Bachelorarbeit:
Soft Paternalism and Consumer Protection

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1. Introduction

Economic models assume that human beings are rational, utility-maximizing agents with a set of consistent preferences. However, findings in behavioral economics suggest that when making decisions, people deviate from the full rationality assumed by economists; for instance, their preferences may change depending on how a situation is framed, or they may use heuristics that systematically lead to suboptimal outcomes (Sunstein & Thaler, 2003a). Based on behavioral economics, some scholars such as Richard Thaler and Cass Sunstein have proposed the use of soft paternalism to steer people into making welfare-enhancing decisions. Soft paternalism is a non-intrusive form of paternalism, where people retain their freedom of choice, but are steered in a certain direction by altering the environment within which they decide, making them better off by their own standards (Sunstein & Thaler, 2003a). Although the use of behavioral insights in policy making is not new, the introduction of the concept of soft paternalism has caused discussions in the polity. The Organisation for Economic Co-operation and Development (OECD) Consumer Protection Committee has discussed the effects of soft paternalism and behavioral economics on consumer protection and developed a toolkit to help design policies. In this work, I will explain the concept of soft paternalism, the implications it has for consumer protection, and what risks should policy makers take into account when considering soft paternalism.

In the first part of this work, I will describe the insights from behavioral economics dealing with deviations from the full rationality attributed to the homo oeconomicus in economic models. I will subsequently explain the concept of soft paternalism, as proposed by Sunstein and Thaler (2003a), (2003b), and (2008), Camerer et al. (2003), and Loewenstein and Haisley (2007). In the second part, I will go through the implications of soft paternalism and behavioral economics on the steps for considering consumer protection policies recommended by the OECD (2010). I will explore the demand-side focused policies of information provision and cooling-off periods. In the fourth part, I will explain risks and considerations that should be taken into account when considering soft paternalism, focusing on the risk of moving to harder forms of paternalism as presented by Whitman and Rizzo (2007) and (2009).
2. Soft Paternalism and Behavioral Economics

2.1. Behavioral economics and deviations of rationality

“Economic research should use reasonable assumptions about agents’ cognitive abilities. Economic models should make predictions that are consistent with micro-level data on decisions, including experimental evidence. Finally, economists have much to learn from psychologists.” - Benjamin & Laibson, Good Policies for Bad Governments, 2003

In recent years, the field of behavioral economics has gained attention from academics as well as the general population. Daniel Kahneman was awarded the Prize in Economic Sciences in Memory of Alfred Nobel in 2002 for “having integrated insights from psychological research into economic science […]” (The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel, 2002). Some of the literature on the subject, such as Predictably Irrational by Dan Ariely; Thinking, Fast and Slow by Daniel Kahneman; and Nudge by Richard Thaler and Cass Sunstein have been quite popular on the bookshelves. These particular books explain the recent findings of behavioral economics, such as biases and heuristics, in layman’s terms; Predictably Irrational and Nudge also provide suggestions for policy makers and private parties on how to act based on these findings.

Standard economic theory assumes that people try to maximize consistent, well-defined preferences under complete information with unlimited cognitive abilities and will-power (Kooreman & Prast, 2010). Their preferences are internally consistent, context independent, and stable. In case there is uncertainty, they assign probabilities to outcomes and change them in accordance to Bayesian rules (Camerer & Loewenstein, 2002). Behavioral economists disagree with this image of human beings. They have identified some situations where economic agents do not show full rationality.

Heuristics are cognitive shortcuts that may lead to systematic suboptimal outcomes. Some of these heuristics, outlined below, are the anchoring effect, availability heuristics, the framing effect, the endowment effect, the status quo bias, and hyperbolic time discounting. These biases demonstrate ways in which humans can deviate from full rationality.

The anchoring effect happens when people make decisions based on an arbitrary “anchor”; they take an initial value and make adjustments to it until they arrive at an answer (Tversky &
Kahneman, 1974). For example, when considering buying a certain good, the price of the first one seen can serve as an anchor to judge all subsequent goods of the same category. If humans were fully rational, the initial anchor would not make any difference in the final result; however, the initial starting point does influence the final results in practice (Tversky & Kahneman, 1974).

The availability heuristic is the judgment of probabilities based on how easily some of the instances can be remembered i.e. based on salience (Tversky & Kahneman, 1974). For example, a person might consider the risk of premature death caused by excessive consumption of alcohol or nicotine to be low if she knows someone who has lived a long life, even if she consumed alcohol and smoked cigarettes her entire life (Samson & Wood, 2010). The media has a strong effect in causing availability; which may explain why many people consider the risk of an airplane accident to be much higher than it actually is (Samson & Wood, 2010).

Framing effects occur when “different descriptions of the same problem highlight different aspects of the outcomes” (Kahneman, 2002). How a situation is framed can lead to humans deciding different alternatives if the information is presented differently. To exemplify this effect, a patient may perceive the outcome probabilities of an operation differently if the operation is presented as having a 95% chance of survival or a 5% chance of death, even if the same information is given in both cases.

The endowment effect happens when people value an item more highly due to the fact that they own it. They would be willing to pay less to acquire an object than they would to sell it (Kahneman, Knetsch, & Thaler, 1991). This is discrepancy is caused by loss aversion, which suggests that people derive less pleasure from acquiring something than they suffer from renouncing to it (Kahneman, Knetsch, & Thaler, 1991). Loss aversion can also help explain the status quo bias.

The status quo bias is the strong tendency of human beings to stay with the default position; choosing not to choose (Samuelson & Zeckhauser, 1988). The status quo bias is closely related to loss aversion, since loss aversion causes people to perceive deviations of the status quo as losses, which gloom larger than the potential gains of the new situation (Kahneman, Knetsch, & Thaler, 1991).
Hyperbolic time discounting is the tendency of human beings to value rewards that arrive today more than they do rewards that will arrive in the future, to a larger extent than standard economic theory would predict (Frederick, Loewenstein, & O'Donoghue, 2002). Someone might prefer €100 now instead of €110 tomorrow, but would prefer €110 in 31 days over €100 in 30 days; showing inconsistency in her time preferences. This deviation of rationality may lead to people wishing to make far-sighted decisions in the future, such as eating healthy, but when said future arrives making short-sighted ones, like eating unhealthy (Camerer & Loewenstein, 2002).

A distinction that should be made in situations within which people decide is between hot and cold states of mind. Hot states of mind are those states where humans cannot think “clearly”, such as fear, pain, or sexual arousal¹ (Samson & Wood, 2010). When in a cold state of mind, people tend to underestimate how being in a hot state of mind affects their behavior (Loewenstein, 2005); this is called a “hot-cold empathy gap”.

If human beings are prone to systematic mistakes in their decision making process, the outcomes of their choices may be sub-optimal. Being aware of the shortcomings of human cognitive abilities, proponents of soft paternalism argue, policy makers can use this knowledge to lead people into making choices that are better for themselves.

2.2. Soft Paternalism

“The paradox of libertarian paternalism is that it terrifies both libertarians and paternalists.” – Benjamin Wallace-Wells, Cass Sunstein Wants to Nudge Us, 2010

2.2.1. Definition and Origin

Soft paternalism², libertarian paternalism³, asymmetric paternalism⁴ ⁵, or light paternalism⁶ is the attempt to influence people’s behavior to improve their lives, without considerably⁷ limiting their

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¹ An example of decision making under sexual arousal can be found in an experiment by Ariely and Loewenstein (2005), where participants in a “cold” state of mind said they would not wish to hypothetically engage in certain sexual activities but under arousal said they would hypothetically engage in them.
² I will only use the term soft paternalism for simplicity. However, all the ones named can be used interchangeably.
³ Libertarian paternalism is a term coined by Cass Sunstein and Richard Thaler (2003a). They define it as: “An Approach that preserves freedom of choice but that authorizes both private and public institutions to steer people in directions that will promote their welfare.” (Sunstein & Thaler, 2003a)
⁴ Asymmetric paternalism is a term coined by Camerer et al. (2003). They define an asymmetrically paternalist policy as: “A regulation is asymmetrically paternalistic if it creates large benefits for those who make errors, while imposing little or no harm on those who are fully rational” (Camerer et al., 2003)
freedom of choice. The first instance of soft paternalism can be found in “Libertarian Paternalism” by Richard Thaler and Cass Sunstein (2003a); in the same year they published a longer essay explaining the concept further, “Libertarian Paternalism is Not an Oxymoron” (Sunstein and Thaler, 2003b). Other works on the subject have been written by Camerer et al. (2003) in “Regulation for Conservatives: Behavioral Economics and the Case for Asymmetric Paternalism” and Loewenstein and Haisley (2007) in “The Economist as Therapist: Methodological Ramifications of ‘Light’ Paternalism”. In 2008, Richard Thaler and Cass Sunstein published the book “Nudge: Improving Decisions About Health, Wealth, and Happiness” which explains in simple terms the idea of soft paternalism with examples and recommendations for both private and public parties. Nudge, the book, was widely read and generated much discussion on the idea of soft paternalism, not only in academia, but among the broader population.

To illustrate this concept, Sunstein and Thaler (2003a), give the example of a cafeteria administrator who has to arrange in the order in which the food is presented; taking into account that more people will select the choice that is more salient. She could choose the order at random, she could choose the order so that her customers would be as obese as possible, or she could arrange the food in a manner that would make her customers better off (Sunstein & Thaler, 2003a). In case she chooses the food arrangement were healthy meals are more salient, a segment of her customers will choose “better” options for themselves without any coercion; whereas someone who rationally decides to eat unhealthy will be free to do so. This policy would thus satisfy the definition of soft paternalism, since it influences people’s behavior to improve their lives, without significantly restricting their freedom of choice. Benjamin and Laibson (2003) capture the essence of soft paternalism when they write: “[soft] paternalistic policies improve consumer welfare by enhancing an individual’s likelihood of maximizing her own welfare.”

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5 It should be noted that under the definition of asymmetric paternalism, more limitations of individual freedom are justified if the benefits for those who are boundedly rational outweigh the costs for those who are fully rational.  
6 Light paternalism is a termed coined by Loewenstein and Haisley (2007). They define it as “In contrast to traditional ‘heavy-handed’ approaches to paternalism, light paternalistic policies aim to enhance individual choice without restricting it.” (Loewenstein & Haisley, 2007)  
7 The extent to which freedom is limited in soft paternalism is subject to debate and will be addressed in this work in the next pages.  
8 Sunstein and Thaler (2003) assume that, in this case, the healthier choices are the ones that would make consumers better off by saying: “Would many object to putting the fruit before the desserts at an elementary school cafeteria if the outcome were to increase the consumption ratio of apples to Twinkies?” (Sunstein & Thaler, 2003). In “The Economist as Therapist” Loewenstein and Hailey (2007) also point to the obesity rates to argue that people are making sub-optimal decision. Indeed, they are skeptical about the view that “people are obese because they have calculated that the pleasure from the extra food, or the pain from the foregone exercise are sufficient to compensate for the negative consequences of obesity” (Loewenstein & Haisley, 2007)
Across the soft paternalistic literature, when behavioral economics shows the existence of time or preference inconsistencies, proponents of soft paternalism usually consider decisions made in cold-states of mind and long-term decisions to be the better ones. However, they do not offer a clear answer as to why one preference should be the correct one. Skeptics of soft paternalism, such as Whitman and Rizzo (2007) and Hill (2007) point this out in their works. For the purpose of discussion, I will grant the assumption that decisions made in a cold state of mind, that weigh the considerations for future selves more heavily, are the better choices.

Sunstein and Thaler (2008) call the person responsible for making decisions that affect the context in which people decide a choice architect; they argue that choice architecture is inevitable. Planners are forced to make design choices, such as choosing a default option (Sunstein & Thaler, 2003a). If human beings were fully rational, the existence of a default option would not alter their final choices; however, since humans deviate from full rationality, the default option has a large effect on the choices people make (Kahneman, Knetsch, & Thaler, 1991).

Sunstein and Thaler (2008) argue that soft paternalism may be the “Third Way,” i.e. a middle-point between liberal and conservative; between libertarian and paternalist (Sunstein & Thaler, 2008). They posit that those who greatly value freedom of choice, e.g. libertarians or classic liberals, should find soft paternalistic policies acceptable, since they preserve freedom of choice and engaging in choice architecture is sometimes inevitable (Sunstein & Thaler, 2003a); whereas paternalists should find the policies attractive as well, since they guide people into making decisions that are in their best interest.

This work does not deal with private uses of soft paternalism but only with those alternatives that could be used by governments to steer people into making certain decisions.

2.2.2. Examples

An example of a soft paternalistic policy can be found in the Save More Tomorrow (SMarT) plan, designed by Thaler and Benartzi (2004), where people decide in advance that a portion of their future salary increases will be saved for their retirement. It is argued that people fail to save enough money for retirement for reasons that, according to proponents of soft paternalism, can be attributed to deviations of rationality (Thaler & Benartzi, 2004). The failure to save can be
partially attributed to loss aversion, since saving money in 401(k) plans\(^9\) can be seen as a loss of income; status-quo bias, since the default is to not contribute anything; and hyperbolic time discounting, since current consumption, facilitated through income, is weighted much more heavily than future consumption (Loewenstein & Haisley, 2007). The SMarT plan can help de-bias people’s behavior. Since the savings take place in the future, they do not fall victim to hyperbolic time discounting. Once in the program, the process repeats itself until the maximum contribution rate is reached, making the status-quo bias work in employees’ favor. It should be noted that this program is not actively enforced by the state, but has been adopted by some private companies voluntarily.

Another example of a soft paternalistic policy is requiring choosing gambling liquidity limits (Benjamin & Laibson, 2003). Gambling can cause individuals with self-control problems to gamble away their savings or significantly indebting themselves, which are assumed to be undesirable outcomes. If a policy requires gamblers to choose a liquidity limit by themselves, ex-ante, in a cold-state of mind, they will be unable to choose in the heat of the moment to spend more money than they initially intended to (Benjamin & Laibson, 2003). This allows rational gamblers who wish to risk large amounts to do so, while helping gamblers with self-control issues to make better choices, by their own standards, since they set their own limits.

The distinction between soft paternalistic policies and harder forms of paternalism lies in maintaining freedom of choice. In an example given by Loewenstein and Haisley (2007), if employees of a company wish to reduce their weight\(^10\), a hard paternalist would ban soda machines altogether, whereas a soft paternalist would keep the machines in the building, but devise a system that did not allow those who state that they wish to lose weight to use them (Loewenstein & Haisley, 2007). This would protect people from hyperbolic time discounting, since they choose their goals ex-ante, and are not able to violate their preferences, as stated by themselves, when faced with temptation. This system can be seen analogous to Ulysses’ actions in the Odyssey, when he decided to be tied up in order to not fall victim to the temptation caused by the mermaids’ songs.

\(^9\) A defined-contribution pension program in the United States of America

\(^{10}\) In this case, the goal of losing weight is stated by the employees themselves (Loewenstein & Haisley, 2007). This is called a self-officiating policy. It should be noted that hard paternalists would be willing to ban the soda machines if they believe people are better off without them, even if the employees do not express any wish to reduce weight or improve their health.
2.2.3. Extent of intervention

When engaging in choice architecture, the costs of deviating from the desired outcome may increase, or some choices could be foreclosed. In the case of the cafeteria manager, if the food is located far away from the cash register, the transaction costs associated with eating unhealthy meals increase. In the case of the SMarT plan, people may have to go through many bureaucratic forms to opt-out of the program. In gambling liquidity limits, a gambler may rationally decide, in the light of new information, to gamble more than he initially intended, but be unable to do so due to the enacted policy.

If the costs of choosing alternatives contrary to the preferred option of the soft paternalistic policies are high, freedom of choice could be limited. If in order to protect consumers and de-bias their behaviors, a consumer protection agency requires cooling-off periods\textsuperscript{11}, the freedom to consume a good or service immediately is reduced. If a cooling-off period lasts a year, is it still soft paternalistic? What would be the optimal duration? It is important to understand how proponents of soft paternalism view the boundaries of government actions when considering soft paternalism, since harder forms of paternalism are considered undesirable\textsuperscript{12}. In the third part of this work I will explore the possibility of soft paternalistic policies leading to harder forms of paternalism.

To which extent should freedom of choice be limited is a matter subject to debate. Sunstein and Thaler (2003b) admit that the line between libertarian, i.e. soft, and non-libertarian, i.e. hard, paternalism is blurred. They proceed to call a soft paternalist who values freedom of choice greatly, and is thus determined to make it relatively costless for people to choose their preferred alternative, a libertarian paternalist; whereas someone who is confident in her judgment and is willing to impose larger costs on those who deviate should be called a libertarian paternalist. In an exchange of opinions between Rizzo and Thaler in 2007, Thaler emphasizes only nudging by policy when it is inevitable, i.e. when a choice has to be made necessarily, as in the example

\textsuperscript{11} With cooling-off periods, consumers are delayed from taking action for some duration or have the right to nullify a contract during a determined period

\textsuperscript{12} One of the strongest cases against (hard) paternalism can be found on “On Liberty” by John Stuart Mill (1859). Mill argues that people should retain their freedom of choice, since they are in a better position than any other party to assess what is better for themselves. He states: “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right.” (Mill, 1859) Soft paternalism properly applied would not violate this, since those steered would retain their freedom of choice, thus they are not coerced against their will.
of the cafeteria (Rizzo, 2007). Thaler is critical of nudging when such a decision is not inevitable and there is no reason to believe that a nudge is really needed (Rizzo, 2007). Camerer et al. (2003) acknowledge that sometimes suboptimal decision making cannot be counter-acted by cooling-off periods, providing information, changing the default, or any other soft paternalistic policy alone; therefore, they argue, there may be benefits in limiting consumer choices in some cases. Although proponents of soft paternalism remain skeptical of harder forms of paternalism, they allow room for limiting freedom of choice in their work.

Camerer et al. (2003) propose an equation to determine the net benefits of a given policy: 

\[(p \times B) - [(1 - p) \times C] - I + > 0\]

They argue that if the benefits for those who are not fully rational outweigh the costs for those who are, a policy can increase social welfare. In this formula, \(p\) is the percentage of those boundedly rational, \(B\) are the benefits for boundedly rational people, \(C\) are the costs for fully rational agents, and \(I\) are the implementation costs of a policy. However, based on this equation, some policies that would not be considered soft by many could be justified; such as sin taxes, which would significantly raise the cost of rationally engaging in a given activity. O'Donoghue and Rabin (2006) argue that sin taxes can improve total social surplus, satisfying Camerer et al.'s equation, if there is a percentage of the population that lacks self-control, while imposing little costs to those who are rational, if there is redistribution of the tax revenue.

Even if policy makers choose Camerer et al. (2003)'s formula to measure the net benefits of a policy, how to measure the benefits \(B\) is not an easy task. One of the causes of this difficulty is that revealed preferences cannot be used to judge welfare, according to proponents of soft paternalism (Sunstein & Thaler, 2003a). Loewenstein and Haisley (2007) state: “Clearly, the traditional welfare criterion used by economists, which involves satisfying people's preferences to the maximum extent possible, cannot be used to evaluate policies that are premised on the view that people don't always choose what's best for themselves.” The costs, and all other elements of the formula, are difficult to assess as well. If the benefits and costs of a given policy are open to interpretation, some policies which significantly restrict freedom of choice can be enacted.

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13 Loewenstein and Haisley (2007) discuss in the same work some of the criteria that could be used to assess welfare, such as experience utility, limiting welfare to valid choices, informed decision utility, and capabilities.
Loewenstein and Haisley (2007) propose an “imperfect but pragmatic approach,” where policies should be implemented when: (1) there is dominance, (2) the current situation has clearly negative outcomes, or (3) it is a self-officiating policy. If none of these conditions are met, policy makers should refrain from enacting policies that could limit freedom.

An option will be dominant if it is better in at least one criterion than any other strategy, while not being worse in any other aspect (Pindyck & Rubinfeld, 2009). Loewenstein and Haisley (2007) give the example of employee’s contributions to savings plan; where if someone has monotonic preferences, meaning they prefer more income over less, they will profit from a policy that increases their savings if their contributions are matched by the employer. In these cases, a soft paternalistic policy is dominant and should be enacted.

Loewenstein and Haisley (2007) argue that if the current state situation has clearly negative outcomes, an intervention can be beneficial. To support this claim, they give the example of people who use payday loans\textsuperscript{14} having a higher chance to file for bankruptcy, which they argue, is clearly a negative outcome. Loewenstein and Haisley (2007) do not provide the reader with clear criteria to assess what constitutes a “clearly negative outcome.” If this concept is open to interpretation, this vagueness of terms can facilitate the move to harder forms of paternalism.

Self-officiating policies are those that help people achieve the goals they choose \textit{for themselves} (Loewenstein & Haisley, 2007). If people who are in a state they do not wish to be in, such as being overweight, believe that a soft paternalistic policy can help them achieve their goal, Loewenstein and Haisley (2007) argue, an intervention may be warranted. They stress the importance of guiding the need for policy based on preference and not choice; if someone wants to achieve A, but their actions are inconsistent with A, soft paternalistic policies are justified. An example of this inconsistency can be found when people wish to be healthy, but find themselves eating unhealthy meals most of the time. When there is a large gap between preference and choice is where soft paternalistic policies can be most useful, since they can align choices with preferences (Loewenstein & Haisley, 2007).

\textsuperscript{14} A short-term loan, also referred as “cash advances”
3. Consumer Protection

“We are witnessing a renaissance of paternalism in legal scholarship. This revival has been fueled by the rise of behavioral law and economics” – Matthew Edwards, The FTC and the New Paternalism, 2008

Consumer protection policies are those whose aim is to: “protect consumers from fraudulent and misleading commercial practices and unsafe products and to promote transparent markets that enable consumers make informed decisions” (OECD, 2010). From an economic perspective, it has usually been founded on market failures, which occur when one of the assumptions taken in economic models is not met in reality. What has especially guided the need for consumer protection policies are asymmetrical information and bargaining power. While non-governmental protection measures, such as screening and signaling of information exist, they are usually considered insufficient, making the case for government intervention to protect consumers (OECD, 2010).

With findings of deviations from rationality from behavioral economics and the proposal of soft paternalism, more focus has been given to behavioral failures. The idea of steering consumer into making better choices has been especially influential in the United States of America and the United Kingdom. In the United Kingdom, a government unit was founded in 2010 called the Behavioural Insights team, often referred as the “nudge unit,” its responsibilities are: “encouraging and supporting people to make better choices for themselves, considering the application of behavioural science to policy design and delivery, advancing behavioural science in public policy, [and] championing scientific methodology to bring greater rigour to policy evaluation” (United Kingdom’s Cabinet Office, 2010). The work of the Behavioural Insights Team has been broad, publishing reports on improving health, improve energy use, improving financial decisions, organ donation, charity, and empowering consumers (United Kingdom's Cabinet Office, 2010).

The Committee on Consumer Policy of the Organization for Economic Co-operation and Development (OECD) discussed the implications of behavioral insights for consumer protection policies in two roundtables in 2006 (OECD, 2006) and 2007 (OECD, 2007). These discussions led to the creation of a Consumer Policy Toolkit, published in 2010, where a framework to design and evaluate consumer protection policies is given. In 2007, the Federal Trade Commission of the United States of America organized a conference as well to discuss the
implications of Behavioral Economics for Consumer Protection Policy (Federal Trade Commission, 2007). I will use the guidelines provided by the OECD (2010), since they are universal and have an economic approach that makes emphasis on protecting freedom of choice, which is important when discussing soft paternalism.

3.1. Policy guidelines

“We are not only irrational, but predictably irrational... our irrationality happens the same way, again, and again.” - Dan Ariely, Predictably Irrational, 2009

In order to help policy makers decide when and how to intervene, the OECD Consumer Protection Committee designed the Consumer Policy Toolkit as a framework. This toolkit presents a process to determine policies that consists of six steps:

**Figure 1: Consumer policy making steps**

In step 1, policy makers ought to define if there is a problem and what the source of said problem is. The sources of problems have usually been attributed to information failures, wrongful firm behavior, such as products with defects and false advertisement, and market and government failures (OECD, 2010). With the existence of behavioral failures, behavioral biases have also been added to the list of possible sources of problems. If humans deviate from full rationality, policy makers may identify new problems that were usually not thought to warrant
actions in the past, such as in repeat purchases and search goods\textsuperscript{15}. When there are repeat purchases, according to standard economic theory, market failures are less likely to occur, since consumers quickly learn about the quality of the product and how it satisfies their needs and adapt their future purchasing behavior accordingly. In case a product does not solve the needs of the consumers, or a firm is deceiving consumers, non-governmental mechanisms such as reputation and word of mouth will correct the problem (OECD, 2010). However, irrational consumers can make the same mistake repeatedly, since their biases, and consequently their alleged behavioral failure, does not disappear with more purchases. In the case of search goods, having sufficient information about the product does not necessarily mean that consumers will process the information and make decisions that are in their own best interest, since they are subject to biases.

If our cognitive abilities are limited, we are bound to make sub-optimal choices in most areas of our lives; as behavioral economics expands more biases and ways in which we fail to make rational decisions and assessments will likely be found. Policy makers ought to consider when a problem is severe enough to require legislation. As governments do not intervene each time there is a deviation from perfect competition (the fact that in most sectors companies make profits determines that market failure is ubiquitous), consumer policy makers ought to not intervene in every scenario where there is a behavioral failure, but only in those where market detriment is significant.

In this first step, decision makers need to determine if the consumer authority is the most appropriate entity to address the issue (OECD, 2010). People often are aware of their behavioral failures, such as giving in to temptations (e.g. eating unhealthy snacks) they know to be welfare reducing and against their own preferences (e.g. being healthy); although they may not be aware that the cause of their (irrational) behavior is, for example, hyperbolic time discounting, they often search for ways to align their choices with their preferences and improve their decisions. Some self-debiasing mechanisms include internal rewards and punishments, structuring their external environment, and enlisting the help of third parties (Rizzo & Whitman, 2009). An example of a private alternative is the website www.stickK.com, founded by behavioral economists to help people achieve their goals, such as eating healthier, by having

\textsuperscript{15} Search goods are those goods where the consumer can obtain sufficient information about the quality and attributes of the good prior to purchase. When dealing with the extent a customer can gather information of a good, the categories are: Search goods, experience goods, and credence goods. For experience goods and credence goods, more interventions have been warranted, even prior to behavioral economics, since information is only available ex-post or not at all (OECD, 2010).
stakes invested in the goal and thus inducing loss aversion (StickK, 2008). Policy makers should acknowledge that such mechanisms may be possible and sometimes enough to counteract consumer irrationality, so no intervention may be needed.

In the second step, policy makers should assess the extent of consumer detriment. Consumer detriment is the financial and non-financial welfare loss for consumers caused when market outcomes do not reach their potential (OECD, 2010). Some of the sources of information to assess consumer detriment the OECD (2010) recommends are focus groups, econometric analysis, complaints data, consumer surveys, and market screening. However, as noted in the first part of this work, assessing welfare when there are behavioral failures is not an easy task, since revealed preferences may be biased and thus not a good indicator of welfare. If consumer protection agencies intend to design soft paternalistic policies, it would be necessary to refine the tools to assess welfare and detriment when there are behavioral failures.

Another factor that should be taken into account is the multiple selves’ problem, where individuals can be viewed as a collection of multiple selves in different points of time with sometimes competing and contradictory preferences (Posner, 1997). An example that illustrates this problem is given by Edwards (2008) of a hypothetical consumer called Ben. Ben goes to the supermarket and buys a gossip magazine and a candy bar because they were strategically placed. Ben enjoys the candy bar greatly and feels pleasure when reading about celebrities’ lives. Some time after, he regrets this decision since it led him to gain weight and not use his time to read journals of his professional field. In his death bed, he announces that he regrets nothing, even if he had diabetes and did not advance much in his career. Which one is the true Ben? Was there any consumer detriment in this case? Which self has priority over the others? These are questions that are not easy to answer. Most soft paternalists tend to favor future selves over present ones; arguing that the rate of obesity in the United States of America is a clearly negative outcome (Loewenstein & Haisley, 2007), discarding the possibility that the decision to eat unhealthy can be a rational one of someone who favors the pleasure of eating over health and is willing to incur in risk of premature death to satisfy his needs. Behavioral economics can point us to the existence of inconsistent preferences but it cannot give us guidance on the normative level as to which preference by which self is the one worth steering towards. Korobkin and Ulen (2000) argue that, although this decision can vary from situation to situation, in cases such as health care we may be led to prefer future selves over present ones,
since the present (healthy) self does not have sufficient information to assess the true costs of her decisions.

In the third step, the policy maker has to consider if the consumer detriment warrants a policy action. She has to consider the scale of consumer detriment; it is stated that if the detriment is small but felt by a large number of consumers, or if the detriment is only felt by a small number of consumers but has large detriment, a policy may be warranted (OECD, 2010). The policy maker has to consider the anticipated duration of consumer detriment, the consequences of taking no action, and other substantial costs to the economy of taking action (OECD, 2010). After assessing these considerations, the policy maker decides if she should move to the next step, to research for more evidence, or to terminate the investigation if she decides that no action is required.

In the fourth step, policy makers set the goals for a policy and consider which options are available. Based on literature on soft paternalism, the doors for a wider range of policies are open, since behavior elements that change behavior can be deployed without the need to foreclose choices. When designing consumer protection policies, there is a distinction between demand-side measures and supply-side measures. Demand side measures focus on empowering consumers to make better choices, such as improving information for consumers to decide; whereas supply side measures focus on modifying the behavior of companies, for example by setting minimum standard for products (OECD, 2010). Soft paternalism and behavioral insights have more impact on demand-side measures, since they alter the context within which people make decisions. After going through the last two steps of the consumer protection policy design process, I will focus on the demand-side measures of information provision and cooling-off periods.
In the fifth step, policy makers evaluate among the existing options, taking into account both quantifiable and non-quantifiable aspects (OECD, 2010). To evaluate the options a cost-benefit analysis is encouraged. The equation shown in the first part of this work by Camerer et al. (2003) can be used to guide policy makers as to what policies would bring net benefits to society. The risk of soft paternalism opening the doors for harder forms of paternalism, based on the slippery slope argument as proposed mainly by Whitman and Rizzo (2007), should be taken into account as possible costs when considering soft paternalistic policies. This argument will be explored in the next part of this work.

The sixth and final step of the process is dedicated to evaluating the effectiveness of a policy once implemented to assess if it is achieving what it was supposed to. It should take into account possible unintended consequences of the selected policy, changes in the marketplace, and changes in the nature of the problem (OECD, 2010). Based on this review, a policy maker should decide if a measure should be maintained, modified, eliminated, or if a reassessment of the problem is needed (OECD, 2010).

Although it is more difficult to foresee the unintended consequences of a policy before it is enacted than ex-post, when the effects are clear, policy makers ought to analyze critically every proposed policy and analyze and consider possible unintended consequences as costs. An
example of a consumer protection policy with unforeseen unintended consequences are the item pricing laws that require a price tag on each individual item sold by a retailer (Bergen et al. 2008). This policy could be thought to address an information problem, where consumers do not dispose of enough information before purchasing\textsuperscript{16}. However, due to the added costs of adding a price tag to each item, the price of those goods affected increased by 10\% (Bergen et al., 2008). If the ultimate goal of this law is to protect consumers, it could be argued that this law is not net beneficial, since consumers have to pay 10\% more for the same baskets of goods.

3.2. Cooling-off periods

“There is no known cure for the ills of ownership.” – Dan Ariely, Predictably Irrational, 2009

Cooling-off periods are a measure that can be applied by consumer protection agencies to protect consumers. With cooling-off periods, consumers are allowed to cancel a contract or return a good bought during the period without penalty (OECD, 2010) or are delayed from taking action for some duration (Camerer et al., 2003). Cooling-off periods have been used to correct information asymmetries, especially in experience goods, since consumers do not have enough information about a good to make an informed decision, such as in used cars markets. In many experience goods, the quality of the product can be assessed after a small period of time using the product. If consumers can try the product for a period of time without penalty, they will be better off, since they have more relevant information to guide their purchases. Soft paternalism and behavioral economics may give additional foundations to support the current cooling-off period policies, indicate new areas where cooling-off periods should be considered, and point us to risks of the same policy.

In scenarios where people’s (limited) cognitive abilities may lead them to make suboptimal decisions that are not consistent with rational time preferences, such as hyperbolic time discounting, or overestimating the duration of “hot” states of mind, consumer protection agencies could attempt to guide people into making better decisions by requiring cooling-off periods. Sunstein and Thaler (2003b) indicate two circumstances where cooling-off periods may be beneficial: (1) infrequent decisions where the buyer lacks experience and (2) emotions have a large influence on the purchase decision.

\textsuperscript{16} This law does not only require that there is a price tag on a shelf where there are the same products with the same price, but that each of those individual items has its own price tag
Camerer et al. (2003) argue that in situations where sellers may try to exploit consumers using high-pressure sales tactics, such as door-to-door sales, consumers will not be able to decide rationally, since they will be in a hot state of mind and overestimate the duration of said state of mind. They argue a soft paternalist could use cool-off periods in these cases to improve their purchasing decisions (Camerer et al., 2003). If consumers are able to cool-off, the incentive to instill and encourage hot states of mind by sellers will be reduced and sellers may even have an incentive to ensure the participants make the purchase in a cold state of mind and consider all benefits and costs of their decisions (Camerer et al., 2003). While cooling-off periods in these cases are not new\textsuperscript{17}, soft paternalism gives additional basis for consumer protection agencies to enact such policies.

In the private sector, some businesses use cooling-off periods voluntarily to signal high-quality products (OECD, 2010). This can be seen as a private mechanism for solving information asymmetries. The use of cooling-off periods has increased in recent years in online shopping, especially in clothes and shoes purchases. Since consumers cannot try the goods before buying them, they are encouraged to buy them, try them, and return those goods which they do not wish to retain. However, if consumers use the existence of cooling-off periods to try more items than they intend to buy to return them afterwards, they may be subject to the endowment effect. The endowment effect causes people to value things they own automatically more (Kahneman, Knetsch, & Thaler, 1991). Possessing an item even a short period of time is sufficient for the endowment effect to affect the valuation of the item by the owner. This could potentially negatively affect consumers, since they may spend more money in goods they would not have otherwise bought in a cold state of mind. A consumer, who rationally or irrationally purchases more goods than what would be optimal considering her budget constraints, thinking she would return many of the bought items, may find herself keeping more items than she originally intended to. The endowment effect is important when discussing cooling off periods for consumer protection, since policy makers ought to consider to which extent the endowment effect causes consumer detriment, especially in growing e-markets. If a consumer protection agency requires cooling-off periods for certain goods, either based on traditional market asymmetries or behavioral failures, it should also consider possible endowment-effect losses in their cost benefit analyses.

\textsuperscript{17} In 1972 the United States of America legislated a law imposing a 3-day cooling-off period for door-to-door sales (Edwards, 2008)
Another unintended consequence cooling-off periods may have is the loss to businesses from customers returning items that are in a condition which is good enough to be accepted back, but not good enough to be sold to another customer. For the retail industry, this cost has been estimated at $9 billion annually in the United States of America (National Retail Federation, 2013). If cooling-off periods were to become more widespread, these costs should be taken into account.

3.3. Providing information

“One wonders whether we would be better off on average if we spent much more time making decisions by slowly calculating Bayesian posteriors instead of using our lightning fast (non-Bayesian) intuitions.” - Benjamin & Laibson, Good Policies for Bad Governments, 2003

If humans were completely rational, providing information, no matter how complex, would lead to consumers making better choices and increasing their welfare. Information would be neutral, meaning that how it is presented, as long as the content is the same, would not affect the decisions that consumers made. However, if consumers are not fully rational, a policy maker interested in increasing consumers’ welfare would need to frame information in a way that leads consumers into making what are assumed to be better choices. This could imply the need to reframe and change many of the existing measures dedicated to providing information.

Providing information enhances consumer decision making by increasing transparency and accountability, reducing search costs, facilitating comparison between products, and protecting consumers from deceptive practices (OECD, 2010). However, since information is not neutral, it is not enough to provide it without further considerations. Consumer protection agencies have to decide how to frame information, since it will have different effects on consumers. Kahnemann and Tversky (1983) found that, since people have loss-aversion, they will make different choices if a probability is framed as a potential gain or as a potential loss. Hibbard et al. (2000) show that a warning with: “Eating cholesterol-reduced margarine reduces your risk of heart disease” (potential loss) has a larger effect than one that reads “eating cholesterol-reduced margarine improves liver function” (potential gain). In the same way, consumers will prefer a product with a nutrition information label that reads “90% fat free” over one with “contains 10% fat.”

In Jolls and Sunstein (2006), they provide an example where soft paternalism may attempt to improve consumer choices by inducing the availability heuristic, i.e. judging probabilities based
on salience. People underestimate the probability of experiencing a negative outcome when compared to others (they are subject to the optimism bias) (Jolls & Sunstein, 2006). If this bias causes them to make suboptimal decisions, instead of using a generic warning that does not induce availability, as in the case of cigarettes in the United States of America and in Germany, policy makers could provide a truthful account of the effects. In practice, this could translate from a warning that reads “Smoking causes cancer” to one that says “Mary Anne, smoker for 15 years, died in June of lung cancer.” Since providing a narrative causes more availability, an average consumer would allegedly be less likely to choose to smoke an additional cigarette with the second warning than with the first one, due to a different framing. While Jolls and Sunstein (2006) do not advocate listing exclusively worst-case scenarios, they admit there is no clear line to decide how scary a narrative should be.

Consumer protection agencies interested in promoting better decisions among consumers ought to analyze current information provision policies, to assess the possible effects of framing over decision making. With this knowledge, information can be provided in a way that increases the likelihood of consumers making welfare-enhancing choices.

4. Risks and considerations

4.1. Slippery Slope

“The safest road to hell is the gradual one - the gentle slope, soft underfoot, without sudden turnings, without milestones, without signposts.” – C.S. Lewis, The Screwtape Letters, 1942

A criticism that has been made to soft paternalism is the risk that, if soft paternalistic policies are implemented, they will lead to harder forms of paternalism that may be undesirable. This form of argumentation is called a slippery slope argument; Whitman and Rizzo (2007) define a slippery slope argument as: “one suggesting that a proposed policy or course of action that might appear desirable now, when taken in isolation, is in fact undesirable (or less desirable) because it increases the likelihood of undesirable policies being adopted in the future.” Whitman and Rizzo (2007) argue that the risk of slippery slope should be taken more seriously into account, as a potential cost, when assessing a soft paternalistic policy18. Whitman and Rizzo (2007) do not

18 It should be noted that often the slippery slope argument is considered to be a fallacy if it is not sufficiently well-grounded
19 Whitman and Rizzo (2007) do not argue that adopting policy A, which may be desirable, will necessarily lead to adopting policy B, which may be undesirable; they argue that adopting policy A may increase the risk of policy B
criticize the behavioral economics insights upon which soft paternalism is founded, nor do they criticize per-se the liberty-preserving measures soft paternalists advocate, but the subsequent policies that may be adopted if soft paternalistic policies are enacted. Consumer protection agencies ought to consider this risk as a cost when analyzing soft paternalistic policies.

Slippery slopes are more likely to pose a hazard if there is a continuum rather than sharp distinctions along the slope (Whitman & Rizzo, 2007). If the theory does not provide clear boundaries as to which extent a choice architect should be allowed to influence people and limit liberty, policy makers may not be able to make this distinction either, enacting policies in the future that would seem undesirable today. Sunstein and Thaler (2003b) admit in their work that in the imposed costs of exercising choice for subjects there is a continuum rather than a sharp dichotomy. In the first section of this work I explained that when discussing the extent of intervention, proponents of soft paternalism do not offer guidelines clear enough to eliminate the risk of the slippery slope. The line drawing problems of soft paternalism are the main enabler of the slippery slope.

If there is a gradient, well-organized interest groups may use this to influence consumer protection laws; this effort would be unnoticed by less organized groups (Whitman & Rizzo, 2007). Groups that advocate healthy lifestyles and fail to acknowledge that some individuals are willing to live unhealthy lifestyles in order to satisfy other needs could try to influence consumer protection laws, beyond framing, to foreclose other choices, or to increase the costs of exercising choice significantly. An example where this can happen is when providing narratives to induce availability heuristics in consumer protection policies, as proposed by Jolls and Sunstein (2006), explained in the second part of this work. If there is no clear line as to what narrative is alarming enough, interest groups may push for ever-scarier narratives of the possible risks; slowly moving down the paternalist slope. The first narrative applied by a consumer protection agency may be used only to counterbalance the effects by the optimism bias; however, once it is enacted, scarier narratives may seem more reasonable, since humans tend to prefer the middle ground when confronted between two extremes (Rizzo & Whitman, 2009). In the first decision of applying a narrative, a soft narrative may seem as the middle ground between laissez-faire and hard paternalism. However, once producers are required to

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being adopted in the future. Eugene Volokh (2003) also makes this distinction in his work “The Mechanisms of the Slippery Slope”.
provide narratives for the first time, the middle ground shifts and scarier narratives become more attractive alternatives (Rizzo, 2007).

Eugene Volokh (2003) argues that slippery slopes are closely related to forms of irrational behavior and context dependence. If decision makers within the polity are also subject to the same deviations of rationality as consumers, context dependence can increase the risk of the slippery slope. This claim can be supported by the existence of availability cascades, as defined by Kuran and Sunstein (1999), which increase the demand for regulations when much information about soft paternalism and consumer protection is readily available. Being subject to the availability bias as well, decision makers within the political process can be more exposed to possible benefits than to possible costs of soft paternalistic policies, leading them to enact more or harder policies than would be optimal.

The hindsight bias, the tendency to assume ex-post that events were more predictable than they were ex-ante, can also increase the risk of falling down the slope (Whitman & Rizzo, 2007). Consumer protection agencies that notice, ex-post, that a significant amount of consumers, rationally or irrationally, still make what policy makers consider suboptimal decisions after the first policy is enacted, may assume that these decisions are made because the first policy was not hard enough (Whitman & Rizzo, 2007). In the case of cooling-off periods, this could slowly lead to longer periods, reducing the freedom of choice of consumers.

In the OECD Consumer Protection Toolkit (2010), freedom of choice is highly valued and the guidelines constantly remind the reader of the dangers of strong interventions. However, the OECD is an economic organization, where economic and civil liberties are highly valued. Consumer Protection agencies across the world are encouraged to use the Consumer Protection Toolkit to guide them through policy making, but are not legally required doing so. Decision makers and stakeholders in the different polities come from varied backgrounds and may not value freedom as much as the OECD. If this is the case, consumer protection policies based on soft paternalism may have higher costs of deviation than the OECD or proponents of soft paternalism would recommend; thus increasing the risk of harder forms of paternalism.

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20 An availability cascade is defined as: “self-reinforcing process of collective belief formation by which an expressed perception triggers a chain reaction that gives the perception increasing plausibility through its rising availability in public discourse.” (Kuran & Sunstein, 1999)
As noted in the first part of this work, proponents of soft paternalism overwhelmingly prefer long-term decisions over short-term ones. With policies such as cooling-off periods, policy makers can attempt to “fix” the time-preference inconsistency of consumers, even if there is no exact discount rate that ought to be preferred (Whitman & Rizzo, 2007). If there is no single correct discount rate to be chosen by choice architects, policy makers could initially prefer softer policies, assuming a small hyperbolic time discounting bias by consumers, and then move to harder policies, where long term preferences are much heavier weighted than short-term ones.

The vagueness caused by having no way to assess an exact discount rate increases the risk of falling down the paternalistic slope. The first policy enacted could require a cooling-off period of one hour for goods purchased in hot states of mind, and then gradually be extended to 24 hours, increasing the costs of exercising choices. Policy makers have no tool at their disposal to assess exactly how long a cooling-period should be to induce an optimal time-discount rate. Indeed, policy makers have no accurate empirical method to measure benefits or costs of any given soft paternalistic policy (Whitman & Rizzo, 2007), allowing open interpretation by decision makers and stakeholders as to what would be an appropriate policy based on soft paternalism.

The problems of drawing a line between soft and hard paternalism increase the likelihood that soft paternalistic policies lead to harder forms of paternalism, which are viewed as undesirable today. When making assessment of consumer protection policies based on soft paternalism, policy makers should take the risk of the slippery slope into account, specifically in steps 5 and 6 of the policy making framework by the OECD (2010).

4.2. Additional Risks: Knowledge Problems and Public Choice

“To act on the belief that we possess the knowledge and the power which enable us to shape the processes of society entirely to our liking, knowledge which in fact we do not possess, is likely to make us do much harm.” - F.A. Hayek, Lecture to the memory of Alfred Nobel, 1974

Besides the risk of moving to harder forms of paternalism, consumer protection policy makers ought to take into account information problems that may lead to undesired unintended consequences and insights from Public Choice Theory when considering soft paternalistic policies.

Policy makers may not dispose of sufficient knowledge to make appropriate consumer protection policies based on soft paternalism and behavioral economics. Inspired by Hayek’s
famous work, The Use of Knowledge in Society (1945), Whitman and Rizzo (2008) point us to some areas where policy makers cannot assume to have the necessary knowledge to make optimal decisions. To make optimal decisions as to what the right policy would be, decision makers within the polity have to know what (1) the true preferences of consumers, which are not revealed by their choices, are, (2) the extent of any given bias, which may change from situation to situation and person to person, (3) to which extent the person tries to de-bias herself, (4) how biases interact with each other, (5) by how much any given policy will reduce self-regulation effects, and (6) all the aforementioned knowledge for the whole population, not just individuals or on average (Rizzo & Whitman, 2008). It would be very hard, if not impossible, for any single government agency to gather and process this knowledge to make an optimal decision. If government agencies rely on uncertain knowledge, they may enact policies that lead to (negative) unintended consequences by over or underestimating consumer detriment and miscalculating the effects of any given policy. As seen in the second part of this work, although a policy may be enacted with good intentions, such as in individual pricing laws, they may lead to consumer detriment by causing effects that were not foreseen by policy makers. In the case of cooling-off periods, different durations may be optimal for different individuals to guide them into making welfare-enhancing decisions; however, it is impossible for any agency to know which duration is optimal for each single individual\textsuperscript{21}.

Biases do not influence a consumer in isolation, i.e. more than one bias may be influencing choice at the same time (Besharov, 2002). Sometimes biases counter-balance each other. When people make a decision, they may be influenced by, for example, loss-aversion, which reduces risk-taking, and the optimism bias, which may lead the consumer to disregard possible risks of a given choice, thus encouraging risk-taking. If the two biases influence a consumer at the same time in similar magnitudes, she may make a decision which is close to the fully-rational one (Besharov, 2002). However, if a consumer protection agency enacts a policy that only counters one of the biases without attempting to correct the other, the decisions consumers make may cause more detriment than the initial ones. Since it is impossible to know all the biases that influence consumer choices in a given time and place, consumer protection policies may cause consumer detriment in some cases by countering only some, not all, of the biases.

\textsuperscript{21} Even if a consumer policy agency could gather this knowledge, which it cannot currently do, it would be impossible in most cases to have individual cooling-off periods; if there is only a one-size-fits-all cooling-off period duration, many individuals will be negatively affected by it.
In the soft paternalism literature, there are few mentions to Public Choice Theory scholars. Public Choice Theory is a field of economics that uses the tools of economic analysis in markets to analyze actors, who are assumed to be utility-maximizing agents, within the political process. Whitman and Rizzo (2007) mention how interest groups may aggravate the risk of the slippery slope and Glaeser (2006) how consumers may have more incentives than government agents to correct their own biases. However, no thorough analysis is provided describing the incentives that decision makers and other stakeholders face when considering soft paternalistic policies. By using Public Choice insights, such as rent-seeking or separation of costs and benefits, we may assess if the current incentives by policy makers in consumer protection agencies are aligned with the interests of consumers. When the benefits of a given policy are concentrated in small groups, while the costs are dispersed among many individuals, those who benefit have a strong incentive to influence the political apparatus. Strong incentives enable them to solve the free-riding problem of influencing the political process. If the costs of influencing the political process are dispersed among many individuals, the individual incentives to influence the polity are not large enough for them to overcome the free-riding problem. This problematic may translate into enacted policies that benefit the few at the expense of the many (Simmons, 2011).

5. Conclusion

Soft paternalist scholars make a compelling argument for their proposition. Based on behavioral economics, they identify many situations where people fall short from the optimal decisions that would have been made by a *homo oeconomicus*. Furthermore, there are some situations where choice architecture is unavoidable, such as how to frame information disclosures. The proposal of soft paternalism and the existence of “behavioral failures” have large implications for governments in many areas, including consumer protection.

At every step of the recommended consumer protection policy guidelines by the OECD (2010), soft paternalism can have valuable insights regarding when and how to intervene. Two demand-side consumer protection policies that are largely influenced by soft paternalism are cooling-off periods and providing information. Soft paternalism can support current cooling-off periods and point us to new areas where this measure could improve consumer decision making; however, behavioral economics also points us to risks of the same policy, such as excessive purchases induced by the endowment effect. Since information provision is non-neutral, consumer protection agencies ought to revise their current information provision policies with the lenses of
a soft-paternalist and consider if the information being currently provided is framed in a way that improves consumer decision-making

While on a theoretical level most policies of soft paternalism seem sensible, the actual policies enacted based on these recommendations may have additional costs. Soft paternalism may evolve into hard paternalism, since the line that separates soft from hard paternalism is not well-defined. In the soft paternalism literature, the standards on how to determine to which extent freedom of choice can be limited are not sufficient to protect their argument from the risks of the Slippery Slope. However, the risk of falling down the slope is just an additional cost to be considered.

Since the beginnings of Public Choice theory, there have been many advances on the study of decision making within the polity. Nonetheless, mentions to Public Choice scholars are largely absent in the soft paternalism literature. I believe that by taking Public Choice Theory into account, we can understand the existing incentives in the policy decision making process, which would enable us to assess some risks of soft paternalism better. The calculated costs of policies would likely be higher, increasing the discipline of legislators to preserve freedom of choice.

Behavioral economics can identify many cases of inconsistent preferences. It cannot tell us which preferences are our true ones or the ones worth steering towards. Across the literature, proponents of soft paternalism overwhelmingly prefer decisions made in a cold state of mind rather than decisions made in a hot state of mind. Even if freedom of choice is preserved, steering consumers towards cold-state, long-term preferences, requires the state to make normative judgments that may be inconsistent with the Werturteilsfreiheit, i.e. freedom from value judgments, economics ought to have.

I consider that soft paternalism should change the way we think about consumer protection to improve current and future policies. Soft paternalism may give us options we thought to be unavailable in the past; we may not have to decide between a complete laissez-faire and hard paternalism in some areas. However, soft paternalism does not give legislators a carte blanche, i.e. complete freedom to act as they wish, to enact a new wave of paternalistic policies. I think that consumer protection policies based on soft paternalism should be viewed with more skepticism than they currently are and more considerations about the costs and risks should be made.
Bibliography


http://www.nytimes.com/2010/05/16/magazine/16Sunstein-t.html?pagewanted=all

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