

Book Review

Cass Sunstein, *Simpler: The Future of Government*. New York: Simon & Schuster, 2013, pp. 272, \$26.

Reviewed by Bernard W. Bell

By late 2008, it seemed obvious that the market could make grave errors, harming many and bringing the U.S. economy to its knees.¹ Deregulation appeared a tarnished concept on the wane.² And with the election of Barack Obama, we seemed on the verge of a new era of regulation.³ So what happened?

Cass Sunstein occupied the “cockpit” of the regulatory state, as head of the Office of Information and Regulatory Analysis (OIRA) for virtually all of the President Obama’s first term. In *Simpler: The Future of Government*, he combines his extraordinary grasp of the literature on behavioral economics with astute observations about its implications for contemporary regulatory controversies. *Simpler* is not primarily a chronicle of Sunstein’s tenure. Thus he spends little or no time discussing some of the regulatory controversies during Obama’s

Bernard W. Bell is Professor of Law and Herbert Hanoach Scholar at Rutgers School of Law.

1. See FIN. CRISIS INQUIRY COMM’N, 112TH CONG., FIN. CRISIS INQUIRY REP.: FINAL REP. OF THE NAT’L COMM’N ON THE CAUSES OF THE FIN. AND ECON. CRISIS IN THE U.S. xv-xvi (2011) (describing the consequences of the September 2008 financial collapse).
2. See *id.* at xviii; Eric Lipton, *With Obama, Regulations Are Back In Fashion*, N.Y. TIMES, May 13, 2010, at A15 (noting the Bush administration’s “tacit acknowledgment” in late 2008 “that its deregulatory agenda had gone too far”).
3. Lipton, *supra* note 2 (“A new age of regulation is well under way in Washington . . .”). See also Barack H. Obama, *Renewing the American Economy*, Address at the Cooper Union, New York (Mar. 27, 2008) available at <http://www.nytimes.com/2008/03/27/us/politics/27text-obama.html> (discussing the need for legal reforms and a change in culture to establish a “21st century regulatory system”).

first term: the Affordable Care Act,⁴ implementation of Dodd-Frank,⁵ the controversy regarding RU-486,⁶ and two major decisions invalidating SEC regulations after subjecting the agency's cost-benefit analysis to rigorous review.⁷

Sunstein's principal aim is to explain and defend what might be described as "cost-benefit analysis 2.0." The Reagan Administration established a regulatory review architecture that required agencies to weigh the costs and benefits of regulatory initiatives, under OIRA "supervision."⁸ At base, this first-generation cost-benefit analysis seemed to assume that regulated entities acted along the lines postulated by classical economics, deliberately weighing costs and benefits. And regulatory review's primary targets were mandates imposed upon business to protect public health and safety.

Sunstein has long been a devotee of cost-benefit analysis (150, 152, 156, 172).⁹ Despite such devotion, in *Simpler* he does raise questions about the limits of such calculations and evaluates claims that agencies systematically err in their assessments of costs and benefits (158-60, 163-72, 174-77). Sunstein also agrees that "incentives matter," i.e., that regulated entities and citizens sometimes deliberately weigh costs and benefits, and that government can alter their conduct by modifying those incentives (210).

However, Sunstein explains, based on insights gleaned from behavioral economics, individuals often do not deliberate. Instead they act impulsively in ways that harm their own interests; indeed, in ways they would not have acted had they deliberated. This should lead to a cost-benefit analysis that reflects

4. William M. Sage, *Brand New Law! The Need to Market Health Care Reform*, 159 U. PA. L. REV. 2121, 2146 (2011); John Harwood, *Next Big Challenge for Health Care Law: Carrying It Out*, N.Y. TIMES (April 29, 2013), available at <http://www.nytimes.com/2013/04/30/us/politics/next-big-challenge-for-health-law-carrying-it-out.html>; Ezra Klein, *The First Few Years of Health Reform Could Be Very, Very Messy*, WASH. POST, <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/07/02/the-first-few-years-of-health-reform-could-be-very-very-messy/> (July 2, 2012, 7:40). The extraordinary complexity of implementing the statute can be seen in the implementation timeline for the Act. See Henry J. Kaiser Family Found., Health Reform Implementation Timeline, <http://kff.org/interactive/implementation-timeline/> (last visited April 5, 2014).
5. See Ben Protess, *Deconstructing Dodd-Frank*, N.Y. TIMES, Dec. 12, 2012 at F12; Ted Kaufman, *Set Up To Fail: Dodd-Frank Leaves Bank Regulators Overwhelmed, Underfunded*, FORBES (JULY 19, 2013, 9:30), <http://www.forbes.com/sites/tedkaufman/2013/07/19/set-up-to-fail-dodd-frank-leaves-bank-regulators-overwhelmed-underfunded/>.
6. See *Tummino v. Hamburg*, 936 F. Supp. 2d 162 (E.D.N.Y. 2013); Michael D. Shear, *Obama Waves White Flag In Contraceptive Battle*, N.Y. TIMES, June 12, 2013, at A19.
7. *Business Roundtable v. SEC*, 647 F.3d 1144 (D.C. Cir. 2011); *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 177-79 (D.C. Cir. 2010).
8. Exec. Order No. 12291, 46 Fed. Reg. 13193 (Feb. 19, 1981). See Robert W. Hahn and Cass R. Sunstein, *A New Executive Order For Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. PA. L. REV. 1489, 1506-07 (2002).
9. See also CASS R. SUNSTEIN, *THE COST-BENEFIT STATE: THE FUTURE OF REGULATORY PROTECTION* 139-40 (2002).

the lessons of behavioral economics and consideration of whether “nudges” provide the most appropriate regulatory response in many instances. He defines nudges as “approaches that do not force anyone to do anything and maintain freedom of choice, but have the potential to make people healthier, wealthier, and happier.”¹⁰ By contrast, traditional regulatory approaches impose legal prohibitions or modify incentives, through such mechanisms as user fees and marketable permit systems. While behavioral economics is discussed frequently in legal scholarship, agencies seem to explicitly invoke the school of thought rather infrequently.¹¹

Sunstein effortlessly establishes the basic tenets of behavioral economics: that we often assess matters quickly and act with little deliberation in ways that produce systematic errors that often lead us astray. We purchase a product factoring in the cost savings from the easy mail-in rebate we anticipate receiving, even though we will probably procrastinate and never claim it. We select an investment portfolio and then, due to inertia, fail to rebalance it as needed (55).¹²

Nudges can correct these cognitive biases (*i.e.*, “de-bias” decision-making), and help individuals make either the choices they would were they to deliberate or the choices that serve them best. Two nudges Sunstein features are default rules and disclosures. If a person has a choice, let’s say among employee benefit plans, Sunstein advocates government specification of a default choice, *i.e.*, a particular option is deemed selected unless the person chooses otherwise (119–21).¹³ If set correctly, the government-specified default

10. Sunstein co-authored a book on nudges before his appointment to head OIRA: RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS* (2008).
11. In 2013 alone, approximately 47 articles in the top 20 law journals had some reference to behavioral economics. By contrast the term “behavioral economics” appears to have been first used in an agency *Federal Register* notice (outside of citations and other non-substantive references) in 2006, and during the years 2009 through 2013 was discussed by name in 15 notices (2 in 2009, 4 in 2010, 3 in 2011, 4 in 2012, and 2 in 2013). The paucity of references is surprising given Sunstein’s position at OIRA and President Obama’s call for clarification of “the role of the behavioral sciences in formulating regulatory policy.” Memorandum on Regulatory Review, 74 Fed. Reg. 5977 (January 30, 2009). *See also* Unified Agenda, 74 Fed. Reg. 64131, 64137 (Dec. 7, 2009) (noting that OMB Director Peter Orszag, whom the president had directed to clarify the role of behavioral sciences in policy formation, had described behavioral economics as “one of the most important intellectual developments of the past several years”).
12. The studies Sunstein uses to illustrate cognitive biases are intriguing. For instance he discusses one study in which two groups of subjects were offered the opportunity to contribute to retirement accounts. One group was shown pictures of themselves as they would appear in at age 70; the other was not. The former contributed twice as much to their retirement accounts.
13. Sunstein does acknowledge that sometimes requiring active choosing, *i.e.*, not setting a default, is most appropriate. He also notes (103) that private entities will sometimes specify defaults for their own purposes (citing Google’s strategy for setting the default on its Chrome web browser to discourage users from anonymously browsing the web).

will benefit most individuals. If, as is likely, individuals do not make an active choice, their interests will probably be served by the default choice. However, those who desire another option face no obstacle in choosing it (124–26).¹⁴

Information disclosure can serve as a nudge, particularly when its design reflects the lessons of behavioral economics, that is, when such disclosures are “concrete, straightforward, simple, meaningful, timely, and salient” (93).¹⁵ Sunstein discusses the deliberations regarding the labels disclosing gas mileage performance on new cars (MPG disclosures) to show how OIRA and the relevant agencies considered the lessons of behavioral economics in designing the disclosures (84–88). He also discusses the deliberations regarding the change of the “food pyramid” to the “food plate,” the USDA’s new graphic designed to educate the public about nutrition (75–78).

He emphasizes the importance of a disclosure’s salience, referencing the “invisible gorilla” study. His main public policy example of the need for salience is quite controversial—the requirement for graphic warnings of cigarette smoking’s health risks. Cigarette packs have long carried warnings. However, because identical warnings, consisting solely of text, appeared on all packs, they faded into the background; they lacked salience (130). In 2009, Congress mandated that such warnings vary and include color graphics depicting smoking’s health consequences, making them more salient by engaging smokers’ visceral, emotional responses.

One need not study behavioral economics to appreciate the importance of providing basic information about a product or service. But Sunstein discusses another type of information that might influence behavior; government might harness the power of social norms as an element of an information disclosure strategy. Sunstein notes that in Great Britain the number of small business owners remitting tax payments to the government increased when the government’s warning letters informed recipients of the high rate of voluntary compliance (67).¹⁶ Sunstein suggests that a higher percentage of Americans might vote if advised of the turnout figures for their precinct (38). Such disclosures seem to inject normative considerations into individuals’ choice, encouraging them to do what the public-regarding citizen *should* wish to do, not merely what the individual *would* do if merely de-biased.

14. Sunstein also mentions “choice overload,” the counter-productive effect of offering too much choice. He discusses the regulatory response to choice overload adopted with respect to the proliferation of Medicare Part B offerings.

15. He distinguishes “summary disclosure” (disclosure that provides the most important information in an easily manageable format, such as labels, often at the point of sale) from “full disclosure” (comprehensive information for individuals seeking detailed information, often provided via the Internet) (78).

16. More specifically, British authorities conducted a randomized trial in which one group of taxpayers received the traditional warning letter and the other received the letter that included voluntary compliance rates. The compliance rate of the latter group was fifteen percentage points higher than the compliance rate of the former.

Nudges address a distinct subset of the problems regulators face; they are primarily appropriate when two conditions are met. First, individuals must have real freedom of choice, like consumers choosing products or employees choosing employee benefit plans. (Thus, for example, nudges should not be used in regulating working conditions.) Second, those individuals' interests must align very closely with those of the public. Thus, behavioral economics and nudges may serve as particularly appropriate tools to assess the government's own communications with citizens (such as the food plate/food pyramid) and its regulation of businesses' structuring of customer or employee choice (such as MPG disclosures and mandatory employees benefit plan defaults).

But often individuals' actions, such as decisions regarding product purchase and product use, impose costs on others. Cars may diminish air quality and dangerous products may create disproportionate risks for others.¹⁷ Ensuring that individuals fully deliberate regarding their own interests, i.e., counteracting their cognitive biases, will not necessarily lead them to weigh the costs and risks imposed on others.

In addition, regulation often focuses on choices made by institutional decision-makers, such as business enterprises. Questions of automobile crashworthiness, workplace safety, and pollution control are questions of this type. *Individual* decision-making reflects cognitive biases because individuals often make impulsive decisions (42-48). Though business entities may often act in ways that confound classical economists' models, perhaps businesses are less likely than individuals to act impulsively and more likely to calculate costs and benefits.¹⁸ Thus, application of behavioral economics to business decision-making and the use of nudges to affect such decisions will likely be quite complicated.¹⁹

Nevertheless, behavioral economics does provide a justification for "paternalistic" interventions; the two conditions set forth above, individuals' freedom of choice and the alignment of individual and public interests, generally hold with respect to such interventions. Paternalistic interventions are some of the hardest for liberal democracies to justify, and the use of nudges might make such interventions easier to justify and more palatable.

17. Alternatively, the risk faced by the product user may be identical to that imposed on others, but others may have a significantly lower tolerance for risk (particularly if, unlike the product user, they are receiving no benefit from the product).
18. While business enterprises are comprised of individual decision-makers who are subject to cognitive biases, the institutional context may matter. See, e.g., Joshua D. Wright & Judd E. Stone II, *Still Rare Like A Unicorn? The Case of Behavioral Predatory Pricing*, 8 J.L. ECON. & POL'Y 859, 865 (2012); Reza Dibadj, *Reconceiving the Firm*, 26 CARDOZO L. REV. 1459, 1492 (2005) ("Behavioral economics is squarely focused on individuals, not organizations.").
19. Behavioral economics may suggest that efforts to help individuals make sound choices be abandoned in favor of regulation restraining business entities. See Howard Latin, *"Good" Warnings, Bad Products, and Cognitive Limitations*, 41 UCLA L. REV. 1193 (1994); EPA & NHTSA, *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule*, 75 Fed. Reg. 25324, 25652-53 (May 7, 2010).

Nudges possess great promise. Indeed, sometimes they may be more effective than prohibitions, particularly where there is lax enforcement or widespread violation of the law.²⁰ At the very least, nudges might supplement a prohibition on dangerous conduct.

However, nudges come in many varieties; different forms of nudging may have different implications. Disclosure may de-bias individuals, essentially giving them the information they would want were obtaining information costless.²¹ Of course, the effect of such efforts will not necessarily be neutral. Almost invariably, the regulator will have to choose which information the consumer would likely consider most important, which consequently crowds out other information, as consumers' capacity to process information has limits (194-95). But more importantly, regulators would almost inevitably go beyond neutral de-biasing. They will surely be tempted to make consumers aware of information that is important in terms of *regulators'* goals,²² such as reducing pollution or controlling the medical costs generated by poor nutritional habits.

Indeed, controlling information may appeal to regulators in disquieting ways. It appears much easier to justify nudges, the provision of information and the modification of "choice architecture," than legal prohibitions. The "cost" appears minimal, and the benefits quite substantial (215). So rather than ban a product that should perhaps be banned or specify a necessary MPG standard, regulators might instead seek to manipulate consumer choice. They may encounter far more muted objections from regulated entities than they would have had they sought to impose a regulatory mandate.²³ And any

20. Texting while driving may be one such risky behavior. Sunstein recounts AT&T's campaign against texting while driving, entitled "The Last Text," featuring the last texts sent by drivers before fatal accidents (63).
21. Availability of information is important even under classical economic theory; markets might fail due to information asymmetries. Long before Sunstein's arrival, OIRA had directed agencies to consider "informational measures," such as standardized testing and rating systems, mandatory disclosure requirements, and government provision of information, in deciding upon an appropriate regulatory response. Economic Analysis of Federal Regulations under Executive Order 12866 (Jan. 11, 1996), *available at* http://www.whitehouse.gov/omb/inforeg_riaguide.
22. Thus, some states have enacted legislation requiring doctors to show pregnant women an ultrasound image of their fetus before performing an abortion. *E.g.*, Women's Right to Know Act, 2011 N.C. Laws S.L. 2011-405 (codified at N.C.G.S.A. § 90-21.85) (held unconstitutional in *Stuart v. Loomis*,—F. Supp. 2d—, 2014 WL 186310 (M.D.N.C. 2014)). Such a requirement might be viewed as a "nudge," albeit one that can create a great deal of emotional trauma. See Bonnie Rochman, *Requiring Ultrasounds Before Abortion: One Mother's Personal Tragedy*, TIME (March 23, 2012), <http://healthland.time.com/2012/03/23/requiring-ultrasounds-before-abortion-one-mothers-personal-tragedy/>.
23. Such approaches may not meet resistance from regulated entities because of the ease with which they can be circumvented. Sunstein uses the failure of the Federal Reserve Board's effort to protect bank customers from overdraft fees as an example of a failed default rule. Banks were barred from charging such fees absent the depositor's explicit consent; depositors were defaulted into rejecting overdraft protection. But because the bank controlled the

objections may also be less salient to the public, and thus less likely to create public controversy. After all, disclosures can always be ignored and defaults can easily be rejected. So even assuming full transparency of regulators' consideration of nudges as the appropriate regulatory response, the quality and intensity of public deliberation may suffer given nudges' minimal salience.²⁴ Sunstein argues that transparency provides a shield against regulators' misuse of nudges, but nudges' potential lack of salience may undermine his point.

More fundamentally, *should* people be steered away from choices by subtly manipulating the presentation of choices and the available information about those choices? The Supreme Court has expressed disapproval of such an approach in the First Amendment context. In conjunction with prohibiting harmful conduct, the government may prohibit advertising that informs the public of opportunities to engage in such illegal conduct. But so long as the government allows the conduct to remain legal, it cannot discourage it by imposing advertising bans that seek to manipulate consumer conduct.²⁵

Indeed, does subtly manipulating choice by nudges undermine the relationship of citizen to government, causing citizens to view their government as taking advantage of their vulnerabilities for its own purposes? People may expect such efforts at manipulation from private entities, but should they expect it from their government?

Cigarette warnings raise additional issues. It is surely laudable to provide government information in ways people view as relevant and comprehensible—the point of Sunstein's "Plate, Not Pyramid" chapter. But the smoking regulation seems quite different. The graphic cigarette warnings do not merely provide information, but seek to evoke an emotional response to accomplish regulators' objectives (158).²⁶ Should such powerful tools be at government agencies' disposal?

Sunstein acknowledges the potential for abuse, but believes it can easily be cabined. The examples he uses, however, are the easiest with which to cope: executive branch officials furthering the administration's partisan interests (202–03, 207–08, 196–97).²⁷ Worse still, identifying self-serving messages may

context in which the choice to accept overdraft protection was made, most depositors chose overdraft protection, rejecting the government-specified default (118–19).

24. 44 *Liquormart Inc. v. Rhode Island*, 517 U.S.484, 509 (1996) ("the advertising ban served to shield the State's anti-gambling policy from the public scrutiny that more direct, nonspeech regulation would draw"); See also Edward L. Glaeser, *Paternalism and Psychology*, 73 U. CHI. L. REV. 133, 151–52 (2006).

25. 44 *Liquormart*, *supra* note 24, at 510–11.

26. See also MARK G. YUDOF, *WHEN GOVERNMENT SPEAKS: POLITICS, LAW, AND GOVERNMENT EXPRESSION IN AMERICA* 166–67 (1983) (discussing government communication and First Amendment constraints). Sunstein mounts a stronger defense than he could in other contexts, arguing that the government is seeking to counteract private entities' emotional appeals in advertising cigarettes as well as nicotine's addictive qualities (199).

27. YUDOF, *supra* note 26, at 196–97.

be challenging; it is often difficult to distinguish such messages from those that serve legitimate public purposes.²⁸

The use of defaults can raise similar issues.²⁹ Defaults, of course, go beyond providing information—they make tentative decisions for individuals that individuals must reverse.³⁰ The major question is how the defaults are to be set: will they be set based on predictions about what the individual (or most individuals) would do, whether or not regulators believe that choice to be in the individual’s best interest? Are they set based on the regulator’s assessment of the individual’s best interests?³¹

Or might the default be based on what would best serve society, to nudge people toward public-regarding decisions?³² A default favoring organ donation might be set, not to reflect general attitudes, but because organ donation saves lives, thus “encouraging” individuals to make the public-regarding choice (59, 103).³³ After all, an individual’s interests may differ from society’s because, as noted earlier, individuals themselves may create externalities, by imposing costs on others that they need not consider. Perhaps in such circumstances, nudges are inappropriate. But it will be enticing to craft nudges that appeal to public spiritedness, for example “disclosures” advising people of social norms with regard to paying taxes or voting.

28. *In re. Consumer Prod. Safety Comm’n—Prohibitions on Grassroots Lobbying and Publicity or Propaganda*, B-322882, 2012 WL 5489123 (Comp. Gen. Nov. 8, 2012) (“It is often difficult to determine whether [materials agencies provide the public] are political or not because the lines separating the nonpolitical from the political cannot be precisely drawn.”); YUDOF, *supra* note 26, at 170–73.
29. The power of inertia is not a new revelation. Indeed, a major administrative law case decided 30 years ago discussed driver inertia, and NHTSA’s failure to properly account for its effects: *Motor Vehicles Mfs. Ass’n v. State Farm*, 463 U.S. 29, 54 (1983).
30. Once again they may provoke fewer objections than more robust regulatory responses, after all, the public will be assuaged by retaining the right to reject the default choice, and given cognitive biases people overestimate the likelihood they will do so.
31. Dep’t Of Labor, Employee Benefits Sec. Admin., Final Rule, *Default Investment Alternatives Under Participant Directed Individual Account Plans*, 72 Fed. Reg. 60452, 60476 (October 24, 2007) (codified at 29 C.F.R. pt. 2550) (“[T]he regulation’s primary goal is to promote default investments that enhance retirement saving, not to align default investments with individuals’ levels of risk tolerance.”).
32. See text accompanying notes 14 and 15, *supra*. Other default-setting approaches are available. The least objectionable choice could be selected as the default. For example, perhaps we believe it more offensive to take organs from deceased individuals who would not have wanted them taken, say for religious reasons, than to refrain from using an organ of a deceased person who would have donated had they not procrastinated (103). Or, the default could be set to encourage active choosing. A default choice might withhold a significant amount of wages for retirement, on a theory that excessive withholding will be more salient than inadequate withholding.
33. “If you want to increase the number of organs available for people who need them, an effective way to do so is to presume that people consent . . . to donate but allow them to opt out if they wish.”

And there is yet another problem: is everyone defaulted to the same choice (let's say the likely majority choice)? As Sunstein notes, sometimes various population subgroups differ in ways that might make group-specific defaults appropriate.³⁴ Thus, he suggests, perhaps different defaults should be set for different subgroups.

However, if the defaults are based on subgroups' general characteristics, individuals who don't share their subgroup's attitudes may be disadvantaged by being defaulted to the subgroup choice. This might be particularly problematic if the subgroups are drawn along racial or gender lines. Differences in life expectancy, for example, might mean that on the whole members of one racial group or one gender would be better served by one benefit or retirement plan rather than another, even though the atypical individual in that group would be made worse off. Perhaps such criteria would be precluded from consideration on constitutional grounds.³⁵ However, presumably salary level would not be a constitutionally-suspect means of classification. Would lower-paid workers be defaulted into a less costly, less generous retirement program that might benefit lower-paid workers as a whole, but at the expense of the minority of such workers who can and would forgo current consumption for a more generous retirement plan? Such workers could reject the default, but as Sunstein acknowledges, many will not.

For Sunstein the answer to these challenges may lay in "personalized defaults." "Once enough information is available about Joe Smith, we could design [default rules] for Joe Smith" (155). But regulators would lose control over private entities' establishment of such personalized defaults, because the algorithms used to create such defaults would surely be too complex for government mandates. Moreover, the personalized default approach assumes that "Joe Smith" has an unusually tolerant view toward the collection and use of his private data; in other words, privacy concerns may pose a major obstacle to mandating personalized defaults.³⁶

Ultimately, *Simpler* does not tell us what happened to the "era of regulation" that seemed just beyond the horizon six short years ago—that's not the point of the book and the answer to that question probably has much more to do with politics than with any particular regulatory decisions made by OIRA or any

34. Though Sunstein does not use this example, it appears that African-Americans as a group are significantly less likely to donate organs than Caucasians. See, e.g., Laura A. Siminoff, et al., *Racial Disparities in Preferences and Perceptions Regarding Organ Donation*, 21 J. GEN'L INTERNAL MED. 995 (2006).

35. See, e.g., *Arizona Governing Committee v. Norris*, 463 U.S. 1073 (1983) (gender discrimination in state-selected pension plan); Martha Chamallas, *Questioning the Use of Race-Specific and Gender-Specific Economic Data in Tort Litigation: A Constitutional Argument*, 63 FORDHAM L. REV. 73 (1994).

36. Moreover, Sunstein largely ignores the temporal challenges for default rules. Agencies are quite slow in modifying regulations or requirements. New employee benefit plans may arise that provide better options and might warrant modifying a default rule. Will agencies be nimble enough to change their default rules quickly enough to respond to such developments?

agency. However, *Simpler* does provide a wonderful perspective on the creative ways in which government may regulate while preserving individual choice.