



A behavioural perspective on consumer protection

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This article considers some basic insights from behavioural research and their implications for consumer protection. It outlines some fundamental features of the social and institutional environments in which consumers interact, and discusses the behavioural tendencies, and potential failures, likely to arise in such contexts. Of particular interest, is the tension that emerges between the empirical findings and standard assumptions about human agents that typically guide the social sciences and policy. A behavioural perspective, it is argued, can help make sense of what might otherwise be seen as economic 'puzzles' in the behaviour of consumers. This perspective highlights the ability of a behaviourally informed and insightful design and regulation of consumer protection to lead to improved consumer welfare.

I Introduction

How consumers should be protected largely depends on what they are like. What are their strengths and their weaknesses? Which facets of the context in which they function are threatening to consumers and which are not? What can they be taught, or be expected to be aware of, or to abide by, and what goals must be achieved through other means, such as laws and regulations? Our answers to such questions will fundamentally influence where we choose to focus our consumer protection efforts, and what we try to achieve through them. This article reviews recent behavioural research, focusing on people's intuitions, proclivities and limitations, and on aspects of decision-making behaviour where standard theoretical assumptions may yield misleading expectations. It suggests that a view of decision behaviour informed by empirical research rather than intuition or theoretical assumptions may help create a more successful consumer protection agenda.

At present, policies regarding consumer behaviour and protection (or lack thereof) have been influenced by two compelling, if somewhat discrepant views. The first, based on the 'rational agent' model, relies on analytic, a priori analyses of the making of rational decisions. It is the perspective overwhelmingly promoted in business and policy schools, and it has come to dominate much of economics and the social sciences, as well as the formulation and conduct of policy. The second, 'folk psychology' perspective, consists of our intuitive understanding of the decisions that people make and of the factors that motivate and underlie them. Part of what has made the normative treatment so appealing has been its general affinity with intuition: normative theory assumes that preferences respect simple requirements of

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stability and coherence that most people, upon some reflection, readily endorse. Nevertheless, the folk psychological perspective also plays an important role because policy makers intuitively recognise certain normative assumptions — from unlimited memory to pure self-interest — as too extreme, and attempt to adjust expectations, and policy, accordingly.

As it turns out, empirical investigation has yielded many findings about consumer decision-making that tend to be both non-normative and counterintuitive. Not only are decisions often inconsistent with normative desiderata; they violate simple intuitive expectations as well. Decision behaviour is the outcome of normative ideals that people endorse upon reflection, combined with psychological proclivities, perceptual processes and behavioural idiosyncrasies that intrude upon and shape behaviour, often independent of deliberative intent. All this can generate systematic behaviours that are unforeseen and often misunderstood. A more nuanced behavioural perspective, it is suggested below, can yield better understanding, new policy insights, and improved consumer protection.

II Decisional conflict and its discontents

People's preferences are typically constructed, not merely revealed, during the decision-making process, and the construction of preferences can be heavily influenced by the nature and context of the decision. This has nontrivial implications for how we might want to think about consumer protection. Consider, for example, the role of decisional conflict and its implications for the proliferation of alternatives.

The classical view of decision-making does not anticipate nor does it consider the implications of decisional conflict. Each option according to this view is assigned a subjective value, or 'utility', and the person then proceeds to choose the option assigned the highest utility. As a consequence of this compelling account, it is universally assumed that offering more alternatives is clearly a good thing, since the more options there are, the more likely is the consumer to find one that satisfies her utility function.

In contrast, since preferences tend to be constructed in the context of decision, choices can be hard to make. People often look for a good reason, a compelling rationale, for choosing one option over another. At times, compelling rationales are easy to articulate, whereas other times no easy rationale presents itself, rendering the conflict between options hard to resolve. Such conflict can be aversive and can lead people to postpone the decision or to select a 'default' option. The proclivity to subdue decisional conflict, rather than to maximise utility, can generate preference patterns that are fundamentally different from those predicted by normative accounts based on value maximisation. In particular, certain features can worsen the decision context while the normative assumption is that it has been made better.

For example, decisional conflict has been shown to yield a greater tendency to search for alternatives when better options are available in the context of a difficult decision, than when relatively inferior options are available and the

decision is easy.¹ Rather than a plus, a proliferation of alternatives can dissuade consumers from making what may otherwise amount to a favourable choice. In particular, as choices become difficult, consumers naturally tend to defer decisions, often indefinitely.² In one study, expert physicians had to decide about medication for a patient with osteoarthritis. These physicians were more likely to decline prescribing a new medication when they had to choose between two new medications than when only one new medication was available.³ Apparently, the difficulty in deciding between the two medications led some physicians to recommend not starting either. A similar pattern was documented with shoppers in an upscale grocery store, where tasting booths offered the opportunity to taste 6 different jams in one condition, or any of 24 jams in the second. Of those who stopped to taste, 30% proceeded to purchase a jam in the 6-jams condition, whereas only 3% purchased a jam in the 24-jam condition.⁴

In a related manipulation that was part of a larger study discussed further below, Bertrand, Karlan, Mullainathan, Shafir and Zinman⁵ conducted a field experiment with a local lender in South Africa to assess the relative importance of various subtle psychological manipulations in the decision to take-up a loan offer. Clients were sent letters offering large, short-term loans at randomly assigned interest rates. Various psychological features on the offer letter were also independently randomised, one of which was the number of sample loans displayed: the offer letters displayed either one example of a loan size and term, along with respective monthly repayments, or it displayed four examples of loan sizes and terms, with their respective monthly repayments. In contrast with standard economic prediction and in line with conflict-based predictions, higher take-up was observed under the one-example description than under the multiple-example version. The magnitude of this effect was large: the simple (one example) description of the offer had the same positive effect on take-up as dropping the monthly interest on these loans by more than 2 percentage points. In a related finding, Iyengar, Jiang, and Huberman⁶ show that employees' participation in 401(k) (retirement savings) plans drop as the number of fund options proposed by their employer increases.

Adherence to the default or status quo has also been observed in naturally occurring 'experiments'. One was in the context of insurance decisions, when

1 A Tversky and E Shafir, 'Choice under conflict: The dynamics of deferred decision' (1992) 3 *Psychological Science* 358–61.

2 S S Iyengar and M R Lepper, 'When choice is demotivating: Can one desire too much of a good thing?' (2000) 79 *Jnl of Personality and Social Psychology* 995–1006; E Shafir, I Simonson and A Tversky, 'Reason-based choice' (1993) 49 *Cognition* 1–36; Tversky and Shafir, above n 1.

3 D Redelmeier and E Shafir, 'Medical decision-making in situations that offer multiple alternatives' (1995) 3 *Jnl of the American Medical Association* 273 at 302–5.

4 Iyengar and Lepper, above n 2.

5 M Bertrand, D Karlan, S Mullainathan, E Shafir and J Zinman, 'What's psychology worth?: A field experiment in the consumer credit market', National Bureau of Economic Research, Massachusetts, Working Paper 11892, 2005.

6 S S Iyengar, W Jiang and G Huberman, 'How Much Choice is Too Much: Determinants of Individual Contributions in 401K Retirement Plans' in O S Mitchell and S Utkus (Eds), *Pension Design and Structure: New Lessons from Behavioural Finance*, Oxford University Press, Oxford, 2004, pp 83–97.

New Jersey and Pennsylvania both introduced the option of a limited right to sue, entitling automobile drivers to lower insurance rates. The two states differed in what was offered as the default option: New Jersey motorists needed to acquire the full right to sue (transaction costs were minimal: a signature), whereas in Pennsylvania, the full right to sue was the default, which could then be forfeited in favour of the limited alternative. Whereas only about 20% of New Jersey drivers chose to acquire the full right to sue, approximately 75% of Pennsylvania drivers chose to retain it. The difference in adoption rates had financial repercussions estimated at nearly \$200 million.⁷ A second naturally occurring 'experiment' was recently observed in Europeans' decisions regarding being potential organ donors.⁸ In some European nations drivers are by default organ donors unless they elect not to be, whereas in other European nations they are, by default, not donors unless they choose to be. Observed rates of organ donors are almost 98% in the former nations and about 15% in the latter, a remarkable difference given the low transaction costs and the significance of the decision.

Whereas the addition of options can generate conflict and increase the tendency to refrain from making any decision, options can sometimes be manipulated to lower conflict and increase the likelihood of making a particular choice. *Asymmetric dominance* refers to the fact that in a choice between options A and B, a third option, 'A', can be added that is clearly inferior to A (but not to B), thereby increasing the choice likelihood of A.⁹ For example, a choice between \$6 and an elegant pen presents some conflict for participants. But when a less attractive pen is added to the choice set, the superior pen clearly dominates the inferior pen, thus providing a rationale for choosing the elegant alternative, and increasing the percentage of those choosing the elegant pen over the cash. Along related lines, a *compromise effect* has been observed wherein the addition of a third, extreme option makes a previously available option appear as a reasonable compromise, thus increasing its popularity.¹⁰

The systematic documentation of preference reversals and other inconsistencies suggests that minor contextual changes can alter what consumers choose in ways that are unlikely to relate to their ultimate utility. Of course, the fact that consumers are influenced by conflict and context need not immediately imply that choices ought to be taken away, or even that the number of available alternatives ought to be restricted. It does suggest, however, that a proliferation of alternatives, which is where many consumer markets are headed, needs to be addressed and handled with care, rather than be seen as an obvious advantage. It also suggests that the determination of a default outcome, for example, rather than a mere formality that can be effortlessly changed, needs to be chosen thoughtfully, since it acquires a

7 E J Johnson, J Hershey, J Meszaros and H Kunreuther, 'Framing, probability distortions, and insurance decisions' (1993) 7 *Jnl of Risk and Uncertainty* 35–51.

8 E J Johnson and D Goldstein, 'Do defaults save lives?' (2003) 302 *Science* 1338–9.

9 J Huber, J W Payne and C Puto, 'Adding asymmetrically dominated alternatives: Violations of regularity and the similarity hypothesis' (1982) 9 *Jnl of Consumer Research* 90–8.

10 I Simonson, 'Choice based on reasons: The case of attraction and compromise effects' (1989) 16 *Jnl of Consumer Research* 158–74; I Simonson and A Tversky, 'Choice in context: Tradeoff contrast and extremeness aversion' (1992) 29 *Jnl of Marketing Research* 289–95.

privileged status. In effect, when proliferating options or the status quo are inappropriately handled (intentionally or not) they can lead to substantial decrement in consumers' social welfare. In particular, a proliferation of options can worsen the decision context all the while it is assumed that consumers are being made strictly better off. And the selection of a harmful default, while just another option that in theory can be easily changed, can have a detrimental effect on consumers that would have been avoided had that particular default not been imposed.

Several other behavioural factors can influence the outcome of consumer decisions in ways that standard analysis is likely to miss. People often are not so good at predicting their future tastes or at learning from past experience,¹¹ and their choices can be influenced by anticipated regret,¹² by costs already incurred,¹³ and by effects of sequencing and of temporal separation, where high discount rates for future as compared to present outcomes can yield dynamically inconsistent preferences.¹⁴ Contrary to standard assumptions, the psychological carriers of value are gains and losses, rather than anticipated final states of wealth, and attitudes towards risk tend to shift from risk aversion in the face of gains to risk seeking for what appear as losses.¹⁵ Also, people are loss averse (the loss associated with giving up a good is substantially greater than the utility associated with obtaining it).¹⁶ This, in turn, leads to a general reluctance to depart from the status quo, because things that need to be renounced are valued more highly than comparable benefits.¹⁷

In their intuitive mental accounting schemes, people compartmentalise wealth and spending into distinct budget categories, such as savings, rent and entertainment, and into separate mental accounts, such as current income, assets and future income.¹⁸ Contrary to standard and fairly universal assumptions of fungibility, people then exhibit different degrees of willingness to spend from their various accounts, which yields consumption patterns that are overly dependent on current income and sensitive to labels with, for

11 D Kahneman, 'New challenges to the rationality assumption' (1994) 150 *Jnl of Institutional and Theoretical Economics* 18–36.

12 D E Bell, 'Regret in decision-making under uncertainty' (1982) 30 *Operations Research* 961–81.

13 H R Arkes and C Blumer, 'The psychology of sunk cost' (1985) 35 *Organizational Behaviour and Human Decision Processes* 124–40; J T Gourville and D Soman, 'Payment depreciation: the behavioural effects of temporally separating payments from consumption' (1998) 25 *Jnl of Consumer Research* 160–74.

14 G Loewenstein and J Elster (Eds), *Choice Over Time*, Russell Sage Found, New York, 1992; G Loewenstein and R H Thaler, 'Intertemporal choice' (1989) 3 *Jnl of Economic Perspectives* 181–93.

15 D Kahneman and A Tversky, 'Prospect theory: An analysis of decision under risk' (1979) 47 *Econometrica* 263–91.

16 A Tversky and D Kahneman, 'Loss aversion in riskless choice: A reference dependent model' (1991) 106 *Quarterly Jnl of Economics* 1039–61.

17 J L Knetsch, 'The endowment effect and evidence of nonreversible indifference curves' (1989) 79 *American Economic Rev* 1277–84; W Samuelson and R J Zeckhauser, 'Status quo bias in decision-making' (1988) 1 *Jnl of Risk and Uncertainty* 7–59.

18 R H Thaler, 'Mental Accounting and Consumer Choice' (1985) 4 *Marketing Science* 199–214; R H Thaler, *The Winner's Curse: Paradoxes and Anomalies of Economic Life*, Free Press, New York, 1992.

example, people saving and borrowing (often at a higher interest rate) at the same time.¹⁹

What is common to many of these patterns is the overly local and context dependent nature of consumer choices. Standard thinking typically assumes robust preferences, largely impervious to minor contextual nuances. In contrast, people's choices often result from a heavily context-dependent deliberation, with the option chosen not infrequently being the one that would have been foregone had context differed by just a little, and often in rather trivial ways. What this means is that people's choices are often at the mercy of chance forces as well as of conscious manipulation, both of which may be worth protecting against. In what follows, we briefly consider some other facts of human perception and behaviour worth thinking about as one envisions policies with an eye towards consumer protection.

III Other relevant behavioural facts

Identities

Recent research has highlighted the relevance of identity salience for people's decisions.²⁰ People derive their identity in large part from the social groups to which they belong.²¹ A person may alternate among different identities — she might think of herself primarily as a mother when in the company of her children, but see herself as a professional while at work. The list of possible identities is extensive, with some identities, like 'mother', likely to conjure up strikingly different values and ideals from others, such as 'CEO'.

In one remarkable study, Asian-American women (whose two salient identities, Asian and woman, entail conflicting expectations regarding mathematical ability) scored higher on a math test after completing a brief survey that evoked their ethnicity than did those — randomly assigned — who first completed a survey that evoked gender.²² In fact, identity-salience has been shown to affect various behaviours, including resistance to persuasion,²³ reactions to advertisements,²⁴ and the rating of consumer products,²⁵ and it thus has implications for consumers' decisions. In one study, college students whose 'academic' identity had been made salient were likely to opt for more

19 L M Ausubel, 'The failure of competition in the credit card market' (1991) 81 *American Economic Review* 50–81.

20 See, eg, G Akerlof and R E Kranton, 'Economics and Identity' (2000) 115 *Quarterly Jnl of Economics* 715–53; D J Benjamin, J J Choi and A J Strickland, 'Social identity and preferences', 2006, manuscript; R LeBoeuf and E Shafir, 'The conflicting choices of alternating selves', 2006, manuscript, The University of Florida, and references therein.

21 J C Turner, 'A self-categorization theory' in J C Turner, M A Hogg, P J Oakes, S D Reicher and M S Wetherell (Eds), *Rediscovering the social group*, Basil Blackwell, Oxford and New York, 1987, pp 42–67.

22 M Shih, T L Pittinsky and N Ambady, 'Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance' (1999) 10(1) *Psychological Science* 80–3.

23 H H Kelley, 'Salience of Membership and Resistance to Change of Group-Centered Attitudes' (1955) 8 *Human Relations* 275–89.

24 M R Forehand, R Deshpandé and A Reed II, 'Identity Salience and the Influence of Differential Activation of the Social Self-Schema on Advertising Response' (2002) 87(6) *Jnl of Applied Psychology* 1086–99.

25 A Reed II, 'Activating the Self-Importance of Consumer Selves: Exploring Identity Salience Effects on Judgments' (2004) 31(2) *Jnl of Consumer Research* 286–95.

academic periodicals (eg, *The Economist*) than were those whose 'socialite' identities had been triggered. Similarly, Chinese-American citizens whose American identity was evoked adopted more stereotypically American preferences (eg, for individuality and uniqueness over collectivism and conformity) compared to when their Chinese identities had been triggered.²⁶

Evoked identities tend to activate concepts and priorities that are associated with particular tastes and values.²⁷ Consequently, preference tends to align with currently-salient identities, yielding predictable tension anytime there is a mismatch between the identity that does the choosing and the one likely to do the consuming, as when a parent/CEO might happily accept a professional weekend invitation while at work only to regret having to absent herself from the children once back at home.

Similar phenomena may be observed when stereotypes that involve perceived competence and intellectual or professional ability interfere with consumers' confidence and willingness to engage in various transactions. People targeted by negative stereotypes are more likely to mistrust other people's motives,²⁸ may expect to be socially rejected on the basis of the group to which they belong,²⁹ and may experience stereotype threat — the fear of confirming a negative stereotype about their own group.³⁰ Adkins and Ozanne³¹ discuss the impact of a low literacy identity on consumers' behaviour, and argue that when low literacy consumers accept the low literacy stigma, they perceive market interactions as more risky, engage in less extended problem solving, limit their social exposure and experience greater stress. In one study, low SES students performed worse than high SES students when the test was presented as a measure of intellectual ability, but

26 R A LeBoeuf, 'Alternating selves and conflicting choices: Identity salience and preference inconsistency', unpublished doctoral dissertation, Princeton University, 2002; LeBoeuf and Shafir, above n 20.

27 Cf J A Bargh, M Chen and L Burrows, 'Automaticity of Social Behaviour: Direct Effects of Trait Construct and Stereotype Activation on Action' (1996) 71(2) *Jnl of Personality and Social Psychology* 230–44; E T Higgins, W S Rholes and C R Jones, 'Category Accessibility and Impression Formation' (1977) 13(2) *Jnl of Experimental Social Psychology* 141–54.

28 J Crocker, K Voelkl, M Testa and B Major, 'Social stigma: The affective consequences of attributional ambiguity' (1991) 60 *Jnl of Personality and Social Psychology* 218–28; see also G L Cohen, C M Steele and L D Ross, 'The mentor's dilemma: Providing critical feedback across the racial divide' (1999) 25 *Personality and Social Psychology Bulletin* 1302–18.

29 R Mendoza-Denton, G Downey, V J Purdie, A Davis and J Pietrzak, 'Sensitivity to status-based rejection: Implications for African American students' college experience' (2002) 83 *Jnl of Personality and Social Psychology* 896–918; J N Shelton and J A Richeson, 'Intergroup contact and pluralistic ignorance' (2005) 88 *Jnl of Personality and Social Psychology* 91–107.

30 J Aronson, 'Stereotype threat: Contending and coping with unnerving expectations' in J Aronson (Ed), *Improving academic achievement: Impact of psychological factors on education*, Academic Press, Oxford, England, 2002, pp 281–304; C M Steele, 'A threat in the air: How stereotypes shape intellectual identity and performance' (1997) 52 *American Psychologist* 613–29; G M Walton and G L Cohen, 'A question of belonging: Race, social fit, and achievement' (2007) 92 *Jnl of Personality and Social Psychology* 82–96.

31 N R Adkins and J L Ozanne, 'The low literate consumer' (2005) 32 *Jnl of Consumer Research* 93–105.

performance was comparable when the test was not seen as pertaining to intellectual measures.³²

All of the above suggests possibilities both for consumer protection and for consumer empowerment as policy makers endeavour to incorporate behavioural considerations into regulation, as well as program design and implementation. For example, when offering options, be they bank accounts, healthy foods or benefits programs, intended for lower SES participants, the sheer fact that these are presented as intended towards welfare recipients or the working poor may trigger identities less responsive to the offered program than if more conducive identities, such as head of family or working taxpayer, had been used instead.

What is suggested by the behavioural literature is that options available to consumers should be carefully crafted and communicated. Overly complex arrangements, extensive verification procedures, information that's hard to find, language that's at an inappropriate level, are all not just hassles to be grappled with and overcome, but can actually be significant factors in the eventual renunciation or misuse of otherwise beneficial alternatives. A recent study of American food-stamp applications (by the organisation America's Second Harvest) found dramatic hassle costs. State applications reach up to 36 pages and often include incomprehensible questions. The application process often cues negative identities and can induce guilt and alienation. People are finger-printed (to verify that they are not double-dipping in other locations), they encounter perjury threats, they undergo home visits to verify that they are 'really poor', and they are often condescended to. Such treatment is likely to reinforce the alienation and hopelessness that often discourage this population. Such hassle factors may appear negligible in a standard cost-benefit analysis, but they are the kind of barriers whose removal is likely to open channels for improved welfare.

Knowledge and attention

A standard assumption is that consumers are attentive and knowledgeable, and typically able to avail themselves of important information. Instead, there appears to be often a rampant ignorance of options, program rules, benefits and opportunities, and not only among the poor or the uneducated. Surveys show that fewer than one-fifth of investors (in stocks, bonds, funds or other securities) can be considered 'financially literate',³³ and similar findings describe the understanding shown by pension plan (mostly 401(k)) participants.³⁴ Indeed, even older beneficiaries often do not know what kind of pension they are set to receive, or what mix of stocks and bonds they are invested in.

Cognitive load, the amount of information attended to, has been shown to affect performance in a great variety of tasks. To the extent that consumers

32 J-C Croizet and T Claire, 'Extending the concept of stereotype threat to social class: The intellectual underperformance of students from low socioeconomic backgrounds' (1998) 24 *Personality and Social Psychology Bulletin* 588-94.

33 G J Alexander, J D Jones and P J Nigro, 'Mutual fund shareholders: Characteristics, investor knowledge and sources of information' (1998) 7 *Financial Services Review* 301-16.

34 E Schultz, 'Helpful or Confusing? Fund Choices Multiply for Many Retirement Plans', *The Wall Street Journal*, 22 December 1995, C1, C25.

find themselves in situations that are unfamiliar, distracting, tense, or even stigmatising (say, applying for a loan), all of which tend to consume cognitive resources, less resources will remain available to process the information that is relevant to the decision at hand. As a result, decisions may become even more dependent on situational cues and irrelevant considerations, as is observed, for example, in research on 'low literate' consumers, who purportedly experience difficulties with effort versus accuracy trade-offs, show overdependence on peripheral cues in product advertising and packaging, and show systematic withdrawal from market interactions.³⁵

In contrast with classical analyses, which impute substantial planning and control, numerous studies of middle-class savings suggest that saving works best as a default. For example, Madrian and Shea³⁶ show that 401(k) participation is significantly higher when employers offer automatic enrolment, and that participants are likely to retain both the default contribution rate and default fund allocation. Given their substantial impact on decision outcomes, the determination of decision contexts, perceived standards and automatic defaults acquires an underappreciated power that merits greater attention.

Automaticity and priming

A variety of priming effects and automatic processes further contribute to consumer decisions often being malleable and disconnected from eventual consumption. At one extreme, are phenomena such as mere exposure, where mere repeated exposure to objects, say, through publicity, even subliminally, can increase their liking.³⁷ Then there is priming, wherein certain attributes are made to play a greater role in a person's decisions. In a classic priming study, participants took a test involving 'word perception', in which either creativity, reliability or a neutral topic was primed. Participants then completed an ostensibly unrelated 'product impression' survey that gauged their opinions of various cameras. Cameras advertised for their creative potential were rated more attractive by those primed for creativity than by those exposed to words related to reliability or a neutral topic.³⁸ Priming can thus influence preferences by making dimensions salient that would otherwise have been considered less important. Because of the transitory nature of priming effects, consumption is often likely to occur long after such criterion salience has dissipated, leaving consumers in different states of mind during product consumption as compared to acquisition.³⁹

Automatic and imperceptible reactions can also influence decisions so that,

35 Adkins and Ozanne, above n 31, and references therein.

36 B C Madrian and D F Shea, 'The power of suggestion: Inertia in 401(k) participation and savings behaviour' (2001) 116(4) *Quarterly Jnl of Economics* 1149–87.

37 R F Bornstein, 'Exposure and effect: Overview and meta-analysis of research, 1968–1987' (1989) 106 *Psychological Bulletin* 265–89; R B Zajonc, 'Attitudinal effects of mere exposure' (1968) 9(2) *Jnl of Personality and Social Psychology Monographs* 1–27.

38 J R Bettman and M Sujan, 'Effects of Framing on Evaluation of Comparable and Noncomparable Alternatives by Expert and Novice Consumers' (1987) 14(2) *The Jnl of Consumer Research* 141.

39 See N Mandel and E J Johnson, 'When Web Pages Influence Choice: Effects of Visual Primes on Experts and Novices' (2002) 29 *Jnl of Consumer Research* 235–45; B Verplanken

for example, diners lightly touched on the shoulder by their waitress tip more than those who were not touched.⁴⁰ In the aforementioned field experiment conducted in South Africa, intended to assess the relative importance of subtle psychological features compared to price in the decision to take-up a loan,⁴¹ some 57,000 incumbent clients of a lender were sent letters offering large, short-term loans at randomly chosen interest rates. Consistent with standard economics, those offered higher rates were less likely to take up a loan than those with access to lower rates. In addition, various 'psychological' features on the offer letter, which did not affect offer terms or economic content, were also independently randomised. Among them was the presence or absence of a smiling woman's picture in the bottom corner of the offer letters. For the men in the sample, the presence of that picture had the same positive effect on take-up as dropping the monthly interest on the loans by 4.5 percentage points!

Even when presented with hypothetical questions, respondents are unable to prevent biasing effects on their behaviour, particularly when the questions appear relevant.⁴² Thus, gauging attitudes toward consumer products can increase attitude accessibility and impact consumer behaviour.⁴³ For example, Morwitz, Johnson and Schmittlein⁴⁴ found that merely asking consumers whether they intended to purchase an automobile or a personal computer increased their subsequent purchase rate. Follow-up interviews suggest that the effects of hypothetical questions on choice occur beyond awareness and, as a result, are quite difficult to counteract.

A rich and fascinating literature documents the many ways that mere exposure, simple priming, subliminal perception and unconscious inferences alter judgment and choice. It is not clear, of course, that all this can be 'stopped'. But serious awareness of these effects, contrary to the impression that people are fully in control of their exposure and choices, is likely to help create contexts that are more respectful of the true nature of human — as opposed to 'rational' — consumers.

and R W Holland, 'Motivated decision-making: Effects of activation and self-centrality of values on choices and behaviour' (2002) 82 *Jnl of Personality and Social Psychology* 434–47.

40 A H Crusco and C G Wetzel, 'The Midas touch: The effects of interpersonal touch on restaurant tipping' (1984) 10 *Personality and Social Psychology Bulletin* 512–17; N Schwarz, 'Feelings as information: Informational and motivational functions of affective states' in E T Higgins and R M Sorrentino (Eds), *Handbook of motivation and cognition: Foundations of social behaviour*, Vol 2, Guilford, New York, 1990, pp 527–61, N Schwarz and G L Clore, 'Mood, misattribution, and judgments of well-being: informative and directive functions of affective states' (1983) 45 *Jnl of Personality and Social Psychology*, 513–23.

41 Bertrand et al, above n 5.

42 G J Fitzsimons and B Shiv, 'Nonconscious and Contaminative Effects of Hypothetical Questions on Subsequent Decision-making' (2001) 28 *Jnl of Consumer Research* 224–38.

43 K J Chapman, 'Measuring intent: There's nothing "mere" about mere measurement effects' (2001) 18 *Psychology and Marketing* 811–41; R H Fazio, M C Powell and C J Williams, 'The role of attitude accessibility in the attitude-to-behaviour process' (1989) 16 *Jnl of Consumer Research* 280–8.

44 V G Morwitz, E J Johnson and D Schmittlein, 'Does Measuring Intent Change Behaviour?' (1993) 20 *Jnl of Consumer Research* 46–61.

IV Two truisms about behaviour

Two fundamental behavioural facts are at the core of why consumers' decisions so systematically diverge from those envisioned by standard assumptions. The first is 'construal', the notion that decision-makers need to construe a representation of the relevant decision problems in their mind, and the other is the 'power of the situation', the fact that such construal is heavily impacted by the context of decision.⁴⁵

Despite the fact that this is universally assumed, people do not respond directly to objective conditions; rather, stimuli are mentally construed, interpreted and understood (or misunderstood). Decisions are directed not towards objective states of the world but towards our mental representations of those states. And these mental representations do not always bear a one-to-one relationship to states they represent, nor do they necessarily constitute faithful renditions of those states. As a result, many otherwise well-intentioned interventions can fail simply because of the way in which they are construed by the targeted group. For example, people who are rewarded for an activity that they would otherwise have found interesting and enjoyable may come to (mis)attribute their interest to the reward and, consequently, view the activity as less attractive. Children who were offered a 'good player award' to play with magic markers — which they previously enjoyed in the absence of any extrinsic incentive — subsequently showed little interest in the markers when these were introduced as an optional activity (in contrast with kids who had not received an award and maintained their interest).⁴⁶ Critical for the success and effectiveness of policy interventions is the need to devise contexts in ways that do not merely provide the appropriate options and convey the correct information, but that also trigger the construal most likely to generate the intended interpretation and response.

Another fundamental fact about human behaviour is that it is a function both of the person and of the situation.⁴⁷ One of the most striking lessons of behavioural research has been the great power that context exerts relative to the presumed influence of beliefs, preferences and personality traits, and, at the same time, a persistent tendency among people to underestimate this power of the context. Consider, for example, the now-classic Milgram obedience studies, where people proved willing to administer what they believed to be grave levels of electric shock to innocent subjects,⁴⁸ or Darley and Batson's Good Samaritan study,⁴⁹ which recruited students of a

45 For further discussion, see E Shafir, 'Decisions Constructed Locally: Some Fundamental Principles of the Psychology of Decision-making' in A W Kruglanski and E T Higgins (Eds), *Social Psychology: Handbook of Basic Principles*, Guilford Press, New York, 2007, pp 334–52.

46 M R Lepper, D Greene and R E Nisbett, 'Undermining children's intrinsic interest with extrinsic reward: A test of the "overjustification" hypothesis' (1973) 28 *Jnl of Personality and Social Psychology* 129–37.

47 L Ross and R E Nisbett, *The Person and the Situation: Perspectives of Social Psychology*, McGraw-Hill, New York, 1991.

48 S Milgram, *Obedience to Authority*, Harper & Row, New York, 1974.

49 J M Darley and C D Batson, 'From Jerusalem to Jericho: A study of Situational and Dispositional Variables in Helping Behaviour' (1973) 27 *Jnl of Personality and Social Psychology* 100–8.

Theological Seminary to deliver a practice sermon on the parable of the Good Samaritan. While half the seminarians were ahead of schedule, others were led to believe they were running late. On their way to give the talk, all participants passed an ostensibly injured man slumped groaning in a doorway. The majority of those with time to spare stopped to help, whereas among those who were running late a mere 10% stopped, the remaining 90% simply stepping over the victim and rushing along. Despite years of ethical training and continued contemplation of life's lofty goals, the contextual nuance of a minor time constraint proved decisive to these seminarians' decision to stop to help a suffering man.

As it turns out, the pressures exerted by seemingly trivial situational factors can present restraining forces hard to overcome, or can create inducing forces that can be harnessed to great effect. In contrast with massive interventions that often prove ineffectual, seemingly minor situational changes can have a large impact. Kurt Lewin, who coined the term 'channel factors',⁵⁰ suggested that certain behaviours can be facilitated by the opening up of a channel, whereas other behaviours can be blocked by the closing of a channel. An illustrative example of a channel factor was documented by Leventhal, Singer and Jones,⁵¹ whose subjects received persuasive communications about the risks of tetanus and the value of inoculation, and were then invited to go to the campus infirmary for a tetanus shot. Follow-up surveys showed that the communication was effective in changing beliefs and attitudes. None the less, only 3% actually took the step of getting themselves inoculated, compared with 28% of those who received the same communication but, in addition, were given a map of the campus with the infirmary circled, and urged to decide on a particular time and route to get them there.

Related findings have been reported in the utilisation of public health services, where a variety of attitudinal and individual differences rarely predict who will show up at the clinic, whereas the mere distance of individuals from the clinic proves a strong predictor.⁵² Along these lines, Koehler and Poon⁵³ argue that people's predictions of their future behaviour overweight the strength of their current intentions, and underweight situational or contextual factors that influence the likelihood that those intentions will translate into action. This can generate systematically misguided plans among consumers, who, reassured by their good intentions, proceed to put themselves in situations which are powerful enough to make them act and choose otherwise.

V Concluding remarks

Much more can be said about human decision behaviour than can be summarised here. And much of it has direct consequences for what we ought

50 K Lewin, *Field theory in social science*, Harper, New York, 1951.

51 H R Leventhal, P Singer and S Jones, 'Effects of fear and specificity of recommendation upon attitudes and behaviour' (1965) 2 *Jnl of Personality and Social Psychology* 20–9.

52 B E Van Dort and R H Moos, 'Distance and the utilization of a student health center' (1976) 24(3) *Jnl of American College Health Association* 159–62.

53 D J Koehler and C S K Poon, 'Self-predictions overweight strength of current intentions' (2005) *Jnl of Experimental Social Psychology*.

to expect from consumers, and the ways in which they might be aided, educated and protected. Human behaviour is the outcome of a system — the human information processing system — that is idiosyncratic and complex. While many of us endorse the normative principles of economic theory upon reflection, these do not adequately describe the ways in which we, in fact, go about making decisions. As the renowned economist John Maurice Clark said almost 100 years ago:

The economist may attempt to ignore psychology, but it is sheer impossibility for him to ignore human nature . . . If the economist borrows his conception of man from the psychologist, his constructive work may have some chance of remaining purely economic in character. But if he does not, he will not thereby avoid psychology. Rather, he will force himself to make his own, and it will be bad psychology.

Indeed, examples of ‘bad psychology’ abound.⁵⁴

Because preferences can be malleable, confused, misguided or just plain ‘distracted’, consumers can benefit from some attention and help. One form in which these may be delivered is through laws and protections appropriately structured to defend against others’ unwelcome influences, which may include any number of familiar methods such as misleading advertising, hidden clauses, pressure tactics and so on. Another, perhaps less obvious, way to help is through clever arrangements against consumers’ own weaknesses, including bad planning, myopia, procrastination, overconfidence, forgetfulness, distraction, peer pressure, confusion, susceptibility to framing effects, misguided beliefs and other such very human traits. Much of this can be attained through intelligent and informed design of decision contexts that provide the right channel factors, induce desirable behaviours, restrain less constructive tendencies and thus ameliorate decision-making.⁵⁵ Seatbelt laws provide a simple safety default that is habitual and unquestioned; being a willing organ donor as a default for drivers who do not elect to opt out creates a context substantially superior to that generated by an opt-in arrangement;⁵⁶ per-unit pricing allows comparisons that most people would not conduct intuitively; and direct deposits are an excellent method to save by circumventing the mental accounting that allows one freely to spend cash found in one’s pocket. Standard restraints on one’s premature access to or control over retirement savings are another example, whereas the attempt to limit such restraints (currently under way in the United States) is an example of the failure to appreciate human fallibility and its potentially dire consequences.

A remarkably successful decision design, which has now influenced legislation in a number of countries, is Thaler and Benartzi’s ‘Save More

54 For related discussion, see M Bertrand, S Mullainathan and E Shafir, ‘Behavioural Economics and Marketing in Aid of Decision-Making among the Poor’ (2006) 25 *Jnl of Public Policy and Marketing* 1.

55 J March, ‘Bounded rationality, ambiguity and the engineering of choice’ (1978) 9 *Bell J Econ* 587–608.

56 Johnson and Goldstein, above n 8.

TomorrowTM, (SMaRT) program.⁵⁷ Relying on the most basic psychological principles of hyperbolic discounting, inertia and nominal loss aversion, Thaler and Benartzi's program helps employees substantially increase their retirement savings as a result of agreeing to default deductions from future raises (a program from which they can always withdraw, but very rarely do). Assuming one agrees that saving more is a good thing, particularly when those who are saving like it and want to continue, it is notable that SMaRT allows people to improve their financial condition merely by providing a good 'channel', while imparting no new knowledge, no substantial incentives and very little by way of new oversight.

Of course, what may be seen as 'paternalistic' policies endorsed here are opposed by many scholars. A good representative objection, which explicitly addresses recent behavioural research, is Glaeser.⁵⁸ While Glaeser voices a number of important concerns, including some unassailable observations regarding the potential dangers of paternalism, his critique does not impinge much on the current discussion. First, according to the classic definition Glaeser uses, paternalism involves 'the interference of a state or an individual with another person, against their will', and, as such, fails to address many of the proposals in the present article, since these are often endorsed by consumers. Second, whereas Glaeser largely focuses on 'errors and false beliefs' of the sort that can be learned and straightforwardly corrected, much of the discussion above centers around human proclivities, perceptions and behaviours that are less easy to 'correct', since they are passive, implicit, often undetectable and unaware. Consumers, says Glaeser, 'face stronger incentives to correct errors that directly impact their well-being than do government bureaucrats'. Adequate correction, however, often boils down to knowledge, awareness, ability and cost. The right intervention, of course, need not be provided by the government — it can come from a variety of private institutions. None the less, a well-designed default savings mechanism, for example, may be easier for bureaucrats and professionals to implement than for consumers, who may not be aware of, or themselves be able to implement, a better way. (After all, consumers face stronger incentives for their flight to go well than do engineers and technicians, but that has little impact on whom we think ought to be taking care of the technical aspects of flights.)

What is critical is that we be aware of potential failures and proceed to design appropriate contexts that help people achieve more beneficial outcomes. While it is hard to imagine a situation where governmental bodies will not prove instrumental in bringing this about, there is certainly room for careful thinking about how to allocate responsibility for and control over such contextual design.

It seems imperative for policy makers to explore arrangements that, while often non-binding, help people promote desirable behaviours that ameliorate their conditions. Paradoxically, low-income citizens often have less recourse to all sorts of beneficial savings and deposit defaults and to other such programs. Typically, ethnographic studies of the poor suggest drastically

57 R H Thaler and S Benartzi, 'Save More Tomorrow: Using Behavioural Economics to Increase Employee Saving' (2004) 112(1)(2) *Jnl of Political Economy* 164–87.

58 E L Glaeser, 'Paternalism and psychology' (2006) 73 *Uni of Chicago L Rev* 133–56.

different forces at play, in the form of friends and family in dire straits, who frequently request help. Rather than default savings venues, this creates situations where spending is often the safest way to 'save'.

A behaviourally informed perspective has implications for what ought to count as ethical, and perhaps as legal. According to the standard view, people are well informed and in control. Enticements that are better avoided, if harmful enough, will be avoided; information that is hard to find or to understand, if deemed important enough, will be deciphered; opportunities, if beneficial enough, will be explored. Instead, behavioural research provides ample illustration that even minor temptations and perfectly surmountable difficulties may prove not trivial to overcome and can become decisive obstacles.⁵⁹

Consider the credit cards market, which has benefited from deregulation coupled with technology enabling the almost real-time tracking of personal financial information. A recent report by FRONTLINE® and *The New York Times* documents some of the techniques used by the credit card industry to get consumers to take on more debt. Revenues come from tactics that include hidden default terms, penalty fees and higher rates that can be triggered by just a single lapse — a payment that arrives even hours late, a charge that exceeds the credit line by a few dollars, or a loan from a separate creditor (such as a car dealer) which renders the cardholder 'overextended'. '[Banks are] raising interest rates, adding new fees, making the due date for your payment a holiday or a Sunday on the hopes that maybe you'll trip up and get a payment in late.' The average American family now owes roughly \$8000 on its credit cards. Of course, the flurry of unexpected fees and rate hikes often comes just when consumers can least afford them,

Such tactics, of course, are not limited to the credit card industry. Many bank fees, according to *Consumer Reports*, are 'no-see-ums embedded in fine print or collected so seamlessly that consumers don't realize they've paid them until long after the fact'. Application and re-certification forms can be extremely unfriendly and complicated. As reported by ACORN (Association of Community Organizations for Reform Now):

Much of the competition between lenders in the subprime industry is not based on the rates or terms offered by the different lenders, but on which lender can reach and 'hook' the borrower first. Predatory lenders employ a sophisticated combination of 'high tech' and 'high touch' methods.

Of course, regulating such markets is a non-trivial proposition. None the less, where human frailty is fully recognised, such regulation is attainable. Consider, for example, the Federal Trade Commission's Funeral Rule, which lists a number of procedures every funeral home must follow, and services it must explicitly describe and provide. 'When a loved one dies', explains the 'Consumer Rights under the Funeral Rule' brochure, 'grieving family members and friends often are confronted with dozens of decisions about the funeral — all of which must be made quickly and often under great emotional duress'.

Systematic human frailty, as it turns out, is exhibited not only, and perhaps

⁵⁹ For more on this, see Bertrand et al, above n 54.

not especially, when loved ones die. Recognition of such everyday frailty suggests we ought seriously to consider ways to attain a healthy balance between libertarianism and paternalism,⁶⁰ or between free market competition and consumer protection.⁶¹ A better understanding of consumers' strengths and limitations can bring about healthier consumers in more sustainable environments.

60 C Sunstein and R H Thaler, 'Libertarian Paternalism is Not an Oxymoron' (2003) 70(4) *Uni of Chicago L Rev* 1159–1202.

61 See, eg, J S Gans, 'Protecting consumers by protecting competition: Does behavioural economics support this contention?' (2005) 13 *CCLJ* 1–11; L Sylvan, 'Activating competition: The consumer-competition interface' (2004) 12 *CCLJ* 191–206.