

### Nudging for Rationality and Self-Governance\*

**Abstract:** Andreas Schmidt argues that ethicists have misplaced moral qualms about nudges insofar as their worries are about whether nudges treat us as rational agents, because nudges can enhance our rational agency. I think that Schmidt is right that nudges often enhance our rational agency; in fact, we can carry his conclusion further: nudges often enhance our self-governing agency, too. But this does not alleviate our worries that nudges fail to treat us as rational. This is shown by disambiguating, as Schmidt does not, two conceptions of treating-as-rational. The more plausible conception of treating-as-rational ends up undermining Schmidt's case that nudges often treat us as rational.

*Penultimate version – please quote and cite from the published version*

1. Andreas Schmidt argues that ethicists have misplaced moral qualms about nudges – the devices of “choice architecture” that improve<sup>1</sup> our choices by exploiting our mental heuristics and decision-making biases – insofar as their worries are about whether nudges treat us as rational agents.<sup>2</sup> Using an ecological model of rationality, he argues that nudges often enhance, and do not generally fail to respect, our rational agency. I think that Schmidt is right that nudges often enhance our rational agency; in fact, we can carry his conclusion further: nudges often enhance our self-governing agency, too. But this does not alleviate our worries that nudges fail to treat us as rational. This is shown by disambiguating, as Schmidt does not, two conceptions of treating-as-rational. On what I call the “value-grounding” conception of treating-as-rational, Schmidt succeeds in showing that nudges treat us as rational but misunderstands our original worries about whether nudges treat us as rational. These worries are better understood using the “authority-grounding” conception of treating-as-rational, which ends up undermining Schmidt's case that nudging often treats us as rational.

2. Schmidt's arguments are a response to one species of moral objections to nudging, the nub of which is the following claim: “... nudging implies treating agents as irrational.”<sup>3</sup> Schmidt aims to show

that nudging, at least as a form of public policy,<sup>4</sup> does not treat agents as irrational and, in fact, is often an important way of treating them as rational. He does this by drawing on an “ecological” model of rationality – developed as a normative, philosophical view by Jennifer Morton<sup>5</sup> – on which an agent’s decision-making procedures are rational in some decision-making environment to the extent that, given the agent’s psychological capacities and tendencies, those procedures help them to reliably achieve their ends in that environment.<sup>6</sup> This contrasts with “heroic” models of rationality, which do not measure the rationality of an agent’s decision-making procedures against their particular psychological makeup and decision-making environment.<sup>7</sup>

The appeal to ecological rationality allows Schmidt to claim that nudging does not generally undermine rational agency (his “Weaker Argument”) and, in fact, often supports it (his “Stronger Argument”). How so? The central idea is that nudges are features of our environments that can make our normal array of heuristics and biases function as rational decision-making procedures. For instance, we tend to rely on the decision-making procedure of preferring the default option, the “status quo bias.” Which option is presented as the default is a function of our decision-making environment that, when adjusted via nudging to line up with our ends, can make it the case that the procedure of preferring the default is ecologically rational. It becomes a procedure that, given our psychological makeup and decision-making environment, reliably enables us to achieve our ends.

Schmidt goes on to explain why, given the nature of ecological rationality, we often should prefer altering our decision-making environments rather than our normal array of decision-making procedures, and why political states (rather than other entities) should take on the task of altering our decision-making environments. My concerns below do not hinge on these further details of Schmidt’s view, and I want to grant that he succeeds in showing that nudging does not undermine, and often bolsters, rational agency, at least if we accept an ecological model of rational agency.

3. In fact, we can take Schmidt's arguments further. As he hints, in addition to worrying that nudges do not treat us as rational, ethicists have worried that nudges fail to treat us as self-governing.<sup>8</sup> To reply, we can appeal to an ecological model of self-governance (just as Schmidt appeals to an ecological model of rationality), on which an agent is self-governing in some environment to the extent that, given their psychological makeup, their decision-making procedures reliably lead them to make decisions that are self-determined (or with which they identify, or that are reasons-responsive, or whatever your preferred criterion of self-governance is) in that environment.<sup>9</sup> This would be important for two reasons: first, it would clarify that what, at a first pass, seems to be a different objection to nudging – about self-governance, not rationality – can be answered with a similar reply. Second, moral theorists of diverse stripes are convinced that there is a deep connection between rationality and self-governance, such that the potential threat that nudges pose to one is a threat to the other.<sup>10</sup> This potential connection behooves us to consider whether Schmidt's appeal to ecological rationality also works for self-governance.

There is independent reason to think that self-governance is an ecological property, insofar as the various capacities that are plausibly central to self-governance are sensitive to an agent's social environment.<sup>11</sup> Take the capacity to reflectively endorse or reject one's desires. This is not a capacity whose strength or exercise floats freely of our social environment; social environments that involve widespread deference to authority-figures and/or the diffusion of responsibility, for instance, will weaken and hamper the exercise of this capacity.<sup>12</sup> And just as we can tailor our decision-making environments via nudging to ensure better alignment between our normal decision-making procedures and the achievement of our ends, we can do the same for self-governance. So Schmidt has set the stage for a remarkably wide-ranging conclusion: (public policy) nudging does not generally undermine, and often bolsters, both rational and self-governing agency.

4. Even if we grant Schmidt this wide-ranging conclusion, our worries about whether nudges fail to treat people as rational may remain. It does not obviously follow from the fact that a nudge bolsters my rational agency that it treats me as rational; to see whether it does, we need a general conception of treating people as rational (or irrational), which Schmidt does not provide.<sup>13</sup> What he does say leaves open some puzzling theoretical holes. For instance, he claims that treating someone as rational rules out “sidestepping [their] capacities for rationality”<sup>14</sup> and also more generally involves treating them “as capable of rational agency.”<sup>15</sup> Notice that engaging (i.e., not sidestepping) someone’s rational capacities is not sufficient for treating them as rational, and treating someone as capable of rational agency is not sufficient for engaging their capacities for rationality. By lying to you, I directly engage your capacities for rationality, but I do not treat you as rational, at least not in any sense relevant to the moral evaluation of nudges. (If nudges only do as well as lying at treating someone as rational, then so much the worse for nudging!) And by threatening to take your life unless you do as I say, I sidestep (at least some of) your capacities for rationality, by preying on your fear, while at the same time treating you as capable of rationality.

Parallel questions arise when we turn to the idea of treating someone as self-governing. Engaging someone’s capacities for self-governance is insufficient for treating them as self-governing in the relevant sense; e.g., various forms of insidious manipulation can successfully engage our capacities for self-governance.<sup>16</sup> And we can sidestep someone’s capacities for self-governance while still treating them as capable of self-governance, as when we paternalistically take away some of their options in order to prevent them from making bad choices.

You might think we can quickly resolve this issue by noting a mismatch between my focus here on persons’ capacities for rationality (and self-governance) and Schmidt’s focus on the ecological exercise of those capacities. We could take Schmidt’s focus to suggest that treating people as rational is not ultimately about their agential capacities but simply about acting under the assumption that they

do or will generally succeed in exercising those capacities. But there are two reasons why this is not how we should understand what Schmidt has in mind, even though his uses of the terms “rational” and “irrational” sometimes lend themselves to applying this performative conception of treating-as-rational. First, it would make Schmidt’s reply to the rationality objection to nudging entirely miss the mark. The objection would be rendered, “Nudges treat us under the assumption that we generally decide and behave in an irrational manner.” An apt reply by Schmidt would need to establish something like the conclusion that nudges do not treat us under the assumption that we generally decide and behave in an irrational manner (Weaker Argument), and they do treat us under the assumption that we generally decide and behave in a rational manner (Stronger Argument). But Schmidt’s arguments entail neither piece of this reply. He allows that we generally decide and behave in an irrational manner, given that we often operate in environments that fail to promote ecological rationality, leaving us at the mercy of tendencies that tend to frustrate our ends. And he does not conclude that we generally decide and behave in a rational manner, for the same reason.<sup>17</sup>

The second reason why Schmidt cannot rely on the performative, rather than capacity-focused, understanding of treating-as-rational is that the performative conception suggests that, if we know that someone does not now generally decide and behave rationally, then the best we can do to treat them as rational is increase the likelihood that they will generally decide and behave rationally. This is the only way to move closer to (reasonably) acting under the assumption that they generally decide and behave in a rational manner.<sup>18</sup> But notice that, when I object that someone has treated me as irrational, I am not thereby requesting their help in getting me to decide and behave more rationally. Indeed, for them to do so would add insult to injury, and this would be true even if I am fully aware of my own irrational foibles. Yet, this is what seems to follow if we understand Schmidt as offering a performative conception of treating people as rational.<sup>19</sup> Thus, I think we most charitably read Schmidt

as working with a capacity-focused conception of treating-as-rational, on which treating someone as rational concerns how to respond to their rational capacities.<sup>20</sup>

But, again, what Schmidt says on this front leaves open some puzzling gaps. What I think is missing from his discussion is a moral premise, which is suppressed in his arguments and deserves to be made more explicit. This is a premise about the special kind of moral value or reasons grounded in our rational capacities, along with an account of what it takes to properly respond to that value or those reasons and thereby, in this morally significant way, treat someone as rational. Schmidt is certainly aware of some of the important attempts to address these issues,<sup>21</sup> but I worry that his discussion fails to recognize the pertinent theoretical choices he needs to make in specifying this moral premise insofar as it underlies his view.

One such choice concerns whether we think of our rational (and, we can add, self-governing) agency as grounding an intrinsic value that justifies a value-appreciating response – what I call the “value-grounding” view – or instead as grounding practical authority that commands an authority-recognizing response – the “authority-grounding” view. Now, you might immediately wonder whether there are other views besides these two that we should consider here (for how to respond to the distinctive, agency-grounded value or reasons that arise from our rational, autonomous agency). Perhaps, but we should notice that apparent alternatives often are specifications of, or simply ambivalent between (see n. 26 below), the value-grounding and authority-grounding views. For instance, moral philosophers often appeal to the Kantian notion of dignity as referring to a distinctive normative property grounded in our rational, autonomous agency, but as Jeremy Waldron argues, this notion of dignity needs to be specified either in terms of a special kind of value (“beyond price”) or using an authority-focused notion (such as high “rank”).<sup>22</sup> Similarly, Christine Korsgaard argues that the Kantian notion of humanity needs to be analyzed as either a “valuable property” or (what she thinks is more plausible) a “normative standing” that carries practical, morally “legislative” authority.<sup>23</sup> We also

need to be able to situate our view of how to respond to the value or reasons grounded in rational, self-governing agency within a broader picture of how to respond to value or reasons of some relevant, general kind, to avoid making ad hoc claims about what it takes to treat persons as rational and self-governing that are not justified by a broader account of how to respond to value or reasons. Both the value-grounding and authority-grounding views do this, and I am not aware of other views that do: the value-grounding view draws on a general account of responding to intrinsic value, and the authority-grounding view draws on a general account of responding to practical authority.

The choice between the value-grounding or authority-grounding view poses a dilemma for Schmidt. The value-grounding view supports his Stronger Argument but misconstrues the worries about nudging that he tries to address. The authority-grounding view makes better sense of these worries but fails to support Schmidt's Stronger Argument.<sup>24</sup>

On the first horn of this dilemma, we accept the value-grounding view and think of treating someone as rational (or self-governing) as properly responding to the intrinsic value that is grounded in their relevant agential capacities. Properly responding to something's intrinsic value most centrally involves a concern to preserve the basis of its intrinsic value and acknowledging this value in one's thoughts and feelings.<sup>25</sup> Responding to someone's intrinsic value as a rational (or self-governing) agent would thus primarily involve being concerned to preserve their agential capacities and acknowledging their capacity-grounded value in one's thoughts and feelings.<sup>26</sup> If this is how we understand what it takes to treat someone as rational (or self-governing), we can straightforwardly substantiate Schmidt's Stronger Argument. There, Schmidt claims that nudges can "support rational agency" by "helping people be ... rational."<sup>27</sup> Provided that rationality is ecological and, thus, that our rational capacities are partly structured by our decision-making environments, a concern for preserving our capacities for rational agency favors creating environments that bolster our rational agency. The same goes, mutis

mutandis, for a value-grounding view about how to respond to the value grounded in our ecological capacities for self-governance.

The problem here is that the value-grounding view turns our original worries about how nudging relates to rational (or self-governing) agency into strawmen. If treating someone as rational (or self-governing) is primarily a matter of being concerned to preserve and acknowledge the value grounded in their agential capacities, then there is nothing even remotely worrisome about nudging. For there is nothing about nudging itself (especially public policy nudging) that purports to diminish, much less destroy, our agential capacities. This is true even if we reject ecological models of rationality and insist on a heroic model, on which our decision-making procedures involve careful deliberation and manifest rationality or irrationality regardless of our environment and particular psychological propensities. For, nudges do not aim at undercutting the deliberative, calculative capacities privileged by heroic rationality; they simply aim to prompt people to make better decisions in situations where they already tend not to use those capacities.<sup>28</sup> (We can say the same thing about nudges and a heroic model of self-governance.)

Here Schmidt disagrees. He claims that, if we reject ecological rationality, there are four ways we will think that nudges impede the exercise of heroic rational agency: “nudging typically works through cognitive biases,” “nudges ... work through System 1,” “[nudges] sometimes work through mechanisms where agents ignore relevant information and/or focus on irrelevant considerations,” and “[nudges] sometimes exploit our inability to properly handle probabilities.”<sup>29</sup> While nudging often has these features, none of them come close to implying that nudging is incompatible with being concerned to preserve and even encourage the exercise of heroic rational capacities. It often makes sense to both impose a nudge, which would work if someone’s thinking exhibits irrational biases and/or the automaticity of System 1, and also encourage them to exercise their heroic rational capacities, which would work if their thinking avoids common biases and, using System 2, is more reflective.

There is nothing wrong with having a backup plan, and nudges can serve as a helpful backup plan if someone's attempt to exercise their heroically rational agency (which one may be actively encouraging) falls short. It thus remains mysterious how, if we accept the value-grounding view, there is even a *prima facie* worry about whether nudges treat us as rational.<sup>30</sup>

The authority-grounding view gives us a better grip on what is potentially worrisome about how nudges relate to rational (or self-governing) agency. On this view, developed most fully by Stephen Darwall and Korsgaard, the sort of response at stake when we think about treating people as rational (or self-governing) is authority-recognition.<sup>31</sup> There are various ways to fill in an account of how to respond to practical authority, and we need not commit to a particular theory here. But it is worthwhile sketching how an authority-grounding view might be developed more fully so as to begin evaluating whether nudging is compatible with recognizing agency-grounded authority. For this, let me briefly summarize Darwall's account. According to Darwall, practical authority is best understood as the standing to address legitimate demands to others.<sup>32</sup> The proper response to such authority is to accept it as a legitimate constraint on one's deliberation and conduct. One recognizes the distinctively "second-personal" reasons grounded in someone's authority, which are conveyed by their legitimate demands, and treats these reasons as preemptory considerations in one's decision-making.<sup>33</sup> This precludes weighing the desirability of heeding someone's authority against conflicting goals, such as helping them to make better decisions, although it does allow for their authority to be overridden by competing authoritative demands or undercut by illegitimizing factors.<sup>34</sup> It also involves accepting their authority to hold oneself accountable, should one fail to abide by the demands that they have the standing to address to oneself.<sup>35</sup> This provides one way, then, of how to fill in the authority-grounding view, on which treating someone as rational (or self-governing) is a matter of recognizing their agency-grounded authority.

Nudges immediately appear morally worrisome on the authority-grounding view, at least if we assume that the practical authority grounded in a person's agential capacities includes some standing to determine how others are involved in their life. If someone has not welcomed my influence and I nudge them by, e.g., rearranging their default options, then I fail to fully accept their agency-grounded authority, given that, at a minimum, I have weighed it against the desirability of getting them to make a certain choice and found it wanting. For I have chosen to intervene in their affairs without deferring to their standing to determine whether I will so influence them. And I have influenced them in a manner that eludes their ability to hold me accountable for failing to recognize their agency-grounded authority, because my nudging escapes their reflective control, impeding them from judging whether I heed their practical authority.<sup>36</sup>

Now, this overstates the tension between nudging someone and accepting their agency-grounded authority, in part because we can surrender our agency-grounded authority with others so as to permit various forms of interpersonal influence, including nudges.<sup>37</sup> It may also turn out that, upon further reflection (as I tentatively suggest below), we realize that nudges often succeed in respecting our agency-grounded authority. But it remains that the authority-grounding view provides a better basis for understanding our original worries about whether nudges fail to treat people as rational (or self-governing).

The problem on this second horn of the dilemma is that the authority-grounding view does not support, and may undermine, Schmidt's Stronger Argument. This is because accepting someone's agency-grounded authority does not involve any general concern to preserve or enhance their rational (or self-governing) agency. That is, there is nothing about accepting someone's agency-grounded authority as a default constraint on one's decision-making about how to interact with them, and thereby taking them to have the standing to hold oneself accountable for respecting their agency-grounded authority, that requires caring about the general upkeep and enhancement of their agential capacities.

In fact, in light of the arguments above, it seems that such a concern is often overridden by accepting someone's agency-grounded authority. For, regardless of how nudges may bolster someone's agential capacities, perhaps by ecologically supporting these capacities, respecting the practical authority that is grounded in these capacities may still prohibit such nudging (provided, again, that this authority includes some default standing to determine how others are involved in one's life). So even though "nudging can play a significant role in helping people be procedurally rational"<sup>38</sup> (and, we can add, self-governing) the authority-grounding view does not support the general warrant for public policy nudging given by Schmidt's Stronger Argument.

5. At this point Schmidt will remind us of his transparency and control conditions on nudging.<sup>39</sup> The transparency condition requires that "a watchful person can infer nudge tokens in her environment from their general type without this being prohibitively difficult and costly."<sup>40</sup> The control condition specifies a kind of indirect, democratic control over nudges, tailored to Schmidt's focus on public policy nudging, but we can also imagine, as Schmidt does, translating such democratic control into less formal, more direct forms across different relational contexts.<sup>41</sup>

These are plausible conditions of morally appropriate nudging that would go a long way toward alleviating the initial worries about nudging (discussed above) generated by the authority-grounding view of treating people as rational. The problem is that Schmidt's defense of these conditions requires appealing to a moral concept that is supposed to be independent of the idea of treating people as rational.<sup>42</sup> For, since he takes treating people as rational to primarily involve enabling and enhancing their rational capacities, he does not think that treating people as rational requires that nudges be transparent and controlled, given that nudges need not be transparent and controlled in order to enable and enhance persons' rational capacities.<sup>43</sup> He thus appeals to a further moral notion – he uses an

unspecified idea of “liberal respect”<sup>44</sup> – to justify the transparency and control conditions on morally appropriate nudging.

This is a problem at two levels. First, focusing specifically on nudging, what we worry about when we object that nudges fail to treat us as rational is what should justify the transparency and control conditions, or whatever similar moral constraints apply to nudging. If we accept these (or similar) conditions, but we then try to defend nudging against the objection that nudges fail to treat us as rational without yet justifying these conditions, we seem to have missed the thrust of the objection. (This may be because, as I argued above, we have not adequately specified the idea of treating people as rational.) Now, Schmidt could reply that this thought rests on a failure to appreciate the ecological nature of rationality; only a tacit acceptance of heroic rationality leads to thinking that nudging someone in a way that treats them as rational must involve making the nudging transparent and controlled. I disagree. The intuitive idea that the imperative to treat people as rational is at least one of the main moral reasons why nudges should be transparent and controlled is compatible with thinking that rationality is ecological. Schmidt himself acknowledges this when he points out that ecological rationality can be enhanced by implementing transparency and control in nudging.<sup>45</sup> (The same goes for the idea that the imperative to treat people as self-governing requires transparent and controlled nudging, even if self-governance is an ecological property.)

Second, and more broadly, the ideas of liberal respect and treating people as rational are not as separable as Schmidt suggests. We cannot appeal to one to justify the transparency and control conditions, or to evaluate nudges more generally, without also appealing to the other. Consider first what it takes for an ideal of respect to support the transparency and control conditions on nudging. At a minimum, this ideal must entail that **(A)** putting individuals in a position to notice and exercise some control over how they are being influenced by others is more respectful than not doing so, all else equal. Assuming (as Schmidt seems to) that the relevant ideal of respect concerns a form of

recognition respect, not appraisal respect, it must also be true that claim (A) follows from a general claim about the form of recognition respect at stake – a claim about what it takes to accord appropriate significance to the fact that individuals have certain traits, capacities, or functions, rather than the fact that they do well along some measure of human excellence.<sup>46</sup> What traits, capacities, or functions could these be? Whatever they are, they must show how **(B)** we are set apart from non-human animals and young children, who do not warrant the special form(s) of respect designated by (A). While these beings certainly warrant other kinds of respect, the demand to be influenced in transparent and controlled ways is associated with the distinctive respect accorded to adult persons. It is difficult to imagine traits, capacities, or functions that satisfy claim (B) that do not centrally concern our rational (and self-governing) agency. If so, then whatever ideal of respect can support Schmidt’s transparency and control conditions will be (at least in part) an ideal of respect for rational agency, i.e., of appropriately responding to the value or reasons grounded in our rational agency. As I argued above, this ideal will be what informs our conception of treating people as rational. To treat people as rational in the relevant sense just is to appropriately respond to the value or reasons grounded in their rational agency. The relevant notion of liberal respect thus cannot be used to justify the transparency and control conditions without also informing our conception of treating people as rational. (I expect that something similar is true of treating people as self-governing.)

The upshot is this: Schmidt’s case in favor of nudging – at least as contained in his “Stronger Argument” – tacitly uses the value-grounding view to fill in the idea of treating people as rational. But, besides misunderstanding our worries about nudges failing to treat us as rational, this requires Schmidt to find a separate normative basis for his transparency and control conditions. He appeals to an ideal of liberal respect, and there are two problems with this appeal: we should not need a distinct normative basis (beyond treating people as rational) to justify the transparency and control conditions, and any

suitable ideal of respect will serve as a conception of treating people as rational, and so will not be able to function as a further, separable normative basis after all.

Specifying Schmidt's suppressed moral premise thus leaves some work left to be done, if he wishes to maintain his conclusion that nudges widely cohere with treating people as rational. One route he could go would be showing how, even on the authority-grounding view, nudges are widely appropriate (at least the public policy nudges that he has in mind). Perhaps Schmidt's appeal to ecological rationality could help here, to explain how the practical authority grounded in our agential capacities is more amenable to the influence of nudges than I suggested above. This might be true if our agency-grounded authority is diffused and thus shared across the social contexts that, on an ecological view, help shape our rational and self-governing capacities. If we share our capacity-grounded authority with the practices and institutions that help constitute our agential capacities, then there may be less tension than I have indicated between being nudged, especially by democratically-controlled institutions, and respect for our capacity-grounded authority.

Another option is to develop an alternative conception of treating people as rational that (i) does not boil down to either the value-grounding or authority-grounding views, (ii) makes sense of the worry that nudges do not treat us as rational, (iii) supports Schmidt's Stronger Argument (which requires that treating people as rational generally involves enabling and enhancing their rational capacities), and (iv) justifies his transparency and control conditions. Perhaps such an account of treating people as rational is in the offing. But for now, even if we concede that Schmidt has shown how many nudges enable and enhance our ecologically rational capacities, we should remain cautious about accepting the conclusion that those nudges thereby treat us as rational.

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\*Many thanks to RJ Leland and two Associate Editors of this journal for their helpful and probing comments.

<sup>1</sup> By “improve,” I mean (and will assume throughout) that nudges are aimed at the nudged agent’s interests and/or ends.

<sup>2</sup> Andreas Schmidt, “Getting Real on Rationality – Behavioral Science, Nudging, and Public Policy,” *Ethics* 129 (2019): 511-543.

<sup>3</sup> *Ibid.*, 516.

<sup>4</sup> He focuses on public policy nudges, which can be democratically controlled and counterbalance private nudges – see *ibid.*, 531.

<sup>5</sup> Jennifer Morton, “Toward an Ecological Theory of the Norms of Practical Deliberation,” *European Journal of Philosophy* 19 (2011): 561-584.

<sup>6</sup> Schmidt, “Getting Real on Rationality,” 520-1.

<sup>7</sup> *Ibid.*, 518-19.

<sup>8</sup> *Ibid.*, 516 (n. 13).

<sup>9</sup> This model coheres with, but does not require, a “relational” theory of autonomy (see, e.g., Catriona Mackenzie and Natalie Stoljar, “Introduction,” in *Relation Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self*, ed. Catriona Mackenzie and Natalie Stoljar (Oxford: Oxford University Press, 2008), 7-8, 21-1), on which autonomy consists in part in not being subject to certain forms of interpersonal power.

<sup>10</sup> See, e.g., Kantian constitutivists such as Christine Korsgaard, *The Sources of Normativity* (New York: Cambridge University Press, 1996) and *Self-Constitution: Agency, Identity, and Integrity* (Oxford: Oxford University Press, 2008), non-Kantian constitutivists such as David Copp, “The Normativity of Self-Grounded Reason,” *Social Philosophy and Policy* 22 (2005): 165-203, and non-Kantian non-constitutivists such as Michael Bratman, “Rational Planning Agency,” *Royal Institute of Philosophy Supplement* 80 (2017): 25-48 and “Intention, Practical Rationality, and Self-Governance,” *Ethics* 119 (2009): 411-43.

<sup>11</sup> See Manuel Vargas, “The Social Constitution of Agency and Responsibility: Oppression, Politics, and Moral Ecology,” in *The Social Dimensions of Responsibility*, ed. Marina Oshana, Katrina Hutchinson, and Catriona Mackenzie (Oxford: Oxford University Press, 2018).

<sup>12</sup> See Manuel Vargas, *Building Better Beings: A Theory of Moral Responsibility* (Oxford: Oxford University Press, 2013), 226-7.

<sup>13</sup> His Weaker Argument does not require him to do so; there, he can simply rely on the necessary conditions of treating-as-rational implied by the objections to nudging to which he is responding. But his Stronger Argument makes claims about how nudges succeed in treating us as rational, which requires laying out sufficient conditions for treating-as-rational.

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<sup>14</sup> Schmidt, "Getting Real on Rationality," 516.

<sup>15</sup> *Ibid.*, 532.

<sup>16</sup> See Sarah Buss, "Valuing Autonomy and Respecting Persons: Manipulation, Seduction, and the Basis of Moral Constraints," *Ethics* 115 (2005): 195-235, 200ff.

<sup>17</sup> You might narrow the scope of the decisions and behaviors in question to those taking place in the environments in which the nudges in question are being implemented since, in these environments, we can safely assume that persons will generally decide and behave rationally. If so, then Schmidt's claim is simply that nudges treat us as rational only insofar as we are under the influence of nudges. But it seems clear that, when we worry that nudges fail to treat us as rational, this is a failure to acknowledge something broader about us, which extends beyond narrow nudging environments.

<sup>18</sup> Is this a wider objection to Schmidt's view, which applies even if we understand Schmidt as working with a capacity-focused, not performative, conception of treating-as-rational? For even on the capacity-focused reading of Schmidt's view, nudges treat us as rational by helping us to be more rational. But the capacity-focused reading does not carry the primary odd result highlighted here, which is that we cannot move closer to treating people, who we know often decide and behave irrationally, as rational unless we increase the likelihood of their rational choice and behavior.

<sup>19</sup> What about an alternative performative conception of treating-as-rational, on which we treat someone as rational just when we act with the expectation that they will exercise their rational capacities in response to what we do? On this conception, which does not carry the odd implication I just discussed, the rationality objection to nudging is that nudging someone does not rule out expecting that they will exercise their rational capacities (and perhaps expects that they won't). Schmidt's arguments can be plausibly understood as replying to this version of the objection. But there are two problems: first, this version of the performative conception renders the rationality objection to nudging a strawman. (This is an issue to which I return below, in discussing the first horn of the dilemma that I pose for Schmidt.) It is not clear how we could seriously think – even on a heroic view of rationality – that nudges expect us not to use our rational capacities. Nudging is entirely compatible with thinking that people are likely to use their heroically rational capacities, because the aim of nudging is not defeated when people make a rational decision using careful, reflective calculation, independent of the nudges and other ecological influences to which they are subject. Second, as before, we want to avoid a conception of treating-as-rational that allows lying and paradigmatic forms of manipulation to count as ways of treating people as rational, and we often lie and manipulate with the expectation that others will exercise their rational capacities in response.

<sup>20</sup> It is worth noting that having rational (or self-governing) capacities comes in degrees and so being rational in the capacity-focused sense consists in having the capacities to a sufficient degree (or above a minimum threshold).

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<sup>21</sup> Schmidt, “Getting Real on Rationality,” 516 (n. 14).

<sup>22</sup> Jeremy Waldron, *Dignity, Rank, and Rights: The Berkeley Tanner Lectures* (Oxford: Oxford University Press, 2012), 23-7.

<sup>23</sup> Christine Korsgaard, “Valuing Our Humanity,” in *Respect for Persons*, ed. Oliver Sensen and Richard Dean (forthcoming).

Accessed at: <http://ibdh.org.br/wp-content/uploads/2016/02/THE-PRINCIPLE-OF-HUMANITY-AND-THE-SAFEGUARD-OF-THE-HUMAN-PERSON.pdf#page=40>.

<sup>24</sup> What if Schmidt surrenders the Stronger Argument and retreats to the Weaker Argument? He would then lose his case for thinking that nudging is often a way of treating people as rational and have to settle for the claim that nudging does not generally treat people as irrational. I also am not convinced that his Weaker Argument is safe from the dilemma I lay out below. Even if Schmidt opts for what I call the “authority-grounding” conception of treating people as rational, it may still turn out that nudges generally treat us as irrational, for reasons I summarize below.

<sup>25</sup> Joseph Raz, “Respecting People,” in *Value, Respect, and Attachment* (Oxford: Oxford University Press, 2001), 160-2.

<sup>26</sup> See especially Raz, “Respecting People.” See also J. David Velleman, “Beyond Price,” *Ethics* 118 (2008): 191-212, esp. 196-207; Carl Cranor, “Toward a Theory of Respect for Persons,” *American Philosophical Quarterly* 12 (1975): 309-319; Onora O’Neill, “Universal Laws and Ends-in-Themselves,” in *Constructions of Reasons: Explorations of Kant’s Practical Philosophy* (New York: Cambridge University Press, 1989), 138-40; Robin Dillon, “Respect and Care: Toward Moral Integration,” *Canadian Journal of Philosophy* 22 (1992): 105-132; Thomas E. Hill, Jr., *Virtue, Rules, and Justice: Kantian Aspirations* (Oxford: Oxford University Press, 2012), *Respect for Humanity* (Tanner Lectures on Human Values [accessed at: [tannerlectures.utah.edu](http://tannerlectures.utah.edu)], 1997), and *Dignity and Practical Reason in Kant’s Moral Theory* (Ithaca: Cornell University Press, 1992); Sarah Conly, *Against Autonomy: Justifying Coercive Paternalism* (Cambridge: Cambridge University Press, 2013), and for the related, but non-standard, view that our agential capacities ground *instrumental* value, Sarah Buss, “The Value of Humanity,” *The Journal of Philosophy*, 109 (2012): 341-377. Several philosophers are agnostic or ambivalent about the choice between a value-grounding and authority-grounding view, including John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Belknap Press, 1999), Sec. 77; Robert Noggle, “Kantian Respect and Particular Persons,” *Canadian Journal of Philosophy* 29 (1999): 449-477; David Sussman, “The Authority of Humanity,” *Ethics* 113 (2003): 350-366; Ian Carter, “Respect and the Basis of Equality,” *Ethics* 121 (2011): 538-571.

<sup>27</sup> Schmidt, “Getting Real on Rationality,” 528.

<sup>28</sup> But couldn’t the value-grounding view favor enabling the exercise, and not just the preservation, of agential capacities? Perhaps, but it is unclear why nudging would be (or even appear) inconsistent with such treatment, for reasons I give in the next paragraph. And given the choice between preserving and allowing the exercise of someone’s agency – as when

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we have good reason to think that someone is going to make a choice that undermines their own agency, the sort of choice from which we might nudge them away – the value-grounding view should favor preservation, given that the intrinsic value being appreciated is grounded in the capacities themselves, not their exercise.

<sup>29</sup> Schmidt, “Getting Real on Rationality,” 519-20.

<sup>30</sup> Here you might raise some version of what Schmidt calls the “Undermining Worry” as a way for the value-grounding view to make sense of some of our original worries about nudging and rational agency: even if nudges do not pose any *prima facie* threat to our capacities for rational agency, depending too much on a system of nudges will cause these capacities to atrophy – see Schmidt, “Getting Real on Rationality,” 536-7. That may be right, but this Undermining Worry seems to change the subject from the focus of our original worries about nudging and rationality. What we have in mind in worrying about whether nudges treat us as rational is not whether dependence upon a vast system of nudges will weaken our rational capacities, at least not directly. Rather, our worries concern our status as rational agents, which nudges seem to directly disrespect or violate.

<sup>31</sup> Stephen Darwall, *The Second Person Standpoint: Morality, Respect, and Accountability* (Cambridge, MA: Harvard University Press, 2006), and Korsgaard, “Valuing Our Humanity.”

<sup>32</sup> Darwall, *Second Person Standpoint*, ch. 1-2.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, 15-20.

<sup>35</sup> *Ibid.*, ch. 4.

<sup>36</sup> This is true of many nudges, anyways. There is some debate about whether and when the efficacy of nudges depends on subjects not being aware of the influence of those nudges while they are being nudged. Schmidt thinks that worries about nudges becoming less effective when they are transparent are exaggerated and/or unfounded – see Andreas Schmidt, “The Power to Nudge,” *American Political Science Review* 111 (2017): 404-417, 408-9. Even so, it remains that nudges are standardly designed to elude the reflective control of subjects at least while the nudges are impacting their decision-making, which matters on the authority-grounding view for the reasons just given.

<sup>37</sup> Grant J. Rozeboom, “How to Evaluate Managerial Nudges,” unpublished manuscript.

<sup>38</sup> Schmidt, “Getting Real on Rationality,” 528.

<sup>39</sup> *Ibid.*, 532-5.

<sup>40</sup> *Ibid.*, 534. For further discussion, see Schmidt, “Power to Nudge,” 410.

<sup>41</sup> Schmidt, “Getting Real on Rationality,” 534.

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<sup>42</sup> Ibid., 532-3.

<sup>43</sup> But transparency and control may “further improve conditions for rational agency,” as I mention below. See *ibid.*, 534.

<sup>44</sup> Ibid., 533.

<sup>45</sup> Ibid., 534.

<sup>46</sup> Stephen Darwall, “Two Kinds of Respect,” *Ethics* 88 (1977): 36-49, and *Second Person Standpoint*, 122-3.