Les politiques de sécurité dans l'espace public : les enjeux d'un urbanisme comportemental incitatif

La fabrique de l'innovation publique - Les audits et les évaluations de politiques publiques à l'ère des sciences comportementales

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Plan

A. Le nudge: un environnement comportemental incitateur

B. L’architecture et le design : source d’inspiration des nudges

C. Le nudge: coup de pouce ou coup de pied?

D. Le coup de cloche du droit

A. Le nudge: un environnement comportemental incitateur

L'environnement comportemental incitateur : une pièce de l'urbanisme comportemental

- Recourir à un **nudge** équivaut à
  - donner le pouvoir à un **architecte du comportement des citoyens** (*choice architect*)
  - de créer un **environnement comportemental** (*choice architecture*)
  - de caractère **incitateur** offrant
    - un **contexte propice** à l'adoption d'un **comportement déterminé**
    - **sans contrainte** apparente

      - THALER, RICHARD H./SUNSTEIN, CASS R./BALZ, JOHN P., "Choice architecture", *The Behavioral Foundations of Public Policy*, 2013

- L'urbanisme comme science comportementale

BEHAVIORAL ARCHITECTURE:

Design as if People Mattered

CLOVIS HEIMSATH
Clovis Heimsath Associates

Cornell Hospitality Quarterly, 1978

***Clovis Heimsath** received the*

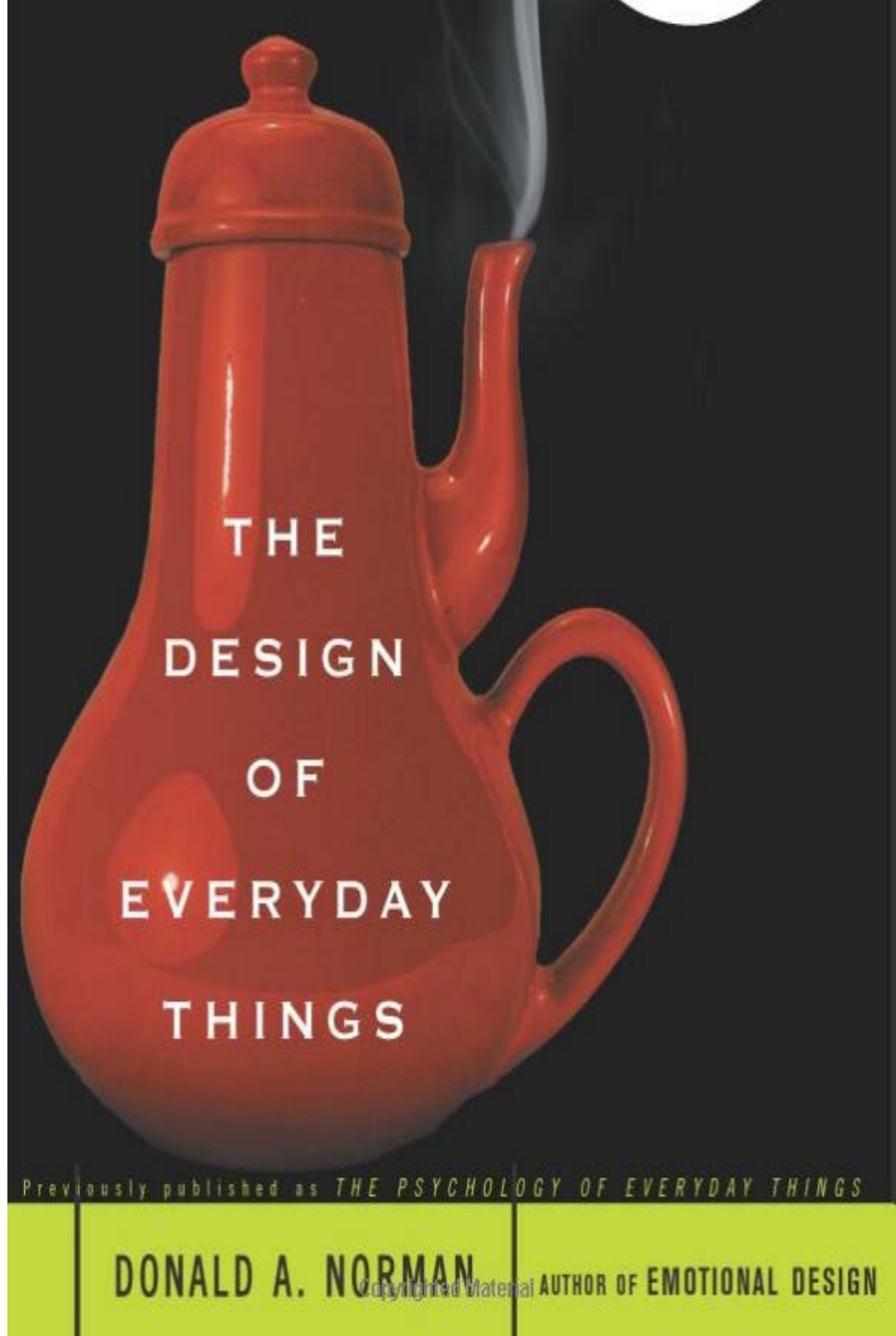
What is Behavioral Architecture?

Behavioral architecture requires sophisticated insights that did not come from architects; they came from a new breed of behavioral psychologists who

B. L’architecture et le design : source d’inspiration des nudges

- « The goal of this essay is to develop the same idea for people who create the environments in which we make decisions: **choice architects**. If you indirectly influence the choice other people make, you have earned the title »
  - THALER /SUNSTEIN/BALZ, “Choice architecture”, 2013

- DONALD NORMAN, ***The Design of Everyday Things***, initialement publié sous le titre de *The Psychology of Everyday Things*, 1988



LANGDON WINNER

Do Artifacts Have Politics?

- Langdon Winner, Do Artifacts Have Politics? Daedalus, vol. 109, No 1, Modern Technology: Problem or Opportunity? 1980, pp. 121-136

IN CONTROVERSIES ABOUT TECHNOLOGY AND SOCIETY, there is no idea more provocative than the notion that technical things have political qualities. At issue is the claim that the machines, structures, and systems of modern material culture can be accurately judged not only for their contributions of efficiency and productivity, not merely for their positive and negative environmental side effects, but also for the ways in which they can embody specific forms of power and authority. Since ideas of this kind have a persistent and troubling presence in discussions about the meaning of technology, they deserve explicit attention.[1]

Le design coercitif …

- “If a **forcing function** is really desired, it is usually possible to find one, although at some cost for normal behaviour. It is important to think through the implications of that cost—to decide whether people will deliberately disable the forcing function... **It isn’t easy to force unwanted behaviour onto people. And if you are going to use a forcing function, make sure it works right**, is reliable, and distinguishes legitimate violations from illegitimate ones”
  - DONALD NORMAN, *The Design of Everyday Things*

→n’est **pas** un nudge:

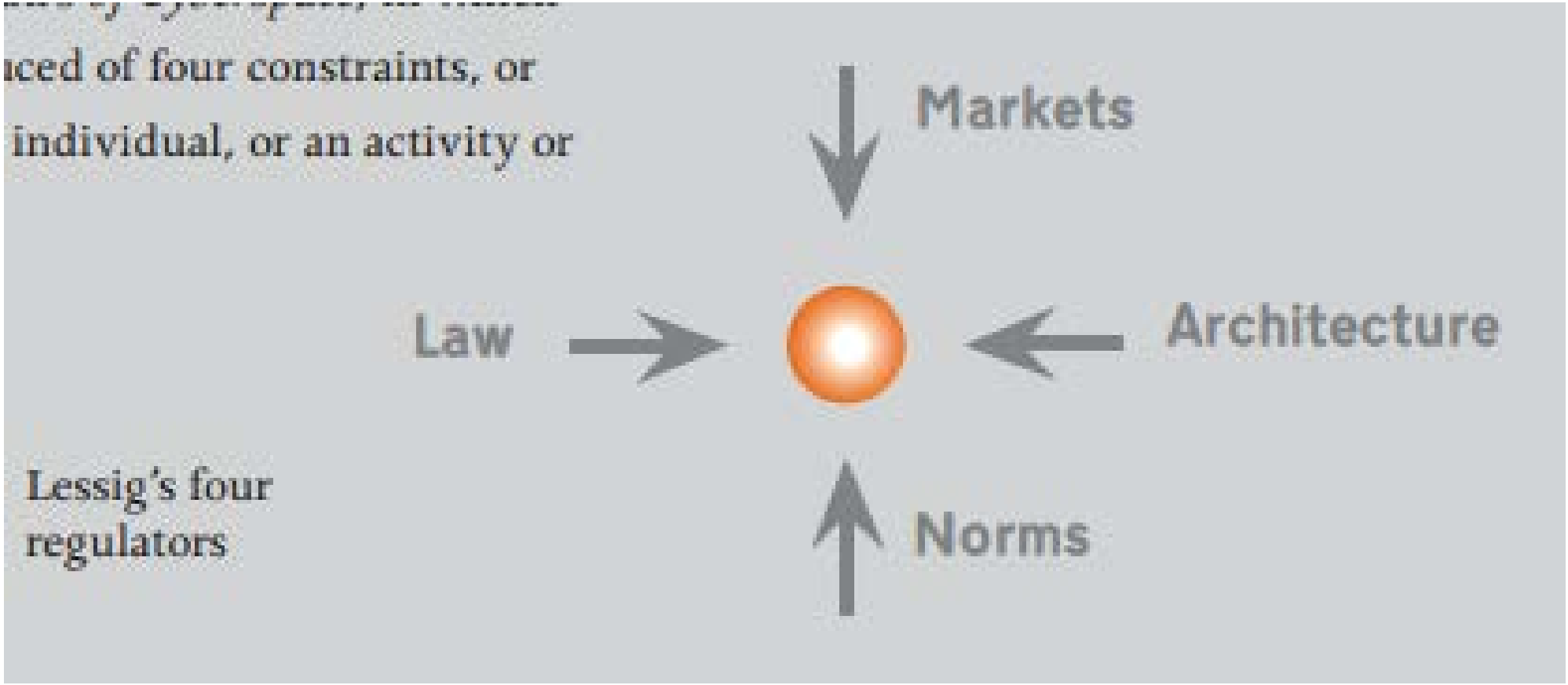
« *If choice architects coerce people, they are no longer merely nudging* »

SUNSTEIN 2015.

… vs le design incitatif

- “Can computers change what you think and do? Can they motivate you to stop smoking, persuade you to buy insurance, or convince you to join the Army?”
  - “The computer can proactively seek to motivate and influence users, drawing on strategies and routines programmed into it. It can encourage, provide incentives, and negotiate, to name a few strategies. **Captology** [an acronym for computers as persuasive technologies] focuses on the planned persuasive effects of computer technologies. It also focuses on endogenous, or ”built-in,“ persuasive intent, not on exogenous intent.”
    - FOGG, B.J. **Persuasive Technology**: Using Computers to Change What We Think and Do, Morgan Kaufmann, San Francisco, 2003

LESSIG, LAWRENCE, *Architecting for Control*, 2000



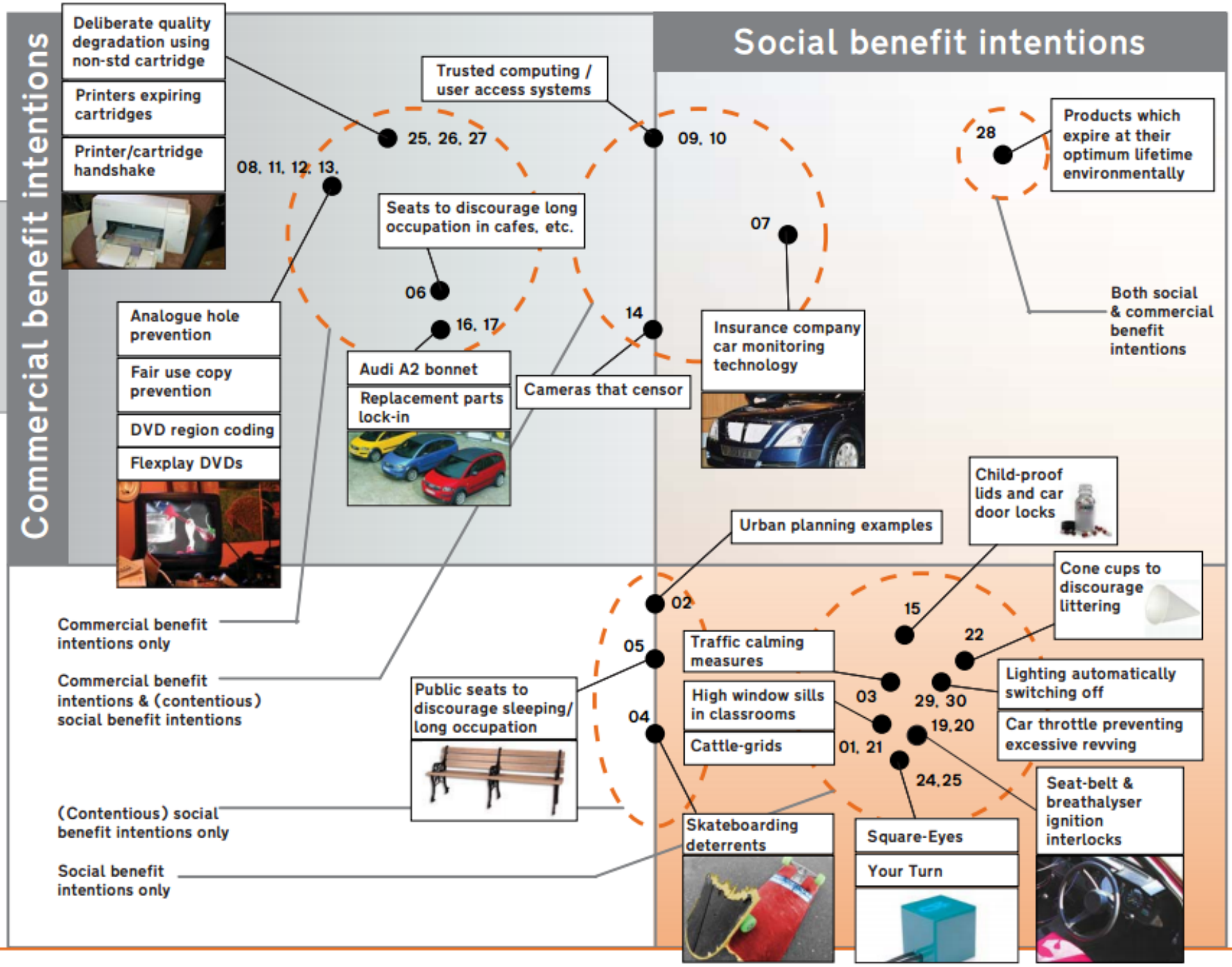
- LESSIG, LAWRENCE, *Code and other laws of cyberspace*, 1999, pp. 86 ss.

Architectures of Control in Consumer Product Design

Daniel Lockton
Downing College, University of Cambridge
June 2005

- Architectures of control are features, structures or methods of operation designed into physical products, software, buildings, city layouts—or indeed any planned system with which a user interacts—which are intended to enforce, reinforce, or restrict certain modes of user behaviour

Diagram:
The strategic intentions behind some architectures of control discussed in this paper. See page 19 *et seq*, 'Summary of examples' and the case studies.



Prévention situationnelle de la criminalité dans l'espace public

- JEFFERY, C. RAY, ***Crime prevention through environmental design***, Sage Publications, Beverly Hills, 1971
- NEWMAN, OSCAR, *Defensible space:* ***crime prevention through urban design***, Macmillan, New York, 1972
- ***Technical Prevention of Crime*** : Norme CEN « *Prevention of crime - Urban planning and building design* », 2005-2010
- études de sécurité publique dans les projets d'aménagement et de construction (loi d'orientation et de programmation pour la sécurité du 21 janvier 1995 [« loi Pasqua »])

C. Le nudge: coup de pouce ou coup de pied?

une question de degré de contrainte

une architecture de contrôle des comportements

- **urbanisme comportemental incitatif**
- →Coups de pouce

- **urbanisme comportemental répulsif**
- →Coups de pied

1.5.
Lake Shore Drive, Chicago (Courtesy of the city of Chicago)

Figure 1.5). One's natural instinct is to slow down. When we drive on this familiar stretch of road, we find that those lines are speaking to us, gently urging us to touch the brake before the apex of the curve. We have been nudged.

Le nudge : un acte matériel **souple** de **mise en oeuvre** des règles

Acte	**appréciatif**	**impératif**
normatif	Règles incitatives (non obligatoires) (Droit souple – *soft law*)	Règles obligatoires (Droit «dur» - *hard law*)
normatif *de mise en œuvre*	Règles incitatives de mise en œuvre (évaluation)	Règles obligatoires de mise en œuvre (organisation, compétence, procédure, mise en œuvre, surveillance, sanctions)
matériel *de mise en œuvre*	Acte incitatif (non contraignant) de mise en œuvre de mise en œuvre d'une règle (obligatoire ou non) (**Environnement comportemental incitateur** – ***nudge*** - *soft implementation*)	Acte contraignant de mise en œuvre de mise en œuvre d'une règle (obligatoire ou non) (**Architecture de contrôle des comportements –** *hard implementation*)

D. Le coup de cloche du droit

L’interdiction des coups bas: le spectre de la **manipulation**

	Transparent	*Non-transparent*
System 2 thinking	Transparent facilitation of consistent choice	Manipulation of choice
System 1 thinking	Transparent influence (technical manipulation) of behavior	Non-transparent manipulation of behavior

Table 1: Suitable labels of intervention types

Les nudges sont juridiquement admissibles à condition en particulier

- de ne pas s'attaquer à ***l'essence*** des droits fondamentaux
- d'être fondés sur une ***base légale*** suffisante
- de viser un ***intérêt public***
- d'être ***proportionnés***
- d'être conformes à la ***bonne foi***
- de ne pas être ***discriminatoires***

Le rôle d'une **démocratie** par rapport aux nudges consiste à

- encadrer ces actes de ***fait*** par
- des actes de ***droit***

En matière d'**urbanisme comportemental**

- pratiques courantes mais impensées
- l**acunes juridiques**