The Promises and Pitfalls of Behavioural Regulation

La réglementation par orientation: promesses et défis

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NYU School of Law

La réglementation par orientation: la conceptualisation et la rédaction de textes réglementaires pour le 21e siècle – ICAJ - Ottawa 8 septembre 2014
our understanding of regulation is set to change as a result of behavioural sciences
involve the systematic analysis and investigation of human behaviour through controlled and observation.
Predictably Irrational
The Hidden Forces That Shape Our Decisions

The Logic of Life
The Rational Economics of an Irrational World

Thinking, Fast and Slow
Winner of the Nobel Prize in Economics
how humans actually behave

(when they make choices)
humans are not
Rational
Reflective
Impassive

(tu pourras trouver un meilleur Homar sur google – merci)

Irrational
Intuitive
Emotional
Why this matters for policymakers?
(voir supra pour image)
a few illustrations of insights from behavioural research
1. Framing

90% OK
around 70%

10% SIDE EFFECTS
around 35%

(encadrement?)
even small
apparently insignificant details
can have major impact
on people’s behaviour
(chercher dans le livre Nudge en cas de doute)
1. framing

The location of food items in a cafeteria
produce some unexpected impact
You are able to increase/decrease the consumption of many items by as much as 25%
INSERT 2 forms
fine/tax collection
lesson learned

• people influenced by how information is framed

• choices not affected by properties but frame

→ context matters
2. the power of inertia
lesson learned

• Automatic enrollment more participation

• Inertia means default matters
3. Social influence

+ 25%
but also

- **Anchoring** - tendency to rely too heavily on one piece of information when making decisions
- **Loss aversion/Endowment effect** – A loss from the status quo perceived as more undesireable than a gain
- **Group polarization/Confirmation bias** - to favor information that confirms preconceptions regardless of whether the information is true
- **Zero-risk bias** – preference for reducing a small risk to zero over a greater reduction in a larger risk
- **Informational cascades**
- **Choice and information overload**
Lesson learned

→ sensitive to context

→ not respond to objective experience

not always ‘rational’ but victims of mental shortcuts, biases and heuristics
We think much less than we think we think.
an alternative view of human agent

of utmost importance for policymakers
Opportunities
straight ahead
success of policymaking depends on understanding people’s behaviour before (trying to) alter it
but also

Challenges

(nice image?)
Is it acceptable to play on biases in designing regulations?
despite failure to predict people’s behaviour
little efforts at understanding ‘behaviour’ in policy circles.
Why so?
not easy

while behavioral research demonstrates the extent and limits of rational action, it does not provide regulators with a ready-made framework for incorporating its insights into policy making
generally

- no formal recognition (almost the opposite)
- timid use of behavioural research
- lack of systematic integration in policymaking
avantgarde
‘Libertarian paternalism’
By changing the environment in which the choice is made, a nudge-inspired policy steers people - who are placed in this environment - towards making positive decisions while preserving individual choice.
Test, Learn, Adapt:
Developing Public Policy with Randomised Controlled Trials
Randomised controlled trials (RCTs)

Random allocation to groups

RCT is an experimental design which involves random allocation of participants, either to an experimental group which receives some form of ‘treatment’ or intervention, or to a control group which receives no such special treatment or intervention.
Thank you.
Please join the NHS Organ Donor Register.

Join or find out more.

Every day thousands of people who see this page decide to register.

Join or find out more.

organdonation.nhs.uk
Thank you.
Please join the NHS Organ Donor Register.

Three people die every day because there are not enough organ donors.

Join or find out more.
Percentage of People Registering as Organ Donors, by Variant

- Control: 1
- People Photo: 3
- Take Action: 8
- People: 2
- 9 lives: 6
- People Logo: 4
- 3 Die: 5
- Reciprocity: 7
(à substituer avec meilleure image)
Consumer Rights Regulation
Article 22
Additional payments

Before the consumer is bound by the contract or offer, the trader shall seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader’s main contractual obligation. If the trader has not obtained the consumer’s express consent but has inferred it by using default options which the consumer is required to reject in order to avoid the additional payment, the consumer shall be entitled to reimbursement of this payment.

→ to address power of inertia
Distance Selling Directive

Cooling-off period of 15 days ➔ myopia/impulse buying
web screen ballot-box

encourages active choice of preferred browsers, and implicitly removes the impact of default
Shop for gas grills on Google

- **GP-Grill Gas Grill** - £141.96
- **Falcon Dominator** - £888.00
- **Outback Omega 250** - £129.00
- **Blue Seal Cobra CS9** - £897.60
- **Burco** - £850.50

**Buy a Gas Grill 2014 - Gas Grill Ratings - Gas Grill Reviews**

Before you run to the hardware store to buy a new gas grill you should know that there are a lot more grills out there than you’ll find in one store. I’ve broken ...

**Top Gas grill Reviews | Best Gas grill – Consumer Reports**

Looking for the Best gas grill? Consumer Reports has honest Ratings and Reviews on gas grills from the unbiased experts you can trust.

**Weber.com - Weber® Grills - Gas**

Manufacturer of gas and charcoal grills, parts and accessories. Features recipes, service and dealer locations.

Grills - Gas - Parts & Support - Charcoal

**Gasbarbecue nodig?**

www.vanhattemhoreca.nl/
Diverse BBQ’s in de aanbieding
Bestel veilig en snel online

**Catering Gas Grills**

www.nisbets.co.uk/Cooking-Machines
10,305 seller reviews
Top Quality Cooking Machines
At low Prices. Free P&P Available!

**barbecook® gas BBQs**

www.barbecook.com/gas
Gasbarbecues met Extra Veel Smaak!
Ontdek nu de barbecook Gas Grills.

**Gas grills**

www.beslist.nl/gasbarbecues
Gasbarbecues nu al vanaf €39.95!
Keuze uit ruim 113 gasbarbecues

**Gas Barbecues 70% off RRP**

www.outdoorlivingworld.co.uk/Gas_bbq
Huge Range Of Gas Barbecues
At Great Prices - Buy Online & Save

**Gas-Grills im Angebot**

www.nextag.de/Gas-Grills
Erstklassige Gas-Grills in vielen Varianten: Hier zum Niedrigpreis!
Gas Grill at Amazon
www.amazon.com/patio
⭐⭐⭐⭐⭐ 336 reviews for amazon.com
Low Prices on Gas grill
Free Shipping on Qualified Orders.

Cheap Gas Grill
www.groupon.com/
⭐⭐⭐⭐⭐ 61 reviews for groupon.com
Save 50-90% Every Day
Thousands of Deals to Enjoy

gas grill
www.appliancesconnection.com/Grills
⭐⭐⭐⭐⭐ 3,550 seller reviews
1 (800) 299 9470
Huge Variety, Free In-Home Delivery
Price Match Promise on All Grills

BBQ Grills
www.wholeslepatiostore.com/  
1 (888) 611 7227
Quality BBQ Grills
Come See Our Store Today!

DCS Gas Grills
www.ajmadison.com/  
⭐⭐⭐⭐⭐ 1,074 seller reviews

Weber.com - Weber® Grills - Gas
www.weber.com/grills/category/gas
Gas Grills. Grill Shopping Tools. 0 Grill Comparison Grill Finder. Spirit® ... 4 or 6 stainless steel burners • Backlit LED tank scale • Grill Out® handle lights.

Gas Grills: Shop at Sears for Your Outdoor Cooking Gear
www.sears.com/grills-outdoor-cooking-gas-grills/b-1024073
Sears features gas grills with a wide variety of features, including multiple burners and searing options. Entertain outdoors year round with gas grills.

Natural Gas Grills - Home Depot
www.homedepot.com/...Grills-Grill...Gas-Grills...Gas-Grills/N-5yc1vZc5t...
Natural Gas Grills - Gas Grills - Grills & Grill Accessories - Outdoors at The Home Depot.
Café de France
www.cafefrance.fr
2.7 ★★★★★ 15 avis de Google

Café de Paris
plus.google.com
3.8 ★★★★★ 25 avis de Google

Café de la Paix
www.cafeodelapaix.fr
3.9 ★★★★★ 524 avis de Google

Les Deux Magots
www.lesdeuxmagots.fr
3.8 ★★★★★ 525 avis de Google

Delaville Café
www.delavillecafe.com
3.6 ★★★★★ 91 avis de Google

Café Beaubourg
www.beaumary.com
3.6 ★★★★★ 163 avis de Google

Le café A
www.facebook.com
3.9 ★★★★★ 61 avis de Google

10 of the best cafes in Paris | Travel | The Guardian
www.theguardian.com » Travel » Paris city guide » Traduire cette page
5 mai 2011 - Cult food blogger Clotilde Dusoulier selects her pick of Paris's famous cafe scene.

Paris restaurants and cafés – Time Out Paris
Paris restaurant guide, including the latest restaurant reviews and features. Discover the best restaurants and cafes for drinking and dining in Paris with Time Out...
Google search results for "cafe in paris" showing alternatives and cafes near Paris with ratings and addresses. A map is also shown with marked locations. Links to "The Guardian" and "Time Out Paris" for more information on cafes in Paris.
You limit the ability of operators to leverage on cognitive biases (debiasing through law) but.... also possible to positively use them
### Table 1: Types of front-of-pack food labelling systems

<table>
<thead>
<tr>
<th>Traffic Light</th>
<th>Per 30 g serve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic Light</td>
<td>Med Fat (2.5 g per serve)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Traffic Light + Overall Rating</th>
<th>Per 30 g serve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall</td>
<td>Med Fat (2.5 g per serve)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Monochrome %DI</th>
<th>% Daily Intake (%DI) Per 30g Serve</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy</td>
<td>5.8%</td>
</tr>
<tr>
<td>Protein</td>
<td>8.2%</td>
</tr>
<tr>
<td>Fat</td>
<td>3.6%</td>
</tr>
<tr>
<td>Saturated Fat</td>
<td>6.2%</td>
</tr>
<tr>
<td>Carbohydrate</td>
<td>4.2%</td>
</tr>
<tr>
<td>Total Sugar</td>
<td>6.2%</td>
</tr>
<tr>
<td>Fibre</td>
<td>0.3%</td>
</tr>
<tr>
<td>Sodiuem</td>
<td>7.0%</td>
</tr>
<tr>
<td>Overall</td>
<td>12.3%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Colour-Coded %DI</th>
<th>% Daily Intake (%DI) Per 30g Serve</th>
</tr>
</thead>
<tbody>
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</table>

same field of vision

**Tabular format**
Environmental Labelling

a) Current Energy Label
b) Proposed Energy and Carbon Footprint Label
c) Proposed Energy and Environmental Label
Smoking causes fatal lung cancer

Get help to quit: 0800-555-5555

Smoking kills – quit now!

HETFIELDS FILTER CIGARETTES

A nudge?
The features of Behavioural Regulation
The appeal
<table>
<thead>
<tr>
<th>Conventional Regulation</th>
<th>Behavioural Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Reduce the options:</td>
<td>• Changes the environment of choice:</td>
</tr>
<tr>
<td>limits choice</td>
<td>choice-preserving</td>
</tr>
<tr>
<td>• Rests on the assumption that people behave rationally</td>
<td>• Rests on the assumption that people conditioned</td>
</tr>
<tr>
<td>• Top-down: requires bureaucratic oversight</td>
<td>• Bottom-up:</td>
</tr>
<tr>
<td></td>
<td>less funding</td>
</tr>
<tr>
<td>• Evidence-based (real)</td>
<td>• Evidence-based (laboratory-setting)</td>
</tr>
<tr>
<td></td>
<td>• Cooperative with the industry</td>
</tr>
</tbody>
</table>
The flaws
Legitimacy
Effectiveness
Design
Legality
Legitimacy
Effectiveness
Design
Legality
legitimacy

how comfortable citizens are with having experts and bureaucrats designing policies limiting the exercise of their individual autonomy?

Response:

1. choice-preserving
2. neutral settings do not exist
Legitimacy
Effectiveness
Design
Legality
Once we accept it...

How we design behavioural-informed regulation?
“where relevant, feasible, and consistent with regulatory objectives...each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible”.
(à substituter avec une meilleur image )
privileged tool

Impact Assessment

prospective analysis of
ECONOMIC – SOCIAL – ENVIRONMENTAL impacts
EUROPEAN COMMISSION:  
Guardian of the EU Treaties;  
Promotes the EU interest;  
Monopoly of legislative initiative

COUNCIL OF MINISTERS:  
Co-legislator, representing Member States governments

EUROPEAN PARLIAMENT  
Co-legislator, representing EU population

European Court of Justice  
Interprets EU legislation
What is regulatory Impact Assessment

- Impact assessment is performed for all new proposals for legislation and for some other major policy initiatives.
- IA is embedded within a framework for policy-making.

Conducted in accordance with IA Guidelines.
behavioural impact

- design policy options
  (e.g. a behaviourally-informed option)
- ‘road-test’ policy intervention
  (e.g. efficiency ? compliance rate?)
in so doing

should be able to interact with network of national, local and international actors experiencing behavioural intervention across the EU and beyond
Legitimacy
Effectiveness
Design
Legality
Are public administrations empowered to manipulate/play on the cognitive framework of their citizens?

Is our legal system ready for it?
As nature of public action shifts from *coercion* to *persuasion*, checks & balances must adapt.
behavioural regulation is based on invisible design-based interventions aimed at interfering with the private space of individuals whose legal effects difficult to determine and increasingly personalised
What is at stake

Freedom of expression

Privacy: right to informational self-determination
Principle of legality
Principle of impartiality
Judicial review

and

behavioural informed regulation
regardless of what you think, 

a new principle enlightening 

regulation
you should

regulate how people behave

not how they are assumed to behave.
EXPERIMENTATION: THE CATALYST OF CREATIVITY
Thank you for your attention!

more at

www.albertoalemanno.eu
Bibliography by A. Alemanno

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Nudging Legally - On the Checks and Balances of Behavioural Regulation

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