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Peer Review

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

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In the article "Reframing Housing Policy through Behavioral Public Law: Nudges, Ethics, and Regulatory Design," the author discusses how nudging can be used in the field of (sustainable) housing policies and embeds the concept of nudging theoretically in the framework of behavioral law and economics as well as behavioral public law. Overall, the article offers a very well-rounded discussion of the possibilities and ethical concerns of nudging in the housing context. It reads very fluently and coherently. However, I find that some aspects could be improved. I have also included an annotated version of the article.

1) First, I find that the beginning of the article is not sufficiently supported by sources or references. I have marked a few places where I think the specific statements need to be substantiated with appropriate references.

2) For an article with a single author, I suggest using the first-person singular ("I") rather than "we."

3) I would recommend italicizing new technical terms for readers.

4) I think that the concept of nudging could perhaps be explained in the definition section using classic examples. This would help laypeople in particular to understand the concept better.

5) From 2.4 and Section 3 onwards, my biggest criticism is that the discussion of nudging and other instruments becomes confused and is not properly separated. Strictly speaking, instruments and measures that change the financial incentive structure of behavioral options and decisions are not considered "nudges." However, the author describes some examples (as nudges) where this is the case. These should definitely be replaced with more appropriate examples, or a separate category of "incentives" should be created complementary to the discussion of nudges. I feel that the concepts are not yet sufficiently separated in the paper.

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To give an example:

p. 8 ff: The author describes several housing policies aimed at improving sustainable housing. However, some of the examples provided do not really fit into the category of nudges but read as if they were mentioned as examples of nudges. E.g., “inclusionary housing policies requiring the allocation of a percentage of new developments to affordable housing can significantly alter the economics of housing projects. (...) “can be considered additional development costs (...)” Strictly taken, according to Thaler and Sunstein, such measures that change the economic structure/incentives of choices are not considered nudges.

I would therefore suggest that all provided examples where this might be the case are carefully checked, and in case they are referring to measures where the economic structure of choices is addressed, these examples should be removed from the paper and other examples with more classical nudges should be chosen instead.

Definitions / conceptual groundwork

1. **Thaler & Sunstein (2003), “Libertarian Paternalism,” AER P&P.** Introduces the framework that later underpins *nudge*: steer choices while preserving freedom of choice (no bans, no incentive changes).
2. **Thaler & Sunstein (2021), *Nudge: The Final Edition* (Yale).** Canonical definition: a nudge “alters people’s behavior... **without forbidding any options or significantly changing their economic incentives**; ...not taxes, fines, subsidies, bans, or mandates.” (short quote).
3. **Sunstein (2014), “Nudging: A Very Short Guide.”** Concise scholarly overview reiterating that nudges work via choice architecture rather than incentives/mandates.
4. **Beshears, Choi, Laibson & Madrian (2020), “Nudging: Progress to date and future directions.”**Surveys the literature and quotes the standard definition (“...without... significantly changing their economic incentives”).
5. **Hansen (2016), “The Definition of Nudge and Libertarian Paternalism.”** Sharpens the definition and explicitly contrasts nudges with incentive-based tools.
6. **Camerer et al. (2003), “Regulation for Conservatives: Behavioral Economics and the Case for ‘Asymmetric Paternalism’.”** Normative case for low-cost, non-incentive policies that help the error-prone while imposing minimal burdens on others—closely aligned with nudges.

Sources:

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1. Thaler, R. H., & Sunstein, C. R. (2003). Libertarian paternalism. *American Economic Review, 93*(2), 175–179. https://doi.org/10.1257/000282803321947001
2. Thaler, R. H., & Sunstein, C. R. (2021). *Nudge: The final edition*. Yale University Press.
3. Sunstein, C. R. (2014). Nudging: A very short guide. *Journal of Consumer Policy, 37*(4), 583–588. https://doi.org/10.1007/s10603-014-9273-1
4. Beshears, J., Choi, J. J., Laibson, D., & Madrian, B. C. (2020). Nudging: Progress to date and future directions. *American Economic Review: Papers & Proceedings, 110*, 72–76. https://doi.org/10.1257/pandp.20201039
5. Hansen, P. G. (2016). The definition of nudge and libertarian paternalism: Does the hand fit the glove? *European Journal of Risk Regulation,* 7(1), 155–174. https://doi.org/10.1017/S1867299X00005468
6. Camerer, C., Issacharoff, S., Loewenstein, G., O'Donoghue, T., & Rabin, M. (2003). Regulation for conservatives: Behavioral economics and the case for "asymmetric paternalism." *University of Pennsylvania Law Review, 151*(3), 1211–1254. https://doi.org/10.2307/3312889

6) I think the discussion could perhaps focus a little more on the contradiction that nudging should actually allow "freedom of choice," but at the same time, nudges are sometimes so subtle that this freedom of choice is questionable. Another more profound point of criticism is the question of the longevity of such effects, which is also addressed in part by the author. And yet another aspect is the question of mass impact. Here, one could perhaps draw a comparison that more binding measures (regulation) have the greatest effects (e.g., in reducing inequalities), but at the same time, compliance by powerful groups may then be lower than with "soft nudges." That would be a discussion of the dimensions of effectiveness vs. compliance.

If these points are addressed, I think the quality of the manuscript will be significantly improved.

Attachments: available at https://doi.org/10.32388/GXYTUS

Declarations

Potential competing interests: No potential competing interests to declare.