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Issue

It's in Your Own Best Interest

[Samuel Freeman](#)

[Simpler: The Future of Government](#)

by Cass R. Sunstein

Simon and Schuster, 260 pp., \$26.00



Henri Cartier-Bresson/Magnum Photos

Children buying toy cars, Paris, 1967; photograph by Henri Cartier-Bresson

1.

Public, political, and academic opinion about the role of government has changed considerably since the early 1980s. There is now a widespread presumption that private, free-market solutions are the appropriate way to address not just economic but also social and political issues. In the spirit of our free-market era, *Simpler: The Future of Government* outlines strategies that regulate economic behavior but also promote individual welfare by preserving freedom of choice rather than by mandates, prohibitions, subsidies, and other incentives.

Cass Sunstein is a leading legal and political theorist, recognized for his many works in constitutional jurisprudence and regulatory theory. In recent years, he has been

trying to combine his long-standing commitment to progressive liberal positions with advocacy of free-market liberalism. Lately, and most notably in his best-selling book of 2008, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (coauthored with the economist Richard Thaler), Sunstein has sought inspiration from the growing field of behavioral economics.

Simpler is a follow-up to *Nudge*. Sunstein draws from his experiences as head of the Office of Information and Regulatory Affairs (OIRA) from 2009 to 2012. OIRA, a division of the Office of Management and Budget, oversees and critically assesses federal regulations, fulfilling a 1981 mandate from then President Reagan to ensure that “regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society.”

Sunstein contends that “the future of government” largely lies in policies that preserve freedom of choice. Such policies, which he and Thaler dubbed “nudges,” would encourage people to make decisions that benefit rather than harm them. Nudges attempt to influence people’s choices by altering the circumstances of choice to bring about a desired result. “To count as a mere nudge,” Sunstein writes, “the intervention must be easy and cheap to avoid. Nudges are not mandates. Putting the fruit at eye level [in a school cafeteria, for example] counts as a nudge. Banning junk food does not.” Advertisers and salespersons are professional nudgers. They appeal to our feelings and influence our beliefs and judgments so that we choose in ways that benefit them. Government nudges, by contrast, are designed to influence individuals to choose in ways that promote their own health, safety, and welfare.

Sunstein calls government nudges “libertarian paternalism.” Government, he says, should use its regulatory powers to simplify the disclosure of relevant information and present choices in ways that encourage individuals to freely choose alternatives that benefit rather than harm them. The nudges Sunstein discusses in *Simpler* fall into four broad categories. The first includes simple disclosures—the number of calories in soft drinks, for example. Here Sunstein emphasizes the need for simplifying health, safety, and financial information on products. His main examples, aside from clearer summaries of nutrition facts, include simplified labels about the fuel economy of cars and energy labels on appliances, and clear information about total fees, penalties, and interest on mortgages, credit cards, and other loans.

A second category of nudges consists of beneficial default rules, which ensure that if people do nothing at all (“default”), things will go well rather than badly for them. For example, Sunstein points to government efforts to encourage employers to automatically enroll their employees in 401(k) plans as an example of a beneficial default rule, one that results in employees having far greater savings, unless they choose not to participate. Other examples include automatic enrollment in health care and Medicare drug plans and in free school lunch programs for eligible children. In such cases freedom of choice is preserved but has to be asserted if the default is to be changed. Sunstein also advocates automatic enrollment in a national organ donation program, in which, again, people can refuse to take part.

The third category covers guidelines for making important information, such as warnings, visible and salient, since people are often blind to the obvious. For example, Sunstein believes that the health warnings required on tobacco packages have become much too familiar. He argues that, in order to be effective nudges, tobacco warnings

should be far more graphic—enough to evoke strong visceral reactions. Finally, Sunstein endorses cost-benefit analysis of government programs as an effective nudge since it pushes agencies to focus on the economic consequences of regulations and can, he argues, promote social welfare. For example, a rule to make refrigerators more energy-efficient might add an average of \$200 to their price, but save consumers only \$100 over the unit's lifetime. "If the goal is to help consumers," Sunstein writes, "the rule sounds pretty hard to defend.... Cost-benefit analysis shows why. Without an accounting, we would not be in a position to know whether this rule is a sensible idea."

Nudges are effective, Sunstein explains, because small details often significantly affect people's behavior, as with the order in which food is presented in school cafeterias. The framing and presentation of available options is one example of "choice architecture," which Sunstein defines as designing the social environment in which people make decisions so that it influences their choices. Nudges are a form of choice architecture that alters people's behavior without forbidding options, mandating choices, or (unlike subsidies or fines) significantly changing economic incentives. For example, choice architects decide "that your car has...a clear display of how many miles per gallon you are now getting" and "that you see, or don't see, all of the extra fees associated with your airfare."

2.

The theoretical background for nudges is the growing field of behavioral economics, which modifies standard economic theory's model of rational economic man. In the standard theory, individuals are said to be rational in that they maximize their gains and minimize their losses. According to the theory of expected "utility," or welfare, rational persons first rank their preferences for goods or social arrangements and then maximize their welfare by consistently choosing their highest-ranked preference. Many economists also think that rational persons prefer only what is best for themselves, benefiting others only if it coincides with their own self-interest.¹

Most economists acknowledge that many choices people make are not rational in their sense. Still, they contend that the rational man model is a sufficiently close approximation of how people normally behave in making economic and many noneconomic choices. Since the 1950s, economists such as Nobel laureate Gary Becker have extended the economic analysis of behavior to subjects—including, for example, love and marriage—traditionally dealt with by sociology, psychology, and political science.

Many social scientists, however, argue that we are nowhere near as rational, reflective, or self-interested as mainstream economists assume. Their theories of "bounded rationality" say that, rather than choosing our best option, we often choose one that is merely "good enough" even when better choices are available. This can lead to inconsistent choices. Experimental psychologists argue that we frequently act less than rationally in the economists' sense. Most of us do not deliberately and objectively assess information about our options, calculate probabilities of risks, and make choices based on our objective assessments.² Instead, we typically act intuitively, out of habit, or automatically, making choices based on rules of thumb. Often our judgments about ways of solving problems—"heuristics"—are useful, but sometimes they can lead to severe

errors. In short, human decisions are subject to many biases in our thinking that are irrational from the perspective of rational economic man.

One cognitive bias Sunstein discusses is “loss aversion.” For most people, losses loom larger than gains. Consequently, losing certain things often makes us more than twice as unhappy as gaining the same thing makes us happy. This aversion to loss sometimes causes people to make choices that are economically irrational. To invest none of your retirement savings in stocks and put them all in a bank account that yields hardly any interest will seem safe but is not a rational way to manage your money. Sunstein wants government to make use of our cognitive biases. For example, loss aversion suggests that fees and taxes should be more effective in altering our behavior than rewards or subsidies. Imposing a five-cent tax on grocery bags has a major effect in reducing their use while paying a five-cent bonus to bring reusable bags has been ignored.

Other psychological biases Sunstein discusses include optimism and overconfidence; the “bandwagon effect” or herd-like behavior; the “status quo” bias, which leads people to procrastinate or to continue patterns of conduct in spite of their adverse consequences; the “affect heuristic,” which leads people to assess costs, benefits, and probabilities by consulting their feelings rather than calculating the numbers; and the “availability heuristic,” which distorts individuals’ assessment of probabilities of bad outcomes. The last leads governments to allocate resources in ways that respond to people’s fears rather than to the most likely danger. For example, the emphasis on terrorist attacks, airplane crashes, and tornadoes leads us to greatly overestimate our susceptibility to them, while we underestimate our greater susceptibility to risks such as smoking, sunbathing, and overeating.

Nonetheless, many mainstream economists resist the applications of cognitive psychology to economics. Milton Friedman famously argued that positive economics, like any serious science, often makes unrealistic and sometimes “wildly inaccurate descriptive representations” in its models and hypotheses, but this lack of realism is of no consequence so long as the laws and hypotheses of economic analysis predict behavior more accurately than do other explanations.³ Behavioral economists and others might counter that standard economic theory fails to do just this when applied outside the sphere of free-market behavior, and even then often falls short when it comes to the national economy. For example, economic theorizing based on the “efficient markets hypothesis” failed to predict the 2008 financial collapse because it was unable to appreciate both collective overconfidence and blindness to risk and uncertainty in the stock and financial markets.⁴

In response, mainstream economists might say that businesses that do not calculate their costs, risks, and benefits do not—or should not—survive for long in a competitive environment. When people are shown how inconsistent or otherwise irrational their choices are, they often acknowledge their misjudgment and try to change their conduct. None of this, however, shows that public policy should not incorporate the insights of behavioral economics.

Sunstein’s nudges acknowledge—but then redirect—our tendency to make irrational choices. He writes, “The best nudges move people in the directions they would go if they were fully rational.” Nudges influence people to act more in their own best interests. This suggests an ambivalent attitude toward the standard model of economic

man: Sunstein criticizes that model as inaccurately describing how people normally choose but endorses it as a normative model of how we ought to choose. For Sunstein, there is no conflict here. His endorsement of the standard model of rational choice is built into “soft paternalism” or the libertarian paternalism he advocates.

3.

For Sunstein, nudges are “libertarian” since they preserve freedom of choice but also paternalistic in that they promote individuals’ well-being, presumably “in a way that will make choosers better off, *as judged by themselves*.” “Libertarian” is an ambiguous term, given its associations with liberal positions on both the left and the right. Civil libertarians, typified by the ACLU, emphasize the importance of personal and political freedoms, including freedom of conscience, association, speech and expression, and freedom to act on one’s tastes and convictions and pursue one’s own life.



Chang W. Lee/The New York Times/Redux
New York City Mayor Michael Bloomberg (right) and Health Commissioner Dr. Thomas Farley, with a display of different sizes of soda and the amounts of sugar they contain

These are the abstract liberties that John Stuart Mill would protect under his Principle of Liberty. Together with political liberties to vote and hold office, John Rawls declares that such freedoms or “basic liberties” should be restricted only to protect others’ basic liberties. Neither Mill, Rawls, nor progressive liberals generally regard economic liberties as having this special status.

By contrast, economic libertarians, such as Friedman, mainly advocate economic freedoms of contract, private ownership, and control of economic resources; and freedom to use one's property and buy and sell as one chooses. These economic liberties are held to be at least as important as personal liberties, and more important than citizens' political liberties. Liberals generally endorse free markets because of their presumed efficiency in allocating resources—whether labor, land, or capital—but want to regulate markets for purposes of health and safety, or to correct for inefficiencies. Economic libertarians, on the other hand, advocate laissez-faire, accepting economic regulation only to correct the grossest economic inefficiencies, such as cartels, price collusion, and monopolies in essential goods and services, or dire threats to health and safety, for example, the sale of dynamite or poisonous substances.

This is the position increasingly advocated by those now controlling the Republican Party. Friedman himself objected to government licensing of occupations, as well as to most work safety regulations, restrictions on the sale of pharmaceuticals, and prohibitions against racial and religious discrimination in hiring and in public accommodations such as restaurants and hotels.⁵ His position borders on the philosophical libertarianism associated with Ayn Rand and her political advocates and defended by the philosopher Robert Nozick in his *Anarchy, State and Utopia* (1974). Unlike Friedman, however, who supported a “safety net” for the poor, these and other philosophical libertarians would eliminate all social programs and most public spending for infrastructure, education, and other public goods, except where necessary to protect personal and property rights and enforce contracts. In each case, they argue that private arrangements would be superior, and even when not, still no one should be taxed to benefit others. Many Tea Party Republicans are happy to get rid of such public services, thus outdoing even Friedman.

As his many works on freedom of speech and democracy indicate, Sunstein is more a civil than an economic libertarian. He does not regard economic liberties as on a par with personal and political liberties, and he does not advocate laissez-faire. He would (through regulation) nudge markets to protect consumers against biases in their thinking that incline them to ignore their own best interests. And although he respects free-market agreements and efficient market allocations of resources, he is far more inclined, by means of taxation, to redistribute income and wealth to pay for public works and to meet individuals' basic needs than economic libertarians allow. Still, Sunstein has stronger attachment than most progressive liberals to freedom of economic choice and market solutions.

Accordingly, in *Nudge* (published months before the financial crisis), he and Thaler opposed bans on predatory lending because these would deprive high-risk borrowers from any source of financing. “Libertarian paternalists do not favor bans,” they assert. Similarly, Sunstein and Thaler oppose limits on subprime mortgage lending with teaser and variable rates since these “prohibit contracts that may be mutually beneficial.” It is much better to improve “the architecture of choice” by nudges such as disclosure of total fees and interest, so that high-interest loans do not exploit people's ignorance, confusion, and vulnerability.

Sunstein and Thaler also endorse Friedman's voucher and school choice plans, as well as at least partial privatization of Social Security. Finally, rather than “Soviet-style” national restrictions on major sources of pollution, they advocate incentive-based

approaches that increase freedom of choice, ideally, for example, a cap-and-trade system in which “rights” to pollute could be purchased or given away and then traded on the market.

Sunstein contends that because nudges preserve individual freedom of choice, they should be acceptable to Republicans and Democrats alike. But one person’s nudge is often another’s mandate or prohibition, as is the case with graphic cigarette warnings and Mayor Michael Bloomberg’s proposed ban on soda containers over sixteen ounces. Both of these are endorsed by Sunstein. Consumers would still be able to smoke and drink as much as they like; but suppliers would be required to include dramatic warnings on cigarette packages and they would be prohibited from offering soft drinks in oversized containers.

Many of the nudging measures Sunstein envisions may be effective in preserving consumers’ personal freedoms of choice and conduct, liberties that progressive liberals deem important. But they often also would constrain the economic freedoms of businesses, limiting the liberties economic libertarians especially prize. Sunstein is not sufficiently clear about this conflict.

According to Sunstein, nudges challenge the laissez-faire view that individuals are made better off the more choices they have. Often a plethora of choices paralyzes us and delays our pursuit of more important aims. Nudges also challenge the view that “individuals’ own judgments [are] the best guide to what will make their lives go well.” As Sunstein has discussed in these pages, liberals’ assumption that individuals are normally the best judge of their own interests may be true of the final ends and commitments that make us happy and give our lives meaning. But because of cognitive biases, he says, the same often is not true of the choice of means we take to pursue our ends and commitments.

Still, Sunstein argues that the soft paternalistic measures that nudges involve, such as product warnings and other disclosure and default rules, do not prescribe choices of ends or means. Instead, they aim to enable people to freely choose courses of action that they themselves would on reflection deem rational or desirable.

4.

The subtitle to *Simpler* is *The Future of Government*. It is a practical book, written to appeal to a wide audience, including Democrats, independents, and moderate Republicans. From a progressive liberal perspective, however, libertarian paternalism might seem disappointingly meek. There are limits to what can be accomplished by disclosures, warnings, and default rules. Unlike other progressive measures, nudges are not bold or exciting. They involve no subsidies for infrastructure such as roads, bridges, schools, or other public goods; no social programs to meet basic needs; no redistributions to the poor; no higher taxes on the wealthy. Instead, they gently reshape economic transactions, aiming to protect consumers from their own bad choices. To point to these limitations is not an argument against nudges. Rather, it is a reminder that libertarian paternalism can at best supplement core liberal programs that require mandates, prohibitions, incentives, subsidies, and transfers to the less advantaged.

Seen in a wider perspective, though, nudges might be understood as an integral aspect of progressive liberal attempts to prepare the background for free choices so that individuals’ lives are made better. A liberal democratic constitution ideally should be

designed to provide the institutional background, rights, and resources that enable citizens freely to form and express their convictions and pursue their conceptions of a good life. Nudges perform a function at the micro level similar to what basic liberal social and political institutions do at the macro level. They are conscious attempts by government to give structure to the environment for choice so that people choose for their own benefit while not undermining the well-being of others.

Economic libertarians contend that government exists primarily to protect property rights and enforce contracts. Some even hold that private property, contracts, and free markets are pre-political, originating in a state of nature. On this view, influencing people's choices or the environment in which they make their decisions is not within the role of government. Of course, government spending for essential public services—national defense, police, the courts, etc.—does influence choices. But this differs from government agencies consciously seeking to structure choices, which smacks of social planning. These libertarians believe that individual welfare and freedom are better protected by leaving not just the options from which people choose but also the environment for economic and other choices up to the free market's Invisible Hand.

This is unreasonable. To leave the setting in which choices are made entirely up to laissez-faire is to surrender choice to contingencies of a process skewed in favor of those with greater wealth and ability to pay. In the system of laissez-faire, people's choices are constantly nudged, manipulated, and variously influenced by businesses, advertisers, and others whose sole interests are to maximize their economic gains. Often, those interests are best served by cultivating consumers' ignorance or false beliefs through visceral advertising appeals and misleading information about the products on offer. The highly financed advertising campaigns of irresponsible cigarette companies and oil companies are only the most flagrant example.

Even without these strategies, our cognitive biases often lead to wrong choices. Everyone can agree that health, safety, and having adequate resources to live a normal life span are largely in people's interests. It is no affront to individual freedom—other than the mild affront to the economic freedom of businesses—for government to use disclosures, defaults, and other strategies to nudge consumers to act for their own benefit.

5.

Efficient markets are said to tend toward a hypothetical state known as "Pareto efficiency," in which no further mutually beneficial trades can be made and no one can be made better off without making others worse off. Economists celebrate such features of perfectly competitive markets since they embody the values of greater social welfare and individual freedom. But perfect competition and Pareto efficiency are virtually impossible to achieve in the real world because of complexity of information, lack of knowledge, negative "externalities" such as pollution, and the many cognitive biases Sunstein discusses. Nudges are designed with these problems in mind. By disclosing relevant information, simplifying its presentation, framing choices, and using beneficial default rules and other strategies, Sunstein aims to preserve freedom of personal and economic choice and also to protect people from biases and other cognitive limitations.

But as the 2008 financial crisis demonstrated, even when contracts and transactions are mutually beneficial to the persons who are party to them, they can have seriously harmful consequences for others and for the general public. Among the

problems the market cannot solve are gross and entrenched inequality, declining wages, income growth and windfalls captured by the top 1 percent, as well as an ongoing failure to meet the basic needs of the poor and unemployed. Between 2007 and 2012 wages declined for the bottom 70 percent of wage earners, and from 2000 to 2012 wages declined or were stagnant for the bottom 60 percent.⁶ Also, according to the Berkeley economist Emmanuel Saez, the top 1 percent captured 68 percent of all income growth from 1993 to 2012, and 95 percent of all income growth from 2009, the first year of the economic recovery, until 2012.⁷

Indeed, markets often are the source of these problems. Market distributions tend not toward but away from greater equalization of income and wealth. Most Americans do not consider inequality itself a problem of justice so long as the free market benefits everyone. But our recent history of widening and now gaping inequality is different. Income inequality has increased at a historic rate. In 1970, the richest 1 percent of Americans received 9 percent of total national pre-tax income. In 2011 their share had risen to 19.8 percent.⁸

Moreover, even with rising gross domestic product and greater overall wealth, median incomes and the welfare of the less advantaged have fallen.⁹ One does not have to be an egalitarian to find that troubling. These problems cannot be resolved through expanding free choice, cutting government benefits and the deficit, and increasing market distributions, as Republicans contend. Nudges can promote greater social welfare, as Sunstein argues, but they cannot respond to these problems either. Far more reform is required of the institutions that provide the setting in which choices are made, including markets and their regulation, laws of property, taxation, and the resulting distribution of income and wealth.

1. The claim that self-interest is rational is not part of utility theory and is widely contested. Many social scientists and philosophers contend that we also sometimes choose to benefit (or burden) others, regardless of our own welfare. See Daniel Hausman, *Preferences, Value, Choice, and Welfare* (Cambridge University Press, 2012), chapters 2.3 and 2.4. [↪](#)
2. Sunstein relies especially on Nobel laureate Daniel Kahneman, who in *Thinking, Fast and Slow* (Farrar, Straus and Giroux, 2011) provides an important summary of the experimental psychology undergirding behavioral economics. [↪](#)
3. See “The Methodology of Positive Economics,” in Friedman’s *Essays in Positive Economics* (University of Chicago Press, 1953), pp. 3–34, at p. 14, which was heavily influenced by the philosopher Karl Popper. That the sole purpose of scientific explanation is to maximally predict phenomena is now much less acceptable to philosophers of science. Among other reasons, it cannot account for many explanatory achievements, including those in evolutionary biology and related fields. [↪](#)
4. On the efficient market hypothesis and its role in cultivating the excessive faith in free markets behind the financial crisis, see Alan Blinder, *After the Music Stopped* (Penguin, 2013) pp. 64–65. [↪](#)

5. See Friedman's *Capitalism and Freedom* (University of Chicago Press, 1962), which greatly influenced the revival and current predominance of free market liberalism. [↵](#)
6. "[A Decade of Flat Wages: The Key Barrier to Shared Prosperity and a Rising Middle Class](#)," Economic Policy Institute, August 21, 2013. [↵](#)
7. See "[Income Inequality in the United States, 1913–1998](#)," Updated to 2012, and Steven Rattner, "[The Rich Get Even Richer](#)," *The New York Times*, March 25, 2012. [↵](#)
8. A majority sees rising inequality as a "bad thing." See Ilyana Kuziemko and Stefanie Stantcheva, "[Our Feelings About Inequality: It's Complicated](#)," *The New York Times*, April 21, 2013. [↵](#)
9. Now at \$52,100, median household income is 6.1 percent less than when the recession began in December 2007 and 4.4 percent less than when the recovery began in June 2009. See Robert Pear, "[Median Income Rises, but Is Still Below Level at Start of Recession in '07](#)," *The New York Times*, August 21, 2013. [↵](#)

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