

# Various Nudging Models and the Freedom of Choice

*Dr. jur. Karampatzos Antonios, Associate Professor*

*Law Faculty, National and Kapodistrian University of Athens*

Address: 47, Akadimias str., 10672 Athens (GR), Law Faculty, National and Kapodistrian University of Athens / Email: [akarampat@law.uoa.gr](mailto:akarampat@law.uoa.gr)

Panel title: Nudging 2.0: Reconsidering the place of autonomy in welfare-promoting public policy.

Organiser: Dr. Alexios Arvanitis

## Abstract

Efficient welfare-promoting public policies are a desideratum for many legal systems and policy advisors. The latter, however, while designing such policies, usually face the reproach of paternalistic intervention which may deprive individuals of their personal autonomy. There are, indeed, some public policies that give short shrift to freedom of choice by resorting to manipulative regulatory tools. This may be the case, for instance, with the so-called “nudges”, as introduced by *Cass Sunstein* and *Richard Thaler*. These are mainly based on welfare-promoting *default options*, which usually fly below the radar screen of the “protected” individuals and thus seek to silently change their preferences. People do not opt out from such default options mainly due to ignorance of the pre-regulated scheme or to inertia. Sometimes such policies aim at protecting the individual in the sphere of which they intervene; this is regularly the case with the law on consumer protection and the various rights granted to consumers (e.g., withdrawal rights after a reasonable period for sober reflection). In other instances, such public policies purport to promote the general interest by interfering with one person’s choices: this is the case especially with organ donation when the government acts in the way suggested by *Sunstein* and *Thaler*, that is, by turning all citizens to organ donors *by default* – unless they wish to opt-out. Such a legislative intervention may cause a drastic increase in the numbers of organ donors but it seems to disregard people’s freedom of choice and personal autonomy and may easily be accused of manipulation. On the other hand, opt-in schemes do not produce welfare-promoting results in such instances, since people do not easily choose to opt-in by themselves (e.g., to become organ donors on their own motion). The author of the paper supports, in fact, a third path lying in-between the opt-out (default option) and opt-in models, namely the *forced-choice model*, according to which the person is, in some instances, *required* to make a choice

between two options: e.g., the citizen cannot conclude the online submission of their tax declaration without ticking a box on whether they want to become organ donors or not and before being informed of the social benefits of organ donation via hyperlink. Within this framework, I further explore the basic preconditions under which a default option might be a legitimate instrument of public policy (i.e., primarily, transparency and easy reversibility of the default option). In the same vein, I also examine *information nudges* which preclude measures of strict paternalism and preserve freedom of choice: so, when Ulysses is ready to come across a dangerous old bridge, which may at any time collapse, in order to meet his beloved Penelope, soft paternalism may tip his shoulder and draw his attention to the danger lying in front of him (*informative nudging*); now it is up to him to decide whether he will take the risk or not. Such an informative interference is in line with the liberal tradition of *Kant* and *Mill*, which the author wishes to endorse.

*Keywords:* nudges; personal autonomy, manipulation; consumer protection, organ donation; default options, opt-out, opt-in, forced-choice.