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CASS SUNSTEIN STOPS NUDGING FROM THE WHITE HOUSE

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The White House yesterday announced the departure of Cass Sunstein, Administrator of the White House Office of Information and Regulatory Affairs, and one of the closest and most influential advisers of President Obama. The news came unexpected to the many, not to the few.



Sunstein will [return](#) to his position as the Felix Frankfurter professor of law at Harvard Law School where he will direct the new Program on Behavioral Economics and Public Policy (his previous [Program on Risk Regulation](#) never really took off due to his departure to the White House).

For the last three-and-a-half years he has reviewed regulation for the US President on everything from financial reform to healthy eating. But most importantly he has put in place, through a series of [executive orders](#) that we discussed [here](#), a durable system of review that provides equal attention to cutting bad rules and creating protections where needed.

Yet a quick look at the [numerous sources](#) who have commented upon Sunstein's departure illustrates how disputed Sunstein's role has been at the White House.

At first, his skepticism toward regulations won him endorsements from conservatives like [The Wall Street Journal's editorial board](#), which called his nomination a "savvy choice" and labeled him an important "voice in the incoming administration," as well as from libertarian/conservative bloggers [Glenn Reynolds](#) and [Ed Morrissey](#). At the time of his

appointment, [Glenn Beck's campaign against Sunstein](#) was always that the celebrity legal scholar, married to [academic-turned-special assistant to Obama Samantha Power](#), was originally [a target of the left](#), who saw his appointment as an "olive branch from an incoming Democratic president to conservatives and libertarians." Beck's objections gained so much traction in collective imagination that paved the way to the emergence of a Web site called [Stop Sunstein](#).

Although it might be too early to determine Sunstein's legacy as OIRA Administrator, the media and the blogosphere are ready to judge Obama's first (and perhaps the only one) regulatory tsar.

According to the most cynical observers, Sunstein epitomizes the central contradiction of the Obama's administration, that of embracing policies that disappoint its friends without disarming its enemies.

Indeed, the only undisputed fact about Sunstein's legacy seems to be that he leaves behind a record criticized by both political opponents and White House allies.

While environmental and safety advocates claim that Sunstein was overly deferential to business interests and little effective in strengthening consumer protections, business groups denounce that the Obama administration increased the regulatory burden on businesses.

Among the pro-regulators, [Rena Steinzor](#), the president of the Center for Progressive Reform, said that "Cass Sunstein was the best-qualified, best-connected administrator OIRA ever had and he was enormously destructive of health and safety agencies". The postponement of a plan to cut ozone emissions until 2013 and of the mandatory rear-view cameras on cars are offered as examples of OIRA's failure to deliver strong regulation.

The [White House Office of Management and Budget](#) director Jeffrey Zients [credited him](#) with helping design "numerous rules that are, among other things, saving lives on the highways by making vehicles safer and reducing distracted driving; dramatically increasing the fuel economy of the nation's cars and trucks; protecting public health by reducing air pollution; making our food supply safer; and protecting against discrimination on the basis of disability and sexual orientation."

Yet, perhaps it is his apolitical, technocratic and legal pragmatist touch that renders him such a unique, yet controversial figure, especially in the highly polarised US political spectrum. Scholars who study Obama say that Sunstein had a major influence on Obama's view of government — stressing pragmatism over ideology. In my view, Obama's record is a first step towards the implementation of the pragmatic view expounded by [Richard Revesz](#) and [Michael Livermore](#) in '[Retaking Rationality](#)', their seminal book exploring the future of regulatory policy in health, safety and the environment.

Indeed, if one take a strict cost-benefit perspective (possibly the humanized version Cass Sunstein shared with the readers of the [European Journal of Risk Regulation](#)), the data are on his side: "The net benefits of regulations ... exceeded \$91 billion — 25 times the corresponding number in the Bush administration and more than eight times the corresponding number in the Clinton administration". This record *per se* does not mean that pro-regulators have lost and conservatives have won or viceversa. Rather this picture presents a more nuanced, by far less familiar, scenario in which the merits of the single rules have been scrutinized under the most rigorous and advanced experimentalist approach. As a result, the ensuing oversight left behind the non-meritorious rules and advanced those welfare-enhancing.

The President [commented upon](#) the departure by stating that "for the last three and a half year, Cass Sunstein, has helped drive a series of historic accomplishments on behalf of the American People...from putting in place lifesaving protections for American's families, to eliminating tens of millions of hours of paperwork burdens for our nation's citizen and businessess. Cass has shown that it is possible to support economic growth without sacrificing health, safety and the environment".

Beyond the circumstantial rethoric, I believe that Sunstein's empirically-informed regulatory approach, although inherently experimentalist, will exercise a tremendous, long-lasting and bipartisan influence on how regulations will be adopted by federal agencies in the future. I also predict that Cass Sunstein's legacy will go beyond the US and spread across jurisdictions willing to go towards smarter, behaviorally-informed

regulation.

The United States boasts worse exports than Sunstein's ideas.