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Cass Sunstein Wants to Nudge Us

BENJAMIN WALLACE-WELLS MAY 13, 2010

The professors in Hyde Park believe in something called the University of Chicago mind. It runs cold and analytical when the rest of the culture runs hot. Chicago scholars tend to be social scientists at heart, contrarian but empirical, following evidence to logical extremes. They are centrally interested not in what it is like to be an individual within society but in how society washes over individuals, making and remaking them. During the campaign, when his former Chicago colleagues were asked to detail Barack Obama's intellectual evolution, many of them described him in these terms. But they knew Obama, at best, only partly exhibited this tradition. His friend Cass Sunstein, who is certainly the most productive and probably the most influential liberal legal scholar of his generation, inherited it in full. "Cass has," says Saul Levmore, a former dean of the law school, "the quintessential University of Chicago habit of mind."

I met Sunstein for the first time last fall, at an Au Bon Pain near the White House, just after he abandoned some measure of academic fame to run the White House's little-known Office of Information and Regulatory Affairs. The office, known in Washington as OIRA, reviews major regulations written by federal agencies (on matters like the environment, the financial system, Medicare and Medicaid and public health and safety). Republicans have seen OIRA as a powerful tool to check the regulatory instincts of some agencies. But Sunstein wants to use OIRA to make regulations more supple, not less robust. Government regulations can operate at the level of philosophy, elaborating how you weigh the interest of the individual against that of society, of the present against the future. Sunstein's influence at OIRA might help give the government a University of Chicago mind.

I could see Sunstein coming toward me a block away — bald and lean, his body tilted enthusiastically forward, at an angle to the ground. Sunstein, who is 55, has an almost childlike excitement — his e-mail messages end in long strings of exclamation points, and when other academics talk about his mind, they do so in the way people talk about the ballet, as something precious that ought to bepreserved. When his friends imitate him, they make their voices higher and gentler, and they introduce a quaver.

The summer before Obama's election, Sunstein married the crusading anti-genocide journalist Samantha Power, now a senior director at the National Security Council. Despite Sunstein's reputation as a nonideological technician, he seems romantically drawn to fiercely moral public intellectuals — his previous long-term relationship was with the philosopher Martha Nussbaum. In 2008, Sunstein and Power seemed to so perfectly symbolize the intellectual aspirations of the Obama administration and its faith in expertise that they were photographed by Esquire dressed for squash.

Sunstein's world is filled with experts. When a White House spokesman sent me an initial list of Sunstein friends that I should speak with, it began with three Nobel Prize winners. Colleagues have long marveled at his graphomania. He has published hundreds of articles and roughly three dozen books, two of which appeared while he was waiting almost five months to be confirmed by the Senate last year. "Cass has no psychological relationship to writing at all," Power told me. He knows he has a reputation for distraction. Several academics I spoke to wondered whether his elbows could be sharpened sufficiently for Washington — he was not exactly Rahm Emanuel. I asked Sunstein about this. He smiled and affected a macho tone. "Who the" — here he uttered an expletive associated with Rahm Emanuel — "says my personality is not like Rahm Emanuel's?"

When Sunstein moved into his new office in the Eisenhower Executive Office Building last September, Washington was a brittle place — the financial cataclysm still hung over everything. Sunstein saw in the housing collapse, he told me, a "cascadelike process." People thought they could handle more risk than they really could, and the regulatory system permitted too much systemic risk. Some of these errors were a result of legislation, but many were caused more quietly, by tiny rules issued by federal agencies — the kinds of regulations over which Sunstein now has some authority.

If you think about it — and Sunstein certainly has — you can see a similar problem in one of the fields OIRA deals with often: the environment. The small risks that people or companies take (in adding increments of carbon to the atmosphere or — as in the case of the recent Gulf Coast oil spill — maintaining drilling rigs) sometimes threaten to cascade into a catastrophe. So how can the government change the framework of choices that particular people are faced with so that their own small errors in risk perception don't expose the whole of society?

∂**Part of the reason** that Sunstein is so admired as an academic is that he has inherited lessons from everyone, including conservatives. When we spoke, he made a point of emphasizing the influence of icons of the right, like the libertarian economist Friedrich von Hayek and the originalist legal scholars. As a young academic, Sunstein found himself deeply moved by the society Franklin D. Roosevelt envisioned — he wrote a book championing F.D.R.'s idea of a "second bill of rights" that would guarantee Americans a job, an education and a home — but he accepts that much of the New Deal amounted to "morals without technique." "In 2010 there's so much more knowledge about economics than there was in the '30s," Sunstein told me. "A lot of what I've tried to do is hold on to some of these moral commitments of the Roosevelt administration and figure out how we might actually get them."

In "Nudge," a popular book that he wrote with the influential behavioral economist Richard Thaler, Sunstein elaborated a philosophy called "libertarian paternalism." Conservative economists have long stressed that because people are rational, the best way for government to serve the public is to guarantee a fair market and to otherwise get out of the way. But in the real world, Sunstein and Thaler argue, people are subject to all sorts of biases and quirks. They also argue that this human quality, which some would call irrationality, can be predicted and — this is the controversial part — that if the social environment can be changed, people might be nudged into more rational behavior.

Libertarian paternalists would have school cafeterias put the fruit before the fried chicken, because students are more likely to grab the first food they see. They support a change in Illinois law that asks drivers renewing their licenses to choose whether they want to be organ donors. The simple act of having to choose meant that more people signed up. Ideas like these, taking human idiosyncrasies into account, might revive an old technocratic hope: that society could be understood so perfectly that it might be improved. The elaboration of behavioral economics, which seeks to uncover the ways in which people are predictably irrational, "is the most exciting intellectual development of my lifetime," Sunstein told me.

Maybe so, but the paradox of libertarian paternalism is that it terrifies both libertarians and paternalists. (Its natural audience is professors, who often love it.) Conservatives see a Big Brother strain in Sunstein's philosophy (Glenn Beck called him "the most dangerous guy out there"), while some liberals worry that behavioral economics is too immature to handle the weight of guiding policy. "Right now we're in a Keynesian moment," William Galston, a longtime Democratic Party insider who is now a senior fellow at the Brookings Institution, told me after Obama took office. "We're not going to nudge the system back. We'll drag it back."

Keynes was the theorist of an earlier generation of liberalism, whose ideas Sunstein wanted to refine, and I asked him about Galston's critique. "I would reject the distinction between a Keynesian moment and a behavioral moment," Sunstein said. His voice was so quiet it barely came through on my recording of the interview. "Keynes emphasized the role of what he called animal spirits on the economy. He saw the crucial role of confidence. The 'cash for clunkers' program was a big success in part because it gave people the sense that the economy was moving. So Keynes was in this dimension an early behavioral economist."

During the 2008 presidential campaign, Sunstein went to Iowa on Obama's behalf with his friend Austan Goolsbee, now a member of the White House Council of Economic Advisers, and Goolsbee's friend from college Samantha Power. Sunstein got in such an involved conversation with a voter that he left Goolsbee and Power outside, shivering in the snow. The three joked that, between their three sprawling areas of expertise, they had almost any potential question about Obama covered. They failed at the first door, when a voter wanted to know the location of the nearest caucus.

Sunstein and Power, who is 39, soon went on a date, and she asked him if he ever fantasized about doing anything else. "I expected him to say he dreamed of playing for the Red Sox," she told me. "His eyes got real big and he said: 'Ooh! OIRA!' "

"And I said, 'What the hell is that?' "

The office that Sunstein occupies is a kind of cockpit for the modern administrative state. When Congress passes new laws, many of the details are delegated to executive-branch agencies like the Environmental Protection Agency or the Food and Drug Administration. Officials in the Reagan administration, aiming to chasten the bureaucracy, gave OIRA the power to review every significant new rule that emerged from these agencies and to decide whether the benefits (in health, safety or environmental protection) were greater than what it would cost society to comply. Business groups quickly learned that OIRA was the place where they might get a favorable hearing. The office gained the reputation, legal scholars say, as a graveyard of regulation.

The office's administrators require that federal agencies express the costs and benefits of their proposed rules (lives saved, swampland preserved) in dollars. Moral principles, filtered through this cost-benefit analysis, find their way into confounding little boxes. A human life, the E.P.A. figured in a 2001 rule about arsenic and drinking water, was worth $6.1 million. (If an environmental regulation would save one life but cost $4 million, it ought to be put into effect; if it cost $8 million to save that life, the regulation would be scuttled.) Each I.Q. point a child lost because of exposure to lead was worth $8,346 over the course of a lifetime. A lost workday was worth $83. Many of these estimates used data from surveys — taken at malls, among other places — that asked passers-by how much more they would need to be paid to take on a job that carried, for instance, a 1-in-10,000 risk of death. Richard Posner, who has the most magnificent and chilly mind in this realm, used similar projections to price the benefit of preventing the extinction of the human race at $600 trillion.

Sunstein, steeped in the literature of behavioral economics, suggests that this abstract, utilitarian method might be humanized and reconciled with the world in which people actually live. His longtime friend Leon Wieseltier, the literary editor of The New Republic, compared Sunstein's discovery of behavioral economics with the moment when the philosopher John Stuart Mill, a utilitarian, fell ill and lost himself in the poetry of Samuel Coleridge. "It was an intellectual revolution that permitted him to get away from utilitarianism," Wieseltier told me, and to acknowledge "the centrality of emotions to human affairs. . . . Behavioral economics played a role like that in Cass's life."

Behavioral economists have replaced the rational actor in economic models with an often befuddled character — bedeviled by impulses and sentiments, overwhelmed by choice. The Obama administration has tried to explain the world to this new economic actor by providing new kinds of information in new ways. When I visited Sunstein in December in his office in Washington, he talked me through some of his favorite examples.

During the 1980s, the E.P.A. made public the list of the companies that released the largest quantities of toxic chemicals into their communities and hoped for a loud public shaming that would get them to clean up. Amazingly, it worked, and now the agency is trying something similar with greenhouse-gas emissions. Sunstein was also enthusiastic, he told me, about plans to change the reporting requirements for a car's fuel economy, so that consumers would have a better sense of how much they would probably spend on gas over a vehicle's lifetime. And one of the most publicized insights of "Nudge" was that many fewer people take advantage of tax-free individual retirement accounts than would benefit from them. The Obama administration has given employers incentives to automatically enroll their workers in 401(k) plans — the employees are able to opt out of the plans if they want to.

Some scholars dislike the strong, if subtle, governmental hand that is embedded in this last proposal. It seems more forceful than a nudge. "Once you get to a point where you have automatic enrollment, you raise the question, What kind of fund?" Mario Rizzo, a professor of economics at New York University, says. "The problem is that if you were enrolled automatically, you could complain later that you'd been put into either a too-risky or a too-conservative fund. So then you micromanage that and you say you have to have a balanced fund. But pretty soon you're on a slippery slope, where you're dictating people's retirement choices." Rizzo told me about an academic study of gift-giving that found that most people would value cash more highly than the gifts they get for holidays; if even your friends and family can't figure out what you want, he asked, how can a distant bureaucrat? "Sunstein is very taken with the need for experts," Rizzo says. "But it turns out experts are subject to these cognitive quirks, too."

Sunstein takes this last problem very seriously. Thaler, his co-author and friend, mentioned it to me in the context of the financial cataclysm. No matter how many Ph.D.'s in finance, for instance, the S.E.C. hired, they would never know enough to run Wall Street. The trick, Sunstein says, is to crack the rule-making process open. Last month, Sunstein issued a directive allowing the agencies to solicit feedback on their proposed regulations through social media like wikis and blogs. "Hardly anyone would isolate Section 553 of the Administrative Procedure Act" — the law that governs the public notice-and-comment period for most federal rules — "as the greatest invention of modern government," Sunstein told me in his office late last year, his eyes filled with life. "But I see it as having potential."

In late 2000, scientists working in Antarctica began to withdraw drills that had spent weeks boring deep into the ice. It took an hour or two for each drill to emerge to the surface. Two engineers were needed to lift the extract: 10-foot cylinders of ancient ice, with a half-million-year climate record contained in the gas bubbles trapped inside. The ice cores were so old that the bubbles had been compressed beyond visibility, and so the samples looked impeccably clear. But when the samples were shipped back to laboratories where they were placed inside vacuums and pulverized with tiny needles, they released ancient air, which scientists captured to examine.

As the scientists analyzed the record, they found what would become crucial evidence of climate change: for 800,000 years, the level of carbon in the atmosphere oscillated gently within a confined range; after World War II, the carbon levels broke the top of the range and continued, unabated, upward. Scientists grappled with two emerging truths: that carbon emissions were changing the earth's climate, and that we had no certain historical reference points that would allow us to estimate the damage. "What you have is a link of very tenuous inferences, where each link is very highly uncertain," says Martin Weitzman, a professor of economics at Harvard.

These findings had a tidal effect on economics and regulation. In his early days at the White House, Sunstein spent as much time working on climate change as on any single issue. "The rules that govern climate change are unquestionably the most important that Sunstein will have to deal with," Thomas McGarity, who teaches environmental law at the University of Texas, told me. Because of the vast uncertainties involved, climate change offers a profound test of the capacities of cost-benefit analysis. Whatever action Congress takes, some of the most difficult questions lie in the regulatory details that will be subject to review by Sunstein and OIRA: how much of our wealth will the government sacrifice to try to prevent the world's climate from changing, and how will we value the interests of the future against those of the present?

For years, Sunstein has wrestled in his writing with the difficulty in estimating the possibility of catastrophe — studies of insurance markets have found that we tend to ignore small risks until their probability passes a certain threshold, at which point we overspend wildly to prevent them. Our public assumptions about costs and benefits are often similarly out of whack. We probably spent too little on air security before the Sept. 11, 2001, attacks, Sunstein says. Afterward we have struggled to calibrate the appropriate response. Likewise, the threat of catastrophic climate change bedevils even experts. How do you account for a small but real chance that the global sea level will rise by 20 feet?

In OIRA's cost-benefit calculations, the government's willingness to spend depends on how expensive the damage will be — on what economists call the social cost of carbon. Sunstein and others in the government have spent several months trying to define this cost, and he talked me through the process. One of the most important issues is the discount rate, which suggests how much present value should be assigned to costs or benefits that will be experienced in the future. If given a choice between paying $1 million now and $1 million five years from now, economists realize that individuals and governments will want to pay later. If people depreciate future costs by 3 percent a year, $1 million five years from now is only worth about $860,000 today.

Over very long periods, like those involved in climate change, the discount rates that are applied to short-term problems like budgets build toward absurdity: using one common method, spending $1 million to forestall climate change in 2100 would be valued today at $2,300. Calculations like this seem to argue against doing anything now. The problem, Sunstein says, is that we might do irreversible damage to the planet while blithely waiting for the price of action to drop just enough.

The debates over the discount rate are less mathematical than moral. Spending money now to prevent climate damage that won't appear for decades is a tax on present generations; declining to spend now is a tax on the future. The British government several years ago assigned the economist Nicholas Stern to value the cost of climate change. Stern's vision was nightmarish. He envisioned melting glaciers that would threaten one-sixth of the world's population, mostly in South Asia, the Andes and parts of China; rising temperatures that would starve much of Africa, where crops would have difficulty growing; and worldwide plagues of malaria and dengue fever. Stern set the discount rate at 1.4 percent, a figure that would call for vast action, immediately.

As an academic, Sunstein seemed to side with economists like William Nordhaus at Yale, who set the discount rate at about 5 percent, which would counsel patience. "It's not clear what direction the risk of error cuts in," he told me. "If we err, 7 percent could be bad," he said, but "if we err, 1 percent could be bad also." A low discount rate might protect the environment by spurring us to sacrifice now — while damaging the economy, increasing poverty and putting more people out of work. The difficulty is that the experts are lined up "out the door and down the block on both sides of this issue," one economist told me. Sunstein has urged long and detailed public comment. "We're trying to get a wide range of views," he said. But in some cases — in the case of climate change — the problem isn't just that experts don't know enough. The problem is that nobody knows enough, and still the government has to choose.

Last month, a small new regulation appeared in the Federal Register that seemed to augur a quiet cataclysm: it revised energy standards for small motors, of all things, but in doing so the E.P.A. considered, for the first time, the social cost of carbon using a governmentwide standard. The expectation is that each new regulation that governs carbon production — among them, the fuel-economy rule for automobiles — will now consider its social cost, using the standard, which was developed by an interagency group inside the Obama administration. The group counted the consequences of warming not just in the United States but all over the world — crops withering in Africa, dikes overtopped in Bangladesh.

The interagency group made some choices — Stern's apocalyptic model was out; Nordhaus's more moderate model was in. "To enshrine these Pollyannaish studies and never look at the Stern Review — it's not a technocratic middle of the road; it's a political choice," says Frank Ackerman, an environmental economist at Tufts. Ackerman says that the discount rate the government prefers — 3 percent — isn't low enough. "It nowhere captures the urgency of the science."

Sunstein won't defend a discount rate as low as Stern's — the expenses it would require are, for him, prohibitive. But he says the government has weighed the possibility of environmental catastrophe, of events that are unlikely to occur but not quite dismissible, into the social cost of carbon. The interagency group wanted to recognize, Sunstein told me, "some of the ethical and economic judgments that some economists have that lead to a lower discount rate."

One of the last papers Sunstein wrote as an academic concerned the fate of animals under environmental change — many species will quite likely become extinct if the planet continues to warm, but their fates had never previously been accounted for in a mathematical model that could be used by the government for cost-benefit analysis. Sunstein tried to do that, in a paper in which he wrote with feeling about the suffering of polar bears — starving cubs dependent on mothers unable to hunt in melting ice. It seemed to the environmentalists that his sympathies were with them. But to them, Sunstein's moral judgment seemed compromised by his quest for a perfect technique and his insistence on counting things that were impossible to count. "You don't spend that long at the University of Chicago," McGarity told me, "without some of that thinking rubbing off on you."

The University of Chicago, during the '80s and '90s, was the great seat of conservative scholarship — law and economics, public-choice theory, constitutional originalism. Sunstein, as a young scholar, found himself both "in awe" of these movements and convinced "that my smartest colleagues were blundering, and I couldn't explain to myself why." When Sunstein and Thaler presented their attack, using behavioral insights, on the rational-actor model that undergirded more-traditional economic thinking, they delivered it to a tense classroom that included conservative skeptics. It was an atmosphere, Sunstein said, that felt "a little like war."

Sunstein spent two decades wrestling with this conservative literature, and the theories that he elaborated bore marks of those struggles and traces of their influence. "What makes Cass unique is that he does not dismiss these critiques but incorporates them, and seeks to build upon them," the Chicago law professor Eric Posner told me.

Yet when Sunstein first became, last summer, a familiar figure to Glenn Beck's radio audience, it was as an animal rights fanatic — endlessly mocked for having once proposed in an academic article that advocates might be granted the right to sue on behalf of abused animals, and for his suggestion that hunting was morally indefensible. Beck's Sunstein has evolved, over time, into an avatar of a perceived Big Brother strain in the Obama administration, its secret manipulation of national life. "This is what Cass Sunstein does," Beck said on his radio program last month. "He nudges. He moves. He slides into position."

Sunstein had, during his academic career, a penchant for publishing trial balloons — they were a necessary part of his inquiry, a perpetual what if? Now, with their author a government official, some of these conjectures seem more worrisome. Sunstein has, for example, written often about the corrosive effects of rumors and falsehoods on democratic discourse (it is the subject of one of the two books that were published while he was waiting to be confirmed last year), and in a 2008 paper, he proposed that government agents "cognitively infiltrate" chat rooms and message boards to try to debunk conspiracy theories before they spread. The paper was narrowly concerned with terrorism, but to some, these were dark musings. The liberal essayist Glenn Greenwald, writing in Salon, called the proposal "spine-chilling."

During the presidency of George W. Bush, expertise was a war cry from the left, as many liberals felt the government had abandoned science and social science. But the academy's insights aren't static or settled. Many innovative ideas — among them, some of the corrections proposed by behavioral economics — are still hypotheses. Like Sunstein, their brilliance comes with speculation, and it comes with whimsy.

"There's a big difference between the role of an academic and the role of someone in government," Sunstein told me when we spoke at the Au Bon Pain near the White House. "That's a cliché, but in academic life if you say things that are common sense and people nod their heads, it's not very useful. You're not adding anything." One of the changes in Washington, he said, was the pace: he could no longer take off the afternoons to play tennis. It was past dinnertime, and Sunstein was headed back to the office, to his memos. "When I was an academic, I'd sometimes get a little feeling of excitement when I had an idea that was, I hoped, fresh," he said. "And whether anyone should act on that idea is a very different question."

Correction: May 30, 2010

An article on May 16 about Cass Sunstein, the Obama administration's regulatory czar, referred incorrectly to the discount rate, a figure Sunstein's agency, the Office of Information and Regulatory Affairs, considers when assessing plans to combat global warming. The rate suggests how much present value should be assigned to costs or benefits that will be experienced in the future. The discount rate is not the depreciation rate of money. (For instance, $1 million in five years and discounted at 3 percent would be considered worth $860,000 today.)

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