It’s All Cass Sunstein’s Default

The law professor who brought behavioral science into public policy believes that with a little intervention, we can all have the freedom to choose wisely.

BY SALLY HELGESEN
YOU ARE AWAITING your commuter train after a crushing day, and decide you need a pick-me-up. A large coffee should do it, maybe paired with a sugary treat. A donut kiosk adjoins your platform, so you get in line, only to find that when you reach the counter, a tray of bananas stares you in the face. Inertia and rebellion war briefly with your better judgment. But in the end you grab a banana, priced ridiculously at $1.50, virtuously choosing to forgo the donut.

Heading for the train, you pause to reflect: Why is a donut shop pushing bananas? Perhaps profit margins are higher on the overpriced fruit. Or maybe the shop is attempting to proclaim its good corporate citizenship by providing an uncharacteristically nutritious snack. How you feel about this — whether you’re grateful to have been prompted to make a healthier choice or irritated that even a donut shop feels the need to try to improve your diet — probably serves as a good indication of how you will feel about the work of Cass Sunstein.

Sunstein is a constitutional and administrative law professor who has built his high-profile career at the University of Chicago and Harvard. The author of dozens of influential books, both popular and academic, he is a polymath who regularly weighs in on a daunting range of topics. But Sunstein is perhaps best known for bringing the insights of behavioral science into the realms of law, public policy, and regulation.
Marketers and advertisers have long been assiduous in applying such insights in order to influence people’s decisions, but until the last decade, policymakers rarely used them when crafting regulatory frameworks. Sunstein has been instrumental in making this happen, as an advocate, teacher, writer, and government administrator. It’s an accomplishment that has gained him both fame and notoriety. His supporters believe that people benefit when lawmakers take into account data on how individuals actually make decisions. They can then craft laws and regulations that help people make the kind of informed choices that will lead them to live better lives. Those who object fear the soft tyranny of good intentions, warning that even the best-intentioned nudges constitute a manipulative and condescending intervention that undermines individual freedom.

Sunstein is particularly intrigued by the science of defaults, those subtle cues (the well-placed tray of bananas, for example) that shape our decisions, often without our being aware of it, making certain choices feel almost automatic. In his most recent book, #Republic: Divided Democracy in the Age of Social Media (Princeton University Press, 2017), Sunstein examines the role of defaults in shaping social media, in particular their increasing power to influence how we communicate, who we connect with, and how we find information. The powerful algorithms that offer “suggestions” in effect program defaults into every step of our online interactions, while making alternatives difficult to find.

The design of defaults is thus of great importance. And that importance is only magnified by the flawed nature of human decision making. Although lawmakers, economists, and providers of healthcare and social services used to assume that people based decisions on their own rational self-interest, seven decades of behavioral data have demonstrated that this is rarely true. In reality, people are influenced by random factors and tend to base even consequential choices on convenience and habit. Moreover, the structures that frame how we make individual decisions always exist in a larger context. For instance, offering fruit alongside donuts has social and economic implications. If fewer people choose sugary treats, healthcare costs will come down, resulting in a rise in disposable income, increased consumer spending, and so forth.

Yet the question of who gets to set the defaults sparks contentious debate. Should private-sector companies have the right to pay for preference? For example, should a french fry vendor be able to secure favorable placement in a school cafeteria by offering cash or a discount? Or should school administrators or parents...
have a voice? And if so, should experts armed with data about the impact of excessive french fry consumption be able to weigh in on the public’s behalf? Does the use of behavioral data by regulators with enforcement powers promote the best interest of citizens, or does it constitute an infringement on their liberty?

The importance of these questions can hardly be overstated. The answers will determine everything from how companies set strategy, to the reliability of consumer information, to the role of the truth in shaping information, to how we understand liberty in the Internet age. Sunstein, who has been at the center of the default debate, comes down strongly on the side of the public as represented by its elected government, arguing for greater and more transparent regulation of how defaults are set — in healthcare, energy consumption, financial services, Internet search, and education. He also argues for the expanded use of data in identifying optimal outcomes, though not in compelling them.

Sunstein coined the term libertarian paternalism to describe how the government’s use of empirical data can improve the operation of the regulatory state. Libertarian reflects his belief that people should be given incentives and alternatives rather than mandates and penalties in civil law. He notes that “to qualify as libertarian, design must always be choice-preserving. Nudges are interventions that individuals can easily decline or avoid. There is always an opt-out or a safety valve.” Paternalism reflects his conviction that incentives designed to make specific outcomes more likely are not just an intelligent but also a benign way to encourage behaviors that can help people lead longer, happier, healthier, and more prosperous lives. Far from seeing such behavioral interventions as an architecture of coercion, he views them as providing an architecture of choice that leaves individuals free to decide.

CHOICE IN ACTION

Architectures of choice — what they are and how they work — was the theme of a memorable encounter on March 3, 2016, at the New School’s Center for Public Scholarship in New York. On an unseasonably warm evening, a crowd started snaking up Fifth Avenue well in advance, eager to hear Cass Sunstein and Daniel Kahneman address the role of choice in our changing democracy.

Emerging onstage, the two men offer a study in contrasts. Sunstein, then a youthful 61, is tall and lean, shy and a bit awkward despite his athletic carriage. Kahneman, then 81, is an Israeli-American Nobel laureate who grew up in France and spent the war years hiding from the Nazis with his family; he is small and dapper, utterly cosmopolitan, a man of the world who exudes gravitas mixed with humor and a certain sprightliness. He enters the hall wearing a beret.

Sunstein kicks things off by offering a vivid example of a choice-preserving mechanism with which many in the New York audience are familiar: the pay meters installed in taxis several years ago. In addition to processing credit card transactions, the meters give riders the choice of adding a tip in the amount of 20, 25, or 30 percent of the total fare. Riders may also choose “other” and punch in a specified amount. Thus, giving a lower or higher tip, or no tip at all, is an option; the architecture of choice is preserved. However, “by signaling that between 20 and 30 percent is usual, typical, expected,” notes Sunstein, “the meters have had the effect of increasing annual driver income by between 10 and 20 percent.” This has provided a corresponding jump in tax receipts for the city, ultimately spreading rewards to the public as well as the private sector.

The taxi meters constitute a default, Sunstein explains, by making it easier to leave a tip than to not leave one. Suggesting an amount sets an expectation, which constitutes another default, and again most people follow along. The same principle can bring improvements in many other arenas, he says. Auto-enrollment savings accounts (with a choice-preserving opt-out) demonstrably improve the financial security of people with low incomes. Providing reports on home energy use decreases customer consumption more effectively than increasing rates. Simplifying application forms and texting reminders of pre-enrollment deadlines result in far more college students taking advantage of financial aid.
Sunstein notes that such tweaks to the system work because they take into account how people actually make decisions that affect their health, finances, and safety. Chief among these insights is the effect of inertia, known among behaviorists as “the status quo bias,” and the principle of loss aversion, our human tendency to prefer avoiding loss over seeking gain. He offers a clear example of how the latter works: When grocers sought to persuade customers to bring their own bags by offering a dime to those who did, almost nobody took them up on the offer. But when grocers began charging a dime for the bags that had formerly been provided free of charge, people immediately began bringing their own.

Daniel Kahneman has been listening intently. He is the progenitor of loss aversion theory, which he first articulated in experiments conducted with Israeli psychologist Amos Tversky. It forms one of the foundational insights of behavioral economics, and demonstrates why and how people routinely miscalculate the balance between the benefits and costs of various actions. “I want to say something about Cass Sunstein,” he begins. “First of all, he’s a saint. Yet what he writes about, and what he does, is also very controversial. He writes a book with Richard Thaler, who is the father of behavioral economics — I myself am the grandfather — and then draws on these insights in the real world in order to make a difference in people’s lives.”

As Sunstein blushes — being called a saint by Kahneman in his world is like being called a saint by God — Kahneman continues: “But why is this controversial? In part it’s because before behavioral economics, economists considered themselves the only true scientists of the social realm. That is, they considered their theories to be pure, informed only by metrics. But they turn out to have been influenced by other considerations.”

The fault line exposed by behavioral economists was bound to stir controversy, Kahneman says, because our human belief in our own rationality “leads to specific moral and political conclusions.” If people are entirely rational, as classical economists have always presumed, “they have a clear sense of what serves their best interests and so do not require protection or help from the government. If people really are the best judges of what is good for them, neither they nor society as a whole should be protected from the consequences of poor choices, so even gentle nudges are an unbearable form of paternalism and condescension. Those on the right object to nudges because they believe neither governments nor markets should care about how people make decisions, but those on the left often object only to nudges that disproportionately impact those who are already disadvantaged. For example, they might consider a tax on cigarettes to be a tax on the poor.”

Sunstein counters that taxes are not nudges, but rather blunt and coercive instruments used to regulate behavior that could more effectively be addressed by less invasive means that preserve choice. Nudges, prompts, and reminders are cheap, simple, and inherently choice-preserving tools that regulators can use to increase compliance and encourage better outcomes.

Kahneman notes that choice architecture and nudges have long been used in the private sector. Examples range from the simple opt out on insurance in rental car contracts to the sophisticated product suggestions that are intrinsic to Google’s and Facebook’s business models. Yet applying an enhanced understanding of what might motivate and engage citizens in their interactions with government inevitably evokes concerns about personal liberty. Conservative commentator Glenn Beck once called Sunstein “the most evil man, the most dangerous man in America.” Sunstein used the quote as a blurb on one of his books.

The evening at the New School continues as a call-and-response duet, with Sunstein providing detailed examples of how understanding human biases and assumptions can shape policy in useful ways and Kahneman offering philosophical perspective. Throughout their exchange, the protagonists maintain their contrasting personas. Sunstein, ever the legal expert, scores points and provides evidentiary backup, advocating, persuading, building his case. Kahneman the philosophe shares incisive thoughts and constantly expands
the discussion to reflect larger human questions: What constitutes human freedom? How much power of agency do we exert in the world? What happens when dictators learn to manipulate architectures of choice? The questions anticipate the issues Sunstein would raise in early 2017 in his book #Republic.

A SAGE OF CONCORD
Cass Sunstein was born in Waban, Mass., part of a small but vibrant Jewish community that settled in the western suburbs of Boston after World War II. His mother was a teacher and his father a builder. Sunstein attended boarding school at Middlesex, a top-rated independent school in Concord, Mass. Concord is the home of Emerson and Thoreau, a historic village where the young republic’s relationship to pragmatism and idealism was debated and to a large extent defined.

Growing up, Sunstein wanted to be a writer, though when asked about early influences, he names Carl Yastrzemski, who played first base for the Boston Red Sox in the 1960s and 1970s. Sunstein studied English at Harvard College, completing his bachelor’s degree in three years. He had originally planned to teach English, but decided upon graduation to pursue the law, believing it would lead to a more active engagement with the world.

Sunstein had a notable career at Harvard Law School, graduating magna cum laude and winning the school’s 1977 Ames Moot Court Competition. Lincoln Caplan, an author and visiting lecturer at Yale Law School, notes in a 2015 profile of Sunstein published in Harvard Magazine that Sunstein did not compete to make the law review. Having graduated college in three years, he still had one year’s eligibility on the varsity squash team and wanted to keep playing — the team went on to win the national championship that year. Sunstein remains an avid competitive squash player and, not surprisingly, has written about the sport.

Caplan also notes that Sunstein had already decided he might want to become a law professor, but viewed his decision not to pursue law review as a barrier to that ambition. Yet a clerkship with Supreme Court Justice Thurgood Marshall, followed by a brief stint in the Justice Department’s Office of Legal Counsel, positioned him well. He was hired by the University of Chicago in 1981.

With several stints away for visiting professorships, Sunstein remained at Chicago until 2008, finishing as the Karl N. Llewellyn Distinguished Service Professor of Jurisprudence. His voracious intellectual curiosity was well served at Chicago, where his mentor was appellate court judge and prolific author Richard Pos-
In Hyde Park, he also met the thinkers he calls his personal heroes, Kahneman and Richard Thaler, the Charles R. Walgreen Distinguished Service Professor of Behavioral Science and Economics at Chicago’s Booth Business School and another Nobel laureate in a specialty that seems to bristle with them. All these colleagues have been instrumental in bringing formerly distinct disciplines such as economics, behavioral science, human psychology, and law together in an approach that exemplified what became known as the “Chicago School” of thought. Another hero and close friend on the Chicago faculty would provide the conduit to Sunstein’s tenure outside the academy: constitutional law professor Barack Obama.

During his first decade at Chicago, Sunstein was married to fellow faculty member and Harvard graduate Lisa Ruddick, now associate professor of English, with whom he has a daughter, Ellyn. Following their divorce, Sunstein began a decade-long, high-profile personal and professional partnership with well-known U.S. philosopher Martha Nussbaum, a fellow faculty member who is presently the Ernst Freund Distinguished Service Professor of Law and Ethics at Chicago. They collaborated on articles and edited an influential and controversial book, Animal Rights: Current Debates and New Directions (Oxford University Press, 2004), which later caused an uproar when Sunstein was undergoing his congressional hearings for federal office.

In late 2007, Sunstein volunteered for Obama’s first presidential campaign. Irish-born Samantha Power, a noted human rights activist and war journalist whose book A Problem from Hell: America and the Age of Genocide (Basic Books, 2002) won a Pulitzer Prize in 2003, had been a policy fellow in Obama’s Senate office and served his campaign as a senior foreign policy advisor. She and Sunstein began knocking on doors together on behalf of their candidate in January 2008. In February, Sunstein resigned from Chicago and accepted the first of several professorships at Harvard Law School. In July of that year, he and Power were married in County Kerry, Ireland. Then, not long after he arrived at Harvard, he received an enticing offer.

IN THE COCKPIT

In 2008, Sunstein and Thaler coauthored the best-selling Nudge: Improving Decisions about Health, Wealth, and Happiness (Yale University Press). The book offers a framework and rationale for crafting government regulations that improve efficiency and more effectively serve people’s needs while also saving taxpayers money. Within a year of its publication, Sunstein had the opportunity to test the framework in the real world as administrator of the U.S. Office of Information and Regulatory Affairs, known as OIRA.

Since its creation in 1980 as part of the Paperwork Reduction Act, OIRA has been charged with reviewing federal regulations affecting virtually every aspect of life in the United States: clean air and water, food safety, financial stability, national security, healthcare, energy, agriculture, workplace safety, sex and race discrimination, immigration, education, crime, highway safety, and disability rights. Given its extraordinarily broad portfolio, OIRA, whose name can sound earnestly wonky or ominously Orwellian depending on your point of view, is the most powerful agency that most people have never heard of. Sunstein calls it the cockpit of the regulatory state.

OIRA’s original purpose was simply to oversee and promote cost-cutting and efficiency initiatives in every agency and cabinet department. But in 1981, President Ronald Reagan increased its scope by charging it with ensuring that “no regulatory actions be undertaken unless the potential benefits to society outweigh the potential costs to society.” Sunstein, then a young attorney in the Justice Department’s Office of Legal Counsel, played a role in drafting this cost-benefit provision.
His appointment as administrator nearly three decades later was game-changing, because he brought with him the recognition that OIRA’s oversight and coordinating function, and especially its cost-benefit mandate, gave it the power to materially change the way every aspect of government works. He also brought a firm belief that the identification of cost-benefit trade-offs — of the kind his office was charged with ensuring — required an understanding of how ordinary citizens make such calculations.

The criteria people use to assess trade-offs and make decisions has been a contentious topic in the academic world since at least 1955, when future Nobel Prize–winning economist Herbert Simon challenged the assumption that people in a free society decide what best serves their interests in an entirely rational and therefore essentially accurate way. Simon’s experiments demonstrated that, on the contrary, people’s choices are often informed by biases, uncertainties, and partially or poorly understood information. Especially when making financial choices and assessing potential risks, humans tend to be ruled by impulsive desires and overly optimistic assumptions. This optimism extends to how they calculate risks to their personal safety, the classic example being the firm belief of the overwhelming majority of drivers that their driving skills place them far above average.

In the years since Simon’s experiments, behavioral economics has come to have a huge influence, spawning an industry of bestsellers — many of which have become essential reading for business executives. The overarching theme of this body of work has been the extent to which markets are driven by human emotions and perceptions, and their consequent inability to be rationally managed. This has brought the behaviorists into sharp conflict with their more traditional colleagues, who retain their faith in the untrammelled rationality of “homo economicus” and insist that unfettered markets create and serve meritocratic effort and yield the best outcomes.

Sunstein says he was attracted to public work because government is problem driven, not theory driven, and so requires putting theory into action. “You’ve got 20,000 people a year dying on highways, so you need to figure out the most cost-efficient way to reduce the carnage,” he said at the New School event. “You have x number of people living in poverty: How do you bring that number down? You have a high rate of small business failure: How do you ameliorate that? If you as a regulator don’t know the nature of human biases, you can’t design laws and programs that people will be motivated to use. Behavioral data helps us know how to do this.”

During his tenure at OIRA, Sunstein reviewed the provisions that made up the Dodd–Frank financial system reforms. He backed major environmental...
WHEN WE OUTSOURCE SEARCH TO ALGORITHMS, WE ELIMINATE SERENDIPITY AND CHANCE ENCOUNTERS, ENSURING THAT WE HAVE EVEN LESS IN COMMON WITH OUR FELLOW CITIZENS.

initiatives, such as higher fuel efficiency standards for cars and trucks and new toxic emissions rules for power plants. He approved the revamping of the decades-old food pyramid, replacing it with a plate that more clearly conveyed how to balance a meal. He managed a deal between appliance manufacturers and the Department of Energy to make refrigerators more energy efficient, while providing consumers with understandable, clearly displayed data so they could see the cost savings involved. Perhaps most comprehensively, he initiated a “look back” at every regulation already on the books to eliminate outdated rules and streamline the system, a process that resulted in more than 500 change recommendations.

His goal was to emphasize a sensible approach, rejecting extremes in a highly polarized environment. Sunstein views having simplified application and compliance procedures as one of his signal achievements, and in so doing he likely saved both citizens and businesses tens of millions of dollars in paperwork costs. He says that during his tenure, he met with people in hundreds of regulated companies, “and the complaints I heard were rarely about the regulations themselves but about how confusing they were, how much time and guesswork compliance required. This kind of complexity constitutes a tax in itself, and [is] deeply frustrating to people. So redesigning rules to be easier to comply with was a primary goal.”

Sunstein left government service in 2012 to return to Harvard Law School. But his approach bore fruit in a 2015 executive order encouraging the use of behavioral science insights to improve the design of federal policies and programs in order to increase citizen engagement. Sunstein notes that “in terms of health, safety, national security, and consumer behavior, the use of behavioral science is now part and parcel of ordinary government work. Those uses are not partisan [and] will definitely endure. They are popular because they save lives and money.”

ESCAPING THE CYBERCASCADE

Today, Sunstein is the Robert Walmsley University Professor at Harvard and founder and director of the university’s Program on Behavioral Economics and Public Policy. In August 2013, Power was appointed U.S. am-
bassador to the United Nations; she served through the end of Obama’s term in January 2017.

Sunstein and Power now live outside Boston in Concord and have two young children, Declan and Rian. Like many other men who become fathers again later in life, Sunstein appears besotted with and fascinated by his young children, mentioning them in lectures and presentations. He started his evening at the New School seminar by noting that he had explained Kahneman’s famous distinction between System 1 thinking (fast, automatic, frequent, emotional, and subconscious) and System 2 thinking (slow, effortful, logical, infrequent, calculating, and conscious) to Declan when the boy was 5 in an effort to teach him how to balance impulse with longer-term consideration. The following week in a toy store, Declan turned to Power and asked in frustration, “Mommy, do I even have a System 2?” Similarly, Sunstein’s 2016 book The World According to Star Wars (HarperCollins), a lively and compelling study of myth, creativity, free will, technology, and humans’ capacity to design their own lives, was inspired by Declan’s fascination with the subject.

Sunstein has also become interested in the impact of technology on democracy. This interest culminated in #Republic, which brings together many themes he has worked with in the past. The book is to some extent an update of 2001’s Republic.com and 2007’s Republic.com 2.0 (both from Princeton University Press), but with a focus on social media. Sunstein is fascinated by how the proliferation of choice that has transformed our consumer culture is currently transforming how we understand what constitutes news. And he is concerned about social media’s ability to give biased or unproven news wide exposure and so deepen divides among citizens, a capacity now on vivid display both at home and globally.

The ability of powerful algorithms to sort through masses of information and “suggest” items and sites that suit our interests and tastes has resulted in a high degree of personalized curation. In 1995, MIT Media Lab founder Nicholas Negroponte prophesied this state of affairs, terming it “The Daily Me.” Sunstein quotes a recent statement from Facebook that confirms the intentionality behind this transformation: “If you could look through thousands of stories every day and choose the 10 that were most important to you, which would they be? The answer should be your News Feed. It is subjective, personal, and unique — and defines the spirit of what we hope to achieve.”

This kind of subjectivity might strike some as the ultimate architecture of choice, but Sunstein has a different view. When we outsource our search for information to algorithms, we eliminate serendipity and chance encounters, protecting ourselves from information we might prefer to ignore and enabling us to avoid what Sunstein calls the “unchosen exposures” upon which robust public involvement depends. As a result, our ongoing retreat into “gated communications communities,” says Sunstein, diminishes our ability to understand other points of view, and makes it difficult to imagine how reasonable people could even hold different perspectives. Because democracy thrives in a cultural environment where opposing ideas can be freely aired and vigorously debated, custom curation has the effect of narrowing our understanding of the world and how we assess which issues are important. This diminishes our capacity for self-government and ensures that we have ever less in common with our fellow citizens.

Custom curation also facilitates the spread of inaccurate or biased information, popularly known as fake news. Sunstein notes that cyberecascades — those online rumors, factoids, or urban legends that get amplified through repetition — occur in isolated communities where “what others believe” is the standard by which truth is judged. In a climate where news comes via personalized feeds, fakeness becomes relative, defined differently depending on which sources you follow. “Cyberecascades,” Sunstein writes, “are inherent in the echo chamber of Twitter and Facebook. This is a primary reason that conservatives tend to question ‘what science tells us’ in regard to climate change, while liberals tend to question science when it comes to GMOs [genetically modified organisms].” We are all getting different information.
When we surrender the power to filter the information we consume, Sunstein warns, we give up a fundamental democratic right. He notes that communications law in the U.S. has traditionally focused on limiting government censorship and so has few tools for addressing the trend toward customized information and its inevitable progeny, relativized truth. Free speech, he points out, also has an affirmative side, which is threatened chiefly by “an inert people,” in the words of Supreme Court justice Louis Brandeis. Curation operates on the principle of inertness. We don’t seek information — it comes to us.

Behavioral science is clear about why we are so eager to surrender to customization: It’s easy and convenient. The field since its start has been insistent about the limited nature of human attention. Daniel Kahneman’s first book, *Attention and Effort* (Prentice-Hall, 1973), described our aversion to whatever is demanding. Because attention requires focused effort, our brains are always on the lookout for shortcuts and defaults. Social media is built to provide them and so gives us a way to plunge into the fray without having to give the effort much, or even any, thought.

Not surprisingly, Sunstein sees a role for government in mitigating the effects of information filters. Most democracies are deliberative rather than direct, relying on representatives who debate and reach compromises rather than putting every question before the voters. As a result, government, in Sunstein’s view, has a responsibility to ensure that “opinion [is] reflective and well-informed,” enabling people to understand opposing viewpoints so they can come together in support of the compromises that lawmaking inevitably entails. By contrast, the development of niche speech markets makes self-government less workable by reinforcing the clustering of the commons.

Those who disagree may object that government has no business messing with the Internet, which is assumed to operate best when it is most free from regulatory intervention. But Sunstein sees this view as incoherent, given that the Internet relies on government to enforce contracts, protect property rights, and prosecute the hacking of websites and the hijacking of personal information and social media accounts. Because online activity can flourish only when government upholds these protections, he believes that ensuring “a well-functioning system of free expression” is a proper use of regulation.
Sunstein therefore advocates regulatory measures that expand our range of choice — the kind of nudges, tweaks, prompts, and defaults he pursued during his tenure at OIRA. “Must carry” policies (similar to those regulations that require cable providers to carry locally licensed television stations) could bring information that would otherwise get filtered out of social media forums. “Opposing viewpoint” or “serendipity” buttons could enable Twitter users not only to receive but also to pass along different perspectives, diminishing the intensity of fake news cascades. “Deliberative domains” could offer users a chance to try to persuade those skeptical of their cherished beliefs rather than endlessly preaching to their choirs. Algorithms could be tweaked to lead researchers to new sources of information rather than continually pushing them to the most frequently used channels. Such proposals, limited and optional, reflect Sunstein’s passion for incremental and inexpensive fixes, for weighing costs and benefits, and for finding middle ground between competing claims and interests.

Throughout his varied career, Cass Sunstein has illustrated how a data-driven understanding of the ways humans make decisions and attempt to calculate the impact of their actions can be used to influence law, regulation, and social policy. In this effort, he has been guided by an abiding pragmatism that would have put him at home in 19th-century Concord. It was a place where gated communications and gated communities were unknown, and where the free exchange between citizens of different circumstances supported the ferment and moderation essential to the experiment of democratic self-rule.

Maintaining this ferment — and this moderation — in an era of technological silos has become of paramount concern to Sunstein. In our present unsettled circumstances, clashes over not only the authenticity of news but also our common understanding of what constitutes a fact have become endemic and deeply dividing. Sunstein quotes John Stuart Mill, one of his intellectual heroes, to describe what he hopes to effect: “It is hardly possible to overrate the value...of placing human beings in contact with other persons dissimilar to themselves, and with modes of thought and action unlike those with which they are familiar.... Such communication has always been...one of the primary sources of progress.”

To communicate in this way, people in a democracy need to be able to access information. In the end, someone has to decide between the donut and the banana. Will it be the vendor, the state, or what an algorithm suggests is the popular choice? To Sunstein, what matters is the freedom to make the choice, and the transparency that informs the decision.

Resources


Michael Lewis, The Undoing Project: A Friendship That Changed Our Minds (W.W Norton, 2016): The collaboration between Daniel Kahneman and Amos Tversky that laid the foundation for the field of behavioral economics by demonstrating the irrationality of most human decision making.

Cass R. Sunstein, #Republic: Divided Democracy in the Age of Social Media (Princeton University Press, 2017): Insight on how social media spreads misinformation and rage, and what citizens, as well as the government, can do about it.


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