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Peer Review

Review of: "Reframing Housing Policy through Behavioral Public Law: Nudges, Ethics, and Regulatory Design"

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This paper engages with an important, complex problem – the inability of current housing policy to effectively provide affordable and sustainable housing in many jurisdictions. It aims to contribute to advancing behavioural public law as a robust methodology for addressing complex housing challenges by attempting to offer a structured analytical framework and highlighting the promises and limitations of behavioural interventions in this challenging area.

After (briefly) noting some of the criticisms of nudge in public policy and administration, it explores the potential of nudging strategies to influence housing-related decisions with a critical review of literature and case studies, proposing five key dimensions for integrating behavioural insights into housing policy.

The distinctions and framing of Behavioural Law and Economics as a broader perspective on Behavioural Public Law, of which nudging and choice architecture are further subcategories, is sensible and useful. However, it is not clear to me, especially given the acknowledged need for interdisciplinary responses to complex policy problems, why law and economics are highlighted above other disciplinary contributions to policy engaging with behaviours and practices (see for example this special issue). I'm sceptical that it is useful to do so, especially given that a range of criticisms, and some of the proposed solutions, of applying behavioural insights in policy emerge from wider disciplines and contributions (i.e., sociology and anthropology, public health, design, systems thinking and methods, quantitative system modelling for policy, to name some key ones).

While I agree that the identified criticisms are important and relevant (i.e., limited structural impact and context dependencies, ethics/legitimacy, lack of replicability/durability/scalability, inadequacy to address structural determinants, and the need to integrate with other policy tools), perhaps a wider analysis would recognise the problematic role of 'individualising' problems in directing scarce policy attention

and implementation resources away from powerful actors (i.e., developers, landlords, land bankers) and towards the least powerful actors (home buyers and renters) - although, to their credit, literature on landlord/renter incentive mismatches is discussed. Secondly, a more holistic and transdisciplinary lens on behavioural public policy might also turn the analytical lens back on government policy and regulatory practitioners – what behavioural and decision biases might lead them to select relatively light, fast, and unobtrusive nudges over the hard, fraught, and sustained job of policy reform? How do their organisational, governance, and political contexts make this the path of least resistance? How could we instead ensure traditional tools are improved – made more targeted, impactful, and better evaluated – by behavioural science contributions (including, but not limited to, nudges)? Thirdly, taking into account the 'wicked nature' of these policy problems, systems-informed methods would better account for interdependencies, preconditions, and unintended consequences linking behaviours, actors, and influences. Such qualitative system dynamics methods, and quantitative modelling such as Agent-Based Modelling and game theory, are seeing increasing engagement in behavioural public policy design.

Focusing only on nudges, and not on how behavioural public law/policy – i.e. behavioural science–informed policy design and implementation – can improve current policy arguably reinforces this problematic 'blind spot'. An increasing number of useful and interesting perspectives articulate how behavioural science can enrich and inform traditional policy intervention mixes, extending well beyond the narrow 'nudge' framing and toolkit. See, for example, the recent EU Commission's Joint Competency Centre report on behavioural public policy, Michie & West's Behaviour Change Wheel and Transtheoretical Domains Framework. On a tactical level, mapping and understanding the tasks involved in, for example, energy retrofitting, can provide important insights into household needs, and how they are enabled and constrained by the actions and inactions of policymakers, builders, energy companies, suppliers, and more (see this example of in depth journey mapping of energy upgrades in Australian homes). Such methods come from marketing, design, and user experience testing for software development, but can do a lot to correct implementation failures of economically and legally framed policy interventions.

That stated, engaging with these dynamics and relevant literature is a relatively small addition and would strengthen an already good and interesting paper. Many of the issues and interventions discussed in terms of affordability, equity, and environmental sustainability would make more sense from the perspective of interdisciplinary behavioural public policy as opposed to economics and law alone.

Some specific recommended improvements include:

1. Situating Beyond Law and Economics

Recommendation: Briefly acknowledge wider contributions in the conceptual foundations (Section 2), perhaps with a sentence or two and a couple of references (e.g., Michie & West's Behaviour Change Wheel; EU JRC report on behavioural public policy). This broadens the scope without diluting the legal focus.

2. Avoiding the "Individualisation Trap"

Recommendation: Add a paragraph in the Conclusions highlighting this risk and pointing to literature on power imbalances in housing policy. This would align with the paper's stated concern for equity and legitimacy. I.e., re: The review of criticisms notes ethical concerns and limited structural impact, but it does not fully engage with the critique that behavioural tools and analyses in policy can inadvertently shift responsibility from powerful actors (developers, landlords, land bankers) onto individuals (tenants, homebuyers). For example, if the uptake of prefabricated homes is slow in some countries, is that a problem for homeowners' adoption, or the banks that won't offer building loans for pre-fabricated properties that can't be 'reclaimed' onsite if the builder's business fails?

3. Turning the Lens on Policymakers and Program Designers

Recommendation: A short discussion in Section 4 (Legal and Ethical Considerations) would strengthen the reflexivity of the analysis. I.e., the role of policymakers' own cognitive and organizational biases in favouring nudges. Why do officials prefer "light-touch" behavioural tools over systemic reforms? How do institutional incentives and political pressures shape this preference? See, for example, some interesting reflection and research from the World Bank on their own behavioural biases and decision-making in international aid.

4. Addressing Complexity and Interdependencies

Recommendation: Add 1–2 sentences in Section 3 (Behavioural Strategies in Public Housing Policy) pointing to systems and design-oriented methods as natural complements to nudging. I.e., housing is a "wicked problem," with interdependent drivers and unintended consequences. The current framework (Table 1) is strong, but the analysis could note that systems-informed methods (e.g., system dynamics, agent-based modeling, journey mapping of retrofit decisions) can complement nudges to better capture real-world complexity.

5. Concrete Application of Framework

Recommendation: Add a short worked example showing how the framework diagnoses strengths and weaknesses of one intervention. This would improve usability for policymakers and provide a worked

opportunity to respond to the above issues and considerations.

Declarations

Potential competing interests: No potential competing interests to declare.