

# It's All for Your Own Good

**Jeremy Waldron**  
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Why Nudge? The Politics of Libertarian Paternalism

by Cass R. Sunstein

Yale University Press, 195 pp., \$25.00

Conspiracy Theories and Other Dangerous Ideas

by Cass R. Sunstein

Simon and Schuster, 267 pp., \$26.00

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## 1.

In their book *Nudge*, Richard Thaler and Cass Sunstein considered the choices made by ordinary people about their retirement.<sup>1</sup> Many employees have the opportunity to enroll in a 401(k) plan, in which their contributions will be sheltered from taxes and to which their employer will also contribute. But a considerable number of people do not choose to enroll in a 401(k) plan and of those who do, many select levels of contribution that are far below what would be most advantageous to them. Why? Probably because of inertia. It is easier not to make a decision than go to the trouble of calculating an optimal contribution.

Employers sometimes try to educate people to make better choices, offering them retirement-planning seminars, for example. But the lessons of these seminars are soon forgotten: “Employees often leave educational seminars excited about saving more but then fail to follow through on their plans.” And so Sunstein and Thaler suggested a different strategy. Instead of teaching people to overcome their inertia, we might take advantage of their inertia to solve the problem. Suppose we arrange things so that enrollment at some appropriate level of contribution is the default position—the position that obtains if the employee does nothing. Something has to be the default position; why not make it the position that accrues most to the employee’s benefit, “using inertia to increase savings rather than prevent savings”?

Resetting the default position this way is what Thaler and Sunstein call a “nudge.” It exploits the structure of the choice to encourage a more desirable option. The decision is not taken entirely out of the employee’s hands. She can still change it and revert to a

strategy of no contributions or diminished contributions to her retirement funds. But in that case she has to make an effort; this is where she has to overcome her inertia.

Nudging is an attractive strategy. People are faced with choices all the time, from products to pensions, from vacations to voting, from requests for charity to ordering meals in a restaurant, and many of these choices have to be made quickly or life would be overwhelming. For most cases the sensible thing is not to agonize but to use a rule of thumb—a heuristic is the technical term—to make the decision quickly. “If it ain’t broke don’t fix it,” “Choose a round number,” “Always order the special,” and “Vote the party line” are all heuristics. But the ones people use are good for some decisions and not others, and they have evolved over a series of past situations that may or may not resemble the important choices people currently face.

Now, every decision we face presents its own “choice architecture,” in which the possibilities we have to choose from are arrayed in a certain order. Some make themselves clamorously known; others have to be unearthed. There may be limited time to make a choice and then some possibilities expire. Or if nothing is done, something may still come to pass: there are default options (as opposed to possibilities a person has to positively choose). There is no getting away from this: choices are always going to be structured in some manner, whether it’s deliberately designed or happens at random.

Nudging is about the self-conscious design of choice architecture. Put a certain choice architecture together with a certain heuristic and you will get a certain outcome. That’s the basic equation. So, if you want a person to reach a desirable outcome and you can’t change the heuristic she’s following, then you have to meddle with the choice architecture, setting up one that when matched with the given heuristic delivers the desirable outcome. That’s what we do when we nudge.

All of this sounds like a marketer’s dream, and I will say something about its abusive possibilities later. But Sunstein and Thaler have in mind that governments might do this in a way that promotes the interests of their citizens. Governments might also encourage businesses and employers to use it in the interests of their customers and employees. The result would be a sort of soft paternalism: paternalism without the constraint; a nudge rather than a shove; doing for people what they would do for themselves if they had more time or greater ability to pick out the better choice.



Cass R. Sunstein; drawing by James Ferguson

## 2.

Cass Sunstein is a Harvard law professor and the author of dozens of books on the principles of public policy. He knew Barack Obama from Harvard Law School and in 2009, he was appointed administrator of the White House Office of Information and Regulatory Affairs. Sunstein's thought about nudging is evidently the fruit of his determination to consider alternatives to the old command-and-control models of regulation. Now, with his government service behind him (for the time being), he has given us another book, called *Why Nudge?*, in which he provides an accessible defense of what he calls "libertarian paternalism"—a good-natured paternalism that is supposed to leave individual choosing intact.

"Paternalism" is usually a dirty word in political philosophy: the nanny state passing regulations that restrict us for our own good, banning smoking and skateboarding because they're unsafe, or former New York City Mayor Michael Bloomberg trying to limit the size of sugary sodas sold in New York City—"the Big Gulp Ban." Now, a nudger wouldn't try anything so crass. If you ordered a soda in nudge-world, you would get a medium cup, no questions asked; you'd have to go out of your way to insist on a large one. Not only that, but diet beverages would probably be the ones displayed most prominently in nudge-world and served without question unless the customer insisted on getting the classic version from under the counter.

You could order a supersized sugary beverage if you wanted it badly enough, but it wouldn't be so convenient to carry it to your table because Thaler and Sunstein are in favor of abolishing trays. It is all too easy to load up a tray with food that will never be eaten and napkins that go unused. You could insist on a tray if you wanted to hold up the line, but a tray-free policy has been proved to lower food and beverage waste by up to 50 percent in certain environments. *Nudge* and *Why Nudge?* are replete with examples like this.

Nudging is paternalistic, but it is surely a very mild version of paternalism. It's about means, not ends: we don't try to nudge people toward a better view of the good life, with compulsory library cards, for example, or PBS always coming up when you turn on your TV. And it is mild too because you can always opt out of a nudge. Not that Sunstein is opposed to more stringent regulations. Sometimes a straightforward requirement—like the rule about seat belts—might be a better form of paternalism. These options are left open for the regulator.

And actually there is nothing inherently paternalistic about nudging. Salesmen and retailers use it all the time to promote their own interests rather than ours. Even in the hands of governments, it can be used to promote socially responsible as well as individually rational outcomes. The tray-free policy in the cafeteria is one example. A nudge toward organ

donation is another: the assumption would now be that your organs will be donated, though you can go to the trouble of checking “No organ donation” on your driver’s license if you like. We can nudge for the benefit of the environment, or nudge people toward charitable donations. We might even nudge them toward certain forms of charity and not others: there could be curbside devices resembling parking meters that solicit charitable donations but nudge us away from giving loose change to panhandlers, directing our pennies instead “to community programs that provide meals, job training and education services, substance abuse help, and affordable housing.”

Moreover, though a nudge may be different from a shove as far as consumers are concerned, Sunstein is interested in requiring businesses to nudge their consumers. A lot of the opposition to Mayor Bloomberg’s Big Gulp Ban came not from soda-drinkers but from manufacturers and retailers, who whipped up anti-paternalist sentiment among the guzzlers. In nudge-world, retailers would have to be “motivated” to make the small diet beverage the default option and banned from messing with the choice architecture for their own benefit. Soft paternalism for the consumer might therefore presuppose hard regulation for the retailer.

### 3.

All this seems sensible. Why then do people get so angry at Cass Sunstein? He is, as I said, a prolific writer and on the back of another of the books he has produced this year, his publishers have splashed a number of vituperative blurbs describing this mild-mannered scholar as “very, very strange...with his numerous bizarre claims” (Sarah Palin) and, in the words of Glenn Beck, “the most evil man, the most dangerous man in America.”

That book, *Conspiracy Theories and Other Dangerous Ideas*, looks from its cover like it is going to be a pyrotechnic liberal manifesto—a sort of *Mad* magazine for the White House. Sunstein says that “of the hundreds of academic articles I have written, the most controversial appear in these pages.” In fact, the eleven brief essays it contains are, if anything, exasperatingly moderate. Sarah Palin tries to saddle him with “the wacko belief that animals should have the right to sue in court.” But a chapter in *Conspiracy Theories* argues that people should have the right to sue in behalf of animals that are being cruelly mistreated, which is hardly a “wacko” position.

So what explains the hostility? Much of it is simple animus against big government, compounded by resentment of academics in office. But there is also a core of genuine worry, and I want to use Sunstein’s writings about nudging to try to bring that worry into focus.

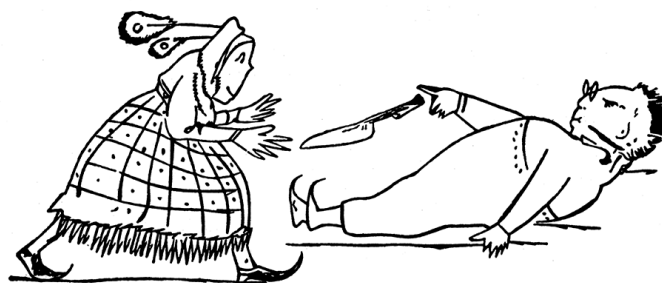
Let’s think about the *dramatis personae* of Sunstein’s account. There are, first of all, people, ordinary individuals with their heuristics, their intuitions, and their rules of thumb,

with their laziness, their impulses, and their myopia. They have choices to make for themselves and their loved ones, and they make some of them well and many of them badly.

Then there are those whom Sunstein refers to as “we.” We know this, we know that, and we know better about the way ordinary people make their choices. We are the law professors and the behavioral economists who (a) understand human choosing and its foibles much better than members of the first group and (b) are in a position to design and manipulate the architecture of the choices that face ordinary folk. In other words, the members of this second group are endowed with a happy combination of power and expertise.

Of course regulators are people too. And like the rest of us, they are fallible. In the original *Nudge*, Sunstein engagingly confessed to many of the decisional foibles that Thaler exposed. Worse, though, is the fact that regulators are apt to make mistakes in their regulatory behavior: “For every bias identified for individuals, there is an accompanying bias in the public sphere.” Sometimes governments blunder because they feel compelled to defer to the irrationalities of ordinary people. But we all know they are perfectly capable of screwing things up on their own, whether it’s the invasion of Iraq or the rollout of Obamacare. There is a new book by two British political scientists called *The Blunders of Our Governments*<sup>2</sup> that might serve as a useful companion to *Why Nudge?*

Sunstein is happy to acknowledge that public officials have their own defective heuristics. But he cautions critics against using this point as an “all-purpose bludgeon against initiatives that promise to do more good than harm.” And he offers little more than reassurance that there actually are good-hearted and competent folks like himself in government:



Government has in its employ many people whose business it is to calculate the consequences of alternative courses of action.... A large virtue of technocrats in government—specialists in science, economics, and law—is that they can help overcome some of the errors that might otherwise influence public as well as private judgments.

More reassuring, I think, would be a candid assessment of what might go wrong with nudging. One of Sunstein’s many books (from before his time in the White House) is entitled *Worst-Case Scenarios*.<sup>3</sup> Could we please have something like that as a companion to *Nudge*?

I am afraid there is very little awareness in these books about the problem of trust. Every day we are bombarded with offers whose choice architecture is manipulated, not necessarily in our favor. The latest deal from the phone company is designed to bamboozle us, and we may well want such blandishments regulated. But it is not clear whether the regulators themselves are trustworthy. Governments don't just make mistakes; they sometimes set out deliberately to mislead us. The mendacity of elected officials is legendary and claims on our trust and credulity have often been squandered. It is against this background that we have to consider how nudging might be abused.

There are deeper questions, too, than these issues of trust and competence. As befits someone who was "regulation czar" in the Obama White House, Sunstein's point of view is a rather lofty one and at times it has an uncomfortable affinity with what Bernard Williams once called "Government House utilitarianism."<sup>4</sup> Government House utilitarianism was a moral philosophy that envisaged an elite who knew the moral truth and could put out simple rules for the natives (or ordinary people) to use, even though in the commissioner's bungalow it was known that the use of these rules would not always be justified. We (the governors) know that lying, for example, is sometimes justified, but we don't want to let on to the natives, who may not have the wit to figure out when this is so; we don't trust them to make the calculations that we make about when the ordinary rules should not be followed. Williams saw the element of insult in this sort of approach to morality, and I think it is discernable in Sunstein's nudging as well.

For Sunstein's idea is that we who know better should manipulate the choice architecture so that those who are less likely to perceive what is good for them can be induced to choose the options that we have decided are in their best interest. Thaler and Sunstein talk sometimes of "asymmetric paternalism." The guiding principle of this approach

is that we should design policies that help the least sophisticated people in society while imposing the smallest possible costs on the most sophisticated.

This is a benign impulse on their part, but it is not a million miles away from the condescension that worried Bernard Williams.

#### 4.

Deeper even than this is a prickly concern about dignity. What becomes of the self-respect we invest in our own willed actions, flawed and misguided though they often are, when so many of our choices are manipulated to promote what someone else sees (perhaps rightly) as our best interest? Sunstein is well aware that many will see the rigging of choice through nudges as an affront to human dignity: I mean dignity in the sense of self-respect, an individual's awareness of her own worth as a chooser. The term "dignity" did not appear in the book he wrote with Thaler, but in *Why Nudge?* Sunstein concedes that this

objection is “intensely felt.” Practically everything he says about it, however, is an attempt to brush dignity aside.

He begins by coupling the objection about dignity with an objection about autonomy, the privileging of each individual’s independent control of her life. The two go together, says Sunstein, though he acknowledges that the complaint about dignity is the more fundamental of the two. Having said that, however, Sunstein seems happy to associate himself with those who maintain that dignity just equals autonomy or that if there is anything left out of that equation, it is not worth bothering with.<sup>5</sup>

Sunstein’s second move is to equate autonomy and well-being (or, more crudely, “utility”—the economist’s word for the satisfaction of needs and wants). He toys first with the idea that autonomy is just a preference like any other. If people like choosing, he says, we can design environments in which they are forced to state a preference—no meal unless you order; no pension unless you opt in or opt out of a 401(k). I am afraid that’s a trivialization. Autonomy is not just one preference among others; it is a principle about how one’s preferences are pursued.

Eventually what we are told by Sunstein is that autonomy is just a surrogate for welfare—what people ultimately want is the promotion of their own well-being and it doesn’t really matter how that comes about. At best autonomy is a heuristic: “People speak in terms of autonomy, but what they are doing is making a rapid, intuitive judgment about welfare.” I must say that I find all of this remarkably tone-deaf to concerns about autonomy.

And allowing dignity to just drop out of the picture is offensive. For by this stage, dignity is not being mentioned at all. Sunstein does acknowledge that people might feel infantilized by being nudged. He says that “people should not be regarded as children; they should be treated with respect.” But saying that is not enough. We actually have to reconcile nudging with a steadfast commitment to self-respect.

Consider the earlier point about heuristics—the rules for behavior that we habitually follow. Nudging doesn’t teach me not to use inappropriate heuristics or to abandon irrational intuitions or outdated rules of thumb. It does not try to educate my choosing, for maybe I am unteachable. Instead it builds on my foibles. It manipulates my sense of the situation so that some heuristic—for example, a lazy feeling that I don’t need to think about saving for retirement—which is in principle inappropriate for the choice that I face, will still, thanks to a nudge, yield the answer that rational reflection would yield. Instead of teaching me to think actively about retirement, it takes advantage of my inertia. Instead of teaching me not to automatically choose the first item on the menu, it moves the objectively desirable items up to first place.

I still use the same defective strategies but now things have been arranged to make that work out better. Nudging takes advantage of my deficiencies in the way one indulges a

child. The people doing this (up in Government House) are not exactly using me as a mere means in violation of some Kantian imperative. They are supposed to be doing it for my own good. Still, my choosing is being made a mere means to my ends by somebody else—and I think this is what the concern about dignity is all about.

To see the problem, it may help to think about a slightly different sort of nudge—an informational nudge, where we manipulate the information given to people who use certain heuristics, in order to achieve the behavioral change that we figure the proper processing of correct information would lead to.

For example: between 15 and 20 percent of regular smokers (let's say men sixty years old, who have smoked a pack a day for forty years) will die of lung cancer. But regulators don't publicize that number, even though it ought to frighten people away from smoking, because they figure that some smokers may irrationally take shelter in the complementary statistic of the 80–85 percent of smokers who will not die of lung cancer. So instead they say that smoking raises the chances of getting lung cancer. That will nudge many people toward the right behavior, even though it doesn't in itself provide an assessment of how dangerous smoking actually is (at least not without a baseline percentage of nonsmokers who get cancer).

Or consider the way lawmakers nudge people away from drunk driving. There are about 112 million self-reported episodes of alcohol-impaired driving among adults in the US each year. Yet in 2010, the number of people who were killed in alcohol-impaired driving crashes (10,228) was an order of magnitude lower than that, i.e., almost one ten thousandth of the number of incidents of DWI. The lawmakers don't say that 0.009 percent of drunk drivers cause fatal accidents (implying, correctly, that 99.991 percent of drunk drivers do not). They say instead that alcohol is responsible for nearly one third (31 percent) of all traffic-related deaths in the United States—which nudges people in the right direction, even though in itself it tells us next to nothing about how dangerous drunk driving is.

There's a sense underlying such thinking that my capacities for thought and for figuring things out are not really being taken seriously for what they are: a part of my self. What matters above all for the use of these nudges is appropriate behavior, and the authorities should try to elicit it by whatever informational nudge is effective. We manipulate things so that we get what would be the rational response to true information by presenting information that strictly speaking is not relevant to the decision.

I am not attributing informational nudging to Sunstein. But it helps us see that any nudging can have a slightly demeaning or manipulative character. Would the concern be mitigated if we insisted that nudgees must always be told what's going on? Perhaps. As long as all the facts are in principle available, as long as it is possible to find out what the nudger's strategies are, maybe there is less of an affront to self-respect. Sunstein says he is



committed to transparency, but he does acknowledge that some nudges have to operate “behind the back” of the chooser.

It may seem a bit much to saddle Cass Sunstein with all this. The objections about dignity and manipulation that I’ve been considering can sound hysterical. It is perfectly reasonable for him to ask: “Is there anything insulting or demeaning about automatic enrollment in savings and health care plans, accompanied by unconstrained opt-out rights?” The strategies he advocates, when used wisely and well, seem like a sensible advance in public regulation, particularly when we consider them nudge by nudge.

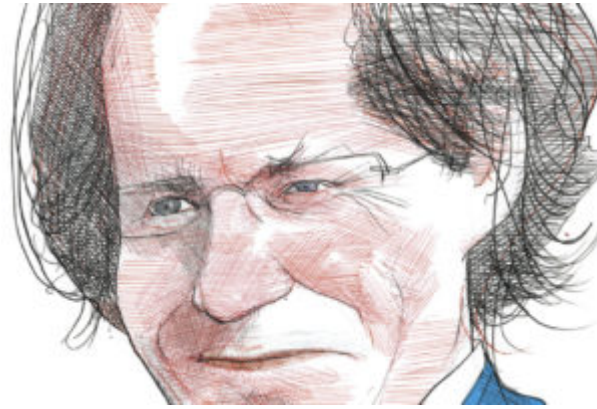
Still, it is another matter whether we should be so happy with what I have called “nudge-world.” In that world almost every decision is manipulated in this way. Choice architects nudge almost everything I choose and do, and this is complemented by the independent activity of marketers and salesmen, who nudge away furiously for their own benefit. I’m not sure I want to live in nudge-world, though—as a notoriously poor chooser—I appreciate the good-hearted and intelligent efforts of choice architects such as Sunstein to make my autonomous life a little bit better. I wish, though, that I could be made a better chooser rather than having someone on high take advantage (even for my own benefit) of my current thoughtlessness and my shabby intuitions.

## Letters

### Nudges: Good and Bad October 23, 2014

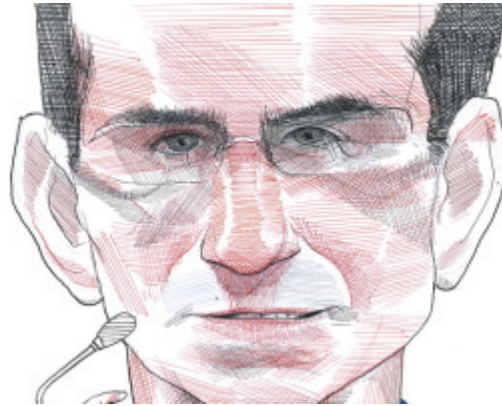
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- 1 Nudge: Improving Decisions About Health, Wealth, and Happiness (Yale University Press, 2008). ↵
  - 2 Anthony King and Ivor Crewe, *The Blunders of Our Governments* (Oneworld, 2014). ↵
  - 3 Harvard University Press, 2007. ↵
  - 4 Bernard Williams, *Ethics and the Limits of Philosophy* (Harvard University Press, 1985), pp. 108–110. ↵
  - 5 See Ruth Macklin, “Dignity Is a Useless Concept,” *British Medical Journal*, 327 (2003), and Steven Pinker, “The Stupidity of Dignity,” *The New Republic*, May 28, 2008. ↵
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