

Nudging – Interference with Autonomy?

The fourth Law and Economics Conference was held at the Law Faculty of the University of Lucerne in April. The event, organized in partnership with Notre Dame Law School, focused on «Nudging – Theory and Applications».



*Prof. em. Dr. Dr. h.c. mult. Bruno S. Frey during his speech.
[photo: Ariel David Steffen]*

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The conference was inspired by the book «Nudge – Improving Decisions About Health, Wealth and Happiness» written by Richard Thaler and Cass R. Sunstein, which discusses the theory of nudging. People can be «nudged» in a desired direction, for example by means of defaults. A textbook example for a default is the objection clause in organ donation according to which every human being is considered to be a donor after death unless explicitly opting out.

Thought-provoking introduction

Prof. Dr. Klaus Mathis welcomed the participants and opened the conference with some thought-provoking questions: does nudging and the so-called libertarian paternalism threaten the autonomy of people? Does the state not pretend to have knowledge which it does not have, as Friedrich August von Hayek would argue? Should we not better trust the spontaneous order, even if it does not always lead to the best outcome? Does nudging not pave the way to serfdom, to allude to Hayek again? The aim of this conference was to give some answers to these intriguing questions. In his welcome speech, Prof. Dr. Sebastian Heselhäus,

Vice Dean of the Law Faculty, emphasized the value of nudging from the perspective of the government arguing that its use in intelligent legislation would raise the general welfare as long as the tools implemented fulfilled the test of proportionality.

Rationality through law

The first keynote speech was delivered by Prof. Dr. Avishalom Tor, Director of the Research Program on Law and Market Behavior at Notre Dame Law School. He pondered on improving rationality through intelligent legislation and provided an overview of the interrelation between libertarian paternalism, nudging and rational decision-making. He argued that the general welfare of the population can be improved by nudges in legislation.

University Counsellor Prof. em. Dr. Dr. h.c. mult. Bruno S. Frey and Jana Gallus, MA in Economics, discussed beneficial and exploitative nudges and the issue of legislators' unwillingness to genuinely raise the general welfare of the population through nudging. As a solution to this problem, he proposed that a legal framework for the use of nudging tools should be developed. In his presentation, Prof. Mark White of the College of Staten Island CUNY analyzed the crucial importance of interests and the subsequent limitations of libertarian paternalism. The morning panel was concluded by Prof. Anne-Lise Sibony with her presentation on the use of nudging tools in EU legislation.

Discussion via video conference

The afternoon was divided into two panels featuring presentations from a number of established researchers as well as up and coming academics on various topics regarding the debate surrounding nudging. One of these was Ndujoh MehChu, JD candidate at the University of Chicago Law School, who spent the summer of 2014 working as a research assistant at the University of Lucerne (see interview in uniluAKTUELL, issue 48). He presented his research on the welfare consequences as a result of impersonal default options on rational and informed decision makers. It is planned that Daniel Scime, who has been working as a research assistant to Prof. Dr. Klaus Mathis during this summer (see interview on page 8 in this issue), will be participating at the next conference on «Environmental Law and Economics» in spring 2016.

The highlight of the conference was the discussion via video conference with Prof. Cass R. Sunstein from the Harvard Law School, during which he provided an insight into his latest research findings. The evening concluded with a raclette boat cruise, a typical Swiss experience greatly enjoyed by all participants.

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