

When Banks do not Always Know Best

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The highly esteemed 20th century British novelist C.S. Lewis once remarked that: “a tyranny sincerely exercised for the good of its victims may be the most oppressive” (Lewis, 1987). He went on to explain that this is because a tyranny that exists for the sake of evil can only be evil for so long – “It would be better to live under robber barons than under omnipotent moral busybodies. The robber baron’s cruelty may sometimes sleep, his cupidity may at some point be satiated”. A tyranny exercised by people he referred to as “moral busybodies”, however, would “torment us without end for they do so with the approval of their own conscience” (Lewis, 1987).

In many respects, such sentiments describe the situation in the financial technology (fintech) world today with regard to the mass issuance of

contactless cards by banks and other financial institutions. We are told that contactless cards “are good for us” and we need not question our supposed “betters” who know more than we can ever hope to know with regard to our payment preferences. Those who want to opt out of using contactless technology are told they have no choice in the matter (Collinson, 2015).

Why is this a problem?

This is problematic as it is underpinned by what is known in the academic literature as “paternalism”. Paternalism¹ is defined as an “interference of a state or an individual

¹ The etymology of the term is also indicative of its meaning. It is ultimately derived from the Latin word “pater”, meaning “father”, and is also the root word for other words such as “paternal” and “paternity”.

Une « tyrannie sincèrement exercée pour le bien de ses victimes peut être la plus oppressive », a affirmé C.S. Lewis, parce que les « bienfaiteurs moralisateurs » « nous tourmenteraient sans relâche car ils le feraient en toute bonne conscience ».

Concernant l'émission massive de cartes sans contact par les banques et autres institutions financières actuellement, on nous dit que les cartes sans contact « sont bonnes pour nous » et que nous n'avons pas à remettre en question nos supposés « supérieurs » qui connaissent mieux que nous nos préférences de paiement. On dit à ceux qui ne veulent pas utiliser la technologie sans contact qu'ils n'ont pas le choix.

with another person, against their will, and defended or motivated by a claim that the person interfered with will be better off or protected from harm” (Dworkin, 2017). In its more extreme forms, which some authors distinguish as “hard paternalism”, this entails using force to alter a person’s actions (Dworkin, 2017). This can range from punishing children for eating unhealthy food, to holding back a depressed man who is about to kill himself by jumping off a bridge. Its counterpart, that is soft paternalism, is distinct from hard paternalism in that it at least seeks to persuade and communicate the consequences of the action to the person in question but does not prevent them from following through with their intended action if they still wish to do so. Thus, it would allow children to eat unhealthy food if they wish to, even after telling them the health risks, or permit a depressed man to jump off a bridge even after he has heard why that might not be a good idea (Dworkin, 2017).

Libertarian paternalism

Thankfully, cases of hard paternalism are few and far between in the fintech world today. But this poses problems of its own as it allows other instances of paternalism to go unchecked. The paternalism that describes the mass issuance of contactless cards is referred to in the academic literature as “libertarian paternalism” (Dworkin, 2017). This was first coined by behavioural economist Richard Thaler and legal scholar Cass Sunstein (Bovens,

2009). It entails allowing people to be technically free to choose, but permitting the government or an organisation like a bank to “nudge” people in the “right” direction (Bovens, 2009). This usually involves exploiting certain cognitive biases such as our tendency to be reluctant to give something up once we already have it (endowment effect) or our apparent preference to read from left to right (left to right bias). In the case of contactless cards, the bias that banks and other financial institutions primarily seek to exploit is what is known as the “default effect”. That is, individuals, as a number of experimental studies have shown (Kahneman, 2013), are biased towards what is known as the “default” option. That is to say, if a certain option is given as the default, there is an increased likelihood that it will be chosen, even by those who would not have chosen that same option in an alternative world. In the case of contactless cards, the default effect is seen because people who would not have chosen contactless cards as a means of payment nevertheless remain with it as they don’t – either because of laziness, ignorance or some other factor – opt out. Outside of finance, the default option bias has been utilised to increase organ donor rates, boost newsletter subscriptions and combat obesity. Sometimes referred to as “nudge policy”, it played an important role in the policymaking of the British Government during David Cameron’s premiership (Bovens, 2009).

Ce manque de choix est un problème parce qu'il est sous-tendu par le paternalisme. Le paternalisme est une « ingérence d'un Etat ou d'un individu dans la vie d'une autre personne, contre son gré, et au motif que la personne qui subit cette ingérence se trouvera dans une meilleure situation ou sera protégée contre le mal. ». Dans ses formes les plus extrêmes, il implique le recours à la force pour modifier les actions d'autrui. Le paternalisme qui sous-tend l'émission de masse des cartes sans contact est décrit dans la littérature académique avec la notion de « paternalisme libertaire » et ne comprend pas l'usage de la force. En finance, cela implique généralement d'exploiter certains biais cognitifs tels que notre réticence à abandonner quelque chose une fois que nous l'avons déjà en notre possession.

The relevance of paternalism to ethics

The issue of paternalism strikes at the heart of applied ethics (Dworkin, 2017). Most immediately it calls into question the ability of people (or what ethicists refer to abstractly as “moral agents”) to be truly rational. The notion of rational moral agents arises from the argument of the German philosopher Immanuel Kant that morality is nothing else than obedience to the categorical imperative and that we ought to follow the course of action that we wish to have universally applied everywhere (Kant, 2008). If people are not truly rational, if they behave in ways that can even at times seem contradictory or suboptimal, then this raises many questions not only about being moral in our day to day lives, but even raises a fundamental question about the discipline of ethics itself.

Yet the issue of contactless cards being issued by banks by default also touches upon other issues such as the classical liberal belief that people ought to be able to enjoy an ability to pay in a variety of ways. The 20th century Austrian political philosopher and classical liberal Friedrich Hayek argued that an economy should have competing currencies issued by private issuers as opposed to one currency mandated by a government (Hayek, 1976). Not only does this have the advantage of promoting monetary stability, it also ensures that there is diversity to accommodate people's preferences (Hayek, 1976).

The mentality behind contactless technology represents a slippery slope

However, we find today that banks are acting very much like a government as portrayed in classical liberal literature, in that they offer individuals little to no choice in how they pay. Individuals are simply told they must adopt contactless technology for their apparent benefit or do without (Collinson, 2015). Again, it should be stressed that this is no small matter: if banks can effectively “dictate” that people use contactless technology, what stops banks in the future from requiring people to insert an implant in their body if they wish to enjoy the services that the bank has to offer? Indeed, there is an entire genre in Christian eschatology on this very matter². Furthermore, the issue of contactless cards was highlighted by the Financial Conduct Authority (FCA), the independent financial regulatory body in the UK (Salmon, 2017). The FCA insisted that banks ought to make it easier for customers to opt out of contactless technology, reflecting the fact that this issue is now one of growing regulatory concern (Salmon, 2017).

² Consider the words in Sacred Scripture that a number of Christian groups interpret as an omen for the future: “And he causeth all, both small and great, rich and poor, free and bond, to receive a mark in their right hand, or in their foreheads: And that no man might buy or sell, save he that had the mark, or the name of the beast, or the number of his name.” (Revelation 13:16-17, King James Version)

Does paternalism necessarily lead to the right decisions being made?

Dans le cas des cartes sans contact, le biais que les banques et autres institutions financières cherchent principalement à exploiter est connu sous le nom de « l'effet par défaut ». L'effet par défaut décrit le fait que les personnes qui n'auraient pas choisi les cartes sans contact comme moyens de paiement continuent néanmoins à les utiliser du fait qu'elles ne décident pas - soit par paresse, ignorance ou d'autres facteurs - d'en sortir.

La FCA a insisté sur le fait que les banques devraient permettre aux clients de se retirer plus facilement de la technologie sans contact, montrant par là-même que cette question est une préoccupation réglementaire grandissante.

Then there are other issues with contactless cards and paternalism. One of them is whether it is, indeed, pointing people in the right direction. There are some psychological studies that show that contactless cards make people spend more (Poulter, 2016). This can be problematic at a household level – households may find it difficult to live within their means – and could potentially be problematic at the aggregate level for an economy in terms of macroeconomic stability. It was overstretching, after all, that led to the financial crisis of 2007-2008. When this is considered, then one can say that a paternalistic attitude to contactless cards has “unintended consequences”.

An overview of this paper

This paper argues that a paternalistic attitude by banks when it comes to contactless cards is unjustified: the benefits arising from greater adoption of contactless card technology, such as the potential for increased convenience and reduction in queues, pales in comparison to ethical considerations, cybersecurity concerns as well as the potential financial implications involved. It instead argues in favour of what is known in the academic literature as the “capabilities approach”, a

framework developed by thinkers such as Amartya Sen and Martha Nussbaum (Robeyns, 2016).

The capabilities approach argues that development and human flourishing should be seen as an expansion in human freedoms and the ability for people to live a life “they have reason to value”. This paper argues that if banks and other financial institutions are to really make a positive impact, then they should not judge themselves on whether they have made people's lives easier in the form of increased convenience or reduced costs – though these factors, of course, play a part – but rather, they should judge themselves on whether they have expanded people's freedoms. In the context of contactless cards, this means the real possibility of being able to opt for a non-contactless card, if one so wishes, and that this opportunity should be made as transparent as possible.

What is libertarian paternalism and how is it relevant to contactless cards?

Libertarian paternalism advertises itself as distinct from other forms of paternalism in that it simply changes the way choices are presented to people, as opposed to eliminating choices, or forcing people to accept particular choices (Dworkin, 2017). Underpinning libertarian paternalism is the notion that people are bad decision makers (Dworkin, 2017). They can make

Le paternalisme libertaire se présente comme étant différent des autres formes de paternalisme, dans la mesure où il modifie simplement la façon dont les choix sont présentés aux gens, plutôt que d'éliminer les choix des gens ou de les forcer à adopter certains choix. Cependant, la liberté est fondamentale à l'éthique.

irrational decisions, or contradictory decisions, or decisions that are plainly incorrect. However, with the help of findings in disciplines such as behavioural economics and psychology, people can be “nudged” into making the correct decision. Indeed, the very term “nudge” is apt as it overlaps with the notion that harks back to Adam Smith of an “invisible hand”. This has come to frequently feature in libertarian literature only that, in this context, the invisible hand is being used by policymakers to achieve certain social outcomes.

There is ample evidence in the academic literature that people can make what might appear to be “wrong” decisions – everything from psychological pricing to the Allais paradox shows this³. Consider the following question: Would you prefer being paid £10,000 at the end of every year forever, or £200,000 now, both compounded annually at a 5% interest rate? Most people would opt for the first option, but from a purely mathematical standpoint there is no difference between the two and thus a person should actually be indifferent when presented with such a scenario. And in the case of a person who lives a finite number of years (i.e. all of us), it is in fact better to go for the £200,000 now.

Libertarian paternalists point to such lack of rationality as a justification for intervention. Libertarian paternalism can be seen

³ See also Kahneman (2013)

as getting the “best of both worlds” – allowing people to be free and to have a full range of choices available to them, but still indirectly managing them to achieve certain social outcomes.

The relationship between libertarian paternalism and contactless technology

Libertarian paternalism is relevant to contactless cards for two reasons. The first is that contactless cards are issued by banks with the belief that the technology is in their interest. One major bank insists that customers are automatically given contactless cards because they are quick, convenient and secure (Salmon, 2017). The bank goes so far as to believe that this benefit is large enough to justify phasing out non-contactless credit cards entirely. That means that those customers who wish to use non-contactless credit cards are simply unable to do so (Salmon, 2017).

The second reason is that the issuance of contactless cards exploits a cognitive bias, one well documented in the literature: the default option. That is to say, rather than customers having to “upgrade” to a contactless card, they are given one from the outset, and this is the default option. Given that people are inclined to stay with what they are given, banks and other financial institutions can advertise that uptake of contactless cards has increased even though this is actually less to do

with people's innate preferences and more to do with the psychological reality that people generally remain with the default option.

Does offering contactless cards intrude on freedom?

The 17th century British philosopher John Locke posed a problem: imagine waking up in a room that you do not know is locked but that is, in fact, locked (Rickless, 2015). To think that one has freedom in such a situation would be mistaken: one is certainly free to remain in the room, but has no freedom to leave because the room is locked. Therefore, it is mistaken to describe the man in the room as free, inasmuch as it is mistaken to describe a man who is paralysed as “free” to move his or her limbs (Rickless, 2015). Any belief in “freedom” in this context is illusory. Locke's account of the man in the locked room has fascinated philosophers ever since.

Freedom is fundamental to ethics. Without the ability to act freely, it is disingenuous to speak of ethical behaviour. The concept of freedom is fundamental to virtually every ethical system. In Christian ethics, it is taught that free will is a gift from God and that furthermore, a “Christian life” is the highest expression of freedom. Hence St. Paul writes: “Where the spirit of the Lord is, there is freedom” (Philippe, 2007). In deontological ethics, the normative branch of ethics that emphasises adherence to

rules, freedom is also emphasised very strongly – as one sees in the writings of many of its thinkers. For example, John Callanan notes that much of the reasoning behind Immanuel Kant's agnosticism (Kant being a deontological ethicist), can at least be partially explained by the historical context in which he lived. Kant helped form the thinking of the Enlightenment period and he sought a system that embraced tolerance at a time when religious persecution was still an issue (Immanuel Kant, 2016). Freedom also features prominently in the writings of some of Kant's followers, such as Johann Gottlieb Fichte. Even in utilitarian ethics, the branch of ethics that emphasises the maximisation of happiness and is traditionally seen as the branch of ethics most divorced from an emphasis on freedom, certain branches of the paradigm highly emphasise the importance of freedom.

Infringing on freedom is no small matter

Given the importance of freedom in many ethical worldviews, it naturally follows that violating another person's freedom is looked upon extremely unfavourably. Herein we encounter the controversy surrounding paternalism: to interfere with someone else, and thereby with their freedom, is considered to undermine that person's integrity. Therefore, when it comes to having a paternalistic policy, there needs to be sufficient justification for interfering

En outre, la théorie des choix publics nous enseigne qu'à l'instar des gouvernements et des politiciens, les banques et autres institutions financières sont aussi susceptibles de commettre des erreurs. Nous avons relevé que les cartes sans contact soulèvent une grande variété de problèmes de cyber-sécurité, allant du « clonage » de cartes, à la possibilité de dépenser un montant illimité dans une devise étrangère, en passant par le vol de carte et l'autorisation du détenteur de la carte à dépenser de l'argent sans avoir à composer un numéro de code PIN.

L'un des principes fréquemment invoqués pour expliquer la grandeur du libre-marché est celui de la souveraineté du consommateur : l'idée selon laquelle « le client à toujours raison ». Cependant, avec les progrès de la technologie ainsi qu'une meilleure compréhension de la psychologie humaine, de tels principes sont progressivement remplacés par la notion selon laquelle « les entreprises ont toujours raison. ».

with the freedom of others, even if it is, indeed, for their benefit.

In the case of contactless cards, and bearing in mind the words of Locke as mentioned previously (Rickless, 2015), it could be argued that the automatic provision of contactless cards, based on a paternalistic mentality, is an infringement of the freedom of others. This is because, much as in Locke's argument (Rickless, 2015), there is only an illusion of freedom. People, if we are to go by experimental studies at least, are inclined to remain with the default option even if they oppose it. Being presented with two options does not mean that customers are predisposed to picking either using all their rational faculties. Cognitive bias(es) have a part to play.

Indeed, this points to a problem that is inherent within libertarian paternalism. Libertarian paternalists argue that libertarian paternalism is distinct from other forms of paternalism in that it does not restrict the array of choices available to people as, for instance, with hard paternalism, but that the array of choices is simply presented in alternative ways for the good of those in question. But we have to ask ourselves: 'where exactly is the line drawn?'

Take, for instance, the traditional example frequently cited in the literature of the cafeteria (Bovens, 2009). Schools know that, if they place unhealthy food away from eye level in a cafeteria, this will reduce consumption of unhealthy food by

children. This is because only the children most eager for it will seek the unhealthy food. By placing the unhealthy food away from eye level, schools can achieve the objective of reducing consumption of unhealthy food among children whilst at the same time preserving their freedom (or at least so libertarian paternalists believe). But suppose schools decide instead to cover unhealthy food altogether with a blanket of some kind so that children are not cognisant of what exactly remains under the cloth. This is problematic because it could be said that the unhealthy food is still there. It could be said that the freedom of the children to choose has been preserved. Yet in covering the food the children are ignorant of the unhealthy food actually being there and, being ignorant, cannot actually exercise their freedom to choose unhealthy food. Freedom means the ability to choose good and the ability to choose evil. This points to the issue raised by Locke with regards to the man in the closed room (Rickless, 2015). It is difficult to see how this is consistent with the claim that libertarian paternalism preserves choice.

Like the cafeteria example, much the same can be said about contactless cards. If people are automatically enrolled onto contactless cards and are not informed about the possibility of remaining with or reverting to traditional "chip and pin", then it could be said that the freedom of customers has, indeed, been infringed.

What can public choice theory teach us about the problems with paternalism?

Public choice theory is an important school of thought that came to prominence in the 20th century, although its origins can be seen as far back as the 19th century, and perhaps even further back. Public choice theory analyses the decision-making processes of politicians and governments. One of the crucial conclusions of public choice theory is that politicians and the government are people too: they are susceptible to making bad decisions, engaging in unscrupulous behaviour and so on, and so forth. This stands in stark contrast to the belief usually assumed, but never made explicit, in policy debates that the government is objective and unable to make suboptimal decisions⁴.

Public choice theory teaches us that, in the same way that governments and politicians are prone to error, so too banks and other financial institutions can make mistakes. A paternalistic relationship conveys the mental image of banks and other financial institutions “knowing more” than the “little people” who are being nudged in this direction and that direction. However, it is also completely plausible that banks and other financial institutions are

⁴ In the literature, public choice theory gave birth to the term “government failure”, a good counterpoint to frequently used “market failure”.

also prone to irrational decisions and suboptimal choices.

Consider the issue of unintended consequences. This concept describes a situation where a policy has consequences that are not otherwise intended, almost always negative. Imagine throwing a ball upwards with the intention to catch it as it falls back down, only for a strong gust of wind to suddenly blow the ball away from you as it falls back into your hands. Unintended consequences are a result of a complex world with many variables, the effects of which cannot be predicted from the outset. In the case of encouraging contactless cards, whilst some banks have said their use should be encouraged because they are quick, convenient and secure (Salmon, 2017), what hasn't been noted is the potential downsides that could come with increased adoption of contactless cards.

Disadvantages of contactless cards

One such potential downside is the inability for people to live within their means as a result of having a contactless card. Research (Poulter, 2016) suggests that ownership of a contactless card can encourage overspending because it removes the “psychological brake” that occurs when someone has to get money out of a purse and ask themselves: “Do I really need this?” The researchers also found that this over-spend effect is particularly pronounced on those who have low self-esteem (Poulter, 2016). This again points back to

Dans le contexte des cartes sans contact, les avantages liés à leur adoption accrue ne semblent pas suffisamment décisifs pour l'emporter sur les autres préoccupations éthiques soulevées par l'atteinte à la liberté. Nous espérons que cette contribution sera pertinente pour éclairer les banques et autres institutions financières sur les enjeux éthiques qui découlent de l'inscription automatique des personnes à la technologie sans contact.

the issue of “manipulation” when it comes to exploiting cognitive biases, raising ethical concerns about paternalism. Most people would not tolerate businesses exploiting the mentally disabled to sell their items, and indeed, there have been a number of scandals in the lending industry already to this effect⁵; in a similar way, it seems unethical to exploit the cognitive biases of others, some of whom invariably will have low self-esteem (Poulter, 2016). Herein it is perhaps relevant to make an allusion to the argument of Kant that such behaviour is unethical as we are treating people not as ends in themselves but as a mere means to an end. As Wilkinson explains: “Nudging uses the clever tricks of modern psychology and economics to manipulate people. We don’t like manipulation when it’s done to sell us things; we shouldn’t like manipulation when our governments do it to us.” In the context of this paper, we could change the word “governments” to “banks” (Dworkin, 2017).

Paternalism potentially conflicts with honesty

Of course, it could be argued that this is all “part of the plan”. Banks issue contactless cards with the knowledge that people are more inclined to spend using one than using a non-contactless card, which means they can increase their profits. However, this undermines the notion of paternalism, which implies that

⁵ See Poulter (2015)

those being interfered with are being interfered with for nonmonetary reasons. As one bank said, customers are automatically enrolled onto contactless technology because the bank believes that contactless payments are secure, convenient and quick (Poulter, 2016). If, indeed, banks are issuing contactless cards to exploit the cognitive bias of remaining with the default option then this merely highlights the issue that public choice theory raised with regards to politicians and governments: claims of interfering in someone else’s freedom for their apparent benefit are usually based on self-interest rather than altruism.

It would not be so bad if banks stated plainly that they are issuing contactless cards to increase their profit margins. However, when it is said that contactless cards are a function of nonmonetary concerns, like convenience and security, and there is some degree of probability that this is not true, we are confronted with a lack of transparency⁶ when it comes to libertarian paternalism. Transparency is a fundamental value that many societies in the Western

⁶ Transparency is particularly pertinent here. It might be believed that those doing the nudging (in this case the banks) would find it more effective if they did not publicly communicate their actual intention. However, Dworkin (2017) notes that findings from psychology show that there is no significant difference in outcomes between a nudge policy that does communicate its intention and one that does not. Therefore, there is really nothing that stops a bank from being transparent about why exactly it is issuing contactless cards as a default option.

world aspire to and libertarian paternalism seems to conflict with that (Dworkin, 2017).

Other disadvantages with contactless cards

There are other downsides that come with the increased adoption of contactless cards. For example, it has been noted that contactless cards are bedevilled by a wide range of cyber-security concerns, from “skimming”, through the ability to spend an unlimited amount in a foreign currency, to the card being stolen and allowing the person with the card to spend money without the need to enter a PIN number. If a person has a very high preference for cyber-security, a preference that completely outweighs that of convenience, it seems unethical for those doing the decision-making to say that such a “choice architecture”⁷ is wrong and that the customer must prefer convenience to cyber-security. Indeed, we can say here that it is the decision-makers who are being irrational as opposed to those who choose to remain with non-contactless cards. This is because the decision-makers say in many contexts that they value cyber-security and regard cyber-security as the most pressing concern for banks and other financial institutions, but then suddenly discard this preference when it

⁷ Choice architecture is the term commonly used in libertarian paternalist literature to describe how choices are presented in order to influence decisions – eg sweets are removed from a child’s field of view.

comes to the issue of contactless technology. In fact, this is nothing else than a conflict with the principle of transitivity⁸, and thus represents irrational decision-making. This shows that even the decision-makers can be irrational, just as implied with public choice theory and politicians and governments, and therefore also raises the question of the *legitimacy* of their authority in trying to nudge people in certain directions.

A capabilities approach to financial technology

Exchange is vital to human existence. Adam Smith remarked that humans are distinct from other species in that we live by exchange: “Nobody ever saw a dog make a fair and deliberate exchange of one bone for another with another dog. Nobody ever saw one animal by its gestures and natural cries signify to another, this is mine, that yours; I am willing to give this for that”. He went on to add that, “But man has almost

⁸ This says that if A is preferred to B and B is preferred to C then A must be preferred to C. Any other arrangement is deemed irrational. The principle of transitivity is violated here because banks and other financial institutions constantly preach that security should be prioritised over convenience. An example of this is found in passwords, with banks advising customers not to choose convenient passwords like “abcd” or “1234” or one’s birthday. Yet this same insistence of prioritising security over everything else is quickly forgotten in favour of convenience when it comes to contactless technology, reflecting a violation of the principle of transitivity and thus providing an example of irrational behaviour on the part of banks and other financial institutions (the “choice architects”).

constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only” (Smith & Skinner, 1982).

The capabilities approach emerged from the ideas of economist Amartya Sen and political scientist Martha Nussbaum – primarily as a reaction to mainstream welfare economics because it was underpinned by utilitarianism – but also in response to the political theories of thinkers such as John Rawls, who argued that a society should be rationally arranged such that the least well-off benefit from any benefits reaped by society as a whole (Robeyns, 2016).

It is relevant to mention Rawls here because Sen lauds his framework but argues that it does not go far enough, Rawls’ framework ultimately boiled down to an assurance that the least well-off were guaranteed the provision of *material* goods, whilst Sen believes that development should be seen as much more. Sen argues, as does Nussbaum, that development should be seen as an expansion of freedoms and the ability to live a life that one has reason to value.

If fintech is to promote human flourishing, then it needs to put freedom at its heart of self-evaluation. Sen gave the example of a person who is fasting. A person who is fasting in a developed country can hardly be said to be malnourished, at least when compared with people in developing countries. The difference between a person who is fasting in a developed country and a person who is malnourished in a

developing country is that the person who is fasting in the developed country at least has the freedom – the “capability” – to nourish him or herself. The same cannot be said for someone in a developing country.

How do we gauge progress in fintech?

In a similar way, it is not an example of progress if people are “forced” to use contactless cards, even if statistics show increased convenience, reduced queues or better security. We should analyse the question of whether the growth in contactless cards is a good thing. First, we should ask whether people have naturally chosen to use contactless cards as a means of payment. Second, we should ask whether those who choose not to pay with contactless cards can pay with other means. These are not trivial questions. As mentioned previously, the ability to exchange is fundamental to human existence. Forcing people to pay in certain ways has at times in history been accompanied by persecution. Furthermore, there are cybersecurity concerns as well as concerns about possible unintended consequences.

A capabilities approach to the issue of contactless cards ensures that people can continue to pay using non-contactless means. It guarantees the freedom to live a life one sees fit to live. Upon closer inspection, it is also noteworthy to see how the Rawlsian criterion is satisfied. Older people, for example, are known to be reluctant to use contactless cards. By

ensuring that there is always a viable alternative to contactless technology, or by refraining from using cognitive manipulation to surreptitiously encourage the uptake of contactless technology, banks and other financial institutions can make sure that the most vulnerable – such as the elderly – are adequately catered for.

Conclusion

Our liberal society prides itself on diversity. A free market is a subset of that diversity and it is seen as a mechanism through which people's preferences can be satisfied. One of the principles frequently touted as fundamental to the free market is that of consumer sovereignty: the idea that "the customer is always right". However, with the advance of technology as well as a better understanding of human psychology, that principle is gradually being replaced with the notion that: "Businesses know best". This has led to an increased prevalence of a paternalistic mindset: rather than consumers choosing what is placed on the market, businesses are collectively determining what consumers can get in the market. It is an inverted relationship, and that is also seen with the issue of contactless cards. Was any consultation held with customers and other stakeholders about whether contactless cards were wanted? Was any discussion held as to how to provide for those who choose not to opt for contactless cards?

Paternalism is relevant to ethics because it encompasses the issue of liberty and freedom: interfering with someone else's choices is a very controversial issue indeed and makes those who suggest it liable to accusations of "manipulation" and "deceit". It would not be true to say that contactless cards represent the only instance of paternalism by banks and other financial institutions. However, it does serve as a useful microcosm of paternalism in the banking and financial industry and paternalism more generally speaking.

The author is not so ambitious as to try to deal with paternalism as an overarching concept and to try to say whether *all* instances of paternalism are acceptable or deplorable. But in the context of contactless cards, the advantages gained from their increased adoption do not seem compelling enough to override the other ethical concerns raised by the infringement of freedom. It is hoped that this paper proves insightful to banks and other financial institutions regarding the ethical issues that may arise from automatically enrolling people into contactless technology.

References

- Bovens, L. (2009). The Ethics of Nudge. Retrieved from: <http://www.bovens.org/TheEthicsFV.pdf>
- Collinson, P. (2015). Contactless payments: should banks force us to use them? *The Guardian*. Retrieved from: <https://www.theguardian.com/money/2015/jan/17/contactless-payments-banks-force-us>
- Dworkin, G. (2017). Paternalism. Retrieved from: <https://plato.stanford.edu/entries/paternalism/>
- Hayek, F. (1976). *Choice in Currency: A way to stop inflation*. London: Institute of Economic Affairs.
- Immanuel Kant*, (2016). [TV programme] Philosophical Overdose.
- Kahneman, D. (2013). *Thinking, fast and slow*. London: Penguin.
- Kant, I. (2008). *Groundwork for the metaphysics of morals*. New Haven & London: Yale University Press.
- Lewis, C. (1987). *God in the dock*. Grand Rapids, Mich.: Eerdmans.
- Philippe, J. (2007). *Interior Freedom*. New York: Scepter Publishers.
- Poulter, S. (2016). 'Guilt-free' tap and pay cards fuel debt crisis. [online] *The Daily Mail*. Retrieved from: <http://www.dailymail.co.uk/news/article-4023468/Guilt-free-tap-pay-cards-fuel-debt-crisis.html>
- Poulter, S. (2017). Wonga relaunched with promises not to target vulnerable. [online] *The Daily Mail*. Retrieved from: <http://www.dailymail.co.uk/news/article-3087089/Wonga-change-heart-Payday-loan-firm-launches-promises-not-target-vulnerable-cap-charges.html>
- Rickless, S. (2015). Locke On Freedom. Retrieved from: <https://plato.stanford.edu/entries/locke-freedom/>
- Robeyns, I. (2016). The Capability Approach. Retrieved from: <https://plato.stanford.edu/entries/capability-approach/>
- Salmon, J. (2017). Don't force people to use tap and go cards, banks are told by watchdog. [online] *The Daily Mail*. Retrieved from: <http://www.dailymail.co.uk/news/article-4362678/Don-t-force-people-use-tap-cards-banks-told.html>
- Smith, A. & Skinner, A. (1982). *The Wealth of Nations*. New York: Penguin Classics.