"Autonomy Gaps as a Social Pathology:

Ideologiekritik Beyond Paternalism[1]"

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1. Introduction

From the outset, critical social theory has sought to diagnose people's participation in their own oppression, by revealing the roots of irrational and self-undermining choices in the complex interplay between human nature, social structures, and cultural beliefs. As part of this project, *Ideologiekritik* has aimed to expose faulty conceptions of this interplay, so that the objectively pathological character of what people are "freely" choosing could come more clearly into view. The challenge, however, has always been to find a way of doing this without arrogantly assuming special access to what is good for people. And this danger of paternalism is one to which social theorists have all too often fallen prey.

In this brief essay, I focus on contemporary instances of clearly self-defeating behavior in contexts of complex choices. I begin by discussing a recent attempt to diagnose and solve these failures of choices, namely the public policy recommendations of behavioral economist Richard Thaler and reform-minded legal theorist Cass Sunstein. Their influential "libertarian paternalist" approach is particularly interesting, both in what it includes (attention to the socially constructed nature of choice situations and the roots of the problems in human nature) and in what it leaves out (an understanding of the social construction of human nature and an adequate appreciation of the value of autonomy). After discussing it, I consider a broadly perfectionist alternative, to the effect that the problem lies in a failure to adequately appreciate the importance of developing autonomy. I then turn to sketching the outlines of a new approach, based on the concept of "autonomy gaps," which approaches overly demanding policies in relational and action-theoretical terms. In the final section, I show how this provides the basis for an analysis both in terms of a critique of ideology and of social pathology.

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2. Choice-Maximizing Public Policy and Predictable Irrationality

We live in an age of unquestioned commitment to choice. Long-standing processes of individualization have been accelerated by widespread popular support for libertarian and market-based trends in public policy. People got the scope for individual choice they demanded, from political parties and health insurance firms, as well as from mobile telephone companies and coffee vendors. Never have people had so many choices to make. [2]

And never has it been clearer how limited our capacities are for making those choices well. The empirical evidence is mounting that most of us have enormous difficulty making precisely the sort of complex choices we have been asking for. Three decades of research in behavioral economics and cognitive psychology have made plain that, especially in cases of expanded options, our rationality is bounded, our self-control is patchy, and our predictions regarding what will make us happy are reliably mistaken. We don't have to look far to see evidence of widespread failures of choice. As menus have expanded, so have our waistlines;[3] as more credit options have emerged, personal debt has ballooned.[4] It's not that some of us are occasionally irrational; we are all, to a large extent and frequently, *predictably irrational*.[5]

In particular, we are especially bad at making the new choices resulting from policies of liberalization. Consider two recent examples of choice-maximizing public policy: Sweden's privatization of pension plans and the deregulation of the U.S. home mortgage market. In 2000, the Swedish government transferred to individual citizens control of their portion of pension savings, to invest in a government-organized system of private investment funds. Swedes were strongly encouraged not to opt for the default portfolio but rather to select their own portfolios out of an initial offering of 456 funds. Two-thirds of Swedes decided to choose their own portfolio, which gave them a return on their investments that was, on average, one fourth of what they would have gotten if they had gone with the default plan. In short, these added choices ended up costing people significantly with regard to their retirement savings. The second example comes from the deregulation of home mortgages markets in the U.S., which generated challenges to decision-makers at two distinct levels. Directly, it opened up markets in which lenders needed to exercise judgment and self-restraint in deciding to whom to lend, and this eventually led, indirectly, to borrowers needing to exercise a great deal of judgment and self-restraint in the face of tempting new options like interest-only mortgages and payday loan outlets on nearly every corner. As catastrophic levels of personal debt and the

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[2] Classically, Ulrich Beck, Risikogesellschaft: Auf dem Weg in eine andere Moderne (Frankfurt: Suhrkamp, 1986); see also Axel Honneth, "Aspekte der Individualisierung," in *Desintegration: Bruchstücke einer soziologischen Zeitdiagnose* (Frankfurt a. M.: Fischer, 1994).

[3] Brian Wansink, *Mindless Eating: Why We Eat More Than We Think* (New York: Bantam Books, 2006).

[4] Cass Sunstein, "Boundedly Rational Borrowing."

[5] Dan Ariely, *Predictably Irrational: The Hidden Forces That Shape Our Decisions* (New York: HarperCollins, 2008).

2008 meltdown of the banking system have demonstrated, decision-making failures were rampant at both levels.[6]

In each of these cases, the pattern is roughly the same: widespread support for less regulation and more options leads to the creation of choice situations that people prove incapable of handling well, with disastrous results both at the individual and the collective level. Without wishing to claim that the complexity of these choice situations is the sole source of the problematic outcomes, it clearly plays a central role. Moreover, as instances of the type of case with which I am concerned here, they are the results of policy decisions, even if they are portrayed as the result of some unavoidable process of market proliferation, reflexive modernization, or what have you. For in these cases, and many others, the confounding situations of choice we face are of our own creation, at least to the extent to which public policy-making can be understood as an extended form of a people's collective action.

3. The Nudge Paternalist Innovation

In this context, part of what is intriguing about the approach recently proposed by Richard Thaler and Cass Sunstein[7] is how clearly they recognize this point, namely that it is an influential piece of contemporary ideology that the complexity of situations of choice is a social given. The "architecture of choice," as they put it, is not naturwüchsig but rather a contingent social construction – something that could, and often should, be otherwise. Their project is indeed partly aimed at providing a hard-nosed, social-scientific critique of the ideological conviction that maximizing choice will lead to better outcomes. They draw on work in behavioral economics (including Thaler's own research) showing how deeply flawed and biased our decision-making patterns are, but they also draw on research showing that many of our preferences are endogenous, that is, largely a function of the decision-making context, rather than expressions of deep-seated priorities.

Thaler and Sunstein are well aware that this depiction of human preferences as fickle and their choices are irrational might naturally lead to straightforwardly paternalistic policies. After all, if people can run their own lives, perhaps the government should do it for them. It is with the aim of avoiding "hard" paternalism while still taking seriously the social and individual costs of our difficulties in dealing with expanded choice that the develop a series of proposals they have labeled "libertarian paternalism". This turns out to be a misleading label, and so I propose to refer to their approach as "*nudge paternalism.*" The basic nudge paternalist thesis is that, because people are so susceptible to various counterproductive tendencies, it is appropriate for social planners, policy makers, and other "choice architects" to modify choice situations in ways that

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[6] Charles R. Morris, *The Trillion Dollar Meltdown. Easy Money, High Rollers, and the Great Credit Crash*, New York: PublicAffairs Books 2008; Richard Beales et. al., „Leap of faith? How a fiasco of easy home loans has tripped up America", *Financial Times*, 16 March 2007.

[7] Cass R. Sunstein and Richard H. Thaler, "Libertarian Paternalism is Not an Oxymoron," *University of Chicago Law Review* 70:4 (Fall, 2003): 1159-1202. Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven: Yale University Press, 2008).

nudge people toward better choices, where "nudging" is distinguished from "forcing" by the fact that people can still choose the de-emphasized option, if they really want to. For example, when cafeterias put fruit ahead of junk food, people make the healthier choices that wish they made more often; and when companies automatically enroll employees in beneficial pension plans, the employees still have the freedom to opt out but typically end up better, given pronounced tendencies toward inertia in the fact of complex and unfamiliar choices. Light-handed interventions of this sort have indeed proven to be very effective.[8]

Thaler and Sunstein's approach has been attracting a great deal of attention, and understandably so. It draws on compelling empirical work in behavioral economics, and contains innovative proposals for ensuring that people's irrational tendencies lead to fewer consequences that they regret. In addition, they are very creative in thinking about the ways in which norms and habits, social patterns and individual patterns, can help people to be more effective than they would be without the support of those patterns.[9] In this sense, they seem to have a nuanced approach both to the limits of human nature and the importance of the social world in enabling individual action.

4. Nudge Paternalism's Under-Appreciation of Autonomy

Unfortunately, Thaler and Sunstein take a troublingly *managerial* approach to people's difficulties with choice, one that reveals their approach to be hardly the innocuous form of paternalism they claim it to be.[10] In this connection, I would like to mention two objections: (1) that their attitude toward people's abilities is ahistorical and hypostasizing, and (2) that their exclusive focus on achieving outcomes, by any politically feasible means necessary, demonstrates little concern with autonomy, either self-guidance or self-governance.

Like most of those working in the recently ascendant field of behavioral economics, Thaler and Sunstein draw heavily on empirical studies purporting to show how people *really* behave, rather than as how models of "economic man" predict they will behave. These very clever empirical studies reveal humbling (even comically humbling) insights into certain widespread and deep-seated human tendencies: our robust irrational biases that lead us to discount enormous future benefits in favor of modest short-term benefits; or to make choices solely on the basis of the order in which the options are presented; or to become counterproductively passive as the result of being presented with more options.[11] The problem is that, with additional support from the growing field of neuroeconomics and a heavy emphasis on the automaticity of our decision-

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[8] In addition to numerous other examples in *Nudge*, see also Richard H. Thaler and Shlomo Benartzi, "Save More Tomorrow: Using Behavioral Economics to Increase Employee Saving," *Journal of Political Economy* 112(1), (2004): 164-187

[9] Thaler and Sunstein, *Nudge*, ch. 3.

[10] For fully account of my criticisms of Thaler and Sunstein, see my "Nudge Paternalism," ms. 2008.

[11] See Wansink and Ariely, as well as Barry Schwartz, *The Paradox of Choice* and Daniel Gilbert, *Stumbling on Happiness*.

making,[12] the conclusion is being drawn that these are unchangeable, transhistorical components of human nature. In some cases, there may be some truth to this. But in general, this is a rather ahistorical and decontextualized understanding of human nature, one that ignores both the enormous historical and cultural variation in how apprehend our world, as well as the extent to which "what humans can do" is fundamentally a function of our material, cultural, and institutional surroundings. For, like no other creature in evolution, we are who we are because of "tools" we have developed – from clothing and machines to language and laws. We are intersubjectively constituted – cognitively, volitionally, and even emotionally.[13] From this perspective, Thaler and Sunstein's virtual silence regarding the ways we can learn to handle complex decision-making seems to be the consequence of accepting an oddly reified and ahistorical *Anthropologie.* For the fact that overcoming these biases doesn't come *naturally* is, in the case of humans, no reason to think that the historical process of autonomization has suddenly come to a halt.

The second limitation to Thaler and Sunstein's approach is the way they focus exclusively on liberty and welfare to the exclusion of autonomy. They go to great lengths to show that their approach improves people's wellbeing (by people's own standards) while retaining an array of options. But even if one grants this, it is still possible that the measures they are advocating are incompatible with a genuine commitment to autonomy. To bring out what I mean here, consider two plausible dimensions of autonomy or self-determination: self-guidance and self-governance.

As I am using the term here, self-guidance involves the reflexive capacity to act on the reasons one understands oneself to genuinely have. It is most clear in the breach: if you cut back radically on sweets because several friends have convinced you that you are at risk of diabetes, but it turns out that your mother put your friends up to it in an effort to help you lose the weight that you genuinely want to lose, then you are not self-guiding. You may be acting in a way that promotes your wellbeing (and by your own lights), but the reasons that justify you so acting are not the reasons on which you act. Again, there are numerous grey areas, but it seems clear that part of what is distinctive of most of the "nudge" solutions being proposed by Thaler, Sunstein, and others is that they involve precisely making use of the fact that people are not aware of how their choices are being framed, for example, by the sequence of fruit and junk food in a cafeteria line. Indeed, the slogan of food researcher and fellow nudge paternalist Brian Wansink is "The best diet is the one you don't know you're on."[14] There may well be some contexts in which we don't particularly care about fully appreciating the justification for our decisions, as long as we lose

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[12] Timothy Wilson, *Strangers to Ourselves*; J.A. Bargh and T.L. Chartrand, "The Unbearable Automaticity of Being," American Psychologist, no. 54 (1999): 462-79; the increasingly dominant assumption in much of this literature is that we do everything mindlessly, so we might as well line up the environmental stimuli in such a way that the outcomes are best.

[13] Andy Clark, *Supersizing the Mind: Embodiment, Action, and Cognitive Extension* (Oxford, 2008); Joseph Heath and Joel Anderson, "Procrastination and the Extended Will," in Chrisoula Andreou and Mark White (eds.), *The Thief of Time: Philosophical Essays on Procrastination* (New York: Oxford University Press, in press).

[14]Wansink, *Mindless Eating*, p. 13.

weight or our pensions grow in value. But to suggest, as Thaler, Sunstein, and others do, that an enlightened approach would focus exclusively on effectively generating better outcomes amounts to a technocratic trivialization of the importance we attach to understanding *in what way* and *in what sense* our actions lead to better results.[15] After all, if the choice architecture in the voting booth or in an online dating service were reengineered to increase the likelihood that one's vote for a politician or choice of a partner would accord objectively with one's real interests – but in a way that one had no understanding of – the superiority of the outcome in no way *compensates* for the lack of self-guidance. They operate in different registers.

Concerns with diminished self-guidance might be addressed by robust self-governance, in the sense that one might autonomously authorize a bit of scaffolding whose influence one does not necessary understand at the moment of acting. But here, again, Thaler and Sunstein remarkably uninterested in the issue of authorization or self-governance. In the end, what nudge paternalists usually offer is a series of reasons for thinking that we don't really need to be so worried about it. There are several ways of downplaying the need for authorization for nudges: by focusing on cases in which nudges seem obviously appropriate, by assuming the prerogative of expert planners, by portraying citizens as legitimately disinterested in many decisions, and by suggesting that modifying defaults is no more intrusive than doing nothing. On closer examination, which I can only anticipate here, each of these strategies ultimately betrays a relative lack of concern for self-governance. First, the pragmatic impatience about purportedly obvious cases -- "Would anyone object to putting the fruit and salad before the desserts at an elementary school cafeteria if the result were to increase the consumption ratio of apples to Twinkies?"[16] – betrays a troublingly presumptuous attitude. For to the extent the question "Who would really object?" is posed merely rhetorically, an arrogant disregard is being expressed for the question of how policy-makers know when they must actually secure authorization. Similar points can be made, second, regarding the assumed prerogative of "choice architects". Third, their counter-charge that it would be paternalistic to require people to think more carefully about their choices and consenting than they actually want to,[17] only works against approaches that assume that the importance of consent lies in some benefit that it gives to the individual. Rather, once one sees reciprocal consent as requirement intrinsic to our efforts to work out the terms of our fair and equal cooperation, then it becomes clear that the requirement of self-governance transcends individual preferences. Finally, in arguing that, since policy makers cannot avoid generating some framing effects there is nothing

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[15] Lurking in the background here is the confused idea that the wrongness of paternalism ought to be understood in terms of harms to interests, and thus that any harms resulting from bypassing an agent's self-guidance need to be weighed against the beneficial outcomes. For an excellent critique of this idea, see Arthur Ripstein, "Beyond the Harm Principle" *Philosophy and Public Affairs* 34 (2006), 215-45. This point also applies to the discussion of self-governance later in this essay.

[16] Sunstein and Thaler, 1166. (For the benefit of readers outside the U.S., a "Twinkie" is a particularly sugary snack cake.)

[17] Thaler and Sunstein, Nudge, ch. 1. See also Dworkin, "Paternalism: Some Second Thoughts," New York: Cambridge University Press 1988, 123.

problematically paternalistic about their opting for the most beneficial framing effects, they seem oblivious to the insulting attitude this substitution of experts' judgment for that of the governed *expresses* vis-à-vis the competence of the governed.

5. Lagging Developments of Autonomy as Intrinsically Problematic

In light of the foregoing discussion, what is needed is an alternative approach that shares Thaler and Sunstein's concern with human vulnerability and their commitment to developing support structures that address the real problems people have as a result of being overwhelmed by the rapid expansion of difficult choice situations, but which takes takes seriously the importance of genuine autonomy and the possibilities for its development. The two problems identified in nudge paternalism together point toward the need for a greater appreciation for what one could call "autonomization". Autonomization, in Axel Honneth's phrase, refers to

> …alle die Vorgänge..., durch die Individuen dazu befähigt werden, mit vorgegebenen Handlungsalternativen auf eine reflektierte, selbstbewußte Weise umzugehen; solche Prozesse lassen sich angemessen überhaupt nur in dem Maße beschreiben, in dem gefragt wird, ob ein Subjekt die institutionelle Erweiterung van individuellen Handlungsspielräumen auch als Chance für die eigene Selbstbestimmung wahrnimmt und zu nutzen weiß.[18]

Seen from this perspective, we can say that the source of the problems with the complex choice situations we have been discussing is that our autonomization has not kept pace with the expansion of demands on our capacities for choice. A mismatch has emerged in these contexts between our autonomy competencies[19] and the demands of various choice situations, what I will discuss below as an "autonomy gap".

This way of putting things has the advantage of addressing precisely the deficits of nudge paternalism's approach. First, it avoids hypostasizing or biologizing the limits to our capacities for choice. There will, of course, be some cases in which we run up against specific hard limits to our ability to handle some cognitive or volitional dimension of a choice situation. But especially once one takes into account the extent to which the development of our autonomy is essential entwined with the development of the intersubjective structures, the limits of an individual's brain will rarely be the end of the story. Second, the emphasis on autonomization repositions autonomy at the center of the account. On this view, what is problematic about the situations of choice in which people are unable to handle them well is primarily the fact that individuals' level of autonomy development is low, and that by addressing the problems in this way,

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[18]Axel Honneth, "Aspekte der Individualisierung," in *Desintegration: Bruchstücke einer soziologischen Zeitdiagnose* (Frankfurt a. M.: Fischer, 1994), 25. See also Jürgen Habermas "Individuierung durch Vergesellschaftung. Zu G. H. Meads Theorie der Subjektivität," in *Nachmetaphysisches Denken: Philosophische Aufsätze* (Frankfurt a. M.: Suhrkamp, 1988), 187 ff.

[19] On autonomy competencies, see Diana Tietjens Meyers, *Self, Society, and Personal Choice* (New York: Columbia University Press, 1989).

self-guidance and self-governance is ensured as a flip side of successfully improving the outcomes. With greater autonomy, individuals not only can handle complex choices better, they are also better able to understand the reasons on which they are acting (or, at least, the structures that are "nudging" them) and to participate in the processes that render any given choice architecture legitimate. Indeed, it might be argued that this reflexive dimension makes a commitment to promoting autonomy a constitutive commitment of liberal democracies.[20]

As we saw, one of the reasons that nudge paternalism is so blind to concerns with autonomy is that its exclusive focus on avoiding problematic <u>outcomes</u> left no conceptual room for seeing a lack of autonomy as intrinsically problematic. An emphasis on lagging autonomization corrects this oversight in a way that also suggests a non-consequentialist analysis of the problems with the cases described earlier. But what, precisely, is intrinsically wrong with low levels of autonomy?

One possible answer involved understanding the importance of raising one's level of autonomy in straightforwardly perfectionist terms. On this view, it is a constitutive component of self-realization or full human flourishing that one develop one's capacities for autonomy.[21] Teleological approaches have the advantage of placing in the spotlight the ways in which autonomy deficits are so bad for people, and intrinsically so. Positively, they can situate the good of autonomy in the context of broader societal practices that express similar commitments, such as public education. Negatively, they provide a particularly direct way of conceptualizing the humiliation and disempowerment that typically accompany experiences of not having what it takes to handle complex choices or to understand how one's choices are being framed. And if we are to characterize people's frustrating unability to cope with social complexity as part of a societal pathology, then it seems natural to speak of the "stunted development" of individuals' autonomy.

There is much more that could be said in developing such an approach, but there are also serious difficulties that come quickly into view. Some of these difficulties are familiar from more general critiques of perfectionism, such as the question of how to find an organizing conception of the good life that can be shared in pluralistic society without becoming empty.[22] One doesn't need to deny that there is more to be said in defense of perfectionism than liberals often think to see the advantages of finding an equally adequate approach that avoids

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[20] Joel Anderson und Axel Honneth, "Autonomy, Vulnerability, Recognition, and Justice," in John Christman und Joel Anderson (ed.) *Autonomy and the Challenges to Liberalism: New Essay*, New York: Cambridge University Press 2005, S. 127-149; Jürgen Habermas, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, Frankfurt/M.: Suhrkamp 1992, Kap. 3-4; Kevin Olson, *Reflexive Democracy. Political Equality and the Welfare State*, Cambridge, Mass: MIT Press 2006; Rainer Forst, *Das Recht auf Rechtfertigung*, Frankfurt/M.: Suhrkamp 2007.

[21] Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1986) and Martha Nussbaum, *Women and Human Development*.

[22] Classically, Rawls, *Theory of Justice*. For an overview, see Bert van den Brink, "Pefektionismus," S. Gosepath, W. Hinsch, B. Rössler (Hg.), *Handbuch der politischen Philosophie und Sozialphilosophie* (Berlin: de Gruyter, in press).

these dangers. Moreover, there are particular problems that arise in viewing the lagging autonomization as primary source of the problems, particularly in connection with the idea that the solutions must always lie in increasing autonomy. This *developmentalist bias* runs the risk of ignoring the real opportunity costs associated with developing one's capacities for autonomy. Such development takes time and effort, time and effort that could be spent on other things. Moreover, some people have a "Yeah, whatever" attitude and would strongly prefer to have experts design contexts that will channel their choices in a way that minimizes regret. And this points to the real *political* limits on what can legitimately be done to promote autonomization processes. If the domain of the personal and the ethical is not to be usurped in the process, the importance of autonomization needs to be better contextualized.

6. An Action-Theoretic Turn to "Autonomy Gaps"

My view is that, in order to avoid the pitfalls of both nudge paternalism and autonomization perfectionism, we need to shift to an action-theoretical approach that highlights the relational character of failures of choice. In particular, we need a conceptual framework that accommodates the idea that these problems are the result of a gap between two ongoing processes, the development of decision-making challenges and the development of decision-making capacities. My proposal, as mentioned earlier, is to diagnose the problems generated by many patterns of decision-making failures in terms of a discrepancy between the *capacities for choice that are presupposed by public policies, institutional arrangements, and social practices* and *the capacities that people actually have or will develop*.[23] In contrast to the perfectionist position just discussed, an autonomy-gaps account conceptualizes the lack of development as problematic only against the background of a contingent level of demandingness of social tasks, thereby holding open the possibility that the solution lies in redesigning choice architecture to make it more doable for more people. In contrast to nudge paternalism, this approach not only leaves open room for the development of individuals' autonomy but also for theorizing systematic patterns of failures of choice as a pathologies of the social: as a fundamental breakdown, at the social level, of the normal relationship between agents and their collective will.

To make this rather bombastic claim even somewhat plausible, it is important to take a brief step back to examining the action-theoretical underpinnings of this account.[24] The basic idea is that, insofar as they are understood as legitimate by participants, social policies, practices, and institutions represent instances of collective intentionality, in which certain more-or-less specific assumptions are made as to how the polices, etc. will work and whether, under that description, it is reasonable to think that they can be they can be realized and sustained. The crucial point for present purposes, of course, turns on the presuppositions of competence. To illustrate, consider a small-scale case of a joint intention. Imagine you and I form a plan "to go for a bike ride tomorrow."

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[23] In developing the concept of autonomy gaps, I have found inspiration in a variety of sources, from Hegel and Durkheim to capability theorists and elaborators of the "social model" within disability studies. {Refs.}

[24] For a fuller account of the details of this proposal, see my essay "Autonomy Gaps," ms. 2007.

What exactly have we agreed to? Quite a lot. And much more than we ever make explicit. If I showed up unannounced with 15 friends, or without a bicycle, we couldn't, without further explanation, plausibly thinking of ourselves as doing what we planned to do. The same is true of the competencies presupposed by the practice, such as knowing how to ride a bike or being adequately fit.

If we turn to autonomy-competencies and extend this analysis to the level of a public policy we get the following picture. Taking the case of shifting to a system in which individuals themselves determine the investment allocations of their retirement income, we could say that this would lead to an autonomy gap just in case the new policy – with the advantages it is presented to citizens as having – presupposes a set of autonomy competencies that people cannot realistically be expected to have (or are likely develop in the near future). Let's assume that the advertised advantage is that, as the result of individuals controlling their investments, they are significantly more likely to end up with the personally preferred balance of near-term sacrifices and long-term retirement income. Thus the package of advantages, disadvantages, liberties, constraints, and so on comprising the policy being adopted presupposes that people have certain capacities. Otherwise, the package in question will *predictably* lack crucial components. In this case, the policy presupposes that people have the *deliberative capacities* to appreciate the relative advantages and disadvantages of a range of possible investment strategies, as well as the probabilities and risks involved. In addition, it presupposes *executive capacities* not only to resist unduly favoring short-term benefits but also to bother to make active choices in the first place. To the extent to which significant numbers of people do in fact lack (and are unlikely to develop) the decision-making skills necessary to sort out these choices well, then such a policy would be marked by an autonomy gap.

7. Autonomy Gaps as Grounds for Social Critique

Diagnosing public policies in terms of autonomy gaps opens up additional possibilities for critiquing public policies presuppose competence that people lack. I'll focus here on an ideological contradiction in the collective will, but there are at least three other important bases for social critique that I *won't* be discussing, due to space restrictions. First, the fact that a policy gives rise to autonomy gaps provides grounds for criticism on instrumental grounds, since it is not likely to succeed. It's often simply imprudent for governments to adopt complex policies that will miss their targets. Second and probably most significantly, autonomy gaps typically exacerbate inequality. Some situations of complex choice are going to be more demanding for some than for others. Many financial cases are like this. Elites who are particularly good at working the numbers – or who can afford to hire professionals to do it for them – are able to reap the benefits of liberalized governmental programs such as privatized retirement accounts, while others are just overwhelmed with the task and thus fail to reap the benefits. More broadly, autonomy gaps represent circumstances in which people come up short in what it takes to participate fully in co-legislation, and thereby represent, in terms of Nancy Fraser's "principle of participatory parity," a failure to establish "social arrangements that permit all to

participate as peers."[25] A third, related, and speculative grounds for criticism of policies that generate autonomy gaps has to do with their symbolic or expressive dimension. For when individual citizens are confronted with governmental forms they cannot understand or new possibilities for opting for short-term over long-term benefits that they are unable to resist, they are being given humiliating and denigrating messages about their inadequacy as citizens and individuals – not just that there is some task but that others can do better, but that they can't meet basic expectations of normal competence.[26]

These are important grounds for criticizing autonomy gaps for the way they undermine central values. But there is another form of normative critique that offers an intriguing possibility of a genuinely internal understanding of a social form that is intrinsically pathological. The category of the pathologies of the social has been a guiding thread in the tradition of critical social theory. But it has not fared well under close conceptual scrutiny. In Axel Honneth's assessment, claims regarding "pathologies of the social" are more difficult than ever to defend coherently.[27] What is needed, it seems, for this sort of analysis to work, is a way of articulating a fundamental problem with social structures that still remains formal enough to avoid charges of substantive violations of commitments to pluralism. Put in terms of anti-paternalism, what we need is a form of social critique that does not involve substituting one person's judgment of the good for another's.[28]

The suggestion is this: the deep problem with social policies, practices and institutions that generate autonomy gaps is that our adopting them involves committing a contradiction in the collective will. To understand how it is that these policies get adopted and maintained, we often must ultimately appeal to the wishful thinking central to many forms of self-deception.

The action theoretical dimensions of this come out once we return to the example of a planned bike ride. Now suppose that we both know *at some level* that I'm not able to cover more than half the distance that we'd planned on and, sure enough, at the farthest distance from our starting point, I can't go on, and we're stranded. We adopted a plan we knew we couldn't carry out. I could, of course, have intentionally deceived you, in which case we didn't actually adopt the plan in the required sense. But in the case I have in mind, what needs explaining is why we set off in the first place. Perhaps there are conventions of etiquette that discourage bringing up the issue, or expectations about masculinity that would make the issue shameful. Whatever the case, forming a joint intention we cannot fulfill is a clear case of thwarting ourselves, of getting

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[25] Nancy Fraser, "Distorted Beyond All Recognition: A Rejoinder to Axel Honneth," in Fraser and Honneth, *Redistribution or Recognition?*, p. 218.

[26] In discussions of the politics of recognition and especially in Axel Honneth's theory of recognition (*Kampf um Anerkennung* [Frankfurt 1992]), it is individuals and groups that are presented as the sources of denigration. But here we have, I would suggest, a form of denigration that is not pegged to particular agents but to aspects of the social world.

[27] Axel Honneth, "Pathologien des Sozialen. Tradition und Aktualität der Sozialphilosophie," in Honneth (Hg.), *Pathologien des Sozialen. Die Aufgaben der Socialphilosophie* (Frankfurt 1994).

[28] Dworkin, "Paternalism: Some Second Thoughts," 123.

in our own way; and this intrinsic irrationality needs explaining, in terms of something that blocks or significantly discourages the acknowledgement of the lack of the presupposed capacity.

At the level of public policy, then, we get the following parallel. We cannot understand ourselves to be self-legislating with regard to a given policy and also believe that the policy presupposes competencies that we do not have. In this sense, autonomy gaps are incompatible with our adoption of the policy counting as a case of genuine self-legislation. Of course, there is the possibility that, to the extent to which autonomy gaps serve the interests of certain powerful elites, this is more or less explicitly intended. Or it could simply be that everyone is aware of what is going on, but the majority simply has the votes to legislate self-serving policies. But on the plausible assumption that these won't cover all cases, we are faced with the task of explaining the pervasive beliefs and modes of thinking that tend to keep people from being aware of the irrationality of what they are doing.

This shift in critical focus from the *consequences* of autonomy gaps to the irrationality of collectively *adopting* policies that generate autonomy gaps makes it possible to underscore not only the intrinsic irrationality underlying autonomy gaps but also what Axel Honneth has termed "Rationalitätsdefizit auf zweite Stufe."[29] For the rational considerations weighed in deliberating about various policies are often blind to the reflexive question of what needs to be done to unsure that these the presuppositions of the policy are met (or the policy is adjusted).

Honneth's remark occurs at the end of a discussion of ideology, and the link here is apt, however unfashionable notions of ideology may currently be. For if it is intrinsically irrational to adopt public polices marked by significant autonomy gaps, then we need to look for another explanation. And if there are cultural or institutional patterns that would explain why people do not acknowledge the threat or presence of certain autonomy gaps, then we have at least reasons not to dismiss out of hand the role of such distortions to the process of self-legislation. Here, I will do no more than identify a few candidate explanations, but that should make clear the point I am trying to make, namely, that this is an area that calls for theoretical and empirical inquiry. The most obvious candidate for a distorting phenomenon is simply a lack of information about what people's competencies are and what various public policies presuppose. And more information here is sure to have an effect. But I doubt this is all that is going on, and I'd like to mention three further cultural patterns, at least in the West, that also seem likely to be involved in the adoption of public policies marked by autonomy gaps, by distorting or clouding our awareness of these gaps, so as to avoid the painful cognitive dissonance involves in realizing what is happening. The first is the widespread belief, deeply embedded in a variety of social institutions, that most of us have high levels of autonomy competency. The second is the belief that if this were not so, we would be aware of this. And the third is the belief that any lack of autonomy competency – or especially any significant inequality among people in levels of competency – is not something about which anything can be done.

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[29] "Annerkennung als Ideologie," *WestEnd: Die neue Zeitschrift für Sozialforschung* Heft 1 (2004): 51-70, here 68.

If it turned out – and this would need to be investigated to be more than an initial speculation – that these beliefs in our omnipotence are widespread and deeply entrenched, and that they generate situations in which the weakest or least competent members of society are systematically shortchanged and marginalized (and the process of democratic self-legislation was thereby distorted), then we have a classic candidate for *Ideologiekritik*: false and normatively loaded claims that, by masquerading as empirical truths, give rise to the sort of self-undermining behavior that can count as pathological.

Interestingly, there is actually a growing awareness of the limits of human rationality, not least of which in the social science research inspiring Thaler and Sunstein's nudge paternalism. If the acknowledgment of the (current) limits of human rationality – and the growing popularity of what one could term "human irrationality nonfiction" – is not to end up legitimating political, institutional, and social shifts toward treating citizens like sheep to be herded, we need to keep alive the ideal of self-critical participants in a process of self-legislation. At least in this sense, one of the pressing contemporary tasks of critical theory is to engage with this emerging *politics of human irrationality*.