

[Home](#) > [Journal of Consumer Policy](#) > [Article](#)

# False Promises? A Sociological Critique of the Behavioural Turn in Law and Economics



| Original Paper | Published: 29 June 2011

| Volume 34, pages 289–314, (2011) [Cite this article](#)[Journal of Consumer Policy](#)[Aims and scope](#) →[Submit manuscript](#) →[Sabine Frerichs](#) <sup>1</sup> **1672** Accesses  **23** Citations  **3** Altmetric [Explore all metrics](#) →

## Abstract

Economic bestsellers like *Freakonomics* and *Nudge* that mainly address outsiders of the economic discipline are also consumed by lawyers. The latter has already become an important reference in the field of consumer law and policy. In principle, this is nothing to complain about but part of law's encounter with science, namely the social sciences. Notably, the law and economics movement proved successful in importing economic perspectives into legal discourse. However, it would seem questionable if the law followed each trend on the academic book market. While there has been an increasing emphasis on economic perspectives at the expense of sociological perspectives within the field of law, economy, and society, a major shift can now also be observed in the field of law and economics. With the behavioural turn in law and economics, *homo oeconomicus* seems to be transformed into *Homer Economicus*, and consumer law prone to be Simpsonized. In this paper, the turn from neoclassical law and

economics to behavioural law and economics will be analysed from a third, namely sociological perspective: the economic sociology of law. In this framework, it is possible to compare and confront the “old” *homo oeconomicus rationalis* and the “new” *homo oeconomicus behaviouralis* with a third model—*homo oeconomicus culturalis*—which demonstrates the limits of the previous models, not least with regard to explaining the recent financial crisis. While governance by nudges might look, at first sight, as a tempting idea, I will question the normative side of this project and emphasize its possible effects on our legal culture and, thereby, our human condition.

 This is a preview of subscription content, [log in via an institution](#)  to check access.

### Access this article

[Log in via an institution](#) →

[Buy article PDF 39,95 €](#)

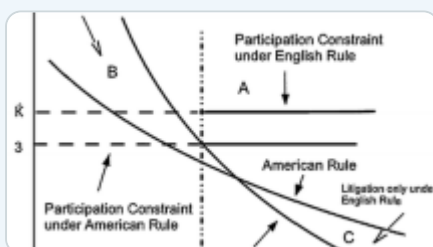
Price includes VAT (Poland)

Instant access to the full article PDF.

Rent this article via [DeepDyve](#) 

[Institutional subscriptions](#) →

### Similar content being viewed by others



[Gordon Tullock and the Virginia School of Law and Economics](#)



[Jacques Rueff Between Economics and Law: Multidimensional Vision,](#)



[Individual Rights, Economic Transactions, and Recognition: A Legal Approach to Social Economics](#)

## Notes

---

1. Technically speaking, scholars are only consumers when they pay for the acquisition of knowledge. In the present context, I use the term, however, in a wider, more figurative sense. In a “consumer society,” academics as well as non-academics are also the target of the “marketing” of scientific knowledge, which thus takes a “commodified” form (such as popular science books). The scholars can then “buy” the propagated ideas or not. This principle holds true even if money is not an immediate part of the transaction.
2. In this respect, it is much different from the “legal analysis of economics” once favoured by the historical school of economics (Desautels-Stein [2010](#), p. 37).
3. The concept of “information asymmetry” stems, of course, itself from modern standard economics. Its usage in the present context demonstrates the accessibility and versatility of economic concepts even outside the economic discipline.
4. Roughly speaking, law and economics favours economic policies that connect the rule of law with ideas of economic efficiency whereas law and society furthers social policies that emphasize principles of social justice.
5. My personal impression is that the different perspectives of economics and sociology are not equally represented in the public media that offer popular representations of scientific theories (including widely distributed books, magazines, and newspapers as well as broadcasting and internet services).
6. See also Farber [2001](#) whose review of “behavioural law and economics,”

edited by Cass R. Sunstein, is aptly titled “Toward a new legal realism.” Sunstein uses the notion of legal realism himself, albeit in a slightly different context, namely with regard to judicial behaviour (see Miles and Sunstein [2008](#); Stephenson [2009](#)).

7. A simple Google search yielded results for *Economist*, *Financial Post*, *Telegraph*, and *Wall Street Journal*. See, for example, Weisman ([2010](#)).
8. At least the “new international edition” that I am working with plays with a diabolical imagery: the cover is blood-red, with black and white lettering. A Sunday Times quote on the top announces “Hot stuff.” And the word “nudge,” which is the eye-catcher of the book, is used to illustrate itself: the “g” nudges the “u” with its descender which symbolizes, iconically, the tail of the devil.
9. Curiously, there is now a second book called *Nudge* on the market, which clearly follows an evangelical mission: “Awakening each other to the god who’s already there” (Sweet [2010](#), subtitle).
10. This argument surfaces already in Thaler ([2000](#)). Accordingly, behavioural economists seek to replace “traditional models” of “rational, unemotional agents” with “behavioural models” of “quasi-rational emotional humans.” In short, “homo economicus” has to evolve into “homo sapiens” (ibid., p. 140). In his review of *Nudge*, Etzioni ([2009](#)) adopts, somewhat uncritically, the same terminology.
11. Camerer ([1999](#), p. 10575) labels this as a positivist (as opposed to a realist) approach: “[B]ecause theories with patently false assumptions can make surprisingly accurate predictions, economic theories that assume that individual agents are highly rational and willful, judge probabilities accurately, and maximize their own wealth might prove useful, even though psychology shows that those assumptions are systematically false.”

12. Interestingly, reservations about the rationality and autonomy of “human beings” also seem to imply a greater respect for the interests of “nonhuman animals” which may perceive pleasure and pain in similar ways as humans. Not surprisingly then, Sunstein also takes a stance in the animal rights debate and, notably, trades Descartes and Kant off against Bentham and Mill (Sunstein [2003](#), pp. 387–389). In the same vein, he confronts the “rationalist” positions of Posner and Epstein with more “behaviouralist” arguments based on animals’ capacity to suffer (Leslie and Sunstein [2007](#), pp. 117–118). What is at stake here is the always contingent line between subject and object, ends and means, (legal) person and (legal) property—and, ultimately, how to define a “humane [!] treatment of animals” (ibid., pp. 132–133).
13. Including not only *homo oeconomicus* but also *homo juridicus* (Supiot [2007](#)).
14. And in reality, *homo sapiens* is often short-sighted—and could thus also be dubbed *homo myopicus* (Baird et al. [2006](#)).
15. I borrow this term from Amitai Etzioni who used it, however, only in a footnote (Etzioni [2010](#), p. 392, fn. 3).
16. The distinction between a rational consumer, a naive one, and a sophisticated one is used and illustrated by Teck et al. ([2006](#), pp. 316–318).
17. As suggested by Camerer and Loewenstein ([2004](#), p. 24).
18. Homer Simpson also appears—albeit less frequently—in academic articles. One of the sequences related in *Nudge* was previously used by Camerer et al. ([2003](#), p. 1254, fn. 144), with Matthew Rabin acting as a mediator. It is about lowering Homer’s IQ by hammering a crayon into his nose: “The surgeon knows the operation is complete when Homer finally exclaims: ‘Extended warranty! How can I lose?’” (Thaler and Sunstein [2009](#), p. 87, fn.\*).

19. For readers not familiar with this character: it should be enough to have a quick look at pictures of him on the internet.
20. In a way, he was paternalistically “nudged” to take precautions.
21. These could also be precautions taken by someone else in order to protect him from his own biases.
22. This term is also used by Hall ([2005](#)) in an attempt to use *The Simpsons* for teaching purposes.
23. Drawing on the classical notion of idiots, which, admittedly, appears somewhat “discomforting” today, Camerer et al. ([2003](#), p. 1218) argue: “In a sense, behavioural economics extends the paternalistically protected category of ‘idiots’ to include most people, at predictable times. The challenge is figuring out what sorts of ‘idiotic’ behaviours are likely to arise routinely and how to prevent them, while imposing minimal restrictions on those who behave rationally.”
24. Jolls and Sunstein ([2006](#), p. 201) describe “debiasing through law” as strategies that “directly [operate] on the boundedly rational behaviour” and “help people either to reduce or to eliminate it.” They thus preserve and do not eliminate individual choice (as more rigid regulations presumably would).
25. This is at least suggested by introducing Thaler and Sunstein’s ([2009](#)) recent terminology into the field of behavioural law and economics, thus building on earlier collaboration between Jolls et al. ([1998](#)) and Jolls and Sunstein ([2006](#)).

26. The notion of “animal spirits” goes back to John Maynard Keynes (Pech and Milan [2009](#)). In today’s behavioural economics, it is notably specified as the “affective—‘animal’—system of the human brain” (Loewenstein and O’Donoghue [2004](#), p. 34) which predates and complements the “deliberative system” that modern humans take so much pride in. See also Lewis ([2010](#)) and Schwartz ([2010](#)).
27. Namely, the nature of man as a social animal. The social component is thus not excluded. However, it is mainly approached from our affective system.
28. On the one hand, models of economic man, or social action, more generally, may explicitly serve normative purposes (such as the rationalization of economic action through standard economics). On a deeper level, they may, however, also have unintended normative effects (what can be called the “reflexivity” and “performativity” of social science in society). On the intertwinement of positive analysis, prescriptive analysis, and normative analysis in behavioural law and economics, see Sunstein ([1997](#)) and Jolls et al. ([1998](#)).
29. One may wonder why the *homo economicus behaviouralis* is suddenly of much appeal. It seems that the “market society,” which overwhelms the individuals both with the possibility and the necessity of taking “free” and “rational” choices in all matters of life (including, for example, retirement savings), has thus found its inner limits.
30. Instead, they argued that “bounded rationality” furthers “a scepticism about antipaternalism but not an affirmative defence of paternalism” (Jolls et al. [1998](#), p. 1541).
31. behavioural economics and new economic sociology even share important sponsors, such as the American Russell Sage Foundation. For behavioural

economics, see Lambert ([2006](#)), pp. 54–55; for new economic sociology, see Convert and Heilbron ([2007](#)), pp. 49–50.

32. Which notably do not confine themselves to restricted notions of “herd behaviour.”
33. In other words, the more we focus on man’s universal nature, the less we understand about the variability of human culture.
34. Here understood not as social but as scientific “representations” of the financial crisis given by scholars and not by laypersons (Leiser et al. [2010](#)).
35. The rationality assumption of standard economics is thus replaced with the assumption of bounded rationality.
36. In behavioural economics, the “classic assumption that economic agents are systematically driven by the pursuit of material self-interest” (Zarri [2010](#), p. 562) is often considered too restrictive since it cannot explain the sense of fairness that economic actors exhibit in certain situations.
37. This is, at least, the direction the inquiry takes in behavioural economics and which leads, almost by necessity, to neuro-economics.
38. Camerer et al. ([2005](#)) give the following account: “Neural evidence suggests [...] that the same dopaminergic reward circuitry of the brain in the midbrain (mesolimbic system) is activated for a wide variety of different reinforcers, including attractive faces, funny cartoons, cultural objects like sports cars, drugs, and money. This suggests that money provides *direct* reinforcement.” (ibid., p. 35; original emphasis; references omitted) Of course, money is also a cultural object.



39. A counter-example is the study by Henrich et al. ([2005](#)) which confronts seemingly universal patterns of human behaviour, suggested by previous research, with cultural variation in a sample of 15 small-scale societies.
40. This “ranking” should not be taken for granted. In his review of *Nudge*, Schlag ([2010](#)) argues pointedly: “Someone’s nudge is someone else’s compulsory mechanism. And it may well turn out too that a ‘nudge-in-action’ will be more coercive than ‘a command and control regulation-in-the-books’” (ibid., 917).
41. According to Sunstein ([1997](#)), “the legal system is pervasively in the business of constructing procedures, descriptions, and contexts for choice” (ibid., p. 1177). More precisely, “law can construct rather than elicit preferences both internally, by affecting what goes on in court, and externally, by affecting what happens in ordinary transactions—market and nonmarket” (ibid.).
42. And towards law and neuro-economics (Chorvat et al. [2005](#))?
43. In the present reinterpretation and enhancement of Rischkowsky and Döring’s ([2008](#)) categories, I include not only “new” but also “old” institutionalism. While the former has occasionally been dubbed “rational-choice institutionalism,” the latter opens the field for more macro-analytical and sociological approaches.
44. This antagonism can be summarized as follows: “In stark contrast to the formal legal notion of the ‘sovereign-consumer,’ the citizen-consumer entails a series of positive values, which cannot be legitimated by a simple internal legal dedication to the maintaining of contractual autonomy, but must instead find their approbation in democratic discourse and the subjection of law to subsequent political direction” (Everson and Joerges [2007](#), p. 159).
45. In the same vein, one can distinguish between *bourgeois* and *citoyen*.

46. At the same time, they are also “participants in informal life and livelihoods that permeate both the private and the public sphere” (Reisch [2004](#), p. 3; emphasis omitted).
47. Which can then either be interpreted as a humanistic ideal, a cognitive illusion, or a social construction.
48. On the link between behavioural economics and new governance, see Amir and Lobel ([2008](#)). This deserves, however, a more thorough discussion, which also makes use of the governmentality concept initiated by Michel Foucault ([2007](#), [2008](#)). The “nudgeable” consumer appears then just as the latest form of the “governable” self (Frerichs [2010b](#)).

## References

---

Abolafia, M. (2010). The institutional embeddedness of market failure: Why speculative bubbles still occur. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part B* (pp. 177-200). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Akerlof, G. A., & Shiller, R. J. (2009). *Animal spirits: How human psychology drives the economy and why it matters for global capitalism*. Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Altman, M. (2006). Human agency and free will: Choice and determinism in economics. *International Journal of Social Economics*, 33, 677-697.

[Article](#) [Google Scholar](#)

Amir, O., & Lobel, O. (2008). Stumble, predict, nudge: How behavioural economics informs law and policy. *Columbia Law Review*, *108*, 2098–2138.

[Google Scholar](#)

Baird, D. G., Epstein, R. A., & Sunstein, C. R. (2006). Symposium on the law and economics of consumer choice. *University of Chicago Law Review*, *73*, 1–2.

[Google Scholar](#)

Beckert, J., & Streeck, W. (2008). Economic sociology and political economy: A programmatic perspective. MPIfG Working Paper 08/4. Max Planck Institute for the Study of Societies. [<http://www.mpifg.de/pu/workpap/wp08-4.pdf>]

Camerer, C. F. (1999). Behavioural economics: Reunifying psychology and economics. *Proceedings of the National Academy of Sciences of the United States of America*, *96*, 10575–10577.

[Article](#) [Google Scholar](#)

Camerer, C. F. (2010). behavioural economics. Paper prepared for the World Congress of the Econometric Society, 2005, London 18–24 August 2005; revised 7 October 2010. [<http://www.hss.caltech.edu/~camerer/worldcongress05v18.doc>]

Camerer, C. F., & Fehr, E. (2006). When does ‘economic man’ dominate social behavior? *Science*, *311*, 47–52.

[Article](#) [Google Scholar](#)

Camerer, C. F., & Loewenstein, G. (2004). Behavioural economics: Past, present, future. In C. F. Camerer, G. Loewenstein, & M. Rabin (Eds.), *Advances in Behavioural economics* (pp. 3–51). Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Camerer, C. F., Issacharoff, S., Loewenstein, G., O'Donoghue, T., & Rabin, M. (2003). Regulation for conservatives: Behavioural economics and the case for 'asymmetric paternalism'. *University of Pennsylvania Law Review*, 151, 1211-1244.

[Article](#) [Google Scholar](#)

Camerer, C. F., Loewenstein, G., & Prelec, D. (2005). Neuroeconomics: How neuroscience can inform economics. *Journal of Economic Literature*, XLIII, 9-64.

[Article](#) [Google Scholar](#)

Carruthers, B. (2010). Knowledge and liquidity: Institutional and cognitive foundations of the subprime crisis. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part A* (pp. 157-182). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Chorvat, T., McCabe, K., & Smith, V. (2005). Law and Neuroeconomics. *Supreme Court Economic Review*, 13, 35-62.

[Google Scholar](#)

Convert, B., & Heilbron, J. (2007). Where did the new economic sociology come from? *Theory and Society*, 36, 31-54.

[Article](#) [Google Scholar](#)

Danesi, M., & Perron, P. (1999). *Analyzing cultures: An introduction and handbook*. Bloomington, IN: Indiana University Press.

[Google Scholar](#)

Davis, J. (2010). After the ownership society: Another world is possible. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part B* (pp. 331–358). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

de Meza, D., Irlenbusch, B., & Reyniers, D. (2008). Financial capability: A Behavioural economics perspective, prepared for the Financial Services Authority. *Consumer Research*, 69. [<http://www.fsa.gov.uk/pubs/consumer-research/crpr69.pdf>]

Desautels-Stein, J. (2010). Liberal legalism and the making of the market: State action doctrine and antitrust law in service of economic development. Berkeley Electronic Press. [[http://works.bepress.com/justin\\_desautels\\_stein/5](http://works.bepress.com/justin_desautels_stein/5)]

Dobbin, F., & Jung, J. (2010). The misapplication of Mr. Michael Jensen: How agency theory brought down the economy and why it might again. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis, Part B* (pp. 29–64). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Duesenberry, J. (1960). Comment on “An economic analysis of fertility”. In National Bureau Committee for Economic Research (Ed.), *Demographic and economic change in developed countries* (pp. 231–234). Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Edelman, L. B. (2004). Rivers of law and contested terrain: A law and society approach to economic rationality. *Law and Society Review*, 38, 181–197.

[Article](#) [Google Scholar](#)

Epstein, R. A. (2006). Behavioural economics: Human errors and market corrections. *University of Chicago Law Review*, 73, 111–132.

[Google Scholar](#)

Epstein, R. A. (2008). The neoclassical economics of consumer contracts. *Minnesota Law Review*, 92, 803–835.

[Google Scholar](#)

Etzioni, A. (2009). Adaptation or paradigm shift? *Contemporary Sociology*, 31, 5–8.

[Article](#) [Google Scholar](#)

Etzioni, A. (2010). Bounded rationality. *Socio-Economic Review*, 8, 377–383.

[Article](#) [Google Scholar](#)

Everson, M. (2006). Legal constructions of the consumer. In F. Trentmann (Ed.), *The making of the consumer: Knowledge, power and identity in the modern world* (pp. 99–121). Oxford: Berg Publishers.

[Google Scholar](#)

Everson, M., & Joerges, C. (2007). Consumer citizenship in post-national constellations. In K. Soper & F. Trentmann (Eds.), *Citizenship and consumption* (pp. 154–171). Basingstoke: Macmillan.

[Google Scholar](#)

Farber, D. A. (2001). Toward a new legal realism. *University of Chicago Law Review*, 68, 279–303.

[Article](#) [Google Scholar](#)

Foucault, M. (2007). *Security, territory, population: Lectures at the Collège de France 1977-1978*. Basingstoke: Palgrave Macmillan.

[Book](#) [Google Scholar](#)

Foucault, M. (2008). *The birth of biopolitics: Lectures at the Collège de France, 1978-1979*. Basingstoke: Palgrave Macmillan.

[Google Scholar](#)

Frerichs, S. (2009). The legal constitution of market society: Probing the economic sociology of law. *Economic Sociology - European Electronic Newsletter*, 10(3), 20-25 [[http://econsoc.mpifg.de/archive/econ\\_soc\\_10-3.pdf](http://econsoc.mpifg.de/archive/econ_soc_10-3.pdf)]

Frerichs, S. (2010a). Oikeus yhteiskuntateoreettisessa ajattelussa: lyhyt historia [A short history of socio-legal thinking]. In T. Kotkas & S. Lindroos-Hovinheimo (Eds.), *Yhteiskuntateorioiden oikeus [Law in social theories]* (pp. 9-44). Helsinki: Tutkijaliitto.

[Google Scholar](#)

Frerichs, S. (2010b). Zwischen Gerechtigkeit und Wahrheit: Das Rechtssubjekt in der Marktgesellschaft. *Zeitschrift für Rechtssoziologie*, 31, 231-250.

[Google Scholar](#)

Frerichs, S. (2011). Re-embedding neo-liberal constitutionalism: A Polanyian case for the economic sociology of law. In C. Joerges & J. Falke (Eds.), *Karl Polanyi, globalisation and the potential of law in transnational markets* (pp. 65-84). Oxford: Hart Publishing.

[Google Scholar](#)

Friedman, M. (1990). The methodology of positive economics. In M. Friedman

(Ed.), *Essays in positive economics* (pp. 3-43). Chicago IL: University of Chicago Press. orig. 1953.

[Google Scholar](#)

Granovetter, M. (1985). Economic action and social structure: The problem of embeddedness. *The American Journal of Sociology*, 91, 481-510.

[Article](#) [Google Scholar](#)

Hall, J. (2005). Homer Economicus: Using *The Simpsons* to teach economics. *Journal of Private Enterprise*, 20, 165.

[Google Scholar](#)

Henrich, J., Boyd, R., Bowles, S., Camerer, C., Fehr, E., Gintis, H., et al. (2005). 'Economic man' in cross-cultural perspective: Behavioural experiments in 15 small-scale societies. *The Behavioural and Brain Sciences*, 28, 795-855.

[Google Scholar](#)

Jolls, C. (2007). Behavioural Law and Economics. In P. Diamond & H. Vartiainen (Eds.), *Behavioural Economics and Its Applications* (pp. 115-155). Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Jolls, C., & Sunstein, C. R. (2006). Debiasing through law. *The Journal of Legal Studies*, 35, 199-241.

[Article](#) [Google Scholar](#)

Jolls, C., Sunstein, C. R., & Thaler, R. (1998). A Behavioural Approach to Law and Economics. *Stanford Law Review*, 50, 1471-1550.

[Article](#) [Google Scholar](#)



Krippner, G. (2010). The political economy of financial exuberance. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part B* (pp. 141-175). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Krugman, P. (2009). How did economists get it so wrong? *New York Times Magazine*, 6 September 2009.

[<http://www.nytimes.com/2009/09/06/magazine/06Economic-t.html>]

Lambert, C. (2006). The marketplace of perceptions. *Harvard Magazine*, 108(4), 50-57 and 93-95 (continued)

Leiser, D., Bourgeois-Gironde, S., & Benita, R. (2010). Human foibles or systemic failure - Lay perceptions of the 2008-2009 financial crisis. *Journal of Socio-Economics*, 39, 132-141.

[Article](#) [Google Scholar](#)

Leslie, J., & Sunstein, C. R. (2007). Animal rights without controversy. *Law and Contemporary Problems*, 70, 117-138.

[Google Scholar](#)

Levitt, S. D., & Dubner, S. J. (2005). *Freakonomics: A rogue economist explores the hidden side of everything*. New York: William Morrow.

[Google Scholar](#)

Lewis, A. (2010). The credit crunch: Ideological, psychological and epistemological perspectives. *Journal of Socio-Economics*, 39, 127-131.

[Article](#) [Google Scholar](#)

Lindenberg, S. (1990). Homo socio-oeconomicus: The emergence of a general model of man in the social sciences. *Journal of Institutional and Theoretical Economics*, 146, 727-748.

[Google Scholar](#)

Loewenstein, G., & O'Donoghue, T. (2004). *Animal spirits: Affective and deliberative processes in economic behavior*. Center for Analytic Economics (CAE) Working Paper 04-14. [<http://www.arts.cornell.edu/econ/CAE/04-14.pdf>]

Loewenstein, G., & O'Donoghue, T. (2006). 'We can do this the easy way or the hard way': Negative emotions, self-regulation, and the law. *University of Chicago Law Review*, 73, 183-206.

[Google Scholar](#)

Lounsbury, M., & Hirsch, P. M. (Eds.). (2010a). *Markets on trial: The economic sociology of the U.S. financial crisis. Part A*. Emerald: Bingley.

[Google Scholar](#)

Lounsbury, M., & Hirsch, P. M. (Eds.). (2010b). *Markets on trial: The economic sociology of the U.S. financial crisis. Part B*. Emerald: Bingley.

[Google Scholar](#)

Lounsbury, M., & Hirsch, P. M. (2010c). Markets on trial: Towards a policy-oriented economic sociology. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis, Part A* (pp. 5-26). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

McFadden, D. (2006). Free markets and fettered consumers. *The American Economic Review*, 96, 3-29.

Miles, T. J., & Sunstein, C. R. (2008). The new legal realism. *University of Chicago Law Review*, 75, 831-851.

[Google Scholar](#)

Mitchell, G. (2005). Libertarian paternalism is an oxymoron. *Northwestern University Law Review*, 99, 1245-1277.

[Google Scholar](#)

Nourse, V., & Shaffer, G. (2009). Varieties of new legal realism: Can a new world order prompt a new legal theory? *Cornell Law Review*, 95, 61-137.

[Google Scholar](#)

Pech, W., & Milan, M. (2009). Behavioural economics and the economics of Keynes. *Journal of Socio-Economics*, 38, 891-902.

[Article](#) [Google Scholar](#)

Phung, A. (2006). Behavioural finance. Online tutorial at Investopedia.com. [[http://www.investopedia.com/university/Behavioural\\_finance/default.asp](http://www.investopedia.com/university/Behavioural_finance/default.asp)]

Polanyi, K. (1957). *The Great Transformation*. Boston: Beacon Press [orig. 1944].

[Google Scholar](#)

Posner, R. A. (2007). *Economic Analysis of Law* (7th ed.). New York: Wolters Kluwer Law & Business.

[Google Scholar](#)

Posner, R. A. (2009). *A failure of capitalism: The crisis of '08 and the descent into depression*. Cambridge, MA: Harvard University Press.

[Google Scholar](#)

Posner, R. A. (2010). *The crisis of capitalist democracy*. Cambridge, MA: Harvard University Press.

[Google Scholar](#)

Prelec, D., & Loewenstein, G. (1998). The red and the black: Mental accounting of savings and debt. *Marketing Science*, 17, 4-28.

[Article](#) [Google Scholar](#)

Reisch, L. A. (2004). Principles and visions of a new consumer policy. *Journal of Consumer Policy*, 27, 1-42.

[Article](#) [Google Scholar](#)

Rischkowsky, F., & Döring, T. (2008). Consumer policy in a market economy: Considerations from the perspective of the economics of information, the new institutional economics as well as Behavioural economics. *Journal of Consumer Policy*, 31, 285-313.

[Article](#) [Google Scholar](#)

Rubtsova, A., DeJordy, R., Glynn, M. A., & Zald, M. (2010). The social construction of causality: The effects of institutional myths on financial regulation. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part B* (pp. 201-244). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Schimank, U. (2010). *Handeln und Strukturen: Einführung in die*

*akteurtheoretische Soziologie*. Juventa: Weinheim.

[Google Scholar](#)

Schlag, P. (2010). Nudge, choice architecture, and libertarian paternalism. *Michigan Law Review*, 108, 913–924.

[Google Scholar](#)

Schwartz, H. (2010). Does Akerlof and Shiller's *Animal spirits* provide a helpful new approach for macroeconomics? *Journal of Socio-Economics*, 39, 150–154.

[Article](#) [Google Scholar](#)

Scott, A. O. (2001). Homer's Odyssey. *New York Time Magazine*, 4 November 2001. [<http://www.nytimes.com/2001/11/04/magazine/homer-s-odyssey.html>]

Shiller, R. J. (2000). *Irrational exuberance*. Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Shiller, R. J. (2008). *The subprime solution: How today's global financial crisis happened, and what to do about it*. Princeton, NJ: Princeton University Press.

[Google Scholar](#)

Stephenson, M. C. (2009). Legal realism for economists. *Journal of Economic Perspectives*, 23, 191–211.

[Article](#) [Google Scholar](#)

Streeck, W. (2010). Does 'Behavioural economics' offer an alternative to the neoclassical paradigm? *Socio-Economic Review*, 8, 387–397.

[Article](#) [Google Scholar](#)

Sunstein, C. R. (1990). Paradoxes of the regulatory state. *University of Chicago Law Review*, 54, 407-441.

[Article](#) [Google Scholar](#)

Sunstein, C. R. (1997). Behavioural analysis of law. *University of Chicago Law Review*, 64, 1175-1195.

[Article](#) [Google Scholar](#)

Sunstein, C. R. (2003). The rights of animals. *University of Chicago Law Review*, 70, 387-401.

[Article](#) [Google Scholar](#)

Sunstein, C. R., & Thaler, R. H. (2003a). Libertarian paternalism. *The American Economic Review*, 93, 175-179.

[Article](#) [Google Scholar](#)

Sunstein, C. R., & Thaler, R. H. (2003b). Libertarian paternalism is not an oxymoron. *University of Chicago Law Review*, 70, 1159-1202.

[Article](#) [Google Scholar](#)

Supiot, A. (2007). *Homo juridicus: On the anthropological function of the law*. London: Verso.

[Google Scholar](#)

Swedberg, R. (2010). The structure of confidence and the collapse of Lehman Brothers. In M. Lounsbury & P. M. Hirsch (Eds.), *Markets on trial: The economic sociology of the U.S. financial crisis. Part A* (pp. 71-114). Emerald: Bingley.

[Chapter](#) [Google Scholar](#)

Sweet, L. (2010). *Nudge: Awakening each other to the god who's already there*. Colorado Springs, CO: David C. Cook.

Teck, H. H., Lim, N., & Camerer, C. G. (2006). Modeling the psychology of consumer and firm behavior with Behavioural economics. *Journal of Marketing Research*, 43, 307-331.

[Article](#) [Google Scholar](#)

Thaler, R. H. (2000). From homo economicus to homo sapiens. *Journal of Economic Perspectives*, 14, 133-141.

[Article](#) [Google Scholar](#)

Thaler, R. H., & Sunstein, C. R. (2009). *Nudge: Improving decisions about health, wealth and happiness*. London: Penguin.

[Google Scholar](#)

Thaler, R. H., & Sunstein, C. R., (2008). Human frailty caused this crisis. *Financial Times*, 11 November 2008.

[\[http://www.fullerthaler.com/downloads/HumanFrailty.pdf\]](http://www.fullerthaler.com/downloads/HumanFrailty.pdf)

Weisman, J. (2010). Economic policy 'nudge' gives way to a 'shove'. *Wall Street Journal*, 8 March 2010.

[\[http://online.wsj.com/article/SB10001424052748704869304575103980232739138.html\]](http://online.wsj.com/article/SB10001424052748704869304575103980232739138.html)

White, M. D. (2010). Behavioural law and economics: The assault on consent, will, and dignity. In C. Favor, G. Gaus, & J. Lamont (Eds.), *Essays on philosophy, politics & economics: Integration & common research projects* (pp. 203-223). Stanford, CA: Stanford University Press.

Zarri, L. (2010). Behavioural economics has two 'souls': Do they depart from economic rationality? *Journal of Socio-Economics*, 39, 562–567.

[Article](#) [Google Scholar](#)

## Author information

---

### Authors and Affiliations

**Centre of Excellence “Foundations of European Law and Polity”, University of Helsinki, P.O. Box 4, 00014, University of Helsinki, Finland**

Sabine Frerichs

### Corresponding author

Correspondence to [Sabine Frerichs](#).

## Rights and permissions

---

[Reprints and permissions](#)

## About this article

---

### Cite this article

Frerichs, S. False Promises? A Sociological Critique of the Behavioural Turn in Law and Economics. *J Consum Policy* 34, 289–314 (2011). <https://doi.org/10.1007/s10603-011-9164-7>

Received

10 October 2010

Issue Date

September 2011

DOI

<https://doi.org/10.1007/s10603-011-9164-7>

Accepted

07 June 2011

Published

29 June 2011



# Keywords

[Behavioural economics](#)

[Consumer law](#)

[Economic sociology](#)

[Culture](#)

[Human condition](#)

## Search

Search by keyword or author



## Navigation

Find a journal

Publish with us

Track your research