Regulatory Studies Center

THE GEORGE WASHINGTON UNIVERSITY

Nudging the Nudger: Applying Behavioral Insights to Regulators

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Introduction

Background:

- Increasing calls for regulatory interventions to address "behavioral market failures"
- Prevalent (mis)assumption that regulators are rational
- Limited research on regulators' behavioral biases through a lens of the institutional incentives they face

Introduction

Rachlinski and Farina (2002): "[a]ttending to the influence of cognitive errors facilitates an understanding of why some governmental structures are generally successful while others persistently fail."

Sunstein (2013): "For every bias identified for individuals, there is an accompanying bias in the public sphere."

UK Behavioural Insights Team (2018): "elected and unelected government officials are themselves influenced by the same heuristics and biases that they try to address in others."

Objectives:

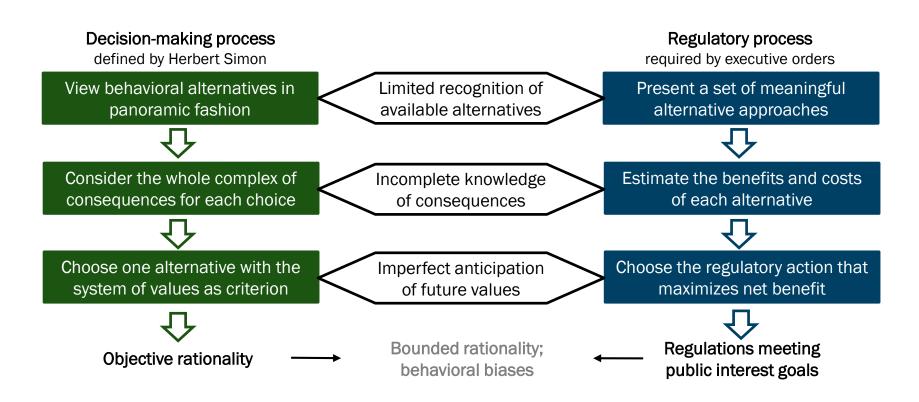
- Explore the "rationality" (or "irrationality") in the regulatory process
- Examine regulators' biases using both behavioral and institutional insights
- Suggest possible improvements in the regulatory "choice architecture"

Why Regulators?

Regulators—Career civil servants involved in rulemaking in federal government agencies

- e.g., subject matter experts, economists, policy analysts, attorneys
- Different from individuals acting in the private sphere, and other public decision makers
 - Specialized knowledge and experiences
 - Institutional constraints
 - Making decisions for the public, not themselves

"Rationality" in the Regulatory Process



Behavioral and Institutional Insights

Behavioral Economics

- Bounded rationality
- Cognitive biases
- Psychological limitations



Public Choice

- Self-interested agents
- Institutional incentives
- Government failure



Regulators' Behavioral Biases

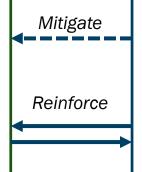
- ♦ Availability Heuristic
- ♦ Myopia
- ◆ Confirmation Bias
- ♦ Overconfidence

Availability Heuristic

Observation: Regulatory agenda responds to salient social events

Behavioral Insights

- A mental shortcut in which people assess the probability of an outcome based on "the ease with which instances or occurrences can be brought to mind."
- "Information cascades" and "reputational cascades" (Kuran and Sunstein 1999)



- Subject matter expertise and access to better data
- Incentives to avoid criticism from political officials and the public
- Indirect response to salient events through legislative mandates

Myopia

Observation: Regulations focus on a single mission or certain aspects while ignoring others

Behavioral Insights

- Cognitive inability to process life-cycle costs or self-control problems
- "tunnel vision" (Breyer 1995); "narrow framing" (Rizzo and Whitman 2009); "focusing illusion" (Tasic 2011); "institutionalized myopia" (Viscusi and Gayer 2015)

Reinforce

- Organizational settings: specific missions and clear tasks
- Intrinsic motivation and specialized training
- Responses to special interests

Confirmation Bias

Observation: Regulations misinterpret scientific evidence to support adopted policies

Reinforce

Behavioral Insights

- The tendency to seek or interpret evidence in a way that supports existing beliefs
- Inferring causal connections from associational data (Cooper and Kovacic 2012; Seidenfeld 2002)

-:

- Time constraints for rulemaking
- Incentives to avoid legal challenges
- Group work in rulemaking group polarization, groupthink

Overconfidence

Observation: Unintended consequences of regulation, over-regulation

Reinforce

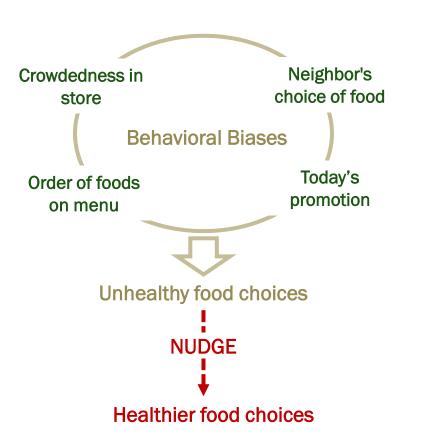
Behavioral Insights

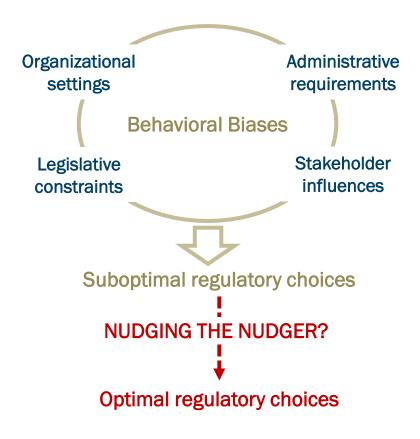
- The tendency to be overconfident in one's own ability to understand problems and make judgments
- "Illusion of explanatory depth" (Tasic 2009);
 "optimism bias" (Cooper and Kovacic 2012);
 "planner's paradox" (Mannix 2003)

- Incentives to meet administrative requirements
- Incentives to avoid legal challenges

Regulators' Choice Architecture

Choice architecture—the environment in which choices are made





Nudging the Nudgers

- Disclose the basis of decisions, including uncertainty
- Invite external scrutiny at an early stage

Greater Transparency in the Evidence Base

Engage Competing Views at an Early Stage

- Interdisciplinary collaboration
- Greater use of ANPR
- Enhance centralized review

Improve Regulatory
Choice Architecture

- Allow variation in compliance and quasi-experiments
- Incentivize retrospective reviews

Improve Feedback
Mechanisms

Consider Non-Regulatory Alternatives

- Greater emphasis on first identifying a compelling public need
- Competition itself is a powerful and dynamic regulator

Conclusion

- Individuals responsible for designing regulatory policy are susceptible to behavioral biases and heuristics.
- Observed regulator behaviors that appear contrary to the public interest may reflect the interaction of behavioral biases and rational regulatory responses to institutional incentives.
- Designing a choice architecture for regulatory decisions with these behavioral biases in mind could lead to better regulatory processes and outcomes.

Future Research:

• Empirical analysis on the relationship between specific institutional settings and systematic errors

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