both empirical and normative premises. While the editor's introduction draws attention to some moral issues, most chapters either explicitly refrain from discussing them or merely declare their standpoint. Maybe it would have been difficult to address these broader issues in a coherent way, given the different viewpoints among contributors, i.e. a lack of „true collective preferences" among *them*. Still, readers could have benefitted from a concluding chapter drawing attention to unaddressed and emerging normative issues as well as common themes, overlaps and contrasts across chapters.

Why Nudge? The Politics of Libertarian Paternalism
    by Cass R Sunstein
    New Haven: Yale University Press, 2014, 195 pp.,
    € 17,63; Softcover

Blake Chapman*

Cass Sunstein, nudge theory co-founder (along with Richard Thaler)[1] and former Obama Administration regulatory czar, has just released his newest defence of nudging in *Why Nudge: The Politics of Libertarian Paternalism.* The short book (160 pages of narrative content) fills an important gap by locating and prioritizing nudges within a regulator's toolbox. Not only does Sunstein take on the biggest criticisms of nudge in dedicated chapters, but he also identifies the circumstances where nudge is the most appropriate regulatory tool. Readers would do well to read *Nudge* first though, as *Why Nudge* revisits many familiar Sunstein tropes such as the inevitability of choice architecture, cost-benefit analysis, and ecological rationality.

Sunstein's stated thesis is to challenge Mill's "epistemic" harm principle. The knowledgeable reader can take this to mean that he is really challenging Mill's corresponding anti-paternalist principle: that paternalism is never a sufficient justification for government intervention. *Why Nudge* achieves this goal, but in a different manner than most readers would expect. *Why Nudge* is not a full-throated defence of libertarian paternalistic nudging, but instead comes across as an argument against adopting any philosophical approach to regulation in favor of a consequentialist cost-benefit approach. As evidenced by the litany of caveats and exceptions Sunstein provides to his nudge-first theory, the appropriate regu-

latory tool in any given instances is the one with the most appealing cost-benefit analysis, evaluated on a case-by-case basis, so as to maximize social welfare.

Why Nudge begins with an exploration of four "errors" in human decision-making that justify certain forms of paternalistic government regulation.[2] It is here where *Why Nudge* most excels. Sunstein, like his colleague Thaler, have the useful ability to take complex scientific studies and boil them down into relatable, digestible prose. Sunstein presents evidence from behavioral economics and cognitive psychology to show that present-bias, lack of salience, optimism bias and the availability heuristic are "behavioral market failures." Sunstein then propagates the first law, or only law for that matter, of behaviorally informed regulation: "in the face of behavioral market failures, nudges are usually the best response."[3] It is here that we see the first instance of Sunstein carving back his own theory. Nudges are the "best response", yet when either social welfare is at stake or cost-benefit analysis shows it, harder paternalism is easily justified, including mandates or bans.[4] Indeed, Sunstein argues that it is not respect for rational choice that should control the deployment of regulatory instruments, but social welfare, which he labels the "master concept."[5]

Why Nudge, as with *Nudge*, reveals inconsistencies in Sunstein's thinking on the two competing issues at the heart of nudge and paternalism: welfare and autonomy. At times Sunstein appears to support the latter, but then the argument collapses in a flurry of welfare/consequentialist exceptions. Oddly, I believe it this inconsistency that is the strength of Sunstein's work. He pays heed to autonomy concerns in certain instances, but overall, nudge is not meant to be an overarching philosophical theory, but a practical regulatory tool to effect change (i.e. embracing consequentialism).

We see the conflict between autonomy and welfare in Sunstein's definition of a nudge as initiatives

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1   Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New York: Penguin Books, 2009).

2   Cass R Sunstein, *Why Nudge? The Politics of Libertarian Paternalism* (New Haven: Yale University Press, 2014), at p. 16.

3   *Ibid* at p. 17.

4   *Ibid* at pp. 18-19.

5   *Ibid* at p. 18.

that maintain freedom of choice, but steer choices in the right direction (as judged by the choosers themselves).[6] This is an ostensibly autonomy-promoting move. However, Sunstein contradicts this statement throughout and it is clear from the totality of the work that *Why Nudge* adopts a decidedly objective welfarist approach. Sunstein writes often of making people better off, but one gets the sense the proviso that welfare is to be determined by chooser's own lights is easily overridden. What's really at issue are consumers making the 'right' choices, including abstaining from smoking, wearing seatbelts, and eating healthy. As Sunstein rhetorically asks, "is it really objectionable for government to try to persuade people not to engage in behavior that causes palpable harm?"[7]

Other examples of Sunstein's pragmatic moderation abound. Even in his ardent autonomy-respecting rejection of ends paternalism (which he ably distinguishes from means paternalism), Sunstein pulls back at the last minute, allowing utilitarian exceptions for "modest" paternalism and "small" or "incidental" intrusions on people's ends.[8] Notable examples are his thoughts on the non-libertarian, but paternalistic NYC soda ban and prohibitions on the display of cigarettes (an "excellent" nudge, Sunstein

writes, despite his acknowledgment that it is ends paternalism in the service of public health, not the chooser).[9] In both instances, Sunstein argues that the overall defensibility of the regulation comes down not to autonomy concerns but cost-benefit analysis.[10]

Sunstein also takes on autonomy or rights-based objections to paternalistic nudges. First, he argues that most efforts to correct behavioral market failures do not in fact interfere with autonomy.[11] He posits that autonomy is not undermined if freedom of choice is maintained and only non-significant costs are imposed.[12] In fact, Sunstein argues the opposite might be the case: choice architecture can promote autonomy by effectively reducing choice and freeing our minds to spend time on more important matters.[13] This is a valid perspective on autonomy and freedom, but not one that most critics of nudge adopt, leaving their concerns largely unanswered.

Sunstein also claims that when people speak of autonomy and the freedom to be foolish, somehow they're really talking about welfare because they are angry they can't get their own way.[14] Instead, concerns about autonomy are really veiled debates about welfare.[15] However, Sunstein presents no evidence to back up this intuition, except that what he cares about when thinking about autonomy is welfare, and that in many situations, "We [all] should really care about welfare."[16] Thus, Sunstein seems to accept autonomy as a value, but only within the confines of welfarist cost-benefit calculations.

In conclusion, *Why Nudge* is a well-written and (mostly) accessible piece on regulatory theory and the primacy of welfarist cost-benefit calculations. Readers expecting the nudge co-founder to go to bat for nudges in all instances will be disappointed, but I think the prospect for nudging is stronger for it. Sunstein recognizes that nudge cannot do it all, and should not do it all, and in the final analysis it is but one nail in the regulatory toolbox.

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6   *Ibid* at p. 17.

7   *Ibid* at p. 139.

8   *Ibid* at p. 69.

9   *Ibid* at p. 79.

10   *Ibid* at p. 78.

11   *Ibid* at p. 21.

12   *Ibid* at p. 138.

13   *Ibid* at p. 137.

14   *Ibid* at p. 21-22.

15   *Ibid* at p. 134.

16   *Ibid* at p. 135.