Social negative option marketing

A partial response to one of Spotswood, French, Tapp and Stead’s (2012) “uncomfortable questions”

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Abstract
Purpose – The purpose of this paper was to address one of Spotswood et al.’s (2012) “uncomfortable questions”. The paper applies negative option marketing, the use of defaults as a behavioral engineering tool to shape choice, to social marketing and then uses the Hunt-Vitell (1986, 1993, 2006) Theory of Marketing Ethics to evaluate it against President Kennedy’s (1962) Consumer Bill of Rights and the American Marketing Association’s (2014) statement of marketing ethics.


Originality/value – This paper contributes to the emerging debate on the use of nudges in a social marketing context and is a partial response to Spotswood et al. (2012).

Keywords Message framing, Marketing, Use of nudges in social marketing, Negative option marketing, Defaults as behavioral engineering tools, Ethics of marketing

Paper type Conceptual paper

Because social marketers are not (usually) elected by the public (though they may work for people who are), they require some justification to answer the charge that their social marketing activities are not simply the efforts of one group trying to impose its ways on other people (Brenkert, 2002, p. 19).

Spotswood et al. (2012) in a recent issue of this journal offer seven questions that articulate some of their concerns about social marketing. While the questions are highly interrelated, the first question discussed by Spotswood et al. (2012, p. 165) is the focus of this paper:

Should social marketers use implicit (rather than explicit) behavior change techniques?

The academic debate on the ethical dimensions of social marketing has been evolving since the late 1970s when Murphy et al. (1978, p. 195) noted that:
Today, politicians, charities and symphony orchestras are promoted like the newest dish detergent.

These authors developed a typology of social marketing programs that attempted to address questions like the ethics of using such marketing to promote the value judgments of special interest groups like the Sierra Club, the Hemlock Society or pornographers. In a subsequent empirical study, Lacziak et al. (1979) asked both academics and practitioners about the ethical issues of using marketing techniques to sway social opinion and found that there was concern that social issues should not be promoted through modern marketing methods. In fact, Lacziak et al. (1979, p. 35) asked:

Is the increased involvement of marketing specialists in the promotion of ideas, personalities, and organizations a beneficial development from the standpoint of USA society? […] What constitutes a “good” (or bad) product or idea? […] How can possible abuse of social marketing be controlled?

These questions become more salient, as marketing exchanges are mediated through digital technology and where socially “virtuous” selections can be programmed by “choice architects” who help to “shape” the situations in which people encounter choices, often through the use of defaults. These “nudges” are choices often created by government behavioral insight units that are helping form the publics’ choices toward a default which is in the publics’ best interest (Cornwall, 2014). In a similar vein, Shove (2003) suggested that the only choice really offered through involuntary “choice editing” is where the alleged socially undesirable (but importantly not illegal) options are simply edited out (Lang and Gataher, 2009).

Purpose
The purpose of this paper is to address one of Spotswood et al.’s (2012) “uncomfortable questions” by considering negative option marketing (NOM), or defaults, a practice in which a “customer’s silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer” (Federal Register, 2003, p. 4,670) in the context of social marketing. Then, Hunt-Vitell’s (1986, 1993, 2006) Theory of Marketing Ethics is used to evaluate negative option social marketing (NOSM) against President Kennedy’s (1962) Consumer Bill of Rights and the American Marketing Association’s (2014) statement of marketing ethics. In addition, this paper examines two key ethical considerations that critics have leveled against the use of defaults, a key element in NOSM:

1. the lack of transparency; and
2. the adverse impact of default rules that may prove especially harmful to at risk populations.

Nudging – the tool of NOSM
Nudge theory and the concept of nudges was named and popularized by Thaler and Sunstein (2008) based on the work of Kahneman and Tversky (1979). Thaler and Sunstein’s (2008) work made a portfolio of heuristic tendencies from psychology, communication, economics, political science and marketing cohesive, comprehensible and highly marketable. The concepts drawn upon by Thaler and Sunstein (2008) are also consistent with other recent books (Ariely, 2008; Cialdini, 2006; Heath and Heath, 2010; Kahneman, 2011) about change and influence that rely on insights from marketing
and social sciences on how decisions are actually made and suggests that human judgment is often guided by simple, oftentimes irrational principles.

Nudges gently push people to make decisions by changing the way choices are presented. Social nudging involves engineering people’s choices so as to channel them to make more socially desirable decisions (from the perspective of the policymaker) without substantively limiting their choice. Nudges are not legal or regulatory mandates. Taxing “un-healthy” food at a higher rate than “healthier” food is a nudge; making “un-healthy food” illegal is not.

Nudging – framing people’s choices so as to direct them to certain outcomes promoting a “good society” (Dolan et al., 2012, p. 16) without substantively limiting choice – has become fashionable (Thaler and Sunstein, 2008; Willis, 2012). “Nudges are ways of influencing choice without limiting the choice set or making alternatives appreciably more costly in terms of time, trouble, social sanctions, and so forth” (Hausman and Welch, 2010, p. 126). They are low-cost to both the person targeted and the organization or agency employing them, they are passive/easy in that they require little effort and they push people to make choices that are good for themselves or society by taking advantage of imperfections in human decision-making abilities (French, 2011). Nudges often include a variety of soft touches, as outlined by Bonell et al. (2011, p. d401):

Nudges might involve subconscious cues (such as painting targets in urinals to improve accuracy) or correcting misapprehensions about social norms (like telling us that most people do not drink excessively). They can alter the profile of different choices (such as the prominence of healthy food in canteens) or change which options are the default (such as having to opt out of rather than into organ donor schemes). Nudges can also create incentives for some choices or impose minor economic or cognitive costs on other options such as people who quit smoking banking money they would have spent on their habit but only being able to withdraw it when they test as nicotine free.

The use of nudges to shape behavior has become so popular that in 2010, UK Prime Minister David Cameron set up the Behavioral Insights Team – or nudge unit – to “persuade citizens to choose what is best for themselves and society” (Basham, 2010, p. 4). Three years later, the team has doubled in size because of its success in nudging British consumers to pay taxes on time, insulate their attics, sign up for organ donation, stop smoking during pregnancy and give to charity. Likewise in the USA, the Obama administration embraced nudges (Dorning, 2010) and has used them to increase enrollment in the President’s signature piece of legislation, The Patient Protection and Affordable Care Act (Maher, 2012).

While nudges can be effective in promoting some behaviors, they are not intended to represent a comprehensive repertoire of behavioral change interventions (French, 2011). Choice architecture, a term coined by Thaler and Sunstein (2008), describes the way in which decisions are influenced by how the selections are framed or presented. Social nudges can range from shrinking plate sizes in cafeterias so that people implicitly reduce portion size (Wansink, 2006) to repainting roadways to create the illusion that drivers are going too fast (Selinger and Whyte, 2011).

Defaults
The quintessential illustration of a nudge is a default which is the designated course of action for those who fail to explicitly choose for themselves (Willis, 2012). Default options are
automatically chosen when individuals make no active choice and stay with the given state or condition (Brown and Krishna, 2004) and are sometimes considered “hidden persuaders” (Smith et al., 2009, p. 1) because people tend to continue with preset options.

Default options can exert a significant influence on behavior. Compared to the non-enrollment default, governments that presume citizens as willing organ donors have markedly higher donation rates (Abadie and Gay, 2006; Johnson and Goldstein, 2003), companies with automatic 401(k) enrollment have more employees who save for retirement (Madrian and Shea, 2001), cities with “green” electricity defaults have lower energy usage (Pichert and Katsikopoulos, 2008) and states with limited tort default have drivers who pay lower insurance premiums (Johnson et al., 1993). Default effects have also been observed in the use of advanced medical directives, Internet privacy preferences, legal contracts, medical vaccine adherence and even for how psychologists choose to analyze their data (Bellman et al., 2001; Chapman et al., 2010; Fabrigar et al., 1999; Johnson et al., 2002; Korobkin, 1998; Kressel et al., 2007; Young et al., 2009).

Thus, defaults matter and their appeal is considered so strong that it has been referred to as the “iron law of default inertia” (Ayres, 2006, p. 5). Their influence is due in large part to the following fundamental reasons:

- **Implied endorsement**: People sometimes treat defaults as a form of implicit advice. When choice architects have explicitly chosen the default, consumers tend to believe that they should not depart from it unless they have information that would justify a change (McKenzie et al., 2006). Consumers assume that the default was chosen as providing the typically best choice (Madrian and Shea, 2001).

- **Effort**: Default effects are also partially due to effort (Samuelson and Zeckhauser, 1988). Making a decision involves effort, whereas accepting the default is easy. To alter the default rule, people must make an active choice to reject that rule. Especially (but not only) if the question is difficult, technical or with social implications it is less taxing to defer the decision by accepting the default.

- **Status quo**: Defaults, by design, represent the existing state or status quo. The status quo bias is a psychological principle which involves the propensity of decision makers to keep things the way they are (Samuelson and Zeckhauser, 1988), often leading humans to make choices that guarantee that things remain the same, or change as little as possible. This preference results in inertia.

Defaults do not force anyone to do anything. On the contrary, they maintain freedom of choice. Whether people opt out or opt in, they are permitted to do so as they see fit. Default rules nonetheless have a large impact, because they tend to stick (Johnson and Goldstein, 2004). Defaults can be valuable and worth a fight. For example, search engines like Google and MSN want their browser to be the default preloaded on computers and go to court to preserve such status so as to garner more of the roughly $20 billion search-advertisement market (Kesan and Shah, 2006).

**Negative option marketing**

Marketers have exploited the power of defaults within a NOM framework where the consumer’s failure to reject or cancel an offer (i.e. to act) signals consent. NOM, also referred to as advance consent marketing, automatic renewals, continuous-service agreements, unsolicited marketing, inertia selling, “free trial” offers or “book-of-the-month” type plans, uses defaults to take advantage of the tendency toward the
status quo and inaction to achieve marketing objectives (Sunstein, 2013). NOM requires that consumers take action so as to not purchase the product or service (Licata and Von Bergen, 2007). NOM incorporates an opt-out default in which consent is presumed and where not explicitly making a choice, doing nothing or being silent means agreement. Individuals must explicitly become involved and take steps to prevent the default from occurring and the sale from consummating (Lamont, 1995).

Four types of plans generally fall within the NOM category: pre-notification negative option plans, continuity plans, automatic renewals and free-to-pay or nominal fee-to-pay conversion plans (USA Federal Trade Commission, 2009). First, in pre-notification plans, such as book, wine or music clubs, sellers send periodic notices offering goods. If consumers take no action, sellers send the goods and charge consumers. Second, in continuity plans, consumers agree in advance to receive periodic shipments of goods or provision of services, which they continue to receive until they cancel the agreement. Third, in automatic renewals, a magazine seller, for example, may automatically renew a consumer’s subscription when it expires and charge for it, unless the consumer cancels the subscription. Finally, sellers also structure trial offers as free-to-pay, or nominal-fee-to-pay, conversions, such as receiving free premium cable channels for 60 days. In these plans, consumers receive goods or services for free (or at a nominal fee) for a trial period. After the trial period, sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.

In the case of NOSM, the marketer uses defaults to encourage “virtuous” behavior, even if the subject would not normally explicitly choose to engage in that behavior. An example of a NOSM program is a “carbon off-set” scheme by Qantas Airlines which “encourages” their customers to make a more environmentally friendly decision by an opt-out donation to an approved organization that uses the funds to allegedly offset the passenger’s share of flight emissions by some form of carbon sequestration. Customers who do not wish pay the extra fee must explicitly opt out of the purchase of the carbon off-set during the on-line transaction. The present study defines NOSM as engineering people’s choices so as to channel them through the use of defaults or opt-out marketing to make more socially desirable decisions (from the perspective of the policymaker) without substantively limiting their choice, as illustrated by the Qantas “carbon off-set” program.

Ethics of NOSM
Influencing behavior is central to social marketing. It is nothing new to governments, which have often used tools such as legislation, regulation or taxation to achieve desired policy outcomes, nor to marketers which have employed numerous advertising promotions to guide people’s behavior. But it is now being used by nations in social marketing campaigns to warn of the dangers of obesity or the problem of domestic violence to achieve desired policy outcomes using nudges. NOSM nudges have garnered increased attention primarily because its techniques – often involving relatively minor and subtle changes to processes, forms and language – have provided policymakers a potentially potent new set of tools to influence citizen choices and behavior so as to shape individual behavior.

The increased use of such NOSM has raised a number of ethical concerns including: a re-conceptualization of the “state-individual relationship” (Menard, 2010, p. 229), suggesting that policymakers assume that “the masses are too stupid to make good
decisions for themselves” (Selinger and Whyte, 2011, p.928), and that nudges undermine trust in patient–physician relationships or exploit power-differences particularly in vulnerable populations (Blumenthal-Barby and Burroughs, 2012). Hansen and Jespersen (2013, p. 5) note that social nudging:

[...] seems to make the approach incompatible with public policymaking in a modern democracy. Indeed, state manipulation with the choices of citizens appears to be at odds with the democratic ideals of free exercise of choice, deliberation, and public dialogue.

Likewise, Haug and Busch (2014) identify a lack of clarity pertaining to the ethical dimensions of nudges, suggesting the need for an ethical framework.

These ethical concerns about NOSM appear to be consistent with a notion voiced by former USA President John Kennedy in a speech to Congress, that consumers have the right to freedom of choice. President Kennedy (1962) said that:

Marketing is increasingly impersonal. Consumer choice is influenced by mass advertising utilizing highly developed arts of persuasion [...] Additional legislative and administrative action is required, however, if the federal Government is to meet its responsibility to consumers in the exercise of their rights. These rights include: The right to safety [...]; The right to be informed [...] The right to choose [...] The right to be heard [...].

This Consumer Bill of Rights, as it has become known, can be used to suggest ethical issues that may arise with the implementation of NOSM techniques as a tool of social policy. For example, would a consumer who does not want to support a specific social cause be truly free to choose under the conditions of a social nudge’s choice architecture without incurring either pecuniary or non-pecuniary costs over and above those faced by consumers making a more socially desirable decision? If NOSM techniques were used, the answer is yes, the consumer making the less socially desirable choice could face more effort, time or even pecuniary costs.

The ethical concerns that are associated with the use of NOSM can also be evaluated using Hunt and Vitell’s (1986, 1993, 2006) general theory of marketing ethics. The Hunt-Vitell (1986, 1993, 2006) theory suggests that ethical decision making is ultimately judged at the nexus of deontological (the behavioral means) and teleological (the outcomes or “desired end states”) evaluations that are influenced by cultural, individual, industry and organizational environments coupled with the personal characteristics of the decision maker and are an antecedent to ethical judgments. When both the means and ends of the act result in social good, that is that no one is made worse off (Arrow, 1950), the act is deemed ethical. This theory can be used to explain the ethical implications of NOSM. Figure 1 adapts a simplified model of the Hunt-Vitell (1986, 1993, 2006) theory to the context of NOSM as an illustration. Table I provides a summary of the interrelationship between NOSM and the Consumer Bill of Rights evaluated by the Hunt and Vitell (1986, 1993, 2006) framework.

NOSM violates the spirit of Kennedy’s (1962) Consumer Bill of Rights by making the pecuniary and non-pecuniary costs of the public actively choosing higher than simply accepting the nudge. NOSM makes some worse off by increasing their costs to express their choice. For example, when NOSM is used to support a vaccination campaign, there is a very small number of vaccine recipients that will be harmed by the vaccine. By increasing the time, effort and potentially financial costs of making a choice, NOSM forces the policymakers’ values on the public, potentially diminishing the safety, and rights of some individuals to be safe, to choose, to be informed and to be heard.
Likewise, when defaults have an effect because consumers are not aware that they have choices, or because the transaction costs of changing from the default are onerous, NOSM marketing may be ethically problematic. Schwartz (2005, p. 39) proposes a set of “universal moral values” which include trustworthiness, respect, responsibility, fairness, caring and citizenship. Similarly, the American Marketing Association’s (AMA’s) Statement of Ethics (2014) appear to largely capture Schwartz’s domain with the following norms:

- do no harm;
- foster trust in the marketing system; and
- embrace the ethical values of honesty, responsibility, fairness, respect, transparency and citizenship.

NOSM may foster distrust by the public and seems to be at odds with the mandate to “embrace, communicate, and practice the fundamental ethical values that will improve consumer confidence in the integrity of the marketing exchange system” (AMA, 2014).

Specifically, NOSM may violate AMA’s basic values which include honesty, responsibility, fairness, respect, transparency and citizenship. Honesty requires the social marketer “to be truthful and forthright in […] dealings with customers and stakeholders”; and “tell the truth in all situations and at all times”. Additionally, NOSM works best in the dark and may be implicitly dishonest, violating any semblance of transparency. Responsibility and respect suggest that the social marketer must both:

[...] recognize our special commitments to vulnerable market segments such as children, seniors, the economically impoverished, market illiterates and others who may be substantially disadvantaged [...] and avoid using coercion with all stakeholders, (AMA, 2014).

On the other hand, NOSM forces those with different values from the choice architects to pay a cost in time, effort or even money if they wish to actually exercise their choice. Fairness requires that social marketers represent their ideas or products in a fair and clear manner with the aim to truthfully communicate the attributes, avoiding conflicts of interest or marketer manipulation. Social marketers under the AMA (2014) Statement of...
<table>
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<th>Consumer right</th>
<th>Deontological implications – are the means(^a) of NOSM good</th>
<th>Teleological implications – are the ends good</th>
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<tr>
<td>To safety</td>
<td>The <em>Implied Endorsement</em> by an expert means of NOSM could reduce the probability of a consumer critically evaluating an option. The choice architecture design of low <em>Effort</em> may discourage the consumer exploring “safer” alternatives. The notion of the nudge being the part of the <em>Status Quo</em> may imply a safe choice when that is not the case for that specific individual.</td>
<td>Choices made due to NOSM could reduce safety for some individuals, while enhancing the publics’ mean level of “social welfare.”</td>
</tr>
<tr>
<td>To be informed</td>
<td>The <em>Implied Endorsement</em> could reduce the probability of information search. The low <em>Effort</em> dimension of NOSM nudges may result in low involvement with the issue by the public. The power of maintaining the <em>Status Quo</em> may imply that there is no need to become informed on an issue.</td>
<td>NOSM may constrain consumer information search and result in a less educated public.</td>
</tr>
<tr>
<td>To choose</td>
<td>The <em>Implied Endorsement</em> could reduce the probability of making an active choice. The low <em>Effort</em> dimension of NOSM nudges may result in many members of the public abdicating their right to choose in favor of the nudge’s lower time and efforts demands. The <em>Status Quo</em> as the “correct choice” implies that there is no need to choose for your-self.</td>
<td>Freedom of choice is constrained by the marginal pecuniary and non-pecuniary costs of choice.</td>
</tr>
<tr>
<td>To be heard</td>
<td>The <em>Implied Endorsement</em> may diminish any dissent. The low <em>Effort</em> dimension of NOSM nudges may encourage the public not to speak out. The <em>Status Quo</em> may in fact silence most other voices.</td>
<td>NOSM increases the costs of “being heard” and may reduce the voice of the consumer in the market place.</td>
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**Table I.**

*Kennedy’s (1962)*


**Note:** \(^a\)Adapted from *Ayres (2006)*
Ethics also have the obligation to be good citizens. Table II provides a summary of the interrelationship between NOSM and marketing ethics.

The more specific ethical criticisms of nudging (and defaults) have included:

- lack of transparency; and
- a negative impact on poor and low-income people.

Nudging and defaults work by implicitly “manipulating people’s choices” (Bovens, 2009, p. 19; Vallgårda, 2012, p. 201) and behavior (Hansen and Jespersen, 2013), and this has ethical implications because of its lack of transparency. For example, Bovens (2009, p. 209) has questioned the ethics of nudges because they:

- ...typically **work better in the dark**. If we tell students that the order of the food in the Cafeteria is rearranged for dietary purposes, then the intervention may be less successful.

While nudges tend to work best when people are unaware that it is influencing their behavior (Selinger and Whyte, 2010), recent research by Loewenstein et al. (2014) seems to complicate the matter. These researchers found, in the context of end-of-life care choices, that even when individuals are explicitly informed that a default rule is in place, and that it has been chosen because it affects people’s decisions, there is essentially no effect on what people do which suggests that people are not uncomfortable with defaults, even when they are made aware that choice architects have selected them, and do so because of their significant effect. Clearly further research is needed, specifically when NOSM is used in high-involvement decisions such as medical care choices.

The second specific ethical concern is that certain vulnerable groups may be particularly sensitive to defaults. Some research (Brown et al., 2012) has found that minorities and the poor and other less “sophisticated” participants – those with lower education levels, who are less confident in their skills in a given context, and who have lower levels of knowledge about specific plan parameters – are more influenced by defaults. This suggests that certain at-risk individuals are less likely to opt out of the default and are more susceptible to defaults even when it is relatively inappropriate for them and further negatively impacts their already modest economic well-being. According to Mani et al. (2013), this may happen because poverty-related concerns consume mental resources, leaving less for other tasks – like evaluating the appropriateness of defaults, and leaving them more vulnerable to unscrupulous social marketers using NOSM schemes.

**Summary**

This paper has explored NOSM and how it relates to both the AMA Statement of Marketing Ethics and President Kennedy’s Consumer Bill of Rights using the Hunt-Vitell (1986, 1993, 2006) general theory of marketing ethics and an evaluative framework. NOSM’s power to influence choice seems at odds with both the Consumer Bill of Rights and the AMA Statement of Marketing Ethics, underlined by Schwartz’s (2005) statement of universal human values. These frameworks mandate respectful, open, fair and honest communication allowing for true freedom of choice. It appears that the use of NOSM to achieve public policy objectives falls short of the standards set by these frameworks when evaluated by the Hunt-Vitell (1986, 1993, 2006) marketing ethics protocol, thereby answering one of Spotswood et al’s (2012) “uncomfortable
<table>
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<th>AMA’s ethical norms and values</th>
<th>Deontological implications</th>
<th>Teleological implications</th>
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<tr>
<td>Do no harm</td>
<td>If the choice is not in the one that the consumer would have made in the absence of NOSM, then it could violate this norm</td>
<td>If the choice is not in the consumers’ best interest, then it could violate this norm</td>
</tr>
<tr>
<td>Foster trust in the marketing system</td>
<td>NOSM diminishes the level of behavior based on trust</td>
<td>The nature of NOSM would constrain the public’s trust</td>
</tr>
<tr>
<td>Honesty</td>
<td>The behavior of a social marketer employing NOSM is not honest</td>
<td>The nature of NOSM would limit an honest outcome</td>
</tr>
<tr>
<td>Responsibility</td>
<td>If the social marketer was acting in the consumers’ best interest then NOSM may positively influence responsible behavior</td>
<td>If the social marketer was acting in the consumers’ best interest then NOSM may positively influence a socially desirable outcome</td>
</tr>
<tr>
<td>Fairness</td>
<td>NOSM guides choice to what is in the best interest of the “public,” but not always what is in the best interest of the individual</td>
<td>Some individuals who accept the nudge will make sub-optimal choices</td>
</tr>
<tr>
<td>Respect</td>
<td>Thaler and Sunstein’s (2008) “libertarian paternalism” assumes that the public does not possess the capacity to make informed and rational choices</td>
<td>NOSM diminishes the respect that the social marketer would hold for the public</td>
</tr>
<tr>
<td>Transparency</td>
<td>By nature NOSM does not result in transparent behavior by the social marketer – as Thaler and Sunstein (2008) note – nudges work better in the dark</td>
<td>For NOSM to be most effective it cannot be transparent</td>
</tr>
<tr>
<td>Citizenship</td>
<td>The implications of NOSM in reducing choice also diminish good citizenship</td>
<td>Effective democracies require active choice</td>
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questions” – “(S)hould social marketers use implicit (rather than explicit) behavior change techniques?” The answer is quite clearly no.

References


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