E*. All other ways of intentionally changing that person's mind—methods that seek to alter their thinking through some (nonconsensual) *nonrational* (or non-reason-giving) process, such as neurosurgery or some sci-fi form of mind control—are classed, on this analysis, as morally impermissible.⁴⁰

In the rest of this paper, I will be developing and defending this analysis of the right to mental autonomy as the right to form attitudes in light of reasons. But first, I will provide some clarification. What is the notion of a reason that I am working with here? By "reasons," I mean normative reasons—considerations that count for or against performing some action or in favor of forming or revising some or other attitude. I will also be understanding the scope of "reasons" to be quite wide. In addition to considerations like the fact that the stove will burn your hand counting as a reason for you to abstain from placing

38 Bublitz and Merkel, "Crimes against Minds."

39 One further example of an indirect violation of someone's right to mental autonomy would be hypnotizing someone without their consent.

40 I am here only defending the view that we adult humans have a right to mental autonomy. It is consistent with everything that I have said here that children do not possess such a right. This may explain why it is permissible to nonrationally condition or habituate children, but not adults, into holding certain attitudes—widely accepted moral judgments, for example.

your hand on it, and a sound argument for proposition p counting as a reason to believe that p , I will also be countenancing as reasons what might be considered (by some) to be some more edge cases. So, for example, the smell of baked bread is going to constitute a reason, in my use of the term, to feel hunger toward the baked bread in question. After all, from a biological or evolutionary point of view, a fitting or appropriate response to good-smelling food is to feel hunger toward it and to form the desire to eat it. Given all this, it sounds perfectly natural to my ears to say that the smell of the baked bread counts as a reason both in favor of eating the bread and in favor of forming a mental state of hunger that is directed toward the bread. Similarly, sad music is going to count as giving you a reason, on my understanding of the term, for forming certain affective states and feelings—and not just as a cause of you entering those states. Likewise, viewing a painting that expresses the sublime—such as Caspar David Friedrich’s *Wanderer above the Sea of Fog*—is going to count, on my view, as a reason for you to feel awe.

A second clarification: What is it exactly to form an attitude in light of a reason? On my understanding, you form an attitude A in light of reason R just when, and because, (1) you have responded appropriately to reason R by forming attitude A , and (2) your awareness of R is causally responsible (in the right kind of way) for your forming attitude A . I will follow Levy in holding that what it is to respond appropriately to a reason is “to be better or worse disposed toward an action, or to raise or lower one’s credence, in a way that reflects the actual force of a reason.”⁴¹ And what it is for your awareness of R to be causally responsible (in the right kind of way) for your forming attitude A is (something like) for your awareness of R to cause you to form attitude A in a way that does not involve any deviant causal chain—for example, by your awareness of R directly causing you to form attitude A , unmediated by any intervening mental events. This characterization of what it is to form an attitude in light of a reason, or to respond to a reason, should suffice for my dialectical purpose here of providing an analysis of the right to mental autonomy.

Why should we accept my account of the right to mental autonomy as the right to form attitudes in light of reasons? Ultimately, we should because it captures our moral intuitions concerning the matter: it correctly classes, I claim, the intuitively impermissible ways of influencing someone’s thinking as impermissible and the intuitively permissible ways as permissible. And our moral intuitions are our ultimate data in this region of philosophical space.⁴² For example, it correctly explains why your right to mental autonomy is violated

41 Levy, “Nudge, Nudge, Wink, Wink,” 283.

42 Kagan, *Normative Ethics*.

when I nonconsensually insert some desire into your mind through neurosurgery or sci-fi mind control: you are not forming this desire in light of normative reasons. Rather, you are simply having this desire foisted upon you through a nonrational process. And it correctly classifies my act of convincing you of some important policy *P* by nonconsensually presenting you with compelling arguments for *P*—for example, by loudly proclaiming them on my soapbox, which you happen to overhear—as permissible. Even though my influence on your thinking here is both significant and (in some sense) nonconsensual, there is nothing even *prima facie* wrong about it. The analysis at hand explains this: I cause you to affirm policy *P* by presenting you with reasons for doing so. Consequently, I do not violate your right to mental autonomy.

What about the instances of morally wrong indirect interventions—subliminal messaging and brainwashing—that Bublitz and Merkel’s account fails to correctly classify?⁴³ First, my analysis can, I claim, explain why the above-described subliminal advertising (by the online store) is wrong. (Recall that the online store shows Flash movies to subliminally prime brand *C*, an action that causes customers to evaluate *C* more positively.) Such messaging is an attempt to *bypass* the customer’s rational faculties. It succeeds, when it does, not by presenting the subject with reasons to evaluate the product in question more positively. Rather, it succeeds, when it does, by inculcating a more positive evaluation of the product through some covert and nonrational process—in this case, through priming and the familiarity bias.⁴⁴ Consequently, it counts, according to the analysis at hand, as violating the customer’s right to mental autonomy.⁴⁵

Second, my analysis can also explain why brainwashing violates people’s right to mental autonomy. When I brainwash you into believing that *p*, desiring that *q*, intending end *E*, or positively evaluating *X*, I cause you to acquire these attitudes without presenting you with normative reasons for forming them. For example, the agents of the Chinese Communist Party might cause you to evaluate the Chinese State more positively by forcing you, at one of their reeducation camps, to repeatedly sing about your love for it and otherwise engage in behavior manifesting support for its tenets and ideals. Nevertheless, these do *not* constitute normative reasons for you to evaluate the Chinese State more

43 Bublitz and Merkel, “Crimes against Minds.”

44 Chartrand, Huber, Shiv, and Tanner, “Nonconscious Goals and Consumer Choice.” The familiarity bias is the psychological effect where subjects are more positively disposed toward familiar stimuli—including those that have been perceived only subliminally, moments before—than unfamiliar stimuli (Park and Lessig, “Familiarity and Its Impact”).

45 I will consider the objection that familiarity is actually a *reason* to prefer a product, and thus that this instance of subliminal messaging does not violate the right to mental autonomy on my analysis, below in section 3.

positively—quite the opposite, in fact! (Normative reasons to positively evaluate the Chinese State would be evidence that said state was a just state, that it did not commit human rights violations, or that it had a beneficent effect upon its citizens, etc.) Consequently, according to my analysis, such brainwashing counts as violating your right to mental autonomy.

This analysis also leaves room for an attractive explanation of why it is intuitively (even) *more wrong*, so to speak, to interfere with someone's thinking through a direct intervention—such as nonconsensual neurosurgery or TMS—than through an indirect one—such as subliminal messaging. The former interventions, unlike the latter, involve a violation of the person's right to bodily autonomy in addition to their violation of the person's right to mental autonomy. Similarly, this account also allows us to class most actual instances of brainwashing as being, all things considered, more wrong than influencing someone through subliminal messaging: such instances of brainwashing (nearly always) involve concurrent violations of other rights—such as the right to liberty and free expression in the case of the Chinese State's reeducation camps.

Aside from according with our moral intuitions, this account explains why philosophers have dubbed this right “the right to mental *autonomy*.” After all, and very plausibly, we act autonomously just when, and because, we act for good reasons. Consider, for example, the difference between autonomously deciding to take drugs of your own free will (to see what it felt like, say) and being compelled to take drugs, against your own better judgment and contrary to your will, by the overwhelming force of your addiction. The former action is clearly a *more* autonomous action than the second, even though both have their sources within your mind. One natural explanation of this is that only in the former case are you acting for good reasons (by your lights, at least). You—the agent—are not really the source of your action when you are overwhelmed by some impulse from which you are both alienated and which you do not take to give you good reasons to so act.⁴⁶ This suggests the following account: you act autonomously just when, and because, you act for good reasons.⁴⁷ By symmetry, we should think that you form some attitude—the belief that *p*, the desire that *q*, the intention to pursue end *E*—autonomously just when, and because, you form that attitude for normative reasons. *You* are the author of some attitude formation or revision—rather than a passive receiver of that attitude—just when, and because, the attitude is formed in light of reasons. If this is correct, then we have further reason to conceive the right to mental

46 Frankfurt, “Freedom of the Will.”

47 Velleman, “What Happens When Someone Acts?”; Korsgaard, “Skepticism about Practical Reason” and *Self-Constitution*.

autonomy—your right to make up your mind *for yourself*, so to speak—as the right to form attitudes in light of reasons.

3. PROBLEMATIC CASES CONSIDERED

I want to finish by considering a number of problematic cases for my analysis of the right to mental autonomy. My account makes straightforward predictions about the conditions under which an intentional action violates someone's right to mental autonomy: an intentional action *A* violates someone *S*'s right to mental autonomy just when (1) *A* causes *S* to form, or revise, some attitude, and (2) *A* does not cause *S* to form, or revise, this attitude in light of reasons for forming, or revising, this attitude. Each of the problematic cases that I now discuss—interference with perceptual states, the airing of non-reason-giving advertising, the use of benevolent nudging, and subliminal messaging—presents a challenge for this account.

3.1. *Perceptual States*

Do perceptual states fall under the purview of the right to mental autonomy? Suppose that I wave my TMS device over your visual cortex while you are working at your desk, causing you to experience various technicolor phosphenes in your visual field. These phosphenes are momentarily distracting but swiftly disappear and have no discernible long-term effects on your thinking or experience of the world. And you know that visual experiences are mere hallucinations. Have I wronged you by so acting? Have I violated your right to mental autonomy?

My intuitions here go like this: it seems clear that I have wronged you in *some way* or another by directly inducing visual experiences within you without your consent. You could reasonably ask me to stop, and you could seek assistance from others—including, plausibly enough, the law—to make me stop if I persisted. But it is not completely obvious to me that I have violated your right to mental *autonomy* by so acting. After all, visual perceptual experiences are not states that we can *self-determine*—except indirectly by choosing to look at this or that. On the other hand, I can violate your right to bodily autonomy by physically intervening in the functioning of your stomach or kidneys, even though you have no direct control over them. By analogy, why think that the right to mental autonomy only limns a sphere of sovereignty around those mental states that you can self-determine? On balance, then, I would say that your right to mental autonomy has been violated by my actions here.

What does my analysis of the right to mental autonomy imply about this case? Well, I have caused you to form some attitudes—the visual perceptual

states in question—without presenting you with reasons to form those states. Consequently, it seems, I have violated your right to mental autonomy, according to the analysis at hand, since I have caused you to form an attitude without presenting you with reasons to do so. One initial concern with this analysis is the question of whether perceptual states can be correctly said to be (propositional) *attitudes*. However, I will simply be assuming here that they are. After all, this is the dominant view in the literature.⁴⁸ When granting that perceptual states are indeed (propositional) attitudes, they fall firmly under the purview of the right to mental autonomy on the analysis defended here.

Here is a way of understanding the problem I am raising here: perceptual states do not seem to be subject to rational norms. It does not make sense, on the face of it, to say that a perceptual state is rational or irrational. Nor does it make sense to say that the contents of the external world arrayed in my visual field give me a *reason* to enter into such and such a visual perceptual state. Consequently, when I jump in front of you and cause you to form perceptual states representing my presence, I am causing you to form attitudes—namely, your perceptual representations of me—without giving you reasons for forming them. But this means that, according to the analysis at hand, I am wronging you and violating your right to mental autonomy simply by jumping into your visual field—or, indeed, by impinging upon your sensory experience in any way, shape, or form! But this is absurd. Clearly, it is not wrong for someone else to enter your sensory field, thereby causing you to enter certain corresponding perceptual states. Something must have gone wrong in my analysis.

But what? The proponent of my analysis of the right to mental autonomy has two options here. Either she can give up the claim that perceptual states fall under the purview of the right to mental autonomy, or she can hold that perceptual states are subject to rational norms (in some sense) and that such states are formed in light of reasons (in some sense of the word “reason”) when someone enters your sensory field and causes you to enter certain appropriate corresponding perceptual states. In my view, both options are reasonable. If she pursues the former, then she must explain why it is (*pro tanto*) wrong for me to induce visual phosphenes by waving my TMS device over your visual cortex in the absence of your consent without appealing to your right to mental autonomy. This could perhaps be done through reference to your right to bodily autonomy alone or through reference to some distinct right to mental *integrity* that has a broader purview than the right to mental autonomy.

48 Byrne, “Perception and Conceptual Content.” For the dissenting perspective that perceptual states are not propositional attitudes, see Crane, “Is Perception a Propositional Attitude?”

However, I prefer the second option. The proposition that perceptual states are subject to norms (of some kind or another) is a compelling one. A number of philosophers hold that beliefs are subject to epistemic norms—including norms of sensitivity to the evidence and rational requirements such as consistency—because beliefs aim at being true.⁴⁹ Your perceptual states aim at accurately representing those aspects of the external world that are currently occupying your perceptual fields. By symmetry, we could hold that perceptual states are subject to norms of accuracy: the perceptual states that you *ought* to form are those that accurately represent the contents of your perceptual fields.⁵⁰ We are then in a position to say that an accurate perceptual state that is formed “in the right kind of way”—that is, through the normal sequence of perceptual processing that transforms sensory input into perceptual states—is formed *through a rational process* (in an extended sense of the phrase). At each step of the perceptual processing, you form the perceptual state that you *ought* to form, given your sensory input and prior knowledge of the causal structure of the world. (The standard view in contemporary cognitive science is that perceptual processing is a sequence of probabilistic inferences, governed by certain epistemic norms.)⁵¹ Your sensory input then constitutes a *reason*—in some extended sense of the word—to form the appropriate corresponding perceptual states that accurately represent it. In this way, then, we can see why it makes sense to say that perceptual states are subject to rational norms and that they are formed in light of reasons (in some extended sense of the terms).

What is the significance of this? Well, it means that the proponent of my analysis of the right to mental autonomy can maintain that my act of non-consensually inducing visual phosphenes in you with my TMS device violates your right to mental autonomy while denying that it is violated if I merely step into your visual field. The former action now counts as causing you to form an attitude without presenting you with reasons to do so, whereas the latter does not. When I step into your visual field, I cause you to form perceptual states by presenting you with reasons for forming these perceptual attitudes. In this way,

49 Velleman, “The Possibility of Practical Reason” and “On the Aim of Belief”; Cowie, “In Defence of Instrumentalism”; Buckley, “Varieties of Epistemic Instrumentalism”; Cote-Bouchard, “Two Types of Epistemic Instrumentalism.”

50 For an extended defense of the view that perceptual states are subject to rational norms, see, for example, Siegel, *Rationality of Perception*. For a defense of the view that perceptual states are epistemically evaluable, see Jenkin, “Perceptual Learning and Reasons-Responsiveness.”

51 Friston, “A Theory of Cortical Responses.”

then, the analysis of the right to mental autonomy under consideration here can accommodate our moral intuitions on these cases.⁵²

3.2. Advertising

A rough-and-ready distinction can be drawn between reason-giving and non-reason-giving advertising. Let us say that an advertisement for *X* is reason-giving just when the advertisement presents the viewer with reasons for purchasing or desiring *X* or makes the case that the viewer should purchase or desire *X*. In contrast, an advertisement for *X* is non-reason-giving just when it aims to cause viewers to desire or purchase *X* without presenting reasons for desiring or purchasing *X*—for example, by exploiting the “beauty sells” effect

- 52 On the story I have just sketched, the perceptual states that you ought to form are those that accurately represent the contents of your perceptual fields (since this is what such states aim at representing). However, this commitment looks to generate a problem for my analysis of the right to mental autonomy. After all, during visual illusions, your visual system fails to accurately represent the contents of your visual field. You, therefore, count, under such circumstances and according to my story, as failing to form the perceptual states you ought to form. In this case, according to my analysis of the right to mental autonomy, I would be wronging you by presenting you with a visual illusion that caused you to form visual perceptual attitudes without presenting you with reasons for forming those attitudes. But this is absurd. I do nothing even *prima facie* wrong when I present you with a visual illusion that causes you to have an illusory experience. However, the proponent of my analysis has a quick fix available to her for this problem. What this case tells us, I think, is that the aim of perception is *not* to accurately represent the contents of your perceptual field but rather to accurately represent the *appearances*—where the appearances can be characterized as (something like) the way the world would (normally) look (or sound, etc.) to someone occupying your vantage point. In the absence of an illusion, you ought to form those perceptual states that accurately represent the contents of your perceptual field because those contents are—or coincide with, etc.—the appearances under such circumstances. But, in the presence of an illusion, the perceptual states that you ought to form are those that accurately represent the (illusory) appearances and not those that accurately represent the actual contents of your perceptual field. This accords, I think, with our intuitions. If I experience the *trompe l’oeil* illusion when viewing del Caso’s notable painting *Escaping Criticism*, then it does not seem like I am making a mistake or violating a norm. Of course, my perceptual attitudes have false (propositional) contents. They are representing the world as containing a boy climbing out of a framed painting, and there is no such boy in front of me. But there is the *appearance* of such a boy. And my perceptual states are accurately representing that appearance. Since perception aims at representing the appearances, I have formed the perceptual states that I ought to have formed, even though their contents (“there is a boy in front of me climbing out of a framed painting”) are false. I lack the space here to flesh out this account of appearances and the aim of perception. But it strikes me as being plausible, and thus I would be warranted in appealing to it to evade the above-presented objection to my account.

and associating *X* with beautiful people.⁵³ Of course, many actual adverts will be both reason-giving in some respects and non-reason-giving in others—for example, an advert that accurately represents the virtues of the product while simultaneously associating it in the mind of the viewer with attractive people.

Consider, for example, the 1978 Tab cola “Beautiful People” television advertisement. Over a montage of beautiful people drinking Tab, a song with the following lyrics is sung:

Tab, what a beautiful drink.
 Tab, for beautiful people.
 Tab, you’re beautiful to me.
 Sixteen ounces and just one calorie.⁵⁴

Although this advert does present the viewer with *some* normative reasons for purchasing Tab cola (it allows you to drink something that tastes similar to Coca-Cola, but which contains only one calorie and is thus better for your waistline), it also (quite blatantly, in my view) attempts to inculcate within the viewer a desire for Tab cola by associating it with beautiful people. The song even asserts that the drink is “for beautiful people.” Advertisers have long held that “beauty sells” and have employed attractive people as endorsers, spokespeople, or models in their adverts.⁵⁵ The empirical evidence supports this contention: the physical attractiveness of the person featured in an advert increases advertiser believability, viewers’ willingness to purchase, viewers’ positive attitude toward the product, and the rates of actual purchase.⁵⁶

Now, no one can seriously believe that drinking Tab cola will turn them into a beautiful person or make it the case that attractive people will want to be in relationships with them. Nevertheless, people seem to acquire a greater desire for a product when it is associated in their minds with beautiful people. The exact psychic mechanism by which this happens is contested and a matter

53 Brumbaugh, “Physical Attractiveness and Personality in Advertising”; Yin and Pryor, “Beauty in the Age of Marketing.”

54 The advertisement can be viewed at <https://www.youtube.com/watch?v=IrPkWNJeHzg>.

55 Brumbaugh, “Physical Attractiveness and Personality in Advertising.”

56 For a discussion of increased advertiser believability, see Kamins, “An Investigation into the Match-Up Hypothesis.” Regarding the effect on viewers’ willingness to purchase, see Kahle and Homer, “Physical Attractiveness of the Celebrity Endorser”; Petroschius and Crocker, “An Empirical Analysis of Spokesperson Characteristics.” For discussion of viewers’ positive attitude toward the product, see Kahle and Homer, “Physical Attractiveness of the Celebrity Endorser.” Regarding effects on the rates of actual purchase, see Caballero and Solomon, “Effects of Model Attractiveness.”

of debate.⁵⁷ However, insofar as this mechanism does not involve forming attitudes in light of reasons, then the airing of such an advertisement is going to count, on my analysis, as violating the viewer's right to mental autonomy. After all, it would be to inculcate a desire for a product within the viewer without presenting her with a normative reason for desiring said product or without making the case, through rational means, that she should desire this product. According to my analysis, this would make the airing of such adverts *prima facie* wrong.

Does this result accord with our moral intuitions? Non-reason-giving advertisements are everywhere. (Purely reason-giving adverts are either rare or nonexistent.) But most of us do not regard the airing of such non-reason-giving advertisements as morally wrong. (If we did, there would presumably be more of an uproar about them!) In which case, it looks like my analysis of the right to mental autonomy—if it does indeed class the airing of non-reason-giving adverts as morally wrong—has itself gone wrong: the proposition that the airing of non-reason-giving advertisements is morally wrong appears to be inconsistent with our moral intuitions concerning the matter.

However, I think the proponent of my analysis can convincingly push back against this indictment. First, it is not obvious to me that our moral intuitions support the proposition that there is nothing wrong about companies airing non-reason-giving adverts. On the contrary, it seems to me most people do think there is *something* objectionable about such advertisements. In my experience, most people, when quizzed upon the morality of non-reason-giving advertisements, such as the Tab cola commercial, describe them as being “manipulative.” For example, Bublitz and Merkel describe non-reason-giving adverts as being “manipulative influences.”⁵⁸ And clearly, when we describe some action as “manipulative,” we mean to communicate that it is morally objectionable in some respect. Indeed, I believe that the wrongness of such manipulative actions consists (in part, at least) in the fact that they are attempts to influence someone's thinking and behavior without presenting them with reasons for thinking or behaving in the desired ways. In other words, such manipulative actions are wrong (at least, in part) because they violate the manipulated person's right to mental autonomy.

Second, the proponent of my analysis of the right to mental autonomy may be able to accommodate the proposition that there is nothing morally objectionable about the advertising industry's use of beautiful people as an instrument of persuasion by holding that the mechanism by which the “beauty effect” in

57 Brumbaugh, “Physical Attractiveness and Personality in Advertising”; Yin and Pryor, “Beauty in the Age of Marketing.”

58 Bublitz and Merkel, “Crimes against Minds,” 72.

advertising influences us is a rational one. For example, according to some psychologists, it could be the case that the “beauty effect” in advertising is mediated by our implicit belief that attractive people are likely to have different personality traits to the general population—in particular, that they are more trustworthy, credible, and expert in matters that they speak about or are associated with.⁵⁹ In this case, it would be rational for us to be more convinced or persuaded by an advertisement that employs beautiful people than by one that features less physically attractive people. After all, given our background implicit beliefs, beliefs perhaps supported by the statistics of our environment, the testimony of the beautiful people about the product will seem more likely to be true than the testimonies of the less physically attractive people. And this is surely a *reason* for us to be more persuaded by the testimony of such people. In this way, then, as well, the proponent of my analysis of the right to mental autonomy can resist the charge that this account incorrectly classifies the airing of non-reason-giving adverts as a morally wrong violation of viewers’ right to mental autonomy.

An alternative way in which the proponent of my analysis of the right to mental autonomy may be able to accommodate the claim that there is nothing morally objectionable about advertisers’ use of the “beauty sells” effect is by holding that the viewers of these adverts count as having waived their right to mental autonomy. It seems highly plausible to me that the right to mental autonomy, like many other rights, can be waived—or example, if someone suffering with long-term depression consented to neurosurgery that cured them by directly adjusting the attitudes constitutive of, or causally responsible for, their depression. Had the neurosurgeon not received the subject’s consent, their actions here would have counted as violating both the subject’s right to bodily autonomy and their right to mental autonomy. However, because the subject granted their consent in this case, they count as having waived both these rights, and there is no wrongdoing. This is one way in which an individual can waive their rights—that is, explicitly. But individuals can also waive their rights in a more *implicit* way—for example, by voluntarily engaging in an activity that they know will involve some probable impact on them (an impact that would count as violating their rights if they were not voluntarily engaging in the activity in question). To take a concrete and pertinent example, if I voluntarily buy a copy of *Vogue* magazine, I should expect to see beautiful people wearing the expensive watches that the advertiser wants me to buy. Plausibly enough, I may count as having implicitly waived my right to mental autonomy with respect to the influence of these adverts on my thinking. And, if I count as having waived my right to mental autonomy in the case of purchasing a *Vogue*

59 Brumbaugh, “Physical Attractiveness and Personality in Advertising.”

magazine, then presumably, I should also count as having waived it when I choose to watch a television channel that I know airs advertisements. In this case, the influence of these adverts on my thinking could not count as violating my right to mental autonomy. If this is correct, then this is a second way in which the proponent of my analysis of the right to mental autonomy can resist the charge that their account incorrectly classifies the airing of non-reason-giving adverts as morally wrong.

3.3 *Benevolent Nudging*

Much recent work in psychology, behavioral economics, and moral philosophy has concerned the phenomenon of nudging.⁶⁰ Roughly speaking, a nudge is a way of influencing someone's actions in a predictable way by changing aspects of their "choice architecture"—that is, the context in which they choose—without forbidding any options or changing their economic incentives.⁶¹ One concrete example of a nudge is the selection of defaults effect: people are more likely to accept the default option when presented with a range of options.⁶²

The behavioral economist Richard Thaler and legal scholar Cass Sunstein have argued that nudge effects can be deployed in public policy to promote both prudent and prosocial behavior among the general public.⁶³ For example, the selection of defaults effect can be utilized to increase pension contributions among employees by changing the defaults on the superannuation policies to which they sign up.⁶⁴ Thaler and Sunstein dub this use of nudges in public policy "libertarian paternalism": it is *paternalistic* because individuals are manipulated into promoting their own self-interest, but it is nevertheless *libertarian* because this practice does not close off any previously existing options that people had.

Thaler and Sunstein regard the use of nudging in public policy to promote the common good as morally permissible and desirable.⁶⁵ However, it looks like such nudging—despite being benevolent—is going to violate the nudged people's right to mental autonomy, at least on the analysis of that right defended here. After all, the fact that a candidate's name is at the top of the ballot is, on the face of it, *not* a reason to vote for them. But, in light of the ballot order effect,

60 Thaler and Sunstein, *Nudge*; Wilkinson, "Nudging and Manipulation"; Doris, *Talking to Our Selves* and "Précis of Talking to Our Selves"; Levy, "Nudge, Nudge, Wink, Wink."

61 Thaler and Sunstein, *Nudge*; Levy, "Nudge, Nudge, Wink, Wink."

62 Smith, Goldstein, and Johnson, "Choice without Awareness."

63 Thaler and Sunstein, *Nudge*.

64 Levy, "Nudge, Nudge, Wink, Wink."

65 Thaler and Sunstein, *Nudge*.

it must be a cause of at least some people's decision to vote for that candidate, whether or not they know it. This means that the intentional utilization of the ballot order effect to influence people's voting constitutes an attempt to influence people's voting preferences without giving them a normative reason to adopt that voting preference. It, therefore, counts, on the analysis at hand, as an attempt to violate their right to mental autonomy. Likewise, with respect to the intention to use the selection of defaults effects in public policy, it is, plausibly enough, a cause of people selecting the default option that is nevertheless *not* a reason for them to so act. If so, then the implementation of Thaler and Sunstein's libertarian paternalism in public policy would be (at least) *pro tanto* wrong. But this is seemingly inconsistent with the moral judgment that the practice of benevolently nudging individuals to behave in prudent and prosocial ways is permissible and commendable.

How should the proponent of my analysis of the right to mental autonomy respond to this problem? I think she has a few different options available to her. First, she can hold that the libertarian paternalistic policy of implementing benevolent nudging is actually morally wrong on the grounds that it violates the nudged individual's right to mental autonomy. Support for this stance comes from the great deal of anxiety expressed by philosophers, psychologists, economists, and nonacademic commentators about the use of nudging in public policy.⁶⁶ Second, the proponent of my analysis can hold that, although the use of nudging is a *wrong-making* feature of public policy because it violates the nudged individuals' right to mental autonomy, such a policy has various other good-making or right-making features—such as the fact that it promotes the prudent and prosocial behavior of nudged individuals—that collectively outweigh this wrong-making feature, such that public policy involving benevolent nudging is an all things considered permissible course of action for governments to engage in. Last, one could deny that nudges have their influence on people without giving reasons or through nonrational mechanisms. A number of philosophers have recently argued that this is the case. For example, Neil Levy argues that nudges constitute good *reasons* for the nudged subject to act in the ways that the nudges push them toward.⁶⁷ And Andreas Schmidt argues

66 Bovens, "The Ethics of Nudge"; Wilkinson, "Nudging and Manipulation"; Levy, "Nudge, Nudge, Wink, Wink"; Schmidt, "Getting Real on Rationality."

67 As Levy puts it: "Most actual and proposed nudges function by presenting reasons to agents. They often present higher-order evidence, and higher-order evidence is evidence. It is, of course, rational to guide our decisions and our beliefs in the light of evidence. There is no reason to think, therefore, that most nudges bypass reasoning" ("Nudge, Nudge, Wink, Wink," 297). Consider again the selection of defaults effect (the phenomenon whereby people are more likely to accept the default option when presented with a range

that nudging not only works through rational mechanisms but overall promotes the rational agency of the nudged individuals.⁶⁸ In these ways, then, the proponent of my analysis of the right to mental autonomy can resist the charge that it incorrectly classes the use of nudging in libertarian paternalistic public policy as morally impermissible.

3.4. *Subliminal Messaging Again*

Recall Bublitz and Merkel's example of subliminal messaging: an online store shows Flash movies to subliminally prime brand C, an action that causes customers to evaluate C more positively, likely through a mechanism such as the familiarity bias.⁶⁹ Intuitively, there is something morally objectionable about subliminally influencing customers' preferences in such a manner. And, very plausibly, this course of action is morally objectionable, or wrong, because it violates the customers' right to mental autonomy.⁷⁰ My analysis of the right to mental autonomy looks like it will be able to accommodate this observation. After all, the fact that you have seen some brand before or are familiar with it is not, on the face of it, a reason to prefer it. (Rather, the reasons to prefer some particular brand include, for example, the fact that products from that brand have been found to be satisfactory or good in prior experience, etc.)

One objection to this conclusion arises out of the thought that familiarity may actually be a reason to prefer a product. After all, the familiarity bias is—very plausibly—a useful heuristic, one upon which it is rational to rely, given the statistics of our environment. If I want to buy—say—some shampoo, it is rational for me to prefer the familiar brand because familiarity correlates with wide usage, and wide usage indicates that something is a satisfactory product. Given this, it is reasonable to think that the familiarity of a product really is a reason to prefer it. (Advertising might be thought to sever the correlation between familiarity and wide usage to some degree—but that does not mean that relying upon familiarity is not rational or that the familiarity of a product is not a reason to prefer it since the familiarity of a product would still be

of options). Very plausibly, Levy suggests, the fact that some certain option has been selected to be the default option is a *recommendation* of that option. And recommendations are reasons to choose some option (at least when they are given by a reliable source). Consequently, Levy concludes, the nudge at work in the selection of defaults effect—the fact that some option is the default—is a reason to pick the default option.

68 Schmidt, "Getting Real on Rationality."

69 On subliminal messaging, see Bublitz and Merkel, "Crimes against Minds." On the familiarity bias, see Chartrand, Huber, Shiv, and Tanner, "Nonconscious Goals and Consumer Choice."

70 Bublitz and Merkel, "Crimes against Minds."

(some) evidence of its wide usage. Furthermore, the fact that a company has the resources to advertise is evidence of its financial success, and that constitutes (some) evidence that they make satisfactory products.) Now, when granting that the familiarity of a product is indeed a reason to prefer it, the fact that the subliminal priming by the online store operates via the familiarity bias means that the primed customers' newfound preference for brand C is an attitude that has been formed in light of a reason. Consequently, this subliminal influence on their thinking does not count as violating their right to mental autonomy on the analysis of that right defended here since their preference was formed in light of a reason. But this conflicts with our moral intuitions about the case, which suggest that this piece of subliminal influence involved some wrongful rights violation—most plausibly, a violation of the customers' right to mental autonomy. After all, the business behind the online store is tampering with your preferences without your even being aware of them so acting!

What is the significance of this? Well, it suggests that there is something lacking with the analysis of the right to mental autonomy developed here. After all, according to that account, your right to mental autonomy can only be violated if you are (intentionally) caused by some third party to form an attitude in a way that does *not* involve you forming that attitude in light of a normative reason. But, in the case of subliminal influence at hand, it looks like the customers are having their right to mental autonomy violated even though they are being (intentionally) caused by some third party to form an attitude in light of a normative reason. But this means that an attitude can be formed in light of reasons but still be formed in a way that constitutes a violation of the subject's right to mental autonomy. And this is contrary to the entailments of the account developed here—which has it that someone forming an attitude in light of a reason is sufficient for their *not* having their right to mental autonomy violated. If this is correct, then the account of the right to mental autonomy promoted here can, at best, constitute a partial analysis of that right—one that articulates a merely necessary condition on the permissible ways of influencing someone's thinking, not a necessary and sufficient condition.

In what remains of this paper, I will augment my analysis of the right to mental autonomy such that it can accommodate the problematic case at hand and other structurally similar cases. My working hypothesis in this paper has been that your right to mental autonomy is your right to form attitudes in light of reasons. My augmented version of this account is that your right to mental autonomy is your right to form attitudes in light of *overt* reasons. The permissible ways of influencing someone's thinking are partitioned from the impermissible ways by the fact that they involve causing someone to form an attitude in light of an overt reason.

What do I mean by an *overt* reason? Let us say that an overt reason is a reason that would cause you to form an attitude in light of it, if it did, through a route that did not circumnavigate your awareness or consciousness. But what does it take for something to circumnavigate consciousness? What precisely does this mean? We can fruitfully characterize what it is for something to enter, or circumnavigate, consciousness through appeal to some concrete examples. Subliminal influences—such as the before-mentioned subliminal primes—are a paradigm case of phenomena that have their effect on you while circumnavigating consciousness. Consequently, subliminal influences, even if they are reasons to form the attitudes that they cause and have their effect on the mind through a rational process, are nevertheless not *overt* reasons to form these attitudes. Attempts to influence someone's thinking through subliminal influences therefore count as violating their right to mental autonomy, on my augmented analysis, and thus constitute *pro tanto* wrongs. This accords with our moral intuitions about these cases.

What is an example of a consideration that does not circumnavigate consciousness and is thus apt to constitute an overt reason? Consider, for example, your act of informing me over the phone that you have dyed your hair black. Suppose I then form the belief that your hair is now dyed black in light of this testimony. My experience of your testimony is conscious. Your testimony, therefore, does not count as circumnavigating my awareness. It thus counts as an example of an *overt reason* for me to form the belief that your hair is now dyed black. Consequently, my causing you to form the belief that I have dyed my hair black by my telling you over the phone that this has happened does not constitute a violation of your right to mental autonomy (irrespective of whether I am actually telling the truth). This accords with our moral intuitions about the matter.

Your right to mental autonomy, then, on this augmented version of my account, is your right to form attitudes in light of overt reasons—that is, in light of reasons that have their influence on your thinking without circumnavigating your consciousness or awareness. Let us call this addition to my analysis the “daylight condition” or the “transparency condition.” This augmented version of my analysis possesses all the benefits of the original version—it classes all of the above-cataloged cases of intuitively impermissible influences on someone's thinking as being (*pro tanto*) impermissible, and the before-cataloged cases of intuitively permissible influences as being permissible—while also correctly classifying cases of subliminal influences as being (*pro tanto*) impermissible (regardless of whether or not these subliminal influences constitute reasons). It therefore looks to be accommodating our moral intuitions better than my

first pass at an analysis of the right to mental autonomy. This constitutes a strong reason to prefer it.⁷¹

One important upshot of this account—that I unfortunately lack the space here to properly unpack—concerns its significance for debates over the ethics of nudging. As we saw before, some have criticized the use of benevolent “libertarian paternalistic” nudging by governments on the grounds that it violates agents’ autonomy.⁷² And others have criticized the use of nudging by Big Tech surveillance capitalists (to prompt their users into interacting more with their products or platforms) on the exact same grounds.⁷³ An influential rebuff to these critiques comes from those who have argued that nudges are reasons, or that they operate through rational mechanisms and actually overall promote the rational agency and autonomy of the nudged individuals.⁷⁴ By the lights of my first analysis of the right to mental autonomy, the use of nudges will not violate nudged people’s right to mental autonomy if nudges are reasons. However, my augmented account may have the resources to imply that the use of nudging will violate individuals’ right to mental autonomy even when granting that nudges are reasons. After all, nudges are standardly covert. (Agents are typically not aware that they are being nudged.) The question now arises as to whether nudges influence us via mechanisms that circumnavigate our awareness of consciousness in the above-described way. If they do, then the intentional use of nudging to influence people—benevolently or otherwise—will constitute an (attempted) violation of their right to mental autonomy, even if nudges are reasons. This may be a way of resurrecting the above ethical critique of the use of nudging by the government and Big Tech companies, etc., from Levy and Schmidt’s rejoinder that nudges, very plausibly, constitute reasons and operate through rational mechanisms. Unfortunately, I lack the space here to further develop or evaluate this line of thought.

4. CONCLUSION

I have argued that we have a right to mental autonomy and that this right is correctly analyzed as our right to form attitudes in light of (overt) reasons. Once understood this way, we can see why this right protects us against all (nonconsensual) “nonrational” interference with our thinking—including

71 Kagan, *Normative Ethics*.

72 Bovens, “The Ethics of *Nudge*”; Wilkinson, “Nudging and Manipulation.”

73 Zuboff, *The Age of Surveillance Capitalism*.

74 For argument that nudges are reasons, see Levy, “Nudge, Nudge, Wink, Wink”; see also Schmidt, “Getting Real on Rationality.”

nonconsensual neurosurgery, pharmacological manipulations, sci-fi mind control, subliminal messaging, and non-reason-giving advertising or nudging. Rather, the only fully permissible ways to seek to influence someone's thinking—those ways that involve no violation of the right to mental autonomy—are through methods that seek to engage their rational faculties without bypassing their awareness. This result, I claimed, accords with our moral intuitions concerning the matter.

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REFERENCES

- BBC News. "Who Are the Uyghurs and Why Is China Being Accused of Genocide?" May 24, 2022. <https://www.bbc.com/news/world-asia-china-22278037>.
- Bovens, Luc. "The Ethics of Nudge." In *Preference Change: Approaches from Philosophy, Economics, and Psychology*, edited by Till Grüne-Yanoff and Sven Ove Hansson, 207–19. Berlin: Springer Science and Business Media, 2009.
- Brumbaugh, Anne M. "Physical Attractiveness and Personality in Advertising: More Than Just a Pretty Face?" *Advances in Consumer Research* 20, no. 1 (1993): 159–64.
- Bublitz, Jan Christoph. "Why Means Matter: Legally Relevant Differences between Direct and Indirect Interventions into Other Minds." In *Neurointerventions and the Law: Regulating Human Mental Capacity*, edited by Nicole A. Vincent, Thomas Nadelhoffer, and Allan McCay, 49–88. New York: Oxford University Press, 2020.
- Bublitz, Jan Christoph, and Reinhard Merkel. "Crimes against Minds: On Mental Manipulations, Harms and a Human Right to Mental Self-Determination." *Criminal Law and Philosophy* 8, no. 1 (January 2014): 51–77.
- Buckley, Daniel. "Varieties of Epistemic Instrumentalism." *Synthese* 198, no. 10 (October 2021): 9293–313.
- Byrne, Alex. "Perception and Conceptual Content." In *Contemporary Debates in Epistemology*, edited by Ernest Sosa and Matthias Steup, 231–50. Oxford: Blackwell, 2005.
- Caballero, Marjorie J., and Paul J. Solomon. "Effects of Model Attractiveness on Sales Response." *Journal of Advertising* 13, no. 1 (1984): 17–23.
- Chartrand, Tanya L., Joel Huber, Baba Shiv, and Robin J. Tanner. "Nonconscious Goals and Consumer Choice." *Journal of Consumer Research* 35, no. 2

- (August 2008): 189–201.
- Côté-Bouchard, Charles. “Two Types of Epistemic Instrumentalism.” *Synthese* 198, no. 6 (June 2021): 5455–75.
- Cowie, Christopher. “In Defence of Instrumentalism about Epistemic Normativity.” *Synthese* 191, no. 16 (November 2014): 4003–17.
- Crane, Tim. “Is Perception a Propositional Attitude?” *Philosophical Quarterly* 59, no. 236 (July 2009): 452–69.
- Doris, John M. “Précis of *Talking to Our Selves: Reflection, Ignorance, and Agency*.” *Behavioral and Brain Sciences* 41 (2018): e36.
- . *Talking to Our Selves: Reflection, Ignorance, and Agency*. Oxford: Oxford University Press, 2015.
- Douglas, Thomas, and Lisa Forsberg. “Three Rationales for a Legal Right to Mental Integrity.” In *Neurolaw: Advances in Neuroscience, Justice and Security*, edited by Sjors Ligthart, Dave van Toor, Tjis Kooijmans, Thomas Douglas, and Gerben Meynen, 179–201. London: Palgrave Macmillan, 2021.
- Frankfurt, Harry G. “Freedom of the Will and the Concept of a Person.” *Journal of Philosophy* 68, no. 1 (January 1971): 5–20.
- Friston, Karl. “A Theory of Cortical Responses.” *Philosophical Transactions of the Royal Society of London. Series B, Biological Sciences* 360, no. 1456 (2005): 815–36.
- Haitiwaji, Gulbahar, and Rozenn Morgat. “Our Souls Are Dead: How I Survived a Chinese ‘Re-education’ Camp for Uyghurs.” *Guardian*, January 12, 2021. <https://www.theguardian.com/world/2021/jan/12/uighur-xinjiang-re-education-camp-china-gulbahar-haitiwaji>.
- Hart, H. L. A. *The Concept of Law*. Oxford: Clarendon Press, 1994.
- Ienca, Marcello, and Roberto Andorno. “Towards New Human Rights in the Age of Neuroscience and Neurotechnology.” *Life Sciences, Society, and Policy* 13, no. 5 (2017).
- Jenkin, Zoe. “Perceptual Learning and Reasons-Responsiveness.” *Noûs* 57, no. 2 (June 2023): 481–508.
- Kagan, Shelly. *Normative Ethics*. New York: Routledge, 1998.
- Kahle, Lynn R., and Pamela M. Homer. “Physical Attractiveness of the Celebrity Endorser: A Social Adaptation Perspective.” *Journal of Consumer Research* 11, no. 4 (March 1985): 954–61.
- Kamins, Michael A. “An Investigation into the ‘Match-Up’ Hypothesis in Celebrity Advertising: When Beauty May Be Only Skin Deep.” *Journal of Advertising* 19, no. 1 (1990): 4–13.
- Korsgaard, Christine M. *Self-Constitution: Agency, Identity, Integrity*. Oxford: Oxford University Press, 2009.
- . “Skepticism about Practical Reason.” *Journal of Philosophy* 83, no. 1

- (January 1986): 5–25.
- Levy, Neil. “Nudge, Nudge, Wink, Wink: Nudging is Giving Reasons.” *Ergo* 6, no. 10 (2019): 281–302.
- Locke, John. *Two Treatises of Government*. London: Awnsham Churchill, 1689.
- Markovits, Julia. *Moral Reason*. Oxford: Oxford University Press, 2014.
- Narveson, Jan. *The Libertarian Idea*. Peterborough, Ontario: Broadview, 2001.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- O’Barr, William M. “‘Subliminal’ Advertising.” *Advertising and Society Review* 6, no. 4 (2005).
- Park, C. Whan, and V. Parker Lessig. “Familiarity and Its Impact on Consumer Decision Biases and Heuristics.” *Journal of Consumer Research* 8, no. 2 (September 1981): 223–31.
- Petroshius, Susan M., and Kenneth E. Crocker. “An Empirical Analysis of Spokesperson Characteristics on Advertisement and Product Evaluations.” *Journal of the Academy of Marketing Science* 17, no. 3 (June 1989): 217–25.
- Raz, Joseph. “On the Nature of Rights.” *Mind* 93, no. 370 (April 1984): 194–214.
- Schmidt, Andreas T. “Getting Real on Rationality: Behavioral Science, Nudging, and Public Policy.” *Ethics* 129, no. 4 (July 2019): 511–43.
- Siegel, Susanna. *The Rationality of Perception*. Oxford: Oxford University Press, 2017.
- Smith, N. Craig, Daniel G. Goldstein, and Eric Johnson. “Choice without Awareness: Ethical and Policy Implications of Defaults.” *Journal of Public Policy and Marketing* 32, no. 2 (2013): 159–72.
- Thaler, R. H., and Cass R. Sunstein. *Nudge: Improving Decisions about Health, Wealth, and Happiness*. New Haven: Yale University Press, 2008.
- Thomson, Judith Jarvis. *The Realm of Rights*. Cambridge, MA: Harvard University Press, 1990.
- Velleman, J. David. “On the Aim of Belief.” In *The Possibility of Practical Reason*, 244–81. Oxford: Oxford University Press, 2000.
- . “The Possibility of Practical Reason.” *Ethics* 106, no. 4 (July 1996): 694–726.
- . “What Happens When Someone Acts?” *Mind* 101, no. 403 (July 1992): 461–81.
- Wilkinson, T. M. “Nudging and Manipulation.” *Political Studies* 61, no. 2 (June 2013): 341–55.
- Yin, Bingqing, and Susie Pryor. “Beauty in the Age of Marketing.” *Review of Business and Finance Case Studies* 3, no. 1 (2012): 119–32.
- Zuboff, Shoshana. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. New York: Public Affairs, 2019.