Overcoming Illusions of Control: How to Nudge and Teach Regulatory Humility

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Introduction

In this chapter we focus on how to use insights from behavioural theory in the process of impact assessment of policy proposals focusing on the European Union (EU). At the outset, we reason that different types of bias exist in the process of policy-making, including biases in the minds of those who are carrying out an impact assessment of a given proposal. We then focus on the case of biases affecting the analysis of the non-intervention option. We argue that EU policy-makers' biases can be reduced by modifying the cognitive architecture of the IA process and by using training in ways that encourage awareness and henceforth a culture of regulatory humility.

Over the last decade, the European Commission has developed an integrated approach to impact assessment of policy proposals – legislative or not. The impact assessment process is now a major step in the development of proposals by the European Commission. Recently, the European Parliament has invested in analytical capacity to work dialogically with the Commission and to carry out impact assessment studies of major amendments of the legislative drafts. Extant literature has established that the EU impact assessment system is, comparatively speaking (for example, in comparison to the systems of the 28 Member States and the United States [US]), sufficiently robust and comprehensive in the coverage of different categories of costs and benefits (Fritsch et al., 2013; Renda, 2011; Radaelli, 2009; Wiener and Alemanno, 2010).

In the debate of how to conduct impact assessment and train policymakers, there are calls for integrating the insights of behaviour science into policymaking and design regulatory options that

take into account the various biases that affect citizens' responses (Alemanno and Spina, 2013; John, 2013; John et al., 2013; Jones et al, 2013; Sunstein, 2011; Van Bavel et al, 2013; Vandebergh, Carrico and Schultz, 2011). But policymakers have a mind too, and therefore their own choices can be biased (see for example Montgomery, 2011). The starting point for this chapter is the potential impact of one over-arching bias – the illusion of control (Langer, 1975). The proposition is that this illusion – which leads humans to over-estimate their competence and ability to control outcomes – may be particularly damaging when the tendency to regulate is institutionalised. Specifically, while the EU impact assessment process obliges policymakers to consider the status quo option (non-intervention), this is rarely ever selected.

We should be clear: we do not claim that cognitive biases explain the preference for public intervention. There are different political and economic justifications for intervention. An organisation can also deliberatively decide to intervene because there is a regulatory obligation or a commitment made by elected politicians. Further, policy-makers can deliberatively manipulate IA procedures towards interventionist choices. If this is so, cognitive biases have no role to play since the organisation is not misdiagnosing the facts; rather it is manipulating them. Our angle is different: we are interested in increasing policy makers' awareness of 'regulatory humility' (Dunlop and Radaelli, 2015b). We believe this should be encouraged among policy-makers, and specifically that the option of not using public intervention (so called 'do nothing' option in IA) be given due consideration – whether it is rejected or not. The classic policy-making literature has always pointed toward the limits of policymaking and policymakers (notably, Hogwood and Gunn, 1984; Simon, 1956; Vickers, 1965: chapter 8; Wildavsky, 1979: especially part 2). The increased complexity of the policy environment, the difficulty of getting evidence into policy, and greater clarity about human biases have all led to a re-discovery of these limitations. The result has been a renewed call for regulatory humility and humble decision-making (Dunlop and Radaelli, 2015b; Etzioni, 1989, 2014). Essentially, we bring these insights about regulatory humility into the field of impact assessment, with the EU as our empirical reference, and develop our suggestions on how to de-bias policy-makers.

The chapter is structured as follows. In section one, we set up the proposition that EU policymakers are especially susceptible to an illusion of control. Then we explore what can be done to mitigate a pre-eminent bias. We outline two categories of solutions. In section two we look at how the IA system in the EU can be implemented and amended in ways that 'go with the grain' of cognitive biases (Dolan et al, 2009: 7). Here, we accept the reality of that policymakers often operate in 'fast' mode (Kahneman, 2011). Rather than try to re-wire the policymaker's mind, we focus on re-wiring the context within which they work to ensure that what is automatic to them is also beneficial to

policymaking. In short, how can we nudge EU policymakers to explore the 'do-nothing option', and indeed all policy options, with humility about the control they can exercise? Section three takes a slightly different tack. Here we focus on how policymakers can be exhorted to engage in more 'slow' thinking about the biases they carry. Such reflection – we argue – can be actively encouraged by appropriate training techniques and content. We explore the possible teaching tools that can be and are being used - including in-class behavioural experiments. The chapter concludes with a discussion of how some of these ideas can be taken forward by the Commission.

Section 1: What Prevents the EU from 'Doing Nothing'?

In his masterpiece on policy-making, *The Art of Judgment* (1965), Sir Geoffrey Vickers defines policy action as a product of policymakers' contextual reality judgments – their understanding of the institutional world in which they operate and rules and procedures that underpin that – and their judgments – the cognitive biases they hold:

> 'Facts are relevant only in relation to some judgments of value and judgments of value are operative only in relation to some configuration of fact' (Vickers: 1965, p. 40).

Thus, to understand policymaking, is to recognise how these two realities intertwine to produce action and practices. Consequently, we argue that the contextual and prevailing values of the EU may intertwine to produce a propensity toward taking policy action rather than selecting the 'do nothing' option. In short, it produces a situation in which regulatory humility may be in short supply.

What is the EU's contextual reality? What is the policy context in which 'doing nothing' is considered? What structural and institutional factors influence how IA is conducted? Deciding if, when and how to intervene are fundamental in all governance systems. The EU however poses some specific challenges. Control here is not simply a matter of whether policymakers should decide to 'do something' about a policy problem in analytical terms. There are of course legal principles at work, especially competence and subsidiarity, with their own relationship with IA (for details, see Meuwese, 2008). Subsidiarity applies to determine whether the EU or the Member States are competent in the areas of 'shared competence'. Thus, the subsidiarity principle relates to WHO should act in relation to a given policy problem, whilst IA concerns WHAT should be done and only comes into play at the EU level if the EU is in principle competent. Logically, there could be policy domains where the EU is competent to act but the IA concludes that this is not the case, having considered the specific features of the policy problem. Equally, we could reason that the IA supports the non-intervention option even in domains of shared competence where the EU is competent by

dint of subsidiarity. Although logically distinct, legal principles and IA analysis are related and in practice the views of the Commission on subsidiarity (e.g. think of a case where the Commission believes it should intervene because of subsidiarity arguments) constrain the usage of non-interventionist option in IA.

Some controversies confirm that IA analysis is blended with wider legal and political arguments – and not always with the best results. Some years ago the Commission looked at insurance premiums from the perspective of gender equality, and concluded, in the IA, that doing nothing would perpetuate imbalances. Frank Vibert (2004) criticised the Commission for having decided to intervene in a field where market forces 'correctly' appraise the different risk coefficient of men and women, and argued that there were no grounds to bring in a gender perspective on the economics of setting insurance premiums at work in the Member States. By opting to intervene, was the Commission making the wrong economic assessment, or was it pushing the boundaries of subsidiarity politically – or both?

If there is a sort of in-built structural bias toward intervention, its roots are not in legal principles or IA standards. Regulatory theory (Majone, 1996) argues that the Commission is a supra-national bureaucracy that has a structural preference for regulation, given the constraints it encounters in activating other policy instruments like taxation and expenditure. In a sense, regulation is the essence of this bureaucracy.

To sum up then, the overall mis-diagnosis of non-interventionist options may result from the application of legal principles, inaccuracies in economic analysis contained in IA, or the wider political roots of the EU regulatory state. We cannot deal with all the three causes, especially because they differ markedly: some are structural, some are contingent. Given our focus on IA, it is better to focus on contingent causes – bearing in mind that the context is more complicated and has structural properties. Let us assume that policy-makers involved in a given appraisal of policy options have already absorbed their fair load of bureaucratic culture (the Commission as regulatory bureaucracy as suggested by regulation theory) and legal views on competence and subsidiarity. We are left with more contingent or proximate causes involves in the biases affecting intervention and non-intervention. At this point, the question becomes: what of the values and cognitive biases that mediate how policymakers approach public policy choice?

The starting point is that as humans all policymakers, whether in the EU or elsewhere, can suffer from over-confidence in their ability to control events (Armor et al, 2002; Taylor and Brown, 1994; Langer, 1975). Ellen Langer (1975) famously demonstrated this 'illusion of control' experimentally, confirming the central hypothesis that people struggle to distinguish between events determined by

chance and those determined by skill. This is true even in situations where exercising skill cannot affect the outcome. Second, people have genuine difficulty in distinguishing between skill- and chance-related situations. These are often closely related in people's experience. For example, there are elements of skill in chance situations such as dice games where participants can learn the odds (1975, p. 324). And so, 'when a chance situation mimics a skill situation, people behave as if they have control over the uncontrollable event even when the fact that success or failure depends on chance is salient' (1975, p. 315-316). The result is an illusion of control which hinders humans from understanding their limited impact on outcomes and conditioning influence of a wide range of specific biases.

Policymakers are required to understand that not all variables can be known, nor can their implications understood; they work in a context where skill is mixed with chance. But, if they are biased by an illusion of control, they cannot fully appreciate the impact of chance and may struggle to identify the 'limits of the regulable' (Vickers, 1965: chapter 8).

This is the cognitive starting point for policymaking in the EU. The particular EU context (described above) combines with the illusion of control to create a policy-making environment in which cognitive biases may be masked and policy action favoured. Hinting at the socialisation effects of this context, Lord Cockfield was fond of saying that the attitude of the EU regulator was 'if it moves, harmonise it!' (cited, amongst others, in McGee and Weatherhill, 1990: 583, see also Vibert 2005). Indeed, even if we discount this political argument, the illusion of control on its own is sufficient to generate an under-estimation of the benefits of non-intervention. The question we address in the rest of the chapter is what can be done to address this potential blindness to bias.

The following two sections suggest some ways ahead. Inspired by Kahneman (2011), we explore two ways forward for EU policymakers – working with the biases to change behaviour fast and raising policymakers' awareness through reflection – changing their minds slowly.

Section 2: Using Prompts to Guide Policymakers in the 'Fast' Lane

This section is dedicated to guiding policy-making in the cognitive fast lane. To work out how we might go with the grain of the illusion of control, we need to go back to why humans (and so policymakers) are motivated to control in the first place. The fact that '[M]ost people hold overly positive views of themselves and their ability to effect change in the environment' (Taylor and Brown, 1988: 21) is usually taken as indicative of psychological well-being. Humans believe that control helps prove our competence (Langer, 1975, p. 323-324; White, 1959). As we take action, our

perception of control increases as do our levels of psychological comfort (Langer, 1975, p. 323). The challenge in policy-making is to make the IA process in general and consideration of the do nothing option in particular activities which goes *with the grain of the strongest cognitive biases*. Indeed, as we shall see, that is the very logic behind the inclusion of the do nothing category in the first place; it exists to encourage policymakers to treat non-intervention as a positive choice. Yet, we know that IA in the EU could be more refined (Renda, 2015) and that the selection of the do nothing category rarely occurs.

The nudge proposition is that we can counteract this illusion of control and the risk of automaticity, by restructuring the policy-making environment. Behavioural theory reveals a huge array of biases supported by varying depths of evidence. The UK Cabinet Office captures nine biases with the 'most robust' effects in its influential 2009 report with the mnemonic title – *MINDSPACE* (Dolan et al, 2009: pp. 7; see Table 1) – whose influence policymakers most need to understand. Here, we take each of these biases in turn to see how the IA system is designed to take account of them and might be amended further still. Essentially, we are concerned with the reforms that can be made to IA that restructure policymakers' cognitive architecture.

Table 1: MINDSPACE Biases and Policymakers

Illusion of control	Policymakers …
Messenger	listen to experts and professional peers
Incentives	avoid losses and emphasize the baseline
Norms	observe professional socialisation
Defaults	overate precedence
Salience	attend selectively and confirm pre-existing beliefs
Priming	are susceptible to cues from the environment
Affect	make associations based on emotional responses
Commitments	seek to make and keep public promises
Ego	are motivated to act to feel good about themselves

Source: Adapted from Dolan et al (2009)

The first bias concerns the fact that ideas 'do not float freely' (Risse-Kappen, 1994); rather, they are carried by **messengers** (Cialdini, 2007). The identity and qualifications of the messenger informs our perception of the importance of what is said. Critically, we lend more weight to the advice of those who can lay claims to authoritative expertise on an issue or whose background resembles our own. Consider the power of an individual scientific adviser, her evidence is routinely given greater weight than that offered by the lay person (Wynne, 1996; Jasanoff, 2003). That heavier weight emanates from the credibility she has been given by her peers – most commonly in the form of professional

distinctions; research funding and career progression (Allchin, 1999). In IA, the power of external experts is usually harnessed in relation to evidencing individual aspects of policy options. This is necessary of course; policymakers need specialist inputs. However, where the opportunity to give evidence comes mid-way through the IA process – i.e. once the problem has been defined – policymakers' preferences may be set. To counter the illusion of control the decisional process would benefit from incorporating expert advice at a much earlier stage' e.g. by inviting experts or 'critical friends', who have civil service background but have retired from the bureau, to comment 'upstream' in the IA process (Stirling, 2005). Highly regarded messengers should be invited to comment on how the questions are framed, not only on how they might be answered.

We can think about the messenger bias in relation to IA in a different way. Rather than taking advice from a small number of identifiable experts, policymakers can also draw upon the wisdom of anonymous crowds (Surowiecki, 2004; Sunstein, 2006), for example by using information markets that correct errors made by individual experts (Sunstein, 2005). Surveying large groups of unnamed experts, stakeholders or citizens offers one means to explore the unthinkable – rejecting policy action – in a way that carries minimal reputational damages for those involved should their advice later appear naïve of ill-considered. Such informational supply tools address the messenger bias, and reduce the possibility of groupthink (Janis, 1972), while still going with the grain of control illusions. Policymakers still exercise choice but they do so with the knowledge that experts have been free to express their opinions about the merits and pitfalls of inaction as well as interventions.

The next bias concerns how humans respond to **incentives**. It is known that we respond to incentives using mental shortcuts. One of the most powerful is the desire to avoid losses (Kahneman and Tversky, 1984). How does this interact with IA? Policymakers are incentivised to consider the do nothing option alongside all others. In many ways, the design of IA suits loss aversion bias. Cost-benefit analysis (CBA) may reinforce our tendency to fear loss more than we value gain. Since it is easier to calculate costs than it is benefits (Harrington, Heinzerling and Morgenstern, 2009) and given that humans define losses and gains relative to a 'reference point' (Kahneman and Tversky, 1979; Tversky and Kahneman, 1991), if no such reference point exists for gains or it is unclear or notional the tendency to lend more weight to fully calculated losses may be stronger. We know for example that people are influenced more by nominal – i.e. numerical – values as opposed to notional or actual values (Ert and Erev, 2013; Raghubir and Srivastava, 2002). We can hypothesise that where the numerical magnitude of a policy option can be calculated loss aversion may be more evident.

Yet, the analytical context in the EU is not so straightforward. The following scenario is instructive. In his analysis of the first batch of EU IAs, Vibert notes that even where the net benefits (from an intervention) were left un-quantified – i.e. policymakers knew only the costs – the Commission never selected the do nothing option (Vibert, 2004: 9). The issue here is that in order to perceive loss accurately (and so be averse to it), policymakers must be certain that they understand *both* the costs and benefits. Yet, the quantification of benefits is complex and lags behind the quantification of costs; in 2011 58.42 per cent of Commission IAs quantified benefits as compared with 88.12 per cent cost quantification (CEPS IA database; Fritsch et al, 2013). In such circumstances, a clear calculation of loss cannot be made; this may push policymakers toward the default of taking action. In short, it is possible that the evidential base of IA in the EU (and indeed the UK[1]) frustrates the power of loss aversion and creates the conditions for the illusion of control to drive action.

Evidence from the United States suggests that achieving parity in the calculation of benefits and costs is possible (Cecot et al, 2008) and may go some way to harnessing the power of loss aversion. Of course, once we are able to calculate loss, the impact of loss aversion will be mediated by the size of the loss itself and in particular how this compares with the current situation. This emphasizes the importance of how the baseline – which acts as the reference point – is framed and calculated in the IA process.

The third powerful bias explored concerns the power of social **norms**. In short, humans are influenced by the actions of others and 'herding' behaviour is common (Schultz et al., 2007). In a social setting this may take the form of people joining a queue even when they do not know what is it for. In the world of IA, we can think of policymakers conforming to professional norms of the bureau. These norms may be especially powerful because their observation is often materially rewarded in terms of career progression, salary etc. The most famous bureaucratic norm is budget maximisation (Niskanen, 1971) – where intervention correlates positively with increased size and power of a department and with the individual prospects of civil servants. Again, this is one of the norms that IA processes and tools such as CBA are designed to counter. As has been noted already, without an accurate understanding of the costs and benefits of action, the biases toward intervention and control can go unchecked.

Moving beyond calculation, how might we go with the grain of social norms? What norms can be mobilised to counter the illusion of control in the IA process? New public management norms such as cutting 'red tape' can be mobilised to trigger reflection amongst policymakers. Given that norms become more powerful if they are personal, the IA process could usefully include prompts for

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[1] In 2010, UK IAs quantifying costs and benefits were 80.4% and 57.1% respectively (Fritsch et al, 2013: table 2).

policymakers to review what was saved by their department, or even their policy team, in previous years through regulation reduction (for an example of this see BIS, 2012).

Linked to social norms, the human tendency to rely on **defaults** typifies Kahneman's fast thinking (2011; see also McKenzie, Liersch and Finkelstein, 2006; Tversky and Kahneman, 1991). Where there are pre-set categories, we are more likely to select one of them than to question them or create our own. While perhaps the best-known tool is actually an *ex post* one – the sunset clause which creates legislation with an expiry date – the inclusion of a do nothing option in IA is designed to prevent policymakers from simply going with the flow. What more can be done to the policy-making flow that generates reflection on the limits of control and pitfalls of intervention *ex ante*? The IA process could be usefully augmented with questions relating to whether any horizon-scanning has been conducted that may suggest trade-offs from the decision or whether a post-decision evaluation has been considered and when this might take place. By asking such questions, policymakers may not ultimately reject the default option but it provides one way to structure the 'flow' of IA in a way that may stimulate reflection about the potential results of a policy decision (whether that is an intervention of not) a few years down the line.

In 2001, when he was Administrator of the US Office of Information and Regulatory Affairs (OIRA), academic risk analyst John D. Graham pioneered the introduction of 'prompt letters' – a procedure whereby OIRA is able to propose that an agency consider a new regulation or reconsider an existing one. The impact of these in the US has been welcomed (Graham, 2008). Such prompt letters offer one way for the fast thinking of the policymaker to be slowed down by the oversight body and to disrupt reliance on defaults. Until 2011, the European Commission's Impact Assessment Board (IAB) enjoyed the power to issue such prompts (article 6 of the former Rules of Procedure) but this power has been scrapped without explanation (Alemanno and Meuwese 2013).

Beyond defaults we have the matter of **salience** – our attention is drawn by what is relevant to us. Humans are vulnerable to 'cognitive dissonance' or confirmation bias – we process information selectively. We rationalise or ignore evidence which disconfirms what might prove us wrong (Festinger, 1956). This goes to the heart of the illusion of control – where we are over-confident about evidence that supports our pre-existing views because it is easier to encode. Going with the grain of this to counter the illusion of control requires that evidence which challenges assumptions is made easier to understand and harder to ignore. The IA evidence gathering process could be amended to require that the same evidence be framed in a variety of ways with the aim that it challenges the cognitive 'anchors' that guide policymakers.

A further dimension of salience concerns the disproportionate attention paid to unusual memorable events and images (Kahneman et al., 1993). The tendency for policymakers to take 'knee jerk' action in the wake of trauma is well known in government and extensively theorised in political science (Better Regulation Executive, 2006; Jones and Baumgartner, 2005). The resulting legislation is often poorly considered (most famously see Baldwin, Hood and Rothstein, 2000 on the UK's 1991 Dangerous Dogs Act) and difficult to reform. Given that traumatic events inject urgency into policy-making, because they are usually unexpected and tragic, going with the grain of this bias is both difficult and potentially undesirable. We should steer clear of artificially conjuring-up an attention grabbing event (Dolan et al, 2009). Rather, one possible solution is to understand that the salience of an event will diminish over time as it becomes less easily recall in the policymaker's (and citizen's) mind. Requiring that policymakers consider the inclusion of post-decision evaluation in policy options (including doing nothing) offers one way to harness the perspective brought by the passage of time.

Humans can be sub-consciously **primed** to act in particular ways (Meyer and Schvaneveldt, 1971). We each encounter priming most frequently in everyday life through the words, smells and visual stimuli used in marketing. In public policy, similar processes are at work. For example, we can think about the influence of stakeholders and key interest groups in policy-making – how they frame and present their arguments may have a powerful influence in determining the 'boundaries of the possible' in minds of policymakers (Majone, 1989). Hindmoor (2009) provides an insightful example in his case study on the policy response to the 2001 foot and mouth (FAM) outbreak in the UK. Here, the National Farmers' Union's (NFU) early and close access to government officials enabled them to successfully persuade against the use of emergency cattle vaccination.

Working with the priming bias requires that more messages get through to the bureau from the external policy environment early on (see the earlier discussion on messengers). Here, humble policy-making means that a single group or idea is not allowed to dominate without challenge. Again, IA encompasses a tool that can enable that: consultation. Yet, we know that consultation exercises can become dominated by a small group of actors who are often the best resourced (Dunlop et al, 2012), hence we need to open up consultation processes and encourage pluralism.

Digging further into human sub-conscious, behavioural theory illustrates the role of **affect** and emotions on actions (for a summary see Finucane et al., 2000). For example, the fear of regret is one of the most powerful drivers of human action. To avoid the negative emotions that accompany making a 'wrong' decision, humans tend to rely on precedents – what was successful / not unsuccessful last time? In organisational decision-making, this is the essence of what Simon

famously called 'satisficing' (1956); policymakers aim for decisions that are 'good enough'. The emotional rewards of incremental policy-making also bring rewards in policy terms – most obviously relative stability for those stakeholders who 'shape' policy and citizens who 'take' it (Lindblom, 1965). Yet, fear of going beyond the status quo also carries its own risks – where the desire to control and produce predictable results may mean missing a potentially innovative solution.

The logic of IA works against emotion in general, and fear in particular. Lerner and Tetlock (1999) report results of an experiment where participants are required to justify their decisions – for example in using tools such as IAs – they are rewarded with positive emotions for rigorous policy appraisal. Where it is implemented fully and overseen vigilantly, IA processes may act as accountability tools which may counter the most negative consequences of affect.

Behavioural theory has established another cognitive bias concerning the importance of honouring public **commitments** (for example, Staats, Harland and Wilke, 2004). We are loathed to break promises. Indeed, we make them with the deliberate intention of binding ourselves to a particular course of action. The desire among policymakers – as individuals and collectively – to be consistent with their commitments is strong. A recent example of this phenomenon is the UK implementation of EU-set targets on first generation biofuels. Even though the government accepted an emerging scientific consensus that the production of food crops into biofuel increased CO_2 emissions, its public commitment to the target and promises made to the nascent UK biofuel industry led to the implementation of the Renewable Transport Fuel Obligation (RTFO). Though institutional forces made policy reversal difficult, the psychological dimension was central to the Department for Transport's (DfT) decision to stick with the planned course of action (Dunlop, 2010).

Much of this desire to be consistent is driven by the need for credibility and accountability – backing down on commitments results in a very public loss of both. This desire to stay true to one's word can be used to policymakers' advantage if part of the contract they make involves remaining open to future review and evaluation. Post-decision evaluation in the case of biofuels did not result in policy reversal but rather a reduction of targets. Though the policymakers in this case anticipated that this would be the course of action, the absence of any commitment to remain open to new knowledge at the time of the IA made the DfT appear inconsistent and focussed on controlling policy failure.

The final bias considered by *MINDSPACE* (Dolan et al, 2009) concerns **ego** – we act and think about ourselves in ways that make us feel good. In policy-making, this bias is perhaps exemplified by credit seeking and blame avoidance (Hood, 2011). Where a decision has resulted in policy success, departments and policymakers seek credit and, where things do not go according to plan, external forces or other actors are held responsible (Miller and Ross, 1975). Such tendencies are also

institutionalised in the complex and multi-layered structures of governments – none more so than the EU, where there is no shortage of actors who can be implicated in success and failure. This might written into the DNA of government, but the misinterpretation of outcomes and events that ego encourages frustrates policy learning. For sure, policy-making is usually too complex to be able to identify a single hero or villain. But achieving a broad understanding of what parts of the policy-making system have and have not worked as expected is possible and important if successes are to be replicated and mistakes avoided in the future.

Again, *ex post* policy evaluation offers a way ahead. Dunlop et al (2012) have shown that even in the absence of a post-implementation evaluation, we can still identify sets of conditions that contribute to certain types of IA – political, instrumental, symbolic, dialogic. By pairing an IA with its policy evaluation partner, we can take this further and piece together the necessary and sufficient conditions – i.e. recipes – that lead us to more or less accurate policy-making. Such learning is 'double-loop' (Argyris and Schön, 1978) in that it generates lessons that will not simply allow policymakers to better understand the policy options selected but will tell them something about the fundamental decision to intervene and the level of control they have exercised (through policy). The dividends for the human ego are obvious; the benefits for policymaking and society are even greater.

Section 3: Creating Reflective and Mindful Policymakers in the 'Slow' Lane

Responding to the behavioural sciences is not simply a matter of accepting and working with policymakers' biases by amending the choice architecture. For good governance to become self-sustaining we require 'mindful' (Langer, 1989) policymakers with the ability to and who are in the habit of reflecting on how their 'appreciative systems' (Vickers, 1965) mediate professional practice. We must accept and embrace the fact that the policymaker is a sentient being not Pavlov's dog! (1927/1960). Thus, we must also attend to the information that policymakers have about biases.

Behind every IA process are professional policy officers. While we know that, in 2009, 90 per cent of OECD countries reported that they provide some form of IA training (OECD, 2009).. Since 2006, the Secretariat General (SG) of the Commission has run central training programme on IA. This has been supplemented by other DGs with their own courses (for example, in DG Enterprise external consultants are used). Between 2007-2013, around 15% of IA officers received this training (private communication with SG official, June 2014). Similarly, while they may be aware of the behavioural sciences agenda and some of the better known cognitive biases, EU policymakers have not yet

received instruction on the role these may play in policymaking (van Bavel et al., 2013). This state of affairs is understandable. IA has only been part of EU governance for the last decade, and behavioural science is even newer to the policy scene. Our interest here is in proposing examples of training that can be, and have been, incorporated into IA training courses and into practitioner-focussed Masters in Business (MBA) and Masters in Public Administration (MPA) programmes. Training courses that are designed to inform policymakers and change their thought processes – rather than simply restructure behaviour – offer a way to generate longer-term engagement with the regulatory humility agenda. This long-term promise is rooted in the potentially powerful professional socialisation effects that can be generated by training (Kirkpatrick, 1959) – the herding effect of social norms at work!

Before outlining a variety of training options, we must first state their purpose. Essentially, training enables practitioners to access their 'slow' thinking capacity. Such capacity is especially important for policymakers. As Schön (1983) argued thirty years ago, becoming an effective professional requires more than technical rationality and the ability to react to the decision-making context; professionals must be able engage in reflective thinking about their world and place therein. Reflection concerns the ways in which we subject our own thoughts and actions – possible and enacted – to consideration. We can go further than this; reflexivity takes us deeper into the self and addresses the emotional dimension of reflection that speaks to the very heart of human biases – what is it that public administrators as human beings with values, feelings and boundaries bring to decision-making?

Reflection takes us back to the fundamental principles of the *Art of Judgment* (Vickers, 1965). Reflection makes the appreciative system stronger – for Vickers, this system works via feedback, determining which facts are relevant, and how they fare in relation to our norms. Interestingly for our argument, Vickers observes that:

> 'Change both massive and unpredictable makes inconsistent demands for rigidity on the one hand and flexibility on the other and poses the most basic policy choice of all, the choice of what to regard as regulable' (Vickers: 1965, p. 99).

How can we train civil servants and policymakers to engage in reflective thinking about their cognitive biases? We argue for two pedagogic mechanisms. Behavioural theory can simply be incorporated into training using classic methods of case studies and academic literature to initiate reflection. Such lectures and small group work encourage participants to reflect on what they have read, heard and discussed about the limits of control. Second, more innovative methods are beginning to appear in MBA (Masters of Business Administration) and MPA (Masters of Public

Administration) training – specifically involving the use of in-class experiments – that may enable reflexive engagement (see Bazerman, 2005 on managerial applications). Kolb's (1984) seminal work on experiential learning suggests that by creating opportunities for students to *reflect by doing*, the learning process is individualised, and concepts move from the abstract to the concrete. We now propose a variety of ways in which the nine *MINDSPACE* biases can be illuminated using traditional and experimental teaching tools.

Messenger bias is most commonly demonstrated using framing experiments. In their studies of issue framing, Kahneman and Tverksy (1979) found that the manner in which the same information or outcome is represented impacts upon the decision that is made. Small changes in this framing can produce different decisions about the issue. By presenting similar groups of policy practitioners with the same information communicated by different people – for example, an expert, a practitioner peer, an interest group representative – we can separate out the impact of who is communicating evidence from the evidence itself. This is relatively easy to resource and can be modelled on evidence submitted for a real IA.

The earlier discussion on human responses to **incentives** emphasised the importance of creating a level analytical playing field where loss could be nominally calculated – thus harnessing the power of loss aversion. But, we can also encourage policymakers to reflect on how cognitive shortcuts mediate their analysis of CBA. Our European policymakers should not consider costs and benefits as objective categories. Rather, they could usefully be exposed to the wider literature that emphasises the subjectivity embedded in CBA analysis itself and its interpretation (notably, Ackerman and Heinzerling, 2004; Driesen, 2005; Parker, 2003). Ackerman and Heinzerling's retrospective application of CBA provides an especially powerful set of case studies where lead would not have been removed from gasoline in the 1970s, the Grand Canyon would have been damned for hydroelectric power and workplace exposure to vinyl chloride would not have been outlawed in 1974.

It may not always be appropriate or possible to conduct in-class experiments. Yet, the impact of cognitive biases can be explored by presenting classic cases to students. In a recent article, Rowe (2013) uses insights from Asch's (1956) classic experiments on group conformity to explore the behavioural dynamics of small group teaching. The experiment provides an opportunity for the practitioners to reflect on the power of group **norms**. In that case, practitioners were invited to reflect – through individual learning logs – on how group dynamics influenced decision-making in the teaching group. However, the logic can easily be extended to policy-making situations where departments within an organisation develop particular ways of doing things.

The need to think beyond **defaults** is an enduring theme in public administration literature. One particularly useful model that can alert policymakers to the wider implications of going with the flow is that of risk tradeoffs. Created by John D. Graham and Jonathan B. Wiener, tradeoff analysis requires policymakers to address the possibility of four countervailing risks being created by taking policy action (1995):

1. has the same risk *transferred* to new population?
2. has the old problem been *substituted* by a new one affecting the same population?
3. has the risk been *transformed* creating an entirely new problem for a new group of people?
4. has risk been *offset* to create a similar one for the same group?

Inviting practitioners to explore these questions in relation to their own experiences of policy-making offers one way to stimulate reflection and heighten awareness of bias.

Similar simple teaching methods can be used to highlight the **salience** of the new. Specifically, availability and recall biases (Tversky and Kahneman, 1973) can be illustrated by introducing policymakers to basic probability calculation.

Practitioners can be exposed to the power of **priming** and **affect** using the types of framing experiments outlined earlier. For example, the same news story can be delivered to practitioners in different ways – one simply read by a newsreader and the other with the reading accompanied by dramatic background images. The expectation here is that the group primed with emotive images will assume a higher risk of the event happening again (see Bazerman, 2005).

One way to explore the power of **commitments** is explore why policymakers might make commitments to their publics. There are various arguments about why humans make promises that they know will tie their hands. For policymakers, such declarations act as accountability and transparency tools (Lerner and Tetlock, 1999) and are central to the identity of a professional policymaker. However, policymaking also requires agility and the willingness to change course. Cases studies that highlight the difficulty of terminating or reversing failing policies offer one way of highlighting the potential pathologies associated with commitment bias.

Finally comes **ego** – how can we teach policymakers that they behave in ways that make them feel better about themselves? This is a sensitive area where course instructors risk alienating their practitioner students! Yet, the role of ego gets to the heart of the wider illusion of control that threatens to undermine regulatory humility. Dunlop and Radaelli (2015b) broach the subject with MPA participants using a mix of case study, conceptual teaching and an in-class experiment. They first generate awareness about the idea of regulatory humility using the case study of legal scholar and activist Larry Lessig. Lessig argues it is necessary to protect the world against irrational

legislation controlling the internet. Specifically, he is concerned that future regulatory interventions aimed at increasing transparency in and control over the online world may at best be futile, and at worst produce unanticipated harms (Lessig, 2010). Practitioners are taken through this case study and encouraged to discuss the idea of regulatory humility and its roots in the classic policy and administration literatures. Deeper reflection is then encouraged by conducting one of Langer's (1975) illusion of control experiments with the practitioners. Based around a lottery, the experiment demonstrates that even though this is entirely a chance situation, those practitioners who selected their lottery number – i.e. had exercised a choice – were more confident they would win. Course evaluations and assignments suggest that this combination of teaching tools produced extensive reflection amongst practitioners (see Dunlop and Radaelli, 2015b) and provides a useful template.

Conclusion

The current discussion on the role of behavioural science in the EU, well represented by the Introduction to our volume, revolves around the issue of integrating the insights of cognitive and behavioural economics into EU policymaking. In the field of impact assessment, this has spawned emerging concerns about whether benefits and costs are objective entities or are refracted by perceptions and heuristics of those most affected by them. At the same time, there is an on-going debate on the alleged reluctance of the Commission to take into serious consideration the option of non-intervening. This is not a new concern; since the early 2000s there have been critiques of the artificiality of some doing-nothing analyses. In this chapter, we have argued that the various biases that underpin the illusion of control produce neglect of policy abstinence.

There is room for optimism however. The EU context may indeed be favourable to behaviourally-informed intervention. Despite the fact that the institutionalisation of IA in the EU pre-dates the influence of behavioural theory in policymaking, there is much in the design of IA that goes with the grain of cognitive biases – notably the emphasis on calculating losses. The challenge is to ensure that analyses and processes are rigorously implemented. Amendments that re-structure some aspects of the IA choice architecture are also required. One recurring theme in this chapter has been the need to structure-in ex post policy evaluation (Commission, 2013; OECD, 2014)

Policymakers should also be trained to think, in slow mode, about the potential impact of their cognitive biases. The ideas and examples suggested in this chapter are in many ways tentative but they do suggest options for the future. First, it would be interesting to extend the use of conceptual and experimental teaching to samples of policymakers from the Commission. If the Commission has

a structural predisposition for regulatory intervention, this should show up in the behaviour of its officers.

Second, the Commission has called for evidence on how to re-formulate its guidance on impact assessment. This guidance (the impact assessment guidelines) should certainly include information on how those who are regulated respond to policy interventions. To some extent, whole segments of the impact assessment procedure, such as problem definition, regulatory options, benefits and costs, and macro-economic estimations should be calibrated and modified by using the insights of the behavioural sciences (Alemanno and Spina, 2013; Van Bavel et al., 2013). The interest in behavioural science is key to the current efforts of the US and European governments to moderate 'irritating' burdens and 'perceptions of administrative obligations'. And yet, guidance should also be clear and informative about the various forms of bias that occur *at the level of the officers preparing the impact assessment*. Their minds may trick them in the same way it tricks the citizen. Guidance on impact assessment should tell the policymaker how to recognise and test for bias, among other things by mentioning the risk of illusion of control. By combining training and guidance, governments have a chance of pushing the agenda for regulatory humility beyond nudging.

Third, think of the implications for training the Commission's officers. There is a market for training regulators, with courses on specific topics, including modules on IA (Allio, 2015). The Commission has its own training modules, with input from private consultants, officers from the Secretariat General, and the Joint Research Centre. These modules include law and economics, and elements of public policy analysis. They have case studies and testimonies from Commission's officers who developed impact assessments in the past and share their experience. Our approach suggests a new way to train on IA and policy formulation. Some fascinating insights on policy-making can be taught by using methods that involve the 'subjects' of the experiment in a reflection about their own illusions and biases.

An important aim of our volume is to discuss the challenges of integrating the sciences of nudging into the legal system of the EU. The impact assessment process is at the core of this system because it is there that policy proposals are appraised and developed. Indeed the impact assessment document is published on the same day the Commission publishes the draft proposal (for legislation or for a white paper or a Communication). It is challenging to think of integrating experiments in training modules for officers who develop EU legal acts and policy in general, but also exciting to think about the possibilities ahead.

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