

Peer Review

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

Mario Herberz¹

1. Department of Psychologie and Swiss Center for Affective Sciences, University of Geneva, Switzerland

I read the manuscript "Reframing Housing Policy through Behavioral Public Law: Nudges, Ethics, and Regulatory Design" with great interest, and I want to congratulate the author on this nice piece of work that, in my view, constitutes a valuable contribution to research at the intersection of the behavioural and legal sciences, as well as a useful tool for researchers and policymakers in the housing sector. My comments and suggestions are mainly asking for the clarification of certain concepts and for some elaboration of examples cited in the paper. Please find my comments detailed below.

Minor comments:

- P.4 To me, the difference between Nudging and choice architecture (e.g., as illustrated in Figure 1) is not clear, and as a scholar mostly interested in behavioral interventions of all kinds, I think the terms are largely redundant and shouldn't be organized hierarchically. Since you don't give a clear distinction anywhere in the paper, I would suggest simply omitting "choice architecture" from the figure.
- P.5 "steer individuals towards better outcomes" - You're somewhat touching upon what may be meant by "better" in the ethical considerations section, but maybe this could be made slightly more explicit with regard to the trade-offs you are already mentioning (i.e., better for the individual, the environment, etc.).
- P.5 I'm not entirely convinced by the categorization of nudges into ex ante and ex post. For example, I would argue that reminders are not necessarily used *after* the behaviour is shown. I think a better classification is the one proposed by Muenscher et al. (2016) and used to classify the whole literature on choice architecture by Mertens et al. (2022) (i.e., nudges providing decision assistance, decision information, or changing the decision structure)
- P. 6 "structural systems" or P.7 "systemic level" - it is unclear to me how interventions on this level

would look, maybe you could elaborate a bit more? For example, “Community norms to encourage recycling in housing complexes” still target individuals or families, right? On the other hand, I would see a useful distinction between levels of intervention between individuals and policymakers (who are also biased as you write on P.8) or service providers/landlords (bottom of P. 11)?

- P.6 Could you make the distinction between contextual conditions and legal and ethical requirements a bit sharper? To me, there is still quite some overlap at the moment.

- p. 7 “in this case referring to criminal law” – it’s unclear to me what you refer to here.

- p.8 I find it interesting that the author states “The effects of these interventions are not usually immediate” – in my conceptual understanding of choice architecture, it is mainly designed to produce short- to medium-term effects, while the empirical evidence about long-term effects remains quite mixed.

- p.8 I really like that the author raises the point of continuous impact evaluation of nudging interventions. I think it would be great to give a bit more detail on the different options that could be implemented to achieve this in the housing sector. In my experience (in Europe), it can be quite difficult to set up randomized controlled trials to evaluate effectiveness. What other approaches could be leveraged to achieve this goal?

- P. 9 references 31-34: the summaries of these findings stay on a really abstract level and are quite difficult to understand, even for the informed reader. I think it could help to give a bit more detail on the papers, like what type of behavioural intervention was used and how they may address availability issues without causing unwanted price increases. How they may improve housing affordability while protecting the public interest (also: what does “public interest” mean here?). To which social or economic segments should financial incentives be tailored and why?

- P. 10 Can you give more detail on what you mean by “By studying the split incentive paradox in a comparative behavioural context”?

- P. 10 You write “These strategies also use nudges to improve residents’ environmental and living conditions by addressing structural deficiencies” – could you give more details on the structural deficiencies that are meant here?

- Table 2 gives a very informative and well-selected overview of existing research in this field!

- Bottom of p. 15: Another example that underlines that some nudges are already regulated by law (at least in Europe) are defaults in online environments, like, for example, the pre-selection of a range of services when buying an airplane ticket (e.g., Ryanair; now prohibited by law) and the pre-selection of accepting cookies on websites.

- P. 16 “existing design standards for public spaces may limit the application of nudges, even when behavioural theories suggest that they would be effective.” Can you develop this a bit more? Or give an example?

- P. 18 It is unclear to me how the examples “such as hostile urbanism[61], as well as promote the balanced use of public space[62]” fit with the preceding statement.

References:

Münscher, R., Vetter, M., & Scheuerle, T. (2016). A Review and Taxonomy of Choice Architecture Techniques. *Journal of Behavioral Decision Making*, 29(5), 511–524. <https://doi.org/10.1002/bdm.1897>

Mertens, S., Herberz, M., Hahnel, U. J. J., & Brosch, T. (2022). The effectiveness of nudging: A meta-analysis of choice architecture interventions across behavioral domains. *Proceedings of the National Academy of Sciences*, 119(1), e2107346118. <https://doi.org/10.1073/pnas.2107346118>

Declarations

Potential competing interests: No potential competing interests to declare.